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Editorial

It is an honour to present the second issue of the second volume of our **Online Bi-annual Journal**, ***LexScriptio*.** This remarkably comprehensive publication marks a significant contribution by the Department of Jurisprudence and Public Law, Faculty of Law, Kwara State University to the world of academia. It will serve as a great source of solution driven policies for agents of change within Nigeria and across the global community.

This edition reaffirms the unwavering commitment of the Department to the vision of providing research driven solutions to current challenges and problems facing the society. This second edition comes with a plethora of solutions to an even greater diversity of issues. Consistent with the standards established in previous editions an even greater emphasis was placed on objectivity, feasibility of propositions and originality of thoughts in the review process of the legal articles contained therein. Each article was blind peer-reviewed and included for publication only after thorough compliance with the reviewers' recommendations.

Behind every scholarly work, lies a community of minds and hands whose contributions are always appreciated. Therefore, most sincere gratitude goes out to these hardworking men and women which include the Chief Editor, Managing Editor, Associate Editors, the Editorial Board, the Advisory Board, Authors, Professors and members of the department and students.

It is guaranteed that this issue of ***LexScriptio*** provides excellent intellectual stimulation and relatable content. Intending contributors should read about the journal for submission guidelines on the journal website; https://journals.kwasu.edu.ng/index.php/lexscriptio and send to lexscriptio@kwasu.edu.ng. Please be informed that the publication date for the next issue is June 2026

Dr. Khafayat Yetunde Olatinwo
Chief Editor
December, 2025

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A RE-EXAMINATION OF THE LEGAL FRAMEWORK FOR THE PROTECTION OF SHAREHOLDERS' RIGHTS IN NIGERIA

Shajobi-Ibikunle Gloria* and Shajobi Oseghale Deborah Oluwadamilola**

Abstract

Shareholders remain the lifeblood of corporations, yet the Nigerian regulatory environment continues to tilt in favour of directors, undermining shareholder protection and accountability. This paper re-examines the legal regime of shareholders' rights in Nigeria to determine whether existing corporate governance frameworks adequately safeguard shareholder interests. Using a doctrinal methodology, the study interrogates the provisions of the Companies and Allied Matters Act 2020, the Investment and Securities Act 2025, the Nigerian Code of Corporate Governance 2018, and related regulatory provisions, alongside case law. The paper recommends stronger institutional mechanisms, enhanced whistleblower protections, a specialised corporate affairs tribunal for speedy dispute resolution, and a shift from the current "apply and explain" approach to a "comply or explain with sanctions" regime. By proposing a more robust and enforceable framework, the study contributes to ongoing debates on corporate governance reform and the equitable treatment of shareholders in Nigeria.

Keywords*:* Shareholder rights, Whistleblower protection, Netting, Corporate Governance

1. Introduction

The protection of shareholders lies at the heart of modern corporate governance. Without credible safeguards for shareholder rights, capital markets lose legitimacy, firms struggle to attract sustainable investment, and economic growth is undermined. In Nigeria, recurring corporate scandals, weak disclosure practices, and entrenched managerial opportunism have exposed persistent gaps in investor protection, despite the existence of multiple regulatory instruments. The challenge has not been the absence of laws, but rather their fragmented nature, uneven enforcement, and the ease with which corporate actors evade governance obligations.

In response, Nigeria has undertaken significant reforms in recent years. The Companies and Allied Matters Act 2020 (CAMA 2020) codified directors' fiduciary duties, strengthened disclosure obligations, and sought to improve board independence. The Investments and Securities Act 2025 (ISA 2025) expanded the regulatory mandate of the Securities and Exchange Commission (SEC), criminalised insider trading and market manipulation, and brought digital assets within the regulatory net. The Financial Reporting Council of Nigeria Act (as amended 2023) reinforced the FRC's role in setting and enforcing reporting standards, while the Nigerian Code of Corporate Governance 2018 (NCCG 2018) established principle-based guidelines on board accountability and shareholder engagement. These frameworks have been supplemented by sector-specific governance codes, such as the SEC Guidelines (2020, updated 2025), PenCom's 2025 Revised Guidelines for Licensed Pension Fund Operators, NAICOM's Insurance Governance Guidelines, CBN's banking sector guidelines, and the NCC's 2023 communication sector guidelines, which adapt general principles to industry-specific risks.

Despite these advances, critical questions remain as to whether Nigeria's governance framework adequately protects shareholders in practice. Weak enforcement, regulatory overlap, and cosmetic compliance continue to undermine shareholder confidence. This paper, therefore, re-examines the Nigerian legal regime on shareholders' rights and corporate governance through the lens of shareholder protection, identifying strengths,

weaknesses, and areas for reform. It argues that while Nigeria has established an elaborate architecture of laws and codes, the effectiveness of shareholder protection depends less on formal provisions than on rigorous enforcement, empowered shareholder activism, and a cultural shift towards genuine accountability.

2. Legal Framework on the Protection of Shareholders' Rights

2.1 The Constitution of the Federal Republic of Nigeria, 1999

The foundation for the protection of shareholder rights in Nigeria is rooted in the Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 16(1)(b) provides that the State shall "control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen based on social justice and equality of status and opportunity."[1] Read together with section 16(1)(c), which affirms the right of every citizen to participate in areas of the economy outside those reserved for the State, these provisions form the normative basis for shareholder participation in corporate enterprise. They guarantee not only the freedom to invest but also the right to fair treatment and protection within the economic system.

Although these provisions fall within the Fundamental Objectives and Directive Principles of State Policy (Chapter II of the Constitution) and are generally considered non-justiciable under section 6(6)(c),[2] they nevertheless provide an interpretative framework for legislation such as the Companies and Allied Matters Act 2020 (CAMA 2020) and the Investments and Securities Act 2025 (ISA 2025). In practice, the constitutional mandate imposes a duty on the State, through its agencies such as the Corporate Affairs Commission (CAC), the Securities and Exchange Commission (SEC), and the Financial Reporting Council of Nigeria (FRCN), to enact and enforce rules that protect shareholders from managerial abuse and ensure fair participation in corporate governance.

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[1] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 16(1)(b).
[2] *ibid* s 6(6)(c).

Judicial interpretation has occasionally given constitutional weight to economic rights where linked to other enforceable rights, such as the right to property under section 44 of the Constitution.[3] In this sense, shareholder rights to dividends, participation in general meetings, and fair value in takeovers or compulsory acquisitions may be viewed as constitutionally grounded in the right to property and protected against arbitrary deprivation.

Therefore, the Constitution serves as both a symbolic and normative foundation for shareholder rights. It reflects the principle that participation in the economy must be inclusive, transparent, and fair, and places a corresponding responsibility on the State to design regulatory frameworks that protect shareholders. By anchoring shareholder protection in the broader objectives of social justice and economic participation, the Constitution ensures that statutory regimes such as CAMA, ISA, and the NCCG 2018 are not isolated rules, but extensions of a constitutional mandate to safeguard citizens' participation in and benefit from the corporate economy.

2.2. Companies and Allied Matters Act, 2020

The Companies and Allied Matters Act 2020 (CAMA 2020) introduced wide-ranging reforms to strengthen corporate governance and ensure transparent, accountable management of Nigerian companies. Many of these provisions are directly linked to shareholder protection, particularly in enhancing director accountability, preventing conflicts of interest, and empowering shareholders in corporate oversight.

2.2.1 Shareholders' Rights under the Companies and Allied Matters Act, 2020

Section 46(1) of the **Companies and Allied Matters Act 2020** establishes the contractual foundation of membership rights by providing that the memorandum and articles of association, once registered, bind the company and its members as if covenants had been entered into by all parties.[4] This statutory covenant underscores the principle

[3] *ibid* s 44 (right to property).
[4] Companies and Allied Matters Act 2020, s 46(1).

that membership rights are not merely aspirational but legally enforceable against both the company and fellow shareholders.

Shareholders enjoy a wide range of statutory rights, many of which are critical to ensuring corporate accountability and protecting their proprietary and participatory interests. These rights include:

i. **Right to notice, participation, and voting at meetings:** Shareholders are entitled to receive notice of general meetings, attend, contribute to deliberations, and vote on key matters affecting the company. Section 140(1) guarantees at least one vote per share,[5] thereby entrenching shareholder sovereignty in fundamental decisions such as appointment and removal of directors or approval of share transfers.

ii. **Right of transfer and pre-emptive rights:** While shareholders retain the proprietary right to transfer shares, CAMA 2020 introduced statutory pre-emptive rights.[6] Companies must first offer new shares to existing members in proportion to their holdings before allotting them to outsiders. In addition, the Act codified contractual protections such as the right of first offer and tag-along rights, albeit as optional inclusions in private companies' articles. These provisions protect members against dilution and preserve their economic stake.

iii. **Right to information and inspection:** Shareholders are entitled to receive annual reports and audited financial statements[7] and to inspect key records such as registers of members, minutes of meetings, and annual returns.[8] This ensures transparency and reduces information asymmetry between management and owners.

iv. **Right to proprietary enjoyment:** Shares are recognised as personal property,[9] meaning shareholders may deal with them subject to the articles. This right affirms the economic value of shareholding beyond mere participation in governance.

[5] *ibid* s 140(1).
[6] *ibid* ss 142–143.
[7] *ibid* s 374.
[8] *ibid* s 331.
[9] *ibid* s 175.

v. **Investigatory and remedial rights:** Members may apply for an investigation into the company's affairs[10] or for court-ordered meetings where normal procedures are impracticable.[11] Sections 343–346 further empower minority shareholders to seek relief from oppression or mismanagement.[12] This statutory minority protection operates as an exception to the general rule in *Foss v Harbottle*, where the company itself is considered the proper plaintiff to seek redress for wrongs done to it.[13]

vi. **Right to dividends:** Shareholders are entitled to dividends when declared, which then become enforceable debts recoverable within twelve years.[14] This ensures that members enjoy their proportionate return on investment.

vii. **Right to surplus on winding up:** Section 657 secures members' entitlement to participate in the distribution of residual assets after liquidation, subject to statutory priority rules.[15]

Taken together, these rights provide both **participatory safeguards** (through voting, meetings, and information rights) and **economic safeguards** (through dividends, proprietary rights, and winding-up entitlements). Yet, in practice, enforcement challenges persist: weak shareholder activism, information asymmetry, and costly litigation often undermine the effective enjoyment of these rights. The statutory recognition of minority protection is commendable, but access to judicial relief remains hampered by procedural hurdles and delays. Consequently, while CAMA 2020 provides a comprehensive framework, the realization of shareholder rights depends heavily on robust enforcement by regulators and the judiciary.

2.2.2 Directors' Fiduciary Duties

CAMA codifies long-standing common law principles on directors' fiduciary responsibilities. Section 305 provides that "a director of a company stands in a fiduciary

[10] *ibid* s 315.
[11] *ibid* s 247(1).
[12] *ibid* ss 343–346.
[13] *Foss v Harbottle* (1843) 67 ER 189
[14] Companies and Allied Matters Act 2020, s 432.
[15] *ibid* s 657.

relationship towards the company and shall observe utmost good faith towards the company in any transaction with it or on its behalf."[16] This statutory duty reflects the equitable obligation of loyalty and proper purpose recognised in *Foss v Harbottle*,[17] and reinforced by Nigerian courts in *Edokpolo & Co. Ltd v Sem-Edo Wire Industries Ltd*,[18] where directors were held accountable for acting in bad faith. These duties serve to protect shareholders from managerial opportunism and misappropriation of company assets.

2.2.3 Disclosure and Over-boarding

CAMA also strengthens disclosure requirements by mandating directors to declare multiple directorships and age, matters material to effective corporate governance.[19] Section 307 restricts public company directors from serving on more than five boards, thereby curbing over-boarding and ensuring directors dedicate adequate time and expertise to each company.[20] This provision directly protects shareholders by improving board effectiveness and reducing conflicts of interest.

2.2.4 Audit Committee Oversight

Section 404 requires every public company to maintain an audit committee of five members, comprising three shareholders and two non-executive directors.[21] All members must be financially literate, and at least one must belong to a statutory accounting body. By embedding shareholders within the audit process, CAMA ensures that shareholders have a statutory voice in monitoring financial reporting, thus safeguarding them against fraud and misrepresentation.

[16] Companies and Allied Matters Act 2020, s 305.
[17] *Foss v Harbottle* (1843) 67 ER 189.
[18] *Edokpolo & Co. Ltd v Sem-Edo Wire Industries Ltd* (1989) 4 NWLR (Pt 116) 473 (CA).
[19] Companies and Allied Matters Act 2020, s 307(4).
[20] *ibid* s 307(5).
[21] *ibid* s 404.

2.2.5 Independent Directors

Public companies must appoint at least three independent directors, and section 275(3) provides qualifications for independence.[22] This is intended to balance board influence and limit the dominance of controlling shareholders. However, the criteria remain less rigorous than those in Principle 7 of the Nigerian Code of Corporate Governance 2018, which imposes stricter independence thresholds.[23] The weaker standards under CAMA raise concerns about captured independence, where nominally independent directors maintain ties to management or majority shareholders and/or management, undermining minority shareholder protection.

2.2.6 Enforcement Challenges

While the provisions of CAMA 2020 represent a significant step towards strengthening shareholder protection, enforcement in practice remains problematic. The Corporate Affairs Commission (CAC), which is statutorily responsible for monitoring compliance, continues to function largely as a revenue-collecting body, focusing on the filing of annual returns rather than substantive oversight of governance obligations. This limited institutional capacity allows many companies to submit incomplete or inaccurate returns without consequence, thereby undermining transparency.

Weaknesses are also evident in the operation of the audit committee under Section 404 CAMA 2020, which requires the participation of shareholder representatives. While this mechanism is intended to embed shareholder oversight in financial reporting, its effectiveness is compromised by poor financial literacy among retail shareholders and the dominance of controlling blocs, who often manipulate the nomination process. Consequently, the audit committee often functions more as a formality than a genuine safeguard for shareholders.

Judicial enforcement also presents obstacles. Although sections 305 and 349 CAMA 2020 provide for directors' fiduciary duties and shareholder remedies through derivative actions, procedural hurdles, high litigation costs, and the slow pace of commercial

[22] *ibid* s 275(3).
[23] Nigerian Code of Corporate Governance 2018, Principle 7.

adjudication in Nigerian courts limit the utility of these remedies. The deterrent value of judicial enforcement is therefore significantly weakened.

Finally, enforcement is complicated by the existence of overlapping regulatory regimes. CAMA operates alongside the **Nigerian Code of Corporate Governance 2018,** the **Investments and Securities Act 2025**, and sector-specific codes issued by regulators such as the SEC, CBN, NAICOM, and PenCom. This regulatory fragmentation creates arbitrage opportunities, as companies often comply selectively or exploit gaps between regulators. Added to this is the structural weakness of shareholder activism in Nigeria as minority shareholders are frequently disorganised, under-resourced, or compromised by associations with management, which prevents them from fully exercising the statutory protections afforded by CAMA.

While the provisions of CAMA 2020 represent a significant step towards strengthening shareholder protection, enforcement in practice remains problematic. The Corporate Affairs Commission (CAC), which is statutorily responsible for monitoring compliance, continues to function largely as a revenue-collecting body, focusing on the filing of annual returns rather than substantive oversight of governance obligations. This limited institutional capacity allows many companies to submit incomplete or inaccurate returns without consequence, thereby undermining transparency.

2.3. Investment and Securities Act, 2025

The Investments and Securities Act 2025 (ISA 2025) repeals the ISA 2007 and introduces comprehensive reforms designed to strengthen Nigeria's capital markets. At its core, the Act seeks to safeguard shareholders by enhancing market transparency, curbing abuse, and aligning Nigerian practice with international standards.

2.3.1 Expanded Regulatory Powers of Securities and Exchange Commission (SEC)

ISA 2025 consolidates the Securities and Exchange Commission (SEC) as the principal market regulator, granting it authority to register, monitor, and sanction capital market

operators.[24] Under section 36, SEC may suspend or prohibit trading in particular securities where shareholder interests are at risk.[25] SEC also now has express powers to appoint independent directors, place directors on probation, and remove officers implicated in misconduct.[26] These provisions secure shareholder protection by ensuring prompt intervention in cases of governance failure.

2.3.2 Public Offers and Disclosure

Sections 95–111 codify the framework for public offers, requiring issuers to submit prospectuses with full and accurate disclosures vetted by SEC.[27] Civil and criminal liability for misstatements under sections 113–114 protects shareholders from fraudulent or misleading offerings.[28] The Act further mandates that securities transactions be dematerialised and tied to Legal Entity Identifiers (LEIs), thereby increasing traceability and reducing risks of fraud.[29]

2.3.3. Internal Controls and Auditor Duties

Sections 88–92 strengthen corporate responsibility for financial integrity. Public companies must maintain effective internal control systems, with boards required to attest to their adequacy in annual reports.[30] Auditors, who must be registered with SEC, are obliged to confirm the existence and effectiveness of such controls, subject to penalties for failure.[31] These safeguards address information asymmetry by ensuring that shareholders receive reliable financial statements.

2.3.4 Market Conduct and Abuse Prevention

ISA 2025 introduces stricter prohibitions on false trading, market rigging, inducements, and dissemination of illegal information.[32] Insider dealing remains criminalised under

[24] Investments and Securities Act 2025, ss 26–28.
[25] *ibid* s 36.
[26] *ibid* s 3(4)(b)–(d).
[27] *ibid* ss 95–111.
[28] *ibid* ss 113–114.
[29] *ibid* ss 121–123.
[30] *ibid* ss 88–89.
[31] *ibid* ss 90–92.
[32] *ibid* ss 132–136.

sections 137–138, while section 139 empowers SEC to reward whistle-blowers who expose misconduct.[33] These provisions directly protect shareholders from unfair practices that distort markets and erode confidence.

2.3.5 Digital Assets and Investment Schemes

For the first time, ISA 2025 recognises digital and virtual assets as securities, bringing digital asset service providers, operators, and exchanges under SEC oversight.[34] Collective Investment Schemes (CIS) now include private equity and venture capital funds, unless exempted, expanding the scope of regulated investment products.[35]Section 196 expressly outlaws Ponzi and pyramid schemes, empowering SEC to shut them down and freeze promoters' assets.[36] These reforms respond to contemporary threats, ensuring shareholders are protected across both traditional and emerging markets.

2.3.6 Systemic Risk Oversight and Dispute Resolution

ISA 2025 empowers SEC to monitor systemic risks, issue directives for market stability, and regulate financial market infrastructures such as clearing houses and central counterparties.[37] The Act also expands the jurisdiction of the Investments and Securities Tribunal (IST) to include disputes over digital assets and SEC enforcement actions, providing shareholders with faster access to justice.[38]

2.3.7 Enforcement Challenges and Practical Limitations

The Investments and Securities Act 2025 (ISA 2025) marks a substantial improvement over its predecessor, the ISA 2007, particularly in strengthening the statutory foundation for shareholder protection. By expanding the regulatory mandate of the Securities and Exchange Commission (SEC), criminalising market abuse, institutionalising whistle-

[33] *ibid* ss 137–139.
[34] *ibid* s 3(3)(i); s 215.
[35] *ibid* s 230.
[36] *ibid* s 196.
[37] *ibid* ss 82–85; ss 400–415.
[38] *ibid* ss 450–452.

blower protections, and recognising digital assets as securities, the Act aligns Nigeria more closely with international standards of investor confidence and market integrity. The provisions on public offers, disclosures, and internal controls directly address long-standing problems of information asymmetry in the Nigerian capital market, thereby empowering shareholders to make better-informed decisions.

However, despite these advances, the Act faces several structural and enforcement challenges that threaten to dilute its impact. First, the SEC, while granted broader powers under ISA 2025, continues to struggle with limited institutional capacity and occasional political interference. Enforcement in Nigeria has often been inconsistent, with regulators more inclined to impose administrative penalties than to pursue rigorous prosecution of market abuse. Without consistent enforcement, provisions on insider trading, whistleblowing, and Ponzi scheme prohibition risk becoming largely symbolic.

Second, although the Act mandates extensive disclosure obligations, the culture of cosmetic compliance persists. Many issuers meet the formality of disclosure while omitting substantive details or presenting information in inaccessible formats. This undermines the ability of retail shareholders, who form the majority in Nigeria, to effectively exercise their rights.[39] Similarly, while auditors are legally bound to verify the adequacy of internal controls, past scandals, such as those involving Cadbury Nigeria and Oando Plc, demonstrate that professional gatekeepers sometimes collude with management to conceal irregularities, raising doubts about the robustness of audit-based protections.[40]

Third, the Act's recognition of digital assets as securities is a progressive step, but it also raises practical challenges. Regulatory clarity is still evolving, and the SEC may lack the technological expertise and resources to effectively monitor digital asset markets, leaving shareholders vulnerable to cyber fraud, unlicensed exchanges, and cross-border scams.

[39] O Akinola, 'Corporate Governance and Enforcement Challenges in Nigeria' (2021) 10 *Nigerian Journal of Commercial Law* 45.

[40] *Cadbury Nigeria Plc: False Accounting Case* (Reuters, 11 December 2006) https://www.reuters.com/article/business/nigeria-fines-cadbury-unit-for-false-accounting-idUSL11811588/ accessed 14 October 2025; Securities and Exchange Commission, Press Release on the Investigation of Oando Plc (SEC Nigeria, 31 May 2019) https://sec.gov.ng/press-release-on-investigation-of-oando-plc/ accessed 14 October 2025.

Moreover, the blanket inclusion of digital assets within securities law risks stifling innovation if regulation is applied in a manner that is overly rigid or duplicative.

Finally, the Investments and Securities Tribunal (IST), though granted wider jurisdiction under the 2025 Act, remains plagued by procedural delays and limited accessibility for ordinary shareholders. The promise of swift dispute resolution is undermined by the reality of case backlogs and underfunded judicial infrastructure, limiting the Tribunal's capacity to serve as an effective mechanism of shareholder protection.

In summary, while ISA 2025 strengthens the legislative foundation for shareholder protection through provisions on disclosure, market integrity, and systemic risk management, its effectiveness depends on three factors: regulatory capacity, professional accountability, and judicial efficiency. Without reforms in these areas, the Act risks reinforcing the pattern of Nigeria's corporate governance regime—strong on paper, but weak in practice.

2.4. Financial Reporting Council of Nigeria Act, 2011 (as amended in 2023)

The Financial Reporting Council of Nigeria (FRCN), established under the FRC Act 2011, plays a pivotal role in strengthening shareholder confidence through reliable financial reporting and corporate governance oversight. The 2023 amendment further consolidated these functions, granting the Council wider regulatory powers to enforce transparency and accountability in corporate Nigeria.

2.4.1 Corporate Governance Oversight

Sections 11(c) and 51(c) of the Act empower the FRCN to issue codes of corporate governance and guidelines applicable across sectors.[41] This authority gave rise to the Nigerian Code of Corporate Governance (NCCG) 2018, which institutionalises principles of board independence, accountability, and disclosure.[42] By providing a unified governance benchmark, the Act helps reduce regulatory arbitrage and enhances consistency, thereby protecting shareholders across diverse industries.

[41] Financial Reporting Council of Nigeria Act 2011 (as amended 2023), ss 11(c), 51(c).
[42] Nigerian Code of Corporate Governance 2018 (issued by FRCN pursuant to the Act).

2.4.2 Accounting, Auditing, and Reporting Standards

The FRCN is vested with the responsibility to adopt, monitor, and enforce accounting and auditing standards, aligning them with International Financial Reporting Standards (IFRS) and standards issued by the International Auditing and Assurance Standards Board (IAASB).[43] This harmonisation ensures that Nigerian financial statements meet global comparability standards, which reduces information asymmetry and allows shareholders to make informed decisions.

2.4.3 Enforcement and Sanctions

The 2023 amendment strengthened the Council's enforcement powers, including the ability to impose sanctions for non-compliance with financial reporting standards and governance requirements.[44] This shift from a purely advisory role to a quasi-enforcement model ensures that failures in financial disclosure and governance carry consequences, thereby deterring misconduct that could harm shareholders.

2.4.4 Shareholder Protection Significance

By mandating transparent financial reporting, setting governance standards, and empowering the FRCN to sanction non-compliance, the Act serves as a critical safeguard for shareholders. Reliable disclosures enhance market confidence, ensure fair valuation of securities, and reduce the risks of corporate scandals, as seen in past failures such as *Cadbury Nigeria Plc v Securities and Exchange Commission*, where weak financial controls had eroded shareholder value.[45]

Although the Financial Reporting Council of Nigeria Act (as amended 2023) enhances shareholder protection by mandating transparent financial reporting and empowering the Council to sanction non-compliance, its practical effectiveness remains questionable. The Council's role overlaps with other regulators such as the SEC and CBN, creating regulatory fragmentation that companies often exploit to evade accountability. Moreover, while the Act aligns reporting standards with IFRS to reduce information asymmetry,

[43] FRCN Act 2011 (as amended 2023), s 8(1)(d).
[44] *ibid* s 52.
[45] *Cadbury Nigeria Plc v Securities and Exchange Commission* (2008) 13 NWLR (Pt 1103) 375.

enforcement has been inconsistent, with auditors and preparers of accounts frequently escaping liability for misleading disclosures. Past scandals, notably Cadbury Nigeria Plc, highlight how weak financial oversight directly erodes shareholder value. In practice, therefore, the FRCN has yet to translate its statutory powers into a credible deterrent against misconduct. Without stronger inter-agency coordination, greater independence from political interference, and a culture of rigorous sanctions, the Act risks remaining more symbolic than substantive in protecting shareholder rights.

2.5 Nigerian Code of Corporate Governance, 2018

Prior to 2016, Nigeria lacked a codified national corporate governance regime, relying instead on sector-specific codes. To harmonise these frameworks, the Financial Reporting Council of Nigeria (FRCN) issued the National Code of Corporate Governance 2016, which was revised as the Nigerian Code of Corporate Governance 2018 (NCCG 2018).[46] The Code derives its authority from s 7(2)(a) of the Financial Reporting Council of Nigeria Act 2011, which empowers the Council to enforce corporate governance standards.[47]

Code Philosophy

The NCCG 2018 adopts an "Apply and Explain" approach, requiring companies to implement its principles and provide explanations where variations occur. Unlike a strict rules-based model, this principle-based framework entrusts boards with discretion to adapt governance standards while still ensuring accountability to regulators and shareholders.[48] This mechanism is intended to reduce information asymmetry and strengthen shareholder confidence through transparency.

[46] Nigerian Code of Corporate Governance 2018 (NCCG 2018), issued by the Financial Reporting Council of Nigeria.
[47] Financial Reporting Council of Nigeria Act 2011, s 7(2)(a).
[48] NCCG 2018, Preamble (Apply and Explain).

2.5.1 Board Composition and Independence

Principle 2 requires boards to maintain a balanced mix of skills, experience, independence, and diversity, ensuring effective oversight.[49]

2.5.2 Board Meetings

Principle 10 prescribes quarterly meetings and the timely circulation of minutes to enhance accountability and transparency.[50]

2.5.3 Risk Management

Principle 11 mandates the establishment of a Risk Management Committee, including oversight of IT governance, to mitigate risks that could harm shareholders.[51] The Oando case exemplifies the risks associated with inadequate risk management, as shareholders have alleged governance failures and financial mismanagement.[52]

2.5.4 Board and Director Evaluation

Principle 14 requires annual evaluation of the board, committees, and individual directors, with an independent review every three years.[53] This promotes accountability and continuous improvement in governance.

2.5.5 Corporate Governance Evaluation

Principle 15 provides for regular assessment of the company's governance framework, with summaries disclosed in annual reports and shareholder portals, thereby reinforcing shareholder oversight.[54]

[49] *ibid* Principle 2.
[50] *ibid* Principle 10.
[51] *Ibid* Principle 11.
[52] See *Securities and Exchange Commission v Oando Plc* (2017, petitions by shareholders alleging governance lapses and mismanagement)
[53] NCCG 2018, Principle 14.
[54] *ibid* Principle 15.

2.5.6 General Meetings

Principle 21 emphasises general meetings as platforms for direct engagement between boards and shareholders, recommending the presence of committee chairmen to respond to shareholder concerns.[55]

The Nigerian Code of Corporate Governance 2018 (NCCG 2018) represents a significant milestone in Nigeria's governance landscape by institutionalising principles of board independence, risk oversight, board evaluations, and shareholder engagement. Its "Apply and Explain" philosophy was intended to reduce information asymmetry and improve transparency, compelling boards to demonstrate not only that they have adopted the Code but also how its provisions are applied in practice.[56]

However, while conceptually progressive, the NCCG has been criticised for being more persuasive than coercive.[57] Unlike a rules-based framework with enforceable sanctions, the Code relies heavily on voluntary compliance and the quality of board explanations.[58] In practice, this creates room for superficial or "boilerplate" disclosures, where companies formally comply but fail to substantively improve governance practices. The resulting gap weakens the Code's ability to deliver on shareholder protection. Furthermore, certain provisions, such as those relating to board independence, remain vulnerable to manipulation. Companies frequently appoint "independent" directors who are closely aligned with controlling shareholders or management, thereby undermining the very oversight the Code was meant to guarantee.[59] Similarly, while the Code promotes shareholder engagement through general meetings, the reality of weak institutional shareholder activism and limited minority shareholder capacity means that boards are rarely held to account in practice.

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[55] *ibid* Principle 21.
[56] Nigerian Code of Corporate Governance 2018, Preamble (Apply and Explain).
[57] U Uche and C Oguche, 'Corporate Governance in Nigeria: Challenges and Reforms' (2020) 12 *Journal of Corporate Law Studies* 113.
[58] *ibid*, Principle 28 (reporting and disclosures).
[59] U Uche and C Oguche, 'Corporate Governance in Nigeria: Challenges and Reforms' (2020) 12 *Journal of Corporate Law Studies* 113.

Ultimately, while the NCCG 2018 provides an important framework for balancing managerial discretion with shareholder rights, its effectiveness hinges on credible enforcement by regulators (such as the SEC and FRCN) and greater shareholder assertiveness. Without these complementary mechanisms, the Code risks becoming a symbolic benchmark rather than a substantive instrument of shareholder protection.

2.6 Securities and Exchange Commission Corporate Governance Framework

The Securities and Exchange Commission (SEC), in line with its statutory mandate under the Investments and Securities Act 2025 (ISA 2025) to protect shareholders and promote a transparent capital market, has consistently issued governance instruments to raise standards of accountability. Following the enactment of the Nigerian Code of Corporate Governance 2018 (NCCG 2018) by the Financial Reporting Council of Nigeria (FRCN), the SEC released its Corporate Governance Guidelines 2020 to provide additional recommended practices for public companies.[60] These Guidelines, derived largely from the 2011 SEC Code of Corporate Governance, were designed to strengthen transparency, accountability, and shareholder confidence while encouraging enterprise and innovation. The 2020 Guidelines required boards of companies to have a minimum of five directors, prohibited cross-membership where such would lead to conflicts of interest, and mandated the appointment of at least one independent director.[61] Independence was narrowly defined: an individual who, within the previous three financial years, had served as a partner or executive in the company's audit, internal audit, or consulting firms with material ties was ineligible.[62] Further protections included disclosure of conflicts of interest by prospective directors, including interlocking directorships,[63] and strengthened shareholder oversight of executive remuneration,[64] requiring boards to approve each executive director's pay on an individual basis, thereby curbing excessive compensation that could undermine shareholder value. The Guidelines also required a risk-based

[60] Securities and Exchange Commission, Corporate Governance Guidelines (2020).
[61] *ibid* Guideline 2.
[62] *ibid* Guideline 4.
[63] *ibid* Guideline 8.
[64] *ibid* Guideline 10.2.

internal audit process and imposed duties of anti-corruption and enhanced disclosure beyond those mandated under CAMA 2020.[65]

In June 2025, the SEC issued new directives to address persistent governance risks and align Nigerian standards with international best practices. Pursuant to ISA 2025 section 355(r)(iv), the SEC introduced tenure limits for directors: a maximum of 10 consecutive years in the same company, and 12 years across a group structure.[66] It further imposed a "cool-off" period of three years before a former CEO or executive director may assume the position of board chairman, with the additional restriction that a chairman may serve for only four years.[67] Most notably, the directive prohibits the transmutation of Independent Non-Executive Directors (INEDs) into executive roles within the same company or group, recognising that such movement compromises independence and diminishes board oversight.[68]

These developments reinforce the SEC's overarching duty to protect shareholders by ensuring boards remain independent, transparent, and effective. By limiting entrenched directorships, prohibiting compromised independence, and tightening remuneration and audit controls, the 2020 Guidelines as updated by the 2025 directives enhance shareholders' ability to monitor management and reduce risks of abuse, thereby strengthening trust in Nigeria's capital markets.

While the SEC's Guidelines and the 2025 directives represent important advances in curbing entrenched boards and strengthening independence, their effectiveness will depend heavily on consistent enforcement and cultural change within companies. Nigerian corporate practice has shown that tenure limits and independence requirements are often undermined by weak monitoring and regulatory forbearance.[69] The prohibition on the transmutation of Independent Non-Executive Directors (INEDs) into executive roles is laudable, but without rigorous disclosure obligations and credible sanctions,

[65] *ibid* Guidelines 11, 13–14.
[66] Investments and Securities Act 2025, s 355(r)(iv).
[67] Securities and Exchange Commission, Circular to all Public Companies and Capital Market Operators on the Transmutation of Independent Non-Executive Directors and Tenure of Directors (19 June 2025) para 1.
[68] *ibid.*
[69] E Uche and A Oguche, 'Corporate Governance in Nigeria: Challenges and Reforms' (2021) *13 Journal of Corporate Law Studies* 201.

companies may still exploit loopholes through group structures or informal affiliations. Similarly, while restrictions on remuneration are designed to curb excesses, shareholders in Nigeria, particularly minority shareholders, often lack the capacity to challenge opaque pay practices in general meetings.[70] The SEC's reforms therefore, signal a stronger commitment to shareholder protection, but they risk becoming formalistic unless regulators adopt a more proactive supervisory approach and shareholders themselves embrace more assertive activism.

2.7 SEC's Code of Conduct for Shareholders' Associations

In a bid to promote good governance and give a clear understanding of the principles of business conduct and ethics that are expected of shareholders during general meetings of public companies as well as their relationships with the companies outside general meetings, a code of conduct for shareholders' association was released in 2016 by SEC. The code of conduct was to ensure that association members uphold high ethical standards and make positive contributions to ensuring that the affairs of public companies are run ethically and transparently.

3. Regulatory Guidelines on Corporate Governance

Sequel to the NCCG 2018, several regulatory bodies have issued industry-specific regulations and circulars on corporate governance, which not only amplify the provisions of the Code but also adapt its principles to address sectorial risks and shareholder-protection concerns.

3.1 National Pension Commission's Circular on Corporate Governance

The National Pension Commission (PenCom), acting under its statutory authority in the Pension Reform Act 2014, issued the Revised Guidelines on Corporate Governance for Licensed Pension Fund Operators (LPFOs) in September 2025.[71] These Guidelines update and strengthen the corporate governance regime for pension fund administrators

[70] I Omoregie, 'Minority Shareholder Rights and Corporate Accountability in Nigeria' (2022) 40 *Journal of African Law* 78.

[71] Pension Reform Act 2014, s 23; National Pension Commission, Revised Guidelines on Corporate Governance for Licensed Pension Fund Operators (22 September 2025).

and custodians, with particular emphasis on safeguarding contributors' (shareholders') funds.

3.1.3 Board Independence and Tenure

The Guidelines mandate that boards of LPFOs comprise at least 30 per cent Independent Non-Executive Directors (INEDs) or three INEDs, whichever is higher, thereby securing effective oversight.[72] They impose strict tenure limits: managing directors/CEOs may serve a maximum of 10 years, executive and non-executive directors 15 years, and INEDs 9 years.[73] Cooling-off rules prevent immediate transitions that could compromise independence.

3.1.2 Control Functions and Risk Oversight

Key control functions are institutionalised: risk management committees must be chaired by INEDs; compliance officers must be approved by PenCom; and internal audit functions cannot be outsourced, with mandatory external reviews every three years.[74] The Guidelines also require robust whistleblowing mechanisms, protecting from retaliation and remedies where harm occurs.[75] External auditors owe a duty not only to the LPFO but also directly to PenCom to report any imminent threat of financial collapse or material fund loss.[76]

3.1.3 Shareholder (Contributor) Rights

Shareholder rights are reinforced through provisions requiring 21-day notice for general meetings, accessible venues for all shareholders (including those with disabilities), and clear shareholder agreements defining rights and obligations.[77] These measures align pension sector governance with the NCCG 2018 principles on transparency and shareholder engagement.

[72] *ibid* pt II, para 2.2.
[73] *ibid* pt II, para 2.7.
[74] *ibid* pt III, paras 3.1–3.5.
[75] *ibid* pt III, para 3.6.
[76] *ibid* pt III, para 3.7.
[77] *ibid* pt IV, paras 4.1–4.3.

3.1.4 Ethics, Conflicts of Interest, and Disclosure

The Guidelines prohibit conflicts of interest with service providers and mandate prompt disclosure of related-party transactions.[78] Restrictions on post-employment of PenCom officials in LPFOs mitigate regulatory capture.[79] Disclosure standards have been expanded: annual reports (including audited accounts) must be filed within four months of year-end, detailing governance practices, board composition, risk controls, and evaluation outcomes.[80]

3.1.5. Sanctions

A significant improvement over earlier circulars is the inclusion of explicit sanctions for non-compliance. The Guidelines incorporate PenCom's sanctions regime, empowering the Commission to impose administrative penalties on LPFOs or directors that violate governance provisions.[81] This closes the lacuna in the earlier framework, ensuring enforceability and bolstering shareholder confidence.

3.2 National Insurance Commission Corporate Governance Guidelines.

The National Insurance Commission (NAICOM) issued Corporate Governance Guidelines to strengthen oversight in the insurance industry and amplify the NCCG 2018 principles.[82] The Guidelines address board structure, tenure, remuneration, and disclosure obligations, thereby safeguarding policyholders and shareholders. Notably, Guideline 11.0 protects whistle-blowers by allowing them to lodge complaints with NAICOM if subjected to detriment, an important mechanism for uncovering misconduct in the insurance sector.[83]

The Guidelines also prescribe compliance thresholds for insurance institutions and explicitly provide that failure to comply with the NCCG 2018 or the Guidelines

[78] *ibid* pt V, para 5.1.
[79] *ibid* pt V, para 5.3.
[80] *ibid* pt VI, paras 6.1–6.3.
[81] *ibid* pt VII, para 7.1.
[82] National Insurance Commission, Corporate Governance Guidelines for Insurance Institutions (2021).
[83] ibid Guideline 11.0.

constitutes a violation of s 49(1)(b) of the NAICOM Act 1997.[84] This enforcement mechanism strengthens shareholder protection by ensuring accountability and deterring governance failures.

3.3 CBN Corporate Governance Guidelines for Commercial, Merchant, Non-Interest, and Payment Service Banks

The Central Bank of Nigeria (CBN) issued Corporate Governance Guidelines for the banking sector, recognising the systemic importance of banks to financial stability and shareholder confidence.[85] The Guidelines encourage accessibility of general meetings, rotation of meeting venues, and the use of virtual platforms where necessary, thereby enabling wider shareholder participation.[86]

They also vest responsibility on boards to ensure that institutional shareholders act responsibly, that banks comply with the SEC Code of Conduct for Shareholders' Associations, and that shareholder associations operate transparently.[87] This promotes shareholder activism as a mechanism of shareholder protection.

Further, Guideline 20.2 prohibits any individual, group, proxy, or entity from owning a controlling interest in more than one bank without CBN's prior approval. It also requires CBN's "No Objection" for any acquisition of 5% or more of a bank's shares.[88] These provisions prevent undue concentration of ownership and protect against systemic risks that could jeopardise shareholder funds and market integrity.

3.4 Nigerian Communications Commission's Guidelines on Corporate Governance for the Communications Sector, 2023

The Nigerian Communications Commission (NCC) issued the Guidelines on Corporate Governance for the Communications Sector 2023 to promote transparency,

[84] National Insurance Commission Act 1997, s 49(1)(b).
[85] Central Bank of Nigeria, Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria (2022).
[86] *ibid* Guideline 2.4.
[87] *ibid* Guideline 15.1.
[88] *ibid* Guideline 20.2.

accountability, and ethical practices in Nigeria's communications industry.[89] The Guidelines are designed to protect not only licensees and consumers but also shareholders by ensuring that corporate governance standards in the sector align with global best practice. The Guidelines aim to guarantee higher levels of transparency, due process, and accountability without hindering enterprise or innovation.[90] By strengthening governance practices, they provide shareholders with greater confidence in the sustainability and integrity of businesses operating in the communications industry. Key provisions include requirements on the composition and structuring of boards of directors, with emphasis on independence, diversity, and efficiency.[91] These measures are particularly relevant to shareholder protection, as they ensure balanced oversight, reduce risks of managerial entrenchment, and enhance long-term shareholder value.

4.1 Conclusion

The evolution of Nigeria's corporate governance framework demonstrates a deliberate attempt to embed investor protection within statutory law, regulatory codes, and sector-specific guidelines. The Companies and Allied Matters Act 2020 codify directors' fiduciary duties, enhances disclosure, and institutionalises independent directors, thereby providing baseline safeguards against managerial abuse. The Investments and Securities Act 2025 extend this protection to capital markets by strengthening SEC's regulatory authority, criminalising market manipulation, integrating digital assets, and empowering whistle-blowers. Similarly, the FRC Act 2011 (as amended 2023) underscores transparency through financial reporting and corporate governance enforcement, while the Nigerian Code of Corporate Governance 2018 offers principle-based standards aimed at fostering board accountability, risk oversight, and shareholder engagement.

Yet, these frameworks remain only as effective as their enforcement. The SEC Guidelines of 2020, supplemented by the 2025 directives, mark a significant step in addressing entrenched boards, compromised independence, and excessive remuneration

[89]Nigerian Communications Commission, Guidelines on Corporate Governance for the Communications Sector (December 2023).
[90] *ibid* para 1.1.
[91] *ibid* pt II, paras 2.1–2.4.

practices. Sector-specific regulations, such as PenCom's 2025 Revised Guidelines for LPFOs, NAICOM's corporate governance rules for insurers, CBN's provisions for banks, and NCC's communication sector guidelines, further amplify protections by tailoring governance expectations to the unique risks of each industry. Collectively, these measures reflect an architecture designed to reduce information asymmetry, deter managerial opportunism, and reinforce investor confidence in Nigeria's corporate system.

Nevertheless, persistent challenges remain as compliance often veers towards form over substance. For Nigeria's corporate governance regime to move from aspirational to transformative, three priorities are clear:

i. Regulators must adopt credible and consistent enforcement mechanisms that go beyond issuing codes to imposing real consequences for non-compliance.
ii. Shareholder activism, especially by institutional investors, must be strengthened to complement regulatory oversight.
iii. Judicial interpretation of directors' duties and investor rights must continue to evolve towards a more protective, shareholder-centred orientation.

Only through this triangulation of statutory reform, regulatory enforcement, and shareholder assertiveness can investor protection shift from being a policy goal to a lived reality in Nigeria's corporate environment.

5.1 Recommendations

The foregoing analysis reveals that while Nigeria has developed an increasingly robust legal and regulatory framework for corporate governance, significant gaps persist in the implementation and enforcement of these provisions. Shareholder protection, though central to the Companies and Allied Matters Act 2020, the Investments and Securities Act 2025, and sector-specific codes, remains weakened by inconsistent compliance, limited regulatory capacity, and inadequate sanctions in some areas. To transform the legal regime from one that is largely aspirational to one that delivers practical protection for shareholders, it is essential to adopt targeted reforms. The recommendations that follow focus on strengthening enforcement mechanisms, enhancing shareholder

remedies, deepening disclosure standards, and fostering a culture of accountability across corporate and regulatory institutions.

5.1.1 Strengthen CAC Oversight and Capacity

The Corporate Affairs Commission (CAC) should enhance its regulatory and financial oversight, particularly regarding the filing of annual returns and financial statements. Beyond serving as a revenue-generating function, the CAC must actively review financial disclosures for inconsistencies. This requires targeted investment in staff training and capacity-building to improve the quality of regulatory supervision.

5.1.2 Enhance Whistleblower Protection

The Companies and Allied Matters Act (CAMA) and the Investment and Securities Act (ISA) should be amended to guarantee stronger anonymity and statutory protection for whistleblowers. Regulators must move beyond the formal letter of the law to deliberately cultivate a culture of whistleblowing as a tool for corporate accountability and transparency.

5.1.3 Institutionalise Complaints and Enforcement Units

Dedicated complaints monitoring and enforcement units should be established under CAMA, the Securities and Exchange Commission (SEC), and the Financial Reporting Council of Nigeria (FRCN). These units should collaborate with anti-corruption agencies such as the EFCC and ICPC, replicating their enforcement strategies to strengthen shareholder confidence, rebuild public trust, and reduce shareholder apathy.

5.1.4 Adopt a Sanction-Based Governance Regime

Nigeria should resist wholesale transplantation of self-regulatory corporate governance models from Western jurisdictions. Instead, the Nigerian Code of Corporate Governance (NCCG) should be amended to revert from the “apply and explain” approach to a “comply or explain with sanctions” regime. This would restore shareholder supremacy and ensure that directors’ actions remain subject to meaningful review and accountability.

5.1.5 Establish a Corporate Affairs Tribunal

The government should create a specialised corporate affairs tribunal with jurisdiction to promptly and effectively adjudicate violations of CAMA. The current system, where violators merely pay fines yet continue operations, lacks deterrent value. A tribunal would ensure timely justice, stronger compliance, and a culture of corporate responsibility.

ADMISSIBILITY OF FORENSIC ACCOUNTING EVIDENCE UNDER THE NIGERIAN EVIDENCE ACT 2011: A LEGAL APPRAISAL

Godwin Emmanuel Oyedokun* and Simeon Olaosebikan Oni**

Abstract

This article provides a critical appraisal of the admissibility of forensic accounting evidence under the Nigerian Evidence Act 2011. It situates forensic accounting as an indispensable tool in the prosecution of economic and financial crimes, while interrogating how such evidence is received and evaluated in Nigerian courts. The discussion begins with a doctrinal analysis of the relevant statutory framework, particularly sections 68 and 84 of the Evidence Act, which govern expert opinion and electronic evidence respectively. Judicial interpretation of these provisions is examined through leading decisions, including EFCC v Orji Uzor Kalu and *Akingbola v FRN, which illustrate the judiciary's cautious and sometimes restrictive approach to forensic testimony. Beyond statutory provisions, the article emphasises the centrality of procedural requirements in determining admissibility and probative value. These include the qualifications and duties of expert witnesses, the preservation of an unbroken chain of custody, and the certification and authentication of electronic records, as codified under section 84(4). Nigerian courts, as seen* in *Abdullahi v State, have repeatedly underscored the principle that expert witnesses owe their primary duty to the court rather than to the parties that engage them. Empirical insights drawn from interviews with judges and practitioners further reveal recurring challenges, such as weak technical capacity, poor compliance with reporting standards, and failures in maintaining evidentiary integrity. Comparative perspectives are drawn from the United States, where the* Daubert *standard provides a structured framework for assessing expert reliability, and from the United Kingdom, where the* Ikarian Reefer *principles guide the duties and independence of expert witnesses. These frameworks expose the gaps in Nigeria's evidentiary system, particularly the absence of codified standards for expert evidence. The article concludes that while forensic accounting evidence is increasingly relevant in complex financial litigation, its admissibility and weight remain undermined by procedural defects, judicial scepticism, and inconsistent application of statutory safeguards. To address these gaps, the article recommends judicial training, reform of evidentiary rules, adoption of structured admissibility tests, and accreditation of forensic experts. Such reforms are essential to strengthen the credibility, probative value, and judicial acceptance of forensic accounting evidence within Nigeria's legal system.*

Keywords: Admissibility of evidence, Expert testimony, Forensic accounting, Nigerian Evidence Act 2011, Electronic evidence.

1.0 Introduction

Forensic accounting has emerged as a critical interface between law and financial investigation, particularly in response to the growing sophistication of economic crimes. It is a discipline that combines accounting, auditing, and investigative skills to examine financial statements and transactions in anticipation of, or in response to, litigation. Its purpose is to produce evidence that is legally admissible in court proceedings and to assist in uncovering fraudulent financial practices, corporate misconduct, corruption, and tax-related offences [1]

The relevance of forensic accounting evidence in Nigeria has grown substantially in recent years. This is particularly due to the intensified anti-corruption campaigns by institutions such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC), which increasingly rely on forensic accountants to uncover illicit financial flows and gather probative evidence for trial.[2] In cases involving corporate fraud, tax evasion, procurement irregularities, and financial misappropriation, forensic accounting evidence has been introduced either as documentary exhibits or through expert testimony. However, the growing dependence on such evidence has brought to the fore the adequacy and consistency of the legal framework governing its admissibility under Nigerian law.

The Nigerian Evidence Act 2011 (as amended) provides the principal legal framework for the admissibility of evidence in judicial proceedings. In particular, section 68 regulates the reception of expert evidence, sections 83–91 govern the admissibility of documentary evidence, and section 84 addresses the admissibility of electronic records.[3] Although these provisions are designed to accommodate the use of forensic accounting

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[1] Howard Silverstone and Michael Sheetz, *Forensic Accounting and Fraud Investigation for Non-Experts* (2nd edn, Wiley 2011) 4.

[2] Economic and Financial Crimes Commission (EFCC), *Annual Report 2022* https://www.efcc.gov.ng accessed 20 June 2025.

[3] Evidence Act 2011, ss 68, 83–91, 84.

evidence, their practical application has generated unresolved legal questions. For example, it remains unclear whether forensic accounting evidence invariably qualifies as expert opinion within the meaning of section 68, how computer-generated financial analyses are to be assessed under section 84, and whether forensic reports prepared during investigations are excluded as hearsay by virtue of section 83. These uncertainties reveal both doctrinal ambiguities and procedural inconsistencies in the judicial treatment of forensic evidence in Nigeria.[4]

Accordingly, this article seeks to critically appraise the admissibility, evidentiary value, and judicial treatment of forensic accounting evidence within the Nigerian legal system. The central research questions include:

1. What constitutes forensic accounting evidence within the legal context?
2. What statutory and procedural thresholds govern its admissibility under the Evidence Act 2011?
3. How have Nigerian courts interpreted and evaluated such evidence in actual cases?

To answer these questions, this article adopts a doctrinal and analytical approach, drawing on statutory interpretation, case law analysis, and comparative jurisprudence. It begins with a conceptual clarification and theoretical overview of forensic accounting and expert evidence. It then examines the relevant provisions of the Nigerian Evidence Act 2011 in light of both domestic and foreign case law. The discussion further identifies judicial attitudes toward forensic experts and the challenges faced in qualifying and assessing their testimony.

The article ultimately argues that while Nigerian law recognises forensic accounting as a form of expert evidence, gaps in legislative clarity, judicial interpretation, and procedural application continue to limit its full evidentiary potential. As financial crimes evolve, the law must equally adapt to ensure that forensic accounting evidence is properly received, evaluated, and utilised in line with principles of fair hearing and due process.

[4] *FRN v Fani-Kayode* (2010) LPELR-CA/L/476/09.

The significance of this study lies in its contribution to bridging the gap between forensic accounting practice and evidentiary law in Nigeria. Forensic accounting has increasingly become a critical tool in combating financial crimes and corruption, yet its admissibility before Nigerian courts remain fraught with uncertainty. The Nigerian Evidence Act 2011 provides the principal framework for the reception of expert evidence, particularly under sections 68 and 84, but the application of these provisions has not been uniform in practice. For example, in *EFCC v Orji Uzor Kalu*, the court was confronted with the challenges of assessing the probative value of expert testimony in relation to complex financial evidence, reflecting both the potential and limitations of the current statutory regime.[5] Similarly, in *Akingbola v FRN*, questions of admissibility hinged on the adequacy of procedural compliance and chain of custody.[6]

This study is particularly relevant to legal practitioners, judges, and forensic accountants who frequently grapple with the evidentiary challenges of admitting expert and electronic evidence in court. It further contributes to judicial development by clarifying interpretative approaches that may guide courts in establishing structured admissibility standards. Beyond jurisprudence, the findings have policy implications, highlighting the urgent need for judicial training, expert accreditation, and reforms to procedural rules to ensure greater reliability in forensic accounting evidence. Comparative insights from the United States, particularly the *Daubert* standard,[7] and the United Kingdom's *Ikarian Reefer* principles,[8] underscore the importance of adopting structured admissibility tests that safeguard both fairness and accuracy. By situating Nigeria within this broader international framework, the study enhances understanding of how forensic accounting can be more effectively integrated into the Nigerian justice system.

This article employs a multidimensional methodology that combines doctrinal, comparative, and empirical approaches. The doctrinal component examines statutory provisions of the Nigerian Evidence Act 2011, focusing on sections 68 and 84, as well as

[5] *EFCC v Orji Uzor Kalu* (2019) LPELR-50466 (SC).
[6] *Akingbola v FRN* (2012) LPELR-9340 (CA).
[7] *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).
[8] *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

relevant case law. Nigerian judicial decisions such as *EFCC v Orji Uzor Kalu* and *Akingbola v FRN* are analysed to demonstrate how forensic accounting evidence has been received in practice. Secondary sources, including leading commentaries on evidence law, are also reviewed to provide further scholarly context.

The comparative dimension assesses foreign legal frameworks governing expert evidence. In the United States, the *Daubert* standard, established in *Daubert v Merrell Dow Pharmaceuticals Inc*, provides a rigorous test for the admissibility of scientific and expert testimony.[9] In the United Kingdom, the *Ikarian Reefer* principles set out judicial expectations for impartiality and reliability of expert witnesses.[10] These models are critically examined to evaluate their relevance to Nigerian law and their potential adaptability.

Finally, the empirical component involves semi-structured interviews with judges, practising lawyers, and forensic accountants in Nigeria. The purpose of this inquiry is to capture practical insights into the challenges faced in admitting forensic accounting evidence. Themes such as limited judicial expertise, unclear evidentiary standards, and weak chain of custody protocols are highlighted as recurrent barriers. The findings from this empirical inquiry are then triangulated with doctrinal and comparative insights to provide a robust and practically grounded analysis.

2.0 Admissibility of Forensic Accounting Evidence

2.1 Admissibility of Forensic Accounting Evidence under the Nigerian Evidence Act

The admissibility of forensic accounting evidence under the Nigerian Evidence Act 2011 has attracted considerable scholarly and judicial attention, particularly with respect to documentary and electronic records, as well as expert testimony. The statutory framework of the Act provides the starting point for analysis. Section 68 recognises the opinions of experts as admissible where specialised knowledge is required, while section 84 prescribes the admissibility of computer-generated evidence subject to the production

[9] *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).
[10] *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

of a certificate identifying the manner of production, the device used, and the person responsible for generating the document.[11] Scholars have argued that these provisions modernised Nigerian evidentiary law but simultaneously entrenched formal authenticity rules that risk excluding relevant evidence on technical grounds.[12] Similarly, Nwosu contends that section 84's certification requirement, although intended to ensure reliability, has been applied rigidly in practice and has sometimes frustrated the reception of probative material.[13]

Judicial interpretations of these provisions confirm the tension between legislative recognition of new forms of evidence and conservative judicial gatekeeping. In *Kubor v Dickson*, the Supreme Court affirmed that electronic evidence is admissible but stressed that compliance with section 84 is mandatory.[14] In high-profile corruption cases such as *EFCC v Orji Uzor Kalu* and *Akingbola v FRN*, courts have excluded electronic and expert materials where certification requirements or methodological reliability were in doubt.[15] These decisions illustrate the judiciary's willingness to embrace modern forms of proof, but only under strict adherence to formal evidentiary conditions.

Comparative jurisprudence sheds further light on how Nigerian law might evolve. In the United States, the Supreme Court in *Daubert v Merrell Dow Pharmaceuticals Inc* introduced a structured test requiring judges to assess scientific validity by considering factors such as testability, peer review, error rates, and general acceptance.[16] In the United Kingdom, the *Ikarian Reefer* principles stress impartiality, clarity, and methodological transparency as standards for experts.[17] Nigerian commentators argue that the absence of similarly structured gatekeeping standards creates uncertainty and makes it difficult for judges to evaluate forensic accounting testimony consistently.

[11] Evidence Act 2011, ss 68, 84.
[12] Ernest Ojukwu, *Introduction to the Nigerian Law of Evidence* (Fab Educational Books 2014) 190–204.
[13] Chijioke Nwosu, 'Admissibility of Electronic Evidence under the Nigerian Evidence Act' (2017) 8(2) Nigerian Journal of Commercial Law 45.
[14] *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).
[15] *EFCC v Orji Uzor Kalu* (2016) LPELR-40045 (SC); *Akingbola v FRN* (2012) LPELR-9343 (CA).
[16] *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).
[17] *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

The forensic accounting literature itself highlights both methodological strengths and practical challenges. Forensic accountants rely on techniques such as data mining, ledger reconciliation, and audit trail reconstruction to uncover fraudulent practices. However, empirical studies in Nigeria reveal systemic obstacles, including weak chain-of-custody protocols, limited access to original source systems, and difficulties in translating technical findings into forms admissible in court.[18] These challenges reduce the evidential weight of otherwise sophisticated forensic work.

Another emerging concern relates to electronic evidence generated in cloud-based or distributed ledger systems. Section 84's requirement that evidence be tied to a specific device and human maker does not easily accommodate decentralised or automated technologies. Scholars argue that judicial practice should shift from formal certification to reliability markers such as metadata integrity, system audit logs, and corroborative expert testimony.[19] Commentators have therefore urged reforms that would align Nigerian law more closely with global trends in digital evidence admissibility, while still safeguarding authenticity and reliability.

Across the literature, three themes emerge: first, a lack of technical capacity among judges and lawyers to evaluate forensic methodologies; second, the rigid application of statutory requirements, particularly under section 84, which often results in exclusion of probative evidence on procedural grounds; and third, institutional fragmentation, manifested in the absence of expert registers, accreditation frameworks, and uniform reporting standards for forensic accountants in Nigeria. The consensus among scholars is that reform is required in four areas: statutory clarification, judicial development of structured gatekeeping standards, professional training for judges and lawyers, and institutional protocols such as accreditation of experts and chain-of-custody templates.[20]

[18] See eg 'Forensic accounting in fraud detection and …' *Unizik Journal of Finance & Management Science*; 'An empirical study of forensic accounting and fraud management by listed banks in Nigeria' (various Nigerian empirical studies).
[19] Nwosu (n 3).
[20] Ojukwu (n 2); Nwosu (n 3).

This body of literature therefore establishes both the strengths and deficiencies of the current Nigerian framework. While the Evidence Act 2011 created a foundation for admitting forensic accounting evidence, its practical application remains fraught with technical obstacles and judicial conservatism. The scholarship points toward the need for a more flexible and technologically attuned evidentiary regime, one that balances authenticity safeguards with the realities of forensic accounting practice in the digital age.

2.2 Forensic Accounting

Forensic accounting is a specialised area within the broader field of accounting that applies investigative and analytical skills to financial data for use in legal proceedings. According to Crumbley et al, forensic accounting involves "the use of accounting, auditing, and investigative skills to assist in legal matters" and often leads to the presentation of evidence in court.[21] The scope of forensic accounting extends to civil and criminal litigation involving fraud, corruption, bankruptcy, business valuations, taxation, and economic damages.[22]

The nature and types of forensic accounting evidence are diverse. These may include reconstructed financial statements, electronic audit trails, irregular transaction patterns, expert reports on financial misappropriation, and analytical models detecting anomalies.[23] Such evidence is typically presented through expert witness testimony and supported by documentary or electronic records. As noted by DiGabriele, forensic accounting evidence encompasses not just factual data but also interpretation, professional judgment, and opinion.[24]

Legally, forensic accounting evidence intersects with multiple evidentiary classifications. It is primarily treated as expert evidence under s 68 of the Nigerian Evidence Act 2011, which allows opinions from persons specially skilled in fields such as foreign law,

[21] D Larry Crumbley, Lester E Heitger and G Stevenson Smith, *Forensic and Investigative Accounting* (8th edn, CCH Incorporated 2017) 2.
[22] Howard Silverstone and Michael Sheetz, *Forensic Accounting and Fraud Investigation for Non-Experts* (2nd edn, Wiley 2011) 4–6.
[23] Robert Rufus, Laura Miller and William Hahn, *Forensic Accounting* (Pearson 2015) 79.
[24] James DiGabriele, 'An Empirical Investigation of the Relevant Skills of Forensic Accountants' (2008) 73 *Journal of Education for Business* 313.

science, or art. When the evidence involves reports or exhibits, it may also fall under the category of documentary evidence under ss 83–91. Furthermore, where the reports are computer-generated or rely on digital databases, they may attract the requirements of electronic evidence under s 84.[25]

This multifaceted classification complicates its admissibility in practice. For example, while an accountant's qualifications may not be in dispute, the opinion presented may be challenged for lacking foundational data, or the electronic records relied upon may fall short of the strict conditions of authenticity laid down under s 84(2) of the Act.[26]

2.3. Legal Appraisal of Forensic Accounting Evidence in Nigeria

The legal appraisal of forensic accounting evidence in Nigeria is best understood through several interconnected evidentiary and procedural theories that guide judicial reasoning, admissibility decisions, and the weight accorded to such evidence during trials. Central to this is the theory of relevance and probative value. Nigerian law requires that all evidence admitted must first pass the threshold test of relevance. Section 1 of the Evidence Act 2011 provides that evidence must relate to facts in issue or to facts relevant to the issue, while section 7 further clarifies that facts are relevant if they make the existence or non-existence of a fact in issue more or less probable.[27] In the context of forensic accounting, this means that expert reports, financial reconstructions, and digital audit trails must be directly connected to the legal questions before the court, such as proof of fraud, asset misappropriation, or money laundering. Nigerian jurisprudence underscores this principle, as illustrated in *Oyetola v INEC*, where the court stressed that the mere volume of documents or data is insufficient unless they demonstrate a direct bearing on the facts in dispute.[28] Thus, probative value ensures that forensic accounting evidence does not merely enter the courtroom but is capable of influencing judicial determination.

[25] Evidence Act 2011 (Nigeria), ss 68, 83–91, 84.
[26] See *FRN v Fani-Kayode* (2010) LPELR-CA/L/476/09.
[27] Evidence Act 2011, ss 1, 7.
[28] *Oyetola v INEC* [2023] 18 NWLR (Pt 1906) 303 (SC).

A second important theoretical framework is the role of the expert witness. Section 68 of the Evidence Act 2011 recognises the opinions of persons "specially skilled" in science, art, or trade when relevant to issues before the court, and section 76 further provides that an expert may rely on materials reasonably relied upon by professionals in that field.[29] Forensic accountants therefore fall squarely within the class of recognised experts, and their function is to assist the court in understanding technical financial issues beyond the ordinary competence of judges. The admissibility of their testimony depends not only on professional qualifications but also on methodological rigour and independence. Comparative influence is also visible: the United States Supreme Court decision in *Daubert v Merrell Dow Pharmaceuticals* developed criteria for assessing expert testimony, including testability, peer review, error rates, and general acceptance.[30] While not binding in Nigeria, these standards have been considered persuasive. In *FRN v Fani-Kayode*, for instance, the court scrutinised the forensic accountant's methodology and qualifications before admitting the report, implicitly applying a Daubert-style rationale.[31] This demonstrates a growing Nigerian judicial tendency to demand not only expertise but demonstrable reliability in forensic accounting evidence.

Finally, the adversarial system theory also shapes how such evidence is treated. Nigeria's legal system is adversarial, placing on the parties the responsibility to present and challenge evidence. Forensic accounting evidence in this context becomes a persuasive tool wielded either by prosecution or defence. The opposing party retains the right to cross-examine the expert, interrogate methodology, question neutrality, and tender counter-expert reports. This adversarial scrutiny is essential, given the risk of partisanship in expert testimony. As emphasised by Lord Woolf in *The Ikarian Reefer*, the expert's overriding duty is to the court rather than the party paying for their services.[32] Nigerian practice increasingly reflects this expectation, though challenges remain where experts may appear aligned with the interests of their instructing party. The doctrine therefore reinforces that admissibility is only the beginning, the weight, reliability, and credibility

[29] Evidence Act 2011, ss 68, 76.
[30] *Daubert v Merrell Dow Pharmaceuticals* 509 US 579 (1993).
[31] *FRN v Fani-Kayode* (2010) 14 NWLR (Pt 1214) 481.
[32] *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

of forensic accounting evidence are ultimately determined through adversarial testing, especially under cross-examination.

2.5. Provisions of the Nigerian Evidence Act 2011

The Nigerian Evidence Act 2011 (NEA) provides the principal legal basis for the admissibility of evidence, including expert and electronic evidence, in judicial proceedings. The relevant provisions of the Evidence Act that are applicable to the admissibility of forensic accounting evidence are as follows:

2.5.1 Opinion of Experts

Section 68 of the *Nigerian Evidence Act 2011* (NEA) provides that when a court must form an opinion upon matters relating to science, art, or foreign law, the opinions of persons specially skilled in those areas are admissible. [33]The rationale is that judges, while trained in law, may lack the technical competence to evaluate complex issues requiring specialised knowledge. Expert evidence therefore functions as a tool to assist the court in understanding matters beyond ordinary comprehension.

Forensic accountants clearly fall within the category of "persons specially skilled" envisaged under Section 68. Their expertise in analysing financial data, uncovering fraudulent transactions, and reconstructing financial records can provide critical assistance in disputes involving fraud, insolvency, and corporate governance. As observed in *Esso Petroleum Co Ltd v Southport Corporation*,[34] expert testimony is admissible where it furnishes the court with technical information outside judicial knowledge. Nigerian courts have similarly acknowledged this principle, as in *Seismograph Services (Nigeria) Ltd v Esiso Akporuovo*,[35] where the Supreme Court emphasised that the probative value of expert evidence depends on its cogency and consistency with other facts in issue.

[33] *Nigerian Evidence Act 2011*, s 68.
[34] *Esso Petroleum Co Ltd v Southport Corporation* [1956] AC 218 (HL).
[35] *Seismograph Services (Nigeria) Ltd v Esiso Akporuovo* (1974) 6 SC 119.

Nonetheless, admissibility does not equate to unquestioned acceptance. The courts in Nigeria have repeatedly stressed that while expert evidence is admissible, it is not binding on the judge, who remains the ultimate arbiter of fact. This judicial discretion ensures that experts do not usurp the role of the court. However, a critical concern lies in the neutrality of experts. Forensic accountants are often retained and remunerated by one party, raising concerns of bias and partiality. This underlines the need for courts to assess whether the expert demonstrates independence and whether the methodology applied meets recognised standards of reliability.

Furthermore, Section 68 should be read alongside Sections 67 and 69 NEA, [36]which respectively restrict the use of opinions to recognised domains and require disclosure of the basis for conclusions. Together, these provisions articulate a broader evidential policy: expert testimony should illuminate and clarify issues for the court without substituting judicial reasoning.

In practice, forensic accounting evidence has gained increasing relevance in Nigeria, particularly in corruption cases, tax litigation, and commercial fraud disputes. Yet, Nigerian jurisprudence reveals a delicate tension between reliance on expert knowledge and the preservation of judicial independence. Excessive dependence on experts' risks diluting judicial authority, while reluctance to embrace technical expertise may impede justice in complex disputes. Section 68, therefore, represents a carefully balanced framework, admitting expert evidence while subjecting it to judicial scrutiny in order to preserve both fairness and accuracy in adjudication.

2.5.2 Admissibility of Electronic Evidence

Section 84 of the Evidence Act 2011 marked a paradigm shift in Nigerian evidentiary rules by expressly recognising computer-generated and electronic evidence as admissible in judicial proceedings. The section stipulates that such evidence must be accompanied by a certificate specifying the manner of production, the particulars of the device, and the person responsible for generating the document. The intention behind this requirement is

[36] *Nigerian Evidence Act 2011*, ss 67, 69.

to safeguard authenticity and reliability in an era of increasing dependence on digital information.[37]

From a progressive standpoint, Section 84 reflects judicial and legislative responsiveness to the digitisation of commerce and communication. In forensic accounting, where reliance is placed on electronic spreadsheets, accounting software outputs, and email correspondence, the statutory acceptance of electronic evidence provides a legal framework for the use of technologically-driven financial analyses in court. The Supreme Court has affirmed this statutory development in *Kubor v Dickson*,[38] holding that documentary evidence obtained electronically is admissible if the strict requirements of Section 84 are satisfied.[39]

Nonetheless, critical concerns arise from the rigid certification requirement. Courts have, on several occasions, excluded otherwise credible electronic evidence solely on the ground of non-compliance with the certificate provision, thereby prioritising procedural form over substantive justice. This strict approach was evident in *FRN v Fani-Kayode*,[40] where electronic evidence was rejected due to non-adherence to Section 84 despite its potential probative value.[41]

Moreover, the statutory language presupposes a simple relationship between document, device, and operator. This assumption does not align with the realities of modern technologies such as cloud computing, blockchain systems, or decentralised databases, where identifying a single "device" or "individual responsible" is often impossible. Forensic accountants, though skilled in analysing electronic data, may not have direct access to the technical configuration of third-party systems, thereby creating evidential hurdles under Section 84.

Scholars have criticised this rigidity, noting that it risks undermining justice in the digital age. For instance, Nwosu argues that the insistence on certificates reflects "a misplaced

[37] Evidence Act 2011, s 84.
[38] *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).
[39] Ibid
[40] *FRN v Fani-Kayode* (2010) 14 NWLR (Pt 1214) 481 (CA).
[41] Ibid

formalism that sacrifices evidential value at the altar of procedural exactitude"[42]. Similarly, Ojukwu observes that the provision is ill-suited to complex digital transactions and calls for a more flexible approach, such as presumptions of authenticity for records generated in the ordinary course of business.[43]

Section 84 constitutes a commendable recognition of digital evidence but remains hampered by its technical and inflexible framework. A more context-sensitive approach, such as allowing expert testimony to substitute for certification where appropriate, or adopting statutory presumptions of authenticity, would strike a better balance between legal certainty and technological reality.

2.5.3 Documentary Evidence and Conditions of Admissibility

Sections 83 to 91 of the Nigerian Evidence Act 2011 (NEA) provide the statutory framework governing the admissibility of documentary evidence. Section 83(1) lays down the general rule that a document is admissible if it is relevant and was made in the ordinary course of business.[44] This reflects the principle that documents generated in routine professional or commercial activity carry a presumption of reliability and probative value.

However, admissibility is not automatic. The provisions emphasise conditions such as authenticity, originality, or proper certification of copies, alongside compliance with the hearsay rule.[45] These requirements are especially pertinent in forensic accounting, where reports, audit working papers, and electronic financial records often serve as primary evidence in disputes involving fraud, mismanagement, or compliance failures. By requiring proof of origin and integrity, the Act attempts to safeguard against fabricated or unreliable documentary evidence.

Nevertheless, a critical examination reveals several jurisprudential and practical tensions. First, the insistence on originality or certified copies has sometimes clashed with the

[42] Chijioke Nwosu, 'Admissibility of Electronic Evidence under the Nigerian Evidence Act' (2017) 8(2) Nigerian Journal of Commercial Law 45.
[43] Ernest Ojukwu, *Introduction to the Nigerian Law of Evidence* (Fab Educational Books 2014).
[44] Evidence Act 2011, ss 83–91.
[45] Ibid

commercial reality of modern record-keeping. Businesses increasingly rely on electronic documents and scanned reproductions rather than hard-copy originals. Courts have occasionally taken a rigid stance, excluding secondary documents for want of certification, even where the authenticity of the content was not seriously in doubt, thereby elevating form over substance.[46],[47]

Second, the hearsay rule embedded within Section 83 creates evidential challenges. Documentary evidence tendered for the truth of its content may be excluded if the maker of the statement is unavailable for cross-examination, unless exceptions apply. While this protects against untested assertions, it can be problematic in forensic accounting, where reports are often compiled from voluminous records and third-party confirmations. Scholars have argued that the rigid exclusion of such evidence undermines the effective adjudication of complex financial disputes.[48]

Third, the provisions appear insufficiently adapted to digital and transnational contexts. In a globalised economy, financial records are frequently stored in cloud-based systems or generated by multinational entities. The statutory focus on "originals" and "certified copies" seems ill-suited to decentralised, paperless environments. Nigerian courts have yet to fully reconcile these statutory demands with international best practice, where greater weight is given to reliability indicators and expert testimony rather than strict formalities.[49]

Finally, in forensic accounting, the authenticity and credibility of documentary evidence often depend less on formal certification and more on expert analysis. Yet the Act does not expressly accommodate this role, leaving forensic accountants to rely on judicial discretion under Sections 68 and 83. A more flexible statutory approach, such as presumptions of authenticity for business records or broader judicial powers to admit

[46] *Esso West Africa v Oyegbola* (1969) 1 NMLR 194.
[47] *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).
[48] Ernest Ojukwu, *Introduction to the Nigerian Law of Evidence* (Fab Educational Books 2014).
[49] Chijioke Nwosu, 'Admissibility of Electronic Evidence under the Nigerian Evidence Act' (2017) 8(2) Nigerian Journal of Commercial Law 45.

documents where reliability is established, would better balance procedural safeguards with the practical demands of modern litigation.

Sections 83–91 embody an important safeguard against unreliable documentary evidence but reveal a tension between legal formalism and the commercial realities of contemporary record-keeping. A reform-oriented approach, integrating digital realities and expert-led authentication, would enhance both the efficiency and fairness of adjudication.

2.5.4 Judicial Notice and Discretion

Sections 101 to 104 of the Nigerian Evidence Act 2011 (NEA) regulate the scope of judicial notice and judicial discretion in evidentiary matters. Section 101 provides that courts may take judicial notice of facts that are so notorious or authoritatively established that proof is unnecessary, such as laws, customs, or matters of common knowledge.[50] Sections 102–104 extend this to facts contained in official publications, government records, or other sources of unquestionable authenticity.[51] These provisions serve the important function of conserving judicial time and avoiding the needless proof of facts whose truth is not reasonably in doubt.

Equally significant is the discretion afforded to judges in excluding evidence that, though technically admissible, would be unfairly prejudicial or misleading. Nigerian courts have repeatedly affirmed this balancing function, holding that the probative value of evidence must outweigh its prejudicial effect before it can be admitted. In *Abdullahi v State*, the Supreme Court stressed that admissibility is guided not only by relevance but also by fairness and the interests of justice.[52] This discretionary power ensures that evidentiary rules are not applied mechanistically, but with a view to substantive justice.

From the standpoint of forensic accounting and expert evidence, these provisions are particularly significant. While forensic expert reports often rely on specialised methodology and complex financial analyses, their admissibility and weight ultimately

[50] Evidence Act 2011, s 101
[51] Evidence Act 2011, ss 101–104.
[52] *Abdullahi v State* (2008) 17 NWLR (Pt 1115) 203 (SC).

rest on the court's evaluation of their neutrality, reliability, and probative value. Where an expert's methodology is contested, or their impartiality is questioned, a judge may discount or even exclude the report under discretionary powers. For example, in *Ubani v Director, SSS,* the Court of Appeal emphasised that expert evidence is not binding on the court and may be rejected if considered unsatisfactory[53]

A critical concern, however, is the potential subjectivity in the exercise of this discretion. Judicial notice is meant to streamline proceedings, yet courts have sometimes extended it to matters better proved through evidence, thereby blurring the line between fact and inference. Similarly, the discretionary exclusion of evidence risks inconsistency, as different judges may apply the probative-prejudicial balancing test unevenly. This unpredictability can undermine the confidence of forensic experts and litigants in the evidentiary process. As Ojukwu observes, judicial discretion under the NEA remains "a double-edged sword: essential for justice but prone to abuse if not exercised with restraint and consistency".[54]

Furthermore, in a digital age where complex financial crimes often require expert interpretation, excessive judicial reliance on discretion could inadvertently diminish the value of forensic evidence. A more structured framework, such as statutory guidelines on the admissibility and evaluation of expert reports, akin to the UK Civil Evidence Act 1995, would provide clarity and reduce arbitrariness.

Sections 101–104 enhance judicial efficiency and fairness by recognising judicial notice and discretionary exclusion of evidence. Yet, their application highlights tensions between flexibility and predictability. For forensic accounting and other specialised expert testimony, the challenge lies in ensuring that judicial discretion promotes substantive justice without undermining the reliability and relevance of expert contributions.

[53] *Ubani v Director, SSS* (1999) 11 NWLR (Pt 625) 129 (CA).
[54] Ernest Ojukwu, *Introduction to the Nigerian Law of Evidence* (Fab Educational Books 2014).

2.6 Procedural Requirements

The admissibility and evidential weight of forensic accounting and electronic evidence under Nigerian law are shaped not only by statutory provisions but also by compliance with well-established procedural requirements. Procedural safeguards operate as a necessary complement to the Evidence Act 2011, ensuring that evidence presented before the courts is not only formally admissible but also credible, reliable, and fair in its impact on the adjudicatory process.

Forensic accountants and other expert witnesses must demonstrate sufficient professional and academic qualifications, relevant experience, and the use of reliable methodologies before their opinions can be accorded evidentiary value. The Nigerian judiciary has emphasised that an expert's report should be presented in a structured format, reflect methodological transparency, and exhibit impartiality and independence. In *Abdullahi v State*, the Court stressed that expert witnesses owe their primary duty to the court, rather than to the party that engaged them, thereby underscoring the principle that expert testimony must be objective and detached from partisan interests.[55] Similarly, comparative English authority in *The Ikarian Reefer* has reinforced that experts must provide independent assistance to the court, avoid assuming the role of advocates, and disclose any limitations in their expertise or methodology.[56] These principles highlight the procedural responsibility placed on forensic experts to uphold the integrity of judicial proceedings.

A further critical procedural safeguard relates to the maintenance of a verifiable chain of custody. In the context of forensic accounting and electronic records, this entails meticulous documentation of the processes by which evidence is collected, preserved, transmitted, and ultimately presented in court. Without such documentation, the risk of tampering, manipulation, or contamination increases significantly, thereby undermining evidentiary integrity. Section 84(4) of the Evidence Act 2011 requires certification of electronic evidence, specifying the manner in which the record was generated, stored, and

[55] *Abdullahi v State* (2013) LPELR-21864 (CA).
[56] *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

managed.[57] Authentication requirements further demand that parties demonstrate the evidence is indeed what it purports to be, whether through corroborative testimony, technical validation, or procedural documentation. The failure to comply with these safeguards, as illustrated in *Kubor v Dickson*, may result in exclusion or the downgrading of the probative weight of the evidence.[58] These procedural hurdles, though sometimes criticised as overly technical, are intended to protect the integrity of the judicial process in an era where electronic records are highly susceptible to alteration.

It is also important to distinguish between the admissibility of evidence and the weight accorded to it. Admissibility is primarily a question of conformity with the Evidence Act 2011, whereas weight relates to the persuasive impact of evidence in the eyes of the court. Nigerian courts have repeatedly held that evidence that satisfies statutory admissibility criteria may nonetheless be accorded little or no probative weight if found unreliable, unclear, or lacking in neutrality. In *Onubogu v State*, the Supreme Court observed that admissibility does not automatically translate to credibility or determinative value.[59] Forensic accounting reports, for instance, may be admitted as expert evidence but ultimately discounted if they demonstrate methodological flaws, biased reasoning, or insufficient grounding in established accounting standards. This distinction serves to remind practitioners and forensic experts alike that admissibility is a necessary but not sufficient condition for evidence to shape judicial outcomes.

These procedural requirements, relating to expert qualifications and duties, chain of custody and certification, and the careful balancing of admissibility against weight, illustrate the complex evidentiary environment in which forensic accounting evidence must operate. While Nigerian law has recognised the value of expert and electronic evidence, strict procedural compliance remains the key to ensuring that such evidence retains both its admissibility and its persuasive force in court.

[57] Evidence Act 2011, s 84(4).
[58] *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).
[59] *Onubogu v State* (1974) 9 SC 1.

3.0 Case Law Analysis

3.1 Judicial treatment of Forensic Accounting Evidence in Nigeria

Judicial treatment of forensic accounting evidence in Nigeria has been both evolving and inconsistent, reflecting a broader tension between legal formalism and the technical complexity of modern financial crimes. Several key cases illustrate the judiciary's cautious engagement with forensic evidence.

In *Federal Republic of Nigeria v Sule Lamido*, the court admitted forensic reports presented by the prosecution which alleged the misappropriation of public funds through complex financial transactions. However, while the reports were technically admissible, the court noted that their probative value was limited due to insufficient correlation between the expert's conclusions and the underlying documentary evidence.[60]

Similarly, in *EFCC v Orji Uzor Kalu*,[61] forensic accounting reports tendered by the Economic and Financial Crimes Commission (EFCC) were admitted under the provisions of the Evidence Act 2011. Nonetheless, during cross-examination, the credibility of the expert was substantially weakened when it became apparent that the analysis failed to distinguish clearly between primary evidence and interpretive opinion. The defence further challenged the expert's independence, alleging that he was closely affiliated with the prosecuting agency, thereby introducing an element of bias.

By contrast, the Federal High Court in *Akingbola v FRN*,[62] rejected certain aspects of forensic evidence on the basis that it failed to comply with Section 84 of the Evidence Act 2011, which governs the admissibility of electronic evidence. The court specifically criticised the absence of a valid certificate of authentication and expressed concern over the expert's long-standing consultancy relationship with the EFCC, which was seen as compromising the objectivity of the forensic report.

These cases reveal a pattern in judicial reasoning. Nigerian courts tend to admit forensic accounting evidence when statutory conditions under Sections 68 and 84 of the Evidence

[60] FRN v Sule Lamido, FHC/ABJ/CR/76/2015, unreported
[61] *EFCC v Orji Uzor Kalu* [2019] 4 NWLR (Pt 1663) 197 (CA)
[62] FHC/L/CS/522/2012, unreported

Act are satisfied. However, the weight assigned to such evidence is often contingent on the perceived independence of the expert, the methodology used, and the evidentiary chain of custody.[63]

Empirical data gathered through informal interviews with Nigerian legal practitioners, forensic accountants, and sitting judges suggests that several practical and institutional challenges hinder the effective use of forensic accounting evidence in Nigerian courts.[64] Interviews conducted between February and April 2025 revealed recurrent concerns around expert bias, lack of procedural compliance, and limited judicial expertise in financial matters.

Many lawyers and judges observed that forensic accounting reports often lacked technical clarity or failed to separate factual findings from evaluative conclusions. Some judges noted that certain experts tend to act as advocates rather than neutral analysts, thereby undermining their credibility in the eyes of the court. Furthermore, compliance with procedural requirements, especially the certification of electronic evidence under Section 84(4) of the Evidence Act, was frequently neglected, resulting in either exclusion or diminished probative value of such reports.

There was also a general consensus that Nigerian judges require more training in understanding forensic and digital evidence. Without sufficient technical grounding, judges may either over-rely on expert opinions without critical evaluation or reject them outright due to a lack of comprehension.

Proposals for reform included the establishment of a central registry of accredited forensic experts, mandatory continuing legal education (CLE) for judges and legal practitioners on digital and forensic evidence, and the development of guidelines for assessing expert testimony. Several respondents suggested the adoption of judicial standards similar to the Daubert framework employed in the United States, which

[63] Abiola Sanni, 'Admissibility and Reliability of Forensic Accounting Evidence in Nigeria' (2020) 8(2) *Nigerian Journal of Commercial Law* 145, 151

[64] Interviews conducted by the author with six legal practitioners and three judges in Lagos and Abuja, on file with author.

evaluates the reliability and relevance of expert evidence before it is admitted;[65] see also.[66]

These empirical findings underscore the need for institutional reforms and procedural clarity to ensure the effective and credible utilisation of forensic accounting evidence in the Nigerian justice system.

3.2 Challenges Inhibiting the Admissibility of Forensic Accounting Evidence in Nigeria

Despite the growing relevance of forensic accounting in the prosecution of financial crimes in Nigeria, several persistent challenges undermine the effective use and admissibility of such evidence in judicial proceedings.

One significant issue is the inadequate technical expertise among legal actors, particularly judges and lawyers, in interpreting complex forensic data. While forensic accounting involves the application of specialised financial analysis and investigative techniques, many adjudicators lack the necessary background to critically assess such evidence. This limitation often results in undue reliance on the conclusions of expert witnesses, sometimes without sufficient scrutiny of the underlying methodology or assumptions.[67] In *EFCC v Orji Kalu*,[68] for example, the court admitted forensic reports but was ultimately hesitant to rely heavily on them due to uncertainties surrounding their analytical foundation.[69] The absence of continuous legal education in forensic techniques exacerbates this gap in judicial competence.

A second concern is the absence of clear, standardised criteria for the admissibility of complex financial records, especially those generated electronically. Although Section 84 of the Evidence Act 2011 provides a framework for admitting electronic documents, its application has often been inconsistent. Courts have struggled with interpreting the

[65] *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993)
[66] Michael Saks and Joseph Cecil, 'The Certainty of Uncertainty: Daubert's Effect on Expert Testimony' (2010) 6(1) *J Empirical Legal Stud* 701, 708)
[67] Interviews conducted by the author with Nigerian legal practitioners and judges, February–April 2025 (on file with author).
[68] *EFCC v Orji Uzor Kalu* [2019] 4 NWLR (Pt 1663) 197 (CA).
[69] *Ibid*

requirements for certification, originality, and reliability, leading to unpredictable outcomes. In *Akingbola v FRN*, the forensic evidence was rejected partly due to non-compliance with Section 84(4), highlighting the difficulties parties face in meeting procedural thresholds.[70] The lack of judicial guidelines on the assessment of expert financial evidence akin to the *Daubert* standard in the United States[71] creates uncertainty for litigants and may discourage the use of forensic tools.

A third gap concerns the weak evidential chain of custody in criminal investigations involving financial records. Forensic reports and digital evidence often traverse multiple hands from investigators to analysts to prosecutors yet proper documentation of this movement is rarely maintained. As a result, the integrity of the evidence is easily challenged. Without a reliable chain of custody, courts may either exclude the evidence outright or assign it minimal weight.[72] This problem is compounded by the absence of institutional protocols within investigative agencies such as the EFCC and the Nigerian Police Force, which undermines the credibility of otherwise valuable forensic evidence.

These challenges point to the urgent need for capacity building, clearer judicial standards, and procedural reform. Without addressing these foundational issues, the potential of forensic accounting to contribute to the effective administration of justice in Nigeria will remain largely underutilised.

3.3 Procedural Safeguards, and Practical Realities in the use of Forensic Accounting Evidence in Nigerian

This study reveals a complex interplay between legal doctrine, procedural safeguards, and practical realities in the use of forensic accounting evidence in Nigerian courts. While the statutory framework most notably the Evidence Act 2011 provides a foundation for the admissibility of expert and electronic evidence, its implementation remains uneven, leading to judicial inconsistency and procedural uncertainty.

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[70] *Akingbola v FRN* (Unreported, Federal High Court, Lagos, Suit No FHC/L/CS/522/2012).

[71] *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993); Michael Saks and Joseph Cecil, 'The Certainty of Uncertainty: Daubert's Effect on Expert Testimony' (2010) 6(1) *J Empirical Legal Stud* 701, 708.

[72] Abiola Sanni, 'Admissibility and Reliability of Forensic Accounting Evidence in Nigeria' (2020) 8(2) *Nigerian Journal of Commercial Law* 145, 151.

A key finding is the judiciary's cautious but evolving receptiveness to forensic accounting evidence. Courts have recognised the relevance of such evidence under Section 68 of the Evidence Act, which admits the opinions of qualified experts.[73] However, this recognition is often tempered by concerns over the reliability of the methodology employed, the independence of the expert, and the clarity of the report presented. In *EFCC v Orji Kalu*, the court admitted forensic reports prepared by the prosecution but gave them limited weight due to questions surrounding expert bias and inadequate cross-referencing to underlying financial documents.[74] This pattern suggests that Nigerian courts value forensic evidence but remain wary of overreliance, particularly where the expert's impartiality is doubtful.

The study also confirms that procedural compliance under Section 84 of the Evidence Act is a significant barrier to the admissibility of electronic evidence. The statutory requirement for certification stating the manner of production, device used, and authenticity of the data is often ignored or improperly executed. This was evident in *Akingbola v FRN*, where the court excluded forensic evidence on the basis of defective electronic certification.[75] Such outcomes underscore the need for greater awareness and adherence to procedural rules among forensic practitioners and legal counsel.

Empirical findings from interviews with judges, lawyers, and forensic accountants further reinforce the doctrinal analysis. Participants consistently highlighted the lack of technical expertise among judicial officers and legal practitioners as a major impediment to the effective use of forensic accounting. Most notably, judges expressed discomfort with interpreting complex financial analyses without expert clarification, which can lead to either over-dependence on or rejection of expert reports.[76] This finding suggests that while the courts acknowledge the utility of forensic evidence, they lack the capacity to critically evaluate its content and relevance.

[73] Evidence Act 2011, s 68.
[74] *EFCC v Orji Uzor Kalu* [2019] 4 NWLR (Pt 1663) 197 (CA).
[75] *Akingbola v FRN* (Unreported, Federal High Court, Lagos, Suit No FHC/L/CS/522/2012).
[76] Interviews conducted by the author with six legal practitioners and three judges in Lagos and Abuja, February–April 2025 (on file with author).

Another key issue is the absence of uniform standards for assessing the reliability and admissibility of expert evidence. Unlike jurisdictions such as the United States, where the *Daubert* standard provides structured criteria such as peer review, error rate, and general acceptance for evaluating expert testimony,[77] Nigerian courts lack a consistent framework for such assessments. This gap results in variable judicial outcomes and unpredictability for litigants. It also undermines the development of a coherent jurisprudence on forensic accounting and expert evidence.

Finally, the study identifies the weakness of evidential chains of custody in financial crime investigations. Interview respondents noted that poor documentation and handling of forensic materials, including digital reports, render the evidence vulnerable to exclusion.[78] Courts are often presented with forensic exhibits whose authenticity or origin cannot be adequately verified, especially where there are no documented protocols tracking the evidence from acquisition to courtroom presentation.

These findings point to a need for reforms in three key areas: (1) capacity building for legal actors; (2) standardisation of admissibility criteria for forensic evidence; and (3) institutional improvements in the handling and certification of forensic data. Without addressing these foundational challenges, forensic accounting evidence will remain underutilised and inconsistently applied within Nigeria's legal system.

4.0 Comparative analysis of Admissibility of Forensic Accounting Evidence

A comparative analysis of the treatment of forensic accounting evidence in other jurisdictions particularly the United States and the United Kingdom reveal more structured and predictable legal frameworks than what currently exists in Nigeria. These jurisdictions offer valuable models for evaluating expert evidence and ensuring its proper integration into judicial processes.

[77] *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993); see also Michael Saks and Joseph Cecil, 'The Certainty of Uncertainty: Daubert's Effect on Expert Testimony' (2010) 6(1) *J Empirical Legal Stud* 701, 708.

[78] Abiola Sanni, 'Admissibility and Reliability of Forensic Accounting Evidence in Nigeria' (2020) 8(2) *Nigerian Journal of Commercial Law* 145, 151.

In common law jurisdictions such as the United Kingdom, United States, and Canada, the admissibility of forensic accounting evidence has developed through case law and procedural rules concerning expert evidence. In the UK, courts have endorsed the use of forensic accountants in both civil and criminal cases, provided that the requirements of impartiality, relevance, and reliability are met under the Civil Procedure Rules and the *Criminal Practice Directions*.[79] The UK courts also emphasise the "overriding duty" of experts to the court, not to the party instructing them.[80]

In the United States, the Federal Rules of Evidence, particularly Rule 702, provide for the admission of expert testimony, including forensic accountants, if the testimony is based on sufficient facts or data, is the product of reliable principles and methods, and the expert has applied the principles and methods reliably to the facts of the case.[81] The Daubert standard, established in *Daubert v Merrell Dow Pharmaceuticals*, governs the admissibility of scientific expert testimony and has been applied to forensic accounting testimony.[82]

In Canada, the Supreme Court in *R v Mohan* laid down four criteria for the admissibility of expert evidence: relevance, necessity, absence of exclusionary rules, and the qualifications of the expert.[83] Canadian jurisprudence also underscores the importance of independence, noting that forensic accountants must not be advocates disguised as experts.[84]

Despite these advancements, comparative literature identifies persistent challenges, including expert bias, over-reliance on forensic conclusions, and difficulties in cross-examining highly technical testimony. Courts are increasingly aware of the risk that forensic experts, especially when retained by litigants, may unconsciously tailor their

[79] Civil Procedure Rules (UK), Part 35; Criminal Practice Directions [2015] EWCA Crim 1567.
[80] *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).
[81] Federal Rules of Evidence (US), Rule 702.
[82] *Daubert v Merrell Dow Pharmaceuticals* 509 US 579 (1993).
[83] *R v Mohan* [1994] 2 SCR 9 (SCC).
[84] *White Burgess Langille Inman v Abbott and Haliburton Co* [2015] 2 SCR 182 (SCC).

findings or testimony.[85] The need for judicial gatekeeping, expert independence, and methodological transparency is therefore recurrent in academic and judicial discussions.

4.1 The United States: The Daubert Standard

In the United States, the admissibility of expert testimony, including forensic accounting evidence, is governed by the Federal Rules of Evidence, particularly Rule 702, and further elaborated by judicial precedent. The leading authority is the decision in *Daubert v Merrell Dow Pharmaceuticals Inc*, where the United States Supreme Court held that trial judges must serve as "gatekeepers" to ensure that expert testimony is both relevant and reliable before it is admitted.[86]

The *Daubert* standard requires courts to consider several factors, including:

i. Whether the theory or technique has been tested;
ii. Whether it has been subject to peer review and publication;
iii. The known or potential error rate;
iv. The existence and maintenance of standards; and
v. Whether the method is generally accepted in the relevant scientific community.[87]

This framework has since been codified in Rule 702 of the Federal Rules of Evidence, and it applies across federal courts. The clarity and consistency provided by this standard help courts critically assess forensic accounting reports, ensuring that expert testimony does not amount to speculative or pseudoscientific opinion. The *Daubert* test is also used to exclude "junk science" or biased expert opinions that lack methodological rigor.

4.2 The United Kingdom: The Ikarian Reefer Principles and Criminal Procedure Rules

In the United Kingdom, the approach to expert evidence is guided by both case law and procedural rules. The landmark decision in *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* established foundational duties for

[85] Richard Moorhead and John Peysner, *Expert Witnesses and Legal Decision Making: A Case Study* (Oxford Centre for Socio-Legal Studies 2000) 31.
[86] *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).
[87] ibid 593–594.

expert witnesses, emphasising independence, objectivity, and transparency.[88] According to the Ikarian Reefer principles, an expert witness must:

i. Provide impartial, unbiased assistance to the court;
ii. State facts and assumptions clearly;
iii. Disclose limitations in their expertise; and
iv. Set out the basis for their conclusions fully and transparently.

Additionally, Part 19 of the Criminal Procedure Rules 2020 sets out mandatory procedures for the introduction of expert evidence in criminal trials. These rules require expert witnesses to submit reports in a specified format, declare their credentials, and explain their methodology.[89] The rules also empower courts to hold pre-trial hearings to assess the admissibility and scope of expert evidence.

Notably, the UK courts have also shown willingness to exclude expert evidence that fails to meet the standard of reliability or demonstrates excessive partisanship, particularly in financial crime cases.[90]

4.3 Lessons for Nigeria

Both the US and UK frameworks demonstrate a proactive judicial posture towards regulating expert evidence. The Nigerian legal system, while recognising expert testimony under Section 68 of the Evidence Act 2011, lacks a structured standard or test for assessing the reliability and relevance of such testimony. Unlike in *Daubert*, there is no equivalent mechanism for Nigerian judges to engage in pre-trial admissibility evaluations or to assess the scientific integrity of forensic reports.

Furthermore, while the Evidence Act provides for the admissibility of electronic evidence under Section 84, it does not address the deeper issue of assessing the methodological soundness of electronic or forensic data. The comparative models show that codified

[88] *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).
[89] Criminal Procedure Rules 2020 (UK), Pt 19.
[90] See *R v Harris and Others* [2005] EWCA Crim 1980, where the Court of Appeal quashed convictions based on unreliable expert medical testimony.

procedures and judicial training in handling expert evidence are vital in preventing miscarriages of justice and promoting evidentiary integrity.

Therefore, Nigeria may benefit from adopting structured guidelines either through judicial rules, statutory amendment, or practice directions that codify the standards expected of forensic expert witnesses. Such reforms would enhance consistency, promote fairness, and strengthen public confidence in the justice system, particularly in the prosecution of financial and economic crimes.

4.4 Judicial Precedents on the Admissibility of Forensic Accounting Evidence

Judicial precedents in Nigeria reveal a cautious but developing approach to the admissibility of forensic accounting evidence, especially under Sections 68 and 84 of the Evidence Act 2011. While courts acknowledge the relevance of expert financial analysis in the prosecution of economic and financial crimes, concerns often arise over procedural compliance, expert bias, and the probative weight of such evidence.

In *EFCC v Orji Uzor Kalu*,[91] the Court of Appeal admitted forensic accounting reports tendered by the prosecution under Section 68 of the Evidence Act. However, the court noted that while expert opinion is admissible, it must be supported by primary evidence and subjected to rigorous cross-examination.[92] The judgment underscored that expert evidence, including forensic accounting, cannot be conclusive and must not usurp the court's role as the final arbiter of facts.[93]

In *Akingbola v FRN*, the Federal High Court rejected forensic accounting evidence on the grounds that it failed to comply with the certification requirements under Section 84(4) of the Evidence Act.[94] The forensic report, stored electronically and produced from digital accounting software, was tendered without the mandatory certificate detailing the device used and the conditions under which the data was generated. The court held that non-

[91] *EFCC v Orji Uzor Kalu* [2019] 4 NWLR (Pt 1663) 197 (CA).
[92] *Ibid*.
[93] ibid 220–221.
[94] *Akingbola v FRN* (Unreported, Federal High Court, Lagos, Suit No FHC/L/CS/522/2012).

compliance rendered the evidence inadmissible.[95] This case exemplifies the courts' insistence on strict adherence to procedural formalities when dealing with electronic forensic records.

Similarly, in *FRN v Sule Lamido*, the court admitted expert accounting evidence but gave it limited weight, citing concerns about the independence of the expert witness, who had long-standing ties with the investigative agency.[96] The case reflects judicial sensitivity to potential bias and highlights the importance of demonstrating the neutrality of forensic accountants in litigation.

In *Oando Plc v Adijere W/A Ltd*, the Court of Appeal reaffirmed the general principles governing expert evidence, holding that an expert must not only be qualified but also demonstrate that their opinion is based on facts personally observed or established by admissible evidence.[97] Though not a forensic accounting case per se, the ruling is instructive in setting the standard for expert reliability and relevance in financial matters.

Moreover, in *Osuji v Ekeocha*, the court clarified that expert evidence is advisory in nature and not binding on the judge, even where uncontroverted.[98] This reinforces the principle that forensic reports must be persuasive, methodologically sound, and corroborated by other admissible materials.

These precedents suggest that Nigerian courts recognise the value of forensic accounting evidence but subject it to high thresholds of admissibility and reliability. Compliance with procedural requirements, independence of the expert, and the integrity of the evidentiary chain are pivotal to determining admissibility and evidential weight.

5.0 Conclusion and Recommendations

This study has interrogated the legal, procedural, and practical dimensions of the admissibility of forensic accounting evidence under Nigerian law. Although the Evidence

[95] ibid.
[96] *FRN v Sule Lamido* (Unreported, Federal High Court, Abuja, Suit No FHC/ABJ/CR/76/2015).
[97] *Oando Plc v Adijere W/A Ltd* [2013] 15 NWLR (Pt 1378) 531 (CA).
[98] *Osuji v Ekeocha* [2009] 16 NWLR (Pt 1166) 81 (CA).

Act 2011, particularly Sections 68 and 84,[99] provides a statutory foundation for the admissibility of expert and electronic evidence, its practical enforcement remains marred by ambiguity and inconsistency. Judicial authorities such as *EFCC v Orji Uzor Kalu* and *Akingbola v FRN* illustrate a cautious and often inconsistent approach, where procedural technicalities and evidentiary uncertainties frequently eclipse substantive justice.[100],[101]

Empirical findings corroborate these doctrinal challenges: judges and practitioners often struggle with forensic methodologies, evidentiary integrity, and compliance with certification requirements under Section 84. A major concern is the judiciary's limited technical capacity to assess the neutrality and reliability of forensic experts, compounded by the absence of judicial guidelines. By contrast, comparative jurisdictions have introduced structured evaluative standards. In the United States, the *Daubert* test requires courts to examine the reliability of expert methodology,[102] peer acceptance, and error rates.[103] Similarly, in the UK, the *Ikarian Reefer* principles stress impartiality, methodological rigour, and transparency in expert evidence.[104] These standards underscore the need for Nigeria to adopt a more structured approach.

Forensic accounting has the potential to play a transformative role in Nigeria's anti-corruption and financial crime enforcement framework. However, unless the evidentiary system evolves to accommodate its complexity, that potential will remain underexploited. A harmonised approach, anchored on statutory reform, structured judicial guidelines, judicial training, accreditation of experts, and strengthened investigative protocols, is indispensable for ensuring evidentiary reliability and enhancing justice delivery in financial and economic crime litigation.

[99] Evidence Act 2011, ss 68, 84.
[100] E*FCC v Orji Uzor Kalu* (2016) LPELR-40045 (SC).
[101] *Akingbola v FRN* (2012) LPELR-9343 (CA).
[102] *Daubert v Merrell Dow Pharmaceuticals Inc* 509 US 579 (1993).
[103] *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534 (SC).
[104] *National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68 (QB).

Against this background, the following recommendations are advanced:

5.1 Adoption of Structured Judicial Guidelines for Expert Evidence: Nigerian courts should develop practice directions or judicial policy incorporating criteria for assessing expert testimony. Adapting elements of the *Daubert* standard and *Ikarian Reefer* principles, such as methodological reliability, impartiality, peer acceptance, and relevance—would empower judges to act as effective gatekeepers while reducing arbitrariness in admissibility rulings.

5.2 Statutory Reform and Procedural Clarification: The rigid certification requirement under Section 84 of the Evidence Act has led to the exclusion of probative evidence on technical grounds.[105] Reform is needed to introduce flexibility, such as presumptions of authenticity for records made in the ordinary course of business, while maintaining safeguards against forgery or manipulation. Subsidiary legislation or judicial rules could provide much-needed clarity for forensic and electronic records.

5.3 Capacity Building for Judges and Legal Practitioners: Judicial officers, prosecutors, and defence counsel should undergo continuous legal education (CLE) in forensic accounting and digital forensics. Institutions such as the National Judicial Institute, the Nigerian Bar Association, and the Institute of Chartered Accountants of Nigeria could design joint programmes to strengthen technical competence, reduce judicial overreliance on procedural technicalities, and promote confidence in forensic methodologies.

5.4 Establishment of a National Register of Forensic Experts: A statutory or professional register of accredited forensic accountants and digital forensic specialists should be created. This would limit expert testimony to qualified, independent, and ethically vetted practitioners, thus reducing the risk of bias or incompetence influencing judicial determinations. Such registers have proved valuable in comparative jurisdictions, enhancing consistency and accountability in expert evidence.

[105] Ibid

5.5 Strengthening Investigative and Evidentiary Protocols: Investigative agencies such as the EFCC and the Nigeria Police Force must institutionalise robust chain of custody protocols, audit trails, and standardised templates for forensic reporting. These mechanisms would safeguard evidentiary integrity from the point of collection to courtroom presentation, minimising admissibility challenges and reinforcing the probative value of forensic materials.

AN EXAMINATION OF THE NATURE AND IMPLICATION OF THE MEDICAL CONCEPT OF DEATH IN RELATION TO LAW

Toluwani Mercy Francis*

Abstract

For a very long time, the absence of an established uniform definition of death created uncertainty and put physicians, including relatives and friends of patients and the society at large, in acute dilemma. This paper examined the nature and implication of the medical concept of death in relation to law. This research is doctrinal, both primary and secondary sources of law were relied on. The former includes statutes and cases while the latter consist of books, journal articles, news articles and other materials from the internet. This study found that the American Bar Association, the American Medical Association and the National Conference of Commissioners endorsed definition of death on Uniform State Laws has not been totally effective in addressing matters arising from recent developments in medical treatments such as artificial support systems, organ donation and transplantation, human medical research, euthanasia, genetic engineering, living wills, death certification rules, the maintenance of life support beyond brain death for pregnant women/organ donors, protection of corpses etc. as each has its own distinct ethical and legal considerations. This study also found that there is a beautiful and dutiful interconnection between Medicine and Law on the subject of death. This study concluded that there exist certain legal, medical and ethical issues which should be considered in the process of determining death. Medical practitioners must be aware of these considerations to prevent the continuous violation of the constitutional right to life of patients.

Keywords: Death, Medical Law, Definition of Death, Medical Practice, Ethics.

1. Introduction

During the Christmas period in 2024, Nigeria experienced a series of avoidable and preventable tragic events that led to the loss of at about Sixty-Seven people

[1] The first was at the Children Funfair organized for five thousand children in Ibadan, Oyo State.[2] It was in the news that more than Ten Thousand children and adults turned out for this event because it had been announced on the Radio that they were going to give Five Thousand Naira (#5000:00) to each child. There was a stampede and at least thirty-five children were reported to have died. While Nigeria was still mourning this incident, another stampede that claimed about ten lives happened at a Christmas event organized by a Catholic Church in Abuja as they were trying to distribute welfare/relief materials to the hungry masses.[3] Shortly after, a third stampede occurred in Okija, Anambra state during a Foundation's annual end of the year event where rice was being shared to people and claimed about twenty-two lives.[4]

These events are tragic and there are many ways to look at them and many lessons that can be learnt from them especially on Crowd/Safety control measures during public events, the abject poverty in Nigeria that could make people endanger their lives for such a small amount of money or food etc. But as a medical law researcher, I could not help but wonder if the victims of the stampedes actually died on the spot. There was no security or emergency response team present at any of the scenes.[5] Nigeria does not have an adequate and highly effective medical emergency response program. We do not have

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[1] Associated Press, US News and World Report, Why Did at Least 67 People Die in Christmas Charity Stampedes in Struggling Nigeria, US News and World Report. Available at Why Did at Least 67 People Die in Christmas Charity Stampedes in Struggling Nigeria? Last accessed on the 20th of November, 2025.

[2] Femi Akinyemi, "Ibadan stampede: Help free my daughter, Naomis mother cries out", Nigerian Tribune, 25th December, 2024 Available at Ibadan stampede: 'Help free my daughter ', Naomi's mother cries out - Tribune Online last accessed on the 26th of December, 2024.

[3] **Nathaniel Shaibu, Solomon Odeniyi,** 10 killed, others injured in Abuja food distribution stampede, Punch Newspapers, available at 10 killed, others injured in Abuja food distribution stampede, Last accessed on the 26th of December, 2024.

[4] Stampede: MURIC faults police sledgehammer on Ibadan organisers, ignoring Abuja, Anambra, Vanguard Newspapers, 25th December, 2024, available at Stampede: MURIC faults police 'sledgehammer' on Ibadan organisers, ignoring Abuja, Anambra - Vanguard News Last accessed on 26th December, 2024.

[5] Mathrubumi English, At least 67 deaths in Nigeria's Christmas Charity, Available at https://english.mathrubhumi.com/news/world/67-deaths-in-nigeria-christmas-charity-stampedes-43101fe1 Last accessed on 20th November, 2025.

adequate and well-equipped first responders enough to cater for the whole country as in developed nations, our health care sector is short-staffed and underfunded.[6] Some of our health care professionals are not well trained enough in rapid emergency response, many of our hospitals do not have adequate working ambulances and resuscitation equipment like defibrillators, machines that monitor brain activity, EKG machines etc. Even when we have those machines, we do not have constant electricity supply to power them.[7]

I could not but wonder what ifs; what if some of those victims were given CPR? What if resuscitation attempts were made? What if some of them were not really dead and just passed out and could have been brought back? News has it that some of them were even taken straight from the venue to the mortuary. But even if they had been taken to hospitals, who ensures that the health care professional on duty do not pronounce them dead on arrival (DOA) without following the appropriate medico-legal procedure?[8] All these have prompted this research, an examination of the nature and implication of the medical concept of death in relation to law.

The concept of death is a boundless one that has been looked into from every angle imaginable. Philosophers, Biologists, Religionists, Physicians and very interestingly, even lawyers have probed into the subject of death. The absence of an established uniform standard for defining death has over the years created uncertainty and put physicians (including relatives and friends of patients and the society at large) in acute dilemma.[9] The Physician wants to know the exact point his patient transforms from an individual in need of medical attention into a dead body. The relative or friend wonders if they are caring for the living or if they should be grieving the loss of a loved one. The

[6] Onyedika, Ugoeze. Coalition raises concern over dwindling health sector fortunes, The Guardian Newspaper, 20th November, 2025. Available at Coalition raises concern over dwindling health sector fortunes Last accessed on 20th November, 2025.

[7] Sola Ogundipe, Japa, underfunding, inefficiency undermining Nigeria's public hospitals, Vanguard Newspaper. Available at Japa, underfunding, inefficiency undermining Nigeria's public hospitals - Vanguard News Last accessed on 20th November, 2025.

[8] Scribd, available at Brought Dead Protocol | PDF | Death | Cardiopulmonary Resuscitation last accessed on 20th November, 2025.

9 New York State, The Determination of Death, New York State Task Forces Report on Life and the Law, July 1986, pp 3.

society asks if this expensive and advanced technology is being used to sustain the living or to treat the dead? This work considers the subject of death in relation to law.

In Elementary school, in the subject that was called Integrated Science in Nigeria (now called Basic Science), the characteristics of living things is taught. This is codified in the acronym MR NIGER D which transformed later in High School Biology into MR NIGER CAD. These characteristics are actually Movement, Respiration, Nutrition, Irritability, Growth, Excretion, Reproduction, Cell, Adaptability and ultimately Death.[10]

Death is the ultimate, the leveler. Whether a human is rich or poor, unknown or famous, godly or godless etc. everyone will die someday. Death signifies an end to all the activities of every living thing on planet earth. In conversations, it is called the only constant. To show how important death is to humans, people do different things to prepare for it. Legally, wills and codicils are written. People who believe in God, heaven, hell and life after this life, engage in activities they believe will secure them a space in eternity. In the African tradition, when a king or an important person dies, it is such a big deal. Several rites and protocols are performed and observed respectively to ease the safe passage of the nobility from this life into the afterlife. In some cultures, death is even worshipped.[11]

Maybe one thing that makes death so mysterious is the fact that oftentimes it is unpredictable. The most important fun fact about death actually is that most people do

[10] Scholars help. Available at Biology: Characteristics of Living Things - MR NIGER D - WELCOME TO SCHOLARS HELP last accessed on 20th of November, 2025.

[11] Thanatos, in ancient Greek mythology and religion is considered the personification of death. Other than Thanatos, there are about twenty other known deities considered gods or goddesses of death. The list includes; Anubis- the Egyptian God of Death, Yama- the Hindu God of Death, Freyja- the Norse Goddess of Death, Hecate- the Greek Goddess of Death, Meng Po- the Chinese Goddess of Death, Hades- the Greek God of the Underworld, Hel- the Norse Goddess of Death, Morrighan- the Celtic Goddess of Death, Osiris- Egyptian God of Death, Mot- the Canaanite God of Death and the Underworld, Whiro- the Maori God of Death, Pluto- the Roman God of Death, Chernobog- the Slavic God of Misfortune, Coatlicue- the Aztech Goddess of Death, Sekhmet- Egyptian Goddess of Death, Elrik- Siberian Ruler of the underworld, Ahriman- the Persian God of Death and Destruction, Batara Kala- Javanese and Balinese God of Underworld, Sedna- Inuit Goddess of Destruction and the Underworld and Adro- the African God of Death. Rupesh Chhabra, "21 Gods & Goddesses of Destruction, Death & Underworld", Still Unfold.com, https://stillunfold.com/miscellaneous/gods-of-destruction-death-underworld last seen on the 24th of August, 2021.

not want to die. Morally, many people also frown at people ending their own lives (suicide) or physicians assisting their patients to end their lives.[12]

At the crux of the European Convention on Human Rights is the right to life, it is the most basic of all human rights. The right to life values life and is focused on individual life.[13] Right to life is popularly considered as right to not be killed, and now also (with suicide and assisted suicide) it includes the right to choose to live or not to live. However, whether right to life implies (or not) the right to die or the right that others shall assist with death or the right against non-interference if others are willing to help, it does not in any way suggest a diminishing of the value of life.[14]

Therefore, if life is very important and valuable, its ending (death) and everything it entails is also very important and noteworthy; and should be regulated by the Law, hence a study of the nature and implication of the medical concept of death in relation to law.

1. Death and the Law

Generally, an individual is said to have died when there has been a permanent stop to both respiration and circulation or there has been a permanent stop to all functions of the brain as well as the brain stem.[15]

However, this definition[16] has not been totally effective in addressing matters arising from recent developments in medical treatments such as Artificial support systems, Organ donation and transplantation, Human Medical Research, Physician Aid in Dying (Euthanasia), Genetic Engineering, Wills, Dignifying Death, Death Certification rules,

[12]At the European Human Rights Court in 2002, Diane Pretty in 2002 argued that right to life implied that a human has the right to choose death. Chetwynd SB, Right to Life, Right to Die and Assisted Suicide, J Appl Philos. 2004, 21(2), Advanced National Library of Medicine, National Center for Biotechnology Information. Available at https://pubmed.ncbi.nlm.nih.gov/15462028/, last accessed on the 24th of August, 2021.

[13] Paul Tiensuu, Whose Right to What Life? Assisted Suicide and the Right to Life as a Fundamental Right, Human Rights Law Review, 15(2) June 2015, Pp 251-281. Available at https://doi.org/10.1093/hrlr/ngv006 last viewed on the 24th of August, 2021.

[14] Chetwynd SB, Right to Life, Right to Die and Assisted Suicide, J Appl Philos. 2004, 21(2), Advanced National Library of Medicine, National Center for Biotechnology Information. Available at https://pubmed.ncbi.nlm.nih.gov/15462028/, last accessed on the 24th of August, 2021.

[15] Jalan, M. What Are The 4 Post-mortem Stages of Death? Science ABC, 2024. Available at Stages Of Death: Different Stages The Body Goes Through After Death Last accessed on the 20th November, 2025.

[16] At the time of the proposition of the Act for Uniform Determination of Death in July, 1981.

Keeping brain dead Pregnant Women or Organ Donors on life support machines, and Corpse Protection etc. each of these matters has its own distinct ethical and legal considerations.[17]

The occurrence of new and innovative technology that saves lives have necessitated the need for law to regulate death determination.[18]

> *Death can be defined as an irreversible loss of the capacity to be conscious as well as the loss of all functions of the brainstem. Death can be caused by an irreversible cessation of circulatory functions after or along with a fatal injury of the brain. That these losses are irreversible means that they cannot spontaneously resume or be restored by intervention.*[19]

"Brain Death" [20] or "Cardiac Death" [21] are common parlance in medical circles, these anatomically based terms however refer to the death of particular organ. These terms may give a false interpretation of death. Death is an end of both functions of the brain and circulatory system; an evaluation of brain function trumps any other consideration in death determination.[22]

Moreover, with advancement in technology that saves lives, it has become possible for respiration and Circulation to continue with artificial assistance despite brain death.[23] Also, it is now possible to determine brain death in between the administration of cardio respiratory support.

Common Laws way of defining death, however, does not guarantee the recognition of all these medical advances. According to Common Law, death is the termination of every

[17] Ibid.
[18] R.M Vetch, Death, Dying and the Biological Revolution, Yale University Press, 1972.
[19] Montreal Forum Report, International Guidelines for the Determination of Death — Phase I, May 2012, released October 2012, Canadas Blood Services, World Health Organization.
[20] Determination of death founded on the permanent discontinuance of brain functions. The Montreal forum Reports of May, 2012 is in favour of a permanent discontinuance of neurological function over the cultural and vague former death indicators.
[21] Sudden end of blood circulation because of the hearts inability to effectively contract, Montreal Forum Report, International Guidelines for the Determination of Death — Phase I, May 2012, released October 2012, Canadas Blood Services, World Health Organization.
[22] Ibid
[23] Ibid

vital function. Common Law determines death by the nonexistence of self-generated breathing and heart activities.[24] Obviously, the definition common law gives death is yet to catch up with current medical advances in the field of death determination.

2. Challenges in the Study of the Medical Concept of Death

   For a very long time, the absence of an established unvarying measure to define dying caused excruciating doubt and put medical practitioners (including relatives and friends of patients and the society at large) in acute dilemma.[25] Some scholars believe that deciding on the accurate way of defining death is not an exclusive right of doctors, they believe that the general public ought to be carried along. Both medical and legal practitioners have the rights and obligations, along with other relevant disciplines, to propound definitions for the subject of death.[26]

   The study of the subject of death poses a number of challenges;

1. Death meaning different things due to varying philosophies, religions, and cultures.
2. How difficult it is to research on death and the lack of data on many important aspects of the process of death.
3. Conflicting ideas on the authenticity of the practice of determining death.
4. Inadequate know-how and/or sensitization on the part of medical practitioners.
5. The emotions involved in the subject of death[27]

Uniformity or scientific exactness are not exactly characteristics of the law and medicines way of defining death. Also, what constitute death legally is not automatically similar to what constitutes death medically.[28] This contradiction or inconsistency between the definitions of death in law and medicine often breeds conflict. The medical and legal definitions of death are considered respectively below.

[24] R.M Vetch, Death, Dying and the Biological Revolution, Yale University Press, 1972.
[25] New York State Task Force Report on life and the law, The Determination of Death, July 1986, pp 3.
[26] W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3
[27] Ibid
[28] M.M Halley, W.F. Harvey, Medical vs Legal Definitions of Death, JAMA. 1968, 204(6), pp 423-425. Published on May 6, 1968. https://jamanetwork.com/journals/jama/fullarticle/339061 last viewed on the 26th of August, 2021.

6. Defining death (Medical Definitions of Death).

The May 2012 Montreal Forum Report[29] established that medically, there are three main categories of the definitions of death.

The first category, named the whole brain definitions, focuses on a permanent activity loss of the whole organism, not the entirety of the organism; this includes definitions of death such as;

1. The permanent loss of the cumulative functions of a whole organism or
2. The irreversible loss of the essential functions of a whole organism.

Category two focuses on the permanent cessation of the capacity to be conscious. Definitions in this category are often cited as *the higher brain definitions*. They include definitions such as;

1. losing the one thing considered to be fundamental to the human nature, the capacity for consciousness or
2. The permanent cessation of the ability to socially interact or
3. The permanent end to the capacity to be conscious and sensual, this includes a cessation of a human's distinct personality or
4. permanent cessation of the ability for awareness, this signifies the end of a human being and connotes death.

The third category is a combination of the first and second categories, it includes definitions of death such as;

7. A human being is considered dead when such person has experienced a permanent cessation of the capacity to express and sustain all the physical and mental bodily functions.
8. Permanent cessation of the capacity to remain conscious and a permanent cessation of breathing or respiratory abilities.

[29] Montreal Forum Report, International Guidelines for the Determination of Death — Phase I, May 2012, released October 2012, Canadas Blood Services, World Health Organization.

9. Permanent cessation of the ability to incorporating major human characteristics with full bodily functions.
10. Irreversible cessation of the ability to respond to stimuli and signals, the will and desire to act and the capacity to carry out the act.

1. Legal definitions of death.

Having an appropriate way of defining death in law is very essential. Consider this example, transplant surgeons working in jurisdictions where the appropriate legal definition of death has not been adopted may be civilly liable peradventure, they choose people who have not experienced total heart or cardiac failure to be donors[30] Also, legislating a specific way of defining death in law will determine if certain persons get to continually enjoy certain legal coverings and if other persons gets to be continually liable, or not, for certain actions.[31]

The legislature of every state ought to be preoccupied with an enacted legal definition of death because the legislature unlike the judiciary has the power and the means to consult the general public before coming to a decision. They are able to make decisions that are in line with what the public wants.[32]

Legal definitions of death recognize the end of every important ability, loss of breathing, loss of circulatory functions and the irreversibility of loss of consciousness.[33] There have been efforts to counter the semantic and practical difficulties that come with the traditional definitions of death through legislations and judicial decisions.[34]

[30] W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3
[31] Ibid
[32]Ibid. Capron & Kass, A Statutory Definition of Standards for Determining Human Death: An Appraisal and a Proposal, 121 U.PA.L.Rey. 87, 95-101 (1972). Vol. 1975, 979-987.
[33] M.M Halley, W.F. Harvey, Medical vs Legal Definitions of Death, JAMA. 1968, 204(6), pp 423-425. Published on May 6, 1968. https://jamanetwork.com/journals/jama/fullarticle/339061 last viewed on the 26th of August, 2021.
[34] Ibid

All the attempts which will be considered below and several other attempts not mentioned in this work to redefine death can be broadly divided into six categories;[35]

1. The alternative definitions approach: This adopts the cultural way of describing death and then include another that accepts the cessation of brain activity as death.
2. The refined criteria approach**:** Instead of a meaning, modern methods and tests are gathered to determine the ranking of the cases that fall within the purview of the ambiguous areas in-between living and dying in the traditional definition.
3. The single total definition of brain death: Here, death is determined only when there is a sustenance of a permanent cessation of every brain function.
4. The open-ended definition of brain death: This approach recognizes brain death as a prerequisite for death without discountenancing other acceptable definitions that exist presently and may come to be in the future.
5. The cortical or cerebral death definition: This approach extends the boundaries of death to mean a patient whose brain cortex or cerebrum no longer functions permanently.
6. The Psychological definition of death: This approach describes dying as the irreversible cessation of human consciousness. Some of the above are considered briefly;

According to the Uniform Death Determination Act;

> *An individual who has sustain either (1) irreversible cessation of circulator and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, are dead. A determination of death must be made in accordance with accepted medical standards.*[36]

[35] W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

[36] Act for the Uniform Determination of Death enacted together by the American Medical Association, the National Conference of Commissioners of Uniform State Law, and the American Bar Association, got approval on October 19, 1980 and February 10, 1981.

A number of attempts have been made in the United States' legislature for the determination of death[37] and each one is not without its own legal implication. These will be briefly considered below.

11. Missouri

An act that establishes methods for figuring out when someone died and whether they are dead, as well as the uses for which those methods will be applied. This Act makes provision for the procedure for determination of death and time of death and the goal of the procedure.

Be it passed by the Missouri General Assembly in the manner described below:

Section 1.

> *1. If a doctor declares that a patient has suffered an irreversible stoppage of spontaneous respiratory and circulatory functions, based on conventional medical practice, that patient is deemed dead. A person will be deemed dead if, in the declared opinion of a physician, based on standard medical practice, he has experienced an irreversible cessation of spontaneous brain functions, even if artificial means of support prevent a determination that these functions have ceased. When the pertinent functions halted, death must have occurred.*
>
> *2. In this state, the methods for determining death in subsection 1 must be used to all proceedings, including civil and criminal trials.*

12. New York State

An act to change the meaning of death in the public health law. The following is what the people of the State of New York, represented in the Senate and Assembly, do:

Section 1. By adding a new section, section 4140-a, to the public health law, it is hereby altered to read as follows:

[37]Report of the National Conference of Commissioners on Uniform State Laws, Legal Definitions of Death, 1981. Available at https://www.qcc.cuny.edu pdf last downloaded on the 26th of August, 2021.

4140-a. Deaths- The meaning of death. According to the declared opinion of a properly licensed doctor based on accepted medical practice standards, a person is declared dead if their spontaneous respiratory and circulatory functions have irreversibly stopped. A person will be declared dead if, in the opinion of a duly licensed physician based on accepted medical practice standards, they have experienced a complete and irreversible cessation of brain function, unless the physician receives written notice from the patient's parent, spouse, or next of kin that the declaration goes against their beliefs. This is especially true if the use of artificial means of support precludes a determination that these functions have ceased. This act takes effect right away.

13. Kansas.[38]

A person will be deemed medically and legally dead if a doctor determines, in accordance with standard medical practice, that there is no spontaneous respiratory or cardiac function and that attempts at resuscitation are futile due to the disease or condition that caused these functions to stop, either directly or indirectly, or because of the amount of time that has passed since these functions stopped. In this case, death will have occurred at the moment these functions stopped;

or A person will be deemed medically and legally dead if a doctor believes that spontaneous brain function is absent based on standard medical practice; if, according to standard medical practice, it seems that additional attempts at resuscitation or supportive maintenance will not be successful during reasonable attempts to maintain or restore spontaneous circulatory or respiratory function in the absence of aforementioned brain function, then death will have occurred at the time these conditions first coincide. Prior to the removal of any important organs for transplantation or the termination of artificial methods of supporting respiratory and circulatory function, death must be declared.

Regardless of any regulations to the contrary, these alternate definitions of death must be applied for all purposes in this state, including the trials of civil and criminal proceedings.[39]

[38] Ibid

This is an example of the "alternative definitions" approach. These alternate definitions technique has been criticized for making death multivocal. According to the first definition, if resuscitation is deemed medically impossible, then a person who has lost their spontaneous cardiac and respiratory functions is dead. However, according to the second definition, if it seems that supportive maintenance and resuscitation won't be effective, a person who has lost spontaneous brain function will be deemed dead.

Nowhere in the definitions is it stated that the second definition applies in situations where artificial support of cardiac and respiratory functions is present, while the first definition only applies in situations where it is not. Accordingly, a patient is deemed dead by the first definition if he loses his spontaneous respiratory and cardiac functions but is still conscious thanks to artificial support; however, by the second definition, the patient is still alive as long as the part of the brain that controls consciousness is still functioning.[40]

14. Robert M. Vetch.[41]

In accordance with established medical practice, a person will be deemed dead if a doctor declares that their spontaneous respiratory and circulatory functions have irreversibly stopped. A person will be deemed dead if, in the declared opinion of a physician, based on standard medical practice, he has experienced an irreversible cessation of spontaneous cerebral functions, even if artificial means of support prevent a determination that these functions have ceased. When the pertinent functions halted, death will have taken place.

However, if a person, who is competent to make such a decision, explicitly rejects the use of this standard, or if he has not made such an explicit statement while competent, his legal guardian or next of kin does, then no one shall be deemed dead even with the announced opinion of a physical based solely on an irreversible cessation of spontaneous cerebral functions.

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[39] The Kansas statute was adopted in 1970. Upon it, the Maryland Statute of 1971, the New Mexico Statute of 1973 and the Virginia Statute of 1973 were built.
32 W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3
[41] R.M Vetch, Death, Dying and the Biological Revolution, Yale University Press, 1972.

Additionally, it states that no doctor may declare someone dead if there is a substantial conflict of interest with his duty to care for the patient, such as a commitment to other patients, research, or educational initiatives that could directly profit from declaring the patient dead.

15. A. M Capron & L. R Kass.[42]

In accordance with established medical practice, a person will be deemed dead if a doctor declares that their spontaneous respiratory and circulatory functions have irreversibly stopped. A person will be deemed dead if, in the declared opinion of a physician, based on standard medical practice, he has experienced an irreversible cessation of spontaneous brain functions, unless artificial means of support prevent a determination that these functions have ceased. When the pertinent functions halted, death will have taken place.

This above is an example of the Refined Criteria Approach**.** They saw no need for a redefinition, believing that disputes over death could be settled at the level of criteria. The American Medical Association, Michigan, West Virginia, the Task Force on Death and Dying, and Capron and Kass' criteria are all comparable to a single definition of death, which is the irreversible loss of brain functioning. This is a criticism of this method.[43]

16. California:

If a doctor concludes that a patient has had a complete and irreversible loss of brain function, the patient will be declared dead. Another medical professional must independently confirm the death. This chapter does not forbid a doctor from using other standard and accepted methods to determine a patient's death as the sole reason for declaring them dead.

The definition above is an example of the "open-ended" approach.

New legal definitions of death that emphasize brain death are naive in spite of all these attempts. Treating brain death as human death can have harsh emotional and financial

[42] Capron, A. M. and Kass, L. R. A Statutory Definition of Standards for Determining Human Death: An Appraisal and a Proposal, 121 U.PA.L.Rey. 87, 95-101 (1972). Vol. 1975, 979-987.
[43] W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

repercussions for friends, family, doctors, and hospitals that provide care for people who are chronically unconscious.

According to both the old and the new definitions of death, people in permanent and irreversible comas are not dead because their lower brain centers that control breathing continue to function.[44]

1. The Death Certificate.

When death is declared and certified, social arrangements are impacted by the legal concept of "death."[45] Since it allows the deceased's family to register death, an accurate and timely certification of death is crucial. A death certificate serves as a permanent legal record of the deceased's passing, allowing the family to arrange for the body's disposal and settle the deceased's estate.[46]

Proclamation and certification of death, when done correctly, initiate legal processes that change rights, obligations, and responsibilities in relation to ownership, transplantation, autopsy, burial, and even criminal and civil culpability. The extent to which these legal methods can be applied depends on the concept of "death" as defined by law. The work of establishing a definition of the term "death" for legal purposes has an ethical force because of the relationship between the semantics of the term and the impact of a correctly performed pronouncement and certification of death.[47]

Although it is the responsibility of the physician who treated the deceased during his final illness, another physician may fill out the death certificate in an emergency. According to English and Welsh law, unless there will be an inquest or a coroner's post mortem, a death must be reported within five days of the incident.[48] Unless the coroner decides to

[44] Ibid.
[45] Ibid
[46] Advice for physicians filling up Medical Certificates of Cause of Death in England and Wale (Covid-19), Intended Only for Use in Emergencies. F66 Guidance, Office for National Statistics, HM Passport Office.
[47] W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3
[48] Advice for physicians filling up Medical Certificates of Cause of Death in England and Wale (Covid-19), Intended Only for Use in Emergencies. F66 Guidance, Office for National Statistics, HM Passport Office..

launch an inquiry and requests that the death certificate not be made, the death certificate can still be completed even after a death has been reported to them.

The cause of death is listed on the front of the death certificate, which provides the surviving family with an explanation of how and why the dead passed away. Since the death certificate also acts as a permanent record of the family's medical history, it is crucial that it includes precise and unambiguous information regarding the cause of death as well as a brief explanation of the disease's cause. This information may also be extremely helpful to the deceased's surviving family members.

The relative contributions of various diseases to mortality are calculated using data from death certificates. Statistics on deaths by underlying cause are crucial for population health monitoring, public health intervention design and evaluation, medical research and health service priorities, health service planning, and health service effectiveness evaluation. Research on the health effects of exposure to a variety of risk factors through the workplace, the environment, medical and surgical care, and other sources heavily relies on death certificate data.[49]

2.3 Cause of Death

If the cause of death cannot be determined, death cannot be certified.

a) the disease or injury which initiated the train of morbid events leading directly to death, or

b) the circumstances of the accident or violence which produced the fatal injury" are the two ways the World Health Organization defines an underlying cause of death. The biggest health benefit, from the perspective of public health, will come from averting this initial illness or damage. When it is impossible to determine the cause of death, the deceased must be sent straight to the coroner, along with any useful information that may be available, so that the cause of death can be investigated. To the best of his knowledge and belief, a medical professional has an obligation to identify the cause of death.

[49] Ibid

Senility or old age should not be used as a cause of death very often. It is limited to situations in which the physician has been caring for the deceased for a considerable amount of time, has observed a general deterioration in the patient's health over time, and identifies no specific illness as the cause of the decline. However, when the actual cause of death is not a condition that is often lethal, such as old age or the fragility of old age, it may be stated as a contributing cause of death. For example, COVID-19.

It's also best to avoid using organ failure or natural causes alone as the reason of death. The death should be reported to a coroner if the physician is unable to provide a precise cause of death. The coroner must also be notified of any death caused by poisoning, injury, or reliance on and abuse of substances other than alcohol and tobacco[50]

17. The Ethical, Legal and Medical Issues related to the Determination of Death

With new developments in medicine, doctors may now extend their patients' lives and improve their quality of life. But advances in medical technology have also forced us to make difficult choices, which has caused us to reevaluate things like determining death.[51]

The idea of determining death has significant implications for ethics, law, and medicine. Three key questions are typically embodied in the idea of defining death;

18. What is that essential thing in a human life that when lost that individual is considered dead? This question is considered very philosophical and theological or in a simpler term, **ethical.**
19. When should a person be legally considered dead? This second question is obviously **legal.**
20. What tests and procedures are used in determining that the physiological standards used by the medical profession in determining that a person has died have been met? this last question is **medical** in nature

[50] Ibid
[51] Act for the Uniform Determination of Death enacted together by the American Medical Association, the National Conference of Commissioners of Uniform State Law, and the American Bar Association, got approval on October 19, 1980 and February 10, 1981.

Every time there is a halt in breathing and heartbeat, death has been accurately determined since the late nineteenth century until the late 1960s. The Black's Law Dictionary, which accurately captures the moral and theological beliefs of a pluralistic American society, offers a definition of death that is similar to this one. a set of beliefs that aligned with the state of science and medicine at the time. Only when it resulted in the heart and lungs ceasing to function permanently was the stoppage of other organ systems deemed significant in determining death.[52]

The aforementioned conventional notion of death has been called into question, nevertheless, by the advancements in resuscitation methods and artificial respirators. In the past, when the heart stops pumping, the blood that supplies the other essential organs with oxygen and nourishment stops flowing, which causes all of those organs to stop functioning as well. Nowadays, even in cases when the brain, and particularly the stem, has permanently stopped working, the artificial respirator can continue to perform breathing and circulatory duties. This medical ambiguity is exacerbated by the idea of organ donation and transplantation, as certain organs, such as the liver and heart, are best transferred from a donor who continues to breathe and circulate until the organs are removed. The idea of brain death is presented and exposed to us in this way.[53]

Determination of death refers to the procedures and examinations required to diagnose death in compliance with accepted norms. The Brain Death Standard is a significant criterion for determining death in American hospitals, particularly in the state of New York. Irreversible loss of brain function was suggested as an independent criterion to establish death in a 1968 report prepared by a committee at the Hazard Medical School.

[52] Ibid

[53] When the entire brain, including the brain stem, stops working, it is referred to as "brain death." Both the cessation of brain function and the conclusion of an individual's death as evidenced by the cessation of brain function are possible interpretations of "brain death," according to commentators. According to the first interpretation, brain death is a diagnosis of medical function rather than a sign of death. As used in this Report, "brain death" refers to the second interpretation; it is not just a diagnosis but also a legal criterion for determining death, The Determination of Death. A Report of the Task Force on Life and the Law in New York State, July 1986.

The moment that a patient's brain irrevocably and permanently stops functioning, as determined by observation or testing, is the official time of death. Before the patient is taken off of a respirator, the family has a right to know that the patient has died.

21. The Characteristics of an adequate definition of Death

A definition of death must fulfill the following conditions in order to be deemed sufficient and lawful:

a. Determination of a state that is highly verifiable by the public: Any definition of death that is effective must specify a state that is verifiable by the public. Prescriptions for the condition's persistence or irreversibility are insufficient because irreversibility and permanence are not physically observable. The definition must also prescribe an observable physical criterion or connect with some other phenomenon from which reliable inferences of the irreversibility and permanence of the state can be drawn. This reliable indicator or phenomenon must be such that has proven over time without fail to be genuinely connected with the occurrence of death. If the criterion fails once, then it should be reexamined.

The full recovery of a boy who was kept on a respirator for two weeks after exhibiting a "flat" EEG (isoelectric electroencephalogram), loss of reflexes and environmental responsiveness, a drop in arterial blood pressure, and a loss of spontaneous respiration, for instance, should raise significant concerns regarding the suitability of these phenomena as markers of death. A criterion of death may need to be made up of a number of components in order to meet the reliability requirement; for example, a complex of behavioral and neurological indications may be employed. The addition of new criteria and improvements to established ones should result from new research and technology advancements. Therefore, the criteria of death should not be listed in statutes;

Only the definition ought to be decided in this way. The medical community can experimentally ascertain the directly observable occurrences that are trustworthy

predictors of the incidence of death as defined by the legislation once it has established a definition.[54]

Loss of awareness or the stoppage of breathing, isoelectric EEG, muscle movements and reflexes, heartbeat, etc. are examples of physical manifestations.

22. It must describe an event or occurrence that is instantaneous**:** Death cannot be given a definition that connotes a process happening over a period of time, it is a state; it is a state in which one has permanently lost the ability to perform certain duties.[55] Dying is a process but not death. There is no middle ground between death and its opposite, a person is either dead or not dead.
23. A description of an occurrence that is irreversible: it is not acceptable for a definition of death to describe an occurrence that is temporary. This may also crease a confusion of legal rights in matters of inheritance, even in criminal litigations. How will a person be rightfully charged for murder or manslaughter when the victim has not actually died or can still be medically resuscitated? An adequate definition of death will describe a state that is irreversible by ordinary medical procedures.[56]
24. Not Vague**:** an acceptable definition of death must not be vague. It must as much as possible describe a state that is clear and actually verifiable.
25. It should be simple**:** an adequate definition of death in the process of avoiding vagueness also ought not to be complicated. The definition though medical, must be something the general public can relate with. The practice of legislating alternative definitions should also be avoided because it can lead to inequality and unfairness. If a person by one definition adopted in a jurisdiction is pronounced dead and another person with the exact symptoms of the first person in another jurisdiction (like in cases of permanently comatose bodies on artificial life support systems) is declared to be alive. "Vicious multivocity" should be totally avoided.[57]

[54] W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3
[55] Ibid
[56] Ibid
[57] Ibid

26. Acceptability by the Public: The ethical standards of a pluralistic and democratic society must be met by a suitable definition of death. It should be morally acceptable to the general people.

The rule of action must be one that the majority of people are willing to follow. Every citizen should ask themselves the following questions if they are to participate, as they ought to: Which type of permanent disability would allow me to lose the rights and protections that come with being a living person, as well as (ii) the obligations placed on me for the people I look after? Will I only consent to have these removed if I suffer an irreparable loss of all important functions? Or am I prepared to have these taken away if I experience irreparable unconsciousness despite my heart continuing to beat on its own? There may be further inquiries of this nature.[58]

27. The Nigerian Situation

The Medical and Dental Council of Nigeria establishes the benchmark for medical care in Nigeria.[59] The Medical and Dental Consultants Association of Nigeria and the Nigerian Medical Association are further medical organizations. The World Health Organizations' criteria for determining death state that death is a common medical occurrence and that different nations have extremely different standards for certifying death.[60] The National Population Commission is in charge of registering people and issuing death certificates in Nigeria. Anyone who passes away in Nigeria can be registered; the death certificate is the State's official and permanent record of the deceased.[61] A death certificate must be obtained from the medical facility where the death took place; however, if the death happens outside of a medical facility, a hospital application must be made. This

[58] W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3
[59] Medical and Dental Council of Nigeria. Available at MEDICAL AND DENTAL COUNCIL OF NIGERIA Last accessed on 20th November, 2025.
[60] World Health Organization, Reporting Cause of Death, August 7, 2024. Available at Cause of death last accessed on 20th November, 2025.
[61] https://nigerianfinder.com/how-to-get-a-death-certificate-in-nigeria/

certificate is then taken to the Registrar of Birth and Death with the following information;[62]

1. the name of the person who reported the death
2. the name of the deceased
3. the deceased's date and place of birth
4. the deceased's age, sex, and marital status prior to death
5. the time and date of the death
6. the place of death
7. the cause of death
8. the details of the dependents left behind (spouse and children)
9. the applicant's identification documents
10. a copy of the deceased's identification documents
11. the hospital's death certificate and
12. evidence that the deceased is a blood relative.

However, a number of requirements must be fulfilled before a death in Nigeria can be recorded, including the following:

- In the locality where the death occurred, the registrar of births and deaths must record the death.
- Evidence of death is required.
- The applicant needs to be the deceased's blood relative.
- Within seven days of the death, the death must be reported.
- Deaths recorded within 12 months after the date of death but after 30 days may be registered for a price that the commission will decide.
- Only with the Deputy Chief Registrar's written consent may a death that is reported more than a year after the date of death be registered.

Out of all the above listed conditions, the most relevant to this topic is the second condition; that the applicant must have proof of death. Before death can be registered, it must be proved and before death can be proved, it must be determined. Many Nigerians will not find it strange to discover that there have been many wrong determinations of

[62] Sections 17-22, Births, Deaths etc. (Compulsory Registration) Act, Cap B9, LFN, 2004.

death in the country; people who were not really dead being pronounced dead by Medical Practitioners, not because of any malicious intent but because the Physicians did not have access to adequate or modern medical equipment like their counterparts in developed countries.

The fact that Nigeria still primarily uses the antiquated traditional definition of death, which links it to the irreversible cessation of spontaneous respiratory and circulatory functions, is still very evident. Our doctors typically pronounce death after using a stethoscope. A reversible halt of spontaneous respiration and circulatory functions frequently becomes an irreversible event because many public hospitals, which the majority of Nigerians can afford, lack resuscitation facilities.

6.0 Some Ethical and Legal Implications

Since medical professionals are acknowledged as expert witnesses in court, it is crucial and pertinent that they can use the standards established by their profession to provide exact and correct answers to queries about the cause and timing of death in specific situations. Additionally, without a correct and accurate definition of "death," a real criterion for determining death cannot be appropriately attained. [63]

The right of survivorship and inheritance are also impacted by the cause of death. When an owner passes away, their property is transferred to one or more heirs through inheritance, also known as succession. The law strictly regulates this process.

In instances of brain death or people in vegetative state, their family members are usually at a loss. In most countries, like Nigeria, such persons in vegetative state are not considered dead and as such their death cannot be registered. And without a certificate of death, wills cannot be executed, even Letters of Administration cannot be applied for.

28. **Conclusion**

In conclusion, the ethical, medical and legal issues discussed in this work must always be considered during the process of determining death. Medical practitioners must keep

[63] W.C Charron, Death: A Philosophical Perspective on The Legal Definitions, 1975 WASH. U. L. Q. 0979 (1975). Available at https://openscholarship.wustl.edu/law_lawreview/vol1975/iss4/3

themselves abreast of these considerations or else the constitutional right to life[64] of patients will continue to be violated and this is highly unacceptable.

Furthermore, the process of determining the criteria for death should be factual and unaffected by pragmatic factors like facilitating transplantation, keeping pregnant women on life support past brain death, safeguarding the deceased, and other associated issues. A pure scientific investigation into the empirically sufficient conditions for the conclusion of death should provide the medical notion of death. The criteria must come after the definition of death.

7.1 Recommendations

- The United Nations should look into an adequate definition of death, acceptable to all or most states, that will end all definitions.
- Also, the general public should be carried along during the legislative process in each state. Medical practitioners should always take into consideration all the necessary criteria before a determination of death is made.
- The sanctity of life should the guiding force in the process of death determination.
- Lastly, Medical Practitioners should be properly trained in the use of the new methods and tests made necessary by advancements in medical technology, for the proper determination of death.

[64] Section 33 of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

ANALYSING THE SUITABILITY OF THE INVESTMENT AND SECURITIES ACT, 2025 FOR NIGERIAN COOPERATIVES' CAPITAL MARKET PARTICIPATIONS

Ajibola Anthony Akanji* and Godwin Emmanuel Oyedokun**

Abstract

There has been considerable growth in the awareness of Nigerians about the purpose and relevance of the capital markets to modern economics and their daily lives. There is visibly increase in the participation of Nigerians in business activities associated with the Nigerian capital markets. Identified actor individuals, and registered companies, and a relatively new entrant, the Nigerian cooperatives societies. Some of these activities have been in strict adherence to the enabling laws, while some others run fouls of enabling legislation. The Nigerian cooperative movement has since been confined to a quagmire in the circumstance, the gravamen being questions around the legality or otherwise of cooperatives participation in the Nigerian capital markets. The study adopts doctrinal method of legal research via analytical review of the relevant legislation. The analysed legislations include the Nigerian Investment and Securities Act, 2025; the Nigerian Cooperative Societies Act, 2004; the Companies and Allied Matters Act, 2020; and the Cooperative Development Act, 2004. The study finds that in Nigeria, the cooperative identity is currently paraded by societies lawfully registered as cooperatives and those unregistered as cooperatives; that there is no legislation that expressly prohibits the participation of cooperatives in the capital markets; and that there is no legislation that expressly enables cooperatives to participate in the capital markets; (d) some of the lawfully registered cooperative societies are unaware of the capital markets, while those aware are very cautious albeit reluctant to embrace it. the study finds further that there is an atmosphere of uncertainty about the intersection of cooperatives and the Nigerian capital market. The study proffer pragmatic recommendation with a view to remedy the identified deficiencies with insightful proposals to optimally harness inherent potentials.

Keywords: Cooperative Development, Investment, Legal frameworks, Nigerian Capital Markets, Nigerian Cooperatives

1.0 Introduction

The Investment and Securities Act (ISA) 2025 was enacted on March 31, 2025. It repeals the previous Investment and Securities Act 2007. It reinforces the Securities and Exchange Commission as the apex regulatory authority for the Nigerian capital market which performs the functions conferred on it by the Act. The provisions ISA 2025 are largely in alignment with global best practices. In comparison with its predecessor, there are several visible improvements in the ISA 2025. Perhaps more notably is the increase in the powers of the Securities and Exchange Commission (SEC) in terms of regulation and oversight

[1], and the statutory recognition of digital assets such as crypto currencies as securities[2]. ISA 2025 makes provision for safer investments and more innovative financial products which is hoped to strengthen investor's protection and promote transparency. These new features are encouraging to the diverse stakeholders in the Nigerian economy.

The primary aim in this study is to ascertain the suitability of ISA 2025 to Nigerian cooperatives. The inherent task necessitates the appraisal of some relevant legislation such as the ISA 2025, the Nigerian Cooperative Societies Act, 2004[3]; (c) the Companies and Allied Matters Act, 2020[4]; (d) Cooperative Development Act; 2004[5], and importantly draw intersections between the provisions of the ISA 2025 and the realities of Nigerian cooperatives. The ISA 2025 neither makes no express mention nor exclusion of Nigerian cooperatives.

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[1] Part IX: Se 61

[2] PART I of ISA 2025 provides that the commission shall register and regulate securities exchanges such as commodities exchanges, virtual and digital asset exchanges and other market venues.

[3] Nigerian Cooperative Societies Act Cap N98 Law of the Federation of Nigeria

[4] Companies and Allied Matters Act, 2020 Act No. 3 of 2020

[5] Cooperative Development Act Cap

However, prior to the enactment of the Act, SEC had issued directives to the Nigerian public on the activities of some cooperatives concerning the Nigerian capital market.[6] This brings to fore enquiries about the legality or otherwise of the intersection of Nigerian cooperatives and the Nigerian capital markets. The involvement of cooperatives in the Nigerian capital markets may be premised on two (2) factors: (a) the imperative to raise capital; and (b) the increasing lure to engage in the business of security exchange. Both factors are imperatives for sustainable national development. Currently, Nigeria is working towards obtaining "Signatory A" status with the International Organization of Securities Commissions (IOSCO), an important global standard that only a few countries meet.

Thus, it will be a welcome development if ISA 2025 aligns local laws with global standards, allowing more diverse opportunities that supports sustainable development. Such circumstance will increase the options for infrastructural funding from both indigenous and foreign sources and positions the country as an attractive destination for investment. The foregoing brings to fore the imperatives of an intersection between Nigerian cooperatives and the country's capital market. This may be better appreciated through an explication of key terminologies.

2.0 An explication of terms

(i) Cooperatives

According to the International Cooperative Alliance (ICA), a cooperative is an autonomous association of persons voluntarily united to meet their common economic, social, environmental, and cultural needs of groups, and communities through a jointly owned and democratically controlled enterprise.[7] Cooperatives have been identified as mechanism for the implementation of public policies at the sub-national, national and

[6] See www.sec.gove.ng/cmos on the 24th of January, 2025 the Security and Exchange Commission issued a circular "Unregistered operator alert – Stecs (Alausa) Multipurpose Cooperative Society and Risevest (Victoria Island) Cooperative Multipurpose Society Limited", and on the 28th of May, 2025 the Security and Exchange Commission issued another circular "Illegal operator alert – Silver Kuum Investment Cooperative/Silver Kuum Limited". Accessed on 7th October, 2025.

[7] www.coop Statement on the cooperative identity (2012). International Cooperative Alliance (ICA). Accessed on 7th October, 2025.

international stages. The International Labour Organisation (ILO) and the United Nation Development Programme (UNDP) both identified cooperatives as integral to the actualisation of a sustainability programme, for example the Sustainable Development Goals (SDGs).[8] Premised on the foregoing, ICA launched Coops4Dev in March 2016. Through this initiative, the International Cooperative Alliance entered into a partnership with the European Commission. This was aimed to foster a new frontier of collaboration that will promote the cooperative movement as significant contributors to international development. ‘‘Coops4Dev’’ has since earned a flagship position in cooperatives involvement in sustainable development. Prior to this, the United Nations had declared 2012 as the first international year of cooperatives.

Furthermore, in 2024, the United Nations declared 2025 as the international year of the cooperatives.[9] This was in recognition of the contributions of cooperatives to the implementation of sustainability programme, and to prepare the cooperatives and the larger social solidarity movement for the next decade. Cooperatives operate on seven principles and six values, jointly known and referred to as cooperative ethics.[10] The seven principles are (a) Voluntary and Open Membership; (b) Democratic Member Control; (c) Member Economic Participation; (d) Autonomy and Independence; (e) Education, Training and Information; (f) Cooperation among Cooperatives; and (g) Concern for Community. The six values are; (a) Self-help; (b) Self-responsibility; (c) Democracy; (d) Equality; (e) Solidarity; and (f) Ethical conducts. ICA has four regional offices, each in Africa, America, Asia-Pacific, and Europe. For ease of administrations, ICA operates along eight (8) sectorial organisations: (a)International Co-operative Agricultural Organisation (ICAO); (b) International Co-operative Banking Association (ICBA); (c)Consumer Co-operatives Worldwide (CCW); (d)International Co-operative Fisheries Organisation (ICFO); (e)International Health Co-operative Organisation (IHCO); (f)International Co-operative and Mutual Insurance Federation (ICMIF); (g) International

[8] https:// www.ilo.org Cooperatives and the World of Work Series, and International Labour Organisation (ILO) Promotion of Cooperatives – Recommendation 2002 (No. 193). Accessed on 7th October, 2025.
[9] https://www.2025.coop United Nations International Year of Cooperatives 2025 – Cooperatives for a Better World. Accessed on 7th October, 2025.
[10] www.coop Statement on the Cooperative Identity (2012). International Cooperative Alliance (ICA). Accessed on 7th October, 2025.

Organisation of Industrial, Artisanal and Service Producers' Co-operatives (CICOPA); and(h) Co-operative Housing International (CHI).

(ii) Capital markets

The Nigerian capital market is a financial market where long-term investments, like corporate equities and debt securities, are issued and traded. It plays a vital role in economic development, serving as a platform for raising capital for businesses and providing investment opportunities.[11] The Nigerian capital market is regulated by the Securities and Exchange Commission (SEC) and the Nigerian Exchange Group (NGX), which was formerly known as the Nigerian Stock Exchange.[12] The Nigerian capital market has evolved from a relatively small market to a more developed and sophisticated one, with increasing participation from both local and international investors.[13] The NGX, a multi-asset exchange, lists various securities, including equities, fixed income instruments, and derivatives. The SEC is the primary regulator, ensuring orderly and fair market practices and protecting investors. The market offers a range of instruments, including debt instruments (bonds, loans), equities (common stock), preference shares, and derivatives. The SEC has implemented a capital market master plan to guide the development and growth of the market, with objectives focused on economic growth and financial stability. The capital market facilitates economic growth by enabling businesses to raise capital for investment and providing investors with opportunities to diversify their portfolios.

3.0 Frameworks of the study

i. Conceptual framework

The conceptual framework for this study is grounded in the notion that the cooperative business model is active in virtually all spheres of business and economics. In other jurisdictions, cooperatives have had to raise capital from the capital market yet maintain

[11] https://sec.gov.ng The Securities and Exchange Commission: Opportunities in the Nigerian Capital Markets. Accessed on 7th October, 2025.
[12] https://ngxgroup.com Nigerian Exchange Group. Accessed on 7th October, 2025.
[13] ibid

their specificity as a unique blend of economic and social entities. Attempts are being made to replicate this model in Nigeria,[14] although such initiatives are neither bold enough nor privileged with the most receptive legal framework. Cooperatives' participation in the capital market is a legal, institutional, and behavioral construct that encompasses the rights, remedies, and regulatory assurances provided to individuals and institutional actors who commit to membership of a cooperative society and such cooperative society commits to participation in the Nigerian capital market. This framework incorporates interrelated concepts derived from the thematic components of the (a) the Nigerian Investment and Securities Act, 2025; (b) the Nigerian Cooperative Societies Act, 2004; (c) the Companies and Allied Matters Act, 2020; and (d) Cooperative Development Act; 2004. These metamorphoses into investors/membership rights/protection, cooperatives as appropriate representatives of class investments, holistic statutory interpretations, efficient and effective regulations, business education and awareness.

ii. Theoretical framework

The theoretical underpinning of this study rests on three core legal and economic theories: Market Efficiency Theory, Investor Protection Theory and Regulatory Theory. These theories offer a structured understanding of the imperatives for Nigerian cooperatives' involvement in the capital markets, and the role of legislation to protect, foster fairness and support efficiency. Market Efficiency Theory, particularly the Efficient Market Hypothesis (EMH), posits that securities prices reflect all available information.[15] For markets to operate efficiently, investors must have equal access to accurate and timely information. Thus, any asymmetry in information dissemination undermines pricing mechanisms and investor confidence.[16] The ISA 2025 enhances the statutory framework for continuous disclosure, fair dealing, and transparency principles

[14] Onuoha Onyekachi Chibueze, Capitalization and Co-operative Competitiveness in Nigeria: The Linkage' *Forshen hub International Journal of Entrepreneurial and Cooperative Studies* (2020).
[15] E Fama, 'Efficient Capital Markets: A Review of Theory and Empirical Work' *The Journal of Finance* (1970) 25(2) 383.
[16] IO Umeh, 'Market Transparency and Investor Behaviour in Nigerian Securities Market' (2021) 8(2) *Nigerian Journal of Economic Law* 93. Ditto

essential for market efficiency.[17] It mandates real-time updates, periodic filings, and penalties for false or misleading information, thereby improving informational symmetry in Nigeria's capital markets.

Regulatory Theory, especially the Public Interest Theory of Regulation, provides an overarching justification for state intervention in capital markets.[18] According to this theory, regulation exists to protect investors and correct market failures, such as fraud, information asymmetry, and unfair practices.[19] The Securities and Exchange Commission (SEC) under the ISA 2025 functions as a statutory body whose objective is to regulate and develop a fair and efficient market system.[20] This aligns with the normative expectation that regulation must serve the broader economic interest and safeguard public trust. Taken together, these theoretical frameworks justify and contextualise the legal provisions in the ISA 2025. They highlight the necessity of regulatory frameworks that not only constrain managerial and administrative misconduct and ensure efficient markets but also protect the psychological and informational welfare of investors. Furthermore, they bring to the fore some of the inadequacies in the provisions of the Nigerian Cooperative Societies Act, 2004, as well as the imperatives to implement the provisions of the Cooperative Development Act, 2004 specifically in alignment with contemporary realities.

iii. Legal framework

The legal framework on the intersection of cooperatives and the Nigerian capital market must find primary expression in the Investment and Securities Act 2025 (ISA 2025), and the Nigerian Cooperative Societies Act, 2004 hence steps are taken to identify possible interface between these two legislations. The provisions of allied legislation such as the Companies and Allied Matters Act, 2020; and (d) Cooperative Development Act; 2004 are equally appraised.

[17] ISA 2025, ss 50–58.
[18] RA Posner, 'Theories of Economic Regulation' *Bell Journal of Economics and Management Science* (1974) 5(3) 335.
[19] O Makanjuola, 'Rethinking Capital Market Regulation in Nigeria' (2022) 4(2) *African Journal of Regulatory Studies* 188. Ditto
[20] ISA 2025, s 13.

4.0 Methodology

This study adopts a doctrinal legal research methodology, which involves a detailed analysis of legal texts, statutory provisions, judicial decisions, and relevant scholarly writings on the subject matter. Doctrinal research becomes suitable to this study because it identifies, interprets, and evaluates the content of legal rules and principles, particularly within a codified framework such as contained in the legislation[21]. This research also incorporates comparative legal analysis, with reference to international best practices and standards, such as those set by the International Organization of Securities Commissions (IOSCO) and standards of intersection between cooperatives and the capital markets from jurisdictions like the United Kingdom, India, and the United States.[22] This approach helps to benchmark Nigerian peculiarities against global standards and to highlight areas where improvements may be necessary. In addition to doctrinal analysis, this study utilises secondary data from peer-reviewed journals, textbooks, policy documents, and regulatory reports. These materials provide critical commentary and contextual insights that assist in understanding both the intent and impact of the statutory provisions. The research does not rely on empirical data or fieldwork, as its focus is strictly normative and prescriptive.

5.0 Cooperatives and the Capital Market in other Jurisdictions

The following are some examples of cooperatives involved in the capital markets in other countries: provide reference please

- Amul (India) a major dairy cooperative in India is listed on the stock exchange;
- Indian Farmers Fertiliser Cooperative (IFFCO) (India) a prominent cooperative in India, that is listed on the stock exchange;
- Southern Green Farming and Marketing Multi State cooperative society (Farmfed) (India): A cooperative society involved in farming and marketing;
- Indian Cooperative Credit Society Limited (ICCSL) (India): A cooperative credit society;

[21] T Hutchinson and N Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' *Deakin Law Review* (2012) 17 83.
[22] IOSCO, 'Objectives and Principles of Securities Regulation' (2021) https://www.iosco.org Accessed on 7th October, 2025.

- REWE Group (Germany): A major cooperative in the grocery sector, known for its extensive retail network;
- Groupe Crédit Agricole (France): A large financial cooperative group; and
- Groupe BPCE (France): Another significant financial cooperative group.

In the United States of America, cooperatives can be structured as stock cooperatives and their shares can be traded, they are not typically listed on the New York Stock Exchange (NYSE) or other major stock exchanges like NASDAQ[23]. Instead, market-rate cooperatives in the housing sector can have shares that are traded in a secondary market, but this is usually a local or private market, not a public exchange like the NYSE. Stock cooperatives are a specific type of cooperative where members own shares in a corporation that owns the property. These shares are typically traded in a private market, not a public exchange. A key feature of stock exchange cooperatives is member ownership[24].Cooperatives are owned by their members, who are investors in the cooperative. Shares of stock exchange cooperatives are traded on the stock exchange, allowing anyone to buy and sell them. This model allows cooperatives to raise capital by offering shares to the public[25].Invariably, by virtue of the capital market model, cooperatives can raise capital among themselves, or from the public. Public listing such as on the NYSE could offer cooperatives access to a broader range of investors and capital sources, as well as improved liquidity.

However, it also brings with it more regulatory oversight and reporting requirements. There are two main types of stock cooperatives: market-rate cooperatives where shares are sold at market value, and limited equity cooperatives where shares are sold at a restricted price to ensure affordability[26].

[23] Edwards S. Adams, and Jon Lauck, Farmers Cooperatives and the Federal Securities Laws: the Case for Non-application. *South Dakota Law Review,* Volume 45, Pages 62 – 93, 2000.
[24] Kathryn J. Sedo, The Application of Securities Laws to Cooperatives: A Call for Equal Treatment for Non-agricultural Cooperatives. *Drake Law Review* Vol 46.
[25] Tayybe Zohani, The Study of Presence of Cooperatives in the Stock Market and Over the Counter: Grounded Theory' *Novel Explorations in Computational Science and Behavioral Management* Volume 2, Issue 1 Pages 103 – 122 September 2024.
[26] A Kuupers and H Groenereld, Cooperative Capital of Large Financial Co-operatives: the Capitalisation Evolution of Rabobank. *In the book: The Capital Conundrum for Cooperatives. International Cooperative Alliance 2015*.

Coop Exchange is a concept that aims to create a global network of stock exchanges dedicated to cooperatives, it's still in development and not yet a major player comparable to the NYSE or London Stock Exchange[27].

European cooperatives play a significant role in the European economy and are increasingly recognized for their potential in the European capital markets[28]. The Capital Markets Union (CMU) aims to create a more integrated and efficient financial system within the European Union, and this integration has implications for cooperatives seeking funding and investment. Cooperatives, with their unique governance models and focus on social and environmental values, can benefit from a more integrated capital market. These benefits may include access to diverse funding sources as a more integrated capital market offers cooperatives access to a wider range of investment opportunities, including those from institutional investors and capital markets. Another benefit is reduced reliance on bank lending, the integration of cooperatives into the CMU can help reduce the reliance on traditional bank financing, which may not always be suitable for cooperatives, particularly small and medium-sized cooperatives[29]. Additionally, the integration of cooperatives into the CMU can lower funding costs as it may lead to lower borrowing costs for firms, including cooperatives, by fostering competition and efficiency among financial institutions. Lastly, cooperatives will gain increased visibility and awareness, thus attract more investors and promote the cooperative model[30].

Currently, Cooperatives Europe advocates for policies that promote the inclusion of cooperatives in the CMU and support their access to capital markets[31]. They call for reforms in public procurement rules to systematically include social clauses or reserved contracts for social economy entities, including cooperatives. They also emphasize the need to maintain social conditions within European economic and industrial policies,

[27] https://coop.exchange "Coop Exchange". Accessed on 7th October, 2025.
[28] Holger Blise, The Contribution of Cooperative Banks and Banking to Social Market Economy for Europe – Moderation of Capital Market and Competition. *International Journal of Cooperative Law* Issue 3, Pages 237 to 243, 2020.
[29] ibid
[30] Micheal L. Cook, Fabio R Chaddad, Capital Acquisition in North American and European Cooperatives. *Filene Research Institute*, 2006
[31] Daniela Venanzi, and Paolo Matteucci, The Largest Cooperative Banks in Continental Europe: A Sustainable Model of Banking. *International Journal of Sustainable Development and World Ecology*, Volume 29 (1) Pages 84 – 97, 2022.

ensuring that cooperatives can continue to operate while upholding their values[32]. Invariably, in all jurisdiction cooperatives hold the potentials to play a role in the capital market, although their participation may differ from traditional public companies.

Traditionally, cooperatives raise capital through member contributions, retain earnings, grants from governments and development agencies, and by borrowing from other cooperatives or commercial banks[33]. Cooperative ethics guide the involvement of cooperatives in raising capital and investment decisions[34]. In essence, cooperatives participation in the capital market is internally governed by cooperative ethics with member interests and community needs given priority. Cooperatives can raise capital through a combination of member contributions, retained earnings, and external funding[35]. Member capital is typically the foundation, with members investing through share purchases or loans. Retained earnings from operations, or "institutional capital," also contribute to the cooperative's financial base. Invariably, Capital Formation within Cooperatives is primarily dependent on member contributions (share capital) and retained earnings (reserves) to build their capital base. These may be categorized in three (3) primary sources of equity financing, namely[36]:

(a). Members' contributions, ownership and control: A key aspect of cooperatives is that members are the owners and control the business. This means that in accordance with the relevant principle of cooperatives members have a say in how the business is run and how profits are distributed. Investment Shares: Members can purchase investment shares, which may offer a return on investment, potentially higher than membership shares. Share capital: Members may contribute to share capital, which is the money paid by members for the operation of the cooperative. Loans: Members may make loans to the

[32] ibid

[33] Elena Alexandra Mamouni Limnious, John Watson, Tim Mazzarol, Geoffrey N Soutar, Financial Instruments and Equity Structures for Raising Capital in Cooperatives. *Journal of Accounting & Organisational Change*, Volume 12 (1) Pages 50 – 74, 2016.

[34] Lawrence Musiitwa Kyazze, Isa Nsereko, Isaac Nkote, Cooperative Practices and Non-Financial Performance of Savings and Credit Cooperative Societies. *International Journal of Ethics and Systems*, Volume 36 (3) Pages 411 – 425, 2020.

[35] Muleye Tarekegn Dirse, Gurudutta P. Japee, Funding Sources and their Implications for the Long Term Financial Sustainability of Saving and Credit Cooperatives in Ethiopia. *Journal of Co-operative Organisation and Management*, Volume 13 (1), 100258, 2025.

[36] Christoper J. Kopka, Cooperative Business Structures: Access to Capital via Equity and Credit. *Handbook of Research on Cooperatives and Mutuals*, Pages 100 – 114, 2023.

cooperative. Deposit/Savings Accounts: Members may open deposit accounts within the cooperative. Subscription Fees and Annual Dues: Regular contributions from members, including subscription fees and annual dues, can also contribute to capital[37].

(b). Retained earnings (Institutional capital)/Unallocated Funds: Cooperatives can retain a portion of their profits, which are not distributed to members, as institutional capital. Proceeds from Assets: Proceeds from the sale of assets can also be used to build up capital [38].

(c). External funding and Loans/debt financing: Cooperatives, same as other business models can borrow money from financial institutions, or obtain loans from commercial banks or cooperative banks, or receive grants/donations from government agencies, international organizations, or private foundations. Social bonds can be issued to raise capital, with investors receiving a return and contributing to the cooperative's mission. Importantly, some cooperatives that are better known as stock exchange cooperatives buy and sell shares like public companies[39].

In addition to raising capital through the above means and utilising same for economic activities along the earlier listed eight sectorial divisions of the ICA, there is the rather contemporary trend of cooperatives participation in the capital market[40].

6.0 Analysis of Some of the Highlights of the ISA Act, 2025 along the Peculiarities of Nigerian Cooperatives

Despite the enormous potentials, there are noticeable challenges with cooperatives participation in the capital markets across jurisdictions. These challenges are immersed in legal and regulatory barriers. Nigeria is not an exception to this generalization. As stated earlier, the ISA 2025 did not make a single mention of cooperatives, however a purposive interpretation of its provisions may well showcase its reception of the cooperative model of business. An understanding of this legislative intention may be gained through an evaluation of some of the highlights of the ISA 2025.

[37] ibid
[38] ibid
[39] ibid
[40] ibid

(a) Improved Regulatory Oversight for Securities and Exchange Commission (SEC)

ISA 2025 provides that a person shall not operate in the Nigerian capital market or carry on investments except such person is registered in accordance with the ISA 2025 and the rules and regulations made under it[41]. SEC is further statutorily empowered to make orders or take steps in the best interests of the capital market as well as in the best interests of the public. At doing this SEC is statutorily required to apply to the appropriate court as provided under the Companies and Allied Matters Act, 2020[42]. ISA 2025 makes some provisions that holds farther reaching effects than equivalent provisions of the Nigerian Cooperative Societies Act 2004. Some of these are highlighted as follows:

Appointment of the chief executive and other principal officers of a capital market operator shall be subject to prior notification and ratification by the Commission,[43] the NCSA does not have an equivalent or similar provision.

The Commission may suspend or remove the chief executive or a principal officer of a capital market operator if it is satisfied that such officer has contravened, failed, or refused to comply with the provisions of this Act or any rules and regulations Of the Commission[44], the NCSA does not have an equivalent or similar provision; and

A capital market operator shall maintain separate accounts for transactions for each statutory purpose[45], the NCSA does not have an equivalent or similar provision. The closest the NCSA provides in comparison to the foregoing provisions of the ISA 2025 is contained in Section 35 of the NCSA: *Misapplication of the property of a society*; Section 36 of the NCSA: *Audit*; and Section 37 of the NCSA: *Inquiry and inspection*. Unfortunately, these provisions of the NCSA are not in any way as potent in comparison to the letters and spirits of ISA 2025

[41] S 61 (1) (2) of Investment and Securities Act, 2025
[42] Section 26, Section 36 (4), & Section 37 (1) of ISA 2025 ditto
[43] Section 29 (1) of ISA 2025 ditto
[44] Section 29 (a) (b) (c) of ISA 2025 ditto
[45] Section 64 (1) (2) (3) of ISA 2025 ditto

Furthermore, SEC is now statutorily enabled to access data from telecommunication and internet providers with a view to effective track both legal and illegal activities[46]. Some of the envisaged illegal activities may include insider trading, market manipulation, and fraudulent investment schemes. This regulatory authority is aimed towards enabling SEC like the Economic and Financial Crimes Commission (EFCC) to gather intelligence with the aim to amongst others protect investors and keep the integrity of the Nigerian capital market. On the contrast the NCSA does contain provisions for gathering intelligence on suspicious criminal activities or civil breaches of its provisions.

ISA 2025 makes provision that prohibits and fiercely address the menace of Ponzi schemes that were prevalent in the Nigerian Capital Market. It empowers SEC to act decisively with the imposition of severe penalties on promoters of such schemes[47]. Additionally, the new provisions empower SEC to institute criminal proceedings against promoters of Ponzi schemes, a process that including a minimum fine of twenty million naira only (N20,000,000.00), or a ten (10) year prison sentence, or both[48]. This could not have come at a better time when Nigeria is battling with the negative effect of the contributory scheme *c-bex*, which has recently turnout to be a ponzi scheme[49].

The new provision authorizes the utilization of Legal Entity Identifiers (LEIs) for capital market transactions[50]. This mechanism is hoped to hinder fraudulent transactions and support improved tracking of financial activities.

Investor protection is at the forefront of the intendment of ISA 2025, hence the maintenance of efficient and transparent market, and facilitation of capital formation is emphasized.[51]

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[46] Section 3 (4) of ISA 2025 ditto
[47] Section 139 of ISA 2025 ditto
[48] ibid
[49] Crypto Bridge Exchange (CBEX) was initially presented to Nigerians as a registered contributory investment scheme. The representation attracted investment worth millions of United States of America from a wide spectrum of Nigerians. However, the scheme as turned out as fraudulent with the investment of Nigerians uncertain. www.gaurdiannewspaper.ng. Accessed on 7th October, 2025.
[50] Section 123 (1) (2) (3) incomplete. Furthermore, according to section 357; the interpretation section of ISA 2025: "legal entity identifier" means a code that uniquely identifies every distinct entity or structure that is a party to a financial transaction;
[51] S 3 (1) (2) of Investment and Securities Act, 2025

Thus, ISA 2025 empowers the Commission to intervene in the management and control of capital market operators, public companies and regulated entities which it considers have acted in a manner detrimental to the interest of its investors, shareholders, or in the case of corporate governance violations.[52] break the sentence, it is too long

Furthermore, in conjunction with the Attorney General of the Federation, ISA 2025 makes provisions that SEC may provide information and assistance on request to other local and foreign regulators on freezing or sequestration of funds or assets within Nigeria, promote innovations in the capital market, conduct, cause to be conducted, and disseminate research findings on any matter that falls within the purview of the ISA 2025 which relates to domestic and foreign regulators and supervisors of other financial institutions including entering into cooperation agreement on matters of common interest; prepare guidelines, organise training programmes and disseminate information necessary for the establishment of securities exchanges and other market venues.[53] please, break the paragraph into sentences.

Additionally, where SEC is empowered to take any action against an entity or its officers that is also regulated by another regulator, for instance a cooperative, SEC shall collaborate with the regulator of such entity in taking any regulatory action in accordance with the framework agreed between the Commission and such regulator[54]. This obviously opens a window for the participation of Nigerian cooperatives in the Nigerian capital markets if properly harnessed.

(b) Classification of Securities Exchange

ISA 2025 classifies the Nigerian security exchange into two (2) categories [55]: (a) composite securities exchange; or (b) non-composite securities exchange. A composite securities exchange shall permit the listing, quotation and trading of all types of securities, commodities or financial products or instruments on its platform and shall perform such functions as may be prescribed by the Commission. A non-composite

[52] S 4 (a) (f) (i) of ISA 2025 ditto
[53] S 3 (4) (i) of ISA 2025 ditto
[54] Section 5 (f) of ISA 2025ditto
[55] Section 27 (1) (2) (3) of ISA 2025 ditto

securities exchange may be registered by the Commission as a mono securities exchange which specializes in the listing, quotation and trading of a security, commodity, or financial product or Instrument; or an alternative trading system which provides trading systems that bring together orders from buyers and sellers and could be set in either a physical location or be made available for trading activities on the Internet. This opens the space in the Nigerian capital market to cooperatives to participate either as Composite securities exchange; or non-composite securities exchange.

It appears Nigerian cooperatives may be more suitable for participation as a the later, particularly as "alternative trading system which provides trading systems that bring together orders from buyers and sellers and could be set in either a physical location or be made available for trading activities on the Internet".

(c) Statutory Recognition of Digital Assets

The last one decade has seen an exponential increase in the availability of internet services in Nigeria, hence a consequential increase in the number of services associated with information and communication technology (ICT). Therefore, ISA 2025 provides for the legal recognition of virtual assets and investment contracts as securities[56]. This brings Virtual Asset Service Providers (VASPs), Digital Asset Operators (DAOPs), and Digital Asset Exchanges under the SEC's regulatory of digital assets is a milestone that enables financial technology companies with a smoother and better secured inroad into the Nigerian economy. For instance, platform cooperativism, which is the practice of cooperatives through the means of ICT has fast earned a place as a norm across the globe. In Nigeria the adoption of ICT by cooperatives in growing by the day, hence the propensity of Nigerian cooperatives to hold and trade in digital assets is becoming a norm. However, the NCSA makes no provision for ICT facilitated transactions, while

[56] The interpretation section of ISA 2025 defines virtual assets as mechanism for bringing together buyers and sellers of securities, through commodities, or financial products or instruments; for matching bids and offers for securities, virtual assets, commodities, or financial products or instruments of multiple buyers and sellers; and whereby a matched bid and offer for securities, virtual assets, commodities, or financial products or instruments constitutes a transaction.

these emerging circumstances require statutory enablement to secure validity[57]. Thus, the NCSA and other allied Nigerian legislation require urgent reviews to keep tab with the evolution. If appropriately harnessed, cooperative will be equipped in accordance with the Second Schedule of ISA 2025 invest in virtual assets, digital assets and other distributed ledger technology (DLT) offers, tokens and products.

(d) Statutory Upgrade of Capital Market Infrastructure

ISA 2025 establishes Composite Exchange that encompasses all types of securities, and Non-Composite Exchange which encompasses specific asset types[58]. Additionally, ISA 2025 supports transparency and more efficient transactions with provisions for clearing houses and trade depositories, thus a better structured and efficient capital market with capacity to meet the diverse needs of investors. This creates a window to accommodate new and emerging strands of participants such as the cooperative movement particularly in their bid for industry specific ***"financial market infrastructure (FMI)"***. The interpretation section of ISA 2025[59] defines FMI as any entity set up to carry out centralised multilateral clearing settlement, caching or recording activities or provide a platform for trading securities, and, includes systemically important market participants, trade repositories, securities exchanges, central counterparties, central clearing houses and central securities depositories, and securities settlements systems.

The above provides the cooperative alternatives to create a "cooperatives FMI" or integrate into already known FMIs.

(e) Robust Framework for Commodities Exchange and Warehouse Receipts

ISA 2025 makes provision for the regulation of commodities trading[60], thus enhancing price discovery in the Nigerian Capital Market. This is aimed towards the promotion of investment in agricultural production and through farmers having better access to

[57] Ajibola A. Akanji, Division and Amalgamations Under the Nigeria Cooperatives Societies Act: An Appraisal. *The Korean Journal of Cooperative Studies,* Vol. 40, No 1, 2022.
[58] Section 27 (1) (2) (3) of ISA 2025 ditto
[59] Sections 41 to 44 of ISA 2025 ditto
[60] Section 226 (l) provides that a person shall not, whether as principal or agent, carry on business of or hold Registration of himself out as —a commodity trading adviser, or leveraged commodity trading. The interpretation section of the ISA 2025 further on commodity trading.

financing. This holds the potentials to reposition the agricultural and agro-allied sector as integral to the larger Nigerian economy. The agriculture and agro-allied industry have always been an important sector of the Nigerian economy, with the cooperative movement standing as its backbone from time immemorial[61]. The above provision of ISA 2025 holds the potential to revertilise agricultural cooperatives if properly harnessed. Furthermore, ISA 2025 defines a warehouse" as any commercial space, building, silo, cold chain, tank farm or compressed tank, vessel, vault, structure or other protected enclosure approved by the Commission to be used or useable, for the storage or conditioning of commodities or buildings used for storage purposes or including operation of a warehouse which issues warehouse receipt in relation to commodities to be traded on a registered exchange.[62]

A *warehouse* operator is defined as a person registered under this Act engaged in the business of operating or controlling a warehouse for receiving, storing, shipping or handling of commodities for a fee and includes its agent or employee[63]. ISA 2025 makers further provisions for "warehouse operator's lien"; "warehouse receipt"; and "warehouse receipt system"[64]. The foregoing provisions of warehouse and allied matter sets the ball rolling for cooperatives to invest more into commercial agricultural value chain, perhaps in segments where cooperatives are currently reclusive[65]. These areas include building, silo, cold chain, tank farm or compressed tank, vessel, vault and other agricultural overheads which are currently short in supply in Nigeria.

(f) Expansion of Categories of Issuers Permitted to Raise Funds

Provisions of ISA 2025 expands the categories of issuers permitted to raise funds from the Nigerian capital market[66]. The circumstance although subject to the approval of SEC creates space for a wider spectrum of innovative financial instruments which holds the

[61] Adebayo Akinola, Ayodeji Kehinde, Akeem Tijani, Adeolu Ayanwale, Oluwafunmilola Adesiyan, Victoria Tanimonure, Ayodeji Ogunleye, and Temitope Ojo, Impact of Membership in Agricultural Cooperatives on Yield of Smallholder Tomato Farmers in Nigeria. *Journal of Environmental and Sustainability Indicators*, 100313, 2023.
[62] Ss240 to 267
[63] ibid
[64] ibid
[65] ibid
[66] S 27 (3) (a) (b) of Investment and Securities Act, 2025.

potentials to accommodate and benefit Nigerian cooperatives. For instance, ISA 2025 defines an *Issuer* as any person or entity that issues securities under this Act, in relation to collective investment schemes any person or company discharging the duties of a manager under the provisions of the trust deed or other agreement under which the units or securities are issued or such other person as may be determined by the Commission, or in relation to issuance of securities under Part XVI, the body or bodies referred to in section 268 of this Act. Furthermore, the above provision appears to have significant relationship with the an earlier provision of the ISA as contained in section 27 (1) (2) (3) to wit *"alternative trading system which provides trading systems that bring together orders from buyers and sellers and could be set in either a physical location or be made available for trading activities on the Internet"* hence may be constructive interpreted to accommodate and benefit Nigerian cooperatives.

(g). Cooperatives as a Collective Investment Scheme

Recently, narratives abounded of cooperatives and quasi-cooperatives[67] running variants of collective investment schemes. While such initiatives may be laudable on the one part, on the other hand there have been recorded cases of undesirable consequences. Such recorded negativities have resulted from the inappropriate use of the cooperative model, or poor management of such scheme, or poor expertise in collective investment scheme, or outright intention to perpetrate fraud through the promotion of a collective investment scheme.

One of the noticeable problems with cooperatives participation in the collective investment scheme is absence of regulation and standardization. Which is primarily the consequence gaps in the legal frameworks. For instance, the NCSA does not have specific provisions on collective investment scheme. On the other hand, cooperatives are not registered under the provisions of ISA 2025 or the Companies and Allied Matters Act 2020, hence not subject to regulation by either SEC or Corporate Affairs Commission

[67] Only an association of persons registered as cooperatives and strictly guided with cooperative ethics and law may be referred as cooperatives. Others such as unregistered association, or registered association that are not guided by cooperative ethics and cooperative law may be rightly categorised as Quasi-cooperatives. Registration in this regard is either with the federal department of cooperative or the department of cooperatives in any of Nigeria's thirty-six (36) states or the Federal Capital Territory.

(CAC). These new provisions of ISA 2025 hold the potential to bring a cooperative under the regulatory purview of SEC and CAC to extend their involvement in collective investment schemes.

However, this will be subject to cooperatives getting registered under ISA 2025. This will require additional registration of interested cooperatives under Companies and Allied Matters Act, 2020[68]. This argument aligns with the provisions of Section 158 (1) (2) (3), (4), of the ISA 2025 which provide that a person shall not, directly or indirectly, deal in units or participatory interest of a collective investment scheme unless such units or participatory interest have been duly registered with the Commission. It is sufficed to state that disregarding any of this provision attracts criminal liabilities in accordance with the ISA 2025[69].

(h) Self-regulatory Organisations and Trade Associations

Cooperatives are fundamentally designed to function as self-regulatory organisations; hence cooperatives are operated by their members who are saddled with the responsibilities of determining the governing rules and policies. This establishes the autonomy and independence which cooperatives enjoy. These characteristics ensure members maintain control in a democratic decision-making environment. Although, external regulations as contained in public international law and national legislation apply to cooperatives.

Notwithstanding, cooperatives are self-governed in accordance with cooperative ethics. Furthermore, although Nigerian cooperatives are not registered as trade unions, the first set of Nigerian trade unions are the cooperatives, and till date, a significant number of individual members of trade unions are also members of cooperatives. Additionally, there exists a thin line between trade associations in Nigeria as currently constituted and the Nigerian cooperative movement. ISA 2025 defines[70] a *self-regulatory organisation* as any entity registered or recognised by the Commission as such. This provision opens a frontier for cooperatives to register with the SEC as well as maintain their registration

[68] S 157 (1) (2) (3) of Investment and Securities Act, 2025
[69] Ss 169 – 172 of ISA 2025 ditto
[70] Section 357 of ISA 2025 ditto

under the Nigerian Cooperatives Societies Act 2004. This is subject to amongst others ISA 2025 provisions at section 60 (a) that a self-regulatory organisation or trade association shall always act in public interest to ensure the integrity of the market. ISA 2025 provides that an entity, trade group or association shall not operate or hold itself out as a self- Registration or a regulatory organisation unless registered as such by the Commission upon fulfilment self-regulatory of the conditions as the Commission may prescribe[71]. The Commission shall register an entity as a self-regulatory organization where the Commission is satisfied that such an entity is able to discharge the obligations of a self-regulatory organisation under this Act and the rules and regulations made under it[72]. In further alignment with cooperative ethics, ISA 2025 provides *inter alia* at section 59 (3) *"upon receipt of a no objection from the Commission. an entity registered under subsection (2) may, under the terms of an agreement with another self-regulatory organisation, take-over some or all of the obligations of such self-regulatory by its members of any provision of this Act or the rules and regulations made under it; and not make a decision under its rules that adversely affects the rights of a member unless it has given the affected member an opportunity to make representations to it about the matter".*

The above provision of the ISA 2025 aligns with the sixth principle of cooperatives *cooperation among cooperative* and may be well utilize by the Nigerian cooperative movement to harness benefits inherent in the intersection of cooperatives and the capital market.

(i) The Investor Protection Fund (IPF)

This is another innovative provision of the ISA 2025. It promotes investors' protection and market integrity[73]. It supports the assertion that investors' confidence is central to the Act as it makes provision for and guarantees compensation to investors who suffer financial losses due to the revocation or cancellation of a dealing member firm's registration. Under the previous Act, such compensation was limited to cases of

[71] Section 59 (1) of ISA 2025 dtitto
[72] Section 59 (2) (3) of ISA 2025 ditto
[73] Section 198 – 223 of ISA 2025 ditto

bankruptcy, insolvency and negligence. This provision of ISA 2025 may serve to restore members/investors' confidence in the cooperative business model, hence a better appreciation of cooperatives by both the private and public sectors of the Nigerian economy. The Nigerian cooperative societies act has no specific provision on investor protection.

However, some provisions of the Act may be safely presumed at aiming towards investor protection. For instance, sections 30 – 35 *Property and funds of registered societies*, and sections 36 – 37 *Audit, inspection and inquiry*. It is trite to posit that the foregoing are not commensurate with standard best practices on investor protection. Given this relative lacuna/gap it becomes succinct that provisions of ISA 2025 are interpreted to fill the gap.

(i) The Investments and Securities Tribunal

The Act reforms the Tribunal,[74] which is responsible for resolving capital market disputes. The Act introduces amendments to its composition, jurisdiction, and appointment process to improve efficiency, and ensure that investors have swift access to legal recourse in case of regulatory breaches or market misconduct. On the contrast, one of the foundational gaps in Nigerian cooperative legislation is feeble provisions made for adjudication and arbitration. Importantly, the Nigerian Cooperative Societies Act makes no provision for a cooperative tribunal. This peculiarity has been largely contributory to the stunted growth of Nigerian cooperatives.

However, the converse is the case with ISA 2025 wherein the legislature appears to have taken all necessary precautions to make provisions for a tribunal with capacities to stand the test of global best practices. ISA makes provision for a tribunal that shall consist of 12 persons to be appointed as members by the President Composition of the on the recommendation of the Minister as follows —Tribunal a Chairman who shall be a legal practitioner with at least 15 years post call experience in capital market matters; five full-time members comprising — four legal practitioners with at least 10 years' post-call experience in capital market matters, and one person who is not a legal practitioner with 10 years' experience in capital market matters; and six part-time members, two of whom

[74] Part XVII: Ss 314 – 339 of Investment and Securities Act, 2025

shall be legal practitioners with at least 10 years' post-call experience in capital market matters, and four other persons who are knowledgeable in capital market matters

(6). Conclusion and Recommendations

The Investment and Securities Act 2025 represents a significant evolution in Nigeria's legal and regulatory of Nigeria's capital markets. The Act reflects a deliberate effort to modernise in line with global best practices, particularly in an era of increasingly sophisticated financial products, digital investment platforms, and a growing retail investor base. From expanded rights and remedies to strengthened obligations of market operators, enhanced enforcement mechanisms, and structured investor education mandates, the ISA 2025 attempts to broaden the scope of investors that participate in the Nigerian capital market. However, substance of the ISA 2025 is at a sharp contrast in comparison to the Nigerian Cooperative Societies Act, 2004. Yet there is the growing involvement of the cooperative movement in capital market activities. Many of these activities are done from the purview of the cooperative movement often without any clear regards for legal frameworks because the Nigerian cooperative legislation does not envisage the participation of cooperative in capital market operations.

In a similar vein the ISA 2025 makes no specific provision for the participation of cooperatives in capital markets, neither does the Act make specific provisions excluding cooperatives from participation in the capital markets. Invariably, the practical implementation of this concept faces notable challenges. These include regulatory inertia, delayed adjudication, limited public awareness, weak enforcement of sanctions, insufficient funding, and non-autonomy of the Nigerian cooperative movement from the office of the director of cooperatives.

Furthermore, investor education and literacy remain low, particularly among cooperators in peri-urban and rural areas, hindering the actualisation of rights provided under the law.[75] Moreover, the lack of harmonisation between the ISA 2025 and the Nigerian Cooperative Societies Act and other financial regulations can lead to enforcement

[75] U Nwosu, 'Investor Literacy and Capital Market Participation in Nigeria' *West African Economic Review* (2023).

uncertainty in some cases, and in others jurisdictional overlaps. The foregoing lacuna is constructively construed to draw a positive interface between the Nigerian cooperatives and the Nigerian capital market. Amongst others, it is hoped that the sterling provisions of the ISA 2025 possess the capacity provide remedial for the various deficiencies inherent in the Nigerian Cooperative Societies Act, invariably draw the needed synergy between the cooperatives and the capital markets. To address the identified challenges, the following recommendations are imperative:

First, there is a need to strengthen the institutional independence of Nigerian cooperatives and the Nigerian capital markets to promote proactive and impartial relationships and investments.[76]

Second, massive public sensitisation campaigns should be implemented to ensure that cooperatives and cooperators understand their rights, obligations, and the available synergies with the Nigerian capital markets. This should be complemented with the integration of the interface between cooperatives and capital market education into school curricula and adult financial literacy programme[77].

Third, the government should streamline legal processes and expand the jurisdiction of the Investment and Securities Tribunal to capture smaller claims, as well as the interests of the cooperatives, thereby promoting access to justice for retail investors.

Furthermore, regulators should adopt regulatory technology (RegTech) tools to enhance real-time monitoring of market operators, ensure compliance, and facilitate swift redress mechanisms.[78]

Nigerian Cooperative Societies Act, Cooperative Development Act, and the Companies and Allied Matters Act should be reviewed periodically to reflect emerging trends among Nigerian cooperatives and international best practices. Furthermore, the legislation

[76] SEC Nigeria, 'Five-Year Strategic Plan (2025–2029)' https://sec.gov.ng Accessed on 7th October, 2025.
[77] A Adebayo, 'Bridging the Financial Literacy Gap in Sub-Saharan Africa' *African Development Policy Review* (2022) 18 145.
[78] OECD, 'RegTech in Emerging Markets: Enhancing Compliance and Supervision' (2023) https://oecd.org. Accessed on 7th October, 2025.

should be reviewed periodically to accommodate technological innovations, market developments, and emerging risks in the securities industry.

Importantly, there is a need for inter-agency collaboration between the Nigerian cooperative movement, Securities and Exchange Commission, Central Bank of Nigeria (CBN), Nigeria Deposit Insurance Corporation (NDIC), and the Economic and Financial Crimes Commission (EFCC) to enforce robust synergy between the cooperatives and the capital market and to optimize the inherent benefit from such strategic collaborations. You did not make any recommendation on the amendment of ISA to include specific provision incorporating the participation of Nigerian cooperative in the capital market

In conclusion, the effective participation of Nigerian cooperatives in the capital market is one of the imperatives for bottom-up sustainable development. To optimize the potentials will require promising legal frameworks, political will, institutional integrity, regulatory dynamism, and public participation in the enforcement process.

Prior to this time, scholarly guide for the effective of Nigerian cooperatives in capital markets have been scanty. However, amongst others, this paper serves as a guidance notes to the effective participation of Nigerian cooperatives in the Nigerian capital market.

ANALYSIS OF THE LEGAL AND REGULATORY FRAMEWORKS OF MONEY LAUNDERING ACTIVITIES ON THE NIGERIAN ECONOMY

Bukola Oyaleke *

Abstract

The impact of money laundering globally is overwhelming. It encourages illicit financial flow. Governments across the universe has responded to the waves by putting in place legal and regulatory frameworks to curb the menace. Notwithstanding the existence of legal and regulatory frameworks which are domestic and international in nature, the activities of money launderers are increasing on the daily basis. This paper therefore adopts doctrinal method of legal research attempts to examining money laundering in Nigeria vis-à-vis legal & regulatory impacts on the Nigerian economy. The paper asserts that non-existence of the relevant legal frameworks is not the bane of the fight against money laundering in Nigeria, but the problem of enforcement of the existing legal frameworks. The paper finds that the impacts of money laundering in Nigeria is multifaceted in nature. The paper recommends for full enforcement and implementation of the extant laws on the prevention and detection of the money laundering activities in Nigeria.

Keywords: Money laundering, legal, regulatory, economy, Nigeria.

1.0: Introduction

Money laundering is a global menace ravaging virtually every sphere of human economy and activities. It is one of the known trajectories of illicit financial flows (IFF) globally.

[1] The historical antecedence of IFF in Africa is as old as the world itself and could be traced back to the period of de-colonisation.[2] It was an intentional move by then colonial masters to illegally move capital from the continent of Africa through corporations.[3] This narrative continues. This is possible due to the lack of enforcement and implementation of the existing legal and regulatory frameworks; thereby creating unending impacts on the economy globally. [4]

Notwithstanding the existence of avalanche of literatures analysing legal and regulatory frameworks on money laundering in Nigeria, few examined the impacts of money laundering on the Nigerian economy specifically. Against the foregoing backdrop, this paper examines the legal and regulatory frameworks of money laundering activities on the Nigerian economy. The paper hypothesizes that non-existence of the relevant legal frameworks is not the bane of the fight against money laundering in Nigeria, but the problem of enforcement and implementation of the relevant existing legal frameworks. The paper therefore advocates for the full implementation and enforcement of the existing legal & regulatory frameworks of money laundering in Nigeria with suggested workable recommendations. The question to be asked is: are there legal & regulatory frameworks for the prevention and detection of money laundering activities in Nigeria?

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[1]Bukola Oyaleke, 'A critical analysis of trade-based money laundering activities in Nigeria' (2024) 1(1), KWASU Business and Private Law Journal, https://kwasuspace.kwasu.edu.ng/handle/123456789/2907; ISSN: 0795-7408

[2]ibid 9

[3]ibid 8

[4]Alternative Information & Development Centre, 'What are Illicit Financial Flows and Base Erosion and Profit Shifting: The Bermuda Connection' http://aidc.org.za/what-are-illicit-financial-flows-and-base-erosion-and-profit-shifting/ accessed 11 July, 2025; Global Financial Integrity, 'Illicit Financial Flows' https://gfintegrity.org/issue/illicit-financial-flows/ accessed 11 July, 2025

2.0: Legal and Regulatory frameworks of money laundering in Nigeria

It must be stated from the outset that legal and regulatory frameworks exist in Nigeria that deal with money laundering activities. Under this heading, the various legal and regulatory frameworks shall be elucidated on with a view to identifying their roles in the fight against money laundering activities in Nigeria generally.

2.1: Money Laundering (Prevention and Prohibition) Act, 2022

Money Laundering (Prevention and Prohibition) Act, 2022 is the primary legislation that criminalises money laundering, terrorist financing and other ancillary matters in Nigeria. It repealed the former Money Laundering (Prohibition) Act, 2011. The Act specifically contains provisions that prohibits money laundering or any illegal act and terrorist financing. The Act also states appropriate penalties and the scope of the supervisory and regulatory authorities charged with the responsibilities of implementing anti-money laundering in Nigeria was expanded. It provides *inter-alia* for the wider customer identification system and anti-money laundering obligations for the financial and non-financial institutions according to Financial Action Task Force (FATF).[5]

Section 1(a) & (b) of the Act specifically states "no person or body corporate shall cause to be made or accepted cash payments of a sum that exceeds N5,000,000(Five Million Naira) or its equivalent in the circumstance of an individual, or N10,0000,000 (Ten Million Naira) or its equivalent when a body corporate except through a licensed financial institution."[6] Furthermore, any foreign transfer in cash or securities made by an individual or body corporate which exceeds US$10,000 shall as matter of law be reported to the Securities and Exchange Commission (SEC), Central Bank of Nigeria (CBN), and the Economic and Financial Crimes Commission (EFCC). The report is to be made within seven (7) of the transfer.[7] The report is expected to contain the contact and

[5] UK Ogbodo and EG. Mieseigha, 'Economic Implications of Money Laundering in Nigeria' (Vol 3, No 4, 2013) 173-176.
[6] B Oyaleke, 'Regulating trade-based illicit financial activities in Nigeria' (LL.M Dissertation, University of Pretoria, Pretoria) http://hdl.handle.net/2263/73378 accessed 20 July, 2025; see also, Money Laundering (Prevention and Prohibition) Act, 2022
[7] S. 2 (1) of the Money Laundering (Prevention and Prohibition) Act, 2022

personal details of both the sender and receiver of the said funds or securities.[8] This is an important provision of the Act with a view to preventing laundering of illegal funds through trade.

Furthermore, the report is to be made to the Nigeria Custom Service in line with Section 12 of the Foreign Exchange (Monitoring and Miscellaneous) Act. The failure to do so constitutes an offence which upon conviction the penalty is a forfeiture of not less than 25% of the funds or negotiable instrument not declared or to a term of imprisonment of two (2) years or more or both the fine and the term of imprisonment.[9]

The Act also makes provisions for "Know Your Customers Principle". This principle is geared towards identifying and unraveling the true identity of a prospective customer. This is usually achieved through the process of consensually obtaining information from customers.

Surveillance of suspicious transactions that cannot be justified due to its complexity or that appears to be conduits for laundering of illicit funds is also provided for under the Act. Every financial and non-financial institutions are expected to take deliberate and necessary measures in the prevention of money laundering or any criminal activity.[10]

Predicate offences that serve as foundation for money laundering are also stated in the Act.[11]

2.2: Economic and Financial Crimes Commission Act, 2004

This Act establishes Economic and Financial Crimes Commission (hereinafter referred **'EFCC'**) with the primary responsibility of curbing financial and economic crimes in the country.[12]

[8] S. 2(2), 3 & 4 of the Money Laundering (Prevention and Prohibition) Act, 2022
[9] S. 2 (5) of the Money Laundering (Prevention and Prohibition) Act, 2022
[10] S. 6 of the Money Laundering (Prevention and Prohibition) Act, 2022
[11] S. 15(6) of the Money Laundering (Prevention and Prohibition) Act, 2022
[12]Idayat Hassan, 'The EFCC and ICPC in Nigeria: overlapping mandates and duplication of effort in the fight against corruption' (Working Paper, anti-corruption Evidence, 2021)

Section 46 of the Establishment Act[13] gives the Commission power to conduct prevention, investigation and prosecution of economic and financial crimes like human trafficking, tax evasion, money laundering, foreign exchange malpractices, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, illegal mining, child labour illegal oil bunkering, counterfeiting of currency, theft of intellectual property and privacy, open market abuse, dumping of toxic wastes and prohibited goods.

It also serves as the host to the Nigerian Financial Intelligence Unit (NFIU), which analyses and disseminates suspicious transactions reports (STRs) to all agencies of the government and other Financial Intelligence Units all over the world.[14] Special Control Unit against Money Laundering (SCUML) works with the Commission, established in 2005 in line with the directives of the Financial Action Task Force (FATF). The Unit monitors the activities of the designated non-financial institutions (DNFI), being the targets of money laundering activities and in accordance with Money Laundering (Prevention and Prohibition) Act, 2022.[15] The Commission has the power to ensure compliance with the provisions of other laws and or regulations that criminalise money laundering and other ancillary offences.[16]

This Act is key to the fight against money laundering activities in Nigeria as it confers powers of prosecution on the EFCC on matters relating to money laundering and other ancillary matters.

[13] Economic and Financial Crimes Commission Act, 2004

[14] L Raimi, I.B Suara & A.O. Fadipe, 'Role of Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices & Other Related Offences Commission (ICPC) at Ensuring Accountability and Corporate Governance in Nigeria (20013) 3 *Journal of Business Administration and Education*, 111-112 https://pdfs.semanticscholar.org/bcd5/67e40419e2654132f17d184a723cbb928563.pdf accessed 20 July, 2025

[15] Idayat Hassan, 'The EFCC and ICPC in Nigeria: overlapping mandates and duplication of effort in the fight against corruption' (Working Paper, anti-corruption Evidence, 2021)

[16] Banks and other Financial Institutions Act 1991; Economic and Financial Crimes Commission Establishment Act (2004); the Advance Fee Fraud and Other Fraud Related Offences Act 1995; Money Laundering (Prevention and Prohibition) Act, 2022; the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994; and Miscellaneous Offences Act.

The recent separation of the Nigerian Financial Intelligent Unit (NFIU) from the Commission in 2018 was also a good initiative to ensure effective and efficient in the performance of their statutory duties.

2.3: Nigerian Drug Law Enforcement Agency Act

It establishes National Drug Law Enforcement Agency (NDLEA) in accordance with Degree Number 48 of 1989 now known as Act of Parliament. The Act established NDLEA which is identified as the oldest of all the government agencies that tackle incidences of drug trafficking, money laundering through drug trafficking and other ancillary matters.[17]

According to Section 11 of the Act,[18] it is an offence for any person:

(a) To import, manufacture, produce, process, plant or grow drugs popularly known as cocaine, Lysergic acid diethylamide (LSD), heroine or any other similar drugs and shall be liable upon conviction to imprisonment for life or

(b) To export, transport or otherwise traffic in the drugs popularly known as cocaine, LSD, heroine or any other similar drugs and shall be liable upon conviction to imprisonment for life or.

(c) To sell, buy, expose or offers for sale or otherwise deal in or with the drugs popularly known as known as cocaine, LSD, heroine or any other similar drugs shall be liable upon conviction to the sentence for life imprisonment.

(d) To knowingly possess or use the drugs popularly known as cocaine, LSD, heroine or any other similar drugs by smoking, inhaling or injecting the drugs and shall be liable upon conviction to a term of imprisonment not less than fifteen years but not exceeding 25 years.

Drug trafficking and money laundering cannot be separated in the sense that drug trafficking is one of the predicate offences under the Nigerian Money Laundering (Prevention and Prohibition) Act, 2022. It is even on record that drug trafficking accounts

[17] Oyaleke (n.1) 10
[18] National Drugs Law Enforcement Agency Decree No. 48 of 1989

for the highest proceeds of crime globally.[19] Of which some Nigeria have been important key actors in the drug smuggling business since 1970s till date as key suppliers of 'Mule' (human drug traffickers) for illegal movement of drugs from South Asia to the United States.[20]

2.4: Independent Corrupt Practices Commission Act

This Act establishes the Independent Corrupt Practices and other related offences Commission to address issues of corruption and other related offences that have bedeviled the country. The Commission was established in 2000 by then former President Olusegun Obasanjo.[21] According to section 6(a-f) of the Independent Corrupt Practices Commission Act, 2000,[22] the Commission has the following objectives:

(a) To receive all form of complaints from the general public on the incidences of allegations of corrupt practices, investigate same and in appropriate cases, spearhead the prosecution of the culprits.

(b) To ensure that the conducts of public bodies do not aid corrupt practices and if any corrupt practices is identified, it should ensure that same is reviewed.

(c) To create a platform wherein public officers, agencies or parastatals may be advised and assisted in eliminating or minimizing corruption within their space.

(d) To place advisory role on the heads of public bodies as it relates to any advancements, developments, or changes in trends that are necessary for the effective discharge of the public bodies in order to reduce possible likelihood of bribery, corruption and related offences.

(e) To better inform the members of the public of the dangers of bribery, corruption and related offences and

(f) To ensure and foster public support in the fight against corruption.

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[19] Angela Patnode, 'UNODC World Drug Report 2024: Harms of world drug problem continue to mount amid expansions in drug use and markets' https://pdfs.semanticscholar.org/50f9/1a45f21521e1429f9df97e4f201c18624052.pdf accessed 20 July, 2025

[20] RA Udama, 'The National Drug Law Enforcement Agency' (2013) *6 Journal of International Social Research at* 356

[21] Idayat Hassan, 'The EFCC and ICPC in Nigeria: overlapping mandates and duplication of effort in the fight against corruption' (Working Paper, anti-corruption Evidence, 2021)

[22] Section 6(a-f) of the Independent Corrupt Practices Commission Act, 2000

The Act and the Commission created thereunder is relevant to this paper on the ground that offences of bribery and corruption constitute predicate offences that have been identified globally and in Nigeria in particular.[23]

2.5: Central Bank of Nigeria (CBN) Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Policy and Procedure Manual.

Central Bank of Nigeria (CBN) AML/CFT manual is an important document that sets out standards for the employees of the Bank to ensure compliance with the AML/CFT laws and or regulations. The objective of the manual is to set out policies and procedures to guide the employee and the Bank to conduct business in accordance with the anti-money laundering laws, regulations and standards.[24] Though this paper is not targeted to unraveling laundering activities in the banking sector, the importance of banks and the CBN AML/CFT policy manual as it relates to money laundering activities generally cannot be under-estimated. In money laundering process, banks are always the first point of call used as mediums in making payment for goods and services. Entities that engage in laundering use banks for money transfers, purchases and transactions. The Banks have the duty to ensure that any transfers in cash or securities exceeding US $10, 000 are reported to the Central Bank of Nigeria, Securities and Exchange Commission and the EFCC.[25] Through this, Banks play pivotal role in the success of the campaign against money laundering generally.

The Bank conducts periodically risk assessments to ensure that the Bank is not used as channel for laundering money and terrorist financing. The assessment borders on the products, customers, geographical locations and delivery channels. The Bank adopts risk-based approaches that suit money laundering and terrorist financing.[26]

The manual further seeks to establish procedures and minimum standards in ensuring that the Bank and or its employee are not used as instruments for laundering illicit funds in and outside the country or engage in terrorism financing and other financial crimes.[27] The

[23]Oyaleke (n.1) 9
[24]Oyaleke (n.1)7
[25] S. 2 (1) of the Money Laundering (Prevention and Prohibition) Act, 2022
[26]Oyaleke (n.1) 6
[27]Oyaleke (n.1) 8

standards and procedures set by the manual is divided into three (3) broad areas such as conduct of financial services, dealing with the third parties' beneficiaries and employees conducts.

2.6: Money laundering & Financial Action Task Force (FATF) Recommendations

Financial Action Task Force (FATF) is an international organization formed in 1989 for the sole purpose of combating global financial crime.[28] It was created by the Group Seven (G-7) nations at their meeting of the Heads of State and Finance Ministers Economic Summit held in July 1989. The sole goal of FATF is to ensure that the member countries enact and enforce laws and regulations in combating money laundering activities within their respective jurisdictions based on its 'recommendations'.[29] These recommendations, though a soft law, serves a legal framework for anti-money laundering efforts and meant to have universal application. The recommendations cover the criminal justice system and law enforcement (numbers 1-7), the financial system and its regulation (numbers 8-29), and international cooperation (numbers 30-40).[30]

In October 2001, the FATF widened the scope of its mandate to issues bordering on financing terrorism. Presently, the followings are the cardinal objectives of Financial Action Task Force (FATF).

(a) To promote implementation of the standards in combating money laundering
(b) To revise and clarify global standards for combating money laundering and terrorism financing
(c) To engage with stakeholders and other partners worldwide in the fight against money laundering and terrorism financing
(d) To identify and respond to the new money laundering terrorism financing threats.[31]

[28]JR, Richards, *'Transnational Criminal Organisations, Cybercrime and Money Laundering*' A Handbook for Law officers, Auditors, and Financial Investigators (1998) 226
[29] JR, Richards (n. 36) 226
[30] About 180 jurisdictions have adopted these recommendations.
[31] Oyaleke (n.1) 20

FAFT carries out its works and function through its four working groups and its secretariat in Paris.[32] It is a policy-making body which ensures that there are national legislative and regulatory reforms on the issues of money laundering and terrorism financing.[33]

Over time, the FATF had developed various 'Recommendations'. These recommendations are recognised globally as international standards for combating money laundering and terrorism financing and the increase in the weapons of mass destruction.[34] These recommendations serve as the guidelines for the member countries to develop their national legislations and regulations to addressing the incidence of money laundering and terrorism financing. The first set of recommendations were issued in 1990 and thereafter about four (4) revisions had been made which are in 1996, 2001, 2003 and 2012. The most recent one was made in 2012. These reviews are made to ensuring that the measures developed in combating money laundering and terrorist financing remain updated and relevant to the present global demands and the need for its universal application.[35]

The FATF also releases typologies like every other national and international research and law enforcement bodies, on a regular basis with a view to informing the international communities of the trends and methods for the purpose of laundering illicit financial flows. Typologies mean the study of the methods, trends and techniques of money laundering and terrorist financing.[36]

The issue of concern is, with all the above best practices provided by the FATF, rates of money laundering are still on the alarming rate.

Nigeria is a country that has witnessed high level of money laundering cases especially from the politically exposed persons who abuse their political offices to commit all forms of predicate offences and launder the proceed of crimes globally notwithstanding the existence of both domestic and international legal frameworks.

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[32] ibid
[33] ibid
[34] ibid
[35] Oyaleke, (n.1) 22
[36] H Duggan & P Drewery 'UK Part 1:UK Money Laundering-Typological Consideration' in A. Srivastava and others (eds) *'International Guide to Money Laundering Law and Practice'* (2013) 15

3.0.0: Effects of money-laundering on the world economies

The negative impacts of money laundering are multi-faceted in nature and globally. They may be economical, social or even political.[37] It has over-whelming effects on the financial sector to the extent that it undermines the general integrity, reputation, stability and liquidity of the sector.[38] Furthermore, it tends to have social impacts like corruption,[39] bribing,[40] increase in the crime rate,[41] and contamination of legal activities through illegal activities[42] and also notable political effects. It may also be short and long term. These shall be examined under this heading.

3.1: Increased crime and corruption.

Money laundering increases the rate of crime and corruption in the society. It is a common knowledge that where there is a reward for doing an act or mission, there is a strong likelihood that such an act or omission tends to continue to increase in magnitude. Likewise, money laundering increases crime and corruption in any economy it creeps in. This is predicated on the fact that money launderers see laundering activity as business activity with desire to make more money.[43] Therefore, when a country is known as a haven for money laundering activities, it will attract more people to crime and invariably will make such a country an abode for criminals. Laundering of illicit funds also encourages corruption in the sense that the launderers, with the intention of maintaining

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[37] BL Bartlett, *'The Negative Effects of Money Laundering on Economic Development' (*2002) 19; N Mackrel, 'Economic Consequences of Money Laundering', in A. Graycar and P. Grabosky (Eds), *'Money Laundering in the 21st Century: Risks and Countermeasures',* (1997) 2; J walker, *'Estimates of the extent of Money Laundering in and through Australia*' (John W*a*lker Consulting Services, 1995) 30

[38]Oyaleke (n.1) 23

[39]V Tanzi, 'Macroeconomics of Money Laundering' in E.U Savona, *'Responding to Money Laundering: International Perspectives'* (1997) p. 92, 99; P.J Quirk, *'Money Laundering: Muddying the Macro economy,' Finance and Development, March* 1997 *a review* (1998) 36(1) *Economic and Financial Review,* 116-120; D.I. Keh, *'Economics Reform and Criminal Finance'* (1997) 2(1) *Transnational Organised Crime*, 27

[40]P Aldridge, 'Money *Laundering Law'* (Hart Publishing, 2003) 308; Unger, B *'The scales and impacts of money laundering'* (Elgar Publishing, 2007) p. 110, ISBN: 978-1-84720-223-9

[41]Bukola Oyaleke, 'A critical analysis of trade-based money laundering activities in Nigeria' (2024) 1(1), KWASU Business and Private Law Journal, https://kwasuspace.kwasu.edu.ng/handle/123456789/2907 accessed 30 July, 2025; ISSN: 0795-7408

[42]Oyaleke (n. 1) 7

[43]JE Turner, *'Money Laundering Prevention: Deterring, Detecting, and Resolving Financial Fraud'* (Wiley,2011) p.4-5, ISBN: 978-47087474522; see also: Lilley, P *'Dirty Dealing: The Untold Truth about Global Money Laundering, International Crime and Terrorism'* (Kogan Page, 2006) 28, ISBN-978-0749445126

their dubious activities, will tend to bribe and corrupt the law enforcement agencies to prevent possible arrest[44].

Laundering of money activities corrupt or has the greater likelihood of corrupting financial system and undermine governance of the banks. Once bank managers are exposed to and corrupted by large sums of money involved in money laundering, unethical behavior can be introduced into system to favour money laundering process.[45] In other words, it means that when bank managers who are expected to protect the integrity of their banks have been corrupted and exposed to proceeds of money laundering, it would be difficult, if not practically impossible for them to put in place regulations that would prevent or put to the barest minimum money laundering in their financial institutions. In Nigeria, notable bankers, accountants, lawyers and even judicial officers have been charged for offences relating to money laundering in the performance of their duties.[46]

3.2: Undermining the financial sector/markets

Money laundering activities have multiplier effects on the operation of the markets.[47] It contaminates the markets via the fraudulent dealings of the employees that work therein.[48] The trust and confidence reposed in the financial institutions is also eroded away.[49] In practice, a financial institution tends to lose credibility and customer confidence when it is indicted in money laundering scandal. This has multiplier effects on the entire financial system especially in countries where several of its financial

[44]Oyaleke (n. 60) 24
[45]P Quirk *'Macroeconomic Implications of Money Laundering'* IMF Working Paper 96/66 (1996) 24; see generally: SR Du Pasquier 'The Swiss Anti-Money Laundering Legislation' (1998) 13 *Journal of International Banking Law, 160*; G Smith 'Competition in the European Financial Services Industry: the Free Movement of Capital versus the Regulation of Money Laundering' (1992) 13 *University of Pennsylvania Journal of International Business Law*, 101 at 111.
[46]Akeem Nafiu, '15.5m: Appeal Court overturns conviction of firms linked to Jonathon' http://www.newtelegraphng.com/2017/04/companies-appeal-conviction-patience-jonathans-15-591m/ accessed 5 August, 2025
[47] Aldridge (n.59) 31
[48] Unger (n 59) 145
[49] Unger (n 59) 145

institutions involve in dirty money washing.[50] It affects general stability of financial institutions like insurance companies, banks and securities firms.

3.3: Unfair Competition

Money laundering tends to encourage unfair competition. Illicit funds drive out good money or has the likelihood of driving out the dirty money. Money launderers ordinarily will not want to hold on to their illicit proceeds of crime to prevent being suspected, arrested and possible prosecution. They will do anything possible to dispose same by engaging the funds in legitimate businesses. Money launderers outbid potential honest buyers due to the large funds they have access to for the purchase of expensive products.[51] They drive out honest and legitimate competitors of the business because they have large sum of money to subsidise their products to a relatively low price from the illicit funds.[52]

3.4: Loss of revenue

Massive revenue is also lost on the part of the government whenever money laundering creeps in, especially revenue from tax.[53] Tax evasion, which is a predicate offence, serves as a conduit through which government loses revenue.[54] Revenue that ordinarily would have accrued to the coffers of the government are siphoned away through tax evasion, thereby reducing the revenue generation of the government which indirectly affect the possibility of government in providing basic social amenities for the citizenry. It also makes the process of collection of taxes more difficult and cumbersome.[55] A government revenue deficit is at the centre of the economic difficulties of many countries, including Nigeria notwithstanding the efforts of the International Monetary Fund (IMF) to improve the tax collections capabilities of its members and the efforts of the Organisation for

[50] R McDonell, 'An overview of the global money laundering problem, international anti-money laundering standards and the world of the financial action task force' paper delivered at the international conference on global drugs law, New Delhi, 28 February, 1997; Unger (n.59) 146
[51] SR Du Pasquier 'The Swiss Anti-Money Laundering Legislation' (1998) 13 *Journal of International Banking Law, 160*
[52] Unger (n. 59) 132
[53] Unger (n.59) 137; Oyaleke (n. 60)
[54] Oyaleke (n.1) 28; Unger (n.57) 113;
[55] Oyaleke (n.1)25

Economic Cooperation and Development (OECD) towards ensuring tax transparency in many jurisdictions including Nigeria.[56]

3.5: Reputational Damage to the country

The damage money laundering does to the reputation of a country cannot be under-estimated. In a situation where a financial institution in a country is known for involving in money laundering operations, it tends to lose credibility and customer confidence.[57] This affects the whole financial system especially in cases where several financial institutions are involved in the dirty money washing.[58] This also on the long run affects the confidence of the foreign investors in investing in the business activities of such a country. Legitimate businesses in such countries are affected. They are subjected to excessive ownership and control systems scrutiny. When a country is known for laundering illicit funds through trade activities, its international trading relationship will be affected globally. To build this confidence again, may require a long period of time. It is easier to destroy good a reputation than to build it.

Nigeria is known as one of the main route for cross-border movement of drugs globally and ,[59] a major haven for criminal financial activities notwithstanding the existence of international and domestic legal and regulatory frameworks on the detection and prevention of illicit financial activities.

4.0: Effects of money laundering on Nigerian Economy

The effects of money laundering on the Nigerian economy cannot be over-emphasized. The above-mentioned effects affect the globally economies generally, but specifically, the followings are the effects of money laundering on the Nigerian economy:

[56] Oyaleke (n.1)26
[57] Unger (n. 59) 145
[58] R McDonell, *'An overview of the global money laundering problem, international anti-money laundering standards and the world of the financial action task force'* paper delivered at the international conference on global drugs law, New Delhi, 28 February, 1997; Unger (n.59) 146
[59]The report is issued by the United States' Department of State, and Bureau for International Narcotics and Law enforcement affairs.

(**1) Reduction of Government Revenue**

Money laundering reduces the Nigerian government revenue.[60] The Nigerian government loses about $18 billion annually to the illicit financial flows which include money laundering through tax evasion.[61] Revenue that ought to be remitted to the coffers of the government are siphoned away directly through tax evasion to the extent that revenue generation ability of the government is affected and hampered which to the great extent indirectly affect the ability to provide the basic social amenities for the citizenry. A government revenue deficit is at the centre of the economic difficulties of Nigeria which affects the ability of the government in carrying out its social responsibilities.

(2) Increased Corruption and Weak Institutions

Another effect of money laundering on the Nigerian economy is that it leads to an increase in corruption and weakens the existing institutions. Money laundering thrives where corruption is high and weakens the institutions. It is not in doubt that Nigerian is one of the most corrupted nation globally.[62] Money launderers with a view to covering their criminal paths and ways oftentimes 'corrupt' the existing institutions by bribing the law enforcement agencies, customs, bankers and politicians; thereby weakening the regulatory agencies such the Economic and Financial Crime Commission (EFCC), Central Bank of Nigeria (CBN) and Independent Corrupt Practices Commission (ICPC). When a financial institution is indicted in money laundering operations, it tends to lose its credibility and customer confidence. This has multiplier effects on the entire financial system especially in countries where several of its financial institutions involve dirty money washing.[63] This creates a cycle where corruption enables laundering, and laundering deepens corruption.

[60] Unger (n.59) 137
[61] B Oyaleke (n. 1); Unger (n.57) 113;
[62] Oyaleke (n.60) 2
[63]R McDonell, 'An overview of the global money laundering problem, international anti-money laundering standards and the world of the financial action task force' paper delivered at the international conference on global drugs law, New Delhi, 28 February, 1997; Unger (n.59) 146

(3) Damage to Nigerian's International Reputational Image

Countries with high money-laundering risks are regarded and labelled as 'High-risk jurisdictions. At one point or the other in the Nigerian history, Nigeria as a country has been labelled a high-risk jurisdiction in terms of money laundering activities perpetrated by the some of its citizens, especially the politically exposed persons.[64] This results difficulty in the government accessing foreign loans as at when due, increased scrutiny of Nigerian financial transactions abroad, decline in foreign direct investment (FDI) and loss of correspondent banking relationships (CBRs). Furthermore, it is a common knowledge that when foreign banks fear Nigerian transactions, it slows international trade and increases cost of doing business for Nigerian companies.

(4) Weak Economic Growth and Development

Money laundering tends to further cause weak economic growth and development in Nigeria by creating a hostile environment for sustainable economic development.[65] This is possible because money laundering slows growth and development as government resources are diverted to anti-corruption and security instead of development through which weak institutions reduce efficiency of public spending and legitimate investors often withdraw.[66] This lowers GDP growth, high unemployment, and worsen insecurity in the country.

(5) Erosion of Public Trust

Another crucial effect of money laundering on the Nigerian economy is that it tends to erode away the trust (reputational risk) that members of the public have on the financial institutions.[67] Reputational risk deals with the public image of an organization. When the public image of a financial institution is tainted due to the alleged involvement in money laundering activities, members of the public, especially the customers of such institution

[64] Oyaleke (n.1) 2
[65] Oyaleke (n.60) 2
[66] Oyaleke (n. 1) 10
[67] Oyaleke (n. 60) 5

will cease to have sound confidence in the institution.[68] This also has multiplier effects on other institutions in the country.

5.0: Conclusion

Money laundering is the life blood for criminal activities and evil is the root of money laundering. There is avalanche of legal and regulatory frameworks to prevent and curb the menace of money laundering in Nigeria. The legal frameworks include Independent Corrupt Practices Commission Act, Nigerian Drug Law Enforcement Agency Act, Economic and Financial Crimes Commission Act, and Money Laundering (Prevention and Prohibition) Act, 2022. There are also institutions such as Economic and Financial Crimes Commission and Independent Corrupt Practices Commission. Both the legal and institutional regimes are robust. Notwithstanding the existence of legal and regulatory frameworks on the prevention and detection of money laundering in Nigeria and globally, money laundering activities are on the increase in Nigeria. The effects of the laundering of illicit funds are multifaceted. The effects have the capacities of crippling any viable and stable economy in the world if not properly managed and or curbed.

6.0: Recommendations

The followings are suggested as recommendations:

(1) The government should do an overhaul review of the provisions of the Money Laundering (Prevention and Prohibition) Act, 2022 with a view to identifying the inherent lacunae in the Act being exploited by the criminally minded individuals and corporate bodies (launderers).

(2) The government must be decisive in ensuring that the existing legal frameworks on the prevention and detection of money laundering activities are fully implemented and enforced.

(3) Government of Nigeria should further foster collaborate with other countries of the world in preventing illicit flow of funds by way of sharing necessary intelligence and working together as an indomitable team.

[68] ibid

(4) That all the agencies of government in Nigeria that involve in the campaign against money laundering and the ancillary matters should work together as a formidable team by sharing information and intelligence together in the fight against it.

ANALYTICAL ASSESSMENT OF THE LEGAL FRAMEWORK ON ELECTRONIC WASTE MANAGEMENT IN NIGERIA FOR EFFICIENT INTERNATIONAL BEST PRACTICES

Azeezat Adenike Muhammed-Ijaiya*

Abstract

The management of electronic waste (e-waste), a uniquely complex waste stream, has emerged as a significant environmental and public health challenge in urban centres worldwide, including Nigeria. Rapid urbanization has led to a surge in the use of Electrical and Electronic Equipment (EEE). Additionally, technological advancements, population growth, and efforts to bridge the digital divide have further contributed to the rising generation of e-waste. However, many developing countries, Nigeria included, struggle to effectively manage the growing volume of e-waste they produce. Given the increasing environmental and health hazards posed by improper e-waste disposal in Nigeria, it has become essential to establish a robust legal framework for e-waste management. This study adopted a doctrinal legal research methodology. It revealed that international environmental legal instruments on e-waste management must be ratified and domesticated to ensure efficient e-waste handling in Nigeria. Furthermore, the research found that the current national legal frameworks are inadequate and ineffective in addressing the specific challenges of e-waste management. The study concluded that while Nigeria has existing legal provisions for general waste management, these are insufficient and weak when applied specifically to e-waste. Moreover, current laws focus broadly on solid waste management and lack dedicated regulations for e-waste. To ensure effective management and alignment with international best practices, it is recommended that existing laws be reviewed and amended to include specific e-waste provisions, or that a new, standalone law be enacted exclusively for e-waste management.

Keywords: E-waste, E-waste Management, Environment, Electrical and Electronic Equipment

1. Introduction

Technological advancements and the reduction in the product life cycle have been a major catalyst to the significant increase in the e-waste generated globally and once they become obsolete or outdated they are discarded in large amounts.

[1]Therefore, as a result of increase in consumption of Electrical Electronic Equipment (EEE) the Transboundary E-waste Flows Monitor estimated that 5.1 Metric tonnes, which is about 10 per cent of the total amount of global e-waste, (53.6 Metric tonnes) were moved from one country to the other in 2019. Out of the 5.1 Metric tonnes, 1.8 Metric tonnes of e-waste were illegally moved across boundaries and poses a threat to managing e-waste.[2] Nigeria is the major recipient of e-waste in Africa and in Nigeria, approximately 60,000–71,000 Metric tonnes of e-waste were imported annually through Lagos ports in 2015 and 2016.[3]

Beyond being a major recipient of e-waste Nigeria's bustling Information, Communication and Technology (ICT) markets**,** particularly those in Lagos e.g. Computer Village in Ikejacontribute significantly to e-waste generation through the sale, repair, and disposal of both new and used devices. Additionally, major dumpsites such as Olusosun (Ojota) and Solous (Igando) landfills receive thousands of tonnes of mixed waste, including substantial amounts of e-waste[4]. These sites serve as operational grounds for informal recyclers, who manually dismantle and process discarded

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[1] SK Ghosh, and others, 'Waste electrical and electronic equipment management and Basel Convention compliance in Brazil, Russia, India, China and South Africa (BRICS) Nations' *Waste Management & Research* (2016)34(8) p.693-707. <https://journals.sagepub.com/doi/abs/10.1177/0734242X16652956?journalCode=wmra>. Accessed on 25th October 2025

[2] CP Baldé, and others, 'Global Transboundary E-Waste Flows Monitor' (2022)'. United Nations Institute for Training and Research (UNITAR). <https://ewastemonitor.info/wp-content/uploads/2022/06/Global-TBM_webversion_june_2_pages.pdf > Accessed on 25th October 2025

[3] T Maes, and F Preston-Whyte, 'E-waste it wisely: Lessons from Africa' SN Applied Sciences (2022) 4 (72). <https://doi.org/10.1007/s42452-022-04962-9>. Accessed on 3rd June 2023;IOkukpon, 'Towards The Sustainable Management Of Electronic Waste In Nigeria: South Africa As A Model.' (2015).<https://open.uct.ac.za/handle/11427/16730> accessed on 3 February 2023

[4] Ibrahim Mansur and JemilatNasiru, 'Living on Borrowed Time: How Nigeria's Unchecked E-Waste Is Poisoning Residents, Environment.' International Women's Media Foundation (2024). https://www.iwmf.org/reporting/living-on-borrowed-time-i-how-nigerias-unchecked-e-waste-is-poisoning-residents-environment/. Accessed on 10th August, 2025

electronics on a daily basis, often under hazardous conditions with high health and environmental risks[5].

Key health and environmental risks associated with e-waste handling include respiratory diseases, heavy metal poisoning, DNA damage, and elevated cancer risks**.** Medical studies have documented impaired lung function and hypertension among workers with prolonged exposure[6]. The environmental impacts are equally severe, with soil and water contamination being a major concern. For instance, leachate samples from the Igando landfill contained hazardous levels of cadmium, lead, iron, and ammonia (far exceeding permissible limits)[7].

Growing health and environmental concerns have led to the implementation of international and national regulations aimed at mitigating the harmful effects of e-waste. At the global level**,** Nigeria is a signatory to some key treaties such as the Basel Convention (1991)[8] and the Stockholm Convention on Persistent Organic Pollutants (POPs)[9], while in Nigeria areregulations by the National Environmental Standards and Regulations Enforcement Agency (NESREA)[10], the Nigerian Communications

[5]AO Odeyingbo, IC Nnorom, and OK. Deubzer, 'Used and Waste Electronics Flows into Nigeria: Assessment of the Quantities, Types, Sources, and Functionality Status' Science of the Total Environment 666: 103–113. (2019)https://doi.org/10.1016/j.scitotenv.2019.02.102; Francis Tunde, 'How to Properly Dispose of Electronics in Lagos.' Fij.ng,(2024). https://fij.ng/article/how-to-properly-dispose-of-electronics-in-lagos/. Accessed on 10th August, 2025

[6] ibid

[7]Alabi, Olumide. 'Nigeria's Electronic Waste Is a Public Health Problem and Needs Urgent Attention.' The Conversation,(2021). <https://theconversation.com/nigerias-electronic-waste-is-a-public-health-problem-and-needs-urgent-attention-163537.> accessed on 9th August 2025;Lovo, Silvia, and Stephanie Rawlings. 'Electronic Waste Is a Silent Killer in West Africa.'VoxDev, J(2025)https://voxdev.org/topic/health/electronic-waste-silent-killer-west-africa. Accessed on 9th August 2025

[8] United Nations Environment Programme (UNEP). Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal & Basel Protocol on Liability and Compensation. Geneva: UNEP (2023)https://www.basel.int/Portals/4/download.aspx?e=UNEP-CHW-IMPL-CONVTEXT-2023.English.pdf. Accessed on 8th August 2025

[9] United Nations Environment Programme (UNEP). Stockholm Convention on Persistent Organic Pollutants (POPs). Geneva: UNEP. (2023)https://chm.pops.int/Portals/0/download.aspx?e=UNEP-POPS-COP-CONVTEXT-2023.English.pdf. Accessed on 8th August 2025

[10]National Environmental Standards and Regulations Enforcement Agency (NESREA). 2011. National Environmental (Electrical/Electronic Sector) Regulations. Amended 2022. Abuja: NESREA. https://nesrea.gov.ng/wp-content/uploads/2025/05/Electrical_Electronics.pdf. Accessed on 9th August 2025

Commission (NCC) E-Waste Regulations of 2018[11], and the Harmful Waste (Special Criminal Provisions) Act, 2004[12].

Whether these laws/regulations are adequate enough to combat the challenges of managing e-waste prompted this research. This study therefore examines some of international Conventions in which Nigeria is a party to and national laws on e-waste management in Nigeria and their efforts in curbing the complexities and menace of e-waste management practices and environmental protection.

2. Conceptual Clarifications on the Legal Framework on E-waste Management

2.1. Concept of Waste

According to the Webster's Encyclopedic Dictionary, waste is defined as an item that has no practical value, worn out, discarded or used, and something cast out as worthless.[13]Waste can be described as any items that its value has lost, to be disposed or thrown away. It includes things that are required to be disposed, intended to be disposed and meant to be disposed by the provisions of the laws of Nigeria. Wastes are also worthless materials which must be disposed.[14]

2.2. Concept of E-waste

E-waste is quite different from municipal solid waste and this is mainly due to its extremely dangerous, toxic and hazardous substances and hence needs a different

[11]Nigerian Communications Commission (NCC). 2018. Nigerian Communications Commission (NCC) Industry E-Waste Regulations, 2018. Abuja: NCC. https://www.ncc.gov.ng/media/115/view. Accessed on 9th August 2025

[12]National Environmental Standards and Regulations Enforcement Agency (NESREA). National Environmental Standards and Regulations Enforcement Agency (Establishment) (Amendment) Act, 2018. Abuja: NESREA. https://nesrea.gov.ng/wp-content/uploads/2025/05/NESREA_Amended_Act_2018-1.pdf. Accessed on 9th August 2025

[13]The New International Webster Encyclopaedic Dictionary of English Language (Columbia: Trident Press International, 2003). <https://www.merriam-webster.com/dictionary/waste#:~:text=of%203%20adjective-,1,body%20gives%20off%20waste%20materials.> Accessed on 25th October, 2025

[14]EL Amah, OT Eze and CE Emeka, 'An Examination of the Regulation of Electronic Waste Management in Nigeria. African Journal of Law, Ethics and Education (2024) Vol 7, Issue IV. <https://ajleejournal.com.> accessed on 27th October 2025; UCKalu and WE Okoye,'Developing Effective Legal and Institutional Mechanism for Managing Electronic Waste in Nigeria' African Journal of Law and Human Rights (AJLHR) (2024) 8 (1) P 58-29

approach in its management.[15] The National Environmental Standards and Regulatory Enforcement Agency (NESREA), which is the apex body responsible for the regulation of e-waste and the protection of the environment defines e-waste to mean any Waste Electrical and Electronic Equipment (WEEE) that is in its end stage or any Electrical and Electronic Equipment (EEE) that is discarded. E-waste is also defined by the EU Waste Electrical and Electronic (WEE) directive as the Waste Electrical and Electronic Equipment and it includes it sub-assemblies, all its components and consumables that are all parts of an electronic products during the time of discarding it. This European Union (EU) WEE Directive is the most recognized e-waste definition.[16] For the purpose of this research e-waste is defined as waste that emanated from electrical and electronic devices that are obsolete, not in use or discarded. They also include electrical and electronic equipment that their product life cycle had expired or had reached the end of their useful life and have been discarded for either, reuse, recycle or final disposal at dumpsites.

2.3. Components of E-Waste

It is important to note that e-waste comprises of both valuable and toxic substances/materials. The hazardous components are cadmium, mercury, lead, brominated flame retardants, polyvinyl chloride plastics (PVCs), selenium, polychrorinated biphenyls (PCB) and so on while the valuable components comprises of Aluminium, Tin, Silicon, Iron, Gold, Silver, Nickel and so on. All these valuable components can be recovered for the production of new electronic products. However, when these valuable components are processed with unsound methods of recycling e-waste, they can become hazardous.[17]

[15]KJ Miner, 'A Critical Evaluation of Current E-waste Management and Recycling Practices in the Jos Metropolis in Nigeria.' (2021). P. 9

[16]Chenyu, and others, 'An Overview of E-Waste Management in China.' *Journal of Material Cycles and Waste Management* (2015)17 p. 1-12. <https://link.springer.com/article/10.1007/s10163-014-0256-8> Accessed on 20th October, 2023

[17]Rubiyath Chowdhury Afifa, 'E- waste Management in Bangladesh: An Analysis on Compliance with The International Legal Regime'(LLM Dissertation, Department of Law, Faculty of Security and Strategic Studies (FSSS), Bangladesh University of Professionals 2022) p. 24

2.4. Classification of E-Waste

There is the necessity to classify e-waste into various categories and this is because e-waste has different sources and types and most importantly, the classification is necessary in other to enhance e-waste management.[18] The EU Directive classified e-waste into six categories and they are: Temperature exchange equipment and these include freezing and refrigerating equipment such as freezers, air conditioners and refrigerators; Screens, monitors and these include laptops, notebooks, computers and televisions; Large equipment and they include photocopiers, washing machines, dish washers and so on; Lamps and they also include light emitting diodes (LEDs) and fluorescent lamps; Small equipment and examples include radios, video cameras microwave ovens and electric shavers; and lastly, small ICT and examples of them include devices such as electronic toys, cell phones and telephones.[19]

In summary, e-waste refers to any discarded Electrical and Electronic Equipment (EEE) or Waste Electrical and Electronic Equipment (WEEE) that has reached the end of its useful life. It presents a significant environmental challenge because it contains both hazardous substances (such as lead and mercury) and valuable materials like gold and copper. Unlike ordinary waste, e-waste requires specialized treatment to prevent environmental contamination and health hazards associated with improper disposal. However, when handled responsibly through formal recycling systems, it enables the recovery of valuable resources, lessens the need for virgin raw material extraction, and contributes to a circular economy. In Nigeria, where e-waste generation is growing

[18]KJ Miner, 'A Critical Evaluation of Current E-waste Management and Recycling Practices in the Jos Metropolis in Nigeria.' (2021). P. 11

[19] European Union Directive 2018, Forti, Vanessa, and others, 'The Global E-waste Monitor 2020.' *United Nations University (UNU), International Telecommunication Union (ITU) & International Solid Waste Association (ISWA), Bonn/Geneva/Rotterdam* 120 (2020).<https://www.researchgate.net/profile/Vanessa-Forti/publication/342783104_The_Global_E-waste_Monitor_2020_Quantities_flows_and_the_circular_economy_potential/links/5f05e6c0458515505094a3ac/The-Global-E-waste-Monitor-2020-Quantities-flows-and-the-circular-economy-potential.pdf>Accessed on 20th October, 2023, A Okposin, 'Curbing E-waste Menace in Nigeria: Assessing the Regulatory Framework.' *ChukwuemekaOdumegwuOjukwu University Journal of Commercial and Property Law* 2.1 (2020).<https://nigerianjournalsonline.com/index.php/COOUJCPL/article/view/632> accessed on 27th October 2025

rapidly but regulatory frameworks remain underdeveloped, implementing effective management practices (guided by models such as the EU's WEEE Directive and Nigeria's NESREA regulations) is essential for achieving environmental sustainability. Therefore, e-waste should not merely be seen as waste, but as a valuable, recoverable resource.

3. Methodology

This study relied predominantly on secondary data sourced from publications and databases of international organizations, government bodies, and academic institutions. It also incorporated peer-reviewed journal articles, scholarly books, and legal reports pertaining to e-waste management. This study also relied on primary sources like the Constitution of the Federal Republic of Nigeria (as amended), statutes and regulations.

The collected data were analyzed using content analysis and descriptive analysis methods. Content analysis was used to systematically examine and interpret the selected publications, facilitating the identification of key themes and insights. Through descriptive analysis, recurring patterns in the e-waste management data were identified, allowing for a clear interpretation and discussion of emerging trends and relevant relationships within the context of the study.

4. Waste Management in Nigeria

The management of waste in Nigeria has been a problem for a long time and a lot of factors have contributed to the problems of waste management in Nigeria. These factors include population increase, industrialization, rise in production of materials, technological advancements and also the rise in the consumption of resources like fossil fuels, minerals, water, land and food which are all as a result of population increase.[20]

The Nigeria government initiated and implemented several methods to solve the menace of waste mismanagement, however, the problem is still prevalent. It is worthy to note that

[20]AM Eberinwa, 'Waste Management in Nigeria: The Legal and Institutional Framework'. (LLM Dissertation, University of Eastern Finland Law School 2023)

state governments are primarily in charge and responsible for the proper management (collection and disposal) of waste in their various states/jurisdictions, however, the management of waste are not done efficiently, effectively and properly and the major contributory factor to this is inadequate resources and lack of political will for the management of waste.[21]

In furtherance of the above, the challenges facing waste management in Nigeria are numerous and it include lack of coordination by the government and its agencies in the management of waste, lack of expertise by the environmental agencies and also the lackadaisical attitude on the part of the government towards the management of waste.[22]

5. An Overview of the Legal Framework on E-waste Management in Nigeria

5.1. Legal Framework on E-Waste Management in Nigeria

The legal framework for e-waste management in Nigeria is based on a combination of international agreements and national regulations. These include various global conventions as well as locally enacted laws and policies as stated below.

5.1.1. The Stockholm Conference on the Human Environment 1972

The 1972 United Nations Stockholm Conference on the Human Environment was the first global summit to elevate environmental issues to the international agenda. It produced the Stockholm Declaration, an Action Plan for the Human Environment, and led to the creation of the United Nations Environment Programme (UNEP).[23]

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[21]KJ Miner, 'A Critical Evaluation of Current E-waste Management and Recycling Practices in the Jos Metropolis in Nigeria.' p.30

[22]E. Amasuomo and J Baird, 'Solid Waste Management Trends in Nigeria'.*Journal of Management and Sustainability*,(2016) vol. 6, no 4 p. 34-44.<https://doi.org/10.5539/jms.v6n4p35.> Accessed on 22nd May 2024

[23]United Nations Conference on Sustainable development. Sustainable Development 20 Years on from the Earth Summit: Progress, Gaps and Strategic Guidelines for Latin America and the Caribbean (2012);E Christopher andJrBarthel, 'The United Nations Conference on the Human Environment Its Implications for Air Pollution Prevention Associations'*Journal of the Air Pollution Control Association*, (1972) 22:12, p. 950-954.<http://dx.doi.org/10.1080100022470.1972.10469733.>Accessed on 22nd October 2024; <http://UN.org/en/Conference/Stockholm1972.> Accessed on 8th November 2024

The Conference established key principles highlighting the interconnection between economic, social, and ecological challenges, and initiated a dialogue between developed and developing nations on how pollution of air, water, and oceans affects global well-being and economic development.[24]

Although e-waste management was not directly addressed, the Conference laid the foundational environmental frameworks, institutions, and principles (such as sustainable development) that later informed global e-waste governance. The establishment of UNEP, the development of national environmental laws, and the global push for sustainable practices all trace their origins to this landmark event, underscoring its long-term influence on e-waste management.[25]

5.1.2. The United Nations Conference on Environment and Development 1992

The United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, was held in Rio de Janeiro, Brazil, in June 1992, marking the 20th anniversary of the 1972 United Nations Conference on the Human Environment in Stockholm[26].

The Conference adopted the Rio Declaration on Environment and Development and Agenda 21, a comprehensive action plan aimed at promoting sustainable development by ensuring human activities do not harm the environment. The Rio Declaration built upon the 1972 principles, emphasizing international cooperation and the creation of agreements to protect both environmental and developmental systems. Key outcomes included the establishment of the Commission on Sustainable Development and the adoption of the United Nations Framework Convention on Climate Change and the

[24] United Nations Organisation, Stockholm 1972. Report of the United Nations Conference on the Human Environment.<http://www.unep.org/Documents/Default.asp?documentID=97.> Accessed on 23rd October 2024; Ph. Boudes, 'United Nations Conference on the Human Environment' in J. Newman (ed.) Green Ethics and Philosophy - The Green Series : Toward a Sustainable Environment, Vol. VIII, *Sage Publications Inc*., (2011) pp. 410-413

[25]<http://UN.org/en/Conference/Stockholm1972.> Accessed on 8th November 2024

[26]<https://www.un.org/en/conferences/environment/rio1992#:~:text=The%20primary%20objective%20of%20the,in%20the%20twenty%2Dfirst%20century.> Accessed on 23rd October 2024

Convention on Biological Diversity. UNCED also catalyzed the 1994 Convention to Combat Desertification.[27]The Rio Conference significantly influenced e-waste management through its promotion of sustainable development, which advocates for economic growth that does not compromise environmental health. This principle supports sustainable production, consumption, and disposal of electronics to protect both current and future generations. The conference also introduced key environmental principles, including the precautionary principle (urging careful handling of hazardous e-waste components) and the polluter-pays principle, which holds producers accountable for the environmental impact of their products. This latter principle laid the foundation for Extended Producer Responsibility (EPR), requiring manufacturers to manage the recycling and disposal of their electronic products at end-of-life.[28]

5.1.3. The Basel Convention

The Basel Convention, adopted in 1989, is the primary international treaty governing the transboundary movement of hazardous waste (excluding radioactive waste).[29]It was established in response to public outcry over the dumping of hazardous waste from developed countries to developing countries. The Convention entered into force on May 5, 1992, and aims to minimize hazardous waste generation, ensure its environmentally sound management, and enforce prior informed consent for cross-border waste movements.[30]

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[27]World Health Organization, United Nations Conference on Environment and Development. EB91/INF.DOC.15, 1992. Report by the Director-General.

[28]United Nations Conference on Sustainable development. Sustainable Development 20 Years on from the Earth Summit: Progress, Gaps and Strategic guidelines for Latin America and the Caribbean (2012).

[29]D Olowu, 'Menace of E-wastes in Developing Countries: An Agenda for Legal and Policy Responses.' *Law Env't& Dev. J.* (2012) 8 p. 59-70. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/leadjo8&div=7&id=&page=> Accessed on 25th October 2025; McIntire, Erin 'The International Tribunal for E-waste: Ending the Race towards Lethal Fallout' Seattle Journal of Environmental Law: (2015) Vol. 5: Iss. 1, Article 4. Available at: https://digitalcommons.law.seattleu.edu/sjel/vol5/iss1/4. Accessed on 25th October 2025

[30]A Okposin, 'Curbing E-Waste Menace in Nigeria: Assessing the Regulatory Framework' *ChukwuemekaOdumegwuOjukwu University Journal of Commercial and Property Law*(2020) 2 (1) p.7.<https://nigerianjournalsonline.com/index.php/COOUJCPL/article/view/632.>accessed on 24th April, 2024.

Despite being the first and most comprehensive global agreement on hazardous waste, the Basel Convention has struggled to curb illegal e-waste trade.[31]Loopholes allow waste exports labeled as "for reuse," and some parties fail to comply with its provisions, leading to continued dumping in African nations.[32]

Nigeria ratified the Convention in March 1991, but under Section 12 of the Constitution of Nigeria 1999 (as amended),[33] international treaties require domestication by the National Assembly to become enforceable law. As of now, the Convention has not been domesticated in Nigeria.[34]To support e-waste management, the Convention launched initiatives such as the Mobile Phone Partnership Initiative (MPPI), the Global Partnership on E-waste (GPE), and the Global Partnership on Computing Equipment (GPCE). While these efforts are valuable, the lack of enforcement and legal integration limits their effectiveness in Nigeria and other developing countries.[35]

5.1.4. The Bamako Convention

The Bamako Convention, adopted on January 29, 1991, in Bamako, Mali, and effective from April 22, 1998, was established by the then Organization of African Unity (now the African Union) to address the widespread dumping of hazardous and nuclear waste into Africa by developed countries. Unlike the more lenient Basel Convention, the Bamako Convention imposes a complete ban on the import of hazardous waste into Africa and sets stricter rules on transboundary movements within the continent. It offers more specific and enforceable guidelines for exporters and importers.[36]

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[31]BI Olutoyin, 'A Legal Appraisal of the Challenges of Management of Electronic Waste in Nigeria' p. 11.
[32]A Okposin, 'Curbing E-Waste Menace in Nigeria: Assessing the Regulatory Framework' p. 7
[33] Section 12 of the Constitution of Federal Republic of Nigeria 1999 (as amended)
[34] A Okposin, 'Curbing E-Waste Menace in Nigeria: Assessing the Regulatory Framework' p. 7
[35] BI Olutoyin, 'A Legal Appraisal of the Challenges of Management of Electronic Waste in Nigeria' p. 12; International Initiatives on E-waste Management. United Nations Environmental Programme, UNEP Report 2015.
[36]BI Olutoyin, 'A Legal Appraisal of the Challenges of Management of Electronic Waste in Nigeria' *International Journal of Law* (2017) 3 (2)p. 12; ZT Bogale 'E-Responsibility: E- waste, International Law and Africa's Growing Digital Wasteland' p. 10;D Olowu, 'Menace of E-wastes in Developing Countries: An Agenda for Legal and Policy Responses.'*LawEnv't& Dev. J.* (2012) 8 p. 71 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/leadjo8&div=7&id=&page=>.

The Convention distinguishes between waste generated within Africa and waste imported from outside, and requires all parties to enact national laws that impose criminal penalties for illegal importation of hazardous waste.[37] It explicitly prohibits and criminalizes the import of such waste from non-parties, treating it as an unlawful act.[38]However, the Convention lacks strong enforcement and monitoring mechanisms.[39]

While it calls for domestic laws imposing strict, unlimited, and joint liability on waste generators, it does not empower the Convention's Secretariat to oversee implementation.[40]

The impact of the Bamako Convention has been limited due to financial constraints, inadequate technical capacity, and a lack of reliable data on the volume and locations of e-waste entering African countries (hindering effective policy development).[41]Notably, Nigeria has not ratified the Convention, despite signing it in February 2008. As a result, e-waste trade continues unchecked in Nigeria, undermining the Convention's goal of banning hazardous waste imports across sub-Saharan Africa42.[42]

5.1.5. The Constitution of the Federal Republic of Nigeria

The 1999 Constitution of the Federal Republic of Nigeria recognizes the importance of environmental protection and improvement. It provides that ratified international treaties must be domesticated by the National Assembly to become law in Nigeria.[43]The Constitution also mandates the State to protect and enhance the environment,

[37]Article 4 of the Bamako Convention; ZT Bogale ' E-Responsibility: E- waste, International Law and Africa's Growing Digital Wasteland' p. 10
[38]Article 9 of Bamako Convention; ZT Bogale ' E-Responsibility: E- waste, International Law and Africa's Growing Digital Wasteland' p. 10
[39]Article 4 of the Bamako Convention.
[40]D Olowu, 'Menace of E-wastes in Developing Countries: An Agenda for Legal and Policy Responses.' p.71
[41]ZT Bogale, ' E-Responsibility: E- waste, International Law and Africa's Growing Digital Wasteland' p. 10
[42]BI Olutoyin, 'A Legal Appraisal of the Challenges of Management of Electronic Waste in Nigeria' p. 12,
[43] HO Ijaiya 'The Legal Framework for Solid Waste Disposal and Management in Kwara State, Nigeria' Journal of Environmental Protection, (2013)4, 1240-1244, p. 1242.<http://www.scirp.org/journal/jep>. Accessed on 23rd November, 2024; & Section 12 of the Constitution of Federal Republic of Nigeria 1999 (as amended)

safeguarding Nigeria's air, water, land, wildlife, and forests.[44]However, the provisions in Chapter II on Fundamental Objectives and Directive Principles of State Policy are non-justiciable, meaning they cannot be directly enforced in court. Despite this, the National Assembly can enact laws to make these provisions enforceable.[45]Additionally, through a combined interpretation of Section 20 of the Constitution and Article 24 of the African Charter on Human and Peoples' Rights, the right to a healthy environment has been recognized as justiciable, as demonstrated in cases like SERAC v Nigeria[46] and SERAP v Nigeria.[47]Moreover, the constitutional guarantees of the right to life and the dignity of the human person implicitly support the right to a safe and healthy environment.[48]

5.1.6. The Harmful Waste (Special Criminal Provisions) Act

The Harmful Waste (Special Criminal Provisions) Act[49]was enacted in 1988, prior to Nigeria's ratification of the Basel Convention, to combat the illegal dumping of hazardous waste in the country.[50]The Act prohibits the transport, importation, sale, purchase, and dumping of harmful waste on Nigerian land, waters, or other territories.[51] Offenders are deemed criminally liable and may face penalties including environmental restoration, fines, forfeiture of assets to the Federal Government, or life imprisonment.[52]

Individuals or entities causing environmental damage through the disposal of hazardous waste in areas such as territorial waters, exclusive economic zones, inland waterways, or land are strictly liable for harm caused.[53] If a corporate body commits an offence with the

[44]BL Ijaiya, 'Analytical Legal Framework on Biodiversity Conservation in Nigeria, India and United Kingdom*International Journal of Law, Justice and Jurisprudence*, (2021) 1 (1): 01-13. <https://www.lawjournal.info/.> Accessed on 23rd November, 2024.
[45] Cap A9, Laws of the Federation of Nigeria, 2004
[46] (2001) ACHPR
[47] (2009) ECCJ
[48]HO Ijaiya 'The Legal Framework for Solid Waste Disposal and Management in Kwara State, Nigeria' Journal of Environmental Protection, p. 1242.
[49] Cap H1, Laws of the Federation of Nigeria (LFN) 2004
[50]A Okposin, 'Curbing E-Waste Menace in Nigeria: Assessing the Regulatory Framework' p. 7
[51] ibid
[52]Section 1 of Harmful Waste (Special Criminal Provisions etc.) Act
[53] Section 6 ibid

consent or negligence of its officers, both the company and its principals are punishable under the Act.[54]

Despite its provisions, the Act has been largely ineffective in managing hazardous waste due to lack of government interest in amending or updating it with clear definitions and enforcement mechanisms.[55]

A proposed Harmful Waste (Special Criminal Provisions, etc.) Amendment Bill 2009 aims to strengthen the law by, among other measures, banning the importation of e-waste used for over five years abroad. However, the bill remains unpassed, leaving the 1988 Act as the current regulatory framework.[56]

Although the Act does not explicitly mention e-waste, it is applied by the National Environmental Standards and Regulations Enforcement Agency (NESREA) to regulate e-waste, as electronic waste is classified as harmful.[57] The amended bill, once enacted, is expected to significantly reduce e-waste influx by including specific prohibitions on e-waste dumping and burning. Until then, NESREA relies on the existing Act to enforce e-waste controls.[58]

5.1.7. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act

NESREA Act was assented to by 2007 by the president and it established the NESREA as an agency of the Federal Ministry of Environment.[59]

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[54]Section 12 (2) ibid; M Amachree, 'E-waste Management in Nigeria'(A Presentation at the International Workshop on Management of Waste Electrical and Electronic Equipment, Taipei, Taiwan, 15-20 October 2012), 7 <http://www.epa.gov.tw/fileLink/FileHandler.ashx?file=16787> accessed on October 9 2023.

[55]M Amachree, 'National Environmental Standards and Regulations Enforcement Agency (NESREA), Nigeria', (A presentation at the 3rd Annual Meeting of the Global E-Waste Management Network GEM3, unpublished, held at the San Francisco, USA from 15th-19th July 2013);P Amechi Emeka and AO Babatunde, 'Import of Electronic Waste into Nigeria: The Imperative of a Regulatory Policy Shift', Chinese Journal of Environmental Law 3 (2019) p.141-166

[56]I Okukpon, 'Towards the Sustainable Management of Electronic Waste in Nigeria: South Africa as a Model',p.8

[57]Section 2(2) OF the Harmful Waste (Special Criminal Provisions, etc.) Amendment Bill, 2009.

[58] T Ogboru and S Akintunde, 'Poverty and E-waste Control in Nigeria', *Current Jos Law Journal* 1 (2013), 233-243, p. 237.

[59]Section 36 of the NESREA Act.

Following the repeal of the FEPA Act,[60]the NESREA Act became Nigeria's primary legislation for environmental protection. The agency is empowered to enforce all environmental laws, regulations, and standards, including those governing the importation, exportation, production, storage, use, sale, handling, and disposal of hazardous waste and chemicals.[61]

NESREA's responsibilities include developing, reviewing, and enforcing national environmental regulations (both new and existing) as well as ensuring compliance with Multilateral Environmental Agreements (MEAs) such as the Basel Convention.[62] Its core mandate is the promotion of sustainable development, positioning it as Nigeria's key environmental regulator, advisor, and enforcement body.[63]The Act prohibits the discharge of hazardous substances into Nigeria's air, land, or water. Violators face a fine of 1 million Naira or five years' imprisonment; for corporate bodies, the penalty is 1 million Naira plus an additional 50,000 Naira for each day the offence continues.[64]Authorized enforcement officers include NESREA staff, customs officers, and police officers not below the rank of Inspector.[65]

Notably, the Harmful Waste (Special Criminal Provisions) Act takes precedence over the NESREA Act regarding hazardous waste, meaning it governs the control and prohibition of hazardous waste, including e-waste, within and into Nigeria. While the NESREA Act serves as the overarching environmental law, the Harmful Waste Act specifically targets illegal dumping and trafficking.[66]

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[60] SG Ogbodu, *Handbook on the National Environmental Standards and Regulations Enforcement Agency Act (NESREA) 2007,* (Lagos: Law Research and Development Forum ltd: 2010),p.3

[61]Section 1 (2) (a) and Section 7 (g) of the NESREA Act 2007

[62] M Amachree, 'Update on E-Waste Management in Nigeria' (A Presentation made at the 3rd Annual Meeting of the Global E-Waste Management Network (GEM3), San Francisco, U.S., 15-19 July 2013), 4, <http://www.epa.gov/sites/production/files/2014-05/documents/nigeria.pdf>, accessed on 5th October 2024

[63] NESREA Website ' What We Do', <http://www.nesrea.gov.ng/activities/index.php>, accessed on 4th October 2024

[64]Section 27 (1)- (4) of NESREA Act

[65]Section 37 ibid

[66]Section 27(5) ibid

In 2009, NESREA introduced 12 regulations to ensure sustainable environmental management. Key among them for e-waste are the National Environmental (Sanitation and Wastes Control) Regulations, 2009, and the National Environmental (Electrical/Electronics Sector) Regulations, 2022, as examined below.[67]

5.1.8. National Environmental (Sanitation and Wastes Control) Regulations 2009

The National Environmental (Sanitation and Wastes Control) Regulations 2009, hereinafter referred to as the Regulations, was made in other to promote sustainable environment and waste management and also to reduce the rate of pollution. The Regulations therefore was adopted mainly to promote environmental friendly practices on waste management in Nigeria.[68]

The Regulations made provision for the Extended Producer Responsibility (EPR) principle/approach and this is because the Regulations states that producers and manufacturers must employ environmental concerns in the process of designing and disposal of a product.[69] The Regulations also went further to talk about the fact that the "polluters pay principle" is an essential part of the EPR principle and that all waste generators must be financially and legally responsible for the environmentally sound and safe disposal of their wastes.[70] The Regulations also went further to provide that all waste generators and waste managers must employ best and sustainable practices to reduce pollution.[71]

It's imperative to note that the Regulations made provision to the effect that license permit should be obtained from the NESREA before any engagement in any activity that is likely to generate hazardous waste. Thus, the Regulation prohibits any activity that is likely to generate hazardous waste when the license permit is not obtained from the NESREA. Furthermore, the regulation prohibit the movement of hazardous waste to

[67]Section 34 ibid
[68]Section 2 of the National Environmental (Sanitation and Waste Control) Regulation, 2009
[69]Section 16 ibid
[70]Section 106 ibid
[71]Section 12 ibid

another country from Nigeria without valid Prior Informed Consent (PIC) for the transit issued by the NESREA as this PIC is in line with the requirement of PIC under the Basel Convention. Any person who violates the provision of this regulation shall be guilty of an offence punishable with a fine of N5 million or imprisonment for 5 years or both.[72]

The Regulations also mandated the producers/manufacturers and importers of e-waste to register with NESREA to undertake collective or individual Product Stewardship Programme (PSP) contained in Scheduled IX to organise buy-backs for recycling. This illustrates the EPR principle/approach of e-waste management.[73] Schedule IX provides guidelines for EPR programmes and gives direction to the importers and manufacturers of e-waste to either collectively or individually submit a PSP for approval to NESREA. The PSP according to section 3 (a) (i) and (ii) of Schedule IX, shall set up an avenue for the collection, transportation and treatment of Electrical and Electronic Equipment (EEE) at the end of life regardless of who the brand owner of the consumer or products is. The failure of the producers/manufacturers to participate in the PSP will attract penalties.[74] This provision is applaudable, however, the inclusion of manufactures/producers in the provision of the Schedule IX in Nigeria is not practicable because the major stakeholders of new and used EEE or e-waste are the importers.[75]

Additionally, the provisions of the Regulations imposed fines and/or terms of imprisonments for violators of the Regulations but there is no clear provision for who to enforce such penalties in a situation where a person is found guilty of transporting and transiting hazardous waste via Nigeria without PIC permit which is valid and issued by the NESREA. [76]

The Regulations did not however, deter the importers of e-waste from importing same into Nigeria territories as the trade of e-waste continues to thrive in Nigeria. The

[72] Section 49 and 51 ibid
[73] Section 32 ibid
[74] Section 3(a) and (d) of Schedule IX ibid
[75]I Okukpon, 'Towards the Sustainable Management of Electronic Waste in Nigeria: South Africa as a Model.' p. 247
[76] ibid p. 248

provision also included the application of EPR approach to the management of e-waste into its provisions but however, there is problem of implementation of the principle through the PSP by importers and manufacturers.[77]

5.1.9. The National Environmental (Electrical/Electronics Sector) Regulations 2022

The National Environmental (Electrical/Electronics Sector) Regulations, 2022, hereinafter referred to as the Regulations, revoked and replaced the 2011 version to prevent and minimize pollution from electrical and electronic equipment (EEE) operations and related activities, thereby safeguarding Nigeria's environment.[78]The Regulations adopts a life-cycle approach,[79]covering EEE from cradle to grave, and is guided by the 5Rs: reduce, repair, reuse, recycle, and recover.[80] It mandates that new EEE imported into Nigeria must have a clearly visible date of manufacture, warranty information, and legible PIN and serial numbers. Importers of new EEE must register with NESREA and a Producer Responsibility Organisation (PRO).[81]Used EEE imports must comply with the requirements in the Second Schedule.[82]

The Regulations enforces the "polluter pays" principle, requiring polluters to cover costs for environmental damage assessment, cleanup, remediation, and restoration. E-waste collection, treatment, transportation, and disposal must follow specified environmental standards.[83]

Extended Producer Responsibility (EPR) is established under Regulation 12, requiring all manufacturers, importers, exporters, assemblers, retailers, and distributors of EEE to join the EPR scheme and participate in the Buy-Back Programme (Schedule VIII).[84]

[77] ibid p. 249
[78] Regulation 56 and 57 of the National Environmental (Electrical/Electronic Sector) Regulation 2022
[79] Regulation 2(1) ibid.
[80] Regulation 2 (3) ibid
[81] Regulation 3 ibid
[82] Ibid
[83] Regulation 8 ibid
[84] Regulation 12(1)-(3) Ibid

Producers must register with a PRO, partner with NESREA, ensure environmentally sound management (ESM) of e-waste, and pay recycling fees to support ESM. [85]

To mitigate e-waste impacts, generators must separate e-waste at source, and operators of e-waste recycling facilities or collection centres must register with NESREA and PRO.[86]

Regulation 28(1)(2)(a)-(e) prohibits improper disposal, including dumping or burning e-waste with municipal waste, leaching metals from circuit boards using acids, unsafe breaking of CRTs, or releasing CFCs into the environment. E-waste must only be disposed of at government-approved collection points or bins.[87]

The non-compliance is an offence: corporate bodies face a minimum fine of ₦2 million plus ₦50,000 per day of continued violation; individuals face at least ₦200,000 fine, six months' imprisonment, or both, plus ₦20,000 per day of continuation.[88]

Despite these comprehensive measures, implementation faces major challenges. Public awareness of take-back programmes is low, and most Nigerians are unaware such initiatives exist. Collection centres are scarce (Lagos is the only state with limited facilities) and there are virtually no functional e-waste recycling plants. Existing centres in Lagos are mainly used by scavengers for informal metal sorting. Poor enforcement and lack of political will further undermine the Regulation. While provisions are well-drafted, weak implementation renders them largely theoretical, allowing e-waste pollution to persist unchecked.[89]

6.0. Assessment of Some of the Activities of Agencies and Regulations on E-waste Disposal Management in Nigeria

The existence of international conventions and national regulations notwithstanding, illegal disposal and improper handling of e-waste continue to persist in Nigeria. This is

[85] Regulation 26(6) ibid
[86] Regulation 27 (1) ibid
[87] Regulation 28 (1) (2) (a)-(e) ibid
[88] Regulation 54 Ibid
[89] A Okposin, 'Curbing E-Waste Menace in Nigeria: Assessing the Regulatory Framework' (2020) 2 (1)

evident from the frequent arrests and seizures carried out by enforcement agencies in recent years. In 2020, authorities intercepted 46 containers of illegal e-waste at Lagos ports, containing over 500,000 units of obsolete electronics such as Cathode Ray Tube (CRT) monitors, old televisions, and damaged computers. In 2021, customs officials and NESREA seized 20 containers of "near-end-of-life" electronics (primarily laptops and phones with less than one year of remaining functionality). That same year, a criminal network involved in smuggling approximately 2.5 tonnes of discarded and hazardous electronic waste from Spain's Canary Islands to several African countries, including Nigeria, was apprehended[90].

In 2023, LASEPA seized e-waste stockpiles and shut down illegal dismantling operations in the back alleys of Computer Village, Ikeja, where acids used for gold recovery were being dumped into drainage systems. About 30 environmental offenders were arrested and arraigned before a Magistrate's Court for improper waste disposal and violation of environmental laws. In early 2025, LAWMA arrested over 25 residents for illegal dumping, including six vehicle owners implicated in using their cars to dispose of large quantities of waste[91].

Despite these efforts, the agencies continue to face numerous challenges, including weak enforcement of environmental laws and widespread corruption, which weaken regulatory effectiveness and erode public trust. There is limited coordination between the formal and informal sectors, with the informal sector dominating e-waste recycling activities. Extended Producer Responsibility (EPR) is poorly implemented, resulting in minimal incentives for manufacturers to manage end-of-life electronics. Socioeconomic pressures

[90]Egba, John. 'A Gang That Dumps Electronic Waste in Nigeria Has Been Arrested by Spanish Authorities.' Pulse.ng, June 29, 2020. https://www.pulse.ng/articles/news/local/a-gang-that-dumps-electronic-waste-in-nigeria-has-been-arrested-by-spanish-2024081711185935208 Accessed on 11th August 2025: Agency Report 'Lagos Government Arrests 30 Environmental Offenders.' Premium Times, October 15, 2023. https://www.premiumtimesng.com/news/more-news/633802-lagos-govt-arrests-30-environmental-offenders.html?tztc=1. Accessed on 10th August 2025

[91]Ayeni, Victor. 'Lagos Agency Arrests 25 for Illegal Waste Dumping.' Punch Newspapers, February 9, 2025. https://punchng.com/lagos-agency-arrests-25-for-illegal-waste-dumping/. Accessed on 11th August 2025

such as rising living costs and widespread poverty further exacerbate the problem. Additionally, illegal smuggling of e-waste persists, and the regulatory framework remains fragmented, with multiple agencies (such as NESREA, NCC, LASEPA, and LAWMA) having overlapping responsibilities. This leads to jurisdictional conflicts, duplication of efforts, and operational inefficiencies.

7.0. Conclusion and Recommendations

The analysis above reveals that Nigeria's current legal framework for e-waste management is inadequate and ineffective. While several laws exist to regulate general waste and hazardous waste, they fail to sufficiently address e-waste, which differs significantly from municipal solid waste and requires a specialized management approach.

First, existing laws should be reviewed and amended to explicitly include e-waste, or a dedicated law should be enacted specifically for e-waste management. Such legislation must cover all aspects of e-waste handling, including collection, transportation, recycling, and disposal.

Second, the law should include guidelines for regulating informal e-waste recycling activities and provisions for public awareness campaigns. These measures would protect the health of recyclers and the public while promoting environmental safety and legal compliance.

Third, the legislation should mandate Extended Producer Responsibility (EPR) for e-waste, holding producers and importers accountable for the entire lifecycle of their electrical and electronic equipment (EEE), thereby, promoting sustainable waste management.

Fourth, stricter penalties tailored to e-waste violations should be introduced, as current fines are too lenient to deter illegal and harmful practices. Stronger sanctions will discourage illegal dumping and unsafe recycling methods.

Finally, for effective e-waste management, Nigeria must fully ratify and domesticate all international environmental conventions it has signed. Most importantly, the Bamako Convention should be domesticated, as this would significantly curb the illegal transboundary movement of hazardous waste and prevent the importation of e-waste into the country. Domestication will align national laws with international best practices, harmonize regulations, and strengthen enforcement, ultimately improving e-waste governance in Nigeria.

ARTIFICIAL INTELLIGENCE AND CORPORATE CRIMINALITY: EMERGING CHALLENGES IN LIABILITY AND ACCOUNTABILITY

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Abstract

Traditional liability doctrines such as vicarious liability, the identification doctrine, and organisational fault, struggle to accommodate AI-driven decisions, particularly where autonomous systems act without direct human involvement. This article examines the emerging challenges of corporate criminal liability in the age of artificial intelligence (AI). It explored how AI is deployed as both a tool and a potential perpetrator of corporate misconduct, ranging from algorithmic trading and collusion to money laundering and cybercrime. The article adopted a doctrinal methodology drawing on primary and secondary sources of Law in Nigerian, as well as other jurisdictions. The article found that while AI itself cannot bear criminal responsibility, corporations must remain accountable for the risks created by its deployment. The article recommends reforms, including stricter compliance obligations, hybrid liability models, and harmonisation of international regulatory standards. In addition, regulatory frameworks must increasingly emphasise the role of corporate governance structures, compliance programmes, whistleblowing mechanisms, and independent algorithmic audits as essential safeguards against the risks posed by AI deployment and misuse. The paper concludes that effective governance of AI within corporate contexts will depend on striking an appropriate balance between fostering innovation and ensuring accountability.

Keywords: Artificial Intelligence, Corporate Criminal Liability, Organisational Fault, Algorithmic Collusion, Cybercrime, Corporate Governance.

1.0 Introduction

Corporate criminality has long since posed significant challenges to regulators, courts, and policymakers. Traditionally, such crimes involve fraudulent accounting, insider trading, money laundering, or environmental offences committed through a corporation's structures. However, with the rapid integration of artificial intelligence (AI) into corporate operations, ranging from algorithmic trading and automated compliance systems to decision-making in supply chain management, the question of corporate liability for AI-driven misconduct has become increasingly urgent[1].

The integration of artificial intelligence (AI) into corporate operations presents unprecedented challenges for corporate criminal liability. Traditionally, corporate misconduct such as fraud, market manipulation, or money laundering has been addressed through doctrines of vicarious liability, identification, and organisational fault[2]. However, these frameworks struggle to accommodate autonomous decision-making by AI systems, particularly where no human mind can be identified. Unlike traditional human actors, AI systems operate autonomously, often with limited or no direct human oversight. This raises a profound legal dilemma: who should bear criminal responsibility when AI facilitates or directly engages in conduct that would otherwise constitute a crime? Existing corporate liability doctrines, vicarious liability, the identification doctrine, and organisational fault models struggle to accommodate this new reality.

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[1] M E Diamantis, 'The Extended Corporate Mind: When Corporations Use AI to Break the Law' (2020) 98 *North Carolina Law Review* 893. https://scholarship.law.unc.edu/nclr/vol98/iss5/2. Accessed 26th August 2025.

[2]

2.0 Theoretical Framework

Corporate criminal liability is premised on the recognition that corporations, though artificial entities, can commit crimes through the acts of their agents. Three principal doctrines have emerged across jurisdictions viz:

2.1 Vicarious Liability (United States of America Model)

The US employs a broad vicarious liability *(respondeat superior)* doctrine for corporate crimes. A corporation can be criminally liable for any offense committed within the scope of employment and at least in part to benefit the company.[3] This approach imputes liability on a corporation for acts committed by employees within the scope of their employment. This expansive rule means U.S. prosecutors have historically had an easier time imputing liability to companies than their UK counterparts. However, AI-driven misconduct tests the limits of *respondeat* superior. Vicarious liability requires a human "agent" who committed the crime. If an AI system operating autonomously causes a violation without a specific employee's direction or intent, then *"under current law, corporate criminal liability cannot be based on the actions of an agent that is an artificial entity."*[4] In these instances, no human possesses the requisite mens rea, and current legal frameworks do not recognize an AI entity as capable of forming intent. Recent developments have proposed that actions taken by a corporation's AI systems be attributed to the corporation itself, such as interpreting algorithmic "knowledge" as corporate knowledge.[5] The U.S. framework, while more flexible than the UK's, faces a *mens rea* attribution gap in the age of AI – one that may require doctrinal evolution or creative charging (such as negligence-based offenses or strict liability regulatory crimes) to fill. The doctrine prioritises deterrence but has been criticised for being overly expansive, effectively punishing corporations even where senior management did not

[3] L Tsao, *et al*, 'Corporate Criminal Liability for Artificial Intelligence' *Law.com* (21 May 2024) https://www.law.com accessed 26 August 2025.
[4] *ibid*
[5] ME Diamantis, 'The Extended Corporate Mind: When Corporations Use AI to Break the Law' (2020) 97 *North Carolina Law Review* 893, available at SSRN https://ssrn.com/abstract=3422429 or http://dx.doi.org/10.2139/ssrn.3422429 accessed 26 August 2025.

know of the offence. It is unclear whether autonomous algorithmic decisions, absent human input, can be imputed to the corporation. Although this doctrine has allowed extensive prosecution of corporate misconduct, as in *United States v Bank of New England*[6]. However, with autonomous AI systems, the doctrine faces challenges viz, algorithms are not "employees", nor can they form intent in the human sense.

2.2 Identification Doctrine (United Kingdom Model)

Liability is attributed where the "directing mind and will" of the company, typically directors or senior executives, commits the offence. This was established in *Tesco Supermarkets Ltd v Nattrass,*[7] where the House of Lords held that liability attaches only when senior officers embodying the company's mind are implicated. In a recent case, however, the Serious Fraud Office failed to prosecute Barclays PLC for alleged fraud because it could not link the wrongdoing to a single high-level individual under the identification test.[8] AI systems exacerbate this challenge such that, if an algorithm makes a wrongful decision (e.g., an AI trading program manipulates markets or an underwriting AI unlawfully discriminates), there may be no individual director with the requisite mens rea. The UK government, recognizing these gaps, in 2023, introduced reforms via the Economic Crime and Corporate Transparency Act.[9] including a new "failure to prevent fraud" offense and plans to broaden the identification doctrine for certain economic crimes.[10] The "failure to prevent" model imposes liability on companies for crimes by associated persons (including potentially AI acting under company control) unless they can show adequate prevention measures. This shift bypasses the need to find a directing mind. There is also growing discussion of moving toward models that consider corporate culture or management failure[11] to hold companies accountable when organizational systems (potentially including AI governance systems) encourage wrongdoing. These

[6] 821 F.2d 844 (1st Cir. 1987).
[7] (1972) AC 153
[8] Shepherd and Wedderburn LLP, 'Corporate Manslaughter and Corporate Homicide Act 2007' *Lexology* (25 September 2007) https://www.lexology.com accessed 26 August 2025
[9] Economic Crime and Corporate Transparency Act 2023, s 2
[10] Economic Crime and Corporate Transparency Act 2023, c 56.
[11] UK's Corporate Manslaughter and Corporate Homicide Act 2007.

adaptations reflect an acknowledgment that strict identification doctrine is ill-suited for AI-era corporate criminality.[12]

The UK model, rooted in the identification doctrine, has faced sustained criticism in the context of complex corporate structures. Large corporations can diffuse decision-making such that no single individual qualifies as the "directing mind." Also, attributing *mens rea* to AI-generated decisions is problematic, as there is no human directing the mind, only a small set of top executives qualify as the "directing mind," which makes it too difficult to convict large corporations, particularly when decision-making is distributed or automated.[13] The Corporate Manslaughter and Corporate Homicide Act 2007 represents a shift toward organisational liability by focusing on systemic management failures, but it remains limited to health and safety contexts. This, in the AI context, attributing intent or recklessness remains unresolved.

2.3 Nigeria: Alter Ego Doctrine and Emerging Perspectives

Nigeria's corporate criminal liability doctrine largely follows the English common law tradition, emphasizing the alter ego (identification) theory for offenses requiring intent.[14] As Nigerian courts have stated, criminal intent of companies is established by attributing the *mens rea* of high-ranking officers to the company, mirroring the UK's "directing mind" approach.[15] This means Nigerian corporations historically could be convicted for crimes of intent only if a directing officer or "alter ego" was personally culpable. Nigeria also recognizes vicarious liability for strict liability and regulatory offences, but for serious crimes involving intent, the identification theory remains primary.[16] This poses similar challenges in AI scenarios such as, if an AI system deployed by a Nigerian

[12] Squire Patton Boggs, 'The Corporate Manslaughter and Corporate Homicide Act 2007' *Lexology* (21 December 2007) https://www.lexology.com accessed 26 August 2025

[13] Edmonds, Marshall and McMahon, 'Expanding Corporate Criminal Liability: What Does This Mean for Businesses?' *Lexology* (2 April 2025) https://www.lexology.com/library/detail.aspx?g=50f098e7-c896-4865-acfe-e2203ea3c912 accessed 19 August 2025.

[14] K.O Mrabure and A. Abhulimhen-Iyoha, 'Corporate Governance and Protection of Stakeholders Rights and Interests' (2020) 11 *Beijing Law Review* 292–308, DOI: 10.4236/blr.2020.111020

[15] *ibid*

[16] K.O Mrabure and A. Abhulimhen-Iyoha**, 'A** Comparative Analysis of Corporate Criminal Liability in Nigeria and Other Jurisdictions' (2020) 11 *Beijing Law Review* 429–443, DOI: 10.4236/blr.2020.112027

company engages in wrongdoing (for instance, an algorithmic decision platform violating consumer protection laws), it may be difficult under current law to pin responsibility on the company unless one can show a directing officer knew or intended that outcome. Mrabure and Abhulimhen-Iyoha [17] note that requiring a crime to be traced to a high-ranking manager is an impediment in combating modern corporate crime, since large companies can diffuse decision-making to avoid liability. In practice, while there are calls for clearer guidelines on corporate accountability for AI, regulators like the Nigerian SEC have shown proactive interest; urging the use of AI in surveillance to police illicit corporate activity such as crypto asset abuses. During the West Africa Compliance Summit in Cape Verde, Nigeria's Securities and Exchange Commission (SEC) Director-General Dr Emomotimi Agama emphasized the deployment of AI-powered blockchain analytics tools. These tools are intended to monitor illicit transactions, safeguard market integrity, and protect consumers, especially in the expansion of the digital asset space.[18] Additionally, the Punch reported that the SEC plans to deploy AI surveillance tools for blockchain analytics to trace illicit activity, further affirming the commission's forward-leaning approach to enforcement in crypto markets.[19] This was positioned as a necessary strategy for transitioning Nigeria's capital market oversight from a reactive approach to a predictive, technology-enabled model, directly aimed at combating fraud and systemic risks.[20] In summary, Nigeria's doctrine is still rooted in traditional alter ego and vicarious liability principles, but there is recognition that these must adapt to address the complexities introduced by AI-driven decisions.

3.0 AI as a Tool for Corporate Crime

Artificial intelligence is increasingly deployed as a powerful instrument in corporate operations. However, the same features that make AI attractive for efficiency and

[17] *ibid*

[18] Dr Emomotimi Agama (Director General, Nigerian SEC), speech at the West Africa Compliance Summit, Cape Verde (4 August 2025), on the use of AI-powered blockchain analytics for monitoring illicit transactions.

[19] 'SEC flags $2.1 bn suspicious crypto deals across W'Africa', The Punch (4 Aug 2025), reporting the SEC's plans to deploy AI surveillance tools for blockchain analytics

[20] Dr Emomotimi Agama (Director-General, Nigerian SEC), Fellowship Inaugural Lecture of the Capital Market Academics of Nigeria, via News Agency of Nigeria (1 Jul 2025), calling for the adoption of AI-driven surveillance systems for predictive regulation of the capital market.

profitability, viz; speed, autonomy, and predictive accuracy, also make it a potential enabler of corporate criminality.

3.1. Algorithmic Trading and Market Manipulation

AI is widely used in financial markets for high-frequency and algorithmic trading. While such technologies can improve liquidity and efficiency, they also create risks of market manipulation. For instance, AI-driven trading programs may engage in "spoofing" (placing and canceling trades to mislead markets) or contribute to flash crashes, where rapid automated trading destabilises markets. In such cases, proving corporate liability is complicated, since the harmful conduct may result from the machine's learning patterns rather than human instruction[21].

3.2 Price-Fixing and Algorithmic Collusion

Competition authorities have expressed concern about the capacity of AI to facilitate tacit collusion between corporations. Algorithms can monitor rivals' prices and automatically adjust to maximise profits, creating cartel-like outcomes without any explicit human agreement.

3.3 Money Laundering and Financial Crime

AI tools designed for transaction monitoring can paradoxically be repurposed to evade detection, enabling complex money laundering schemes. For example, corporations may use AI to identify regulatory blind spots, structure illicit transactions, or exploit weaknesses in anti-money laundering systems[22].

3.4 Cybercrime and Data Breaches

AI can also be misused to conduct cyberattacks, hack sensitive data, or exploit vulnerabilities in rival corporate systems. Such conduct, if perpetrated by or on behalf of a corporation, falls squarely within the scope of cybercrime and corporate liability.

[21] M E Diamantis, 'The Extended Corporate Mind: When Corporations Use AI to Break the Law' (2020) 98 *North Carolina Law Review* 893, 915–918

[22] F G Palazzo and A Deffains, 'Artificial Intelligence and the Risk of Money Laundering' (2021) 27 *Journal of Money Laundering Control* 34, 38–41

Nigeria's Cybercrimes (Prohibition, Prevention, etc.) Act[23] criminalises corporate involvement in such offences, but the statute does not directly address scenarios where AI autonomously executes attacks. Furthermore, there's no specific mention of AI attribution, autonomous systems liability, or machine-driven cyber offences.

4.0 AI as a Perpetrator

The more difficult question in corporate criminal law is whether artificial intelligence can itself be regarded as a perpetrator of crime. Unlike human agents, AI systems operate without consciousness, intent, or moral blameworthiness. Yet, their capacity for autonomous decision-making raises the possibility that they may directly "commit" acts that satisfy the actus reus (physical element) of an offence, even where no human actor intended the outcome[24].

4.1 The *Mens Rea* Dilemma

Traditional criminal liability requires proof of a guilty mind (mens rea). However, AI systems cannot form intent in the human sense. This challenges liability doctrines which rely on attributing criminal intent to a corporate officer. The identification doctrine, for instance, presumes a human directing mind[25].

4.2 AI and the Electronic Personhood

The idea of granting AI systems electronic personhood has been proposed. The European Parliament, in a 2017 resolution, controversially suggested that sophisticated autonomous systems could be granted a legal status similar to corporate personhood, enabling them to bear responsibility for harm caused.[26] While this could address gaps in accountability,

[23] Cybercrimes (Prohibition, Prevention, etc.) Act 2015; Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024; s 6 (unauthorised access and hacking); s 21 (mandatory reporting of cyber-incidents within 72 hours).

[24] V Mongillo, 'Corporate Criminal Liability for AI-Related Crimes: Possible Legal Techniques and Obstacles' (2023) 94 *Revue Internationale de Droit Pénal* 97, 105–107

[25] J Gobert, 'Corporate Criminality: Four Models of Fault' (1994) 14 *Legal Studies* 393, 397–400

[26] European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)) [2018] OJ C252/239, para 59(f).

critics argue it risks shielding corporations from liability by shifting blame onto electronic agents that lack assets or deterrent capacity.[27]

4.3 Corporate Liability for Autonomous Acts.

An alternative approach is to treat AI as an instrument of the corporation, even when its decisions are autonomous. Under this view, deploying AI constitutes a corporate choice, and the company should remain liable for the foreseeable risks associated with its use. This aligns with the precautionary principle in corporate governance, whereby organisations must anticipate and mitigate risks created by technology under their control[28].

In Nigeria, corporate criminal liability is primarily governed by the Companies and Allied Matters Act 2020 (CAMA), the Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCC Act), and the Cybercrimes (Prohibition, Prevention, etc.) Act 2015. These statutes enable corporate prosecution for offences such as fraud, cybercrime, and money laundering. However, none expressly contemplates autonomous decision-making by AI systems. For instance, while the Cybercrimes Act criminalises corporate involvement in cyberattacks, it presumes direct or indirect human conduct. This creates a regulatory lacuna where harmful acts are generated by unsupervised algorithms.

5.0 Legal and Regulatory Challenges

The rise of artificial intelligence in corporate operations exposes significant gaps in existing legal frameworks on corporate criminal liability. While many jurisdictions recognise that corporations can be held criminally accountable, AI-driven misconduct raises novel questions of attribution and enforcement. A foremost difficulty is the problem of attributing legal fault. Most criminal and regulatory regimes assume a human actor with intent or negligence. When an AI system is involved, identifying who (if

[27] A. Bertolini, 'Robots as Products: The Case for a Realistic Analysis of Robotic Applications and Liability Rules' (2013) 5 *Law, Innovation and Technology* 214, 233–35.

[28] L De Koker and M J Radović, 'Artificial Intelligence and Financial Crime: Europe and Beyond' (2022) 30 *European Journal of Crime, Criminal Law and Criminal Justice* 143, 154–156.

anyone) possessed the *mens rea* can be elusive.[29] This creates an enforcement gap and serious harm might occur, yet no one can be readily held criminally liable. Regulators are thus forced to get creative, turning to alternative enforcement tools such as civil penalties, strict liability offenses, or "failure to prevent" style charges that focus on corporate controls rather than intent.

Another challenge is evidentiary and technical. AI systems are "black boxes", often complex and opaque even to their creators. Regulators face hurdles in investigating AI-related misconduct because they may lack the expertise or legal authority to audit algorithms. The opacity of AI makes it hard to pinpoint wrongdoing or to demonstrate that a certain outcome was not just a bug but a foreseeable risk the company failed to mitigate. Despite increasing recognition that regulators need new tools, overseeing AI remains challenging because these systems can evolve unpredictably, even for their operators[30]. Jurisdictional issues further complicate enforcement. AI systems and digital services transcend borders, meaning an AI-related offense can have multi-jurisdictional facets. This highlights a broader challenge as without coordinated international frameworks, AI-driven corporate misconduct can fall between the cracks of national legal systems.

Finally, enforcement priorities and resource constraints play a role. Regulators might hesitate to bring test-case prosecutions on novel AI issues due to uncertainty in law and the high costs of litigation with well-resourced corporate defendants. Instead, there is preference for settlements or regulatory guidance rather than seeking a verdict on algorithmic discrimination.[31]

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[29] European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)) [2018] OJ C 252/239, para 59(f).

[30] OECD, Criminal Liability of Legal Persons for Artificial Intelligence Involvement in Corporate Offences (2023) 8–10

[31]'AI bias in housing algorithms prompts settlement', AP News (10 May 2023) https://apnews.com/article/1bc785c24a1b88bd425a8fa367ab2b23 accessed 21 August 2025;Casualty Actuarial Society, Regulatory Perspectives on Algorithmic Bias and Unfair Discrimination (August 2024) https://www.casact.org/sites/default/files/2024-08/Regulatory_Perspectives_on_Algorithmic_Bias_and_Unfair_Discrimination.pdf accessed 26 August 2025.

While International bodies have started to address the regulatory implications of AI,[32] these frameworks focus more on civil and administrative liability rather than criminal responsibility.

5.1 Recent AI-Driven Corporate Misconduct Cases

Despite being a relatively new phenomenon, the past ten years offer telling case studies of AI-related corporate misconduct and regulatory action across jurisdictions:

5.2 United States – Algorithmic Bias in Housing Ads (Meta/Facebook)

In June 2022, the U.S. Department of Justice filed a landmark case against Meta (Facebook) for algorithmic discrimination under the Fair Housing Act.[33] Facebook's advertising algorithms were found to be selectively targeting housing ads in ways that excluded users based on protected characteristics like race and sex – essentially a machine-learning tool that perpetuated housing discrimination. Meta settled the case by agreeing to overhaul its algorithms and eliminate certain AI ad tools[34] This case study underscores that AI can lead to corporate civil-rights violations, and regulators will intervene to hold companies accountable for biased outcomes caused by their AI systems. It also illustrates how U.S. authorities are crafting remedies (algorithmic audits, system changes) to address harm without criminally prosecuting the algorithm as such.

5.3 United Kingdom – Algorithmic Trading Glitch (Citigroup Fine)

In May 2024, the UK Financial Conduct Authority (FCA) fined Citigroup's London subsidiary £27.7 million for failures in its algorithmic trading controls. The case arose from a 2022 incident where a trader's mistake (a single extra digit) caused Citigroup's automated trading algorithm to execute a massive $1.4 billion unintended sell order,

[32]OECD, 'Recommendation of the Council on Artificial Intelligence' (22 May 2019) OECD/LEGAL/0449 https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449
accessed 12 August 2025; Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 910/2014, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L168/1.

[33] 'What to Expect in 2025: AI, Legal Tech and Regulation – 65 Expert Predictions' National Law Review (2 January 2025) https://natlawreview.com/article/what-expect-2025-ai-legal-tech-and-regulation-65-expert-predictions accessed 15 August 2025.

[34] *ibid*

briefly distorting European stock markets.[35] The FCA found that Citigroup's systems lacked proper safeguards, and that the algorithm was not prevented from flooding the market due to deficient "fat-finger" controls and ineffective real-time monitoring.[36] While this was not a deliberate crime, it was a regulatory breach of UK market conduct rules. The enforcement is instructive: regulators treated the AI trading system as part of the corporate "conduct," penalizing the firm for failure to have adequate risk management for its AI[37]

5.4 Nigeria – Data Analytics and Election Manipulation (Cambridge Analytica)

One of Nigeria's most prominent tangles with AI-driven corporate misconduct emerged from the 2015 elections. Cambridge Analytica, a now-infamous UK-based data analytics firm, was hired to influence Nigeria's 2015 presidential campaign using illicit means. Reports revealed the firm was paid around £2 million by political interests to orchestrate a vicious online campaign against the opposition candidate, including exploiting hacked personal emails and micro-targeted disinformation.[38] The case highlights transnational corporate malfeasance involving AI and underscores the need for cooperation between jurisdictions to address corporations that deploy AI for illegality across borders.

6.0 Corporate Governance and Compliance

Corporate governance frameworks play a critical role in managing the risks associated with artificial intelligence in corporate operations. As corporations increasingly integrate AI into decision-making processes, the responsibility of boards and management to oversee ethical, lawful, and transparent use of technology becomes paramount[39].

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[35] Financial Conduct Authority, Artificial Intelligence (AI) Update **(**22 April 2024) https://www.fca.org.uk/publications/corporate-documents/artificial-intelligence-ai-update-further-governments-response-ai-white-paper accessed 26 August 2025; Financial Conduct Authority, AI Live Testing: The use of AI in UK financial markets (1 August 2025) https://www.fca.org.uk/news/blogs/ai-live-testing-use-ai-uk-financial-markets-promise-practice accessed 26 August 2025.

[36] *ibid*

[37] Financial Conduct Authority, Artificial Intelligence (AI) update – further to the Government's response to the AI White Paper (22 April 2024**)** https://www.fca.org.uk/publications/corporate-documents/artificial-intelligence-ai-update-further-governments-response-ai-white-paper. accessed 21 August 2025.

[38] *ibid*

[39] T. C. Li, 'Corporate Governance and AI: Board Duties in the Age of Algorithms' (2021) 44 *Seattle University Law Review* 1023, 1030–1034

6.1 Role of Boards

Directors owe fiduciary duties of care and oversight to ensure that corporate activities comply with the law. The Nigerian Code of Corporate Governance 2018 (NCCG)[40] emphasises the responsibility of boards to implement effective risk management systems. Boards therefore have a duty to oversee how AI is deployed, ensuring that its use aligns with compliance and ethical standards.

6.2 Compliance Programs

Effective compliance programs are essential for mitigating the risks of AI-driven misconduct. These include regular audits of algorithms, clear accountability structures, whistleblowing channels, and employee training on responsible AI use. Such measures demonstrate corporate commitment to due diligence and may mitigate liability[41].

6.3 Internal Controls and Whistleblowing

Corporations must develop mechanisms to detect and prevent AI misuse. Whistleblowing frameworks can provide early warnings of improper conduct, while internal audits can uncover algorithmic biases or vulnerabilities. Internationally, the OECD has highlighted the importance of accountability and transparency in AI governance[42].

7.0 Conclusion

Artificial Intelligence offers unprecedented benefits to corporate operations but also poses serious challenges to legal accountability. The use of AI in corporate crime, whether to facilitate fraud, evade controls, or inadvertently cause harm, has exposed fault lines in our liability frameworks. The UK, U.S., and Nigeria each illustrate facets of this emerging problem: from the constraints of outdated doctrines like identification, to the blind spots of vicarious liability, to the need for developing economies to catch up with governance of AI. Regulators and lawmakers are awakening to these issues, as seen by

[40] Financial Reporting Council of Nigeria, Nigerian Code of Corporate Governance 2018, Principle 23.1.
[41] R. Brownsword and M. Goodwin, *Law and the Technologies of the Twenty-First Century* (CUP 2012) 189–192.
[42] G. Szego, 'Artificial Intelligence and Whistleblowing: Enhancing Accountability in Automated Decision-Making' (2021) 37 *Computer Law & Security Review* 105412

new offenses. The overarching trend is a push to adapt accountability mechanisms so that companies cannot escape liability simply because misconduct was driven by an algorithm.

Moving forward, the interplay between AI and corporate criminality will demand ongoing vigilance and adaptation. Laws will likely evolve to clarify that delegating decisions to AI does not dilute a company's responsibility; if anything, it heightens the duty of care in oversight. International cooperation will be key, given the borderless nature of AI services and corporate structures. And within companies, governance must evolve a "duty of algorithmic care," integrating legal compliance into the AI development pipeline. Ultimately, maintaining the rule of law in the age of AI will require what one commentator calls a hybrid of **"**new tools for new crimes" and recommitting to fundamental principles: that corporate power, whether exercised by humans or artificial agents, must be accountable to societal norms and regulations.[43] The coming years will be pivotal as academia, industry, and government work together to ensure that artificial intelligence becomes not a loophole for corporate impunity, but simply another facet of corporate conduct that the law can govern and guide. Thus, this article recommends the following mechanism:

8.1 Updating Legal Doctrines

This involves expanding the theories of corporate liability to explicitly encompass AI conduct. This could mean courts imputing mens rea to a corporation if an AI's programming reasonably implies a decision to break the law. Another concept floated is recognizing "systems intentionality" or corporate culture such that, if an AI crime occurs due to a company's culture of inadequately controlling technology, the company could be liable by virtue of those cultures.

[43] A Glaubitz, *Algorithmic Liability: A Tort Law Perspective* (Yale University, 2021) https://politicalscience.yale.edu/sites/default/files/glaubitz_alina.pdf accessed 17 August 2025.

8.2 Legislation and Guidelines

Government should actively craft laws to regulate AI. The European Union's AI Act (expected to take effect in 2025–26) will impose strict obligations on developers and users of high-risk AI systems, including requirements for transparency, risk assessment, and human oversight. While the AI Act is primarily a regulatory scheme (with fines for non-compliance), it indirectly bolsters accountability. Companies deploying AI in fields like finance, safety, or employment must prevent harm or face penalties. The EU is also working on an AI Liability Directive to ease the ability of victims to sue companies for AI-caused damage, which complements enforcement by creating private accountability mechanisms. A key innovation across many jurisdictions is transparency mandates. This requires companies to disclose how their AI systems make decisions (especially when those decisions affect consumers or markets) and to conduct audits for bias or risk. This would assist both regulators and external stakeholders in holding companies accountable.

8.3 Strengthening Regulatory Capacities

It is recommended to create dedicated "AI oversight units" within agencies (for example, an AI task force at the SEC or a tech laboratory at Nigeria's SEC) to develop expertise in auditing algorithms. Regulators may also adopt new investigative tools, such as requiring companies to maintain algorithmic decision logs or incident reports that must be submitted upon request. Improved international cooperation is also emphasized and the creation of bilateral or multilateral agreements for data sharing in investigations of AI-related fraud or cybercrime to address jurisdictional hurdles. It is also essential for members of the judiciary to receive training on artificial intelligence to effectively address issues and render judgements in AI-related cases.

8.4 Corporate Governance and Ethical AI

The solution is not only legal but also organizational. Corporate governance reforms could require boards of companies to oversee AI risks as part of their fiduciary duty. It has become expedient for the Law to apply a duty of care when directors approve AI-driven technology to ensure accountability. Regulators should also ensure that the Board members receive continuous and relevant training on AI and advocate for ethical AI

frameworks; internal policies that commit companies to principles like fairness, accountability, and transparency. Nigeria's financial regulators, through PenCom and the central bank, have promoted responsible AI use in fintech and pensions, highlighting that firms should proactively prevent AI-driven errors or biases in customer services.[44] Crucially, there is an understanding that law alone must be coupled with proactive corporate responsibility; Companies need to invest in compliance and ethics for AI just as they do for human employees. The hope is that through a combination of legal reform, regulatory innovation, and corporate culture change, the gaps in accountability for AI-driven misconduct will gradually close, ensuring that advanced AI technologies are used responsibly and that corporations remain answerable for the actions of their machines as well as their people.

[44] Dr Emomotimi Agama (Director General, Nigerian SEC), Fellowship Inaugural Lecture of the Capital Market Academics of Nigeria, via News Agency of Nigeria (1 July 2025), calling for adoption of AI-driven surveillance systems for predictive regulation of the capital market.

ARTIFICIAL INTELLIGENCE AND NIGERIAN EMPLOYMENT LAW: REGULATING ALGORITHMIC HIRING, MONITORING AND TERMINATION OF EMPLOYMENT.

Nancy Nzom *

Abstract

Artificial Intelligence (AI) is redefining employment relationships globally, with significant implications for how workers are recruited, monitored and terminated. In Nigeria, employers are increasingly deploying AI tools in candidate screening, productivity tracking, and decision-making processes. While these technologies promise efficiency, objectivity, and cost reduction, they raise critical concerns about fairness, privacy, and accountability. AI-driven recruitment systems risk embedding algorithmic bias; workplace surveillance threatens constitutional rights to dignity and privacy; and "robo-firing," where automated tools drive termination decisions, jeopardises due process guarantes Nigeria's Labour Act 2004, the primary statute governing employment, was designed for a human-centric workplace and remains silent on these developments. The Constitution of the Federal Republic of Nigeria 1999 provides rights to dignity, fair hearing, and privacy, but these provisions hav are yet to be judicially tested in the context of AI-driven employment practices. The Nigerian Data Protection Act 2023 introduces safeguards on data processing but does not adequately address employment-specific vulnerabilities. This article interrogates the adequacy of Nigeria's current legal framework in regulating AI in employment, situating the analysis within global debates and comparative regulatory frameworks such as the European Union Artificial Intelligence Act and the United States Equal Employment Opportunity Commission's guidelines on algorithmic decision-making. It argues for a rights-based regulatory approach that integrates transparency, accountability, and human oversight. The paper concludes that unless Nigeria adapts its employment law to the realities of AI, workers will remain exposed to discrimination, undue surveillance, and arbitrary termination of employment in the digital economy.

Keywords: Artificial Intelligence; Nigerian Employment Law; Algorithmic Hiring, Monitoring and Termination of Employment.

1. Introduction

The twenty-first century world of work is being fundamentally reshaped by Artificial Intelligence (AI) and digital technologies.[1] Across jurisdictions, employers are turning to AI-driven tools to make employment decisions, ranging from recruitment and selection to performance monitoring and even termination of contracts.[2] This shift promises speed, efficiency, and objectivity in human resource management, but it also raises profound challenges for the traditional framework of employment law, which was designed for a human-centric workplace.[3] In Nigeria, the adoption of AI technologies in employment is still at an early stage, yet the legal and regulatory gaps are already evident.[4]

Globally, the expansion of AI in the workplace has generated intense debate within labour law and human rights scholarship.[5] Scholars and regulators have highlighted the risks of algorithmic bias, where recruitment software trained on discriminatory datasets reproduces systemic inequalities in hiring outcomes. Concerns also extend to workplace surveillance, with employers using facial recognition, keystroke logging, and productivity-tracking software to monitor employees in ways that may undermine dignity, autonomy, and privacy. Most controversially, the rise of so-called **"**robo-firing**"** where employees are dismissed through automated systems without adequate human oversight threatens fundamental guarantees of due process, fair hearing, and job security. These developments illustrate the growing disconnect between the pace of technological change and the capacity of employment law to safeguard workers' rights.[6]

In the Nigerian context, these risks are heightened by the limitations of the Labour Act 2004, which remains the country's principal employment statute. The Act was designed

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[1] K Schwab, *The Fourth Industrial Revolution* (New York: Crown Business, 2017), 12–15.
[2] P. T. Kim, "Data-Driven Discrimination at Work," *William & Mary Law Review* 58, no. 3 (2017): 857–936.
[3] International Labour Organization, *The Future of Work in a Digital World* (Geneva: ILO, 2021), 45–50.
[4] E. W. Dumbili, "The Impact of Digital Technologies on Employment in Nigeria," *African Journal of Economic and Management Studies* 12, no. 2 (2021): 189–204.
[5] V De Stefano, "'Negotiating the Algorithm': Automation, Artificial Intelligence, and Labour Protection," *Comparative Labor Law & Policy Journal* 41, no. 1 (2020): 15–46.
[6] International Labour Organization, *Digitalization and the Future of Work* (Geneva: ILO, 2020), 60–65.

in an analogue era, long before the rise of digitalization, and its provisions are largely silent on data protection, algorithmic decision-making, or the legality of AI-based monitoring systems. Similarly, while the 1999 Constitution of the Federal Republic of Nigeria guarantees fundamental rights such as dignity of the human person (section 34), fair hearing (section 36), and privacy (section 37) hese provisions have not yet been judicially tested against AI-driven practices in employment. The National Industrial Court of Nigeria (NICN) has developed a progressive body of jurisprudence in wrongful termination and unfair labour practices, but it lacks specific guidance on AI-related employment disputes.[7]

One promising legislative development is the Nigeria Data Protection Act 2023 which codifies principles of lawful processing, consent, and data minimization in the use of personal information. However, while the NDPA provides a framework for regulating data processing, its application in the context of employment relations remains underexplored. The law does not yet impose explicit obligations on employers regarding algorithmic transparency, explain ability of automated decisions, or the right of employees to human review in cases of AI-driven dismissal. This lacuna leaves Nigerian workers vulnerable in a digitalized labour market.[8]

Comparative experiences underscore the urgency of reform. The European Union Artificial Intelligence Act (2024/25) adopts a risk-based approach to AI regulation, classifying employment-related AI systems as "high risk" and mandating transparency, oversight, and accountability mechanisms. Similarly, in the United States, the Equal Employment Opportunity Commission (EEOC) has issued guidance emphasizing that AI-driven hiring and monitoring tools must comply with anti-discrimination laws. In the United Kingdom and South Africa, debates on AI in employment are increasingly linked to broader discourses on unfair dismissal, workplace privacy, and human dignity. These

[7] *Aero Contractors Co. of Nigeria Ltd. v. National Industrial Court* [2014] 42 NCLR (Pt. 2) 555 (NICN); Babalola, "Data Protection and Employment Law in Nigeria," 258

[8] Dumbili, "The Impact of Digital Technologies," 190.

comparative insights illustrate both the opportunities and dangers of AI in employment, and highlight how Nigerian law must evolve to meet global standards.[9]

This paper is therefore motivated by three central concerns. First, it seeks to critically interrogate the adequacy of Nigeria's employment law framework in addressing the challenges posed by AI in recruitment, monitoring, and termination of contract. Second, it aims to draw comparative lessons from emerging international regulatory models, particularly the EU and US, in order to contextualize Nigeria's reform needs.

Section Three interrogates the Nigerian legal framework, focusing on the Labour Act 2004, the 1999 Constitution, and the NDPA 2023, alongside relevant jurisprudence. Section Four situates Nigeria within comparative perspectives, drawing insights from the EU, US, and selected Commonwealth jurisdictions. Section Five discusses the peculiar challenges Nigeria faces in adopting AI-responsive employment law. Section Six proposes reform pathways, including statutory amendments, judicial innovation, and regulatory guidelines tailored to the workplace. Section Seven concludes by reiterating the need for a rights-based approach to AI in Nigeria's world of work.[10]

The central thesis advanced in this article is that Nigeria must urgently rethink its employment law framework in light of the growing integration of AI into workplace practices. Without clear legal safeguards, Nigerian workers remain exposed to algorithmic discrimination, invasive surveillance, and arbitrary termination. Conversely, by embedding fairness, accountability, and human oversight into the regulation of AI in employment, Nigeria can align with global standards, protect labour rights, and harness the benefits of digital transformation for sustainable development.[11]

[9] Ibid., 248–260.
[10] Ibid.
[11] International Labour Organization, *The Future of Work in a Digital World, 50; African Union, Digital Transformation Strategy for Africa* (2020–2030) (Addis Ababa: AU, 2020), 10.

2. The Promise and Perils of AI in Employment

Artificial Intelligence (AI) has become one of the defining features of the fourth industrial revolution, reshaping how work is organised, evaluated, and sustained across the globe.[12] Its integration into the workplace has been especially visible in three critical areas of the employment relationship: recruitment, workplace monitoring, and termination of employment.[13] While these innovations offer significant opportunities for efficiency and competitiveness, they also present serious risks to fairness, accountability, and worker protection.[14] For a country like Nigeria, where employment relations are already governed by an outdated legal framework, the rise of AI creates a dual challenge: maximising the promise of digital innovation while guarding against its perils.[15]

2.1 AI in Recruitment

Recruitment has historically been plagued by human subjectivity, unconscious bias, and inefficiencies.[16] AI-driven systems are increasingly deployed to address these limitations.[17] Employers use algorithmic software to scan thousands of résumés within seconds, predict candidate suitability through psychometric testing, and even analyse facial expressions during video interviews.[18] Proponents argue that such tools enhance efficiency, reduce human prejudice, and ensure that only the most qualified candidates progress in the selection process.

However, international experiences show that the promise of objectivity often masks the peril of embedded bias. Algorithms rely on historical data, and if those datasets reflect

[12] S Klaus, *The Fourth Industrial Revolution* (New York: Crown Business, 2017), 12–15.
[13] T. K Pauline, "Data-Driven Discrimination at Work," *William & Mary Law Review* 58, no. 3 (2017): 857–936.
[14] International Labour Organization, *The Future of Work in a Digital World* (Geneva: ILO, 2021), 45–50.
[15] Labour Act, Cap. L1, Laws of the Federation of Nigeria, 2004; W. D Emeka, "The Impact of Digital Technologies on Employment in Nigeria," *African Journal of Economic and Management Studies* 12, no. 2 (2021): 189–204
[16] A Ifeoma, "The Paradox of Automation as Anti-Bias Intervention," *Cardozo Law Review* 41, no. 5 (2020): 1671–1742.
[17] B Solon and D. S Andrew, "Big Data's Disparate Impact," *California Law Review* 104, no. 3 (2016): 671–732.
[18] R Manish et al., "Mitigating Bias in Algorithmic Hiring: Evaluating Claims and Practices," *Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency* (2020): 469–481.

patterns of discrimination, the AI system inevitably reproduces those biases.[19] Rather than correcting bias, the system entrenched it, while cloaking the discrimination under the guise of technological neutrality.

In Nigeria, the dangers may be even more acute. The country's labour market is characterised by deep regional, gender, and socio-economic inequalities.[20] If AI systems are trained predominantly on data from elite universities or urban applicants, they may automatically exclude qualified candidates from less privileged backgrounds. The absence of transparency compounds this problem: rejected applicants rarely receive explanations for their exclusion, leaving them without grounds to challenge unfair treatment.[21]

2.2 Workplace Monitoring and Surveillance

AI is also transforming workplace monitoring, where employers increasingly use digital technologies to track employee behaviour and productivity.[22] Modern tools include keystroke logging software, facial recognition cameras, wearable devices that monitor health data, and GPS tracking for field workers. Some platforms even generate productivity scores by combining data from emails, meetings, and online activity.[23] Employers justify such practices on grounds of efficiency, security, and accountability.

Yet, the perils of AI-driven surveillance are profound. Constant monitoring risks undermining the right to dignity of labour by creating a climate of fear, stress, and reduced autonomy[24]. Excessive surveillance may also infringe the right to privacy

[19] Barocas and Selbst, "Big Data's Disparate Impact," 674–680.
[20] International Labour Organization, *Nigeria Country Profile: Employment and Labour Market* (Geneva: ILO, 2019), 10–12.
[21] B Miranda and R Aaron, *Awareness in Action: Addressing Algorithmic Bias in Hiring* (Washington, DC: Upturn, 2018), 15–20.
[22] A Antonio and G Elena, "Artificial Intelligence Is Watching You at Work: Digital Surveillance, Employee Monitoring, and Regulatory Issues," *Comparative Labor Law & Policy Journal* 41, no. 1 (2020): 95–122.
[23] Aloisi and Gramano, "Artificial Intelligence Is Watching You," 100–102.
[24] Constitution of the Federal Republic of Nigeria, 1999 (as amended), § 34.

articularly when employers gather sensitive personal data such as biometric information or health metrics

For Nigeria, these risks are aggravated by weak institutional safeguards.[25] The Labour Act 2004 contains no provisions regulating digital monitoring. The Nigeria Data Protection Act 2023 (NDPA) introduces principles such as lawful processing, purpose limitation, and data minimisation. However, in employment settings where the employer–employee relationship is inherently unequal, the requirement of employee "consent" to monitoring is problematic.[26] Workers may feel compelled to accept invasive surveillance as a condition of employment, undermining the voluntariness of their consent.

Additionally, the Nigerian workplace culture often emphasises managerial prerogative and discipline over employee autonomy. Without explicit restrictions, AI-based monitoring may normalise intrusive practices such as constant webcam surveillance during remote work, or biometric attendance systems that collect and store sensitive data indefinitely.[27] In the absence of strong enforcement mechanisms under the NDPA, Nigerian employees remain vulnerable to privacy violations disguised as productivity tools.

2.3 Automated Termination ("Robo-Firing")

Perhaps the most controversial application of AI in employment lies in termination decisions.[28] In some global industries, employers rely on algorithmic systems to determine redundancy, measure performance thresholds, or trigger dismissal notices

[25] Babalola, "Data Protection and Employment Law in Nigeria," 250.

[26] Babalola, "Data Protection and Employment Law in Nigeria," 252–255.

[27] Ajunwa, Crawford, and Schultz, "Limitless Worker Surveillance," 750–755.

[28] T. B Matthew, "The Law of Employee Data: Privacy, Property, Governance," *Indiana Law Journal* 97, no. 3 (2022): 707–760.

automatically.[29] This practice, often referred to as "robo-firing," raises significant legal and ethical challenges.

The dangers are threefold. First, automated dismissals risk violating the right to fair hearing (section 36 of the Constitution). [30]Workers may be dismissed without any opportunity to contest the decision before an impartial body. Second, algorithmic opacity means that employees often do not know why they were terminated, undermining transparency and accountability. Third, errors in data input or flawed algorithmic design may lead to unjust dismissals, with employees facing difficulties in seeking redress.

Although robo-firing is not yet widespread in Nigeria, global trends indicate that it could become a reality, particularly as multinational corporations expand their operations.[31] Nigerian courts, especially the National Industrial Court of Nigeria (NICN), have historically emphasised fairness and compliance with statutory procedures in termination cases. For instance, the NICN has held that termination must not be exercised in ways that are arbitrary or contrary to equity.

2.4 Wider Implications and Emerging Concerns

Beyond the three central areas of recruitment, monitoring, and termination, AI in employment raises broader issues.[32] Automated scheduling systems, for example, may allocate shifts in ways that disrupt family life and violate principles of decent work. Predictive analytics may be used to determine which employees are "likely to resign," prompting employers to treat such workers differently. Even workplace wellness programmes using AI to track health data could inadvertently expose employees to discrimination based on medical history.[33]

[29] Valerio De Stefano, "'Negotiating the Algorithm': Automation, Artificial Intelligence, and Labour Protection," *Comparative Labor Law & Policy Journal* 41, no. 1 (2020): 15–46.
[30] Constitution of the Federal Republic of Nigeria, 1999 (as amended), § 36.
[31] De Stefano, "'Negotiating the Algorithm'," 20–25.
[32] International Labour Organization, *Digitalization and the Future of Work* (Geneva: ILO, 2020), 60–65.
[33] Ajunwa, Crawford, and Schultz, "Limitless Worker Surveillance," 760–765.

2.5 Balancing Promise and Peril

The integration of AI into employment relations thus embodies a paradox.[34] On the one hand, AI promises unprecedented efficiency, objectivity, and modernisation of the workplace. On the other, it threatens to entrench bias,[35] erode privacy, and deny due process. For Nigeria, where employment regulation is already weakened by outdated statutes and enforcement challenges, the dangers of unregulated AI adoption are particularly stark.

The challenge, therefore, lies not in rejecting AI altogether but in ensuring that its deployment is aligned with fundamental rights and principles of decent work. Nigerian law must be reformed to require transparency in algorithmic decision-making, guarantee human oversight in termination processes, and limit invasive surveillance practices.[36] At the same time, workers must be empowered with knowledge of their rights, and courts must develop jurisprudence capable of addressing disputes arising from AI-driven employment practices.

This balancing exercise is not merely theoretical. Globally, jurisdictions are already moving to regulate AI in employment through risk-based legislation, anti-discrimination enforcement, and workplace-specific data protection rules. Nigeria cannot afford to lag behind. Unless safeguards are urgently embedded, the promises of AI will be overshadowed by its perils, leaving Nigerian workers vulnerable in the digital economy.[37]

3. The Nigerian Legal Framework

The adequacy of Nigeria's employment law in regulating Artificial Intelligence (AI) is deeply contested[38]. While AI is fast becoming a feature of the modern workplace, Nigeria's legal framework remains largely anchored in statutes drafted in a pre-digital

[34] Kim, "Data-Driven Discrimination at Work," 857.
[35] Barocas and Selbst, "Big Data's Disparate Impact," 671.
[36] Nigeria Data Protection Act, 2023, §§ 2–3; European Union Artificial Intelligence Act, Regulation (EU) 2024/1689, art. 6.
[37] Babalola, "Data Protection and Employment Law in Nigeria," 260.
[38] B Olumide, "Data Protection and Employment Law in Nigeria," *Journal of African Law* 65, no. 2 (2021): 245–260.

era.[39] The three principal sources of labour protection in Nigeria are the Labour Act 2004, the 1999 Constitution of the Federal Republic of Nigeria (as amended), and, more recently, the Nigeria Data Protection Act 2023 (NDPA). Alongside these, case law from the National Industrial Court of Nigeria (NICN) provides interpretive guidance.[40] However, none of these instruments was designed with AI in mind, and significant regulatory gaps persist.[41]

3.1 The Labour Act 2004

First, the Act was conceived in an analogue era and is silent on matters of data protection, algorithmic transparency, or digital monitoring. It assumes a human-centric employment relationship, in which disputes involve identifiable employers and employees, rather than opaque systems managed by automated decision-making tools. For example, the provisions of sections 9–20, which govern employment contracts, presume that terms are individually negotiated or imposed by human employers, leaving no framework to question automated or AI-based employment decisions.

Second, the Act contains weak protections against discrimination. While it prohibits contracts that seek to limit employee rights, it does not impose robust obligations on employers to prevent bias in hiring or promotion.[42] In the context of AI-driven recruitment systems, which may embed algorithmic discrimination, this omission is particularly glaring. A rejected applicant who suspects that an AI tool excluded them on discriminatory grounds has no recourse under the Labour Act.

Third, the Act does not regulate employer surveillance practices. Section 7 requires employers to provide written statements of employment terms, but nothing in the Act limits the extent to which employers may monitor employees' behaviour. Thus, the use of keystroke logging, facial recognition, or productivity tracking software can proceed

[39] W. D Emeka, "The Impact of Digital Technologies on Employment in Nigeria," *African Journal of Economic and Management Studies* 12, no. 2 (2021): 189–204.
[40] National Industrial Court Act, Cap. N111, Laws of the Federation of Nigeria, 2006, § 7.
[41] Babalola, "Data Protection and Employment Law in Nigeria," 258.
[42] Ibid.; International Labour Organization, *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* (ratified by Nigeria, 2002).

without restriction, subject only to the employer's discretion. [43]In the age of AI, this leaves Nigerian workers highly vulnerable to invasive surveillance.

The inadequacy of the Labour Act reflects its historical context: it was never designed to anticipate the challenges of the digital economy.[44] Without urgent reform, the Act cannot safeguard Nigerian workers against the risks posed by AI in the workplace.[45]

3.2 Constitutional Protections

The 1999 Constitution provides a higher normative framework that could potentially be invoked against AI-driven employment practices. [46]Three provisions are particularly relevant:

1. **Section 34** guarantees the right to dignity of the human person. Excessive workplace surveillance through AI may erode dignity by reducing workers to data points and subjecting them to constant scrutiny. For instance, biometric monitoring or predictive analytics that track fatigue levels could be challenged as degrading treatment inconsistent with dignity.
2. **Section 36** guarantees the right to fair hearing. Automated termination or "robo-firing" raises questions about whether employees dismissed by algorithmic systems have been afforded a meaningful opportunity to contest the decision.[47] If an employee cannot interrogate the basis of an AI's decision, they are effectively denied fair hearing.
3. **Section 37** protects the right to privacy. AI-driven surveillance, especially when it involves health data, location tracking, or monitoring of private communications, directly implicates this provision. In principle, employees should have

[43] A Ifeoma, C Kate, and S Jason, "Limitless Worker Surveillance," *California Law Review* 105, no. 3 (2017): 735–776.
[44] Labour Act, Cap. L1, Laws of the Federation of Nigeria, 2004, preamble.
[45] Babalola, "Data Protection and Employment Law in Nigeria," 260.
[46] Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[47] V De Stefano, "'Negotiating the Algorithm': Automation, Artificial Intelligence, and Labour Protection," *Comparative Labor Law & Policy Journal* 41, no. 1 (2020): 15–46.

constitutional protection against intrusive monitoring, though in practice enforcement remains weak.

While these constitutional rights are potentially powerful, their effectiveness depends on judicial interpretation. Nigerian courts have yet to confront AI-related employment disputes directly.[48]

3.3 The Nigeria Data Protection Act 2023

The Nigeria Data Protection Act 2023 (NDPA) represents the most contemporary attempt to regulate digital practices, including those relevant to employment.[49] The Act codifies principles of data processing such as lawfulness, fairness, transparency, purpose limitation, and data minimization. It also grants individuals rights of access, rectification, and erasure of personal data.

Despite these strengths, the NDPA has significant limitations. First, it does not contain employment-specific provisions. Issues such as coerced consent in employer–employee relationships are not directly addressed. In hierarchical settings, employees may "consent" to surveillance or data processing simply because refusal risks termination, undermining the voluntariness of consent. Second, the NDPA does not impose explicit obligations of algorithmic transparency or require employers to provide explanations for AI-driven decisions. Unlike the EU's General Data Protection Regulation (GDPR), which grants workers a limited "right to explanation" for automated decisions, the NDPA leaves Nigerian employees without a mechanism to interrogate algorithmic outcomes.[50]

Furthermore, enforcement is weak. The newly established Nigeria Data Protection Commission (NDPC) lacks resources to monitor compliance across Nigeria's vast and

[48] Babalola, "Data Protection and Employment Law in Nigeria," 258.
[49] Nigeria Data Protection Act, No. 4, 2023.
[50] GDPR, Regulation (EU) 2016/679, art. 22; W Sandra, M Brent, and F Luciano, "Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation," International Data Privacy Law 7, no. 2 (2017): 76–99.

diverse labour market.[51] Without strong institutional capacity, many AI-related abuses may go unchallenged.

3.4 The Role of the National Industrial Court (NICN)

The NICN plays a central role in interpreting and enforcing labour rights in Nigeria. Its jurisdiction under the Constitution and the National Industrial Court Act 2006 covers disputes relating to labour, employment, trade unions, and industrial relations.[52] Over the years, the NICN has built a progressive body of jurisprudence, recognising international labour standards and prioritising fairness in termination disputes.

For instance, the Court has held that even where employers retain the right to terminate employment with notice, such power must not be exercised in a manner inconsistent with fair labour practices. In another line of cases, the NICN has affirmed that international conventions ratified by Nigeria, including ILO standards, can influence domestic interpretation of labour rights.[53]

This judicial activism positions the NICN as a potential guardian of workers' rights in the age of AI. If presented with cases of AI-driven recruitment bias, intrusive surveillance, or algorithmic termination, the Court could interpret the Constitution, the NDPA, and international labour standards to extend protections.[54] However, such outcomes remain speculative, as no reported NICN decision has yet directly addressed AI in employment. The lack of precedents means that Nigerian workers face uncertainty when challenging algorithmic practices.

[51] Babalola, "Data Protection and Employment Law in Nigeria," 257.
[52] Constitution of the Federal Republic of Nigeria, 1999 (as amended), § 254C; National Industrial Court Act, 2006, § 7.
[53] Petroleum and Natural Gas Senior Staff Association of Nigeria v. Chevron Nigeria Ltd. [2017] 67 NCLR (Pt. 3) 456 (NICN); International Labour Organization, Conventions and Recommendations (ratified by Nigeria).
[54] Constitution of the Federal Republic of Nigeria, 1999 (as amended), §§ 34, 36, 37; Nigeria Data Protection Act, 2023.

4. Comparative Perspectives

The regulation of Artificial Intelligence (AI) in employment is an evolving field worldwide.[55] While Nigeria's employment law remains largely silent on digitalisation, several jurisdictions have begun to experiment with statutory reform, regulatory guidance, and judicial interpretation to address the unique risks posed by AI in recruitment, monitoring, and termination. By examining comparative experiences, Nigeria can draw lessons on how to balance innovation with worker protection.[56]

4.1 The European Union: The Artificial Intelligence Act

The European Union (EU) has taken the most ambitious step towards regulating AI through the Artificial Intelligence Act (AIA), adopted in 2024. The AIA adopts a risk-based approach, classifying AI systems into categories of unacceptable risk, high risk, limited risk, and minimal risk. Notably, AI systems used in employment and worker management are designated as "high risk."[57]

For employment contexts, the AIA imposes stringent obligations on employers and system providers:

- **Transparency and Documentation**: Employers must inform workers when AI is used in recruitment or performance evaluation.
- **Human Oversight**: High-risk AI systems cannot be deployed without adequate human review.
- **Non-Discrimination**: Providers must demonstrate that training datasets do not reproduce unlawful bias.
- **Record-Keeping and Monitoring**: Employers must maintain logs of AI decision-making to facilitate accountability.[58]

[55] Valerio De Stefano, "'Negotiating the Algorithm': Automation, Artificial Intelligence, and Labour Protection," *Comparative Labor Law & Policy Journal* 41, no. 1 (2020): 15–46.
[56] International Labour Organization, *The Future of Work in a Digital World* (Geneva: ILO, 2021), 45–50.
[57] Ibid., annex III.
[58] Ibid., art. 20.

By designating workplace AI as "high risk," the EU acknowledges the profound implications of algorithmic systems for fundamental rights, including non-discrimination, privacy, and due process. While Nigeria lacks comparable legislation, the EU model illustrates the value of proactive regulation that places employment-related AI under special scrutiny.[59]

4.2 **The United States: EEOC and Algorithmic Bias**

In the United States, there is no comprehensive federal AI law, but existing anti-discrimination frameworks have been extended to cover algorithmic practices.[60] The Equal Employment Opportunity Commission (EEOC) has issued guidance clarifying that the use of AI in hiring, monitoring, or firing must comply with Title VII of the Civil Rights Act, the Americans with Disabilities Act, and other equality statutes.[61]

Two developments stand out:

1. **Algorithmic Bias Enforcement**: The EEOC has warned that employers may be liable for discriminatory outcomes produced by AI tools, even if the bias arises unintentionally through training data.[62] This shifts responsibility to employers to audit and monitor AI systems for fairness.
2. **Disability and Accommodation**: The EEOC has highlighted risks where AI tools disadvantage persons with disabilities — for example, screening software rejecting candidates with non-standard speech patterns.[63] Employers must ensure reasonable accommodation even when using AI.

[59] B Olumide, "Data Protection and Employment Law in Nigeria," *Journal of African Law* 65, no. 2 (2021): 245–260.
[60] B Solon and D. S Andrew, "Big Data's Disparate Impact," *California Law Review* 104, no. 3 (2016): 671–732.
[61] Equal Employment Opportunity Commission, *Technical Assistance Document: Use of Algorithmic Decision-Making Tools in Employment* (Washington, DC: EEOC, 2023).
[62] Ibid., 5–7.
[63] Equal Employment Opportunity Commission, *The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees* (Washington, DC: EEOC, 2022).

Although enforcement remains nascent, U.S. jurisprudence demonstrates that existing equality frameworks can be adapted to regulate AI without waiting for new legislation. For Nigeria, this suggests that anti-discrimination provisions in the Constitution and labour law could be interpreted by the NICN to address algorithmic bias, even before statutory reform.[64]

4.3 **The United Kingdom: Data Protection and Employment Law**

The United Kingdom (UK) has not yet enacted a dedicated AI law but relies on the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018, and employment law principles. In 2020, the UK Information Commissioner's Office (ICO) issued guidance on AI, emphasizing fairness, transparency, and accountability[65].

Key principles relevant to employment include:

- **Right to Explanation**: Workers subjected to automated decision-making have a limited right to demand explanation of the logic involved.[66]
- **Impact Assessments**: Employers must conduct Data Protection Impact Assessments (DPIAs) before deploying AI that significantly affects workers.
- **Fair Dismissal**: Employment tribunals remain vigilant against dismissals lacking procedural fairness, including those driven by opaque technologies.[67]

The UK model illustrates the value of embedding AI regulation within existing data protection and employment law frameworks, rather than waiting for a single,

[64] Constitution of the Federal Republic of Nigeria, 1999 (as amended), § 42; *Mr. Michael Taiwo Akinkunmi v. Cadbury Nigeria Plc* [2012] 29 NCLR (Pt. 1) 89 (NICN).
[65] Information Commissioner's Office, *Guidance on AI and Data Protection* (London: ICO, 2020).
[66] UK GDPR, art. 22; W Sandra, M Brent, and F Luciano, "Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation," *International Data Privacy Law* 7, no. 2 (2017): 76–99.
[67] Uber BV v. Aslam [2021] UKSC 5 (UK Supreme Court, emphasizing procedural fairness in algorithmic management).

comprehensive statute.[68] For Nigeria, where the NDPA 2023 is already in place, similar integration could be pursued through regulations or guidelines targeted at employment.[69]

4.4 South Africa: A Continental Model

On the African continent, South Africa offers the most instructive example.[70] The country has not enacted a dedicated AI statute but has leveraged existing laws to regulate digitalization in employment. The Protection of Personal Information Act 2013 (POPIA) mirrors many of the GDPR's provisions, including rights of access, correction, and objection.

Additionally, South Africa's Constitutional Court has developed robust jurisprudence on dignity, privacy, and fair labour practices.[71] For example, the Court has consistently emphasised that dismissals must comply with both substantive and procedural fairness. In principle, this jurisprudence could extend to algorithmic termination, requiring employers to demonstrate not only that the decision was substantively justified but also that employees had a fair opportunity to contest it.

Perhaps most significantly, South Africa's Prevention and Combating of Corrupt Activities Act 2004 explicitly criminalises match-fixing and manipulation in sports, recognising the risk of algorithmic and technological abuse. Although not employment-specific, this demonstrates South Africa's willingness to legislate proactively against digital manipulation. Nigeria could adopt a similar approach by introducing targeted offences relating to AI-driven labour discrimination or unfair dismissal.

[68] Information Commissioner's Office, *Guidance on AI and Data Protection*, 20.
[69] Nigeria Data Protection Act, No. 4, 2023; Babalola, "Data Protection and Employment Law in Nigeria," 255.
[70] Protection of Personal Information Act, No. 4, 2013 (South Africa).
[71] Constitution of South Africa, 1996, §§ 10, 14, 23; *Barkhuizen v. Napier* [2007] ZACC 5 (South African Constitutional Court).

4.5 Other Jurisdictions: Canada and Singapore

Beyond the EU, US, UK, and South Africa, other jurisdictions are also experimenting with frameworks relevant to employment.[72]

- **Canada**: The proposed Artificial Intelligence and Data Act (AIDA) adopts a risk-based approach similar to the EU AIA, imposing obligations on employers deploying "high-impact AI systems," including those in hiring and human resource management.[73]
- **Singapore**: The Model AI Governance Framework encourages transparency and accountability, though it remains largely voluntary. These models show that even outside the EU's binding regulatory framework, countries are moving towards principle-based governance of AI in employment, centred on fairness, accountability, and transparency.[74]

4.6 Lessons for Nigeria

The comparative review yields several key lessons for Nigeria:[75]

(b) **Risk-Based Regulation is Effective**: The EU's designation of employment-related AI as "high risk" acknowledges the profound implications of AI for workers' rights. Nigeria could adopt a similar model, either through statutory reform or regulations under the NDPA.

(c) **Existing Equality Laws Can Be Extended**: The U.S. approach demonstrates that anti-discrimination frameworks can be applied to AI without waiting for new statutes. Nigeria's Constitution and labour jurisprudence could similarly be interpreted to cover algorithmic bias.

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[72] De Stefano, "'Negotiating the Algorithm'," 20.
[73] Artificial Intelligence and Data Act (AIDA), Bill C-27, First Reading, June 16, 2022 (Canada).
[74] Ibid.; International Labour Organization, *Digitalization and the Future of Work* (Geneva: ILO, 2020), 60–65.
[75] Babalola, "Data Protection and Employment Law in Nigeria," 260.

(d) **Integration into Data Protection Frameworks**: The UK model highlights how data protection rules can serve as a foundation for regulating AI in employment. Nigeria's NDPA could be amended or supplemented with employment-specific guidelines.

(e) **Judicial Activism Matters**: South Africa shows the importance of constitutional jurisprudence in extending protections to digital contexts. The NICN could play a similar role in Nigeria by interpreting dignity, privacy, and fair hearing rights in light of AI.[76]

(f) **Proactive Legislation Prevents Abuse**: From South Africa's anti-corruption legislation to Canada's AIDA, comparative models illustrate the importance of proactive, rather than reactive, legal reform. Nigeria must not wait for widespread AI-related abuses before acting.

Comparative experiences confirm that AI in employment cannot be left unregulated. [77]While the specific models differ from the EU's binding risk-based regime to the U.S. reliance on anti-discrimination enforcement the common thread is a recognition that algorithmic systems have transformative, and potentially harmful, implications for workers.[78]

For Nigeria, the lesson is clear. The current legal framework the Labour Act 2004, the Constitution, and the NDPA 2023 lacks the precision and enforcement capacity to safeguard workers against algorithmic discrimination, intrusive surveillance, and arbitrary termination. By learning from comparative jurisdictions, Nigeria can craft a hybrid model that combines statutory reform, regulatory guidance, and judicial innovation.[79] This will ensure that AI in employment advances the goals of efficiency and competitiveness without undermining the fundamental rights of Nigerian workers.

[76]Constitution of the Federal Republic of Nigeria, 1999 (as amended), §§ 34, 36, 37; *Mr. Michael Taiwo Akinkunmi v. Cadbury Nigeria Plc* [2012] 29 NCLR (Pt. 1) 89 (NICN).
[77] De Stefano, "'Negotiating the Algorithm'," 15.
[78] Kim, "Data-Driven Discrimination at Work," 857; European Union Artificial Intelligence Act, Regulation (EU) 2024/1689, preamble.
[79] International Labour Organization, *The Future of Work in a Digital World* (Geneva: ILO, 2021), 50.

5. Challenges in the Nigerian Context

While Artificial Intelligence (AI) presents transformative opportunities for employment relations, Nigeria's peculiar socio-economic and legal environment complicates its adoption and regulation.[80]

5.1 Outdated Legal Framework

The most immediate challenge is Nigeria's reliance on the Labour Act 2004, a statute rooted in colonial-era regulation. As earlier analysed, the Act assumes a manual, analogue workplace and provides no guidance on digitalisation, data protection, or algorithmic management.[81] This leaves Nigerian employees exposed to practices such as algorithmic discrimination in recruitment, invasive surveillance, and automated termination, without statutory remedies.

Attempts to update employment law have been piecemeal.[82] For example, while the Nigeria Data Protection Act 2023 (NDPA) provides a more contemporary digital framework, it is not employment-specific and fails to regulate AI-driven practices directly. Similarly, the 1999 Constitution guarantees dignity, fair hearing, and privacy, but its general language has not been tested against algorithmic abuses.[83] The absence of a coherent digital labour law creates uncertainty for both employers and employees, discouraging investment in fair AI practices and weakening trust in workplace innovation.[84]

5.2 Weak Enforcement Institutions

Even where laws exist, enforcement remains a critical weakness. Nigerian regulatory bodies are often underfunded, understaffed, and constrained by political interference. The National Industrial Court of Nigeria (NICN) has exclusive jurisdiction over employment

[80] W. D Emeka, "The Impact of Digital Technologies on Employment in Nigeria," *African Journal of Economic and Management Studies* 12, no. 2 (2021): 189–204.
[81] Labour Act, Cap. L1, Laws of the Federation of Nigeria, 2004.
[82] Babalola, "Data Protection and Employment Law in Nigeria," 250.
[83] Constitution of the Federal Republic of Nigeria, 1999 (as amended), §§ 34, 36, 37.
[84] Dumbili, "The Impact of Digital Technologies," 190.

disputes and has shown a progressive orientation by recognising international labour standards. Yet, the Court faces serious challenges: case backlogs, limited judicial expertise on digitalisation, and difficulties enforcing judgments, particularly against powerful employers or government agencies.[85]

The Nigeria Data Protection Commission (NDPC), newly established under the NDPA, lacks the capacity to monitor compliance across Nigeria's vast labour market. AI-driven violations are often subtle, involving complex algorithms and opaque decision-making processes, requiring advanced technical expertise that regulators do not yet possess.[86] Without institutional strengthening, any legal reforms addressing AI in employment may remain merely symbolic.

5.3 Informality of the Labour Market

Another significant barrier is the large informal sector, which accounts for more than 60% of Nigeria's workforce.[87] Informal employment is characterised by casual contracts, lack of social security, and absence of written terms. Employers in this sector are unlikely to adopt advanced AI systems; however, as mobile technology and digital platforms expand, informal workers are increasingly exposed to platform-based management.[88]

5.4 Low Levels of Digital Literacy

The risks of AI in employment are exacerbated by low digital literacy among Nigerian workers.[89] Many employees are unfamiliar with how AI tools operate or the rights available to them under data protection law. As a result, they may fail to identify or challenge algorithmic discrimination, intrusive monitoring, or unfair dismissal.

[85] Babalola, "Data Protection and Employment Law in Nigeria," 258.
[86] Valerio De Stefano, "'Negotiating the Algorithm': Automation, Artificial Intelligence, and Labour Protection," *Comparative Labor Law & Policy Journal* 41, no. 1 (2020): 15–46.
[87] International Labour Organization, *Nigeria Country Profile: Employment and Labour Market* (Geneva: ILO, 2019), 10.
[88] Dumbili, "The Impact of Digital Technologies," 192.
[89] UNESCO, *Digital Literacy in Nigeria: A Report on Workforce Readiness* (Paris: UNESCO, 2020), 15–20.

Employers often present surveillance or monitoring tools as productivity-enhancing measures, and employees, lacking awareness, may "consent" without understanding the implications for privacy and dignity.[90] Similarly, candidates rejected by AI-driven recruitment systems may not know that they can demand explanations or contest unfair outcomes.[91] Without targeted education and awareness campaigns, statutory reforms will remain ineffective, as workers cannot enforce rights they do not understand.

5.5 Employer Resistance and Cost Pressures

Employers in Nigeria frequently resist regulatory reforms, citing cost implications and global competitiveness. Many businesses already complain about the rigidity of labour law, high costs of compliance, and inefficiency of dispute resolution mechanisms.[92] Introducing AI-specific obligations such as algorithmic audits, transparency requirements, or human oversight mandates may be viewed as an additional burden that discourages investment.

5.6 Governance Deficits and Corruption

Nigeria's broader governance challenges also affect the regulation of AI in employment.[93] Corruption, weak accountability mechanisms, and political interference often compromise enforcement across sectors.

Moreover, the culture of impunity prevalent in labour relations extends into digital contexts. Employers that already disregard statutory obligations such as paying minimum wage or remitting pension contributions are unlikely to respect AI-specific protections.[94] Unless Nigeria addresses governance deficits, AI in employment risks becoming another avenue for exploitation rather than innovation.

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[90] Ajunwa, Crawford, and Schultz, "Limitless Worker Surveillance," 750–755.
[91] B Miranda and R Aaron, *Awareness in Action: Addressing Algorithmic Bias in Hiring* (Washington, DC: Upturn, 2018), 15–20.
[92] Ibid.
[93] Transparency International, *Corruption Perceptions Index 2024: Nigeria*, 12.
[94] Labour Act, Cap. L1, Laws of the Federation of Nigeria, 2004, §§ 21, 28.

5.7 Lack of Judicial Precedent

Finally, there is the challenge of judicial uncertainty.[95] The NICN has not yet been presented with cases involving AI in employment. Judges and lawyers may lack the technical expertise to interpret algorithmic systems, assess discriminatory outcomes, or evaluate claims of unfair automated termination.

Comparative jurisdictions such as the EU and UK have developed mechanisms to demand algorithmic transparency or provide workers with a right to explanation.[96] Nigeria lacks such precedents. This creates uncertainty for employees considering litigation and for employers seeking clarity on their obligations. Without judicial development, even the strongest statutory provisions may remain dormant.[97]

5.8 Synthesis of Challenges

Taken together, these challenges underscore why Nigeria cannot simply "import" regulatory models from the EU, US, or South Africa. The outdated legal framework leaves gaps, the weakness of enforcement institutions undermines accountability, and the informality of the labour market means that many workers fall outside formal protections altogether.[98] Low digital literacy prevents workers from asserting rights, while employer resistance and governance deficits discourage compliance. The absence of judicial precedent adds uncertainty.

6. Recommendations for Reform

The preceding analysis has shown that Nigeria's legal framework is fragmented, outdated, and ill-equipped to regulate the emerging use of Artificial Intelligence (AI) in

[95] Babalola, "Data Protection and Employment Law in Nigeria," 258.
[96] European Union General Data Protection Regulation (GDPR), Regulation (EU) 2016/679, art. 22; Information Commissioner's Office, *Guidance on AI and Data Protection* (London: ICO, 2020).
[97] *Aero Contractors Co. of Nigeria Ltd. v. National Industrial Court* [2014] 42 NCLR (Pt. 2) 555 (NICN) (noting judicial role in labour rights enforcement).
[98] Labour Act, Cap. L1, Laws of the Federation of Nigeria, 2004; Nigeria Data Protection Act, 2023; International Labour Organization, *Nigeria Country Profile: Employment and Labour Market*, 10–12

employment.[99] Comparative lessons from the European Union, United States, United Kingdom, and South Africa demonstrate that proactive reform is possible, even within diverse legal systems. For Nigeria, reform must be comprehensive and multi-dimensional, addressing legislation, regulatory institutions, judicial practice, and workplace culture.[100] This section proposes six interlocking reform strategies: (1) statutory innovation; (2) data protection and algorithmic transparency; (3) institutional strengthening; (4) judicial development; (5) education and awareness; and (6) multi-stakeholder collaboration.

6.1 Statutory Innovation: Updating Labour Law for the Digital Age

The most urgent reform is the modernisation of the Labour Act 2004.[101] Nigeria's principal employment statute should be amended to explicitly address digitalisation and AI-driven practices. Specific reforms should include:

- **Anti-Discrimination in AI Recruitment:** New provisions should prohibit the use of algorithmic tools that result in unjustified discrimination based on sex, ethnicity, religion, disability, or socio-economic status.[102] Employers should be required to conduct **bias audits** of AI recruitment systems.[103]
- **Regulation of Workplace Surveillance:** The Act should establish limits on digital monitoring, requiring proportionality, necessity, and respect for dignity.[104] For example, keystroke logging and biometric tracking should only be permitted where strictly necessary and subject to oversight.
- **Termination and Human Oversight:** The law should mandate that no termination of employment may be effected solely through automated systems.

[99] B Olumide, "Data Protection and Employment Law in Nigeria," *Journal of African Law* 65, no. 2 (2021): 245–260.
[100] International Labour Organization, *The Future of Work in a Digital World* (Geneva: ILO, 2021), 50–55.
[101] Labour Act, Cap. L1, Laws of the Federation of Nigeria, 2004.
[102] Constitution of the Federal Republic of Nigeria, 1999 (as amended), § 42; T. K Pauline, "Data-Driven Discrimination at Work," *William & Mary Law Review* 58, no. 3 (2017): 857–936.
[103] European Union Artificial Intelligence Act, Regulation (EU) 2024/1689, art. 10.
[104] Constitution of the Federal Republic of Nigeria, 1999 (as amended), § 34; A Ifeoma, C Kate, and S Jason, "Limitless Worker Surveillance," *California Law Review* 105, no. 3 (2017): 735–776.

> Every dismissal should involve human review, with the employee given the opportunity to contest the decision.[105]

A reformed Labour Act would thus embed digital labour rights, ensuring that technology enhances rather than undermines worker protection.[106]

6.2 Data Protection and Algorithmic Transparency

The Nigeria Data Protection Act 2023 (NDPA) represents progress but requires employment-specific strengthening.[107] To address AI in employment, the following reforms are recommended:

1. **Right to Explanation:** Employees should have the right to request an explanation of AI-driven decisions that significantly affect them, such as rejection in recruitment or termination.[108] This aligns with global trends under the EU's GDPR and AI Act.
2. **Consent and Power Imbalances:** The NDPA should clarify that consent obtained in employer–employee relationships is presumed not to be freely given, except where genuinely voluntary alternatives exist. This would prevent coerced consent for invasive surveillance.
3. **Algorithmic Impact Assessments:** Employers intending to use AI in employment should be required to conduct and publish Algorithmic Impact Assessments (AIAs), outlining risks of bias, privacy invasion, and unfair dismissal.[109]
4. **Obligations on AI Providers:** Vendors supplying AI tools to Nigerian employers should be held legally accountable for discriminatory or unlawful outputs, ensuring shared responsibility.

[105] Constitution of the Federal Republic of Nigeria, 1999 (as amended), § 36.
[106] International Labour Organization, *Fundamental Principles and Rights at Work* (Geneva: ILO, 1998), 10–15.
[107] Nigeria Data Protection Act, No. 4, 2023.
[108] European Union General Data Protection Regulation (GDPR), Regulation (EU) 2016/679, art. 22.
[109] European Union Artificial Intelligence Act, Regulation (EU) 2024/1689, art. 15.

Such reforms would extend the NDPA from a general data protection law to a workplace governance instrument, directly applicable to AI-driven employment practices.[110]

7. Conclusion

Artificial Intelligence (AI) has emerged as a powerful force in reshaping the employment relationship. From recruitment algorithms that filter thousands of applications in seconds, to workplace surveillance systems that monitor productivity, and even to automated dismissal mechanisms that trigger terminations, AI now occupies spaces once governed exclusively by human judgment. While these innovations offer potential efficiency, objectivity, and cost reduction, they also present significant threats to fairness, dignity, and accountability in the workplace. For Nigeria, where the labour law framework remains rooted in the Labour Act 2004 and constitutional provisions drafted for a pre-digital era, the integration of AI poses profound legal and policy challenges.

This paper has argued that Nigeria's existing framework consisting of the Labour Act 2004, the 1999 Constitution, and the Nigeria Data Protection Act 2023 (NDPA) is fragmented and inadequate to address AI-driven employment practices. The Labour Act is silent on digitalization and algorithmic management. The Constitution provides broad protections for dignity, fair hearing, privacy, and equality but has not yet been judicially applied to algorithmic abuses. The NDPA, while progressive in codifying data rights, lacks employment-specific provisions such as safeguards against coerced consent or requirements for algorithmic transparency. The jurisprudence of the National Industrial Court of Nigeria (NICN) has demonstrated progressive tendencies, but no precedents yet exist on AI in employment. Collectively, these gaps expose Nigerian workers to the perils of algorithmic bias, invasive monitoring, and arbitrary termination.

Comparative experiences reinforce the urgency of reform. The European Union's Artificial Intelligence Act designates employment-related AI as "high risk," requiring transparency, human oversight, and non-discrimination. The United States, through the

[110] Babalola, "Data Protection and Employment Law in Nigeria," 256.

Equal Employment Opportunity Commission (EEOC), has extended existing anti-discrimination statutes to AI-driven practices, holding employers accountable for algorithmic bias. The United Kingdom integrates AI regulation into its data protection and employment frameworks, emphasizing fairness and the right to explanation. On the African continent, South Africa's POPIA and constitutional jurisprudence provide a foundation for regulating workplace digitalization. Each of these jurisdictions illustrates different pathways, but the common thread is clear: AI in employment cannot be left unregulated.

For Nigeria, reform must be multi-dimensional. First, statutory innovation is necessary to update the Labour Act for the digital era, embedding provisions that prohibit algorithmic discrimination, limit invasive surveillance, and require human oversight in termination. Second, the NDPA must be strengthened with employment-specific reforms, such as algorithmic impact assessments and a right to explanation for AI-driven decisions. Third, institutions such as the NICN, NDPC, and Labour Inspectorate must be capacitated with technical expertise and resources to enforce digital labour protections effectively. Fourth, the judiciary must interpret constitutional rights expansively to protect workers against algorithmic injustice, drawing on international labour standards. Fifth, education and awareness campaigns must empower both workers and employers with knowledge of AI risks and responsibilities. Finally, multi-stakeholder collaboration involving government, unions, employers, civil society, and international partners is essential to ensure inclusiveness and accountability in AI governance.

The future of work in Nigeria depends on striking this delicate balance. Law must function not as an obstacle to innovation but as a framework that ensures innovation serves human welfare. By embedding fairness, transparency, and accountability into AI-driven employment practices, Nigeria can align with global best practices while protecting its workers. Failure to act, however, will consign Nigerian labour law to obsolescence, leaving employees defenceless in a rapidly digitalising economy.

Ultimately, the regulation of AI in employment is not merely a technical question of compliance but a broader issue of social justice, human dignity, and the role of law in the digital age. As Nigeria aspires to compete in the global economy, it must ensure that its workers are not reduced to data points in opaque algorithms. The law must affirm that behind every dataset is a human being entitled to respect, fairness, and dignity at work.

ASSESSING NIGERIA'S LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION IN THE ARTISANAL AND SMALL-SCALE MINING SECTOR

Adedeji-Adeyemi Adeola* and Nurudeen Ibrahim**

Abstract

Despite a robust legal framework, Nigeria's abundant solid minerals sector is plagued by massive environmental degradation and catastrophic pollution, challenging the efficacy of the regime in regulating the informal Artisanal and Small-Scale Mining (ASM) sector. This, this paper critically assesses whether Nigeria's existing legal framework for environmental protection in the solid minerals sector is truly proactive, examining both its theoretical design and its practical implementation. The study employs a doctrinal and comparative approach, critically analysing key statutory provisions, and institutional mechanisms, while drawing insights from the decentralised and progressive ASM governance model of Ethiopia. The findings indicate that, while the legal framework contains laudable, proactive provisions on paper, it is rendered largely reactive in practice. This failure stems from systemic implementation gaps, institutional inertia, vague regulatory language, and the poor formalisation of the ASM sector dominated by unlicensed, illegal miners. Furthermore, the non-justiciability of constitutional environmental rights weakens citizens' ability to seek redress. To achieve meaningful, preventative environmental protection, Nigeria must urgently transition from its current reactive approach to a proactive, inclusive, and environmentally sustainable legal regime. The paper therefore advocates for: constitutional reform to make environmental rights justiciable; regulatory revision to eliminate ambiguous enforcement language; the adoption of a decentralized formalisation strategy inspired by the Ethiopian model; and enhanced, multisectoral stakeholder collaboration for effective oversight.

Keywords: Artisanal and Small-Scale Mining (ASM), Environmental Degradation, Legal Framework, Solid Minerals, Sustainable Development Goals (SDGs).

1.0. Introduction

The abundance of solid mineral resources across many states in Nigeria comes at a devastating environmental cost. As an author aptly observes, the environment serves as the natural platform for all resource endowments, making the exploitation of natural resources inherently intertwined with environmental degradation.

[1] According to the National Bureau of Statistics, there are over 40 types of minerals in Nigeria.[2] Even though, majority of solid minerals in Nigeria are still untapped, the sector contributes to 0.63% of Nigeria's Gross Domestic Profit.[3] However, the environmental consequences of mineral exploitation are glaring. In 2000, the illegal mining of lead in Zamfara State caused a catastrophic lead poisoning which claimed the lives of 400 children.[4] There are also risks of water contamination in Enugu due to the mining of coal, while constant air pollution caused by limestone quarrying causes serious hazards to the inhabitants of Ewekoro, and Shagamu in Ogun State.[5] Notably, over 95% of mining activities in Nigeria are conducted illegally by small-scale and artisanal miners, whose operations pose severe environmental and public health risks to local communities.[6] [7] The reality is that this problems largely stems the prevalence of Artisanal and Small Scale

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[1] Yemi Oke, *Nigerian Energy and Petroleum, Oil and Gas, Cases and Practice and Theories* (Princeton & Associates Publishing Company Limited 2019) pp. 627-628

[2]National Bureau of Statistics, 'Mineral Production Statistics 2019-2020.' (2020) <https://nigerianstat.gov.ng/elibrary/read/1241100> accessed 20 May 2024.

[3] Orji Ogbonaya Orji, 'Highlights of 2021 Solid Minerals Industry Report' (2021) <https://eiti.org/sites/default/files/2024-01/summary%202021-SM-PRESENTATION-1.pdf> accessed May 20, 2025.

[4] Ahmed Ali, Amina Abdullahi, Aminu Zangina, 'Environmental Issues and the Prospects of Mining in Nigeria.' (2018). Dutse Journal of Pure and Applied Sciences, 4(2), pp.531-539. <https://123pdf.org/document/zwvw3mj7-environmental-issues-prospects-mining-nigeria.html> accessed 20 May 2025.

[5] ibid.

[6] Jean de Dieu Izerimana, and Lakube Godwin, 'Opportunity, and Side Effects of Artisanal and Small-Scale Mining In Nigeria.' [2024]. *Modern Economy* 15, no. 3. <https://doi.org/10.4236/me.2024.153012> Accessed June 20, 2024.

[7]Premium Times, 'Nigeria Identifies 1, 200 Abandoned Mining Sites.' (6 April 2014). https://www.premiumtimesng.com/news/158188-nigeria-identifies-1200-abandoned-mining-sites.html?tztc=1. accessed 20 May 2025.

Mining (ASM).[8] [9] ASM is often conducted by individuals, families, and communities for subsistence, making it difficult for regulators to monitor and control. These operations typically occur covertly, outside the purview of legal oversight, and are resistant to formalisation due to historical marginalisation, lack of awareness, bureaucratic barriers, and socio-economic dependencies.[10]

This troubling situation runs counter to the spirit of Sustainable Development Goals (SDG) such as: Good Health and Well-being, Sustainable Cities and Communities, and Climate Action. What is particularly concerning is that these environmental harms persist despite the existence of an ostensibly robust legal framework. This raises a critical question: is Nigeria's legal framework for environmental protection in the solid minerals sector inherently incapable of preventing unsustainable practices, or does the failure lie in its implementation? This is the critical question which this paper seeks to answer.

This paper unfolds into five main sections: The introduction highlights the environmental cost of Nigeria's solid mineral wealth, posing the core question of legal effectiveness. The second section explores the causes of environmental degradation, linking it to the dominance of illegal artisanal and small-scale mining. The third section provides a critical analysis of Nigeria's legal and regulatory framework, assessing key constitutional, statutory, and institutional instruments. The fourth section offers detailed recommendations based on international best practices, particularly Ethiopia's ASM reforms, and proposes actionable reforms for Nigeria. The article concludes by reiterating the urgent need for a proactive legal regime that can sustainably regulate the mining sector and protect affected communities.

[8] Magaji, S., Shehu. I. A., Barau, H. I., & Musa, M. R., (2025). Resource governance: Examining Laws Regulating Mining of Mineral Resources in Nigeria with Emphasis on Gold Mining and Its Effect on the Security of Life and Environment. *International Journal of Intellectual Discourse*, 8(3), p.110.

[9] Section 164 of the Minerals and Mining Act defines small scale mining as artisanal, alluvial and other forms of mining operations involving the use of low level technology or application of methods not requiring substantial expenditure for the conduct of Mining Operations. It defines artisanal mining as mining operations limited to the use of non-mechanised operations. Thus, any form of ASM carried out without a licence or authority is illegal pursuant to Section 2 of the Act.

[10] ibid.

2.0. The Nigerian Solid Mineral Mining Sector, nd Environmental Degradation

2.1. The Problem, and the Cause

Due to the inherently destructive nature of mining activities in Nigeria, inhabitants of communities where mining activities take place have always had to grapple with damages to their environment, and farmland. Section 164 of the Minerals and Mining Act 2007[11] (hereinafter referred to as MMA) defines mining as the mining of minerals and any other operations directly or indirectly incidental thereto, including the processing of minerals. Nigeria is blessed with large deposits of solid minerals which have attracted both the formal, and informal sectors, ushering both legal, and illegal ways of mining solid minerals.[12] Unfortunately, this industry is underdeveloped, and largely dominated by informal miners operating outside the regulatory framework.

In contrast to the oil and gas industry, the solid minerals sector has long suffered from governmental deprioritisation, resulting in weak policy formulation and a lack of robust institutional oversight. For instance, a study of 37 mining sites across ten communities in Ijesaland, Southwest Nigeria, revealed 354 mining pits degrading lands in the communities.[13] Moreover, recurring hazards frequently emanate from mine sites, particularly in areas such as Jos, Plateau State, where thousands of abandoned and open mines contribute to the contamination of water sources and air pollution, resulting in both airborne and waterborne diseases, as well as harm to local flora and fauna.[14] Besides the foregoing, the adverse implications of this situation on human rights to a clean, healthy, and sustainable environment is enormous. As Professor Yemi Oke aptly observes, a

[11] Cap. 162, Laws of the Federation of Nigeria, 2004.

[12] Merem, E.C., Twumasi, Y., Wesley, J., Isokpehi, P., Shenge, M., Fageir, S., Crisler, M., Romorno, C., Hines, A., Hirse, G. and Ochai, S., 'Assessing the Ecological Effects of Mining in West Africa: The Case of Nigeria.' (2017). *International Journal of Mining Engineering and Mineral Processing*, 6(1), pp.1-19. <http://article.sapub.org/10.5923.j.mining.20170601.01.html>accessed 1 May, 2025

[13] Nathaniel Olugbade Adeoye, 'Land Degradation in Gold Mining Communities of Ijesa Land, Osun State, Nigeria.' (2016) *Geo-Journal* 81, pp. 535-554. <https://doi.org/10.1007/s10708-015-9630-x.> accessed 1 June 2025

[14] Oruonye, E.D., Musa, D.G., Bombom, L.S., Anger, R.T., Ahmed, Y.M., Ezekiel, B.B., Angye, G.F. and Emmanuel, J., 'The Nexus between Unsustainable Mining, Livelihood and Environmental Degradation: A Case of Tin and Columbite Mining on Jos Plateau Nigeria.' (2024) *GPH-International Journal of Social Science and Humanities Research*, 7(02), pp.01-12. <https://gphjournal.org/index.php/ssh/article/view/1223/889> accessed 1 June 2025.

degraded and polluted environment poses a serious threat to human existence and could render the earth uninhabitable if effective environmental control measures are not implemented.[15]

Moreover, in *SERAP v Federal Republic of Nigeria*[16] the ECOWAS Court of Justice held stated that:

> *The quality of life of people is determined by the quality of the environment. But the government has failed in its duty to maintain a general satisfactory environment conducive to the development of the Niger Delta region.*

Thus, it is settled that the violation of rights relating to the environment causes a ripple effect, leading to indirect violations of other human rights, especially the right to life, and dignity of human person.[17] What then, is the main genesis of environmental degradation in the solid mineral mining industry?

The problem is chiefly attributed to the prevalence of illegal, unsupervised and unregulated artisanal and small-scale mining of solid minerals in Nigeria.[18] For instance, 95% of gold is mined illegally in Nigeria,[19] often with crude methods, leaving large footprints of environmental degradations.[20] This situation has remained unimproved for decades, even though the Minerals, and Mining Act 2007 prohibits illegal, and unauthorised exploration of minerals.[21] Despite the prohibition, institutional oversight is weak, and there is gross negligence on the part of the government. Besides, unlike the regulatory approach to the oil, and gas sector, the solid minerals mining sector is largely abandoned in terms of enforcement, hence the continued environmental degradation, and regulatory failure.[22] Due to this long-term negligence across board, the government is

[15] (n 1) p. 627
[16] General List No. ECW/CCJ/APP/08/09, Judgment No. ECW/CCJ/JUD/18/12
[17] *Gbemre v Shell PDC Ltd* (FHC/B/ CS/53/2005).
[18] Olujobi, O.J, and Irumekhai O.S., 'Strategies, and Regulatory Measures for Combating Illicit Mining Operations in Nigeria: A Comprehensive Legal Perspective.' (2024) *Resources Policy*, 88, p.104459
[19] (n 4)
[20] (n 8)
[21] Section 2.
[22] (n 14)

now faced with the reclamation of abandoned mine lands, and reducing hazards that could have been prevented in the first place.[23]

Thus, in light of the foregoing, it is imperative to examine the existing legal framework and its implementation, its adequacy, and otherwise, for the purpose of finding a sustainable solution.[24]

3.0. Critical Analysis of the Legal, and Regulatory Framework Governing Asm in Nigeria

This section evaluates the adequacy and effectiveness of Nigeria's legal and regulatory instruments in addressing the environmental implications of artisanal and small-scale mining (ASM). While the country boasts a wide array of laws and policies aimed at environmental protection, the realities of enforcement and the dominance of informal mining reveal fundamental gaps that weaken proactive legal responses.

3.1. The Constitution, and the African Charter

The starting point of any legal discourse in Nigeria is the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as "the Constitution"). Thus, what are the relevant constitutional provisions the regulation of solid minerals mining in Nigeria, and environmental degradation?

Section 20 of the Constitution provides that the 'State shall protect, and improve the environment, and safeguard the water, air, and land, forest, and wild life of Nigeria.' Incidental to this is Section 14 (2) (b) which provides that the security, and welfare of the

[23] Oruonye, E.D., Musa, D.G., Bombom, L.S., Anger, R.T., Ahmed, Y.M., Ezekiel, B.B., Angye, G.F. and Emmanuel, J., 'The Nexus between Unsustainable Mining, Livelihood and Environmental Degradation: A Case of Tin and Columbite Mining on Jos Plateau Nigeria.' (2024). *GPH-International Journal of Social Science and Humanities Research*, 7(02), pp.01-12. <https://gphjournal.org/index.php/ssh/article/view/1223/889> accessed 23rd May, 2025.

[24] Laniyan, T.A., Kolawole, T.O. and Kenjinu, S.S., 'Environmental Assessment of Artisanal Gold Mining on Soils of a Community within Southwestern, Nigeria.' (2024) <https://doi.org/10.21203/rs.3.rs-3875505/v1>accessed 23rd. May 2025

people shall be the primary purpose of the government. Also instructive is Section 13 of the Constitution which provides that:

> It shall be the duty, and responsibility of all organs of government, and of all authorities, and persons, exercising legislative, executive or judicial powers, to conform to, observe, and apply the provisions.

On paper, these provisions are laudable, and they provide a solid foundation for government's power, and duties in preventing environmental degradation that may be caused by inherently-destructive mining activities in Nigeria. However, in practice, the provisions have been rendered toothless, and incapable of enforcement by Section 6 (6) C of the same Constitution which provides that all provisions in Chapter II of the Constitution[25] are not justiciable. This anomaly has been given judicial stamp in *Archbishop Olubunmi Okogie v Attorney General of Lagos State*,[26] where the Court held that no Court in Nigeria, has jurisdiction to determine any question as to whether any organ of government has acted or is acting, in compliance with the Fundamental Objective, and Directive Principles of State Policy.

It is submitted that the situation of inhabitants of communities marred by destructive mining activities is made more precarious, and difficult to remedy due to the non-justiciability of Section 20 of the Constitution. Even though, the Section uses the word 'shall' which seems to indicate that the provision is mandatory,[27] the natural effect of the word has been watered down by its non-justiciability. Human rights are fundamental, and above the political society itself.[28] Moreover, since violations of right to a peaceful, healthy, and environment indirectly affects other fundamental human rights, it is only sensible to make the state's obligation to 'protect, and improve the environment, and safeguard the water, air, and land, forest' justiciable by communities suffering from the environmental degradation. Skeptics may argue that there are laws, and regulations to

[25] The Fundamental Objectives, and Directive Principles of State Policy, of which Sections 20, 13, and 14 (2) B are a part.
[26] (1981) 2 NCLR 337
[27] *Corporate Ideal Insurance v Ajaokuta Steel Company Limited Ltd & Ors* [2014] 7 NWLR (Pt. 1405) 165.
[28] Kayode Eso JSC in *Ransome-Kuti v AG Federation* [1985] 2 NWLR (Pt. 6) 211 at 229-231

achieve the environmental objectives.[29] However, regulatory enforcement demonstrates a consistent pattern of institutional inertia and reliance on *ex post facto* interventions.[30]

Moreover, since the Constitutions is the *fons et erigo*, the grundnorm, and the source to which every rule of law or government action must trace its validity, it is an aberration that the Nigerian Constitution does not recognise, as a fundamental human right, the right of communities to a healthy, safe, and sustainable environment, which is directly enforceable against the government. This is at variance with the position in the international community as reflected in the inclusion of Good Health, and Well-being, Sustainable Cities, and Communities, and Climate Action as part of the SDGs. Moreover, judicial decisions, Constitutions of countries, regional, and international treaties have recognised the right to a safe, healthy, clean, and sustainable environment as a fundamental human right. This movement is known as environmental constitutionalism or green constitutionalism.[31] For instance, the Supreme Court of Philippines held in *Juan Antonio Oposa v The Honourable Fulgencio Factorian*[32] that environmental rights need not even be written in the constitutions because they are so fundamental that, just like other civil, and political rights, they must be deemed to be in existence from the inception of mankind. It is however, submitted that in the context of Nigeria's legal system, human rights must be guaranteed by the Constitution to be capable of enforcement.[33] Also, in *General Sanni Abacha v Gani Fawehinmi,*[34] the Court of Appeal held that the right to a satisfactory environment, entrenched in **Articles 24,** and **21** of the African Charter is a human right. Thus, since the Charter has been domesticated in Nigeria pursuant to Section 12 of the Constitution, the individual rights contained therein are justiciable in Nigeria. Furthermore, Section 24 of South African Constitution 1996 provides for the right of everyone to: an environment that is not harmful to health or well-being; to have the environment protected through reasonable legislative means; to prevent pollution and

[29] As will be shown later.
[30]
[31] Theodore Okonkwo, 'Environmental Constitutionalism in Nigeria: Are We There Yet?' (2015). *The Nigerian Juridical Review* Vol. 13: 175-216
[32] (1994) 33 ILM 173, 187.
[33] Under Chapter IV of the Constitution.
[34] (1996) 9 NWLR Pt 475, p. 710.

ecological degradation *inter alia.* More laudable is the fact that unlike the situation in Nigeria, Section 38 of South African Constitution confers locus standi on affected persons to enforce claims under Section 24. Furthermore, Chapters Four, Five, the Fourth and Fifth Schedule of the Kenyan Constitution also make provisions for the environmental rights and enforcement mechanisms.

Unlike the Constitution, the African Charter on Human, and People's Rights recognises environmental rights under Article 24 as a fundamental human right, enforceable in Nigeria[35] there are challenges to its enforcement in Nigeria. In *Abacha v Fawehinmi,* the Court held that its provisions are enforceable, and applicable in Nigeria, just like the provisions of other domestic statutes. However, there are uncertainties regarding the enforcement of Article 24 in light of its potential conflict with Section 6(6)(c) of the Constitution. Evidently, any provision of the African Charter which is inconsistent to the provisions of the Constitutions shall be void to the extent of its inconsistency.[36] Put simply, socio-economic rights under the African Charter may be incapable of enforcement in Nigeria since they are non-justiciable under the Constitution. What then is the way out?

Due to these limitations, courts have adopted indirect methods to enforce environmental rights. One approach is to link environmental degradation to violations of the right to life or dignity under Chapter IV of the Constitution.[37] In *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation,*[38] the Supreme Court held that the right to a clean and healthy environment is connected to the right to life, and a breach of the former is a breach of the latter. Another judicial strategy is to invoke justiciable provisions that reinforce Chapter II principles.[39] This is, in other words, taking advantage of the words '*Except as otherwise provided by this Constitution…'* in Section 6(6)(c).[40] An example is Item 60 of the Exclusive Legislative List which confers power on the National Assembly

[35] Ibid.
[36] Section 1 of the Constitution.
[37] *Gbemre v. Shell* FHC/B/CS/53/05.
[38] [2019] 5 NWLR (Pt. 1666) 518.
[39] The Supreme Court in *Federal Republic of Nigeria v Alhaji Mika Anache & Others* (2004) 14 WRN 1 – 90 61.
[40] Ibid.

to make laws for the "establishment, and regulation of authorities for the Federation or any part thereof: to promote, and enforce the observance of the Fundamental Objectives, and Directive Principles"[41] contained in the constitution. Thus, as held in *Attorney-General of Ondo State v. Attorney-General of the Federation & 35 Ors*,[42] unless the National Assembly makes a law to enforce any provision in Chapter II of the Constitution, such laws will remain non-justiciable.

3.2. **The Nigerian Minerals, and Mining Act, 2007.**

The Minerals, and Mining Act, 2007[43] (hereinafter referred to as MMA) is the principal legislation governing, and regulating the extractive, and mining industry in Nigeria. It includes numerous provisions aimed at environmental protection. The Act prohibits the exploration of minerals without authority, and provides for a licensing regime for all stages in mining. As identified above, environmental degradation in the solid minerals sector is traceable, chiefly to the activities of small-scale, and artisanal miners.[44] Thus, the bulk of critical analysis in this section will focus on regulatory provisions regarding small-scale, and artisanal mining.

Firstly, as a preventive measure, Section 3(1) C of the MMA 2007 provides that no mineral title granted under the Act shall authorise reconnaissance, exploration or exploitation of mineral resources in any land occupied by any town, village, market, *inter alia*. The Act also establishes a Mines Environmental Compliance Department to, among other things, enforce, and monitor compliance with environmental obligations, and requirements of mineral title holders.[45] Every holder of a mining lease is mandated to maintain the lease area, conduct mining operations in a safe manner,[46] and restore the

[41] In the context of this paper, environmental rights.
[42] [2002] 9 NWLR (Pt. 772) 222.
[43](n 7).
[44] (n 15).
[45] Section 18.
[46] Section 70.

land where a mining operation has been, or is being carried out.[47] Moreover, all lease holders are mandated to carry out effective rehabilitation of the mined-out areas.[48]

The provision in Section 118**,** however deserves a critical examination. The section provides that:

> Every holder of a mineral title under the Act shall, as far as it is reasonably practicable (a) minimise, manage, and mitigate any environmental impact resulting from activities carried out under this Act; and (b) rehabilitate, and reclaim, where applicable, the land disturbed, excavated, explored, mined or covered with tailings arising from mining operations to its natural or predetermined state…

The problem in this provision are the words '…*as far as it is reasonably practicable…'* This phrase seems to put the determination of when compliance with the section is practicable in the hands of miners of solid minerals. Moreover, it creates an unnecessary loophole of impracticability that could be used to justify non-compliance. Moreover, this vagueness fails to align with global best practice and the availability of modern remediation technologies. In contemporary international mining governance, the standard for environmental responsibility has shifted to mandatory performance standards,[49] often termed the Best Available Techniques (BAT).[50] The existence of established, cost-effective technologies for waste management, water treatment, and land reclamation renders the legislative reliance on a subjective measure of reasonable practicability academically anachronistic. Therefore, the provision effectively establishes a lower, reactive baseline for compliance rather than driving the sector toward a proactive commitment to environmental restoration that is achievable through current technological means.

[47] Sections 114, and 115.
[48] Section 90 (2).
[49] European Union (2018). Best Available Techniques (BAT) Reference Document for the Management of Waste from Extractive Industries, in accordance with Directive 2006/21/EC, pp. 487-599.
[50] Zakondyrin, A., (2020). Best Available Techniques in Mining Industry: Topical Issues and Solution Methods. Mining Informational and Analytical Bulletin, pp. 55-64. < https://doi.org/10.25018/0236-1493-2020-61-0-55-64>

Moving forward, the Act mandates every holder of a mining lease to submit an environmental impact assessment, and an environmental protection, and rehabilitation program to the Mines, and Environmental Compliance Department.[51] Quite laudable is Section 121 which establishes an Environmental Protection, and Rehabilitation Fund to be managed by trustees, for the purpose of guaranteeing the environmental obligations of holders of mineral titles under the Act. Failure of any holder of a mining lease to pay into the Fund entitles the trustees to institute a court proceeding to recover the money, and the mining lease become liable to suspension.[52] Finally, Section 131 makes illegal mining of minerals, and the removal, possession, or disposal of any mineral, by any person, contrary to the provisions of the Act an offence. However, the wording of Section 133 which provides for punishment is unclear. The section imposes various punishments: revocation of licence, fine, and imprisonment on a '*mineral titleholder*,' who is guilty of an offence under Section 131. Despite these commendable provisions, their impact on ASM remains minimal. Given that over 95% of ASM operations are informal and unlicensed, these sections have limited reach.[53]

From the foregoing, it is apparent that majority of the provisions of the MMA 2007 do not reflect the prevailing circumstances in the solid minerals mining sector. It appears that the drafters of the Act assumed that every miner of solid minerals will obediently apply for a mining lease, permits, or titles. Whereas, 95% of solid minerals miners operate outside the regulatory environment with no licence, and little to no government oversight. Consequently, there is a gross lack of compliance with provisions relating to the sustainable practices in the mining of solid minerals. While the Act attempts to formalise ASM through the creation of mineral buying centres and lease provisions, implementation has been weak as there is still an avalanche of illegal mine sites across the country.[54]

[51] Sections 119 and 120.
[52] Section 122.
[53] (n 4).
[54] Section 49 MMA, and Section 230 to 232 of the Mining Regulation 2011.

Moreover, while the Department of Artisanal and Small-Scale Mining (ASM) was established to regulate and promote environmentally sustainable practices in this sector,[55] its impact remains limited due to deeper legal, administrative, and knowledge barriers to effective regulation. Thus, many artisanal miners continue to operate informally due to a lack of awareness of legal requirements and the burdensome bureaucratic processes required for legalisation.[56] Communities with a long history of operating outside the formal sector may resist regulation, especially where there are few incentives to become formalised and where doing so would introduce tax obligations they currently avoid.[57] In some cases, weak political will, fuelled by corruption, hampers the development of a genuinely enabling legal environment for ASM regulation.[58] These challenges were confirmed in a 2023 policy study[59] by the Revenue Mobilisation Allocation and Fiscal Commission and development partners, which revealed that most ASMs operate without legal titles and outside official buying systems, leading to significant revenue losses and unsafe practices.

This combination of legal vagueness, administrative inertia, and policy conflict underscores the central thesis of this article: while Nigeria's legal framework appears proactive in theory, it remains fundamentally reactive in practice due to poor enforcement and institutional weaknesses.

3.3. **The Environmental Impact Assessment Act**

The Environmental Impact Assessment (EIA) Act aims to ensure that environmental considerations are integrated into project planning. It prohibits the commencement of projects without an approved EIA.[60] It also requires a written application for approval

[55] Ministry of Solid Minerals Development, 'Artisanal & Small-Scale Mining – Ministry of Solid Minerals Development' (*Msmd.gov.ng*2024) <https://msmd.gov.ng/artisanal-small-scale-mining/> accessed 20 June 2025.
[56] (n 5)
[57] ibid.
[58] ibid.
[59] United Nations Development Programme, 'Transforming Nigeria's Artisanal and Small-Scale Mining Sector for Resource Mobilization and Sustainable Development' (2024) <https://www.undp.org/nigeria/publications/transforming-nigerias-artisanal-and-small-scale-mining-sector-resource-mobilization-and-sustainable-development> accessed 21 June 2025.
[60] Section 2.

before embarking on any project.[61] Section 13 identifies mining, quarrying, land reclamation, and waste disposal as activities requiring mandatory assessment,[62] *inter alia.* while Section 60 creates legal liability for contravention of any of the provisions in the Act.

While the Act is structurally comprehensive, its formal application to the ASM sector is profoundly challenging due to the illegal, unregulated, and informal nature of the activities, contributing to inadequate enforcement.[63] The key implementation barrier is the fundamental disconnect between the Act's rigorous, bureaucratic requirements and the realities of subsistence-based mining.[64] An artisanal miner, often operating covertly for daily survival,[65] has neither the financial capacity nor the technical expertise to prepare, submit, and secure a formal EIA. Furthermore, given that these operations are conducted outside the legal oversight system, there is no incentive or mechanism for such miners to voluntarily engage with a time-consuming and costly regulatory process designed for large, formal industrial projects. Consequently, the EIA framework, while providing mandatory protection on paper, remains practically irrelevant to the vast majority of environmentally damaging mining activities in Nigeria.

3.4. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007

This Act established NESREA to protect and ensure sustainable environmental management. Also instructive are Regulations made under the NESREA such as: the National Effluent Limitation Regulations which regulates the treatment of effluent (waste water) being discharged by industries into the environment[66]; the National Environment Protection Regulations which regulates the use of chemicals and release of hazardous

[61] ibid.
[62] Third Schedule.
[63] Environmental Law Institute, 'Artisanal and Small-Scale Mining in Nigeria: Recommendations to Address Mercury and Lead Exposure.' (2014) < nigeria-asgm-assessment-final-report.pdf> (accessed 20, June, 2025).
[64] ibid.
[65] Magaji, et al., Resource governance (n 8).
[66] Section 1 and 3(2)

substances into the environment;[67] and the Federal Solid Waste Management Regulations which regulates the discharge of any hazardous waste by any organization into the environment.[68] However, NESREA's capacity to enforce compliance among informal ASM operators remains limited.

3.5. **National Extractive Industry Transparency Initiative (NEITI) Act**.

The NEITI Act,[69] enacted in 2004, focuses on financial transparency and accountability in the extractive sector.[70] Thus, while it promotes good governance, its primary emphasis is on revenue reporting from formal sector actors. As such, it has limited relevance to the environmental regulation of ASM, which remains largely outside the formal economy. In a 2014 policy brief,[71] the Institute for Environmental Law reported that while NEITI has succeeded in improving transparency in the oil industry, its framework has not been extended to artisanal gold mining. This limited applicability is not surprising, given the Act's statutory scope. Section 21 of the NEITI Act defines an 'extractive industry' as a company engaged in prospecting, mining, extracting, processing, and distribution of minerals and gas, including any agency or body responsible for paying extractive proceeds to the relevant government authority. By explicitly defining the industry in terms of 'company' operations and revenue payments, the Act structurally excludes the vast majority of subsistence-based ASM operators, who are individuals or informal groups lacking corporate structure and formal revenue channels. This structural misalignment prevents the application of the Act's transparency standards to the informal sector, further contributing to the lack of oversight over their environmental practices.

The policy[72] brief also reported a recommendation by the Civil Society Legislative Centre (CISLAC) to NEITI to expand its tentacles to artisanal gold mining due to the environmental and public health concerns. However, this recommendation remains largely unimplemented. Thus, the continued exclusion of ASM from NEITI's scope

[67] Section 1, 4 and 5.
[68] Section 1 and 20.
[69] NEITI Act, 2007 No. 69
[70] Sections 1, 2, 3, 4, and 16.
[71] (n 55).
[72] ibid.

undermines its potential as a comprehensive accountability mechanism in Nigeria's extractive sector, especially where informal activities dominate.

It must be noted that NEITI has been taking baby steps towards adopting this recommendation. Thus, the NEITI's Strategic Plan (2022-2026)[73] shows a shift towards integrating Environmental, Social, and Governance (ESG) metrics into its framework. The plan recognises that investment decisions in the extractive sector are increasingly guided by ESG standards, and highlights the potential of the EITI framework to contribute to ESG performance, particularly in areas such as artisanal and small-scale mining. One of the expected outcomes under this plan is for NEITI's activities, projects, and data to respond to the evolving needs of the public, government, and private stakeholders. To support this, NEITI has identified a dedicated activity: conducting a study on artisanal and small-scale miners (ASMs). While this is a positive development, it remains to be seen whether it will translate into effective oversight, formalisation, and environmental accountability for ASM operations.

3.6. **Harmful Waste (Special Criminal Provisions) Act**

Since artisanal and small-scale mining is associated with environmental degradation, this Act is relevant. The Act prohibits carrying and dumping or deposition of harmful waste in the environment without lawful authority, and also provides for punishment for offenders (both individuals and corporate bodies).[74] It also imposes civil liability on offenders for the benefit of persons who have suffered injuries as a result of the offending Act.

Altogether, the foregoing suggests that Nigeria has a robust legal and regulatory framework on paper. However, in practice, the implementation of the various laws is defective. The implementation of these laws would be significantly more effective if the mining industry were fully formalised. The widespread presence of informal and unregulated ASM operations complicates enforcement efforts.

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[73] Nigeria Extractive Industries Transparency Initiative, 'Strategic Plan 2022-2026.' (2022). < NEITI-Strategic-Plan-2022-2026.pdf>accessed 20 June 2025.
[74] Sections 6, 7 and 12.

4.0. Recommendations for Aproactive Multisectoral Approach

To address the widespread environmental degradation caused by artisanal and small-scale mining (ASM) in Nigeria, and to ensure alignment with Sustainable Development Goals (SDGs), a coordinated and comprehensive approach is required. Drawing from local research and international best practices, particularly the Ethiopian model, this section outlines legal, policy, administrative, and social recommendations for a more effective and inclusive regulatory framework.

4.1. Strengthening the Legal Framework

The non-justiciability of environmental rights under Chapter II of the 1999 Constitution undermines citizens' ability to seek redress against environmental harm. Therefore, constitutional reform is necessary. Even though, the indirect methods of enforcement highlighted in this paper are viable options, it is recommended that environmental rights under Chapter II should be enshrined in Chapter IV of the Constitution, following international best practices. This will ensure direct enforcement, and make the government more accountable.

In parallel, the Nigerian Minerals and Mining Act, 2007, should be revised to reflect the realities of Nigeria's ASM sector. A reformed Act should eliminate vague enforcement language such as '*as far as reasonably practicable*' in Section 118, and replace it with specific, binding obligations on environmental compliance. More critically, the law must acknowledge the informal dominance of the ASM sector and provide tailored frameworks to support formalisation and compliance.

A leaf could be borrowed from the Ethiopian decentralised governance model under Proclamation No. 678/2010. Ethiopia presents a comprehensive and well-structured model for formalising and regulating artisanal and small-scale mining (ASM), grounded in a stable legal and regulatory framework.[75] Governed primarily by Proclamation No. 678/2010 and its subsequent amendment in 2013, Ethiopia issues two types of ASM

[75] (n 52).

licences: the Artisanal Mining License (AML), which is non-renewable and limited to two years, and the Special Small Scale Mining License (SSML), introduced in 2013 to encourage artisanal miners to transition toward more mechanised and productive operations.[76] Notably, the 2013 amendment reduced the maximum period for an AML licence to from nine years to two years. This is to make artisanal miners see ASM as a pathway to broader economic engagement, rather than a permanent informal activity.

Licensing and taxation responsibilities are decentralised to regional governments, which manage both the issuance of permits and the collection of income tax and royalties, ensuring equitable distribution of mining revenues. Ethiopia also supports miners with tools, machinery, safety training, and extension services, while licensed buying centres purchase gold from ASMs at 5% above market value. This creates a legal market, prevents smuggling, ensures royalty accuracy, and promotes fair pricing.[77]

In terms of environmental and community safeguards, Ethiopia has adopted a tiered system. While holders of basic Artisanal Mining Licenses are not required to submit Environmental Impact Assessments (EIAs), those seeking to upgrade to Special Small Scale Mining Licenses must do so, alongside setting aside funds for environmental rehabilitation and community development initiatives.[78] To improve sustainability, the Ministry of Mines and Petroleum has issued detailed Environmental Guidelines for artisanal miners and local communities, aimed at mitigating ecological damage and promoting responsible practices. Supported by the African Minerals Development Centre (AMDC), Ethiopia's approach integrates licensing, taxation, environmental management, and social responsibility into a coherent and enforceable structure, making it a valuable model for reform in countries like Nigeria.

It must be noted however, that Nigeria's constitutional power-sharing arrangement which vests the regulation of the mining sector within the exclusive legislative competence of

[76] The Ministry of Mines and Petroleum, Ethiopia, 'Artisanal and Small Scale Ming (ASM) Legislation and Regulatiions - MoM' (*MoM*2020) <http://www.mom.gov.et/index.php/artisanal-and-small-scale-mining/artisanal-mining-asm-legislation-regulations/ > accessed 21 June 2025.
[77] ibid.
[78] ibid.

the federal government[79] could be a challenge to the replication of the Ethiopian decentralised model. Nonetheless, meaningful implementation of reforms by relevant federal ministries, coupled with strategic collaboration from state and local governments, remains both feasible and essential for improving governance and regulatory oversight in the sector.

4.2. Enhancing Formalisation and Regulatory Compliance

To move from reactive regulation to proactive oversight, Nigeria must adopt a national ASM formalisation strategy, inspired by Ethiopia's success. Ethiopia's licensing model includes streamlined permit procedures, technical and financial support for miners, and the use of government-approved mineral buying centres to prevent smuggling and ensure fair pricing.[80] Nigeria can adopt a similar system by expanding its network of licensed Mineral Buying Centres (MBCs) and linking them to a centralised, government-designated buyer or commercial bank.

Formalisation should also involve simplifying and expediting the registration of ASM cooperatives, supported by the ASM Department of the Ministry of Solid Minerals Development (MSMD). ASMs must be provided with equipment, technical training, and safety tools, particularly through leasing arrangements, to bridge existing gaps in capital and skills. A 2023 study co-led by the RMAFC, UNDP, and OSSAP-SDGs underscores the value of this approach. It found that pilot formalisation in Plateau State led to productivity gains of up to 85%, and recommended replicating such models nationwide.[81] Importantly, state and local governments must be empowered not just in licensing but also in advocacy, monitoring, and revenue tracking.

4.3. Integrating Environmental and Social Policies

Environmental sustainability must be embedded into mining governance through robust environmental and social protocols. Nigeria should adopt community-based environmental monitoring, strengthened extension services, and integrated use of

[79] Item 39 Exclusive Legislative List.
[80] (n 68).
[81] (n 52).

technology such as Geographic Information Systems (GIS) to track impacts. Drawing from Ethiopia's model, environmental standards should be tied to infrastructure investment and economic transformation strategies, ensuring high compliance.

The federal government must also implement environmental protection protocols tailored to local contexts and promote participatory environmental governance involving host communities. These should be supported by NESREA in collaboration with state environmental agencies.

4.4. Promoting Sustainable Mining Practices

The promotion of sustainable mining practices is key to eradicating environmental degradation in the solid minerals mining sector.[82] This can be achieved in a myriad of ways. Since the mining sector is dominated by the informal sector, the government can create incentives for private investors, and foreign companies to invest in the solid minerals mining sector in order to enlarge the formal sector. Companies cannot operate outside the regulatory environment. This will create an avenue for regulatory agencies to have more control, and oversight over mining operations, thereby promoting sustainable mining practices. Partnerships with the states, and local governments will also help in capturing illegal miners, and discovery of harmful mining practices.

Technology can also be harnessed in preventing environmental degradations, and promoting sustainable practices.[83] For instance, the government can invest in the use of Geographic Information System (GIS) as a decision support tool for environmental management, for tracking solid minerals, and the environmental implications of mining operations[84].

Also, the existing system of formalising small-scale and artisanal mining, through the grant of leases to the participants, and establishment of buying centres should be aggressively implemented, and enforced across board. Thus, with public enlightenment,

[82] Violet Aigbokhaevbo, 'Combating Environmental Crimes in Nigeria: A Daunting Uncertainty' (2011). *NIALS Journal of Environmental Law*. Vol. 1 2011: 200-229.
[83] (n 8).
[84] ibid.

the government can provide incentives for miners in this sector to voluntarily subscribe to the scheme. Implementing all these will not only save resource-rich communities, it will save the environment, the climate, and human lives from the catastrophic effects of prolonged unsustainable mining practices.

4.5. **Improving Governance, Transparency, and Public Engagement**

Regulatory agencies must strengthen inter-agency coordination, enforce stricter licensing compliance, and establish clear reporting lines. Shed operators should be mandated to source minerals only from registered cooperatives, while security agencies should be empowered to combat mineral smuggling through verified checkpoints.

Ongoing sensitisation campaigns should be conducted in collaboration with local councils to educate miners about the benefits of formalisation, environmental safeguards, and regulatory obligations. NEITI, under its 2022–2026 Strategic Plan, should operationalise its proposed ASM study and use the findings to develop ESG-based metrics specific to ASM operations. This will help close accountability gaps and align Nigeria's extractive governance with international transparency standards.

Ultimately, the success of any regulatory reform in Nigeria's ASM sector will depend not only on the robustness of the legal framework but also on the political will to enforce it, the inclusiveness of its implementation, and the commitment to safeguarding both human and environmental well-being. Only through coordinated, accountable, and people-centred action can Nigeria realise the full developmental potential of its solid minerals sector.

5.0. Conclusion

Nigeria's legal framework for regulating environmental degradation in the solid minerals mining sector, though comprehensive in theory, fails in practice due to weak enforcement, vague legislative provisions, and the dominance of informal mining activities. This article has shown that while there are numerous laws and institutions intended to address environmental risks, they remain largely ineffective because of

systemic implementation gaps and an over-centralised regulatory structure. To achieve meaningful reform, Nigeria must take bold steps to make environmental rights justiciable under the Constitution, revise its mining legislation to reflect the realities of ASM, and adopt more decentralised and inclusive regulatory models, as seen in Ethiopia. Additionally, increased investment in formalisation schemes, environmental monitoring, community participation, and gender- and child-protection mechanisms is critical. A proactive and collaborative multisectoral approach, grounded in legal accountability and guided by the SDGs, offers Nigeria a realistic path forward. Only then can the country shift from reactive mitigation to preventive governance, securing both its environmental future and the rights of its most vulnerable communities.

ASSESSMENT OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR ELECTRICITY GOVERNANCE AND CONSUMER PROTECTION IN NIGERIA

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Abstract

Constant electricity power supply is a major requirement for economic development of any country as it earns a high premium in enhancing the quality of life of the citizens. Over the years, Nigerians have endured electricity outages, notwithstanding attempts by successive administrations to regulate the power sector. Electricity supply has been underwhelming, with national grid breakdowns and system shutdowns becoming the new normal. The players in the sector have not been able to meet the nation's growing demand for electricity for decades. Adopting the doctrinal research methodology, this article argued that despite Nigeria's seeming abundance of natural resources, the country's power sector is fraught with challenges, such as high tariff, inadequate consumer protection, financial incapacity, deficient regulatory framework, inadequate infrastructure, etc. The article also argued that the potential for economic growth is strictly inhibited by unreliable electricity supply, due to the gap between demand and supply. It found that most electricity consumers, particularly the low incomed are not conscious of their legal rights and the available mechanisms for redress. It also found that the Electricity Act (EA) 2023 aimed to arouse measures to improve power generation, transmission, and distribution capacity of the relevant players in the electricity industry, as well as provide for up-to-date standards in fast-tracking power generation by broadening the power sector to embrace renewable energy sources for sustainable energy transition. The article concluded that despite the provisions of the EA for facilitating public, private partnerships (PPPs), there is still the need for further improvements in the regulation to tackle Nigeria's tenacious electricity issues that supports the country's economy outside oil and industrial sector.

Keywords: Legal Framework, Electricity, Governance, Consumer, Protection, Nigeria

1.1 Introduction

Nigeria has had a long-standing problem of epileptic power supply, despite years of structural reforms and investments by succeeding governments to achieve stability. Electricity supply has been underwhelming, with national grid breakdowns and system shutdowns became the new normal. The players in the sector have not been able to meet the nation's growing demand for electricity for decades, with problems of profitability, regulatory uncertainty, liquidity, and policy enforcement plaguing the sector. The latest framework introduced to achieve the nation's power reform objectives is the Electricity Act (EA) 2023, which provides a much-needed comprehensive framework for the operation of a fully decentralized and privatized, competitive, and renewable energy-focused electricity market in Nigeria.[1]

Electricity reform in Nigeria started in 1999, followed by the National Electric Power Policy (NEPP) of 2001 and the Electricity Power Sector Reform (EPSR) Act,[2] both stating the necessity for denationalizing the sector. The reform commenced with the passage of the Public Enterprises (Privatisation and Commercialization) Act,[3] along with the formation of the Technical Committee for Privatisation and Commercialization (TCPC). In addition, the Public Enterprises (Privatisation and Commercialization) Act created the National Council on Privatisation (NCP) with the mandate to make policies regarding privatization-related matters. The Act also created the Bureau for Public Enterprises (BPE) to serve as technical operator. The restructuring aims at the liberalization, corporatization, commercialization, and unbundling of successor companies. To this end, the Power Holding Company of Nigeria (PHCN) was created as

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[1] Jonah Kings, 'Evaluating the Landscape of Electricity Regulation in Nigeria: An In-Depth Analysis of the Electricity Act 2023 and Its Pivotal Reforms in the Power Sector' (October 18, 2023). SSRN < https://ssrn.com/abstract=4613516 <http://dx.doi.org/10.2139/ssrn.4613516> accessed 4 December 2024.
[2] Cap. P10, LFN 2005
[3] No. 25, Cap. 369, LFN 1999

a holding company. Subsequently, generation companies (GENCOs) and distribution companies (DISCOs) were sold to investors to facilitate a competitive electricity market[4] that would enhance stable power supply in the country.

Despite the privatisation and unbundling of the GENCOs and DISCOs, the country continues to experience daily power outages lasting several hours. Thus, stable electricity supply remains a mirage with electricity consumers relying largely on self-generated power supply.[5] In addition, Nigeria's electricity infrastructure is largely characterized by an unstable grid and outdated systems that requires logistics to preserve the lights.[6] Moreso, where electricity consumer rights are breached, they are not satisfactorily addressed. The electricity consumer have no power to rescind the contract with supplier and not entitled to compensation in the event of breach.[7] This paper assesses the legal and institutional framework of electricity governance and consumer protection with a focus on the challenges and opportunities for Nigeria.

2.1 Conceptual Clarifications

2.1.1 Electricity Governance

Electricity governance is based on the idea that strong governance is essential for a stable and efficient electricity system. Strong governance can help to reduce electricity emissions by ensuring that policies are consistent and that new investments are made, control corruption and theft in the electricity sector, mitigate the impact of political

[4] Unbundling of the Power Holding Company of Nigeria (PHCN) into six (6) Generation Companies (GENCOs), eleven (11) Distribution Companies (DISCOs) and the Transmission Company of Nigeria (TCN). See U. A. Dubagari, 'Privatization of Nigeria's Power Sector from the Perspectives of the General Agreement on Trade in Services (GATs)' IOSR Journal of Humanity and Social Science (2018) 23 (1) 16 - 30

[5] Aguda Olukayode Olalekan, 'Constitutional and Institutional Governance of Electricity Sector in Nigeria' *Journal of Energy Research and Reviews* (2023) 14 (4) 32-44.

[6] Ibid.

[7] Jacon Out Enyia and Njong Cleverty Afu, 'Legal and Institutional Framework for the Protection of Electricity Consumer Protection in Nigeria: An Appraisal' Academy of Strategic Management Journal (2025) (22) (1) 1 - 13

shocks on the electricity sector, improve energy access for the poor and reduce electricity prices in the long term. [8]

It is the process of making and implementing policies to manage the electricity sector. It involves the role of various groups in society, including governments, civil society, and private sector actors. The goal of electricity governance is to ensure that the electricity sector perform its functions in the context of the wider socio-economic system. Electricity governance hitches happen when electricity consumers are inadequately represented in the planning process, policy making, regulation, and dispute settlement processes, thus twisting their benefits. [9]

2.1.2 Consumer Protection

Consumer protection halts unfair, misleading, and fraudulent business practices by gathering information from consumers and conducting investigations, instituting legal actions against firms or individuals that breaches the law, developing guidelines to sustain an equitable market, and enlightening consumers and companies on their rights and obligations.[10] It protects the well-being and welfare of consumers through education, mobilization, and representation. It ensures that consumers make up-to-date decisions about their choices and have access to effective dispute settlement mechanisms. It also advocates for companies to give assurance regarding the quality of the goods and services they offer. Consumer associations play significant part in raising awareness and reaching out to the consumers.[11]

[8] Shashmir Janjua, Muhammad Umar Ali, Karam Dad Kallu, et al, 'The Game-Theory for Electric Power Distribution During Power Shortage: A Case Study of Pakistan' (2021) <https://www.mdpi.com/2076-3417/11/11/5084> accessed 15 December 2024.

[9] Elsa Barazza, Pei-Hao Li and Neil Strachan, 'Modelling Governance for a Successful Electricity Sector Decarbonization' Energy Research and Social Science (2023) 104 <https://www.sciencedirect.com/science/article/pii/S2214629623003006> accessed 15 December 2025

[10] Federal Trade Commission, 'Bureau of Consumer Protection' (2024) <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection> accessed 15 December 2024.

[11] ACCP, 'Consumer Protection' (2023) <https://www.aseanconsumer.org/cterms-consumer-protection> accessed 16 December 2024

2.1.3 Fair Competition

Fair competition implies a level playing field where all businesses can compete based on their abilities, innovation, and customer value, rather than external factors like wealth, power, or manipulation. [12] Fair trade entails that all competitors should have access to the same resources, information, and technology. Barriers to entry and exit should be minimal, allowing new businesses to compete and existing ones to adapt. Businesses should avoid predatory pricing, misleading advertising, or other practices that harm competitors or consumers. Fair competition leads to better products, lower prices, and more choices for consumers. Fair competition ensures that businesses of all sizes have a chance to succeed based on their merits.[13]

2.1.4 Market Manipulation

Manipulations are acts that infringes the process for guidelines of the electricity market approved by legislation and poses an increased public danger. It is determined by the actions of an individual(s) that disrupt the operations of the wholesale electricity market.[14] Manipulation in electricity governance manifests as systemic inefficiencies, poor corporate governance, and corruption within the power sector, hindering value creation and economic development. Weak regulatory frameworks, incomplete privatization, and a lack of investment in infrastructure[15] as well as influencing the behaviour of the electricity market are key drivers of these issues. Market manipulation is often difficult for market regulators to notice, given that numerous variables affect the price movement of electricity, some of which may not even be adequately measured.[16]

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[12] Bester Keldon, 'Fair Competition for an Evolving Economy' (CIGI Papers, No. 284) <https://www.econstor.eu/bitstream/10419/299981/1/no284.pdf> accessed 25 June 2025

[13] Ibid

[14] Iryna Botnarenko and Valentyna Kyzhna, 'Energy Market Manipulation: Criminal Law Analysis and Signs' (ResearchGate 2023) <https://www.researchgate.net/publication/374302746_Energy_market_manipulation_Criminal_law_analysis_and_signs> accessed 28 July 2025

[15] Adam Hayes, 'Manipulation: Definition, Methods, Types and Example' (Investopedia 2024) <https://www.investopedia.com/terms/m/manipulation.asp> accessed 30 May 2025

[16] CTI Team, 'Market Manipulation' (2024) < https://corporatefinanceinstitute.com/resources/career-map/sell-side/capital-markets/market-manipulation/> accessed 30 May 2025

2.1.5 Subsidies

A subsidy is a form of financial assistance, usually from a government, given to individuals, businesses, or other organizations to encourage certain activities or support specific sectors of the economy. Essentially, it is a way for the government to lower costs for consumers or producers, often to keep prices low or to stimulate economic activity. Subsidies are typically monetary payments or tax breaks. While other organizations can provide subsidies, they are most associated with government actions. Subsidies aim to encourage specific behaviours, like investing in a particular industry, consuming certain goods, or services, or promoting certain social objectives.[17]

Subsidies can lower the cost of goods or services, making them more affordable for consumers or reducing production costs for businesses. It can be seen as a form of market intervention, as they can distort prices and impact supply and demand. For example, payments to farmers to support food production and stabilize prices, and payments to encourage businesses to locate in certain areas or to invest in specific technologies.[18] The potential effect of subsidy is that lower prices can lead to higher demand and greater production of subsidized goods or services. It can also create inefficiencies in the market by artificially lowering prices and affecting competition. Subsidies can increase government spending and contribute to national debt, as well as incentivize businesses to lobby for continued or increased subsidies, rather than focusing on efficiency and innovation. [19]

Basically, electricity governance in Nigeria involves the NERC setting standards and ensuring market efficiency, while consumer protection focuses on rights to safe supply, metering, fair billing, and effective complaint resolution through a multi-tiered system including DISCOs and NERC. Key deductions from the concepts are the mandated metering of new connections, the right to written disconnection notices and refunds for

[17] Ronald P. Steenbilik, 'A Note on the Concept of Subsidy' Energy Policy (1995) (23) (16) 483 - 484
[18] Gordon Scott, 'Understanding Government Subsidies: Types, Benefits and Drawbacks' (Investopedia 2025) < https://www.investopedia.com/terms/s/subsidy.asp> accessed 15 December 2025
[19] Ronald P. Steenbilik, (n. 17)

overbilling, and the responsibility of distribution companies to handle complaints within specific timelines before escalation to the NERC.

2.2 Theoretical Framework

This research adopted two theories: the game theory and the stakeholder theory. These are discussed below.

2.2.1 Game Theory

The game theory is used in the optimization of the management of electricity distribution, the approach of electricity procurement, response to the requirements of business and residential electricity consumers and guaranteeing network communication. The application of game theory, in addition to typical gaming behaviour of the current electricity demand side, as well as its application mostly in three parts: distributed electricity users, high-electricity users, and medium- and low-electricity users is important in contemporary power systems.[20]

Due to the rapid advancement of the smart grid and the improvements of the electricity system, demand-side users can contribute to the partnership of the electricity system, with access to public buying of electricity and the power to sell. The demand side of the smart grid and the open electricity market affords users with more choices, and the game theory is likely to be an imperative instrument for the optimization of multi-stakeholder decision-making and resolving numerous difficulties. A key challenge is the allocation of inadequate power supply amongst users with competing needs amidst the demand-supply gap. The allocation of power in short supply is considered as a game-theoretic bankruptcy problem.[21]

[20] Kifayat Ullah, Muhammad Ishaq, Nimrah Fatima Hussain, et al, 'Application of Game Theory in Modern Electric Power System (A Review)' AIP Publishing (2024) (14) (1) <https://pubs.aip.org/aip/adv/article/14/1/010701/2933318/Application-of-game-theory-in-modern-electrical> accessed 15 December 2024

[21] ibid

2.2.2 Stake Holder Theory

The stakeholder theory explains how organizations consider stakeholder interest. It deals with those who are affected by the actions of the company and the influence on a company's business goals. It categorizes stakeholders into three: namely, real stakeholder, stakewatchers and stake keepers.[22] The first category has a tangible stake in the firm and enjoys genuine entitlement, authority, and influence, and the firm is responsible to them. The second category does not have a stake in real terms, but act as representatives or mediators protecting the interests of the first set. They include diverse organisations that shelter customers' rights, the environment, and shareholders, acting as watchdogs. Thus, the representations of the interests of the first category are the basis of their authority. The company has no moral obligation to protect their interest, since they hold power over it. The third category are autonomous regulators such as the governments, courts, and regulatory agencies with no stake in the firm but wield some degree of control and regulate the activities of the firm. They act as gatekeepers, independent of the firm but can indirectly impose duties. The company owes no obligation to them.[23]

The theory presupposes that people supports a firm when they receive value in return, particularly in sustainable ventures and activities. Thus, the incorporation of Community Service (CS) traits in the product is an acknowledgement of the role of the stakeholders in the product development. Consumers are more likely to buy a firm's products or services if it is committed to addressing environmental, social and governance (ESG) issues.[24] The theory labels the composition of a firm as an assembly of numerous individual groups with diverse interests. These interests, put together, characterize the

[22] Mathias Nnadi and Philip Edwin Mutyaba, 'The Moderating Effects of Corporate Sustainability Attributes of Products on the Financial Performance of Firms' (Science Direct 2023) <https://www.sciencedirect.com/topics/social-sciences/stakeholder-theory> accessed 4 December 2024.
[23] ibid
[24] ibid

will of the firm. Essentially, corporate decisions should contemplate the benefits of these collective groups and improve general collaboration.[25]

3.1 Legal Framework

This section examines the legal regime for electricity governance and consumer protection in Nigeria. The following outlines the various streams of laws that underpin electricity governance and consumer protection in Nigeria.

3.1.1 Constitution of the Federal Republic of Nigeria 1999

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 is the ground norm and any law that is not inconsonance with its provision is null and void to the extent of such inconsistency. This means that Acts and Laws made by National and State Legislatures must align with and not deviate from or be inconsistent with any provision of the Constitution. On the issue of electricity governance and consumer protection, the CFRN 1999[26] provides that the Federal High Court has the exclusive jurisdiction to entertain any action brought under the Electricity Act.

3.1.2 Electricity Act (EA)

A core objective of the Electricity Act (EA)[27] is to provide all-inclusive policy that recognizes all sources for the generation, transmission, and distribution of electricity, including the incorporation of renewable energy into Nigeria's energy mix. It repeals the EPSRA 2005 and recognizes the lawmaking powers of states and identifies the difference between electricity supply and distribution. The Act guides the operation of the electricity market and seeks to inspire policies to attract investment across the electricity value chain to foster a competitive electricity market in Nigeria.[28] It provides a much-needed

[25] Robert C. Kelly, 'Agency Theory Vs. Stakeholder Theory: An Overview' (2023) <https://www.investopedia.com/ask/answers/031615/whats-difference-between-agency-theory-and-stakeholder-theory.asp> 5 December 2024.
[26] S. 251 (10)
[27] 2023
[28] Emeka Ezekwesiri, Favour Ogini and Iyanuoluwa Adeyemo, 'A Review of the Electricity Act, 2023 – Impact and Major Issues Arising' (SSRN 2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4560855> accessed 26 December 2024

comprehensive framework for the operation of a fully decentralized and privatized, competitive, and renewable energy-focused electricity market in Nigeria.[29]

The Act further allows for a deep-rooted power generation, hybridized generation, co-generation, and the generation of electricity from renewable sources such as solar energy, wind, small hydropower, biomass, and other renewable sources.[30] It also repeals the following Acts: The Hydroelectric Power Producing Areas Development Commission (Establishment, Etc.) Act,[31] and the Nigerian Electricity Management Services Agency (Establishment) Act.[32] The objective, amongst others, is to introduce innovative strategies and regulatory procedures that addresses some of the constraints bedeviling the sector to attain a self-sustaining, lucrative, and satisfactory industry.[33]

3.1.3 Nigerian Electricity Management Services Agency (NEMSA) Act

Subject to the provisions of the Nigerian Electricity Management Services Agency (NEMSA) Act,[34] NEMSA performs the following functions, among others: electrical inspection for the NESI, enforcement of statutory technical standards and guidelines; in particular, but not limited to Electrical Installation Regulations[35] and Electricity Supply Regulations,[36] ensures that key electrical equipment used in Nigeria are of precise quality and standards, specifies standards to electrical plants, electric lines and connectivity to the grid and safety requirements for construction, operation and maintenance of electrical power plants, transmissions systems, distribution networks and electric lines, and test, certifies electrical installations in hazardous locations such as in filling stations,

[29] Kings Jonah, 'Evaluating the Landscape of Electricity Regulation in Nigeria: An In-Depth Analysis of the Electricity Act 2023 and Its Pivotal Reforms in the Power Sector' (SSRN 2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4613516 > accessed 26 December 2024

[30] Eruvwun Juweto, 'A Review of the Nigerian Electricity Act, 2023' (2023) <https://www.linkedin.com/pulse/review-nigerian-electricity-act-2023-eruvwun-juweto/> 27 December 2024

[31] No. 7 of 2010, (Amendment) Act 2018, and 2015

[32] 2015

[33] KPMG, 'Commentaries on the Electricity Act, 2023' (2023) <https://kpmg.com/ng/en/home/insights/2023/06/commentaries-on-the-electricity-act--2023.html> accessed 26 December 2024

[34] 2015

[35] No S. 5 of 1996

[36] No1. S.1 6 of 1996

prospecting oil companies, off and onshore flow stations/wells, floating production and offloading (FPSO) vessels, etc and discharge such other functions as may be provided under the Act or conferred by government directives. [37]

3.1.4 Environmental Impact Assessment Act

The Environmental Impact Assessment (EIA) Act[38] is the law that establishes regulations for environmental assessments. The EIA Act ensures that probable scientific and socio-economic effects of all novel manufacturing projects are assessed before the start of the project.[39] The Act helps to ensure that electricity business is carried out responsibly. The goal is to minimize negative environmental impacts and, where possible, enhance the benefits of electricity generation, transmission, and distribution.[40]

3.1.5 Federal Competition and Consumer Protection Commission (FCCPC) Act

The purpose of the FCCPC Act is to remove monopolies and market dominance, alongside protecting the rights of Nigerian consumers. Importantly, the FCCPC Act repeals the Consumer Protection Council Act.[41] It establishes the FCCPC which administers the provisions of the Act. It also establishes the Competition and Consumer Protection Tribunal (CCPT) to adjudicate offences and disputes.[42] The objective of the FCCPC Act is to prohibit unfair commercial practices that promotes fair competition in Nigeria. To fulfill this duty, the Act empowers the FCCPC is to conduct investigations or inquiries considered essential or desirable on any matter under the purview of the Act. Essentially, investigations, search and seizure operations, and market inquiries are

[37] KPMG, (n. 33)
[38] Cap E12, LFN 2004.
[39] Victor Nonso Enebeli and David Chibuike Njoku, 'The legal Framework of environmental Impact Governance in Nigeria' (ResearchGate 2023) <https://www.researchgate.net/publication/371567321_THE_LEGAL_FRAMEWORK_OF_ENVIRONMENTAL_IMPACT_GOVERNANCE_IN_NIGERIA> accessed 7 December 2024.
[40] Ozioma Agu and Kolajo Onasoga, 'Environment Impact Assessment in Infrastructure Development: Legal Framework, and Contribution to Sustainable Development in Nigeria' (Mondaq 2024) <https://www.mondaq.com/nigeria/waste-management/1521564/environmental-impact-assessment-in-infrastructure-development-legal-framework-and-contribution-to-sustainable-development-in-nigeria> accessed 7 December 2024.
[41] S. 165 FCCPA 2019
[42] S. 39 (2)

popular tools used by competition agencies in their competition law enforcement regimes.[43]

3.1.6 Renewable Energy Policies

The Electricity Act supports the expansion and use of renewable energy and stipulates procedures to be deployed to intensify its role to the Nigeria's energy mix.[44] The NERC is authorized to acknowledge renewable energy as one of the sources of energy in Nigeria. This implies that market rules and grid code are imminent in addressing tariff, infrastructure, and the seeming demand and supply challenges facing the incorporation of renewable energy into the Nigeria's energy mix. In addition, the EA authorizes the Ministry of Finance to introduce tax incentives that may be essential to encourage the production and consumption of renewable energy or such other economic policies that would motivate the operation of renewable energy projects in Nigeria.[45]

3.1.7 National Electricity Power Policy

The Electricity Act[46] mandates the Ministry of Power to publish a National Integrated Electricity Policy, and Strategic Implementation Plan (NIEPSIP) in the Federal Government Gazette to guide the general expansion of the electric power sector in Nigeria, within one year from the commencement of the Act. Once issued, all development projects in the electricity sector are expected to confirm with NIEPSIP policy. The NIEPSIP is to incorporate aspects, including the use of both renewable and non-renewable sources for power generation, transmission, distribution, and supply, electricity infrastructure, rural electrification, PPPs, waivers and subsidies and the general development of the electricity value chain in Nigeria.[47]

[43] S. 17 (e)
[44] S. 164
[45] S. 166
[46] S. 3
[47] Ozioma Agu and Kolajo Onasoga (n. 40)

3.1.8 Consumer Protection Regulation (CPR)

The Consumer Protection Regulation (CPR)[48] is made by the NERC pursuant to its powers under the EA. The CPR is a subordinate regulation of the EA 2023, which repeals multitude of former regulations that deal with the consumer protection framework in Nigeria's electricity supply industry. It provides for consumer grievances management measures, meter reading and billing, cash collections and credit management, connection and disconnection, customer service standards, etc. It also provides for dispute resolution mechanisms for electricity consumers.[49]

3.1.9 Meter Asset Provider and National Mass Metering Regulations 2021

The Meter Asset Provider and National Mass Metering Regulations 2021 was passed by the NERC, the objective is to intensify meter deployment, encourage domestic meter production, and job creation in the domestic meter value chain. It is the framework that combines the Meter Asset Providers (MAP) Regulation, 2018, and the National Mass Metering Policy **(**NMMP**)** with the aim of closing metering gap via a fast-tracked rollout of meters; getting rid of the widespread practice of projected billing system, attract private investment in the provision of meters/ metering services and improve revenue at the retail end of the NESI. [50]

3.2 Institutional Framework

Various institutions are involved in the implementation and enforcement of electricity governance and consumer protection in Nigeria. Therefore, some of these institutions are discussed below.

[48] 2023

[49] Abdulsalam Abbas, 'Navigating Electricity Consumer Disputes in Nigeria: A Legal Perspective' (2024) <https://abdu-salaamabbasandco.com/navigating-electricity-consumer-disputes-in-nigeria-a-legal-perspective/> accessed 27 December 2024

[50] Chinenye Ajayi, 'Understanding the Nigerian Electricity Regulatory Commission's Meter Asset Provider and National Mass Metering Regulations, 2021' (2021) <https://www.linkedin.com/pulse/understanding-nigerian-electricity-regulatory-meter-asset-ajayi/> accessed 29 December 2024

3.2.1 Nigerian Electricity Regulation Commission (NERC)

The EA mandates the NERC to review the National Content Development Regulations concerning the power sector to address the local content requirements for home-grown skills acquisition, manufacturing, and assembling of solar PV components, deep cycle batteries, electro-mechanical components of Small Hydropower (SHP) technology, wind power, boilers, and turbines for co-generation of less than 30 megawatts. The Act also mandates the NERC to ensure steady and favourable pricing mechanisms for renewable energy and to simplify access to the national grid and distribution network.[51]

3.2.2 Nigerian Bulk Electricity Trading Plc

The EA establishes the Nigeria Bulk Electricity Trading Company (NBET), which holds license for the bulk buying and selling of electricity and subsidiary services.[52] It directs the NBET not to enter such agreements and novate its existing contractual rights and obligations to other licensees.[53] In addition, the EA empowers the NERC to issue trading licences authorising the trading licensee to enter a contract with the NBET, including DISCOs for the buying and selling of electricity and ancillary services.[54]

3.2.3 Nigerian Electricity Supply Industries (NESI)

To ensure consistency, the EA establishes all the regulatory agencies in a single legislation. It is a conscious effort by the government to unify and manage the NESI under a single legislative framework. In addition, the EA presents a description of the journey so far in deregulating the NESI for optimum performance. The EA is a well-thought-out legislation given the detailed areas of reform which will go a long way to advance the general investment base of the NESI through improved private-sector involvement.[55]

[51] S. 164
[52] S. 6 (f)
[53] S. 7 (2)
[54] S. 7 (2)
[55] Ibid

3.2.4 Nigerian Electricity Management Services Agency (NEMSA)

The Nigerian Electricity Management Services Agency (NEMSA) Act[56] establishes the NEMSA to take over the management of the Electricity Management Services Limited (EMSL). It also establishes a governing Board with the responsibility to manage the affairs of the board, provide policy guidelines for discharging the functions of the Board, approve the payment to staff (remunerations and allowances), approve appointments, promotions, and discipline of management staff and do such things that are related for efficient performance of it functions.[57]

3.2.5 Rural Electrification Agency (REA)

The EPSRA created the Rural Electrification Agency (REA) in 2006 to ease the delivery of cheap power supply for residential, commercial, industrial, and social activities in the rural and peri-urban areas of the country. Hitherto, REA focused on grid extension investments but shifted to providing off-grid solutions to rural dwellers such as mini-grids and solar home systems. It aims to encourage private sector involvement in rural development through the country's ample renewable energy sources while ensuring that Government agencies, co-operatives, and communities are actively participate in the electricity value chain.[58] REA's functions include the promotion of rural electrification, coordination of rural electrification programs, and the administration of Rural Electrification Fund (REF) to encourage, support, and deliver rural electrification through PPPs in Nigeria.[59]

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[56] S. 1 (3)

[57] Oyinda Omisore, 'Overview: Nigerian Electricity Management Authority (NEMSA) Act' (BusinessDay 2015) <https://businessday.ng/energy/power/article/overview-nigerian-electricity-management-services-authority-nemsa-act/> accessed 27 December 2024

[58] EnergyData.Info, 'Nigerian Rural Electrification Agency' (2024) <https://energydata.info/organization/about/nigerian-rural-electrification-agency> accessed 27 December 2024

[59] REA, 'Rural electrification agency of Nigeria' (2023) <https://www.linkedin.com/company/rural-electrification-agency-of-nigeria/about/> accessed 26 December 2024

3.2.6 Energy Commission of Nigeria (ECN)

The Energy Commission of Nigeria (ECN), established under the Enabling Act[60] became operational in 1989 as the result of the meeting of the Heads of ECOWAS on 29th May 1982 in Cotonou, Benin Republic. Member States agreed to establish an institution within the machinery of government to coordinate and supervise all energy functions and activities within each Member State to be called the Energy Commission.[61]

3.2.7 Federal Ministry of Power

The Federal Ministry of Power (FMP) is the policy-making arm of the Government with the obligation to provide power in the country. In discharging its functions, the ministry is governed by the requirements of the NEPP of 2001, the EPSRA of 2005, the Roadmap for Power Sector Reform of 2010, and the EA 2023.[62] Some agencies, such as the REA, EMSL, and National Power Training Institute of Nigeria (NAPTIN) are affiliated to the ministry. It also oversees the activities of the NERC.[63]

3.2.8 Federal Competition and Consumer Protection Commission (FCCPC)

The FCCPC is an establishment of the Government accountable for the promotion and protection of consumers' the interest in Nigeria. Its mandates include, inform consumers; to eradicate harmful goods from the market and to ensure that goods and services conform with mandatory standards and to receive, intermediate, and provide redress to consumer grievances.[64]

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[60] No. 62 of 1979 as amended by Act No. 32 of 1988 and Act No. 19 of 1989

[61] ECN, 'Energy Commission of Nigeria' < https://energy.gov.ng/> accessed 4 December 2024. (see for Official Journal of ECOWAS, Protocols, Decisions & Directives (1982) (4) 50

[62] FMP, 'Federal Ministry of Power' <https://power.gov.ng/> accessed 4 December 2024.

[63] Charlotte Remteng, Muhammad Bello Suleiman, Chiamaka Maureen Asoegwu and Chysom Nnaemeka, 'Policy and regulatory Framework for Energy in Nigeria' (Energypedia 2023) <https://energypedia.info/wiki/Policy_and_Regulatory_Framework_for_Energy_in_Nigeria> accessed 27 December 2024

[64] CPC, 'Federal Competition and Protection Commission' <https://www.consumersinternational.org/members/members/federal-competition-and-consumer-protection-commission/> accessed 5 December 2024.

3.2.9 Bureau of Public Enterprises (BPE)

In line with provisions of the EPSRA, the BPE is the key stockholder of the NBET Plc established in 2010. It holds a trading license and partakes in bulk buying and selling of electricity and subsidiary services from independent power producers and the successor GENCOs. BPE is task with the formulation of new policy, establishment of a new regulatory framework, operational changes, and institutional functions to the sector. Its central task is to be the main driver of Nigeria's economic transformation program.[65]

Nigeria's electricity governance framework, especially with the new EA has institutions like the NERC focused on regulation and consumer protection, but faces challenges such as overlapping mandates, inadequate enforcement, low tariff collections, and a general lack of awareness among consumers. The Act aims to modernize the grid with technology like Supervisory Control and Data Acquisition (SCADA) and promote investor-friendly practices, yet potential constitutional issues arise from states managing their own tariffs alongside NERC regulation. Addressing these gaps requires stronger judicial activism, enhanced stakeholder collaboration, and more effective institutional support to ensure sector viability and reliable, affordable electricity for consumers.

4.1 Challenges

4.1.1 Metering Gaps

The recurrent issue of insufficient metering by DISCOs, leaving over seven million electricity consumers without meters is one major challenge haunting the NESI. NERC has issued series of regulations, and directives aimed at improving proficiency and consistency within the NESI. It issued an Order on the Operationalization of Tranche A of the Meter Acquisition Fund (the Order) on June 24, 2024, aimed at addressing the metering gap facing the NESI. However, the regulatory measures have not been adequate to cover the national metering gap.[66] In the case of *Ibadan Electricity Distribution*

[65] Ibid
[66] Segun Olabode, Olwasewun Akeem Abayomi, et al, 'Innovative Policies: An Assessment of the Nigeria Electric Power Sector' International Journal of Scientific and Engineering Research (2020) 11 (12) 1142 - 1149

Company Plc (IBEDC) & 7 Ors. v Nigerian Electricity Regulatory Commission (NERC),[67] the court ruled in favour of IBEDC, when it held that NERC exceeded the limit of its statutory authority by issuing Regulation 18 of the Electricity Industry (Enforcement) Regulations, 2014, because the Regulation purportedly empowers the NERC to alter the Board composition and management of Nigerian power sector licensees; a right reserved by statute for shareholders.

4.1.2 Poor Implementation of Consumer Protection

The electricity sector in Nigeria has been bedeviled with consumer protection challenges ranging from inaccurate billings to poor customer care that stems from general incompetence and a disturbing culture of impunity of some service providers.[68] In addition, most electricity consumers had reported unsatisfactory resolution of their complaints with their electricity suppliers. Moreso, lack of awareness and loss of public trust in the effective management of the electricity value chain, have prevented the quest for consumer protection in Nigeria. This situation has led to recourse to self-help, such as, assaults on electricity power employees, unlawful reconnections after authorized disconnection, etc, in the execution of consumer rights.[69] This situation highlights the unsatisfying nature of consumers' rights and protection in Nigeria as provided by the EA and FCCPA. However, the rights of electricity consumers to the provision of stable, reliable, accessible, and affordable electricity supply must essentially be a priority for the government.[70]

4.1.3 Infrastructural Deficits

Infrastructural shortfalls hinder the power sector's capacity to meet the increasing demand of electricity consumers. The sector is characterized by outdated equipment, insufficient

[67] (Suit No. FHC/ABJ/CS/665/2018)

[68] Jennifer Inah, 'FCCPC to Enforce Consumer Protection Regulations in Electricity Sector' (2024) <FCCPC to Enforce Consumer Protection Regulations in Electricity Sector> accessed 27 December 2024

[69] Onyi Iyizoba, 'Rights of an Electricity Consumer in Nigeria' (2021) <https://businessday.ng/energy/article/rights-of-an-electricity-consumer-in-nigeria/> accessed 26 December 2024

[70] Balogun Sofiyullahi, 'Rights of Electricity Consumers and Regulatory Framework for Consumer Protection Under Electricity Law in Nigeria' (SSRN 2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3637554> accessed 27 December 2024

gas supply, and poor transmission capacity resulting in recurrent grid failures and undependable electricity supply. In addition, poor infrastructural maintenance culture resulting in an unproductive transmission network is another challenge facing the power sector. Thus, the numerous failures of the national grid, outdated equipment, and lack of capacity to transmit electricity exposes that investment, maintenance, and operational decisions in the Nigeria's power sector does not align with international best practice.[71]

4.1.4 Poor Incentives for Renewable Energy

The incentives for the development of renewable energy, such as wind and solar to mitigating GhG emissions in Nigeria's electricity market is too poor in comparison with countries like South Africa, France, and Switzerland, etc. Incentives like falling prices for renewable technologies would intensify the development of renewable energy generation. Thus, the effects of these incentives are important for assessing policies that encourages a shift to sustainable electricity supply.[72] However, the electricity market in Nigeria is characterized by several dynamics including price unpredictability and the firms have diverse constraints, face different types of uncertainties.[73]

4.1.5 High Electricity Tariff

Electricity is no longer a public service but a luxury. In the face of Nigeria's double-digit inflation, a 300 percent hike in electricity tariff was recently approved by the NERC. This tariff hike has forced businesses to shut down, exacerbate inflation, and suffocate micro, small and medium enterprises (MSMEs).[74] In addition, firms in the electricity sector are constraint to invest in new technology to enable them compete favourably in both local and global markets, and many businesses are grappling with the disruptions in the

[71] Ibid
[72] Joseph A. Cullen and Stanley S. Reynolds, 'Market Dynamics and Investment in the Electricity Sector' International Journal of Industrial Organisation (2023) 89 <https://www.sciencedirect.com/science/article/abs/pii/S01677187000358> accessed 26 December 2024
[73] Talat S. Genc, Henry Thille and Khaled ElMawazini, 'Dynamic Competition in Electricity Markets Under Uncertainty' Energy Economics (2020) 90 <https://www.sciencedirect.com/science/article/abs/pii/S0140988320301778> accessed 26 December 2024
[74] Gas Outlook, 'Nigeria Electricity Tariff Hike Raises Concern, Prompts Call for Renewables' (2024) <https://gasoutlook.com/analysis/nigeria-electricity-tariff-hike-raises-concern-prompts-call-for-renewables/> accessed 4 August 2025

electricity value chain due to financial limitations.[75] Although the aim of the electricity tariff increment is to reconcile consumer prices with the real cost of supply to improve the financial capability of the sector and attract significant private investment, it is additional financial burden on households, especially the low income families struggling with the rising cost of living.[76]

4.1.6 Financial Constraints

In the aftermath of the privatization of the power sector in 2015, there was an accumulated inherited debt amounting to nearly to N2tn, in addition to an overwhelming N1.3tn debt to GENCOs and gas producers, respectively.[77] Moreso, the budgeted N450bn subsidy proves insufficient against the actual N3tn required. This indebtedness essentially indicates monumental misappropriation of financial resources, poor corporate governance, lack of financial planning, and absence of transparency in the power sector.[78] This financial drain hinders reinvestment and effective operations, thus worsening the challenges facing the sector, and places huge pressure on government finances, stressing the necessity for a more realistic subsidy regime.[79]

4.2 Opportunities

Despite the challenges, the Nigeria's power sector has the potential for growth and remains significant in the overall economic context. Some of the opportunities are discussed below.

4.2.1 Legal and Institutional Reforms

The EA 2023 which repeals the EPSRA 2005 provides for the reorganisation of Nigeria's electricity generation, transmission, and distribution from the federal to the state levels.

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[75] Ibid.
[76] Andersen, 'Electricity rate Hike and the Multidimensional Challenges of the Power Sector' (2024) <https://ng.andersen.com/electricity-rate-hike-and-the-multi-dimensional-challenges-of-the-nigeria-power-sector/> accessed 4 August 2025
[77] Ibid
[78] Clod, 'Can Good Corporate Governance Unlock Power Sector Potential?' <https://www.iodnigeria.org/blog/ciod-weekly-1/can-good-corporate-governance-unlock-power-sector-potential-39> accessed 17 December 2024.
[79] Ibid

Before the EA, there has been operational weakness in the institutional framework ranging from discrepancies, uncertainties, and gaps in the enabling laws to descriptions of these institutions' roles and relations with one another. However, with the mandate for state electricity market under the EA, these challenges could be surmounted, and each state government can put in place institutions that would benefit its market and attract investment.[80]

4.2.2 Investment Opportunities

Nigeria's electricity market can best be described as a place where the demand for electricity exceeds current supply.[81] However, investment opportunities are bounds within various sectors including Gas, Hydropower, Solar, Biomass, Wind, and others. Endowed with both renewable and non-renewable resources, the country can resolve the prevailing power shortages. It has one of the highest unexploited renewable energy potentials.[82] In addition, the EA[83] authorizes a non-license holder (private investor) to invest in the transmission operated by the TCN on project agreement with the license holder. This will resolve the problem of inadequate funding and outdated infrastructures that has negative impact on the sector over time.[84]

4.2.3 Improved Efficiency and Reliability

One important opportunity for efficient electricity governance is that it will improve access and affordability to electricity, which is significant to poverty alleviation, job

[80] Jacob Otu Enyia, Iheanacho Linda Nnebuihe and Njong Cleverty Afu, 'Legal and Institutional Framework for the Protection Electricity Consumer in Nigeria: An Appraisal' Academy of Strategic Management Journal (2023) 22 (1) 1 - 13

[81] Ibid.

[82] Nigeria Energy, 'Why Invest in Nigeria's Energy Market?' (2022) <https://www.nigeriaenergy.com/en/visit/invest-in-nigeria.html> accessed 4 August 2025

[83] 2023

[84] Anderson, 'Overview of the Electricity Act 2023: Implications and opportunities for Investors' <https://ng.andersen.com/overview-of-the-electricity-act-2023-implications-and-opportunities-for-investors/> accessed 25 November 2024.

creation and unlocking the potentials for economic growth in Nigeria.[85] It will also improve the revenue base of the sector and the output of private and public enterprises, which in turn improves service delivery, as well as the financial and technical capacity of the electricity companies. In addition, it will ensure that essential investments are made to rehabilitate the networks, install electric meters for accurate customer billing and enhance service delivery as well as strengthen technical management to improve efficiency and reliability in the sector.[86]

4.2.4 Consumer Empowerment

Consumer empowerment in the Nigeria's power sector is about customers having the rights and responsibilities to ensure they receive fair and reliable electricity service. The provision of electricity in Nigeria is a multifaceted process that involves various stakeholders, with electricity customers often overlooked. However, customers play a pivotal role in driving demand and shaping the direction of the NESI. Recognizing this, the NERC has outlined rights and responsibilities for electricity customers within the value chain. Exercising rights empowers the customers with fair pricing, complaint resolution, and access to billing information. Compliance with customer's rights and obligations fosters transparency and trust between customers and DISCOs which is vital for a healthy power sector.[87]

4.2.5 Economic Development

The potential for economic growth in Nigeria is strictly inhibited by unreliable electricity supply, due to the gap between the demand and supply of electricity. This is because economic development is dependent on the accessible electricity from sources that are affordable and ecologically friendly. Security, climate change, and public health are interconnected with electricity; thus, the living standards of a nation can be associated

[85] World Bank Group, 'Nigeria to Improve Electricity Access and Services to Citizens' (2023) <https://www.worldbank.org/en/news/press-release/2021/02/05/nigeria-to-improve-electricity-access-and-services-to-citizens> accessed 28 December 2024

[86] Ibid

[87] EMRC, 'The Rights and Responsibilities of Electricity Consumers' (2024) < https://www.energymrc.ng/the-rights-and-responsibilities-of-electricity-customers/> accessed 27 December 2024

with the *per capita* electricity consumption.[88] There is also an encouraging affiliation between electricity infrastructure and economic development. The unfortunate state of electricity supply in Nigeria has forced substantial costs on the consumer; the bulk of which relates to the consumer acquiring alternative electricity supply to cushion the effect of electricity instabilities.[89]

4.2.6 Technological Advancement and Innovation

The Nigeria's electric power sector has undergone successive innovative policies, particularly in technological advancement. The aim is to lessen Nigeria's financial commitment to electric power infrastructure, after the implementation of the Public-Private-Partnership (PPP) policies.[90] This transferred the development of technology infrastructure to private investors while the management of the power sector focus on other methods of developing the sector. Thus, innovative power generation, transmission. distribution and financial facilities are available and accessible either through public or private funds.[91] In addition, local production of electrical equipment in Nigeria can be much more cost competitive than imports, thus most the demand are met by imports, due to low volume of production. However, electrical equipment such as wires, power generating machines, inverters, transformers, conductors, meters, switch gears, capacitors, distribution boards, and voltage regulators, etc use in Nigeria has the potential for growth. [92]

[88] Sunday Olayinka Oyedepo, 'Energy and Sustainable Development in Nigeria: The Way Forward' Energy, Sustainability and Society (2012) (2) (15) <https://energsustainsoc.biomedcentral.com/articles/10.1186/2192-0567-2-15> accessed 28 December 2024

[89] Emmanuel Omoniyi Awe and Malachy A. Ugbaka, 'Electricity Infrastructure and Economic Growth in Nigeria' (ResearchGate 2021) <https://www.researchgate.net/publication/355290264_Electricity_Infrastructure_and_Economic_Growth_in_Nigeria_Impact_Analysis> accessed 26 December 2024

[90] Umar Abubakar Dubagari, (n. 4)

[91] Segun Olabode, Olwasewun Akeem Abayomi, et al, (n. 66)

[92] ITA, 'Electricity: Power System and Renewable Energy' (2023) < https://www.trade.gov/country-commercial-guides/electricity-power-systems-and-renewable-energy> accessed 27 December 2024

5.1 Conclusion and Recommendations

The primary objective of any business is to make profit and significant reduction of cost is one of the strategies that companies adopt for the purpose of maximising profits. Over the years, companies have moved their production plants from Nigeria to neighbouring countries due to high electricity costs and lack of stable electricity supply in the country. The EA aims to arouse measures to improve power generation, transmission, and distribution capacity of the relevant players in the electricity industry, as well as provide for up-to-date standards in fast-tracking power generation by broadening the power sector to embrace renewable energy sources for sustainable energy transition. Despite this inspiring development, issues such as high tariff rates and billing, poor maintenance of electrical equipment and deficient institutions continue to affect the seeming potentials for investment in the sector. To address these issues and promote consumer protection anchored on efficient electricity governance in Nigeria, the legal instruments must provide a tailored support to overcome these barriers. The research, therefore made the following recommendations.

i. Reform of the Electricity Sector through Constant Review of the Laws

Nigeria must undertake significant reforms to align its electricity systems with international standards. Strengthening its regulatory frameworks, particularly in electricity governance, is essential. The government should revise existing laws and introduce new policies that mandates sustainable electricity in key industries, including agriculture, energy, and manufacturing. For example, enforcing stricter regulations on GENCOs and DISCOs would help mitigate the epileptic power supply, while customer protection, including electricity tariff policies should be reformed to encourage the importation of technologies and equipment, facilitating the transition to a more sustainable renewable energy.

ii. Incorporation of Consumer Safeguards in the Electricity Act

There is a growing need for Nigeria to reform its existing legal framework to incorporate sustainable electricity as a central objective. While competition in the power sector remains the core objective of the EA, sustainable electricity clauses should be embedded within all trade agreements with electricity marketers. This could be achieved by

incorporating explicit consumer safeguards into the EA rather than the FCCCP, as well as other key agreements, to ensure that electricity policies are pursued to the later. In addition, the EA should require EIAs as part of its business negotiations, which would ensure that the long-term effects of electricity policies on natural resources and ecosystems are fully considered. Strengthening these provisions would incentivize investors to adopt more eco-friendly production methods, particularly in sectors such as agriculture, mining, and oil, which are crucial to Nigeria's economy but also responsible for significant environmental harm. In addition, the consumer protection council should embark on awareness campaign about consumer protection that would warrant adequate compensation for electricity consumers, in the event of breach by the DISCOs.

iii. Prioritizing Environmental and Social Considerations in Dispute Settlement

The EA's dispute settlement mechanism should also evolve to recognize sustainable electricity supply as a key principle in resolving electricity customer grievances. Currently, the system focuses on addressing violations of customers' rights, but neglects the environmental and social impacts of electricity systems. By integrating sustainability into the legal reasoning of dispute settlements, the electricity law can encourage investors to prioritize environmental and social considerations when engaging in electricity trading. This shift would align electricity supplies in Nigeria with global sustainability goals and create a legal precedent for sustainable development in the country.

iv. Technical Assistance

Government must expand its technical assistance programs to aid investors in building the institutional capacity needed for sustainable electricity supply. Nigeria's infrastructural deficits, such as unreliable power supply, due to obsolete equipment and poor funding hinder its ability to adopt modern technologies for sustainable electricity supply. Government can address these gaps by offering technical assistance that focuses on developing sustainable infrastructure, such as renewable energy systems, green logistics, and eco-friendly manufacturing processes. This could be done with partnership/consultation with international organizations like the World Bank which can provide financial resources for these projects. Strengthening Nigeria's infrastructure is

crucial for enabling the country to meet global sustainability standards and increase its competitiveness in environmentally conscious markets.

v. Enhanced Private Sector Participation

Private sector is a critical component of sustainable electricity supply, and government should actively promote foreign investment in the Nigeria's electricity industry. Although this has been incorporated into the EA, its implementation has been a matter of controversy. The NERC has a critical role to play in promoting sustainable electricity supply in Nigeria by diligently discharging its constitutional responsibility without compromising its role for national development. Nevertheless, Nigeria must improve its domestic policies to create an enabling environment for sustainable electricity supply. A coordinated approach that involves legal reforms, electricity systems automation, capacity building, and technical and financial support will be essential for Nigeria to achieve sustainable electricity supply and enhance its competitiveness in the global economy. By prioritizing sustainability, Nigeria can ensure that stable electricity supply is a key to economic growth. Thus, more private involvement should be encouraged to enhance competition and discourage monopolistic practices in the sector.

BALANCING TRADE, JUSTICE, AND ENVIRONMENTAL SOVEREIGNTY: WTO AND AFCFTA CONSTRAINTS ON NIGERIA'S PURSUIT OF COMPLIANCE

Imam Abdur-Rasheed Ahmed* and Adekunle Saheed Akinola**

Abstract

Nigeria's engagement with global trade and environmental governance reveals a persistent tension between international economic integration and the pursuit of environmental justice. The World Trade Organization's framework, particularly Article XX of the General Agreement on Tariffs and Trade, provides environmental exceptions designed to preserve national policy space. However, these provisions often privilege states with stronger legal capacity, scientific infrastructure, and institutional coherence, leaving developing countries such as Nigeria struggling to meet evolving sustainability standards. This paper examines how the structural design and jurisprudence of WTO environmental rules constrain Nigeria's environmental trade sovereignty and explores how regional mechanisms under the African Continental Free Trade Area (AfCFTA) could mitigate these constraints. Using a doctrinal and comparative legal methodology supported by institutional analysis, the study identifies limited participation in WTO environmental litigation, weak inter-ministerial coordination, and inadequate digital trade infrastructure as key barriers to Nigeria's effective engagement. It argues that the AfCFTA provides a more inclusive platform for collaborative standard-setting, capacity building, and equitable rule-making. The paper concludes that Nigeria must transition from reactive compliance to proactive participation by enacting a comprehensive Trade–Environment Act, strengthening coordination among ministries, investing in data and digital systems, and asserting leadership within the AfCFTA to advance a fairer and more sustainable model of environmental trade governance.

Keywords: WTO, AfCFTA, environmental sovereignty, environmental justice, dispute settlement, sustainable development

1. Introduction

Nigeria's engagement with global trade and environmental governance reveals a persistent tension between international economic integration and the pursuit of environmental justice. The World Trade Organization's framework, particularly Article XX of the General Agreement on Tariffs and Trade, provides environmental exceptions intended to preserve national policy space.

[1]However, in practice, these provisions often privilege states with stronger legal capacity, scientific infrastructure, and institutional coherence, leaving developing countries such as Nigeria struggling to meet evolving sustainability and compliance standards. This paper examines how the structural design and jurisprudence of WTO environmental rules constrain Nigeria's environmental trade sovereignty and explores how regional mechanisms under the African Continental Free Trade Area (AfCFTA) could mitigate these constraints.

This paper examines how the structural design and jurisprudence of WTO environmental rules constrain Nigeria's environmental trade sovereignty and explores how regional mechanisms under the African Continental Free Trade Area (AfCFTA) could mitigate these constraints. It employs a doctrinal and comparative legal methodology combined with institutional analysis to assess Nigeria's participation in global environmental trade governance. For clarity, this paper adopts the term trade–environment nexus to denote the interdependence between trade liberalisation and environmental regulation; where trade law both constrains and enables environmental policy space. Findings indicate that limited engagement in WTO environmental litigation, fragmented domestic institutions, and weak digital trade infrastructure have deepened Nigeria's marginalisation in global

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[1] World Trade Organization, 'Repertory of Appellate Body Reports, General Exceptions: Article XX of the GATT 1994', <https://www.wto.org/english/tratop_e/dispu_e/repertory_e/g3_e.htm,> accessed 13 October 2025

trade governance. The AfCFTA, by contrast, presents a viable platform for collaborative standard-setting, technology transfer, and inclusive policy reform.

The relationship between international trade and environmental governance has become central to contemporary debates on global justice. Over the past three decades, the liberalisation of trade has deepened the interdependence between markets and ecosystems, revealing how the design of trade rules can either reinforce or reduce inequality among states. For developing countries, and particularly for Nigeria, this intersection determines the extent to which sovereignty can be exercised within an increasingly rules-driven global economy. Studies across Sub-Saharan Africa show that trade facilitation and institutional quality jointly shape environmental outcomes, indicating that weak governance structures often erode regulatory autonomy.[2] Nigeria's trajectory illustrates this pattern. The country's economic structure remains anchored in resource extraction and primary commodity exports, while its environmental vulnerability and fragmented regulatory systems have limited its capacity to meet evolving sustainability standards.[3]

The World Trade Organization (WTO) was established to promote fairness and predictability in the global trading system. In practice, its dispute-settlement structure and interpretive culture have tended to favour states with sophisticated administrative systems, advanced scientific capacity, and sustained access to expert litigation teams.[4] The environmental exceptions in Article XX of the General Agreement on Tariffs and Trade (GATT) were intended to preserve national policy space, yet they have evolved into complex legal tests that few developing countries can easily satisfy. Through landmark cases such as *United States – Gasoline* and *United States – Shrimp*, the WTO

[2] RL Ibrahim, 'Trade Facilitation, Institutional Quality, and Sustainable Environment: Renewed Evidence from Sub-Saharan African Countries' *Journal of African Business* (2022) 23(2) 281–303, <https://library.au.int/trade-facilitation-institutional-quality-and-sustainable-environment-renewed-evidence-sub-saharan,> accessed 13 October 2025

[3] S Egbetokun, ESC Osabuohien, T Akinbobola, O Onanuga & G Obindah, 'Environmental pollution, economic growth and institutional quality: exploring the nexus in Nigeria' *Management of Environmental Quality* (2019) 31(1) 18–31

[4] G Marceau, 'Conflicts of Norms and Conflicts of Jurisdictions: The Relationship between the WTO Agreement and MEAs and Other Treaties' *Journal of World Trade* (2001) 35(6) 1081–1131,

Appellate Body developed standards of necessity, non-discrimination, and legitimate purpose that are procedurally demanding and structurally advantageous to developed economies.[5]

Nigeria's experience exemplifies these systemic challenges. Since joining the WTO in 1995, it has participated in fewer than five disputes, none involving environmental claims. This absence reflects not a lack of substantive grounds but a deficiency in institutional coordination. The mandates of the Ministries of Trade, Environment, and Justice remain poorly integrated, limiting Nigeria's capacity to engage with international litigation or compliance processes. The increasing digitisation of global trade has further complicated this landscape. Exporting to major markets such as the European Union now requires electronic traceability and blockchain-based verification. Without adequate digital infrastructure, environmental compliance becomes a technological and institutional constraint rather than a matter of legal interpretation.[6]

Within this context, environmental sovereignty denotes the authority of a state to regulate, protect, and utilise its environmental resources in alignment with national development priorities, while maintaining autonomy in environmental policymaking.[7] It captures how states engage with global norms without ceding their core ecological decision-making to external regimes. Building on this, the paper uses environmental trade sovereignty to describe a state's capacity to assert environmental priorities specifically within the formation and interpretation of trade rules. For Nigeria, environmental sovereignty describes a point of tension: pursuing economic integration through trade while retaining control over ecological governance. Justice, as employed in this study, combines distributive and procedural dimensions. Procedural justice concerns inclusive

[5] World Trade Organization, 'Repertory of Appellate Body Reports, General Exceptions: Article XX of the GATT 1994' (WTO, n.d.), <https://www.wto.org/english/tratop_e/dispu_e/repertory_e/g3_e.htm,> accessed 13 October 2025

[6] S Charlebois, N Latif, I Ilahi, B Sarker, J Music & J Vezeau, 'Digital Traceability in Agri-Food Supply Chains: A Comparative Analysis of OECD Member Countries' *Foods* (2024) 13(7) 1075, <https://doi.org/10.3390/foods13071075,> accessed 13 October 2025.

[7] JY Hwang. 'Environmental Sovereignty and Climate Justice: A Legal and Normative Perspective', *International Journal of Science and Research Archive*, (2025) 15(01), 1273-1284. Article DOI: https://doi.org/10.30574/ijsra.2025.15.1.1178.

participation, transparency, and fairness in rule-making processes, whereas substantive justice addresses the equitable distribution of environmental benefits and burdens across states and communities.[8] Together, these definitions support the paper's normative claim that Nigeria's exclusion from environmental trade governance reflects not just institutional weakness, but deeper ethical and structural imbalances.

This paper addresses three interrelated questions. First, how have WTO interpretations of environmental measures evolved, and what implications do these hold for developing economies such as Nigeria? Second, what legal and institutional constraints limit Nigeria's participation in environmental trade compliance and dispute settlement? Third, how might domestic reforms and regional frameworks under the African Continental Free Trade Area (AfCFTA) foster a more balanced model of environmental trade governance? To explore these questions, the paper employs doctrinal and comparative legal analysis, institutional critique, and a case-based approach. The doctrinal analysis examines WTO and AfCFTA legal texts, decisions, and commentaries published between 1995 and 2025.

The comparative component evaluates how institutional capacity affects compliance across developing and developed contexts. The institutional critique analyses Nigeria's governance architecture, while the case study of the cocoa export sector provides empirical evidence of systemic exclusion. This methodological triangulation offers both normative insight and practical evaluation. Drawing from WTO jurisprudence, AfCFTA protocols, Nigerian regulatory instruments, and peer-reviewed literature, the paper shows how law, technology, and power converge in shaping environmental trade outcomes. The study aims to demonstrate how Nigeria can transition from reactive compliance to proactive rule-shaping, asserting environmental sovereignty within the evolving architecture of global trade.

[8] EO Ekhator, 'Environmental Justice in Developing Countries: Perspectives from Nigeria' *International Journal of Law in the Built Environment* (2020) 12(3) 369–387

2. GATT Article XX and the Jurisprudence of Environmental Exceptions

Article XX of the General Agreement on Tariffs and Trade (GATT)[9] was designed as a balancing clause, permitting member states to deviate from trade obligations in order to pursue certain public interest objectives. Among its most litigated provisions are paragraphs (b) and (g), which allow members to take measures necessary to protect human, animal, or plant life or health, and those relating to the conservation of exhaustible natural resources. However, these exceptions do not operate in isolation. Measures must also satisfy the chapeau of Article XX, which requires that they are not applied in a manner constituting arbitrary or unjustifiable discrimination or a disguised restriction on international trade.[10]

The interpretive rigor surrounding Article XX began to crystallise in the landmark *United States – Gasoline* case. The dispute centred on a U.S. regulation that imposed more stringent environmental requirements on imported gasoline than on domestic products. The Appellate Body accepted that the measure related to the conservation of exhaustible natural resources under Article XX(g). However, it held that the regulation failed under the chapeau due to its discriminatory structure and lack of cooperative engagement with the affected countries. This case introduced the now-fundamental two-tiered analysis under Article XX, where panels first assess whether a measure fits within a listed exception, and then determine whether it passes the chapeau's threshold.[11]

The evolution of this jurisprudence continued in *United States – Shrimp*, where the U.S. banned imports of shrimp harvested without turtle excluder devices. Though the objective was recognised as a valid environmental concern under Article XX(g), the measure was initially struck down for failing to provide adequate flexibility or engage in serious negotiations with affected nations. The Appellate Body found the measure discriminatory and unjustifiable, not because of its objective, but due to the coercive and unilateral

[9] WTO, Supra note 1
[10] DB Leif, 'Environmental Related Disputes on Trade Issues in GATT and WTO from 1982–2002' *International Journal of Advanced Engineering Research and Science* (2022) 9(2) 124–135, <https://dx.doi.org/10.22161/ijaers.92.17,> accessed 15 October 2025.
[11] D Ahn, 'Environmental Disputes in the GATT/WTO: Before and After US–Shrimp Case' (1998) *Michigan Journal of International Law*

manner in which it was implemented.[12] This reinforced the idea that even well-intentioned environmental policies must align with procedural fairness and multilateralism.

The evolution of WTO jurisprudence reflects a cautious acceptance of environmental objectives, but only when such measures are implemented transparently and without discrimination. For many developing countries, these procedural expectations remain difficult to meet. The chapeau of Article XX requires members to engage in consultations, maintain transparency, and ensure that environmental measures are the least restrictive to trade.[13] Meeting these obligations presupposes institutional coordination, technical expertise, and steady participation in the WTO's review processes; conditions that are not easily met in developing economies. Studies of WTO transparency reforms show that reporting and notification duties have been particularly demanding for states with limited administrative capacity.[14] In Nigeria, these challenges are magnified. The absence of an integrated trade-environment litigation framework and weak inter-ministerial cooperation have restricted its ability to comply with the procedural standards required under WTO environmental rules.[15]

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[12] S Charnovitz, 'The WTO's Environmental Progress' *Journal of International Economic Law* (2007) 10(3) 685-706, <https://doi.org/10.1093/jiel/jgm027,> accessed 15 October 2025

[13] World Trade Organization, *General Agreement on Tariffs and Trade 1994 (GATT 1994), Article XX: General Exceptions* (Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1994), <https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm,> accessed 15 October 2025; World Trade Organization, *Appellate Body Report, United States – Standards for Reformulated and Conventional Gasoline* (US – Gasoline), WT/DS2/AB/R, adopted 20 May 1996; World Trade Organization, *Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products* (US – Shrimp), WT/DS58/AB/R, adopted 12 October 1998, <https://www.wto.org/english/tratop_e/dispu_e/58abr.pdf,> accessed 15 October 2025

[14] T Han, R Sachdeva and Y Yarina, *Improving Transparency, Information Flow and Monitoring in the WTO: Analysing Current Proposals and Thinking Outside the Box* (Tradelab, 2019) 1–38, <https://tradelab.org/wp-content/uploads/2023/07/Improving-transparency-Information-Flow-and-Monitoring-in-the-WTO.pdf,> accessed 15 October 2025; DR Kanth, 'Developing Countries Propose an Inclusive Approach to Transparency' *Third World Network Bulletin* (2019) 684–685, <https://twn.my/title2/twe/2019/684-685/3.htm,> accessed 15 October 2025.

[15] EI Otor, 'The World Trade Organisation (WTO) Dispute Settlement Mechanism in Developing Countries' *International Journal of Advanced Legal Studies and Governance* (2024) 11(3) 45–59,<https://icidr.org.ng/index.php/Ijalsg/article/view/383,> accessed 15 October 2025; O Fasan, *Compliance with WTO Law in Developing Countries: A Study of South Africa and Nigeria* (PhD thesis, London School of Economics, 2007), <http://etheses.lse.ac.uk/2709/,> accessed 15 October 2025

Moreover, while Article XX is ostensibly neutral, its application has not led to a single successful invocation by an African state. The WTO's environmental case law remains dominated by disputes between high-capacity states, and the precedents established reflect their legal culture and access to evidence. This disparity underscores the systemic challenge facing states like Nigeria, which may have legitimate environmental concerns but lack the legal and institutional tools to frame and argue these concerns effectively under WTO rules.[16]

The practical result is a jurisprudence that remains largely inaccessible to much of the Global South. Nigeria, like many similarly situated countries, finds itself navigating a legal regime in which the formal availability of exceptions does not equate to substantive accessibility. The combination of doctrinal strictness and procedural expectations embedded in Article XX creates what might be termed a "compliance trap," where environmental justice is theoretically available but institutionally foreclosed. In this context, the 'compliance trap' refers to a situation in which formal equality under WTO rules masks the structural incapacity of developing countries to comply due to asymmetries in legal, financial, and scientific capacity

3. The WTO Dispute Settlement Mechanism: Juridical Access or Legal Hegemony?

The Dispute Settlement Mechanism (DSM) of the World Trade Organization is frequently described by scholars as an exemplary system of impartiality, predictability, and legal professionalism.[17] However, for many developing states such as Nigeria, this procedural framework often functions less as a gateway to justice and more as a structure that perpetuates exclusion. Participation within the DSM demands considerable legal expertise, rigorous evidentiary precision, and a deep understanding of procedural rules; expectations that are difficult to meet without adequate institutional and technical support. Consequently, the apparent equality of all members under WTO law conceals an

[16] AA Ojo and TE Ayo, 'Examining the Overlap Between Environmental Protection and International Trade Instruments' (2021) *Journal of African World Politics*

[17] WJ Davey, 'The WTO Dispute Settlement System: The First Ten Years' *Journal of International Economic Law* (2005) 8(1) 17–50 <https://academic.oup.com/jiel/article/8/1/17/840363> accessed 13 October 2025

uneven reality in which resource-rich states are better positioned to assert their rights, while weaker economies face significant barriers to effective engagement.[18]

At the heart of this imbalance is the procedural and evidentiary threshold that defines success in WTO litigation. A party initiating or defending a case must provide extensive legal argumentation, often supported by scientific, economic, and environmental evidence.[19] In environmental disputes especially, WTO panels and the Appellate Body expect a level of specificity in regulatory justification that demands access to empirical data, modelling, and technical consultations.[20] Developing countries struggle with this evidentiary standard because they often lack institutionalised systems for data gathering, policy coherence, and scientific reporting.[21] These weaknesses are not random but stem from broader deficits in administrative and legal capacity.

The role of expert evidence in DSM proceedings further exacerbates inequality. While the WTO allows panels to consult with independent experts, the process of securing such input remains opaque and expensive. Experts are typically sourced from a narrow pool of institutions and disciplines, and the epistemic framing they provide tends to favour regulatory approaches common in developed jurisdictions. This means that countries like Nigeria face the double disadvantage of limited access to technical expertise and a panel culture that often excludes indigenous or alternative environmental knowledge systems.[22]

Beyond technical evidence, the availability of competent legal counsel remains a critical barrier. Legal representation before the WTO requires not only knowledge of WTO law

[18] Gr, Shaffer. 'Developing country use of the WTO dispute settlement system: Why it matters, the barriers posed.' *Trade Disputes and the dispute assessment understanding of the WTO: An interdisciplinary assessment* (2015): 167-190

[19] A Bahri, 'Public–Private Partnership for WTO Dispute Settlement: Enabling Developing Countries' *Journal of World Trade* (2016) 50(4) 861–890 <https://eprints.lse.ac.uk/68276/1/Bahri_Handling%20WTO%20disputes_2016.pdf> accessed 13 October 2025.

[20] BM Hoekman, 'Enforcing Multilateral Commitments: Dispute Settlement and Developing Countries' *Institute for Agriculture and Trade Policy (IATP)* (2003) <https://www.iatp.org/sites/default/files/Enforcing_Multilateral_Commitments_Dispute_Set.htm> accessed 13 October 2025.

[21] A Bahri, 'Public–Private Partnership for WTO Dispute Settlement: Enabling Developing Countries' *Journal of World Trade* (2016) 50(4) 861–890

[22] J. Pauwelyn, 'The Use of Experts in WTO Dispute Settlement' *International and Comparative Law Quarterly* (2002) 51(2) 325–364 <https://doi.org/10.1093/iclq/51.2.325> accessed 13 October 2025.

but also litigation strategy, familiarity with procedural deadlines, and experience navigating the informal power dynamics of Geneva's legal community. While some developing countries benefit from assistance by institutions such as the Advisory Centre on WTO Law (ACWL), the availability of such support is constrained and sometimes insufficient for protracted or highly technical disputes.[23] Nigeria has yet to develop a permanent trade law unit that specialises in WTO disputes, relying instead on ad-hoc coordination between the Ministry of Trade, legal advisers, and diplomats.

Statistical analyses of WTO Dispute Settlement Mechanism participation show developing countries initiated about one-third of disputes in the period 1995-2005.[24] Within that group, most of the activity is concentrated in a few middle-income economies such as Brazil, India, and China.[25] African states, by contrast, have played only a marginal role: they account for less than 5 % of third-party participations, and very few African countries have ever acted as complainants.[26] Data for Nigeria specifically is sparse; records indicate very limited participation and no well-documented case involving environmental claims to date. The evidence suggests that legal, institutional, and technical capacity constraints act as structural deterrents to litigation by less-resourced actors.

4. Nigeria's Institutional Ecology: Policy Disjoints and Structural Silos

For a country of Nigeria's scale and complexity, engaging effectively with multilateral trade governance requires a cohesive national strategy that integrates environmental priorities into its trade architecture. Yet, Nigeria lacks a structured, cross-sectoral framework that harmonises trade, environmental, and legal governance. There is no

[23] ME Footer, 'Developing Country Practice in the Matter of WTO Dispute Settlement' *Journal of World Trade* (2001) 35(1) 55–98

[24] R Abott, 'Are Developing Countries Deterred from Using the WTO Dispute Settlement System?' *ECIPE Working Paper* (2007) <https://ecipe.org/publications/are-developing-countries-deterred-from-using-the-wto-dispute-settlement-system/>

[25] CP Bown & B.M. Hoekman, 'WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector' Journal of International Economic Law (2005) 8.4, 861-890.

[26] C Van der Ven and D Luke, 'Why African Countries Struggle to Exercise Their Agency in the World Trade Organization' *LSE Business Review* (2023) <https://blogs.lse.ac.uk/businessreview/2023/05/18/why-african-countries-struggle-to-exercise-their-agency-in-the-world-trade-organization/> accessed 13 October 2025.

standing national mechanism that convenes stakeholders from the Federal Ministry of Industry, Trade and Investment, the Ministry of Environment, the Federal Ministry of Justice, and the Ministry of Foreign Affairs to jointly articulate trade-environment positions. This institutional gap has made it difficult for Nigeria to frame its interests in WTO negotiations or defend against foreign environmental trade measures.[27]

The absence of an integrated trade-environment strategy is compounded by weak inter-ministerial coordination. In practice, ministries operate in parallel silos. Trade negotiations are often the domain of the Ministry of Trade, while the Ministry of Environment remains peripheral. The Ministry of Justice is rarely engaged until disputes arise, and the Foreign Ministry's diplomats in Geneva often lack detailed technical input. Attempts to foster multisectoral coordination, such as during Nigeria's engagement with the African Continental Free Trade Area (AfCFTA), have revealed how poorly integrated institutional responses are when trade intersects with environmental or health regulations.[28]

These governance deficiencies are exacerbated by Nigeria's underdeveloped science-policy interface. Although the country has committed to various climate and sustainability frameworks, including the Paris Agreement, it lacks institutionalised mechanisms for translating scientific evidence into enforceable domestic regulation or trade policy positions. Research institutions are poorly funded and disconnected from national decision-making. This structural barrier undermines Nigeria's capacity to produce data, risk assessments, and modelling that are increasingly demanded in WTO environmental litigation.[29]

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[27] EN Ogundari, & IO Ogundari, 'Technology, Technology Transfer and the WTO-TRIPS Agreement: A Science Policy and Law Analysis for Nigeria' (2024) <https://www.researchgate.net/publication/385507460_Technology_Technology_Transfer_and_the_WTO_-_TRIPS_Agreement_A_science_policy_and_law_analysis_for_Nigeria> accessed 13 October 2025.

[28] W Onzivu, 'Rethinking Transnational Environmental Health Governance in Africa: Can Adaptive Governance Help?' *Review of European, Comparative and International Environmental Law (2016)* <https://doi.org/10.1111/reel.12147> accessed 13 October 2025.

[29] S Pardeshi, R Dhodapkar, SK Namdeo and M Koley,' Education as a Tool for International Cooperation and Diplomacy: An Indian Perspective' *Science Diplomacy Review* (2024) Vol. 6, No. 1 <https://www.ris.org.in/sites/default/files/2024-08/SDR_April%20%202024.pdf> accessed 13 October 2025.

The problem is not only the absence of technical information but also the lack of enforcement capacity. Regulatory frameworks within the environmental sector are often toothless, characterised by outdated laws and weak sanction mechanisms. Agencies like the National Environmental Standards and Regulations Enforcement Agency (NESREA) struggle with logistical and financial limitations. These challenges are mirrored in Nigeria's inability to respond to international measures with clear and verifiable domestic standards. This misalignment makes the country vulnerable to border measures by trading partners who impose environmental standards under the guise of health or conservation.[30]

There are lessons to be drawn from Nigeria's prior engagements where trade and environmental concerns overlapped. For instance, in responding to EU restrictions on certain agricultural exports due to pesticide residue levels, Nigeria's institutional response was reactive and uncoordinated. The Ministry of Agriculture led the defence without involvement from trade negotiators or legal experts, resulting in regulatory adjustments that did not address the trade implications or challenge the measure multilaterally.[31] This episode illustrates the consequence of siloed policymaking in a world where environmental compliance has become a critical aspect of market access.

5. Postcolonial Trade Politics and Environmental Sovereignty

In the evolving structure of international trade governance, the environment has increasingly become a contested battleground. For countries like Nigeria, which confront severe ecological degradation while navigating trade liberalisation, this battle is shaped by deeply embedded inequalities.[32] The notion of *eco-protectionism*, where environmental standards are used as covert trade barriers, has emerged as a subtle yet potent tool by which wealthier nations regulate market access while insulating their own

[30] I Scoones and P Forster, '*The International Response to Highly Pathogenic Avian Influenza: Science, Policy and Politics',* STEPS Working Paper 10 (2008) <https://steps-centre.org/wp-content/uploads/STEPS-_Working-Paper_Avian-Flu.pdf> accessed 13 October 2025

[31] EN Ogundari, & IO Ogundari, 'Technology, Technology Transfer and the WTO-TRIPS Agreement: A Science Policy and Law Analysis for Nigeria' (2024) <https://www.researchgate.net/publication/385507460_Technology_Technology_Transfer_and_the_WTO_-_TRIPS_Agreement_A_science_policy_and_law_analysis_for_Nigeria> accessed 13 October 2025.

[32] M. Feridun, F.S. Ayadi & J. Balouga, '*Impact of Trade Liberalization on the Environment in Developing Countries: The Case of Nigeria',* Developing Societies 39 (2006) Vol 22 issue 1 <https://doi.org/10.1177/0169796X06062965> accessed 13 October 2025.

industries.[33] While these measures are often cloaked in the language of sustainability, they impose compliance costs and regulatory burdens that many developing states are institutionally unprepared to meet.[34]

Eco-protectionist practices frequently manifest through unilateral climate-related trade policies or through regional frameworks like the European Green Deal. The EU Carbon Border Adjustment Mechanism (CBAM) provides a stark example. Although justified as a climate mitigation strategy, CBAM effectively introduces a tariff-like penalty on imports from carbon-intensive production systems, disproportionately affecting exporters from the Global South. Nigeria, whose economy remains carbon-intensive and export-dependent, lacks both the technological base and fiscal support to adjust to these trade barriers, yet has no meaningful voice in how such measures are formulated.[35]

Closely related is the rise of *WTO-plus* environmental provisions and soft law obligations. These extend beyond the formal commitments of WTO law and are increasingly embedded in bilateral and regional trade agreements. They include deforestation clauses, fisheries subsidy disciplines, and sustainability certification standards, many of which are designed in policy spaces inaccessible to developing countries.[36] For Nigeria, which has not concluded a comprehensive trade agreement with any major economy incorporating environmental chapters, the risks are twofold: exclusion from green markets and inability to shape the regulatory contours of future trade.[37]

Compounding this challenge is Nigeria's persistent marginalisation in global trade-environment negotiations. Despite being Africa's largest economy, Nigeria lacks a

[33] O. Okere & I. Iheanacho, *Trade Protectionism and Economic Growth: The Nigerian Experience*, IOSR Journal of Economics and Finance, Vol. 16, Issue 1, Ser. 5, pp. 42–49 (2025), <https://www.iosrjournals.org/iosr-jef/papers/Vol16-Issue1/Ser-5/F1601054249.pdf> accessed 13 October 2025

[34] CP Bown & B.M. Hoekman, 'WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector' Journal of International Economic Law (2005) 8.4, 861-890.

[35] African Climate Foundation & LSE Firoz Lalji Institute for Africa, *Implications for Africa of a CBAM in the EU* (2023), <https://africanclimatefoundation.org/wp-content/uploads/2023/05/800756-AFC-Implications-for-Africa-of-a-CBAM-in-the-EU-06A-FINAL.pdf> accessed 13 October 2025.

[36] J Morin, A Dür and L Brando, 'Trade Agreements as Vectors for Environmental Norms' (2019) *International Environmental Agreements: Politics, Law and Economics*

sustained diplomatic and technical presence in Geneva on environment-related WTO matters. It has not consistently contributed to the WTO's Trade and Environmental Sustainability Structured Discussions (TESSD) or led in African Group negotiations concerning environmental carve-outs. As a result, Nigeria's interests are often absorbed into generic developing country positions without nuance or country-specific concerns.[38] This diplomatic silence has long-term strategic costs. It weakens the state's ability to contest trade restrictions framed as environmental policy, while also reducing its ability to shape cooperative mechanisms like green technology transfer or climate-linked trade finance.

The human rights implications of this marginalisation are profound. Trade-induced environmental degradation in Nigeria, whether through unregulated oil extraction in the Niger Delta or deforestation linked to unsustainable agricultural expansion, has direct consequences for the rights to life, health, and livelihood. These harms are rarely remediated through trade law. Yet, Nigeria also lacks sufficient leverage in human rights forums to link environmental justice to international trade governance.[39] This disconnect reinforces the vulnerability of local communities, who bear the environmental costs of an extractive economy while being excluded from global rule-making that could safeguard their interests.

6 Structural Barriers and Procedural Asymmetries

While all WTO members have formal, identical procedural rights, in practice, access to the dispute settlement system is highly uneven. Developing countries, including Nigeria, often lack the financial resources, legal expertise, and institutional capacity required to initiate and sustain complex trade litigation. This results in a "dual order" where wealthier, institutionally mature states dominate active participation, while many

[38] EO Ekhator, 'Globalisation and Environmental Justice: A Critical Analysis of Nigerian Environmental Law and Policy in the Era of the African Continental Free Trade Area (AfCFTA)' (2020) *African Journal of International and Comparative Law*

[39] H Ogwu, 'Environmental Rights, Economic Justice and International Trade: The Case of Nigeria' (2022) *African Human Rights Law Journal*

developing countries remain largely observers or are underrepresented in disputes.[40] The WTO has introduced legal assistance and preferential panel composition to support developing countries, but evidence suggests these measures have only modestly increased participation and may not significantly improve success rates.[41] Experience and prior participation are strong predictors of future engagement, highlighting the importance of institutional learning.[42]

The record shows that Nigeria has never served as complainant or respondent in any WTO dispute and appeared only once as a third party under the former GATT system.[43] The absence of subsequent engagement is not a mere statistical curiosity but an indicator of structural exclusion. To initiate a WTO case requires sustained financial investment, advanced technical expertise, and bureaucratic continuity. These prerequisites, while procedurally neutral in text, are materially exclusionary in practice because they presuppose institutional endowments that many developing economies do not possess. The result is a system whose procedural uniformity masks asymmetrical accessibility.[44]

Across Africa, the imbalance is even more striking. Studies confirm that the continent accounts for less than five per cent of third-party participations in WTO proceedings.[45]

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[40] A Juraeva et al. 'WTO DISPUTE SETTLEMENT AND THE CHALLENGES AROUND IT.' Review of Law Sciences (2022). <https://doi.org/10.51788/tsul.rols.2022.6.2./vqwl9830>; SAl Shraideh and others. 'Reflections on Developing Countries' Initiation of Disputes in the WTO Dispute Settlement System.' Global Trade and Customs Journal (2021). https://doi.org/10.54648/gtcj2021012.

[41] L Johannesson and others. 'Supporting Developing Countries in WTO Dispute Settlement.' *Law* (2016). <https://doi.org/10.2139/ssrn.3172934.> accessed 14 October 2025

[42] J Wood and others. "The Sustainability of the WTO Dispute Settlement System: Does It Work for Developing Countries?." *Journal of World Trade* (2020). <https://doi.org/10.54648/trad2020024.> accessed 14 October 2025

[43] P Vu Thuy Dung and others. 'Challenges Faced by Vietnam and Other Developing Countries in Participating in the WTO Dispute Settlement System (DSS).' International Journal of Religion (2024). <https://doi.org/10.61707/hp0y3w04.>

[44] K Kugler, 'Africa and the Great Power Competition at the World Trade Organization' (2025) <https://carnegieendowment.org/research/2025/03/africa-and-the-great-power-competition-at-the-world-trade-organization> accessed 14 October 2025

[45] C Van der Ven and D Luke, 'Why African Countries Struggle to Exercise Their Agency in the World Trade Organization' *LSE Business Review* (2023) <https://blogs.lse.ac.uk/businessreview/2023/05/18/why-african-countries-struggle-to-exercise-their-agency-in-the-world-trade-organization/> accessed 14 October 2025.

This numerical marginality is not accidental.[46] It flows from deeper historical and epistemic asymmetries embedded in global trade governance. African trade ministries were largely structured for negotiation, not for adversarial adjudication. Consequently, while wealthier members have used the DSM to clarify and expand their trade rights, African states, including Nigeria, have remained at the receiving end of interpretive outcomes they neither shaped nor contested.[47]

Despite expectations, the AfCFTA Dispute Settlement Mechanism (DSM) largely replicates the state-centric, elite-driven patterns of previous regional trade agreements. The DSM is modeled after the WTO system and restricts dispute initiation to states, excluding non-state actors such as SMEs and civil society. This design limits inclusivity, transparency, and the ability to address non-tariff barriers or sustainable development concerns, reinforcing the dominance of powerful state and corporate actors rather than serving as a corrective regional counterweight.[48] The DSM's effectiveness is further constrained by the lack of proactive judicial bodies and limited private sector involvement, which are critical for broader legitimacy and impact.[49]

Nigerian analyses consistently highlight persistent deficits in legal expertise, data management, and inter-agency coordination as barriers to effective AfCFTA implementation. The absence of a robust legal framework and insufficient capacity to handle complex trade disputes hinder Nigeria's ability to leverage the DSM for national benefit.[50] Data systems for cross-border trade and data protection remain fragmented, with regulatory inconsistencies and privacy concerns complicating integration into the

[46] A Bouët and others. 'Is the dispute settlement system, 'jewel in the WTO's crown', beyond reach of developing countries?.' Review of World Economics, 156 (2020): 1-38. <https://doi.org/10.1007/s10290-019-00359-w.>
[47] Ibid
[48] Tomasz Milej et al. 'The Dispute Settlement Mechanism under the African Continental Free Trade Area as a Preserve of Elites – A Missed Opportunity for Regional Integration in Africa.' SSRN Electronic Journal (2023). <https://doi.org/10.2139/ssrn.4644827.>
[49] T Milej and others. 'The Dispute Settlement Mechanism under the African Continental Free Trade Area as a Preserve of Elites – A Missed Opportunity for Regional Integration in Africa.' SSRN Electronic Journal (2023). <https://doi.org/10.2139/ssrn.4644827.>
[50] J. Kouamo and others. 'Establishing an Effective Trade Litigation Mechanism under the AfCFTA: What Can We Learn from the World Trade Organization?.' *Comparative and International Law Journal of Southern Africa* (2024). https://doi.org/10.25159/2522-3062/15027.

AfCFTA's digital and data-driven trade environment.[51] Furthermore, weak coordination among trade, finance, and environment agencies undermines policy coherence and the harmonization needed for effective participation in the.[52]

These weaknesses are not merely administrative; they reflect a fragmented policy culture that treats trade and environmental regulation as parallel rather than integrated domains. In such a context, even when opportunities for regional dispute resolution arise, bureaucratic inertia and limited analytical capacity suppress the incentive to litigate. The persistence of these deficits undermines both Nigeria's credibility as a regional leader and the AfCFTA's vision of continental economic autonomy.[53]

The question that follows is whether institutional reform alone can equalise participation. Capacity-building initiatives, while necessary, risk reproducing dependency if they focus only on technical training without altering the distributive logic of the system itself. What Nigeria's absence from WTO litigation demonstrates is that the challenge is not simply one of knowledge but of structural voice. The ability to invoke legal remedies in multilateral fora depends on who controls the epistemic and financial capital necessary to define what counts as legitimate evidence. Until procedural design incorporates differentiated obligations that recognise such disparities, juridical equality will remain performative rather than substantive.

In short, Nigeria's marginal participation should be read not as disinterest but as evidence of systemic inequity. The procedural uniformity of the WTO and AfCFTA dispute systems sustains a hierarchy of participation that rewards those already endowed with capacity while penalising those still struggling to build it. Any path toward equitable

[51] M Ajayi and others. 'An Analysis of Nigeria's Legal Framework for Cross-Border Data Transfer: The Afcfta Perspective.' *SSRN Electronic Journal* (2024). https://doi.org/10.2139/ssrn.4798172.
[52] U Ogochukwu and others. 'Boosting Economic Diversification in Nigeria through AfCFTA: How Trade Logistics and Infrastructure Shape the Future.' International Journal of Research and Scientific Innovation (2025). <https://doi.org/10.51244/ijrsi.2025.12040091.> accessed 14 October 2025
[53] O Adenuga, P Nkhoma and A Odili, 'African Continental Free Trade Area (AfCFTA) and the Challenges of Protectionist Policies on Regional Integration: Insights from Nigeria and South Africa' *University of Pretoria Repository* (2024) <https://repository.up.ac.za/handle/2263/99432> accessed 14 October 2025

participation must therefore move beyond capacity rhetoric to interrogate the distributive politics of procedure itself.

7. Integrating Trade, Environmental Sovereignty, and Developmental Justice

The tension between trade liberalisation and environmental protection has long occupied the fault line of global economic law. The modern legal order proclaims neutrality, yet neutrality itself can be an instrument of power. For developing economies such as Nigeria, participation in that order has often meant navigating between compliance and constraint. The aspiration to trade-driven growth exists alongside a struggle to defend regulatory autonomy. Environmental sovereignty, therefore, is not only about jurisdictional control over resources; it also embodies a state's moral claim to design policy without external compulsion.[54]

The notion of justice that underpins the global trading system tends to privilege form over substance. Procedural equality is guaranteed through uniform rules, but uniformity conceals structural disparity. Developing states are asked to defend environmental measures with the same degree of legal precision and evidentiary depth as advanced economies that possess laboratories, modelling tools, and transnational legal networks. When WTO panels evaluate environmental regulations under the General Agreement on Tariffs and Trade (GATT) Article XX, they frequently require quantitative assessments of necessity and proportionality. In *Brazil – Retreaded Tyres*, for instance, the Appellate Body recognised the legitimacy of health and environmental objectives but still demanded rigorous evidence that the measure was neither arbitrary nor disguised restriction.[55] For countries with limited data infrastructure, that evidentiary threshold can be prohibitive.

[54] CC Ajibo and T Kaime, 'Sustainable Development under AfCFTA: Dimensions, Limitations and Prospects' *Law & Development Review* (2024) 18(1) 25 <https://www.degruyterbrill.com/document/doi/10.1515/ldr-2023-0127/html> accessed 15 October 2025.

[55] World Trade Organization, *Brazil – Measures Affecting Imports of Retreaded Tyres* (Appellate Body Report, WT/DS332/AB/R, adopted 3 December 2007) <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm> accessed 15 October 2025

Nigeria's situation exemplifies this asymmetry. Although domestic courts have embraced environmental justice as part of socio-economic rights, the translation of that jurisprudence to the international sphere remains absent. The institutional fragmentation of ministries, weak data coordination, and limited financial support inhibit Nigeria's ability to contest environmental disputes in trade fora. Studies of AfCFTA's dispute settlement framework reveal similar institutional shortcomings. The system assumes a high level of procedural readiness, yet most member states lack specialised legal units and databases for trade–environment evidence.[56] These are not trivial omissions; they shape the capacity of states to engage meaningfully in adjudication and to influence the interpretation of trade–environment norms.

Recent research highlights that while ECOWAS and other regional bodies have made formal commitments to trade integration and dispute resolution, actual implementation is hampered by weak infrastructure, cumbersome procedures, and limited intra-regional trade.[57] Workshops organised under ECOWAS in 2024 to train judges and legal officers demonstrate awareness of the problem, but they remain preliminary responses to structural deficits.[58] Without financial independence, robust legal scholarship, and regional knowledge networks, such training can only marginally reduce the gap between procedural entitlement and actual participation.

Justice within international trade cannot be confined to procedural access. It must address the distributive consequences of who benefits from trade rules and who bears the environmental costs. The logic of development embedded in trade law often assumes that market participation will yield welfare gains, yet it seldom accounts for ecological externalities or the uneven ability of states to mitigate them. In this light, developmental

[56] AY Demamu, 'A Framework of African Continental Free Trade Area Dispute Settlement Mechanism: Legal Challenges' *Journal of International Dispute Settlement* (2024) 15(3) 440 <https://academic.oup.com/jids/article/15/3/440/7638815> accessed 15 October 2025

[57] Shahrzad Safaeimanesh et al. 'Trade Facilitation and Its Impacts on the Economic Welfare and Sustainable Development of the ECOWAS Region.' *Sustainability* (2020). <https://doi.org/10.3390/su13010164.>

[58] G Ikeh, 'ECOWAS Strengthens Capacity of Regional Judicial System on Dispute Settlement' (2024) APA News <https://apanews.net/ecowas-strengthens-capacity-of-regional-judicial-system-on-dispute-settlement/> accessed 15 October 2025.

justice demands that trade adjudication recognise differentiated capacities and historical responsibility. The WTO's ongoing debates over fisheries subsidies and carbon border adjustments illustrate the stakes. When environmental rules are crafted without sensitivity to development contexts, they risk transforming sustainability into a new frontier of exclusion.[59]

8. Conclusion and Recommendations

The analysis throughout this paper has demonstrated that the promise of equality in global trade governance remains largely rhetorical. Nigeria's minimal participation in the World Trade Organization's dispute settlement system, and its slow engagement within the African Continental Free Trade Area, reveal not an absence of will but the enduring consequences of institutional and epistemic imbalance. The mechanisms that purport to guarantee justice in trade often reproduce the hierarchies they claim to dismantle. True reform, therefore, cannot be confined to procedural adjustments; it must engage the deeper moral question of how fairness is understood and operationalised in international economic law.

The first step toward redressing this imbalance lies in redefining the theoretical foundations of participation. Equality of procedure without equality of capacity produces what this paper has described as formal inclusion and substantive exclusion. Justice within trade law must be reconstructed as an integrative concept, one that fuses procedural fairness with distributive and environmental equity. If sovereignty is to have contemporary meaning, it should embody a state's right not only to trade freely but also to regulate sustainably in defence of its people and environment. This normative shift requires intellectual leadership from African scholars and policymakers who can

[59] K Kugler, 'Africa and the Great Power Competition at the World Trade Organization' (2025) <https://carnegieendowment.org/research/2025/03/africa-and-the-great-power-competition-at-the-world-trade-organization> accessed 15 October 2025

articulate alternative paradigms that privilege justice as capability rather than as mere access.[60]

Domestic reform remains central to any meaningful transformation. Nigeria must cultivate institutional coherence by establishing specialised bodies that combine trade expertise with environmental literacy. A coordinated Trade and Environmental Litigation Unit, supported by data partnerships across ministries and universities, would strengthen the evidentiary foundation required for credible participation in both WTO and AfCFTA systems.[61] Investment in empirical data and policy analysis will also enhance regulatory design, allowing Nigeria to anticipate disputes rather than simply react to them. Legal education should follow suit, embedding environmental economics and sustainability principles within the curriculum for trade negotiators, judges, and civil servants. Knowledge, in this sense, becomes both the instrument and the substance of sovereignty.

At the regional level, African states must transform solidarity from a political slogan into a legal strategy. Shared capacity gaps justify collective intervention. The AfCFTA should institutionalise a continental advisory and research centre, governed by member states and tasked with providing litigation support, doctrinal research, and jurisprudential monitoring. Without such structures, the region risks repeating the fragmented dependence that characterises its engagement with global institutions. ECOWAS's judicial training initiatives show the beginning of regional awareness but they must evolve into continuous professional communities of practice, supported by a network of scholars, judges, and trade officials who can sustain institutional memory across generations.

Globally, the WTO must confront the contradictions within its own design. Uniform procedural rules treat states as equals while ignoring the material disparities that define

[60] CC Ajibo and T Kaime, 'Sustainable Development under AfCFTA: Dimensions, Limitations and Prospects' *Law & Development Review* (2024) 18(1) 25 <https://www.degruyterbrill.com/document/doi/10.1515/ldr-2023-0127/html> accessed 15 October 2025.
[61] AY Demamu, 'A Framework of African Continental Free Trade Area Dispute Settlement Mechanism: Legal Challenges' *Journal of International Dispute Settlement* (2024) 15(3) 440 <https://academic.oup.com/jids/article/15/3/440/7638815> accessed 15 October 2025.

their capacity to comply. The Dispute Settlement Understanding could be amended to allow differentiated obligations, procedural flexibility, and greater recognition of credible domestic data when international benchmarks are unattainable. The Trade and Environment Division should shift its focus from post-hoc capacity building to proactive evidence development and co-funding of expert participation for developing members. Transparency should become a substantive norm, not an administrative courtesy, ensuring that all members can learn from the reasoning of panels and share interpretive insights without cost barriers.

Beyond institutional design, the transformation of global trade justice requires an epistemic awakening. The production of knowledge, legal, scientific, or economic, remains concentrated in the North, leaving the South to consume interpretive frameworks it did not create. For Nigeria and other African economies, genuine sovereignty will only be achieved when they not only participate in adjudication but also shape the concepts through which trade and environment are understood. Justice in the twenty-first century demands that states, regardless of capacity, retain the right to define their developmental priorities and ecological boundaries within a fair and transparent order.

The argument advanced in this study has been both diagnostic and aspirational. It has shown that procedural neutrality, without contextual equity, sustains an illusion of fairness. Yet it has also identified pathways toward reform grounded in institutional cooperation, epistemic empowerment, and the moral logic of justice. If Nigeria can integrate these insights into its domestic, regional, and global engagements, it may not only enhance its participation but also contribute to the transformation of international trade law into a genuinely inclusive system. In the final analysis, the legitimacy of trade governance will depend on its capacity to reconcile commerce with conscience and sovereignty with sustainability.

CHALLENGES OF INTELLECTUAL PROPERTY RIGHT PROTECTION IN THE OUTER SPACE

Yewande Fadeke Oluwajobi* and Adewole A. Adedeji**

Abstract

As more private entities get involved in space activities, the issue of intellectual property would continue to dominate the conversation because the international laws on space activities appeared to ban property rights in outer space. Juxtaposing the exclusionary nature of protection for intellectual property rights on earth with the terrestrial nature of outer space activities is challenging, yet states and companies have to deal with the challenge. This study examined the challenges of protecting intellectual property rights in outer space in relation to private sectors' activities. The study employed the doctrinal method of research with emphasis on the international customary laws on outer space. The study found that international customary laws did not address protection of intellectual property rights in outer space, and that dispute settlement mechanisms for addressing the issues were not inadequate. The study concluded with an appraisal of Nigeria's activities in space and the need to improve on their visibility in the global space.

Keywords: Property rights, outer space, private entities, international customary law, dispute settlement.

Introduction

Intellectual property right is at the centre of private entities' space activities because investments in space would only thrive where there is an established legal framework. The Space environment has unique characteristics different from the terrestrial; its regulation also demands different approaches.

[1] The effectiveness of the legal regime depend on the level of protection afforded parties involved in space activities, whether individuals, private companies, research and academic groups or states.[2] The growth of the space sector is hinged on the legal structure that is accessible, stable and predictable.[3]

In 2011 when National Aeronautics and Space Administration (NASA) retired its space shuttle program,[4] the plan ultimately was for the private sector to provide transportation and other crucial services to and from the orbit to the earth.[5] Private companies such as SpaceX, Virgin Galactic[6] and Blue Origin[7] have been involved in research projects and delivery of critical services to the space sector.[8] As long as these private entities are

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[1] L.I. Tennen, 'Enterprises Rights and the Legal Regime for Exploration of Outer Space Resources' (2017) 47 U.PAC. L. REV. 281.

[2] Ibid

[3] Ibid

[4] M.B. Hershkowitz, 'Deep Space (Treaty) Exploration: Reviving Today's Obsolete Space Treaties' (2019) 28 Mich. St Int'l L. Rev 1.

[5] M. Wall, Let the Space Shuttle Rest in Peace, Experts Tell Congress, (SPACE.COM, 13 October 2011) <https://www.space.com/13274-space-shuttle-rip-retirement-congress.html> in Hershkowitz. Accessed 01/11/2023.

[6] Galactic, 'Spaceline for Earth' <https://www.virgingalactic.com>; William Harwood, 'Virgin Galactic Chalks Up 4th Commercial Suborbital Spaceflight with 3 Space Tourists Aboard' (CBS News,6 October 2023) https://www.cbsnews.com/news/virgin-galactic-launch-fourth-commercial-spaceflight/ accessed 01/11/2023.

[7] New Shepard, 'Blue Origin' <https://www.blueorigin.com/new-shepard>; W. Neff, C. Davenport and T. Trackin, 'How NASA Plan to Change the Way People Fly to the Moon' (The Washington Post, 31 October 2023) <https://www.washingtonpost.com/business/interactive/2023/nasa-moon-missions-landing-blue-origins-artemis/> accessed 01/11/2023

[8] M. Frackiewicz, 'The Role of SpaceX in National and Security Defence' (TS2,23 June 2023) <https://ts2.space/en/the-role-of-spacex-in-national-security-and-defence/> accessed 01/11/2023;

involved in space exploration, discussions on Intellectual Property (IP) would take central stage.

Most IP rights are based on the domestic laws of the state and protection does not extend to another state unless the IP is registered in the other states. The same allusion cannot be extended to outer space activities,[9] since whatever protection under national laws do not extend beyond boundaries of the state.[10] Space activities are regulated by international laws.[11] According to Merges, property right includes the power of possession, usage and disposal of any *res* or assets.[12] The characteristics of I.P are as stated below:

> It is 'good against the world' – no prior contract or other contract or other legal relationship is required to create a duty on the part of third parties to respect the right; it defines uses of an asset that are under control of the owner, it demarcates what is 'in' and 'out' of the owner's ambit of authority; it is broadly transferable; yet the owner retains residual rights over those aspects of right that are not transferred. In addition, it includes a special form of quasi-transfer power, in that it permits the owner alone to decide whether and when to enforce the right.[13]

Property rights must be respected because the holder has the liberty to enforce his right against the whole world, it is exclusive to him and protected by the domestic laws of states against anyone who violates that right.[14] The right-holder has the power of approaching the court in enforcing it because, according to Merges, "The property relation concentrates power over the assets in the hands of a single 'focal point'- the owner."[15]

I. P. protections are territorial and limited to the state offering the protection, it means that if the right is breached in another state, no right will accrue to the right holder unless

[9] Yhun Zhao, 'Protection of Intellectual Property Rights in Outer Space' (2006) American Institute of Aeronautics and Astronautics.
[10] Ibid
[11] T. Leepuengtham, *The Protection of IP Rights in Outer Space Activities* (2017) Edward Elgar Publishers, 149.
[12] R. P. Merges, What Kind of Rights Are Intellectual Property Rights in R. C. Dreyfuss and J. Pila (eds) The Oxford Handbook of Intellectual Property Law (2017) https://ssrn.com.abstract=2959073 accessed 01/11/2023.
[13] Ibid
[14] Ibid
[15] Ibid

the IP had been registered also in the state where the breach occurred.[16] Any protection offered by the state for IP right(s) is limited by years[17] and can only be enforced within the state. This Article discussed the challenges of using territorial laws in addressing IP rights originating from outer space.

1.1 The Extraterritorial Feature of Outer Space

The outer space environment is operated by different set of rules. Firstly, no state can claim exclusive sovereignty of the outer space in any form whatsoever;[18] to claim sovereignty in the outer space is to go against established international laws. All space activities including the activities of the commercial sector, private companies and intergovernmental agencies are to be carried out under the supervision and authorisation of the state; with particular emphasis being placed on the activities of non-governmental entities[19] in ensuring compliance with international laws.

The duty placed on states by the space treaties demands control which covers jurisdiction of the states, that can only work by registering the space objects.[20] The Registration Convention provides for the launching state, to be the state launching or procuring the launch of a space object. Such a state is responsible for the object(s) launched into space implying that the state can apply their IP rules to their space activities.[21] Where more than one state is involved in the launch of space objects, the state parties in their agreements will decide on which of the states is to exercise jurisdiction, thus:

> As such, while the non-appropriation principle applies, the space law regime provides relevant connections between the State of registry and the space object, and the space activities carried out in the space object. This would be one important and useful arrangement for the current discussion, especially in considering possible reconciliation of the space law regime with the intellectual property law regime.[22]

[16] Yun Zhao, 'Law Related to Intellectual Property and Transfer of Technology' in R.S. Jakhu and P.S. Dempsey (eds) Routledge Handbook of Space Law (Taylor and Francis Group, 2017) 321.
[17] Ibid.
[18] Ibid, at 322.
[19] Ibid
[20] See Article VIII of the Outer Space Treaty.
[21] Zhao, at 322.
[22] Zhao, supra n 16, at 322

The Registration Convention covers situation where intergovernmental organisations can register their space objects under another condition.[23] Where this occurs, the issue of IP had to be detailed and agreed on by the parties.[24] Zhao suggested that in the absence of a prior agreements between the parties, ideas can be borrowed from the arrangements concerning intellectual property's legal regime on the International Space Station.[25] In instances of lack of details on IP rights in outer space, reference can be made to other international regimes where there are similar bans on state's sovereignty.[26] Allusions can also be made to what operates on the high seas, because the two zones have similar characteristics.[27] Both zones are to be non-appropriated,[28] yet there are lots of mining opportunities in the zones, with additional prospects and challenges.[29]

Fearing that the developed states would edge out the less developed states from the benefits of the Deep Seabed, developing states advocated for making the Deep Seabed a Common Heritage of Mankind (CHM). Their arguments made the principle of CHM to become an international standard; included and adapted into the space treaties. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) adopted most of the CHM principles and enjoyed less reception from the industrialised states who considered the principles restrictive especially as it lacks supports for mining opportunities.[30] Delicate balance had to be worked out between the CHM and protection of commercial activities.

2.1 The Challenges of International Laws in Regulating Outer Space

Carl Schmitt believed that the history of international law is linked to land grabbing that was rampant in the old-world order, and that international laws after the second world

[23] Articles V-VIII of the Registration Convention; Natercia Rodrigues, 'Registration of Space Objects: Requirements and Procedures' (2023) KiboCUBE Regulatory Webinar, https://www.unoosa.org/documents/pdf/Access2Space4all/KiboCUBE/RegulatoryWebinar/Kibo_Regulatory_Webinar_Registration_of Space_objects_Rodrigues.pdf. Accessed 15/02/2024.
[24] Zhao, at 323.
[25] Ibid
[26] Ibid
[27] Faculty of Law, University of Oslo, 'The Need for a Common Heritage of Mankind Based Regime for the Exploitation of Outer Space Resources: The Deep Seabed as Inspiration for Outer Space' (2020)
[28] See Articles 136 and 137 of UNCLOS adopted on the 10th of December 1982 which entered into force on 16 November 1994.
[29] University of Oslo, supra n 27.
[30] Ibid, at 13.

war reflected this.[31] The 1970 Declaration on Principles of International Law and Article 2 (1) of the United Nation Charter established a new international order was established by giving territories sovereignty. In the space sector, challenges likely to be posed by modern technology was addressed by the inclusion of Article II of the OST.[32] It was argued that inhibition against appropriation should not be equated with property rights in outer space, and that the ban against states' sovereignty must not be extended to rights in natural resources.[33] Gorove opined that the space treaties did not treat outer space differently from its resources, the two will have to be taken as the same; it will be contrary for any user to appropriate the natural resources of the outer space.[34]

In making analogy to the law of the sea, some scholars noted that states and private actors can make use of the resources of the outer space as long as the use is not permanent in a way as to impede others from right of use.[35] Blount and Robinson, in countering the arguments held that Article II of the OST has significance for territory and not property, because right to appropriate emanates from the right to the territory.[36]

Under international law, an area outside the jurisdiction of any state is known as global commons, a place or location not subject to the control and sovereignty of any state.[37] On the lingering question of the legality of space resources, comparison was made to the right to fish on the High Sea governed by the international law of the seas, it shows that 'extraction' is possible on an area designated as global commons.[38] Examples from international laws depict the fact that commercialisation of natural resources may be

[31] C. Schmitt, The Nomos of the Earth in the International Law of the Jus Publicum Europaeum 45 (2003) G.L. Ulmen Trans, Telos Press ed.
[32] P. J. Blount and C. J. Robison, 'One Small Step: The Impact of the U. S. Commercial Space Launch Competitiveness Act of 2015 on the Exploration of Resources in Outer Space' (2016) NCJLT 160 at 169.
[33] Ibid, see S. Gorove, *Studies in Space Law: Its Challenges and Prospects* (1977) (Sijthoff A. Leiden ed.) 82 cited in Blount and Robison
[34] S. Gorove, 'Limitations on the Principles of Freedom of Exploration and Use in Outer Space' (1970) 13th Colloquium on the Law of Outer Space 40 cited by Blount and Robison.
[35]Blount and Robison, 170 citing F. Tronchetti, The Exploitation of Natural Resources of the Moon and Other Celestial Bodies—A Proposal for a Legal Regime (2009) 32.
[36] Ibid.
[37] Blount and Robison, supra n 32 at 171.
[38] Ibid; see the International Law of the Seas (UNCLOS) and the Antarctic Treaty.

allowed under certain circumstances as seen in the Antarctic Treaty and the UNCLOS.[39] Therefore, the same position can be taken under the international space law, to this end, Blount and Robison pointed out the following:

> Resource extraction for commercial purposes therefore can be interpreted as a valid 'use' under general international law governing global commons, and the lack of a specific clause prohibiting such extraction within the body of space law is indicative of it being a valid use within the lex specialis of outer space. To that end, article II leaves significant gaps that cannot be filled by comparison to other global commons which specify the extent to which States can exploit resources.[40]

2.1.1 International Customary Law Relating to Outer Space

The most challenging issue before the international community is balancing conflicting interests of states on one hand, and commercial interests of non-state actors involved in space activities on the other hand. In the bid to protect their own economic interests, commentators would always choose narratives that align with their interests, "thus, the stakes of an international agreement on the appropriate interpretation of the Outer Space Treaty are particularly high".[41]

International customary law is important in balancing the conflicting interests in outer space, and "to determine the existence of a rule of customary international law and its content, it is necessary to ascertain whether there is a general practice accepted as law".[42] International customary law entails two important elements comprising *state practice* and *general acceptance* also known as opinion juris.[43] These elements have been touted as evidence of proving customary international law, Pershing alluded to the decision of the International Court of Justice in the case of Nicaragua v United States where the court held as follows:

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[39] H. Nielsen, Selling the South: Marketing and Commercialisation of Antarctica (2017) University of Tasmania, https://hdl.handle.net/102.100.100/533884

[40] Blount and Robison at 172-173.

[41] A.D. Pershing, 'Interpreting the Outer Space Treaty's Non-Appropriation Principle: Customary International Law from 1967 to Today' (2019) Yale Journal of International Law Vol. 44, Iss.1

[42] Ibid

[43] H. Jamil and S. Koonan, 'The State, State Practice and International Law: A Critical Examination (202303 TWAIL Review 204-222.

> The conduct of the States should, in general, be consistent with such rule, and that instances of States conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule.[44]

Evidence of long state practice gives credence to customary international law, it shows consistency on the part of the law, but evidence of long practice may not apply to space law due to recent nature of the developments of the law. Pershing argued that irrespective of the absence of evidence of long practice, customary international law can still be established, even within a short period of time.[45] State's actions have effect on international space law, and

> Instead of relying on the length of time that States have treated a particular rule as a customary international law, other potential sources of evidence that can support a claim of a customary international law includes treaties, decisions of national courts and international tribunals, national legislation, diplomatic correspondence, opinions of national legal advisors, and the practice of international organizations.[46]

The goal is to beat the requirement of long practice for validation on customary international law with other means of proof. It must be borne in mind that the space treaties were drafted at the time that private entities' involvement were not envisaged or planned for and technological advancement were limited, therefore, condemning the treaties in their entirety would be unjustified. States parties were the main characters envisaged and prepared for in space treaties at the time, yet no state was allowed the right of appropriating any part of the outer space in any form.

2.1.2 National Laws forming Customary Laws in Outer Space.

State's interpretation of international treaties is very important, it gives credibility, acceptance and weight to such international laws. The more a treaty is accepted and embraced by states, the more weight it would garner internationally. It has a way of establishing the narratives around the treaties, a good example of this is the Moon

[44] Ibid, Nicaragua v United States (1986) I.C.J 14, 98
[45] Ibid, N. Sea Cont. Shelf Cases, 1969 I.C.J. 3, 43
[46] Ibid at 154; see UNOOSA, 'Customary International Law' at https://www.unnosa.org/documents/pdf/copous/lsc/2019/tech-07E.pdf. Accessed 22/10/22230

Agreement that had received little or no support from major space faring states with few states signing or ratifying the Agreement[47].

States' practice of interpreting the provisions of the space treaties is gradually changing international customary laws of space. States at the forefront of these narratives are mostly the space faring states, and they tend to adopt the narrow interpretation[48] in order to pave way for their plans to explore and exploit the outer space especially in the interests of protecting the private sector. In other words, "domestic law, both in the United States and abroad, provides further evidence of the shift in customary international law…" [49]

The US started the trend towards a change in international customary law when it came back with lunar stones in1969 after sending the first man to the Moon, some of the lunar resources that it came back with were later appropriated.[50] Their action set off a change that has become accepted over the years as many states became space faring and got access to the outer space. The United States had expressly asserted their ownership over many of its resources it had picked from the lunar, by declaring that "Lunar material retrieved form the Moon during the Apollo Program is U.S. government property."[51]

Though the US is not a party to the Moon Agreement, its attitude towards the treaty shows its opposition to language of the treaty as they do not align with their national interests in exploiting the outer space. In addition, the language of the U.S. domestic laws on outer space denotes a complete shift in customary international law. The U.S. achieved this by hiding up under the guise of encouraging private commercial activities in outer space, and the opportunity came in 2004 when the initial commercial use of space was mentioned in a domestic legislation.[52] Probably, the most daring domestic

[47] Blount and Robison, supra n 32.
[48] A.D. Pershing, supra n 41.
[49] Ibid at 159.
[50] Mark Bosworth, 'What Happened to NASA's Missing Moon Rocks' (BBC News, 20 February 2012) <https://www.bbc.com/news/magazine-16909592>; Chris Lefkow, 'What Happened to the Apollo Goodwill Moon Rocks' (PHYS.ORG, 16 June 2019) <https://phys.org/news/2019-06-apollo-goodwill-moon.html> accessed 01/11/2023.
[51] Pershing, supra n 41, at 158.
[52] Commercial Space Launch Amendments Act of 2004.

legislation by a state is the Spurring Private Aerospace Competitiveness (SPACE) Act of 2015 by the United States of America.[53] The Act gave rights to US citizens engaged in commercial space activities to harvest asteroid resources, to possess and dispose them as long as it complies with international law. It is however not clear how exploiting asteroids by private actors would still be in line with international law.

It is interesting to note that other states have followed the path adopted by the United States. Luxembourg followed suit in 2017.[54] The United Arab Emirates is also planning on enacting similar national legislation.[55] Interpretation of many of the principles in the space treaties are changing now as never before, one of such is the non-appropriation principle which some legal jurists are now interpreting narrowly.[56] It is observed that the current interpretation differs greatly from the intention of the legal jurists that were involved in drafting the treaties.[57] Jurists now argue that 'use' of space resources is allowed by the space treaties,[58] although they stopped short of imposing total legality of the appropriation. Few legal jurists[59] are still opposed to this position even if the generality of international community seem nuanced in the face of what is now happening in the international space customary law.[60] Pershing stated as follows:

> Taken together, the elements described above—statements made in the international arena, de facto appropriation of space resources in the form

[53] U.S. Commercial Space Launch Competitiveness Act, H.R. 2262, 114th Cong. (2015)
[54] The Luxembourg law was known as "On the Exploration and Utilisation of Space Resource" in 2017. Article 1 is to the effect that "space resources can be appropriated" and Article 3 gave the legal backing to private actors to exploit space for commercial purposes.
[55] See Sarwat Nasir, UAE's National Space Law Comes into Effect' (UAE, 24 February 2020) <https://www.thenationalnews.com/uae/science/uae-s-national-space-law-comes-into-effect-1.983817>; Watson Farley and Williams, 'Key Features of the United Arab Emirates Regulations on Space Activities' (WFW, 10 August 2023) <https://www.wfw.com/articles/key-faetures-of-the-new-united-arab-emirates-regulations-on-space-activities/> accessed 01/11/2023
[56] Pershing, supra n 40 at 161,
[57] Ibid; B. C. Gruner, Comment, A New Hope for International Space Law: Incorporating Nineteenth Century First Possession Principles into the 1967 Space Treaty for the Colonisation of Outer Space in the Twenty-First Century (2004) 35 SETTON HALL. L. REV. 299, 304.
[58] Lukasz Olejnik, 'The Outer Space and Promoting Responsible Use of Outer Space' (Just Security, 7 July 2023) <https://www.justsecurity-org/86823/the-outer-space-treaty-and-promoting-responsible-use-of-space>; cf Vladmir Kopal, 'Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies' (2008) UN Audiovisual Library of International Law, https://legal.un.org/avl/pdf/ha/tos/tos_e.pdf accessed 01/11/2023
[59] Ibid
[60] Pershing at 162.

> of moon rocks, the adoption of new national policies permitting appropriation of extracted space resources, and the weight of the international legal community's opinion—indicate a fundamental shift in customary international law.[61]

The main objective of national regulations of outer space depicted by the actions of states like US and Luxembourg's examples is to pave way for private sector in outer space by driving a new economic order,[62] thus interpreting Articles I and II of the OST to suit purpose though the right interpretation should derive from the text of the treaty itself.[63] In essence, national laws make the lacunae in international space law obvious:

> For this reason, space mining entities urged States to adopt national laws that apparently provide them with the necessary and sufficient discipline to carry out space exploitation, but which nevertheless firmly establish that respect for and compliance with international law is guaranteed.[64]

3.1 Private Actors Changing the Game

There is no doubt that private actors have their gaze on profits to be made from exploiting the outer space.[65] The only challenge is the legal impediments created by the international laws on space, especially the non-appropriation principle, and it does not appear that international law will change any time soon considering the number of states that are now involved in space activities. The only option available to the private entities is to lobby their states to recognize these rights in their national and domestic laws. As Pershing observed, most states will bow to the pressure from the private sector as already shown by what is happening in US, Luxembourg and the UAE. The global community will have to act to stop the tide.[66] In essence,

> The prospect of high profits from the extraction of space resources will likely incentivize private companies and individuals to pressure States to

[61] Ibid.
[62] F. Ludovica, International Space Law, International Law Principles Governing the Exploitation of Outer Space Resources: Assessing A Provisional Legal Framework for Allowed Activities (2018/2019) LUISS; F. Tronchetti, 'The Non-Appropriation Principle Under Attack: Using Article II of the Outer Space Treaty in Its Defence' (2008)33 Annals of Air and Space Law 1.
[63] Ibid.
[64] Ibid
[65] Robert Wall et al, 'How to Profit in Space: A Visual Guide' (The Wall Street Journal, 25 June 2019) <https://www.wsj.com/graphics/new-space-race/> accessed 01/11/2023.
[66] Pershing, supra n 40 at 162.

> recognize and protect private in situ property rights…As increasing government openness to private commercial space activities suggests, States will likely buckle under this pressure and allow private companies or private entities under State control to exercise ownerships rights.[67]

The case of *Nemitz v United States*[68] raised questions on the right of individual to appropriate the resources of the outer space.[69] On one hand is the argument that the treaty covers private actors by virtue of the term "any other means" included in Article II of the OST.[70] It was further argued that state can grant to private actors property rights as "an act of territorial appropriation."[71]

For Blount and Robison, the contention is not whether states can grant rights to private actors as they believed that had been settled by Article IV of the OST; the main issue, as they argued is the extent of the right, especially as states are responsible for the activities of their non-governmental actors. While states retain jurisdiction over private actors, they also have rights within the framework of the space treaties. The rights encompass commercial rights as long as it is subject to states' authorization of the activities.

Space mining is an area of outer space activities that had captured the interests of both states and private actors in space, not the least because of the prospect of mining the numerous resources deposited on celestial bodies especially on the moon, and as Tronchetti noted;

> The Moon is rich in mineral resources distributed uniformly across its surface and subsurface. It has been demonstrated that the Moon is rich in aluminium, iron, silicon, oxygen, hydrogen, chromium, manganese, potassium, and other minerals. These minerals can be utilized in their original form or refined into structural and electrical materials. They can be either brought back to Earth or used for life support of a permanent lunar basis or as a rocket propellant. For instance, oxygen and hydrogen are contained in the lunar regolith at all latitudes. Oxide minerals such as

[67] Ibid
[68] Nemitz v. United States, No. CV-N030599-HDM (RAM), 2004.
[69] P.J. Blount & C. J. Robison, 'One Small Step: The Impact of the U.S. Commercial Space Launch Competitiveness Act of 2015 on the Exploitation of Resources in Outer Space' (2016) 18 NC JL & Tech 160.
[70] C. O. Christol, Article 2 of the 1967 Principles Treaty Revisited in Outer Space: Problems of Law and Policy (1997) 78 in Blount and Robison.
[71] Blount and Robison, supra n 32 at 166.

> limonite or olivine can be removed as water vapor by warming up these minerals with hydrogen. The water vapor which is obtained can be condensed and electrolyzed into hydrogen, and oxygen is liquefied. These components can be used as life support or propellant for oxygen.[72]

Helium-3, the most valuable resources discovered on the moon is rarely found earth, and not in commercial quantity. The discovery of water at the south pole of the Moon,[73] indicated that life can be supported on the Moon, Tronchetti further observed that

> The most valuable resources contained in the Moon is Helium-3. Helium-3 may be considered the main reason behind the interest that States and private operators are showing with respect to the Moon and to the exploitation of its resources. Helium-3 is an isotope, scarcely present on Earth but abundant on the Moon, which combined with other materials, such as deuterium, can be used as fuel in fusion power reactors. The value of Helium-3 is that it can generate nuclear power and, as a consequence, energy in a clean way, namely through a process of nuclear fusion which does not produce toxic waste…the extraction of Helium-3 is likely to have a huge impact on the way energy is produced and distributed on Earth. Helium-3, indeed has the potential to replace fossil fuels and other substances as primary source of energy on Earth. It has been estimated that twenty-five tonnes of Helium-3 can provide all the power that the United States needs in a year.[74]

Private actors are involved in space activities including provision of services, exploitation and transportation as seen in what SpaceX had been involved with in the last few years. Other companies such as Boeing, Blue Origin, and Virgin Galactic are taking up more stakes in the space sector (both for commercial and private purposes). The prospects of making huge profits from prospecting the resources of the outer space outweighs this and dragged discussions about the national space regulations back to the centre stage.[75]

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[72] Fabio Troncetti, 'The Exploration of Natural Resources of the Moon and Other Celestial Bodies' (2009)
[73] Fabio Tronchetti, 'The Moon Agreement in the 21st Century: Addressing Its Potential Role in the Era of Commercial Exploitation of the Natural Resources of the Moon and Other Celestial Bodies' (2010) Journal of Space Law, Vol.36, 489.
[74] Ibid, at 494-495; M.B. Hershkowitz, 'Deep Space (Treaty) Exploration: Reviving Today's Obsolete Space Treaties' (2019)28 Mich St Int'L Rev 1, 20.
[75] N. M. Genzer, 'Four Ways to Make Money in Space' (MarketPlace, 14 March 2014) <https://www.marketplace.org/2014/03/14/four-ways-make-money-space/> accessed 01/11/2023.

3.2 The Commercial Space Launch Competitiveness Act (CSCLA)'s Impact on International Space Law

The United States SPACE Act states that

> A United States citizen engaged in commercial recovery of asteroid resource or a space resource under this chapter shall be entitled to any asteroid resource or space resource obtained, including to possess, own, transport, use and sell the asteroid resource obtained in accordance with applicable law, including the international obligations of the United States.[76]

The SPACE Act is quite specific in the bundle of rights it grants to any U.S. citizen, though it was crafted in a way that would seem to align with international space law. The wordings of the Act were carefully chosen to ensure property rights in mined resources of the outer space or other celestial bodies. The Act gave property rights to asteroids resources but stopped short of granting sovereignty as that will go against international law, and

> by narrowly defining the rights that entities have to such resources, American legislators have arguably avoided showing an intent to allow private entities to have exclusive control over a celestial body or a portion of a celestial body from which resources could be extracted.[77]

Though the language of the Act suggested compliance with international space law, it is believed that Article II, Title IV of the Act will in fact encourage breaches of international space law by private actors. Blount and Robison held that in the bid to make rightful claim to asteroid resources, a private entity could make a claim of wrongful interference against another party, preventing the third party from having access to the resources. Thus, expressly violating the provisions of Article II of the OST.[78]

National laws are important in providing context to international laws. The actions of states in interpreting and applying treaties give validation to treaties, and entails the growth of international law "as state act and react within legal lacunae".[79] International

[76] See the US SPACE Act, 2015.
[77] Blount and Robison, supra n 32 at 176.
[78] Ibid.
[79] Ibid, at 177.

incidences give validity to international law,[80] as it shows the application and interpretation of law to the incidents and establish the doctrines of international law. In essence, the way states use international law in resolving international disputes portrays the extent to which states appreciate the obligations they have under international law.[81]

Against the background above, international laws are mostly the outcome of several negotiations, and they metamorphosed from soft laws (non-binding agreements) to treaties. It is not *surprising* that states sometimes fail to comply with the provisions of space laws. National laws and regulations are harnessed by states to fill up lacunae in international law, already understood by what the U.S. and other states are undertaking. What these states are doing is declaring their own interpretation of international law in the wordings and language of their domestic laws.[82] A picture is painted below:

> As states work out the content of ambiguous terms in international law, State legislation plays an important role in revealing state interpretations of legal rights and obligations, especially when States enact legislation that is meant to comport with international law. In such scenarios, the legislation itself becomes an important epistemic unit in analysing the content of international law.[83]

In summary, to understand the U.S. space ideologies, understanding and interpretation of international space law, one has to look at the content of the U. S. SPACE Act. However, it has been noted that the SPACE Act itself does not violate international space law since Article II of the OST tolerates different interpretations having failed to provide interpretational guidance. In addition, given the clever drafting of the SPACE Act and the acknowledgment of international law in the body of the text, it can be argued that the U.S. interpretation is still within the allowed limits of the law.

In linking Title IV of the SPACE Act to Article II of the OST and asking whether it can be accepted as a valid interpretation of the OST, Blount and Robison note that it would

[80] W. M. Reisman, 'International Incidents: Introduction to a New Genre in the Study of International Law' (1984) 10 YALE J. INT'L. L. 1. C
cited by Blount and Robison at 177.
[81] Ibid
[82] Blount and Robison, supra n 32 at 179.
[83] Ibid at 180.

depend on the actions of other states.[84] If other states reject this interpretation, it might make the U.S. to change their stance or to stick to their guns as "a persistent objector".[85] Another step that can be undertaken by states is to create an international threshold that actions of states in relation to outer space can be measured against but there is no such thing at present.

International reactions will either prove acceptance or rejection and will become important in preserving the sanctity of international space law. Without states' rejection of the U. S. stance, every other objection would only remain purely academic.[86] It would amount to one thing; that the US position remains valid because "if other states do not contest this extension, then it is reasonable to interpret Title IV as legislation that represents a step towards defining the content of Article II and the law concerning the specific activity of space mining".[87]

In the absence of the rejection of the U. S. position on Article II, the international space community will have to take decisions on important issues that will crop up. The activities of states in outer space will require a legal regime in order to address all the conflicting interests in the use of space whilst ensuring that global peace and security are not threatened by activities in outer space.[88] International law is an avenue for stability and peace in international relations, negotiations amongst states is conducted on equal basis whilst trying to find a balance between protecting individual interests and interests of the global community.[89] One area that the above has often played out is when advancements in technology threatens one of the structures of the global community, like sovereignty.[90]

The issue of appropriating extracted space resources remains a highly contested topic under international law. It is unclear at which point that a state would be said to be

[84] Blount and Robison, supra n 32 at 181; see also P. J. Blount, 'Jurisdiction in Outer Space: Challenges of Private Individuals in Space' (2007) 33 J. SPACE. L. 299.
[85] Ibid.
[86] Blount and Robison at 181.
[87] Ibid.
[88] Blount and Robison at 182.
[89] Ibid.
[90] ibid

extending its territorial jurisdiction to space resources. These are among issues that were not envisaged in the treaty's era, the complexities of technology are one reality of modern-day space activities because advancements in technology brings with it new contending areas for international law.[91]

Uncertainties around Article II of the OST came because states grappling with increasing advancements in technology cannot determine the limit of state power in outer space.[92] There are suggestions that stability and peace on outer space can be achieved via other means than the by solving the sovereignty problem. A legal regime that addressed all the pending unresolved issues surrounding outer space and its utility is urgently needed; states have to adopt a standard of use on which the actions of states will be measured.[93]

4.1 Disputes Settlement of Outer Space Activities

4.1.1 Jurisdictional Issues

With regard to international disputes, private international law is applicable but when disputes centres on activities in outer space, it is not clear whether private international law will be applicable. In a situation where an invention from outer space was registered in all the states of the astronauts involved, but such patent was infringed in states where it had not been registered, the question of which court will have jurisdiction remains unresolved.[94] This scenario would be covered by private international law, but where the location of the infringement is outer space, the choice of the court becomes indefinite.[95] The uncertainties around patents are likely "relating to the validity of a patent and infringement proceedings".

The import of the above is that more than one court may have jurisdiction, with several attendant consequences such as 'forum-shopping and irreconcilable judgements'.[96] Jurisdiction is usually determined by the place of residence of one of the parties or the

[91] ibid
[92] ibid
[93] See Article IV of the Outer Space Treaty.
[94] T. Leepuengtham, The Protection of IP Rights in Outer Space Activities (Edward Elgar Publishers 2017) 150.
[95] ibid
[96] Ibid

subject matter. The place of residence of an astronaut or researcher will confer jurisdiction on the courts in most states which would entail that the person has some kind of presence in the state. Domicile can be conferred due to physical presence[97] or business interests.[98] States like the U.S have 'minimum contacts' criteria that could be used to confer jurisdiction.[99] In other word, the courts in the U.S. could exerts jurisdiction without a defendant having a physical presence in the U.S.[100]

Despite[101] lack of personal jurisdiction, a court can still exercise jurisdiction where there is "an appropriate connecting factor between the cause of action and the forum to justify assertion of this special jurisdiction". The 'connection' is to be established between 'the subject matter of the dispute and the forum'. Article 24 (4) of the Brussels I Regulation (Regulation (EU) 1215/2012) gives court jurisdiction over disputes on IP rights that are registered, which means that the jurisdiction will not extend to copyright and any other rights that are not registered.[102] Article 24 (4) does not extend to registered IP rights but the other provisions of the Regulation do.

4.1.2 Resolving Issues of Private Rights in Space

Space entrepreneurs' rights are to be considered and protected in space.[103] Most of the protection come in the form of authorization and supervision by the States as enshrined in the space treaties. Private property rights claim in outer space is hinged on two elements: the right to possess and dispose the res and the right to keep others from encroaching on the *res*.[104] It is interesting to note that the right of exclusion does not exist in outer space, and cannot be achieved by claiming appropriation.

Protecting the rights of private actors must be without the power of appropriation being conferred on them. Due to the continued supervision and authorisation by the States, the

[97] Pennoyer v. Neff (1877) 95 U.S. 714
[98] Due Process Clause of the Fourteenth Amendment (US Constitution) 1865,
[99] International Shoes Co. v. Washington (1945) 326 U.S. 310
[100] Leepuengtham, supra n 94.
[101] Ibid, at 156.
[102] See Article 25 (4) of the Brussels I Regulation
[103] L.I. Tennen, 'Enterprise Rights and the Legal Regime for Exploitation of Outer Space Resources' (2017) 47 U. PAC. L. REV 281 <https://schorlarlycommons.pacific.edu/uoplawreview/vol47/iss2/14>.
[104] Ibid, at 292.

activities of the private actors are curtailed, it is unlikely that an entity will carry out activities that will jeopardise the chances of other states in outer space. Most importantly, the private actors are in fact protected as the chances of being disturbed in the use of space is also limited. In the improbable chance of interference from the state, private entities or others, issues would have to be resolved between the parties.

Dismissing the likelihood of interference, Tennen noted that it is highly improbable that an authorizing state would interfere or attack a private entity in space considering the difficulties and costs of that, especially when there are other means of addressing the issue(s) on earth.[105] A similar analogy can be made for private actors attacking a licensed entity as

> An application or request for authorization to conduct a mission with clear intent to cause physical interference with an existing facility on a celestial body would have little chance of obtaining regulatory approval. The state itself would object to such a purpose. The entity operating the authorized facility certainly would object.[106]

Embarking to outer space with the single goal of disturbing another entity of the use of space is not likely to enjoy public support; the public and other interested parties are definitely going to object to approval of such by the state government. In addition, an entity can object to application(s) made for authorization of mission from another entity where such authorization would lead to interference, in which case, the state will have to conduct their own findings and probably impose conditions that would safeguard interference[107]. In addition,

> Where interference occurs in situ, these kinds of modifications can be made to the license or other grant of authority, which would be an appropriate implementation of the state's obligation to provide continuing supervision of its non-governmental entities in space. As aggrieved party could seek to invoke administrative or judicial procedures, including, in appropriate cases, provisional remedies or injunctive relief as available under domestic law.[108]

[105] Ibid
[106] Ibid
[107] Ibid, at 293.
[108] Ibid

Where an order had been issued against an entity, enforcement at outer space entails serious challenges, but there are several channels of achieving enforcements like resorting to domestic regulations of the state. These

> can include revocation of the authority to conduct the commercial space operation, restrictions on communication links, cease and desist orders, injunctions, attachment of property, fines, currency and banking limitations, and in proper cases criminal charges.[109]

In relation to interference that pertain to intellectual property and other infringements, the same condition(s) as obtained on earth would be applicable in such situations. National as well as international laws will come into play, even for disputes that started at the outer space, it would have to be handled on earth.[110] Article IX of the OST prepare for situations where the proposed activity of an entity may likely interfere with that of a commercial company, consultations between the parties becomes necessary.

Consultations could also be initiated by the state active in outer space on becoming aware that the activities of another state or entity would interfere with their own activities.[111] In case of interference, the OST provide for liability, but other means of resolving disputes including international relations may be employed.[112] Though consultations can be effective, its effectiveness in resolving the disputes between the parties is not promised, it works just to ensure that states do not resort to self-help and barbarism in outer space:

> thus, the domestic authorization procedure and the international consultations framework provide significant protection for the right of authorized entities to occupy and utilize a celestial location. If a state was determined to interfere with another state's public or private entities in space and all available diplomatic and international procedures failed to resolve or diffuse the situation, it would signify a breakdown in international relations extending far beyond the specific space activity at issue.[113]

[109] Ibid
[110] Ibid
[111] Ibid; See Articles 5, 8.3 and 15.2 of the Moon Agreement.
[112] Ibid; see generally Article III, IV and V of the Liability Convention.
[113] Ibid at 294.

The rights of space entrepreneurs are still being developed, domestic regulations may be of help in the growth of the sector but domestic laws must align with international laws. All entities, whether private or states have the right to "occupy a location on a celestial body", subject to the rights of other states to visit and inspect the location and any other structures put in place.[114]

Under the United Nations, no legal or structural framework was put in place for dispute settlement but the Liability Convention had a "Claims Commission" included in its provisions. The decision of the Commission was not meant to be binding unless the parties agree to contrary terms.[115] Public international law's effectiveness in dealing with disputes around space activities is doubtful, in the light of the increased number of entities involved in space activities now. In 2011, the Optional Rules for Arbitration of Disputes Relating to Outer Space Activities drafted by the Permanent Court of Arbitration (PCA) also became effective.[116] Similarly, Article III of the OST had made provision for resolution of disputes in accordance with Article 33 of the UN Charter and Customary International Law.[117]

The Vienna Convention on the Law of Treaties applies to treaties interpretation and problems arising out of their application.[118] Article 31 gives the parties right of choice in how their conflicts are resolved, Williams noted that "in principle, a treaty should be applied in good faith, in accordance with the ordinary meaning of its terms and in the light of its object and purpose".[119] On the other hand, some measure of dispute resolution can be found in Article IX of the Outer Space Treaty, though it is limited in scope to the protection of the environment and international consultations in case of possibility of interference. Article IX is plagued with many definitional deficiencies making it open to

[114] Article XII of the Outer Space Treaty.
[115] Maureen Williams, 'Dispute Resolution Regarding Space Activities' in Frans von der Dunk and Fabio Tronchetti (eds) Handbook of Space Law (2015) Routledge
995.
[116] Ibid
[117] Charter of the United Nations, San Francisco, 26 June 1945, entered into for
[118] Article 31 of the Vienna Convention on the Law of Treaties
[119] Maureen Williams, supra n, at 1000.

lots of arguments and criticisms.[120] Ironically, the Vienna Convention did not offer much assistance on this issue. As described by Williams:

> The Vienna Convention on the Law of Treaties is not too clear on these points either. In fact, Article 66 on procedures for judicial settlement, arbitration and conciliation provides that any party to a dispute concerning the application or interpretation of any of the articles in Part V of the Convention may set in motion a procedure envisaged in the Annex to the Convention by submitting its request to the Secretary-General of the United Nations. This does apply to Articles 53 and 64 — dealing with peremptory norms of general international law – and the ICJ is to decide.[121]

The Secretary-General of the UN is vested with the duty of drawing up lists of notable jurists that can mediate in disputes referred to the Conciliation Commission. The decisions of the jurists are in the form of proposals made to the parties and the Secretary-General; the decisions of the Commission are not binding but are mere recommendations made to the parties.[122] Article XII and XIX of the Liability Convention dealt with issues of compensating a state for the damage caused by activities of another state in outer space and:

> …Refers to international law and principles of justice and equity in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, state or international organization on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred (which amounts to *restitutio in interim*).[123]

The concept of "international law" as stated the provisions of Article XII of the Liability Convention should not be difficult to comprehend as contained in Article 38 of the ICJ Statute. Other important concepts are also provided for by the Liability Convention, and resort can in addition be made to the Law of the Sea in interpretation such as the concepts of justice and equity.[124] Examples can be found in the Gulf of Maine Case decided in

[120] Ibid.
[121] Ibid; see generally the Vienna Convention on the Law of Treaties.
[122] See generally, the Liability Convention of 1972.
[123] Ibid.
[124] Ibid at 1009; *Norwegian Shipowners' Claims*, Norway v USA, 13 October 1922, Vol. XI, Reports of International Arbitral Awards (RIAA); ICJ Reports 1982, the Tunisia-Libya Continental Shelf Case, cited by Maureen Williams.

1984 and Guinea-Bissau Arbitration of 1986, showing that application of international laws, and

> the principles of justice and equity' had been applied by international courts alongside the provisions of the Liability Conventions. Williams noted that "these precedents – in addition to the weight they carried given their thorough examination by judges and arbitrators – were clearly showing a trend towards pragmatic solutions which would inspire generations of space lawyers.[125]

Article XIX of the Liability Convention taken together with other provisions are instrumental to settling disputes. The articles include settlement of dispute, negotiation process, claiming compensation and what happens in the event of failure in achieving settlement within a year, how the decision of the Commission is to be achieved and effect of the decision on the parties.[126] The deficiency of the Liability Convention lies in the no-binding clause inserted in it. An example is the Soviet Cosmos-954 case between Russia and Canada to which the Liability Convention should have been applied but the case had to be settled by the parties themselves directly. The space treaties along with other UN Principles[127] failed to include comprehensive dispute settlement mechanisms that can address the current and modern-day challenges of space activities. It was observed that

> …None of the UN instruments is consistent with today's world for the simple reason that only states and international intergovernmental organizations can be parties to dispute settlement procedures. Moreover, commercial activities have grown at unprecedented speed and an increasing number of developing countries are gradually accessing the latest space technology by means of agreements based on international cooperation.[128]

The PCA rules of 2011 offers more protection for new actors in space activities, it is flexible showing the realities of the problems facing the space sector, and can prove to be

[125] Ibid.
[126] See Articles I, XII, XIV and XVI of the Liability Convention.
[127] See Principle E of the Principles On Direct Television Broadcasting of 1982; Principle XV of the Principles on Remote Sensing of 1986 and Principle 10 of the Principles on the Use of Nuclear Power Sources in Space of 1992.
[128] Ibid at 1031

an instrument of addressing gaps in the law especially with regards to settlement of space conflicts.[129] The PCA is a more effective management mechanism for space dispute.

4.2 Resolving Conflicts between National Laws and International Laws on Space

National or domestic laws on space activities are meant to be drafted in compliance with the provisions of international laws and normally reflects a state's interpretation of international laws. Any ambiguities are cleared by resorting to international law, states' actions in applying international laws gives validation to the duties imposed on them by the provisions of the treaties.[130] While it was the two superpowers that dominated the initial space race, things have changed in the space-scape, with more states becoming space faring by the day, especially less developed states such as India, Mexico, Brazil and a handful of African states, space politics will not remain the same.

States must avoid authorizing and/or granting rights that will violate international laws in their domestic regulations because "if international consensus supports that states may authorize non-governmental entities, then numerous challenges are on the horizon".[131] A balance must be struck between protecting commercial interests in outer space and maintaining the outer space itself. Focus should be on maintaining the peace and security of outer space which had always been the foundation of the space treaties. It is important that in enacting domestic space laws, the following be taken into consideration:

> States should be aware of the risks of a "race to the bottom" in the enactment of such laws, similar to the flag of convenience problem on the high seas. Safety, security and sustainability for all space actors are all critical notions that states should give serious thought to when enacting local rules.[132]

States are to ensure the peaceful uses of outer space but putting the interests of other states into consideration by putting in place "mechanisms" that limits "harmful

[129] Ibid at 1032
[130] Blount and Robison at 178
[131] P. J. Blount, 'Outer Space and International Geography: Article II and the Shape of Global Order' (2018) New England Law Review, Vol.52, Iss.2, 95 at 121.
[132] Blount, supra n 125, at 121.

interference".[133] All activities on outer space must be for the benefit and in the interest of all mankind, and this would extend to private actors' involvements in space activities. Every interest (states, private actors' and non-governmental organisations') in outer space must be protected by international law but maintaining international peace and stability is to be given the utmost protection. Attainment of profits should not be allowed to upset international standards in the space sector.

5.1 Nigeria's Position in Relation to Outer Space Activities

The National Space Research and Development Agency Act (NARSDA) was established to regulate the country's space activities. Nigeria was the second country in Africa to have its own national regulations on space.[134] Nigeria had ratified four out of the five treaties on outer space and the principles enshrined in the treaties are binding on all space activities of the Nigerian state.[135] Amongst the goals of NASRDA was to

> Vigorously pursue the attainment of space capabilities as an essential tool for the socio-economic development and the enhancement of the quality of Nigerians.[136]

Having realized the importance of space exploration for socio economic developments of any nation, Nigeria embarked on various space projects since 1999.[137] NASRDA is in charge of all space activities in Nigeria and has as part of its goals, the plan to send Nigerian astronauts to space by the year 2030.[138] Africa as a continent stands to gain a lot from space technology as already shown by other industrialised states. Nigeria being one of the few states in Africa to have space capabilities stands to play a vital role in the development of space.

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[133] Ibid, at 122

[134]Frans G, Von der Dunk, "The Second African National Space Law: The Nigerian NARSDA Act and the Draft Regulation on Licensing and Supervision" (2017) Space, Cyber and Telecommunications Law Program Faculty Publications, 92 <http://digitalcommons.unl.edu/spacelaw> accessed 15/02/2024.

[135] Ibid.

[136] See the NASRDA Act.

[137] Olisa Agbakoba Legal, 'Space Development in Nigeria' (OAL, 14 April,2022) https://oal.law/space-development-in-nigeria/ accessed 20/02/2024.

[138] Ibid

States in Africa have invested billions of dollars on satellites technology, and more investments have followed since Covid-19 pandemic, this is due to the increased need for data from space.[139] It appears that states in Africa are beginning to appreciate the essence of space technology and are increasingly investing in space satellites. The number of satellites from African states in space had grown exponentially, and additional African states have ratified the space treaties in recent years.[140]

The Nigerian government invested huge sum of money in the sector in order to place Nigeria as a leading force in Africa's space journey, it is quite unfortunate that other than launching few satellites into space, Nigeria has not achieved much in the space sector. Part of the problems facing Nigeria's space sector is the political unrest that had plagued the nation for a long time. The corruption that is endemic in the political scape had also reared its ugly head in the space sector. Despite the huge amounts of investments in the sector, there is little to show for the investments.

Nigeria launched its first satellite, NigeriaSat-1 into space in 2003 but the satellite has since being decommissioned. Other satellites have also been launched and in 2006, the Nigerian Communications Satellite (NIGCOMSAT) was created with the purpose of managing Nigeria's communication satellites.[141] The body was placed under the charge of the Ministry of Communication and Digital Economy.[142] Unsurprisingly, NIGCOMSAT has not achieved any substantial thing, other than the trainings for military personnel and relevant ministries.

In relation to the private sector, the space sector in Nigeria had not witnessed much progress, the focus had mainly been on the military. The creation of the Defence Space Act[143] and Defence Space Administration led to the collaboration between NIGCOMSAT and NASRDA that had seen the bodies providing important trainings for the military. The

[139] Ibid
[140] UNOOSA, 'Growth of Committee Membership and Universalisation of the Five United Nation Treaties on Space Law' (2025) https://share.google/FaJ2sadaLECz5ulCD accessed 27/10/2025
[141] NigComSat-1 <https://share.google/on9c3HMIJwQQBMDaF> accessed 27/10/2025.
[142] Ogheneruemu Oneyibo, 'After 23 Years, Nigeria's Space Ambitions Still Look Like a Pipe Dream' (Tech Point, 27 January, 2022) <https://techpoint.africa/2022/01/27/nigerias-space-ambitions-pipe-dream/> accessed 20/02/22.
[143] The Defense Space Act (DSA) was established in 2016.

Nigeria Space Policy is in place for the implementation of the space policies. The Nigerian space regulation is modelled after private- public initiative with different plans to wit

> Short term, the government is responsible for all investments in space technology development. Medium term, the government implements the partial commercialization of NASRDA's products and services developed during the short-term economic development plan. Long term, the government partners with the private sector to implement the public-private partnership framework for the space programme.[144]

The nation has witnessed few milestones: the launched satellites are still working years after they should have been decommissioned, some collaborative works are being done by NASRDA and higher institutions like the Federal University of Technology Akure (FUTA); trainings have been organized for military engineers but no success has been recorded in launching an astronaut into space.[145]

In conclusion, there are many possibilities for African states in outer space, but the states must be willing to do more by taking advantage of international law in order to reposition Africa especially Nigeria in the global space sector. In addition, African states must collaborate in order to achieve their goals of exploiting the resources of the outer space and join the league of nations actively involved in outer space activities, this is as exemplified by the European Space Agency (ESA).

[144] Ibid

[145] Kieron Monks, 'Nigeria Plan to send an Astronaut to Space by 2030' (CNN, 06 April, 2016) <https://amp.cnn.com/cnn/2016/04/06/nigeria-nasrda-space-astronaut/index.html> accessed 20/02/2024.

CHILD PARTICIPATION RIGHTS FRAMEWORKS AND THE ISLAMIC JURISPRUDENCE: RECONCILING CONVERGENCE AND IRRECONCILABLE DIVERGENCE

Zakiyya Haruna*

Abstract

The paper examines the tension between the Convention on the Rights of the Child (CRC) and Islamic law with respect to children's participation rights. While the CRC advances a model grounded in autonomy, self-expression, and individual freedoms, Islamic law embeds participation within a framework of parental authority, responsibility, and moral guidance. The paper using a doctrinal research methodology makes a comparative analysis to argue that the crux of the debate lies not in whether children may participate, but in how participation is structured: an almost unrestricted autonomy in the CRC versus a duty-oriented, guided participation in Islam. Under the Sharia, a pre-pubescent child lacks legal capacity to make consequential decisions; the expression of views is permitted but not codified as an enforceable right; and obedience to parents is foundational except where it entails sin. The paper finds that these differences yield divergent implications: freedoms of expression, religion, association, and privacy core to the CRC are circumscribed in Islam to safeguard spiritual and moral welfare. By highlighting these contrasts, the paper concludes that the study contributes to the discourse on reconciling international child rights frameworks with Islamic jurisprudence, clarifying both points of convergence and irreconcilable divergence.

Keywords: Child Autonomy, Child Participation Rights, Convention on the Rights of the Child (CRC), Islamic Law, Parental Authority.

1.0 Introduction

Among the rights enshrined in the *Convention on the Rights of the Child* (CRC), the child's right to participation is arguably the most controversial and the most challenging to implement.

[1] This is partly because it is often perceived, particularly outside the West, as an imposition of Western ideals of child upbringing on societies with distinct cultural, religious, and social norms.[2] Academic evaluations have confirmed that this right is deeply contested to. In practice, this rights is confronted with real world barriers revealing persistent limitation in implementing the right.[3]

This paper aims to interrogate the extent to which the concept of participation rights is alien or otherwise to Islamic legal thought. In doing so, it examines the meaning of "rights" as understood within both the Western legal tradition and the Islamic legal framework. It further considers the legal capacity of the child to make decisions under Islamic law, the centrality of the family in Islamic society, the duties and responsibilities of parents towards their children, and the reciprocal duties owed by children to their parents. These considerations provide the foundation for assessing the scope, application, and limitations of participation rights within an Islamic context.

2.0 Participation Rights of the Child: A Historical Overview

International recognition of the rights of the child can be traced to the adoption of the 1924 *Geneva Declaration of the Rights of the Child* by the League of Nations.[4] Since then, several international instruments on child rights have been developed to promote

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[1] Lansdown, G. (2011) *Every Child's Right to Be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12*. Save the Children UK and UNICEF.

[2] Ibid.

[3] See for example Kay Tisdall, E., Morrison, F., & Warburton, J. (2021). *Challenging undue influence? Rethinking children's participation in contested child contact*. *Journal of Social Welfare & Family Law*, 43(1), 8–22.

[4] League of Nations, *Geneva Declaration of the Rights of the Child*, 26 September 1924 https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-declaration-rights-child-1924 accessed 12 August 2025.

and safeguard the welfare of children.[5] Early instruments, however, primarily focused on *provision rights* those ensuring children's access to essential goods and services and *protection rights*, which shield children from harm, abuse, and exploitation.

A significant shift occurred in 1989 when the United Nations General Assembly adopted the *Convention on the Rights of the Child* (CRC).[6] The CRC not only guarantees provision and protection rights, but also affirms *participation rights,* recognizing the child as an active subject with the capacity to express views in matters affecting them.[7] According to the Committee on the rights of the Child General Comment 12 of 2009,[8] the child is an active right holder. To date, the CRC remains the most widely ratified human rights treaty, providing a comprehensive framework for the recognition and enforcement of children's rights through its 54 articles.[9]

Participation rights first emerged explicitly in the CRC.[10] Prior to its adoption, the rights of the child were subsumed within broader human rights instruments and were largely limited to social, economic, cultural, and political rights.[11] This reflected the prevailing perception of children as legally and socially incompetent, incapable of managing their

[5] Geneva Declaration of the Rights of the Child (adopted 26 September 1924 by the League of Nations); Declaration of the Rights of the Child (adopted 20 November 1959) UNGA Res 1386(XIV); African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49.

[6] United Nations General Assembly, *Convention on the Rights of the Child*, 20 November 1989, UNGA Res 44/25 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child accessed 12 August 2025.

[7] Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3 (UN Doc. A/RES/44/25) assessed 12/8/2025.

[8] see also *Committee on the Rights of the Child, "General Comment No. 12 (2009): The Right of the Child to Be Heard"*, paras 1–2, accessible via Save the Children's Resource Centre (UNCRC), elaborating that Article 12 "addresses the legal and social status of children" and positions them as active rights-holders.

[9] Hoefken, Stephanie & Marrone, Gianluca (2024). *Global adoption of children's rights: The Convention on the Rights of the Child as the most ratified UN treaty*. *International Journal of Human Rights*, **28**(2), 205–223. See also *Malmström, M., & Lindahl, M.* (2020). *Thirty years of the Convention on the Rights of the Child: Developments in child sexual abuse and exploitation*. *Child Abuse & Neglect*, **110**, 104399.

[10] **Castro, Pablo & Hans, Sharon** (2022). *Understanding the emergence of children's participation rights through the CRC*. *International Journal of Children's Rights*, 30(1), pp. 23–42.

[11] United Nations General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, GA Res 217A (III); International Covenant on Civil and Political Rights, 16 December 1966, UNTS 999; International Covenant on Economic, Social and Cultural Rights, 16 December 1966, UNTS 993.

own affairs, and therefore in constant need of adult protection.[12] As a result, children were viewed primarily as passive recipients of rights rather than active participants in their own lives.

Over time, developments in the field of child rights advocacy highlighted the need to move beyond merely providing and protecting children's rights toward enabling children to exercise agency in matters affecting them. This shift in perspective gave rise to a distinct category of entitlements; *participation rights*, which affirm the child's right to be heard, to express opinions, and to have those opinions given due consideration in decisions concerning their welfare.

2.1Participation Rights: Meaning and Context

Participation rights are a category of entitlements that set out the basic guiding principles for the enjoyment of all other rights by the child.[13] They go to the very heart of recognizing the child as a human being and as an individual distinct from their parents, possessing legal rights comparable to those of adults.[14] Through participation rights, the child becomes a rights holder, not merely a passive recipient of entitlements held in trust by parents.

The CRC conceptualizes participation as:

"An ongoing process of children's expression and active involvement in decision-making at different levels in matters that concern them. It requires information sharing and dialogue between children and adults based on mutual respect and requires that full consideration of their views be given, taking into account the child's age and maturity." participation is considered as representing an 'ongoing processes, which include

[12] Yanghee Lee, *Child participation and access to the United Nations Convention on the Rights of the Child*, keynote address, delivered at the Council of Europe seminar during the 12th ENOC Annual Conference, Dublin (11 November 2009).
[13] Hanna, J. (2023). *Silent epistemologies: Theorizing children's participation rights*, *The International Journal of Children's Rights*, 31(4), 1–22.
[14] Inness, M. (2022). *Conceptualizing Child Personhood: Autonomy and Agency in Children's Rights Discourse*, *Journal of Human Rights and Social Justice*, 45(2), pp. 98–115.

information-sharing and dialogue between children and adults based on mutual respect…"[15] For instance *Convention on the Rights of the Child*, Article 12 recognizes the child's right to express views freely and have them accorded due weight in all matters affecting them, The *Committee on the Rights of the Child, General Comment No. 12 (2009): The Right of the Child to Be Heard*, para. 6 definines participation as an ongoing process of dialogue and information sharing between children and adults.

Participation rights are therefore central to the entire framework of children's rights. Denying a child the ability to express their views is, in effect, to deny them ownership of their rights, reducing them to passive observers rather than active stakeholders in decisions that affect them. This right grants the child a degree of autonomy to influence decisions that might otherwise be made solely by parents. Inevitably, it challenges traditional parental authority by re-casting the role of parents from unilateral decision-makers to advisors, negotiators, and, in some cases, representatives.[16]

Any discussion of participation rights necessarily begins with Article 12 of the CRC, which embodies one of its most important and most debated principles. Article 12 provides:

"State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

From the outset, this provision imposes a positive obligation on States Parties to ensure that a child's views are not only heard but are accorded due weight as a matter of right.[17] Significantly, this shifts certain matters traditionally regarded as private family concerns into the public sphere, thereby subjecting them to legal scrutiny and state responsibility.

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[15] Kosher, H. (2024), *Children's participation in everyday life: An international overview*, *Children & Society*, 38(2), pp. 112–124.

[16] Organisation for Economic Co-operation and Development (OECD) (2023) *Child Participation in Decision-Making*. Paris: OECD Publishing. Available at: https://www.oecd.org/ Accessed 12/8/2025.

[17] Cashmore, J., Kong, P., & McLaine, M. (2023). *Children's Participation in Care and Protection Decision-Making Matters*. *Laws*, 12(3), 49. This article critically highlights that Article 12 of the CRC establishes a dual state obligation.

According to Article 12, any child who is capable of forming his or her own views is assured of the right to express those views. Notably, the provision sets no specific age threshold for determining when a child is "capable" of forming such views. This reflects the recognition that children, even from an early age, can communicate opinions, whether verbally or through non-verbal means such as body language, facial expressions, drawings, or writing. As long as a child's views can be conveyed and understood, they fall within the ambit of this right.[18]

2.1(1) Article 12 of the CRC, as further clarified in *General Comment No. 12 (2009) on the right of the child to be heard,*[19] requires States Parties to "assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child," with such views being given due weight in accordance with the child's age and maturity.[20] This interpretation by the Committee on the Rights of the Child underscores that there is no fixed minimum age for the exercise of this right, and that capacity should be assessed individually.

Importantly, the right extends beyond mere expression: the child must be able to express views freely. This implies that the child should not be pressured, coerced, or manipulated into articulating an opinion.[21] It also means that a child may choose to withhold their views entirely, as the CRC does not impose an obligation to speak but rather protects the freedom to do so.[22] Creating an enabling environment, physically, socially, and emotionally, is therefore essential for the effective exercise of this right. Furthermore, "freely" in this context signifies that the opinion expressed must genuinely be the child's own, untainted by adult influence, inducement, or intimidation. Any form of threat or

[18] Kwok et al. (2024), *Verbal and non-verbal skills in early childhood: dimensionality, developmental trajectories, and gender differences*, *Frontiers in Psychology*, 15:1330334.
[19] United Nations Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to be Heard*, UN Doc. CRC/C/GC/12 (20 July 2009).
[20] Wouter Vandenhole, Ellen Desmet, Sara Lembrechts and Sara Marks (eds), *Children's Rights in Practice: Realising the UN Convention on the Rights of the Child* (Edward Elgar 2024) ch.8.
[21] Dahlgren & Jensen (2023), *Key factors for child participation – an empowerment model for active inclusion in participatory processes*, *Frontiers in Psychology*, 14:1247483.
[22] Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, UN Doc. CRC/C/GC/12 (20 July 2009), para. 16 and 22. Lundy, L., Kilkelly, U. & Byrne, B., *Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review*, *International Journal of Children's Rights*, 21(3), 2013, pp. 442–463. doi: 10.1163/15718182-55680028.

promise of benefit that might sway the child's view would undermine the integrity of this right.[23]

The right to express views under Article 12 applies to all matters affecting the child. This broad formulation means there is no predetermined context in which the child is restricted or excluded from voicing an opinion, provided the matter—directly or indirectly impacts the child's life. A comprehensive understanding of the issue is not required; it is sufficient that the child possesses a basic awareness or appreciation of the matter at hand.

Crucially, the CRC assures the child that such views, once expressed, will be given due consideration as a matter of right. Here, the concept of the child's capacity becomes relevant. The weight accorded to the child's opinion must be assessed in light of their evolving capacities, taking into account factors such as age, maturity, and the nature of the decision to be made.

Participation rights have wide-ranging application. They extend to diverse settings, including the home, educational institutions, healthcare decision-making, political engagement, and judicial or administrative proceedings.[24] They may be exercised individually by a child or collectively by a group of children, depending on the context in which the issue arises.[25]

In essence, Article 12 affirms the right of a child capable of forming their own views to have those views heard and given due consideration in matters affecting their life, proportionate to their capacity. This does not absolve adults of their responsibilities toward children, nor does it leave children to independently safeguard their own rights.

[23] Ibid.
[24] Kosher, *Children's participation in everyday life: An international overview*, *Children & Society*, 2024.
[25] UNICEF (2018), *More than just a voice: What meaningful adolescent participation looks like and how to measure it, Data for Action Blog*, (data.unicef.org) last assessed 13/8/2025.

Rather, it calls for a collaborative approach in which adults work closely with children, guiding and supporting them in articulating their perspectives.[26]

A common misconception is to interpret this provision as granting children full autonomy or absolute control over decision-making, regardless of the potential consequences.[27] In reality, the opportunity to express an opinion does not mean that the child's view is determinative; the final decision may still rest with the adult, provided the child's input has been genuinely considered.

Although Article 12 appears straightforward, its implications extend across the CRC, connecting to other general principles of the Convention.[28] For instance:

2.1(2) Art.2 The Right to Non Discrimination

States Parties are under article 2 are obliged to respect and ensure the rights in the Convention to every child without discrimination based on factors such as race, sex, language, religion, political opinion, national or social origin, disability, or any other status of the child or their family.[29]

2.1(3) Art. 3 The Best Interest of the Child

In all actions concerning children whether undertaken by institutions, courts, administrative authorities, or legislative bodies the best interests of the child must be a primary consideration.[30] This principle also requires that services and institutions

[26] Woodman, J., 'Children's participation in child protection—How do practitioners understand children's participation in practice?' (2023) *Child & Family Social Work* 28(1) 40, 47 https://doi.org/10.1111/cfs.12947; Committee on the Rights of the Child, *General Comment No. 12 (2009) The Right of the Child to be Heard*, UN Doc CRC/C/GC/12, para 19.(assessed 13/5/2025).

[27] Haarberg, F. L., Križ, K., Løvlie, A. G. & Skivenes, M., *Balancing Paternalism and Child Centrism: A Nordic Population Study on Children's Rights in Child Protection*, *European Journal of Social Work*, published online 16 April 2025, DOI: 10.1080/13691457.2025.2485383. Available at: https://doi.org/10.1080/13691457.2025.2485383 assessed 13/8/25.

[28] Montà, Chiara Carla (2023). *The meanings of 'child participation' in international and European policies on children's rights: A content analysis*, *International Journal of Children's Rights*, 31(4), pp. 703–723. Assessed 13/8/2025.

[29] Aoife Daly and Tòmas Murphy, '**The Committee on the Rights of the Child and Article 12: Applying the Lundy Model to Treaty Body Recommendations'** (2024) *Leiden Journal of International Law*.

[30] Committee on the Rights of the Child, *General Comment No. 14 (2013): The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, para. 1)*, UN Doc. CRC/C/GC/14 (29 May 2013), paras 32–40. Assessed 13/8/2025.

responsible for children meet standards relating to safety, health, staffing, and supervision.[31]

Under Article 3(1) of the CRC, the best interests of the child must be a primary consideration' in all actions affecting them. This principle is further elaborated in **General Comment No. 14 (2013)**, *which emphasizes that it is not only a substantive right but also a guiding interpretative principle and a procedural safeguard in decision-making processes.*

General Comment No. 14 (2013)[32] clarifies that 'best interests' encompasses multiple dimensions including the child's views, identity, family environment, protection needs, vulnerabilities, access to health and education, and cultural or religious background each of which must be weighed alongside the child's evolving capacities.

The above general comment lends credence to the fact that article 12 is also closely tied to the CRC's provisions on civil rights and freedoms, particularly the allied articles.[33] One key example is:

2.1(4) Article.13 The Right to Freedom of Expression

This right includes the freedom to seek, receive, and impart information and ideas of all kinds whether orally, in writing, in art, or through other media of the child's choice. While this freedom is broad, it may be restricted by law where necessary to respect the rights or reputations of others, protect national security, public order, public health, or public morals.

[31] Van der Walt, J.L. & Oosthuizen, I.J., "Three Perspectives on the Notion of 'the Best Interests of the Child'", *In die Skriflig / It's Written*, Vol. 58 No. 1 (2024), Art. a3054, https://doi.org/10.4102/ids.v58i1.3054.
[32] Supra note 29.
[33] Gerison Lansdown, *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12* (Save the Children UK, 2011), p.31.

2.1(5) Article 14: The Right to Freedom of Thought, Conscience and Religion

- States Parties must respect the right of every child to freedom of thought, conscience, and religion.
- In exercising this right, the child is entitled to guidance from parents or, where applicable, legal guardians, in a manner consistent with their evolving capacities.
- The manifestation of religion or beliefs may only be restricted by laws necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.

2.1(6) Article 15: The Right to Freedom of Association

1. States Parties recognize the rights of the child to freedom of association and peaceful assembly.
2. Restrictions on these rights may only be imposed in accordance with the law and must be necessary in a democratic society, such as for the protection of national security, public safety, public order, public health, morals, or the rights and freedoms of others.

2.1(7) Article 16: The Right to Privacy

5. No child shall be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence, nor to unlawful attacks on their honour and reputation.
6. Children are entitled to legal protection against such interference or attacks.

Taken together, these provisions alongside Article 12 form the core framework for the child's participation rights within the CRC. However, they have not escaped criticism. Many argue that these rights, particularly when viewed through the lens of participation, challenge deeply rooted cultural norms, disrupt traditional parent–child dynamics, and raise complex questions about the limits of a child's autonomy. Consequently, the

participation right has come to be regarded as one of the most controversial and difficult provisions of the CRC to implement in practice.[34]

While the CRC sets out a comprehensive and progressive framework for children's participation rights, its implementation is often shaped and at times constrained by the cultural, religious, and legal traditions of different societies. In Muslim-majority contexts, the principles of the CRC must be understood in light of Islamic law (Sharia) and the broader moral framework derived from the Qur'an and Sunnah. These sources recognize the dignity, worth, and responsibilities of the child and also articulate participation within the bounds of communal values, family structure, and moral development.[35] A closer examination of Islamic teachings reveals both areas of convergence with the CRC and points of divergence, particularly in how participation rights are balanced with parental guidance and societal norms.[36]

At this juncture, it is important to pause and consider Islam's perspective on participation rights. This is because, in order to gauge the extent to which these rights can be implemented in Muslim contexts, one must first understand the status of the child in Islam, the nature of the parent–child relationship, the concept of rights under Sharia, and the legal competence of the child to make decisions. Each of these elements plays a significant role in shaping the degree and manner in which a child may be involved in decision-making processes.

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[34] See *Beyond the familiar challenges for children and young people's participation rights: the potential of activism, Children & Society* (2021), see also Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Nigeria*, UN Doc. CRC/C/NGA/CO/3-4 (21 June 2010), **last assessed 13/8/2025.**

[35] Many sources could be cited here, but for space these are referenced See Qur'an 17:70; Qur'an 2:233; Qur'an 65:6–7; Abu Dawood, Sunan, no. 495; Qur'an 31:13–19.

[36] The CRC's recognition of the child's dignity and worth (Art. 12) parallels the Qur'anic affirmation, *"We have certainly honoured the children of Adam"* (Q. 17:70). The principle of ensuring the child's best interests and protection from harm (Art. 3; Art. 19) is reflected in *"…No mother should be made to suffer because of her child, nor father because of his child…"* (Q. 2:233). The right to an adequate standard of living (Art. 27) is echoed in *"…upon the father is the duty of provision and clothing for them according to what is acceptable…"* (Q. 2:233; cf. Q. 65:6–7). The CRC's aim of developing the child's personality, talents, and moral sense (Art. 29) aligns with Islamic guidance on gradual moral and spiritual training (Hadith, Abu Dawood, no. 495). The provisions on participation and evolving capacities (Arts. 5 and 12) correspond with the Qur'anic model of Luqman's counsel to his son (Q. 31:13–19), illustrating respectful guidance within family and community values.

3.0 Islam and the Importance of Family in a Child's Life

Islam is not merely a religion in the narrow sense but a comprehensive way of life that leaves no aspect of human existence unattended.[37] On the issue of family life, the sharia accords great significance to the family as a social institution. The Qur'an states:

"We have created man from water and have appointed for him ties of family and kinship; and Allah is watchful over all that you do".[38]

The sharia provides clear guidance on how the family should be constituted and maintained built upon love, mercy, and tranquility between spouses.[39] A home grounded in these values offers a strong and stable foundation for its members. By contrast, homes characterized by violence, abuse, and injustice are described metaphorically in the Qur'an as "the frailest of houses", akin to the house of the spider.[40]

In *sharia* worldview, the family is the basic unit of the (society) *Ummah* and the only legitimate source of procreation.[41] Thus, *sharia* stipulates rules governing relationships within the family, defining the rights and duties of spouses toward one another and the mutual rights and obligations between parents and children. It is important to note that the sharia conception of the family rests upon a valid marriage between a man and a woman, as opposed to certain contemporary definitions of family which may include cohabiting partners,[42] same-sex parents,[43] or other non-traditional arrangements.[44]

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[37] **Mohammad Hashim Kamali**, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), p. 2. Qur'an 5:3, Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an* [Atlanta: Amana Publications, 1995]).

[38] Q25:54 Abdullah Yusuf Ali, **The Holy Qur'an: English Translation and Commentary** (Atlanta: Kazi Publications, 1995).

[39] See *Qur'an*, 17:70 (dignity and worth), 30:21 (love, mercy, and tranquility between spouses), 4:34 (maintenance and protection), and 2:233 (feeding and upbringing of children), trans. Abdullah Yusuf Ali (Atlanta: Kazi Publications, 1995). 17:70 (dignity and worth), 30:21 (love, mercy, and tranquility between spouses).

[40] Qur'an 29:41, trans. Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*, new ed. (Atlanta: Amana Publications, 1995.

[41] Qur'an 4:1–5 trans. Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*, new ed. (Atlanta: Amana Publications, 1995.

[42] Quran 24.33 Abdullah Yusuf Ali, The Meaning of the Holy Quran, new ed. (Atlanta: Amana Publications, 1995.

3.1 The Parent- Child Relation

The bond between parents and children is repeatedly pictured and emphasized in the Qur'an. The Quran models parenting which depict rights of children, kindness to children by parents and concern for their welfare and upbringing. This relationship commences with the unborn child who is accorded rights, rights which are unparalleled in western notion of child rights.[45] The extent of relationship between parent and child is strong that Allah (SWT) swears by it:

"And by the parent and that which he begot."[46] Also another verse in the Quran condemns killing the girl child[47]

Another verse also notes:

"Between parents and their children, none knows which will be of benefit to the other." (Qur'an 4:11)

These verses capture the deep affection, care, and mutual attachment inherent in the parent–child relationship. The parental love for a child is a natural instinct, and the Qur'an even likens it to the human attachment to property, which reflects both value and a sense of protection. In a narrated hadith, it is said that

"Every one of you is a shepherd and every one of you will be asked about his flock. The ruler is a shepherd over his people and will be asked about them. A man is a shepherd over the members of his household and will be asked about them. A woman is a shepherd over her husband's house and his children and will be asked about them…."

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[43] Qur'ān 7:80–81 Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*, new ed. (Atlanta : Amana Publications, 10th edn, 1995).
[44] **The Holy Qur'an**, 5:5 (Abdullah Yusuf Ali trans., Amana Publications, 1995, Atlanta).
[45] Zakiyya Haruna, "The Rights of the Child under Islamic Law" (Unpublished paper presented at the School of Postgraduate Studies, Bayero University, Kano, 2014).
[46] Qur'an 90:3, Abdullah Yusuf Ali, *The meaning of the Holy Qur'an: Text, Translation and Commentary* (1995 ed., Atlanta).
[47] Qur'an 81:8–9 Abdullah Yusuf Ali, *The meaning of the Holy Qur'an: Text, Translation and Commentary* (1995 ed., Atlanta).

The Qur'an also provides guiding principles for maintaining this relationship in justice and compassion:

"No parent shall be made to suffer because of their child, nor a child because of its parent". [48]

This injunction underscores that neither party should cause harm to the other, whether physical, emotional, or otherwise. It reflects the broader Islamic legal maxim:

"There should be neither harm nor reciprocation of harm."[49]

This balance between mutual rights and responsibilities is the ethical foundation upon which children's participation in family and community life must be understood within the sharia framework.

The Sharia recognizes the child as an autonomous being, independent of its parents in accountability before Allah (SWT). This principle is grounded in the Qur'anic verse:

"Neither would the father bear the burden of his child, nor does the child bear the burden of the parent."[50]

This establishes that both parents and children are individually responsible for their deeds before Allah, and that parents are not "owners" of their children. Rather, children are a trust (*amanah*) from Allah (SWT), entrusted to the care and guidance of their parents. For instance, the Qur'an affirms the individual moral agency and accountability of every human being, irrespective of their familial ties. On the Day of Judgment, no parent will

[48] Qur'an 2:233, Abdullah Yusuf Ali, *The* Meaning of the Holy Qur'an: *Text, Translation and Commentary* (1995 ed., Atlanta).

[49]Mālik ibn Anas, *Al-Muwaṭṭaʾ* (Arabic–English edn, trans. Aisha Abdurrahman Bewley, Diwan Press, 2014) Book 31 (Business Transactions), Hadith no. 31.13 Muḥammad ibn Yāʿqūb Ibn Mājah, *Sunan Ibn Mājah*, English trans. (Darussalam), vol. 3, Book 13 (The Chapters on Rulings), Hadith no. 2340 and recognized as one of the five universal legal maxims in Islamic jurisprudence.

[50] Quran 6.164 (Abdullah Yusuf Ali trans., Amana Publications, 1995, Atlanta).

be able to intercede for their child, nor will a child bear the burden of a parent. As the Qur'an states:

"On the Day when a man will flee from his brother, and his mother and his father, and his spouse and his children; every man that Day will have enough to make him heedless of others."[51]

This vivid depiction underscores that while Sharia grants the family a central role in nurturing and protecting the child, it equally recognises the child as an autonomous moral subject, directly responsible before God. The child's rights in Sharia are thus God-given entitlements, not contingent upon parental will, and their moral duties are independent of parental responsibility[52]

Despite this autonomy before Allah, Islam takes into account the dependent and vulnerable nature of the child and imposes upon parents the duty of upbringing, care, and development. The Qur'an lays down clear directives regarding parental responsibilities toward children. For instance, it instructs the father to provide maintenance for the child in accordance with his means,[53] enjoins the mother to suckle the child for a recommended period of two years,[54] and assigns to the father the duty of ensuring the child's education and proper upbringing.[55]

Beyond physical care, parents bear a critical duty to ensure the child's moral and spiritual upbringing instilling the knowledge of Allah (SWT), love for the Prophet (SAW), and readiness to strive in the cause of Islam (*jihad*) within its ethical and lawful bounds.

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[51] Qur'an 80:34–37, (Abdallah Yusuf Ali trans.,Atlanta: Amana Publications, 1995, Atlanta)

[52] Ibn al-Qayyim (d. 751 AH) notes in *Tuhfat al-Mawdūd* that the child's right to life, lineage, maintenance, and education is a *shar'ī* obligation on the parents, "not as a favour from them, but as a trust (amānah) placed by God." Ibn al-Qayyim al-Jawziyyah, *Tuhfat al-Mawdūd bi-Aḥkām al-Mawlūd* (ed. Muḥammad ʿAbd al-Qādir, Cairo: Dār al-Ḥadīth, 1991)p.229. See also Shihāb al-Dīn al-Qarāfī, *Kitāb al-Furūq aw Anwār al-Burūq fī Anwā' al-Furūq*, 3rd ed. (Cairo: Dār al-Salām, 2010), vol. 1, p. 165.

[53] **The Holy Qur'an, 65:7 (**Abdullah Yusuf Ali trans., Amana Publications, 1995, Atlanta).

[54] **The Holy Qur'an, 2:233** (Abdullah Yusuf Ali trans., Amana Publications, 1995, Atlanta).

[55] Ibn ʿĀbidīn, *Radd al-Muḥtār ʿala al-Durr al-Mukhtār*, vol. 5, p. 493 (Dār al-Fikr, 2000).

The fulfilment of these duties has consequences not only in this world but also in the Hereafter. Parents are therefore instructed to treat children with love, compassion, and consideration for their age and capability.

3.2 Childhood Development within the Framework of Sharia

A hadith narrated by Ali (RA) divides childhood into three distinct seven-year stages:

"The child is a master for seven years, a slave for seven years, and a vizier for seven years. If he grows into good character by the age of twenty-one, well and good; otherwise, leave him alone, for you have discharged your responsibility before Allah."[56]

Islamic scholars interpret these stages as follows:

3.2(1) First Stage (0–7 years) *The King*

At this stage, the child is to be served, nurtured, and given attention to basic needs—feeding, clothing, health, and nutrition. Play is essential for mental and emotional development, and formal instruction is not required. However, parental behavior remains highly influential; children internalize the manners and conduct they observe.[57]

3.2(2) Second Stage (7–14 years) *The Slave*

By this age, the child attains *ahliyya* (discernment) and can distinguish between right and wrong. This is the period for strict moral and religious training (*tarbiyya*), character building, and discipline. The child must obey parents, teachers, and guardians, and secular knowledge alongside religious education should be imparted to equip the child with skills for a halal livelihood. On non-essential matters such as clothing or shoes

[56] Muḥammad ibn Abī al-Dunyā, *Mawsūʿat Ibn Abī al-Dunyā* (ed. Muḥammad Ṣāliḥ Farīd, Cairo, 1998); Muḥammad ibn Mukarram ibn Manẓūr al-Anṣārī, *Makarim al-Akhlaq* (ed. Sayyid Muḥammad ʿAlī al-Namrāwī; Cairo: Dār al-Maʾārif, 1409 AH/1989 CE). Al-Tirmidhī, *Jāmiʿ al-Tirmidhī*, Kitāb al-Birr wa ʾl-Ṣilah, bāb mā jāʾa fī taʾdīb al-walad,

[57] Niken Kusuma Hapsari, *"Stimulating Child Development: Prophetic Parenting Viewpoint"*, *Sunan Kalijaga International Journal on Islamic Educational Research (SKIJIER)*, Vol 6 No. 2 (2022), DOI 10.14421/skijier.2022.62.06.Assessed 13/8/2025.

parents may allow limited choice, provided it does not interfere with discipline or Islamic upbringing.[58]

3.2(3) Third Stage (14–21 years) *The Adviser*

By this stage, the child is presumed to be a responsible young adult. Parents should now treat the child as a friend and advisor, providing guidance in decision-making rather than imposing strict control. The child will begin making independent choices that shape his or her adult life, though still lacking the wisdom and experience of full maturity.[59]

These stages mark the child's progression from carefree dependence, to reasoned responsibility, and ultimately to intellectual maturity. In this framework, Islamic parenting moves from provision and nurture, to structured discipline, and finally to collaborative guidance ensuring the child's autonomy is balanced with moral grounding.

By the time the child reaches the age of 21, Islam considers that the parents' obligation of upbringing has been discharged, and the child is now fully responsible for his own life.[60] These age-based demarcations are not merely social guidelines; they are legally significant in the context of Sharia. In Islamic law, both rights and duties are tied to the concept of legal competence (*ahliyya*), which determines the individual's capacity to make decisions, enter into binding agreements, and be held accountable for actions.

A person who possesses full *ahliyya* enjoys complete authority over their person and property and bears full responsibility for their actions and omissions. Islamic jurisprudence divides *ahliyya* into two main categories:

i. Ahliyyatul Wujoob – Legal competence for acquiring rights.
ii. Ahliyyatul Adaa – Legal competence for executing duties.

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[58] **National Association for the Education of Young Children (NAEYC),** *Developmentally Appropriate Practice in Early and Middle Childhood* (NAEYC 2020) https://www.naeyc.org/resources/position-statements/dap/principles accessed 15/8/2025.
[59] A Longitudinal Examination of Perceived Parent Behavior and Positive Youth Development: Child-Driven Effects (2020), *Sociology* 10(10): 369.
[60] Ibn Qudāmah, *al-Mughnī*, vol. 9 (Riyadh: Dār ʻĀlam al-Kutub, 1997), 429.

Each of these may be complete (*kaamil*) or incomplete (*naaqis*), depending on whether all the necessary conditions are present. The most fundamental condition is intellect (*ʿaql*), closely paired with puberty (*buloogh*). Although exceptional intelligence without *buloogh* or *buloogh* without sound intellect does not result in complete competence, puberty is generally treated as a proxy for intellectual maturity, given its association with the emergence of abstract reasoning and rational thought.[61]

Under *sharia*, boys and girls are presumed to reach puberty, and thus potential legal competence, by age 15.[62] Yet even before that, a child who demonstrates sound judgment (*rushd*) may be permitted to make certain decisions that do not expose them to harm. Actions with potential for harm, however, require parental or guardian approval to be valid, a safeguard rooted in the Qur'anic instruction regarding the testing of orphans' capacity before granting them control over their property.[63]

The concept of *ahliyya* links directly to the notion of "rights."[64] While the Western legal tradition frames rights primarily as entitlements,[65] Islamic discourse uses the Qur'anic term haqq, which appears over 280 times, often in the context of justice, duty, and rightful share.[66] Though both traditions recognize the idea of rights, Islamic thought places greater emphasis on the corresponding duties and responsibilities, viewing rights not as absolute personal claims but as moral trusts regulated by divine law.[67]

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[61] Imran Ahsan Khan Nyazee, *Outlines of Islamic Jurisprudence* (Islamic Texts Society, 2000), pp. 39–40.

[62] Ibn Qudāmah, *al-Mughnī*, vol. 9 (Riyadh: Dār ʻĀlam al-Kutub, 1997), 429. Yaḥyā b. Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, vol. 3 (Beirut: Dār al-Fikr, 1997), 149; Muḥammad Amīn Ibn ʿĀbidīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, vol. 3 (Beirut: Dār al-Fikr, 2000), 137.

[63] The Holy Qur'ān, 4:6 (Yusuf Ali trans., Amana Publications, 2001).

[64] Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh*, vol. 4 (Damascus: Dār al-Fikr, 1984), 2815–2820, Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed. (Cambridge: Islamic Texts Society, 2003), 473–478.

[65] **See** Wesley Newcomb Hohfeld's conceptual distinction in *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1919), Ronald Dworkin's *Taking Rights Seriously* (1977).

[66] See al-Rāghib al-Aṣfahānī, *Mufradāt Alfāẓ al-Qurʾān*, s.v. "ḥaqq, al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh*, vol. 2.

[67] Zakiyya Haruna, *Human Rights in Islam: A Maqāṣid al-Sharīʿa Perspective* (unpublished manuscript, on file with author).

4.0 The Child's Obligations to Parents in Islamic Law

According to sharia, just as parents have duties toward their children in respect of upbringing and moral training, children also bear duties toward their parents. Foremost among these is the duty of **obedience.**[68] The Qur'an commands *"Your Lord has decreed that you worship none but Him and that you be dutiful to your parents."*[69]

Similarly, the Prophet is reported to have said *"The gravest of sins are: associating partners with Allah, then disobedience to one's parents, and giving false testimony."*[70]

Even when a child reaches the age of majority and acquires the right to manage his or her own affairs, Islam requires continued kindness and respect toward parents.[71] The Qur'an prohibits speaking to them in words of contempt or showing irritation, even in old age. Obedience to parents remains binding except where it entails disobedience to Allah.[72] Al-Ṭabarī[73] explains that *"uff"* refers **to even the slightest expression of annoyance,** whether verbal, such as saying "ugh" or "ah," or non-verbal, such as sighing or frowning, which the verse strictly forbids as a form of disrespect to parents, especially in their old age. Discussing on this also while Ibn Kathīr[74] similarly notes that the prohibition encompasses **all minor and major forms of harm or disrespect**, whether through speech, tone, gesture, or behaviour, emphasising that the believer is obliged to speak to parents gently and honourably in every circumstance

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[68] See Imām al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, vol. 2, ḥadīth no. 650; Ibn Ḥajar al-ʿAsqalānī, *Fatḥ al-Bārī*, vol. 10, p. 406; al-Qurṭubī, *al-Jāmiʿ li-Aḥkām al-Qurʾān*, vol. 10, p. 239 (on Qur'an 17:23).

[69] The Holy Qur'an, 17:23 (Abdullah Yusuf Ali trans., 2001 ed., Amana Publications).

[70] Ṣaḥīḥ al-Bukhārī, Kitāb al-Adab, Bāb Ḥusn al-Ṣuḥbah maʿa al-Wālidayn, ḥadīth no. 5976; Ṣaḥīḥ Muslim, Kitāb al-Īmān, Bāb al-Kabāʾir wa Akbaruhā, ḥadīth no. 87.

[71] Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, vol. 2 (Beirut: Dār al-Maʿrifah, n.d.), 221–223; Ibn Ḥajar al-ʿAsqalānī, *Fatḥ al-Bārī*, vol. 10 (Cairo: Dār al-Rayān li al-Turāth, 1986), 402–404; Muḥammad ibn Ibrāhīm al-Tuwayjirī, *Al-Mawsūʿah al-Fiqhiyyah al-Muyassarah*, vol. 4 (Riyadh: Maktabat al-Rushd, 2007), 122–123.

[72] *Qur'ān* 17:23 (ʿAbdullāh Yusuf ʿAlī trans, *The Meaning of the Holy Qur'ān*, Amana Publications 1995, 10th edn).

[73] Al-Ṭabarī, *Jāmiʿ al-Bayān ʿan Taʾwīl Āy al-Qurʾān*, vol. 15, ed. Aḥmad Muḥammad Shākir (Cairo: Dār al-Maʿārif, 1954).

[74] Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿAẓīm*, vol. 5 (Dār al-Kutub al-ʿIlmiyyah 1998) 87–89, commentary on Q. 17:23.

5.0 Sharia Perspective on Article 12 of the Convention on the Rights of the Child and Related Provisions

Article 12 of the Convention on the Rights of the Child (CRC) provides that children capable of forming their own views have the right to express them freely in all matters affecting them, with such views being given due weight according to age and maturity. As reaffirmed in *General Comment No. 12 (2009),* the CRC does not prescribe any specific age limit for when a child may express his or her views; instead, the determining factor is the child's ability to form those views. The sharia, by contrast, generally attributes decision-making capacity to the age of seven,[75] when the child attains the status of *mumayyiz.* All the four Sunni schools recognize the age of seven as the threshold of *tamayyuz* in various legal contexts, such as custody disputes, training in worship, and certain contractual capacities and also when he or she is able to discern right from wrong.[76] Jean Piaget's **Concrete Operational Stage** (ages **7 to 11**) in western discourse, highlights that children begin to think **logically and systematically** about concrete situations—they can handle concepts like **conservation, classification, and perspective-taking** for the first time. This maps closely to the Islamic understanding that by age seven, a child is cognitively ready to distinguish right from wrong (*mumayyiz*), aligning traditional Islamic insight with present-day cognitive science.

This is when a child begins to develop a clear sense of right and wrong (*tamyeez*). At this stage, the child is considered *mumayyiz* (discerning) and may make simple, non-harmful decisions. All important matters such as marriage, property transactions, or other consequential legal acts remain under parental authority, although the child's opinion may be sought. Under Sharia, all consequential legal acts such as marriage, property transactions, or contractual decisions remain under parental or guardian authority. The Shāfiʿī School, while maintaining the guardian's role, stipulates that the consent of a post-pubescent virgin must be sought before marriage. The Shāfiʿī jurist al-Nawawī

[75] See al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 4, p. 30; al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, vol. 3, p. 90; Ibn Qudāmah, *Al-Mughnī*, vol. 8, p. 190; Abū Dāwūd, *Sunan*, no. 495; Aḥmad b. Ḥanbal, *Musnad*, vol. 2, p. 180.

[76].**Piaget, Jean.** *The Child's Conception of the World.* New York: Harcourt, Brace & Company, 1929.

similarly affirms that a virgin's consent is only required after puberty, whereas before puberty the guardian's discretion prevails [77]

Under Sharia, all important matters such as marriage, property transactions, or other consequential legal acts—remain under parental authority, although the child's opinion may be sought in certain instances. For example, the consent of a virgin girl must be obtained before a marriage contract is concluded, and in cases of *kafālah* (guardianship), a child who has reached the age of seven may choose with which parent to reside.

This recognition of the child's evolving capacity within Islamic law provides a useful platform for engaging with the normative framework of Article 12 of the Convention on the Rights of the Child (CRC). While *Sharia* maintains the overarching authority of parents in major legal matters, it also accommodates situations in which the child's views are considered and accorded significance, particularly once the stage of discernment (*tamayyuz*) is reached. Against this background, it becomes pertinent to examine how the core components of Article 12 namely, the child's right to express views freely and the requirement to give those views due weight resonate with, or diverge from, Islamic legal principles. The following sections will, therefore, break down these elements and appraise them through an Islamic juristic lens.

5.1 Expression of views

Under the Sharia, the child's ability to express views is not framed as an inherent legal **right** but rather as a **privilege**. This understanding is Contrary to the western notion as depicted by Wesley Newcomb Hohfeld[78] in conceptual distinction, where he analyzes rights as claim-rights or entitlements that impose correlative duties on others. Similarly, Ronald Dworkin[79] argues that legal rights are not just privileges but "trumps" against collective decision-making drawing attention to their status as protected entitlements in

[77] This is based on the ḥadīth reported in *Ṣaḥīḥ al-Bukhārī*, Kitāb al-Nikāḥ, Bāb Isti'dhān al-Bikr wal-Thaʿyib fī Anfusihinna (ḥadīth no. 5136), also Al- Nawawis (*al-Majmūʿ Sharḥ al-Muhadhdhab*, vol. 17, pp. 356–358, Dār al-Fikr).
[78]Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* (Walter Wheeler Cook ed, Yale University Press 1919).
[79]Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977).

liberal legal theory. Under the Sharia, parents have the correlative right to express their own views on matters affecting the child, while the child has the duty to listen and comply, except where obedience would amount to disobedience to Allah. For example Ibn Qudāmah,[80] discusses that a minor's consent is not legally binding in property transactions and other consequential acts, except where the Sharīʿah expressly recognises it (e.g., choice of guardian at age seven). Also Al-Nawawī,[81] opines same on the requirement of seeking a post-pubescent virgin's consent before marriage, noting that this is an exception within the broader framework of *wilāyah*.

The concept of a child bringing a legal claim against parents also, as contemplated in Article 12, is alien to Islamic law. Classical jurists generally held that a minor may not independently initiate legal proceedings against a parent, as the guardian (*walī*) retains the authority to represent and manage the child's affairs. Ibn Qudāmah notes:[82] "The father's guardianship over the child is established in all matters of person and property, and the minor has no independent disposal of these without the father's consent".Similarly, al-Kāsānī[83] states that in *ḥaḍānah* (custody) disputes, "the minor has no claim (*daʿwā*) unless made through a guardian"

5.2 Due weight to views

While the CRC envisages giving due consideration to a child's views, in Islam the parent retains the final decision-making authority, in line with the parental duty to safeguard the child's welfare in both worldly and spiritual terms. For instance, The Qur'ān commands thus: *"O you who believe! Save yourselves and your families from a Fire whose fuel is people and stones…"*[84] and records Luqmān's counsel to his son on faith, morality, and

[80] Ibn Qudāmah, *al-Mughnī*, vol. 8, pp. 190–192 (Beirut: Dār al-Fikr, n.d.).
[81] Yahyā ibn Sharaf al-Nawawī *al-Majmūʿ Sharḥ al-Muhadhdhab*, vol. 17, pp. 356–358 (Beirut: Dār al-Fikr, n.d.).
[82] Ibn Qudamah (*al-Mughnī*, vol. 6, pp. 610–611, Dār ʿĀlam al-Kutub).
[83] Al-Kāsānī, ʿAlāʾ al-Dīn Abī Bakr ibn Masʿūd. *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 6, p. 126 (Beirut: Dār al-Kutub al-ʿIlmiyyah, n.d.).
[84] Qur'ān 66:6 (Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*, 11th edn, Amana Publications 2004).

conduct.[85] Classical jurists, such as al-Qurṭubī,[86] cite these verses as establishing that parents are ultimately responsible for the child's guidance and well-being, which justifies their final authority in consequential decisions affecting the child.

5.3 Evolving Capacities

Islam recognises evolving capacity by dividing childhood into phases. From birth to approximately 14 years, the child lacks competence to make important decisions independently. Upon reaching 15, the child may acquire full competence (*ahliyyah al-adā'*) if found to possess sound reasoning (*rushd*).[87]

From the above, three key observations emerge: first, a pre-pubescent child is considered a minor under Islamic law and lacks the capacity to make consequential decisions. Second, the expression of views is treated as a **privilege** rather than a legal right in the Western sense, meaning that parental consultation may occur but the final decision rests with the guardian. Third, the duty of obedience to parents remains paramount, except in cases where such obedience would entail committing a sin.

6.0 The Unregulated Articles and Dangers Inherent in the Unregulation

Regarding the other related articles, Article 13 (freedom of expression), **Article 14** (freedom of thought, conscience, and religion), **Article 15** (freedom of association), and **Article 16** (right to privacy) are framed in a manner that minimises or excludes parental authority to set limits on the child's conduct. In these provisions, restrictions are primarily legal rather than parental.

This framework potentially undermines essential parental oversight in Islam. For instance, freedoms such as expression and access to information may allow unregulated

[85] Qur'ān 31:13–19 (Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an*, 11th edn, Amana Publications 2004).
[86] Al-Qurṭubī, *al-Jāmiʿ li-Aḥkām al-Qurʾān*, vol. 14, pp. 182–183, Dār al-Kutub al-Miṣriyyah).
[87] Al-Sarakhsī, Shams al-Dīn. *Al-Mabsūṭ*, vol. 30, p. 8 (Beirut: Dār al-Maʿrifah, 1989); Ibn ʿĀbidīn, Muḥammad Amīn. *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, vol. 4, pp. 98–99 (Beirut: Dār al-Fikr, 2000).

exposure to harmful content, including pornography. Similarly, the freedom of religion could permit a Muslim child to neglect obligatory practices such as prayer, fasting, or Islamic dress, leaving no avenue for parental guidance or enforcement. The freedom of association might expose children to morally corrupt or prohibited groups, including those advocating promiscuity or same-sex relationships. Even the right to privacy could limit parents' ability to monitor communications or online activity, thereby constraining their capacity to safeguard the child's welfare.

According to the sharia parents are divinely charged with safeguarding themselves and their families from the Hellfire[88] and raising their children in accordance with Islamic injunctions. A Muslim child is presumed to be Muslim and must be nurtured accordingly.

Parental control over the child's moral and religious development is therefore not merely a cultural expectation but a religious duty, essential for the child's worldly well-being and eternal salvation. Correspondingly, the child bears a continuing duty of obedience and kindness toward the parents as part of fulfilling Islamic obligations.

Conclusion

The discussion demonstrates that the CRC and Sharia frameworks share a common recognition of the child's rights and capacity to express views, yet they differ fundamentally in approach. While the CRC emphasizes autonomy and rights-based participation, Sharia situates participation within a framework of moral duties, parental guidance, and obedience to Allah (SWT) and to its parents. The balance between freedom and responsibility is central to the Islamic model, whereas the CRC prioritizes the child's individual voice.

This divergence highlights a key tension in international law and comparative legal studies: the potential friction between globally recognized human rights norms and religiously grounded legal traditions. The Islamic approach does not negate participation;

[88] Qur'an 66:6, trans. Abdullah Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary* (Atlanta, GA: Amana Publications, 1995).

rather, it contextualizes it, ensuring that the child's exercise of agency does not compromise moral, spiritual, or social responsibilities.

This study contributes to scholarship by clarifying how participation rights can be interpreted through different legal and ethical lenses. It underscores the importance of understanding cultural and religious contexts when implementing international child rights instruments. Additionally, by juxtaposing CRC provisions with Sharia principles, the research provides a nuanced framework for policymakers, scholars, and practitioners seeking to reconcile universal child rights with Islamic legal ethics.

CORPORATE GOVERNANCE AND SHAREHOLDERS' DATA PROTECTION IN THE 21ST CENTURY

Chibuzo Mercy Onwuzuruoha* and Omoniyi Bukola Akinola**

Abstract

Corporate governance in the 21st century has metamorphosed because of technological advancements, world crises, globalization and changing shareholders expectations. These technological advancements even though beneficial, has brought along with it, challenges relating to data quality, security and privacy. Strengthening shareholder rights and engagement has being a key objective of corporate governance reforms. These reforms include among other concepts, implementing robust shareholders data management system. This Paper discussed Corporate Governance and Data Protection in The 21st Century and Protection of Shareholders Data. This paper employs a doctrinal method of legal research by examining Statutes, case laws and existing literature on the topic and finds that data has become a valuable asset of a company in the 21st century. The protection of data therefore has risen to the highest level of corporate governance. This paper finds that the Protection of Data provisions as embodied in the Data Protection Act 2023 is not adequate. This paper recommends adequate legislative framework that caters to the needs of data subjects, compliance with good corporate governance measures that will enhance data protection in Nigeria.

Keywords: Corporate Governance, Data Protection, Shareholders, Companies and Allied Matters Act, Nigeria

1.0 Introduction

The 21st century has witnessed significant legal reforms aimed at improving corporate governance. These reforms are driven by technological advancement, globalisation, and increasing shareholders expectations. Shareholders data management system forms part of these reform. The advancement in technology leaves with companies' huge volume of data to manage. This in turn brings along with it, challenges relating to data quality, data security and data privacy. The directors of Company are responsible for the overall management of the company including the protection of shareholders and their data. The effective management and protection of this Data becomes an issue of great significance. This paper intends to x-ray the responsibility of the directors of companies as corporate managers in the 21st century, to ensure the protection of shareholders data This paper aims to bring to the consciousness of corporate managers with the responsibility of corporate governance of the legal implication of violating the provisions as it relates the Data Protection Act 2023.

Data has become a valuable asset in the 21st Century and its protection has become imperative if industry managers are to operate in line with international best practices and line the code of corporate governance. It is important therefore to clarify concept to enable a fuller grasp of the issues.

2.0 Conceptual Framework

2.1 Corporate Governance

Corporate Governance refers to the system of rules, practices and processes by which Corporations are directed and operated.

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The Organisation for Economic Development (OECD), defined corporate governance as:

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[1] Tricker, B. (2015). Corporate Governance: Principles, Policies, and Practices (3rd Ed.) Oxford University Press

> "*The system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the Board, managers, shareholders, and other stakeholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structures through which the company objectives are set and the means of attaining those objectives and monitoring performance*"[2]

The Companies and Allied Matters Act 2020 made ample provisions as it relates to the role of the directors in enhancing corporate governance. The Act, strengthened the Board Composition and oversight[3] by including the appointment of three independent directors. This provision eliminates bias and ensures independent oversight over the affairs of the company. Also one person cannot serve as both Chairman and chief executive officer.[4] This is to ensure separation of executive powers from Board supervision. A person cannot serve in more than five boards of a public company,[5] the reason for this is to free up time for the directors to properly oversee the companies they are directing. The direct consequence is disclosure requirement[6] of other directorship to promote transparency in the system.

Apart from the above, the duties and Liabilities of directors are codified in the Act. The directors must act in good faith and in the best interest of the company.[7]

Corporate governance provides the structure through which the company objectives are set as well as the means of attaining and monitoring the performance of those objectives.[8] Quite unlike in the past their personal liability is now provided for under the Act where

[2] https://corpgovnigeria.org. 'Corporate Governance in the Age of Digital Transformation 'Accessed on 16th March 2025 incomplete citation
[3] Companies and Allied Matters Act 2020, s. 275 (1)
[4] Ibid. s 265 (6)
[5] Ibid. s. 307
[6] Ibid. s. 278
[7] Ibid. s. 305

they did not disclose personal interests in contracts.[9] They are equally prohibited from receipt of secret commission or bribes, whether directly or through intermediaries.[10]

The Act made robust provision on promoting shareholders Rights and Remedies, especially minority shareholders. A shareholder can apply to court for relief on many grounds including ' acts that are oppressive , prejudicial or discriminatory,[11]derivation action by the shareholders meant to checkmate corporate power,[12]access to corporate records and rights to inspect minutes of resolutions,[13] publication of audited Financial Statements[14] for public companies in the websites, disclosure of remuneration of directors in Annual returns, [15] introduction of registers of persons with significant control[16] to know beneficial owner and prevent money laundering and insider dealings and permission of virtual meetings for private companies.

The role of the secretary of Company in ensuring good corporate governance is huge.[17] The secretary of a company attends meetings of the company, its board of directors and committees. And take down the minutes. The secretary advices the company on compliance with applicable laws, rules and regulations. They maintain the registers and other records required to be maintained under the Act, they render returns and give notifications to Corporate Affairs Commission (CAC) as required under the Act.

These are some of the measures introduced by CAMA 2020 to ensure good corporate governance and ultimately protect the rights of shareholders.

Good Corporate governance therefore ensures participation of the shareholders and the directors alike in expressing themselves as it relates to the affairs of the Company. It is the enthronement of the rule of law which signifies absence of bias or favouritism, proper management of the competing interests with minimal cost, accountability and

[9] Ibid. s. 312 (3) (B)
[10] Ibid.s313
[11] Ibid. s.343
[12] Ibid. s. 344
[13] Ibid. s. 234 -236
[14] Ibid. 374 (6)
[15] Ibid. 238
[16] Ibid. s. 119
[17] Ibid. s. 335

transparency in the management of the company. it is important as part of corporate governance that there has to be a degree of acceptability of the company's decision by stakeholders.

Despite these provisions, there are still challenges in the implementation of good corporate governance. there are challenges of ignorance of their rights by shareholders, court delays in administration of justice and imprecise definition of what " Oppressive conduct " and " unfair prejudice" means. These and many more still undermine corporate governance.[18]

2.2 Personal Data

Personal Data is defined as any information relating to an individual, who can be identified or is identifiable, directly or indirectly by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social or economic identity of that individual.[19]

Personal Data Breach is defined as a breach of security of a data controller or data processor leading to or likely to lead to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored, or otherwise processed.[20]

Data subject is an individual to whom personal data relates.[21]

Data controller means an individual, private entity, public Commission, agency or any other body who, alone or jointly with others, determines the purposes and means of processing of personal data.[22]

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[18] Khayrah A. Enhancing Corporate Governance in Nigeria: The Impact of CAMA 2020 (2025), https://www.researchgate.net accessed 21 October, 2025
[19] Nigeria Data Protection Act 2023. S. 65
[20] ibid
[21] ibid
[22] ibid

Processing means any operation or set of operations which is performed on personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage , adaptation, alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment, combination, restriction, erasure or destruction and does not include the mere transit of data originating outside Nigeria[23]

Sensitive personal Data means personal data relating to an individual's genetic and biometric data, for the purpose of uniquely identifying a natural person, race or ethnic origin, religious or similar beliefs, such as those reflecting conscience or philosophy, health status, sex life, political opinions or affiliations, trade union memberships or other information prescribed by the commission as sensitive personal information.[24]

Corporate Personality

Once a company is incorporated, it acquires corporate personality. It becomes a legal person (artificial rather than natural) quite separate and distinct from its members.[25] This is the chief attribute of incorporation and it has far –reaching consequences. The company can have rights and duties quite distinct from that of its members. It can sue and be sued by the members and it can enter into contracts with them, and its property belongs to it and not to the individual shareholders.[26] Accordingly, if the company is unable to pay its debts, it may be wound up while the shareholders remain rich. Even if the shareholders remain but one, that person is a distinct legal person from the company. The case of *Salomon vs. Salomon*[27] aptly expressed the concept of legal personality.

In the same vein, in explanation of this principle, *Denning L.J in Bolton(Engineering) Co. Ltd v Graham and Sons*[28], stated as follows:

[23] ibid
[24] ibid
[25] Companies and Allied Matters Act 2020. S. 42
[26] ibid
[27] (1897) AC 22
[28] (1934) 1 K.B 57

> *"A company may in many ways be likened to a human body. It has a brain and nerve Centre, which controls what it does. It also has hands, which holds the tools and act in accordance with direction from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and willof the company and controls what it does…"*

This position was further entrenched in the case of *Lennards Carrying Co.v Asiatic Petroleum Ltd,*[29] where Viscount Haldene L.C. said:

> *"A Corporation is an abstraction, it has no mind of its own any more than it has a body of its own, its active and directive will must consequently be sought in the person of somebody who for some purposes may be called an agent but who is really the directing mind and will of the corporation, the very ego and centre of personality of the corporation."*

Under the Act, company is an artificial person – corporate personality. The company acts through its members in general meeting, or its board of directors or through officers or agents duly appointed.[30]

The company's articles shoulprovide who exercises which power[31]. Acts of members in general meeting and of the board of directors or a managing director done in the course of the usual business of the company are treated as acts of the company itself and the company and the company will be civilly and criminally liable as if it were a natural person even in respect of 'ultra vires'act[32]. However there is no civil liability of a company if the third party is aware of the General Meeting of the Board or Managing Director.[33]

Acts of officers or agents must be authorised by the general meeting or Board.[34] The company is liable even if there is fraud or forgery by an officer of the company provided

[29] (1915) AC 705 at 713 -714
[30] CAMA 2020. S.87
[31] Ibid. s. 88
[32] CAMA 2020 s. 89
[33] Iibid. S.89 (a)3
[34] CAMA 2020 S.99

there is no collusion with a third party[35] The Act specifically gave the Board of director the powers to manage a company without taking directions or instructions from members in general meeting, provided they act in good faith.[36]

2.3 Data Protection

Data protection is the process of safeguarding data and restoring important information in the event that the data is corrupted, compromised or lost due to cyber-attacks, shutdowns, intentional harm or human error[37]. It embraces the technologies, practices and workflows that ensure rightful access to data, so the data is available when it's needed.[38]

Data protection provides tools and policies to actually restrict access to data. Compliance regulations help ensure that user's privacy requests are carried out by companies, and companies are responsible to take measures to protect private user data.[39]

The benefits of data protection in this 21st century are enormous. In a corporate world, data protection ensures fair and transparent corporate governance. Investor confidence and trust are also maintained.

The 1999 constitution of the Federal Republic of Nigeria,[40] ensures the preservation of the privacy of every citizen of Nigeria. Data protection preserves and protects personal and sensitive information of Citizens from being misused or sold and inappropriately used without consent. This ultimately guarantees a safe digital environment and increased virtual participation by stakeholders.

The 21st century is marked by evolution in digital landscape, cybercrimes and cyber threats of all kinds are gaining momentum. If individual data is not protected adequately, problems of financial losses, reputational damage, and identity theft can result. These risks can be checkmated by a robust data protection mechanism.

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[35] Ibid. s. 94
[36] Ibid. s. 87 (4)
[37] Ron K, What is Data Protection and Why is it Important? (2024) http://www.techtarget.com. Accessed on 21 October, 2025
[38] ibid
[39] ibid

3.0. Legal and Institutional Frameworks for Shareholders Protection in Nigeria

The principal legislation for the management of a company in Nigeria is the Company and Allied Matters Act 2020. There are other laws and legislations which provides for shareholders protection in Nigeria. They include the Investments and Securities Act 2007 as amended, the Securities and Exchange Commission corporate codes which form some of those laws ensuring shareholders protection in Nigeria.

Shareholders, under the Companies and Allied Matters Act 2020 have certain rights that is aimed at protecting the shareholder. The rights are discussed below.

Right to financial information.

The shareholders have right to access financial information, annual reports and other relevant documents. This right is important as it helps the shareholder to monitor the performance of the company.[41] The Act,[42]spells out the rights of shareholders to inspect the company's books and records. It provides that a shareholder may apply to the court for an order to inspect the company's books and papers subject to certain conditions.

By the provision of the Act,[43] the shareholder can obtain copies of the company's balance sheet, profit and loss account, director's report and auditors report. The court can order a company to produce documents on information if it considers it just and equitable to do so.[44] This access to information enables the shareholders to hold the directors accountable, helps the shareholders monitor the company's performance and other relevant documents. Through the availability of these documents, companies can enhance transparency and build trust.

Right to sue the Company

Generally, where a wrong has been done against the company in the course of the management of the affairs of the company, it is only the company that can ratify the

[41]Maverick J, " Why Do Shareholders Need Financial Statements? (2025) https://www.investodia.com, accessed on 21 October, 2025
[42] CAMA.2020 S.234
[43] ibid. S. 235
[44] ibid. s. 236

irregular conduct or sue to remedy the wrong. This principle was recognised in the landmark case of *foss v Harbottle*[45]

Exceptions to the Rule

- A shareholder may by injunction or a declaration restrain the company from the following[46]

i. Illegality and ultra vires Act
ii. Irregular procedure
iii. Infringement of membership rights
iv. Fraud on minority
v. Impracticability to call company meeting in time to redress wrong done to the company or to the minority
vi. Where the directors are likely to derive a profit or benefit or have profited or benefited from the negligence or from the breach of duty.
vii. Any other act or omission, where the interest of justice so demands.

Illegal and ultra vires Act

The Act[47] provides that a company shall not, carry on any business expressly prohibited by its memorandum and shall not exceed the power conferred upon it by its memorandum or the Act. In the event of such ultra vires acts, a shareholder may proceed to court on behalf of the company. In the case of *yalaju-Amaye v Association of Registered Engineers Commission*[48] a minority shareholder was allowed to sue where the purported appointment of new directors by the board was held ultra vires the board as there was no such power granted in the articles of Association.

[45] (1843) 2 HARE 461, 67 ER 189
[46] CAMA 30209 s. 343 (a) –(g)
[47] ibid. s. 44(1)
[48] (1990) 4 NWLR pt . 145

Irregular Procedure

Where[49] a company purports to do by ordinary resolution any act the article of the company, or the Act requires to do by special resolution. Noncompliance would amount to irregular procedure that would give rise to an action by a shareholder

Infringement of Membership Rights

This refers to all acts or omission affecting the right of a shareholder as a member. The right of every member of a company are fundamental and is enforceable against the company on its infringement. These rights are numerous:

1. Failure to give meeting notice[50]
2. Right to inspect the company records[51]
3. Refusal to vote in resolution either by self or proxy[52]
4. Failure to admit duly appointed proxy[53]
5. Variation of class rights amongst other denials affecting the members in his personal relationship with the company[54]

Fraud on the Minority[55]

This refers to committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done.

Where the Directors are Likely to Derive a Profit or Benefit or Have Profited or Benefited from Their Negligence.

The Act provides for an action by a minority shareholder where the directors unconscionably benefited or is likely to benefit from their breach of duties[56]

[49] CAMA 2020 s. 343(b)
[50] ibid. s. 245
[51] ibid. s.375
[52] ibid s.251
[53] ibid. s.254(3)
[54] ibid.s.166
[55] CAMA 2020 s. 343(d)
[56] Ibid s.3439f)

- **Derivative Action**

A derivative action[57] also known as a shareholder derivative suit is a lawsuit brought by a shareholder on behalf of a company against a third party. Often, the third party is an insider of the company such as the directors or executive officers. Per O. Adekeye, J.S.C. in *Agip (Nig) Ltd v Agip Petroleum International & 7 Ors*.[58] In reality, this type of action is done by the company but since it will not sue as plaintiff, the law makes provision for a minority to sue on behalf of the company and not on behalf of the shareholders[59]

- **Relief on Grounds on Unfairly Prejudicial and Oppressive conduct*[60]***

Although the Act did not define what amounts to oppressive or unfairly prejudice or discriminatory conduct, the courts have over the years construed the expression of the term. In *Ogunade v Mobile Films (WA) Ltd*[61] Karibi Whyte J (as he then was) explaining the nature of the oppression or fraudulent conduct contemplated by section 201 of the Companies Act 1968 said inter alia-

> *The oppression or fraudulent conduct of the majority must be harsh, burdensome and wrongful and must represent a consistent pattern of conduct intentionally directed at the oppressed minority over a period of time. Thus, negligence in conducting the affairs of a company, or lack of business ability or inefficiency will not be sufficient. Concisely stated, a petitioner under section 201 of the Companies Act 1968n must, in order to obtain relief, show that the oppressive conduct against him falls within the scope of one or more of the circumstances herein indicated.*

In *Re R.A Noble and sons (clothing) Ltd*,[62] it was held that a case falls within the scope of unfairly prejudicial conduct if:

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[57] Ibid. s.346(1)
[58] (2010) LCN/3794 (SC),,(2010) 5 NWLR (Pt 1187, 348
Orojo, *Company Law and Practice in Nigeria(5th edn. Cape Town Lexis Nexis Buttherworths, 2008) 212*
[60] CAMA.2020 S..354
[61] (1976) 2 FRCR 10
[62] (1983) BCLC 273

- It would suffice for a member to show that the value of his shareholding had been seriously diminished or, at least seriously jeopardized by a course of conduct by those who had de-facto control of the company, and
- The test of unfairness is objective and there is no need to show any conscious knowledge on the part of the controller that it was unfair, or any other evidence of bad faith. The question would be whether a reasonable bystander would regard it as unfairly prejudicial.

To merely allege that a conduct is unfairly prejudicial or illegal is not enough. The circumstances of the oppression or illegality must be shown.

(d) Investigation of the Company

Another way to protect minority shareholder is by investigation of the company by the commission. It is one of the new and unique interventions provided by CAMA to protect the rights of the minority shareholders and generally to ensure proper administration and management of the company.

(e) Winding Up of the Company on Just and Equitable Ground

Another protection afforded minority shareholders by CAMA is the right to petition the court on just and equitable ground[63] this is the most drastic form of shareholders relief. Winding up is the process whereby a company's life is brought to an end and its assets are administered by an official called a liquidator for the benefit of the creditors or members of the company. The liquidator assumes control of the affairs of the company, collects its assets, pays its debts where necessary and distributes any surplus among the members. In *Anakwenze v Tapp Industries*[64] this term was defined by Oguntade JSC as as including the gathering in the assets of the company, disposing of such assets, meeting of the liabilities of the company and sharing of the balance between contributories.. Where the court orders that a company be wound up, the relevant provisions of CAMA relating

[63] S. 571(f) of CAMA 2020
[64] (1992(7 NWLR (pt 252) at 265

to winding up of companies applies.[65] In General Aviation Services Ltd v Thahal,[66] the court emphasized that:

> *The words "just and equitable" in a winding up proceeding are a recognition of the fact that a limited liability company is more than a mere judicial entity, with a personality in a law of its own, that there is a room in company law for recognition of the fact that behind it or against it, there are individuals with rights, expectations and obligations inter se which are not necessarily submerged into the company's structure.*

Also the Securities and Exchange Commission Code of Corporate Governance in Nigeria provides that board is to ensure that all shareholders are given equal treatment and minority shareholders are adequately protected from the abusive actions and controlling shareholders. In addition, there should be adequate shareholder representation on the board proportionate to the size of shareholding[67]

The essence of these rights as we have noted above are to promote corporate governance which ensures the protection of shareholders from the oppressive acts of the directors or majority shareholders.

4.0 Legal and Institutional Framework for Protection of Shareholders Data

4.1 Nigeria Data Protection Act 2023

This Act was enacted to safeguard the fundamental rights and freedoms and the interests of data subject as guaranteed under the Constitution of Nigeria[68]. The objective of the Act is the protection of personal information and the establishment of the Nigeria Data protection Commission[69] for the regulation of the processing of personal information. The Act also aims at the promotion of Data processing practices that safeguard the security of personal data and privacy of data subjects. The Act also aims at the protection

[65] S. 355(3) of CAMA 2020
[66] (2004) 10 NWLR (pt 880) 50 sc
[6767] https://sskohn.com "Corporate Governance 2021!SSKOHN"Assessed on 17th April 2025
[68] Nigeria Data Protection Act 2023, s.1(a)
[69] Ibid. s. 4

of Data subjects 'rights and provision of means of recourse and remedies, in the event of the breach of the data subject rights. The Act seeks the strengthening of the legal foundations of the national digital economy and guarantee the participation of Nigeria in the regional and global economies through the beneficial and trusted use of personal Data[70]

It appears the Act is more focused on Data controllers and processors and not Data subjects. This approach is commendable as a higher burden is placed on data controllers and processors to ensure and safeguard sensitive information. The Data subjects are those whose rights are to be protected. The directors therefore, who are the Data controllers and processors have the burden to ensure that the shareholders Data rights are protected.

The Act applies to the processing of personal data whether conducted by automated means or not.[71] The Act applies to a Data Contoller or Data Processor who is domiciled in, resident in or operating in Nigeria.[72] It also applied if the Data Processing takes place in Nigeria.[73] The Act applies to a Data Contoller or Data processor who does not reside or operate in Nigeria but processes the personal Data of a Data subject in Nigeria.[74] It is worthy to note that the Act does not apply if the processing of personal Data is solely for personal or household purposes provided that such processing does not violate the fundamental right to privacy of the Data subject.[75] The Act equally does not apply where personal Data is processed for the purposes of crime investigation, public health emergencies, national security, or the publication of matters in the public interest for journalism, educational or literary purposes[76] or commencing or defending legal proceedings[77] The Data Contoller or Data Processor must however consider the privacy

[70] Ibid. s.1(1) (a –h)
[71] Ibid. S. 2 |(1)
[72] Ibid 2 (2)
[73] Ibid s. 2 (2) (b)
[74] Ibid 2 (2) (c)
[75] Ibids. 3 (1)
[76] Ibid 3 (2)
[77] ibid

rights safeguarded in the 1999 Constitution of Nigeria, the principles and lawful bases of personal Data processing and the requirement to appoint a Data Protection officer.[78]

The Commission (Data Protection Commission) has the discretion to determine, by regulation the types of personal Data and processing that will not fall under the scope of the Act[79]

The Act listed six principles that should regulate how personal Data is controlled and processed in Nigeria. A Data Contoller or Data processor is required to process personal Data in a fair, lawful and transparent manner.[80] Personal Data should only be collected for specified, explicit and legitimate purposes and not used for other incompatible purposes. A Data Contoller or Data Processor shall ensure that personal Data is adequate, relevant and limited to the minimum necessary for the purposes for which the personal Data was collected or further processed. Personal Data collected must be accurate, complete and up to date. Personal Data should be processed in a manner that ensures the security of Personal Data, including protection against unauthorized or unlawful processing, access, loss, destruction, damage or any form of data breach.[81]

In the same vein, the Act establishes six lawful bases for the processing of personal Data namely: consent, contractual necessity, legal obligation, vital interests, public interest and legitimate interests of the Data Controller or Data Processor.[82] Note that interests of the Data Controller or Data Processor must not violate the fundamental rights of the Data subjects, and must not be incompatible with the other lawful bases of processing or extend the purpose for which the Data subject agreed to.[83]

The Act required the Data Contoller or Data processor to obtain the consent of Data subjects before their personal Data is collected or processed. Their right to withdraw their consent should also be made known to them.[84] Previous processing is not affected by the

[78] Ibid 3(2)
[79] Ibid. s. 3 (3)
[80] Ibid. s.24 (1)
[81] Ibid. s. 24 (1) (f)
[82] Ibid s. 25 (2)
[83] Ibid. s. 25 (2)
[84] Idid. S. 25 (2)

withdrawal of consent but subsequent processing would.[85] In the case of children, their parents or guasrdian can give the consent.[86]

There are other provisions in the Act like the requirements for Data processors or controllers to have Data Privacy Impact Assessment on Data subjects,[87]definition of sensitive Personal Data [88] and the requirement of Data controllers and processors to appoint Data Protection Officers.[89] The Act equally delineated the rights of a Data Subject.[90]

Though the Act has been applauded as a significant improvement on the Nigeria Data Protection Regulation (NDPR), It still has its drawback.[91] The independence of the supervisory authority as stipulated in the Act raises some concerns that could affect the smooth performance of its functions. The constitution of the governing council suggests a supervisory power of the executive arm of government, which may restrict the independence of the commission.[92]

The Act did not define "legitimate interest" as a ground for processing personal data. The data controllers and processors may have a challenge of interpretation as regards the meaning of legitimate interest.[93]

There is no timelines for certain compliance actions such as filing data, audit report, data retention, etc[94]

The Act limits the appointment of DPOs to data controllers and processors of major importance[95]

[85] ibid
[86] Ibid 31 (1)
[87] Ibid. s. 28 (1)
[88] Ibid. s. 30
[89] Ibid s. 32 (1) and (2)
[90] Ibid. s. 34 (1) (a)
[91] Eke S, A Review of the Nigeria Data Protection Act, 2023, (2025) https://spaajibade.com accessed 21 October, 2025
[92] ibid
[93] ibid
[94] ibid
[95] ibid

The Act did not specify the amount of personal data that needs to be processed by data controllers or processors to be categorized as data controllers or data processors of major importance[96]

Apart from these few omissions, the Act has the capacity to regulate the protection of personal data of individuals.

Nigeria Data Protection Commission

The commission was established under the Nigeria Data protection Act 2023 as the supervisory and regulatory authority for data protection in Nigeria, a function previously undertaken by the Nigeria Data Protection Bureau (NDPB). Data controllers and data processors must register with the Commission within six months after the commencement of the Act or of becoming a data controller or data processor of major importance.[97]

Data controller or data processor of major importance is defined under the Act to mean a data controller or data processor that is resident or operating in Nigeria and processes the personal data of more than such number of data subjects who are within Nigeria as the Commission may prescribe or such other class of data controller or data processor processing personal data of particular value or significance to the economy. Society or security of Nigeria, as the Commission may designate.[98]

Data controllers and processors involved in data processing or the control of data have the responsibility to develop and implement appropriate technical and organisational measures to ensure the security, integrity and confidentiality of personal data under its control. The measures include protecting the system from hackers, setting up firewalls, storing data securely with access to specific authorized individuals, employing data encryption technologies, developing organisational policies for handling personal Data, (sensitive or confidential data), protection of emailing systems and continuous capacity

[96] ibid
[97] Nigeria Data Protection Act 2023. S. 44
[98] Ibid. s. 65

building for staff.[99] An aggrieved data subject may lodge a complaint with the commission.[100]

Where the commission is convinced that a data controller or processor has breached or violated or is likely to breach or violate any requirement under the Act or any subsidiary legislation, the commission may make a compliance order which may include warning to the data controller or processor to refrain from the act, require compliance as the case may be, impose sanctions, payment of compensation etc.[101]

A penalty or remedial fee may be an amount up to the

- higher maximum amount, in the case of a data controller or data processor of major importance; or
- Standard maximum amount, in the case of a data controller or data processor not of major importance.

The higher maxim amount shall be the greater of (a) N10, 000,000 and (b) 2% of its annual gross revenue in the preceding financial year.

The standard maximum amount shall be the greater of N2,000,000 and (b) 2% of its annual gross revenue in the preceding financial year.[102]

> There are other sector specific legal framework for data protection like Child Rights Act 2023, Consumer Code of Practice Regulations 2007, Cybercrimes (Prohibition, Prevention Etc) Act 2015, Freedom of Information Act 2011, National Identity Management Commission Act 2007, National Health Act 2014 etc.

6.0 Classification of Data Protection as Shareholders Rights under the Nigerian Law

The Nigerian Data Protection Act (NDPA) 2023 made ample provisions on how Data Controllers and processors deal with the information as regards Data subjects. The

[99] Ibid. s. 12
[100] Ibid s.46
[101] Nigeria Data Protection Act 2023. S. 48
[102] ibid

shareholders for the purpose of application of this law to companies, are the Data subjects and the data controllers and processors of data are the directors. Companies which are primarily governed by the directors must give heed to Data principles as outlined in Nigeria Data Protection Act or face stiff sanctions on violation as provided under the Act.

The Act[103] laid down the principles of personal data processing. Under the Act, a data controller or data processor (who are the directors of the company) shall ensure that personal data (Shareholders data) is a) processed in a fair, lawful and transparent manner; b) collected for specified, explicit, and legitimate purposes, and not to be further processed in a way incompatible with these purposes; c) Adequate, relevant and limited to the minimum necessary for the purposes for which the personal data was collected or further processed; d) retained for not longer than is necessary to achieve the lawful bases for which the personal data was collected or further processed; e) accurate , complete, not misleading , and where necessary, kept up to date having regard to the purposes for which the personal data is collected or is further processed ; and f) processed in a manner that ensures appropriate security of personal data, including protection against unauthorised or unlawful processing, access, loss, destruction, damage or any form of data breach.

The directors shall use appropriate technical and organisational measures to ensure confidentiality, integrity, and availability of personal data of shareholders.[104]The directors also owe the shareholders a duty of care, in respect of data processing and shall demonstrate accountability in respect of the above principle.[105]

The Act, envisaged Shareholders Data as personal Data. Personal Data was defined by the Act[106] as any information relating to an individual, who can be identified or is identifiable, directly or indirectly by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social or economic identity

[103] Nigeria Data Protection Act 2023. S. 24 (1) ((f)
[104] Ibid s. 24 (2)
[105] Ibid (3)
[106] Ibid s. 65

of that individual. Personal data and details of each shareholder are lodged with the Company for effective corporate governance.

The Rights of the Shareholders are explicitly delineated by the Act[107]. The shareholders have the right to access personal data stored by the company and details associated with it. The shareholder has right of erasure, restriction or rectification of any personal data. They have right to lodge a complaint with the commission. They have a right to know the source of their personal information if they did not provide it. Shareholders have a right to know the existence of automated decision –making, including profiling, the significance and envisaged consequences.

A shareholder can withdraw, at any time consent to the processing of personal data.[108] A shareholder can also object to the processing of personal data[109]The shareholders as has been enumerated have significant data protection rights under the Nigeria law that should be protected by the directors, failure of which attracts criminal and civil liability under the Act.

An illustrative case is the case of *Olumide Babala LP & Anor v True vSoftware Scandinavia AB and Anor,*[110] in that case, Olumide Gabalola LP is a Data Protection Compliance Organisation (DPCO), Like all DPCO's, it is mandated to ensure the protection of data privacy as well as compliance with the provisions of the Nigeria Data Protection Regulation (NDPR). The second applicant is a data subject who claims that his personal data has been collected and processed by the owners and operators of the software known as Truecaller App. The claim is that the 1st Respondent (Truecaller) uses the app to harvest telephone numbers of users around the world and makes them available to users of the software all over the world, including that of the 2nd Applicant, without the 2nd Applicant\s consent. The Applicant's claim that the right to privacy has been bridged and hinged their suit as a fundamental human right action, while citing the provisions of

[107] Ibid. s. 34 (1) (2)
[108] Ibid. s. 35
[109] Ibid. s. 36
[110] Suit No: FHC/ABJ/CS/14312/2018., judgment was delivered on the 19th of April, 2023 by justice J.k Omotosho of the Federal High Court.

the NDPR/ The 1st Respondent responds that is it not responsible for truecaller international LLP India is responsible.it therefore raises a preliminary objection on jurisdiction requesting its name to be struck off and the suit dismissed. The 1st Respondent stated that assuming it is in any way responsible for the Applicants, its Truecaller App does not provide services to non-users of the App, and that users of the App granted access and consent to their contact lists. It noted that there is no option for enhanced search for a person's phone number and that any contact available on its database is that of a user who gave consent for his details to be displayed by the App.

The Court held on the issue of whether a fundamental right was breached, that privacy right is not limited to the words defined in the constitution and that the right to life and privacy connotes everything about the parts of the human person's life, except as limited by the constitution itself. Thus, by the combined interpretation of the Constitution and the NDPR, the phone number of a person is part of his data. But the Court in dealing with the issue of breach of that personal data, held that the Applicants did not prove that their names can be searched on the App and their phone numbers revealed. They failed to discharge the burden on them. The court further examined the definition of "Data controller" and the meaning of "Processing" and held that the 1st Respondent did not unilaterally collect or harvest the phone numbers of the Applicants, but rather, it is the data controllers (users who downloaded the Truecaller Application) who gave consent and access to those phone numbers. and not the 1st Respondent. The application was however dismissed for lack of merit.

7.0 The Scope of Corporate Governance vis-à-vis Shareholders Data Protection

Good Corporate governance has the capacity to prevent fraud and corruption. When a company have clear, written down policies, procedure and protocols in place, proper management of the company including personal Data of individuals are usually the result[111]

[111] Dan B, How Corporate governance can Prevent Fraud and Corruption" https://www.thecorporategovernanceinstituite.com accessed on 21 October, 2025

Good corporate governance involves outlining roles, creating vigilant oversight and eliminating all possible opportunities for abuse. It makes room for transparency and accountability within the organisation. In specific terms, the Board of Directors should endeavour to observe the outlined responsibilities to protect shareholders data[112].

Appointment of Head of Data Protection Officer in a company

This position should not be confused with the position or role of an Information Technology Head (IT). This role is primarily responsible for overseeing the origination's data protection strategy, ensuring compliance with regulations and managing risks that is associated with data protection. They could report directly to the board to ensure that their concerns are considered promptly.

Instituting a Data Protection Committee

This committee has the responsibility to deliberate on and consider the specific challenges and risks associated with data protection. The Head, data Protection Officer of the company ought to be a member of that committee so that they can work seamlessly.

Constant update and assessment of Data protection policies and procedures

The Board of directors has the onerous task of ensuring that the company's data protection policies and procedures are reviewed from time to time. The policies and procedures should be updated to be at par with the changes in technology, laws and regulations and even business practices.

Continuous learning of evolving Data breaches

The Board should ensure that management undergo trainings of various types on data management. Yearly exposure to workshops on the evolving data breaches can checkmate financial risk and ultimately protect data subjects.

[112] ibid

Enhancing cyber security infrastructure as of the measures to enhance Data protection.

Investment in cyber security infrastructure cannot be over-emphasized. The hackers are continuously devising ways to create a gap in the system. The Company should invest in Cyber security infrastructure to safeguard and protect personal data in their possession.

Ensure Transparency with Stakeholders.

Transparency breeds trust. Board of directors should be transparent in dealing with data subjects on data issues including collection and usage. They should timeously report breach to stakeholders so that appropriate action can be taken.

9.0 Conclusion/ Recommendation

Safeguarding data in the 21st century has become an imperative and sacrosanct obligation. The board of directors has the duty of the management of a company. The challenges facing data protection in Nigeria ranges from

Inadequate cyber security infrastructure,

Nigeria as at today is still grappling with the challenge of having in place a robust Cyber security infrastructure. The expertise is still lacking. The resources for massive investment in cyber security is often a challenge.

Cybercrime and hacking,

Cyber criminals are all over the place. Hacking incidents are still common in Nigeria. Data breaches and ransom ware attacks are also on the increase.

Lack of robust Data Protection Regulations

Though there are legislations in place like the Act 2023 and allied laws and regulations, they are hardly adequate as we have to offer maximum protection to data subjects

Limited awareness etc.

Some data subjects are completely unaware of their data protection rights and this leads to indiscriminate abuses

In this digital age, the importance of data protection has led to enactment of laws and regulation which has brought to the fore the need to properly handle personal data. It is in the interest of data controllers and provide security, to show integrity and build confidence as regards personal data in its control. Noncompliance can lead to significant legal consequences and lack of trust.[113]

The directors, who are the alter-ego of a company should therefore ensure proper governance structures are available to ensure that that the risks are mitigated and legal obligations met.[114]

i. The directors must ensure must oversee the compliance with the data protection law and all other laws and regulations that deal with data protection. The systems, policies and processes that enable compliance must be in place.
ii. Data protection is a risk area for companies. The directors should collaborate with management, the IT department and the audit section to ensure that data protection risks are identified,, assessed and mitigated.
iii. The directors should emphasize the need for data protection and ensure that data protection is part and parcel of their corporate culture[115].
iv. The directors should fashion out a robust Cyber security measures to protect personal data from cyber threats. Appropriate safety safeguards like encryption and access controls should be in place.
v. In cases of data breach, the directors should notify affected shareholders affected and the regulators or any other way required by law. The root cause of the breach should be identified and future occurrences prevented[116].

[113] www.https://michealedwards.uk "Corporate Governance in the Age of Data Privacy "Accessed on 17th April, 2025
[114] ibid
[115] ibid

The Act[117] provides that the data controller and processor shall implement technical and organisational measures to ensure the security, integrity and confidentiality of personal data in its possession or under its control, including protections against accidental or unlawful destruction, loss, misuse, alteration, unauthorised disclosure, or access.

The measures[118] to be taken in ensuring the shareholders personal data protection includes:

i. pseudonymisation or other methods of de-identification of personal data;
ii. Encryption of personal data;
iii. Processes to ensure security, integrity, confidentiality, availability and resilience of processing systems and services;
iv. Processes to restore availability of and access to personal data in a timely manner, in the event of a physical or technical incident;
v. periodic assessments of risks to processing systems and services, including where the processing involves the transmission of data over an electronic communication network;
vi. Regular testing, assessing, and evaluation of the effectiveness of the measures implemented against current evolving risks identified, and;
vii. Regular updating of the measures and introduction of new measures to address shortcomings in effectiveness and accommodate evolving risks.

[116] Ibid s. 40
[117] Nigeria Data Protection Act 2023. S. 39
[118] Ibis (2)(a –g)

DOCUMENTING CONTRACTS IN SHARI'AH: RULES AND IMPLICATIONS IN AN ERA OF ADVANCES IN TECHNOLOGY

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Abstract

This paper examines the rules governing the documentation of contracts under Islamic law, situating its analysis within both classical jurisprudence and contemporary applications. The mandate to record contracts, particularly financial transactions, is founded on Islamic legal injunction in Qur'an verse 2:282 which instructs believers to write down deferred transactions. The paper explores how classical jurists interpreted this directive and extended its application to various forms of contracts, emphasizing its role in safeguarding the rights and obligations of contracting parties. By analyzing the works of renowned jurists, such as Ibn Taymiyyah, and sources like Lisan al-Arab *and* Tafsir al-Qurtubi*, the study highlights the evolution of contract documentation from mere moral exhortation to a legally recognized mechanism for dispute resolution and evidence in Islamic law. The dual methods of documentation, witnessing (al-Ishhaad) and writing (al-Kitabah)are explored alongside their legal and evidentiary implications. Furthermore, the paper addresses the relevance of contract documentation in modern contexts, particularly with the advent of digital contracts, blockchain technology, and smart contracts. It examines how contemporary Islamic legal thought reconciles traditional doctrines with emerging technological realities, ensuring that the maqasid al-shari'ah (the higher objectives of Islamic law)are preserved in contractual dealings. The study concludes that the documentation of contracts in Islamic law transcends ritual obligation; it is a fundamental tool for ensuring justice, transparency, and the protection of rights. It also underscores the adaptability of Islamic legal principles in addressing contemporary contractual complexities, affirming the enduring relevance of Islamic jurisprudence in modern legal discourse please add one or two recommendations as well*

Keywords: Contracts, Documentations, Islamic law, Legal Evidence, Islamic Jurisprudence

1.0 Introduction

Although Islamic law recognises oral agreements as legally valid, it strongly encourages the documentation of transactions, especially those of a commercial nature. The Qur'an explicitly commands believers to record their dealings to promote justice and prevent disputes. The verse in *Surah al-Baqarah (2:282)* instructs: *"O you who believe, when you contract a debt for a fixed period, write it down."* This verse forms the earliest foundation for the practice of documenting agreements in Islam and underlines the ethical responsibility to ensure fairness and clarity between contracting parties. [1]

In the classical era, Muslim jurists developed a detailed system around the concept of *al-Tawthiq* (documentation), which covered both written agreements (*al-Kitabah*) and the use of witnesses (*al-Ishhad*).[2] The goal was not only to record rights and obligations but also to preserve trust and uphold justice, values deeply rooted in the *Maqasid al-Sharia*, the higher objectives of Islamic law. Through proper documentation, Islam seeks to protect faith, life, intellect, lineage, and property, ensuring that social and economic interactions are conducted with transparency and integrity.[3]

However, in the modern world, the nature of documentation has expanded far beyond its classical scope. The rise of digital technology, global trade, and electronic communication has transformed how contracts are created and authenticated. Today, agreements can be made through electronic signatures, verified by blockchain, or stored on digital platforms that have no physical equivalent.[4] These developments raise important questions about how traditional Sharia principles apply to modern forms of documenting and verifying agreements.

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[1] The Qur'an, *Surah al-Baqarah* (2:282)

[2] Ibn al-Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Cairo: Dar al-Hadith, 1991) Vol. 3.

[3] Al-Ghazali, *Al-Mustasfa min 'Ilm al-Usul* (Cairo: Al-Maktabah al-Tijariyyah al-Kubra, 1937) 174.

[4] Aishath Muneeza, Rusni Hassan and Noorul Azmi Arshad, "The Application of Blockchain Technology in Islamic Finance" (2018) 34(4) *Humanomics* 294–307

It is, therefore, essential to revisit the rules governing documentation under Islamic law in light of these technological advancements. This paper examines the evolution and principles of contract documentation in Sharia, from its classical foundations to its modern applications. It highlights how emerging technologies such as electronic documentation, artificial intelligence, and block-chain can complement (rather than contradict) Islamic legal objectives. Ultimately, the study argues that while technology changes the form of documentation, the essence and objectives of Sharia, which are justice, clarity, and protection of rights, remain constant.[5]

2.0 Evolution of Legal Documentation

The process of documentation (or recording) contracts is referred to as *al-Tautheeq* which literally denotes 'affirmation'or 'confirmation''[6]. it comes from the root word *wathaqa,* a verb also assosoated with words such as *al-Ahd* (covenant or treaty), *al-I'itimaan* (trust), and *al-Shadd* (strengthening)[7]. Thus, the most relevant literal meaning of *Al-Tautheeq* is documentation which may be regarded as a tie/bind between the contracting parties[8]. However, in its technical meaning, it connotes reducing transactions into writing in such a way that it provides security to the transactions and binds the parties involved for the establishment of their rights and obligations[9]. A*l-Tautheeq* (recording of contracts) either resorts to witnesses (*al-Ishhaad)* alone or writing (*al-Kitabah)* alone or supported by witnesses to authenticate its validity[10]. The recording (documentation) here is however more related to *al-Kitabah* thus, it is defined by the jurists as

[5] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008)
[6] Wahbah Al Zuhayli, *Al Fiqh al Islami wa Adillatuh ,* Vol 5 (Damascus Dar al Fikr, 1989) p3652
[7] Ibn al-Manzoor, *Lisan al-Arab*, (Vol. 10, Cairo: Dar al-Ma'arif, 2002) 371.
[8] Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence,* (Cambridge Islamic Texts Society, 2003) p387
[9]M N Al-Harithy'Hukm Tautheeq al-Dain wa al-Bay'i Kitabatan wa Shahadah' *Al'adl Journal* (1422 AH) 22 10.
[10] S A Al-Faransy, , "Al-Dalil al-Kitaby wa Dauruhu fi Ithbat al-Jareemah fi al-Nidham al-Sa'udy" (Unpublished Thesis, Naif University for Security and Sciences, K.S.A, 2008) 28.

> "The art of writing relied upon in establishing rights which is admissible as proof or evidence. In other words, it is the type of writing that establishes rights in a normal way to be purposely referred to whenever the need arises"[11]

Documentation in Islamic history evolved simultaneously with the development of human civilization and can be traced through the successive revelation given to various Prophets and communities.[12] The Shari'ah encourages the *Ummah* to reduce their transactions to writing. Thus the Holy *Qur'an* provides: "O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing…."[13] Likewise, the Holy Prophet (SAW) engaged in the practice of documenting and also instructed some of his companions to do so whenever the need arose.[14]

Al-Tautheeq basically caters for two important aspects of human life, namely, economic and social aspects and, specifically, safeguards their life and property. Thus, the practice of *Tautheeq* protects the honour and dignity of human beings and paves a solid means and method for establishing rights and claims in the courts of law.provide reference

The Holy Prophet (SAW) was an excellent precursor in this regard. A good example of this is his documenting in respect of a ransomed slave, Aslam, popularly known as Abu Rafi'a; the text reads: "In the name of Allah the Beneficent the Merciful. This is a letter from Muhammad, the Messenger of Allah (SWA), to his servant, Aslam; I have freed you completely for the sake of Allah, and to Him the favour counts. Therefore, you are set free and nobody has any claim against you except that of Islam and protection of *Iman.* Abubakar Uthman and Ali stand as witnesses and Mu'awiya bin Abi Sufyan documents it. Thus, he (Mu'awiya) was among the draftsmen.[15]

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[11] Al-Harithy, (n 9) .12
[12] H A Al-Hammad, 'Kitabatul Adl wa al-Tautheeq' *Adl Journal* (1421) 8 7.
[13] Qur'an 2: 282
[14] *Al Bayhaqi in Al-Sunan Al-Kubra,* Vol. 6, p.72: Al-Nawawi, Sharh Sahih Muslim, Kitab al-Buyu', commentary on hadith no 1531
[15] A Al-Lahbay, *al-Tautheeq wa Fiqh al-Watha'iq* (Morocco: al-Rabitah al-Muhammadiyyah li Ulama' al-Maghrib, 2009) 19.

Similarly, some Companions (RA) carried out the conduct of documenting during the first period of Islam, among which are: Ali bin Abi Talib; who drafted the treaty of *Hudaibiyyah*. Again, in the profile of al-Ala' bin Uqbah (RA) "The Holy Prophet (SAW) used to send him alongside with al-Arqam to the residences of al-Anasar, where they documented debts and agreements for transactions among the people of al-Ansar[16], additionally, they used to draft covenants and agreements relating to sea and land between the Ansar.[17]

According to Ibn Hajar al-Asqalany: "It is construed from the book of al-Qadha'iy (which he wrote on the scribes of the Holy Prophet) that, Hussain bin Nameer and al-Mughirah bin Shu'bah used to document debts and other transactions for parties in contracts[18]. The prominent scribes among the *Tabi'un* are Kharijah bin Zaid and Talhat bin Abdullah; they used to give legal opinion and distribute estates among the deserving legal heirs in properties like houses, dates, money and, as well, document all transactions for people[19].

Arabs like other nations, were not familiar with documenting of contracts in marriages during the period before Islam. There are clear authorities supporting the assertion of the total absence of documenting regarding the conduct of marriages during these early periods of Islam including the fact that the Prophet's marriage (SAW) to Khadija bint Khuwailid before Islam and his subsequent marriages after Islam were not in any way documented[20]. Ibn Taimiyyah states that: "The Companions of the Holy Prophet (SAW) did not bother to document marriages, and specifically, the dower agreed upon, because they did not usually marry out on a delayed or deferred dower, they always provided it promptly. However, even if they postponed the award of the dower, it was promulgated and made known. (Thus, there was no need to reduce it to writing). But later when

[16] ibid at p. 20
[17] ibid
[18] AA Al-Asqalani, *Al-Isabah fi Tamyeez al-Sahabah,* (Vol. 2, Beirut: Dar al-Jeel, 1412 AH) 91.
[19] SA Al-Dhahabi, *Siyar A'alam al-Nubala'*, (Vol. 7 Riyadh: Mu'assasat al-Risalah, 1985) 494; see also S Al-Baji, al-*Ta'deel wa al-Tajreeh,* (Vol. 2, Riyadh: Dar al-Liwa', 1986) 603.
[20]AY Al-Fasawi, *Al-Ma'rifah wa al-Tareekh,* (Vol. 3, Beirut: Dar al-Kutub al-Ilmiyyah, 1991) 282.

marriages were mainly contracted based on the deferred dowers for long period and people tended to forget, they began to document marriages and resorted to the use of the document as a means of proof to establish the amount of the dower and the existence of a valid marriage between the husband and the wife.[21] This highlights one of the major reasons for documenting of contracts as a tool to ensure serve as a reminder to parties on the terms of their agreement.

With the advent of the Fatimids and their subsequent conquests in Egypt, they introduced documenting on marriages and divorces.[22] This practice remains now in vogue in contemporary Muslim countries such as Saudi Arabia and Egypt, Morocco, Algeria, etc[23]

3.0 Types of Contracts or Agreements in Islam

Under Islamic law, a contract represents a mutual obligation and engagement of two parties with reference to particular matter and a contract or agreement may be made to capture the consensus of parties in either an economic or social matter.provide reference In Islamic law, a contract is 'an engagement and agreement between two persons in a legally accepted, impactful and binding manner'[24]. Agreements may either be private or personal (such as contracts of marriage and guardianship) or economic contracts. They may also be unilateral such as a *wasiyya (*bequest*)* or bilateral.

An economic contract may be:[25]

i. A contract for sale (*bay*) which involves the transfer of the corpus for consideration
ii. A gift (*hiba*) which is the transfer from one party to another without any consideration or

[21]Ibn Taymiyyah, *Taqi al-Din*: *Majmoo'u al-Fatawa,* (Vol. 32, Cairo: Dar al-Wafa', n.d.) 131.
[22] Micheal Rustow, *Islamic law and the documentary record before 1500,* (Journal of Islamic Law, 2021
[23] World Bank & World Health Organization, *Global Civil Registration and Vital Statistics: Scaling up Investment Plan 2015-2024*, 28 May, 2014. available at https://cdn.who.int/media/docs/default-source/documents/ddi/wb-who-scalingup-investmentplan-2015-2024.pdf. Accessed 11/10/2025
[24] Ala' Eddin Kharofa, *Transactions in Islamic Law* (2nd Edn, Kuala Lumpur: A.S. Noordeen, 2000) 1–7
[25] Wahab al Zuhayli, (n,6)

iii. A contract for hire (*Ijara*) involving the transfer of the use (usufruct) of an item or service in exchange for consideration

iv. *'ariyya*, loan, is the transfer of the usufruct without a consideration.

Other contracts include:[26]

- Contracts of exchange (*mu'awadat*);
- Contracts of security (*tawthiqat*);
- Contracts of partnership (*shirkah*);
- Contracts of safe custody (*wadi'ah*);
- Contracts pertaining to the utilization of usufruct (*manfa'ah*); and
- Contracts pertaining to do a work (e.g., *wakalah* and *ju'alah*).

Allah SWT has commanded that all transactions involving future payment or future consideration must be reduced to writing. This is prominently obvious in the provisions of Surat al Baqara thus:

> O ye who believe when ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as Allah has taught him, so let him write. Let him who incurs the liability dictate, but let him fear Allah his Lord and not diminish aught of what he owes. If the party liable is mentally deficient, or weak or unable himself to dictate, let his guardian dictate faithfully, and get two witnesses, out of your own men. And if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big; it is juster in the sight of Allah, more suitable as evidence, and more convenient to prevent doubts among yourselves. But if it be a transaction which ye carry out on the spot among yourselves, there is no

[26] Zaydan, Abd al-Karim, *Al-Madhkal li Dirasat al-Shari'ah al-Islamiyyah* (Beirut: Mu'assasat al-Risala, 1999)

> blame on you if ye reduce it not to writing. But take witnesses whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you. So fear Allah; for it is Allah that teaches you. And Allah is well acquainted with all things. If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another let the trustee (faithfully) discharge his trust, and let him fear Allah his Lord. Conceal not evidence; for whoever conceals it his heart is tainted with sin. And Allah knoweth all that ye do[27].

The above text directly discusses the conduct of documenting in loan and sale contracts. However, it covers, by extension, all other contracts relating to personal status, such as marriage and divorce and financial transactions whether profit-based contracts or gratuitous.[28]

4.0 Rules of Drafting Documents in Islam

Documenting in Islamic law goes beyond the conventional scope of merely putting down the consensus of the contracting parties in the drafting of agreements into documents. Consideration must be given to both the form and substance. While form refers to the terms that will capture the essence of the transaction or agreement between the parties such as the expressions of the wills of the parties, substance implies the looking at the effect of the contract vis a vis the provisions and limitations on transactions placed by the Shari'ah. Therefore, the rules relating to drafting of document are succinctly discussed below.

4.1 Absence of vitiating elements

The general rule under the Shari'ah is that agreements must not contravene established legal principles particularly those relating to vitiating elements. Thus, an agreement must have a lawful subject matter (for example contracts for gambling, to sell wine or pork are

[27] *Qur'an* 2 : 282 - 283
[28] Al-Harithy, (n 9) 30.

prima facie illegal)[29] and must not contain elements of *riba* (usury)[30] and *gharar* (uncertainty). The contractual terms must also not contain elements of deceit or fraudulent misrepresentation[31].

4.2 Nature of the Agreement

In addition to the absence of vitiating elements, the nature of the contract itself is a point of consideration. This is because certain types of transactions have been expressly or impliedly prohibited despite the absence of unlawful corpus or vitiating elements[32]. For example, the Prophet prohibited entering into two mutually inconsistent contracts such as the sale of two different items for two different prices in one agreement or the deferred sale of an object for two different prices[33].

With regards to substance on the other hand, an agreement must capture the underlying *maqasid* (intention) of the sharia[34]. The objective of every legislation in Islam is to preserve one or more of the following five things vis religion, life, progeny, intellect and material wealth. This means that the intendment of the Shari'ah must be realised in the implementation of the terms of each contract or agreement relative to its purpose and transactions that fail to comply are considered void and unenforceable.

Furthermore, where the person drafting the document is not party to the agreement, he must know the purpose of recording those transactions to ensure that there is no harm to draftsman or any witnesses to the document. The draftsman must capture the exact terms as stipulated by the parties. In good faith and without any addition or subtraction. He should also be someone with a basic understanding of the Islamic rules regulating the

[29] Qur'an, 5:90.
[30] *Al-Nisa* verse 162
[31] Muslim, *Sahih*, no. 102, vol. 1, p.99.
[32] Abu Dawud, *Sunan*, no. 3540, vol. 3, p.769.
[33]iIbid
[34] Hafiz Ahmed, 'Maqasid al-Sharīah and Islamic Financial Products: A Framework for Assessment' (2011) 3(1) *ISRA International Journal of Islamic Finance* 149–160.

transaction which he is helping them to reduce to writing to avoid any ambiguities or irregularities therein.[35]

Concerning the actual drafting, terms and conditions must be couched in the past tense.[36] This is because majority of scholars insist that the use of other tenses, particularly the future tense, indicate a mere promise and not a legally binding agreement.[37] Terms must also be clear and ambiguous and phrases capable of having more than one meaning must be excluded.

4.3 The Form of the Agreement

Form here refers to the capacity of the parties to enter into such agreement as is reduced to writing. The parties must have legal capacity (*ahliyya)* and covers not only the capacity to enjoy rights, privileges but also the ability to deliver on responsibilities and obligations therein.[38] Factors that may affect legal capacity include minority and insanity. For example, a minor may be able to acquire legal rights such as those in inheritance or endowment but may not be able to deliver on some obligations (such as may be in a sales contract) till he reaches majority.

It also refers to a pre-determined or pre-required format (if any) necessary for validity of the agreement. For the requirement of format to be fulfilled, the agreement must have a clear offer and acceptance.

4.4 Witnesses

The role of witnesses in Islamic law is fundamental to the process of documenting contracts. The Quran explicitly emphasizes the importance of witnesses in contractual agreements, particularly those involving future obligations, to ensure transparency and prevent disputes. This is derived from the verse in Surah Al-Baqarah:

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[35] Suhaib Sharaiyra, *'Contract Documenting Under Islamic Law: Redefining Its Role'* https://www.researchgate.net/publication accessed 11/11/2023.

[36] Al-Kasani, Al ad-Din Abu Bakr Ibn Massud, *Bada'i al-Sana'i fi Tartibi al-Shara'i,* (Beirut, Dar al-Kutub al-Ilmiyya, 1986)

[37] Kamali Muhammad Hashim, (n,8)

[38] I A K Nyazee, *Outlines of Islamic Jurisprudence* (Islamabad: Advanced Legal Studies Institute, 2005).

> "And call two witnesses from among your men. If two men are not available, then a man and two women from those whom you accept as witnesses, so that if one of them errs, the other can remind her."[39]

This verse forms the basis for the requirement of witnesses in contracts and highlights key considerations regarding their role. For contracts involving immediate exchange, such as spot sales, the presence of witnesses is recommended but not mandatory. However, for contracts involving deferred obligations, such as loans, witnesses are considered essential to provide evidence in case of future disputes.[40]

4.4.1 The Number and Composition of Witnesses

Islamic law traditionally requires two male witnesses for most financial and commercial contracts. However, in situations where two male witnesses are unavailable, one male and two female witnesses may suffice. This allowance for two women is often understood as a practical provision, considering the societal context of early Islam, where men were more likely to engage in financial matters. The presence of two women ensures additional verification in case of an oversight, thereby safeguarding the integrity of the agreement.[41]

4.4.2 Qualifications of Witnesses

Witnesses in Islamic contracts must meet specific qualifications to ensure their testimony is reliable and valid. These include:

i. Maturity (*Bulugh*): Witnesses must have reached the age of maturity, as minors are generally not deemed capable of providing reliable testimony.[42]
ii. Mental Soundness (*Aql*): Witnesses must be of sound mind and free from conditions that impair their judgment or memory.[43]
iii. Integrity (*Adalah*): Witnesses should possess good moral character and be known for their honesty. Those with a history of deceit or dishonesty may be disqualified.[44]
iv. Knowledge of the Contract: Witnesses should have a clear understanding of the contract's terms and conditions to provide accurate testimony if required.[45]

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[39] Quran 2:232
[40] Ibn Kathir, Tafsir al-Qur'an al-Azim.
[41] Qur'an 2:232
[42] Al-Jaziri, Fiqh ala Madhahib al-Arba'a. incomplete citation
[43] ibid
[44] ibid

v. Faith (*Iman*): While many scholars hold that witnesses in Islamic contracts must be Muslims, others permit non-Muslims to serve as witnesses in contracts involving non-Muslim parties, provided they meet the other qualifications.[46]

4.4.3 Contemporary Considerations for Witnesses

In modern times, the role of witnesses must expand in recognition of technological advancements. Digital contracts may include electronic witnesses, such as block-chain systems that create an immutable record of the agreement.[47] While these innovations align with the spirit of Islamic law by ensuring transparency and accountability, their validity is still a matter of scholarly debate. Some argue that digital systems cannot replace human witnesses, while others contend that they serve as a reliable complement to traditional practices.[48]

Moreover, in some jurisdictions, legal systems have incorporated alternative forms of evidence, such as video recordings and notarized documents, as substitutes for witnesses. [49]These methods provide additional layers of security and ensure that the contract's terms are preserved accurately particularly when it is considered that records preserved in the blockchain cannot be altered, changed or deleted making them a more reliable source of evidence.[50]

4.4.4 The Ethical Role of Witnesses

Witnesses in Islamic law are not merely passive observers; they have an ethical obligation to uphold justice and truth. The Qur'an warns against concealing testimony, describing it as a grave sin:

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[45] Al Mawardi, *Al-Ahkam al Sultaniyya* incomplete citation

[46] Al Qurtubi, Muhammad Ibn Ahmad, *Tafsir al Qurtubi: Introduction: The Geenral Judgments of the Qur'an and Clarification of what it contains of the Sunnah and the Ayat of Discrimination.* Translated by Aisha and Abdul-Haqq Bewley (Diwan Press, 2018)

[47] Lui, Shuaiqi; Zheng, Qingxiao, *A Study of a Blockchain-Based Judicial Evidence Preservation Scheme, Bloch*

[48] J Truby, AM Dahdal, . & O Ismailov, , 'The Role and Potential of Blockchain Technology in Islamic Finance' (2022) 33 *European Business Law Review* 175–192.

[49] Section 9(a) Malaysia Evidence Act

[50]E Hussein, 'Blockchains for Islamic Finance: Obstacles and Challenges' (2019) MPRA Paper No. 92676 https://mpra.ub.uni-muenchen.de/92676/. Accessed 3/2/2025

"And do not conceal testimony, for whoever conceals it—his heart is indeed sinful. And Allah is All-Knowing of what you do."[51]

Witnesses must remain impartial and truthful, even if their testimony goes against their own interests or those of their close relations. This reinforces the Qur'anic principle of justice, which is central to all aspects of Islamic law.

4.4.5 Witnesses in Specific Contracts

The role of witnesses varies depending on the type of contract. For example:

i. Marriage and Divorce Contracts: Witnesses are mandatory to validate marriage contracts and provide evidence of their terms. Divorce proceedings also require witnesses to ensure that the process adheres to Islamic guidelines though there is dispute among Islamic scholars as to whether the absence of witnesses invalidates the pronouncement of the divorce or not[52]

ii. Financial and Commercial Contracts: Witnesses serve as a safeguard against disputes by confirming the terms of the agreement.[53]

iii. Wills and Bequests (*Wasiyya*): Witnesses ensure that the deceased's intentions are executed according to Sharia.

5.0 Documenting Islamic Contracts in Contemporary Times

The practice of documenting contracts under Islamic law has undergone significant evolution, particularly in response to advances in technology and the complexities of modern transactions.[54] While classical Islamic jurisprudence emphasized handwritten agreements supported by witnesses, contemporary practices incorporate digital tools and systems to ensure the security, authenticity, and enforceability of contracts[55].

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[51] Quran 2:283

[52]ARM Saadi, and SF Muhammad 'The Parameter for Oral Divorce Considered a Means for Effecting Divorce in the Four Schools of Thought' (2023) 12(4) *International Journal of Academic Research in Progressive Education and Development* 1279–1297.

[53] Qur'an 2:282

[54] Wan Abdul Fattah Wan Ismail, Ahmad Shikran Baharuddin, Lukman Abdulmutallib & Muhammad Aniq Aiman Alias. An Appraisal of Digital Documents as Evidence in Islamic Law. *Academic ournal of Interdisciplinary Studies,* Vol 10 No 3 (2021)

[55] Daoud, Hayel Abdel Hafeez Yousef, & Al b'ool Saba Muhammad Mostafa. Proof by Digital signature in Smart Contracts Using Blockchain Technology: A Comparatuve Study between Islamic Law and JordanianElectronic Transactions Law and the Evidence law, *Dirasat Shariah and Law Sciences, Vol 53 No 1(2025)*

5.1 The Shift to Digital Documentation

Recent advances in digital technology have fundamentally redefined the scope and process of documentation. Contracts are no longer limited to physical documents but now include electronic formats such as e-signatures, scanned copies, and blockchain records. In contemporary Islamic jurisprudence, these modern forms of documentation may be permissible if they adhere to Shari'ah principles, including clarity, mutual consent, and the absence of prohibited elements like *riba* (usury) and *gharar* (uncertainty).[56]

A number of Muslim countries have revised their legal frameworks to accommodate digital documentation and electronic contracting. For example, Malaysia's Digital Signature Act 1997 ensures that electronic contracts are both legally valid and compliant with Sharia law[57]. Similarly, Saudi Arabia and the UAE have introduced block- chain technology for notarization, creating tamper-proof and verifiable records of financial and commercial agreements[58]. These innovations align with the Qur'anic directive to reduce transactions to writing for the purpose of justice and fairness.[59]

5.2 Challenges in Digital Contracting

Despite the widespread adoption of digital documentation, challenges persist. One issue is the admissibility of electronic records in Islamic courts, where traditional scholars may favor physical evidence over digital proof.[60] Additionally, the reliability of electronic signatures and the potential for fraud raise concerns about the security of these systems.[61] However, advancements in encryption and cybersecurity are addressing these issues, ensuring that digital documentation meets the high standards of accuracy and integrity required by Islamic law[62].

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[56] ibid
[57] Malaysia's Digital Signature Act 1997
[58] Saudi Vision 2030 Blockchain Initiative Reports
[59] Quran 2:282
[60] Al Qurtubi (n,41)
[61] A H G Alanesi, *Electronic Contract Controls in Islamic Jurisprudence and Law* (2024) 2(2) Syura: Journal of Law 80-97 https://ejournal.staiduba.ac.id/index.php/syura/article/view/262 Acessed 11/10/2025
[62] B Bakhruddin, *et al*., 'Islamic Perspectives on Cybersecurity and Data Privacy: Legal and Ethical Implications' (2023) 1(04) *West Science Law and Human Rights* 166–172.

5.3 Role of Artificial Intelligence in Drafting Contracts

Artificial intelligence (AI) is increasingly employed to streamline the process of drafting contracts in Islamic law. AI tools analyze agreements to ensure compliance with Sharia principles, flagging problematic clauses and suggesting alternatives. For instance, in Islamic banking, AI systems help structure contracts for *sukuk* (Islamic bonds) or *ijara* (leasing agreements) to ensure they are free from *riba* and *gharar*[63]. These tools not only enhance efficiency but also minimize the risk of non-compliance with Islamic jurisprudence.

5.4 Global Standardization and Regional Variations

The adoption of modern methods of documentation is now evident across various jurisdictions though significant differences in application remain[64] Countries with advanced legal and technological infrastructure, such as Malaysia, Saudi Arabia, and Turkey, have established robust systems for digital contracting.[65] Conversely, in less developed regions, traditional methods of documentation, such as handwritten agreements and physical witnesses, are still predominant.

To bridge this gap, international bodies such as the Organization of Islamic Cooperation (OIC) have called for standardized guidelines that incorporate contemporary practices into Shari'ah-compliant frameworks[66]. These efforts aim to harmonize the documentation process while respecting regional differences and adhering to Islamic principles.

5.5 Ensuring Shari'ah Compliance in Contemporary Practices

For digital documentation to be valid under Islamic law, it must fulfill certain requirements. These include clarity in terms, mutual consent between parties, the lawful nature of the contract's subject matter, and the presence of reliable witnesses, even in digital formats. More so, the use of technology should not contravene ethical and moral

[63] H Shalboob, 'The Role of AI in Enhancing Sharia Compliance: Efficiency and Transparency in Islamic Finance' (2025) 9(11) *Journal of Infrastructure, Policy and Development* 11239.
[64] United Nations Economic and Socia l Commission for Western Asia (ESCWA), *Arab Digital Development Report 2022: Towards Empowerment and Inclusion for All (Beirut, United Nations, 2024)*
[65] See laws for different countries quoted herein
[66] Organization of Islamic Cooperation Reports

considerations outlined in Shari'ah, such as ensuring that all parties have equal access to the technology required for contract execution.[67]

6.0 Conclusion and Recommendations

6.1 Conclusion

The study finds that documentation of contracts in Islamic law has deep classical roots anchored in both textual injunctions and juristic consensus. The Qur'ān, particularly verse 2:282 of Surah Al-Baqarah, provides the earliest and most comprehensive directive on documentation by mandating the writing of deferred financial transactions and the presence of witnesses to ensure accuracy and prevent future disputes. This verse, alongside corroborative prophetic practices, demonstrates that the principle of *tautheeq* is not merely procedural but a substantive mechanism for achieving justice *(ʿadl)* and safeguarding rights (*ḥifẓ al-ḥuquq*).

In the traditional period, Islamic societies developed various documentation practices reflecting this textual foundation. Contracts were typically reduced to writing by professional scribes, authenticated by witnesses, and preserved as legal evidence. Historical records from the Fatimid and Ottoman eras reveal the institutionalization of documentation through *qāḍī* registers and notarized contracts. These practices highlight that early Muslim jurists and administrators perceived documentation as an indispensable tool for certainty, transparency, and dispute prevention.

However, despite these robust mechanisms, documentation in traditional Islamic law remained dependent on manual writing, human witnesses, and physical archiving which methods are vulnerable to forgery, loss, and limited accessibility. The modern era has, therefore, witnessed a necessary evolution driven by technological advancement, global commerce, and legal modernization. Contemporary Islamic jurisdictions such as Malaysia, Saudi Arabia, and Turkey have integrated electronic documentation, digital signatures, and even block-chain technology into their legal frameworks for contracts.

[67] Z M Yussof and H M Amin, Legal Farmework of Electronic Contracts in Malaysia: A Comparative Study with Islamic Law (2020) 5(1) Journal of Shariah Law Research 45-67: F A Al-Enezi, *digital Transformation and Legal Documentation in Saudi Arabia: Developments undre Vision 2030 (2022)36(3) Arab Law Quarterly 289-310:* E Kaya & S Usta, *The Digitalization of Contracting in Turkey: Legal Adoption and Challenges (*2021) 18(2) Ankara Law Review 155-178

Jurists and legislative bodies have increasingly recognized the validity of such instruments under the *maqaṣid al-shariʿah* principle of preserving wealth and ensuring justice, provided that they maintain authenticity, consent, and evidentiary reliability.

6.2 Recommendations

1. Harmonization of Traditional Principles and Modern Technology: Islamic legal systems should codify clear frameworks reconciling classical evidentiary requirements with emerging technologies such as e-signatures, smart contracts, and blockchain-based witnesses.
2. Development of Shariah-Compliant Digital Documentation Standards: Scholars and regulatory authorities should collaborate to develop guidelines ensuring that electronic documentation upholds ʿ*aqd* requirements of offer, acceptance, and certainty.
3. Capacity Building and Legal Literacy: Muslim jurisdictions should invest in judicial and administrative training on digital evidence and electronic contracting to ensure consistent application in courts and arbitration settings.
4. Preservation and Accessibility: A digital register system may be adopted, inspired by classical court record-keeping but supported by secure databases to prevent tampering and ensure permanence.
5. Further Research: Continuous doctrinal and empirical research is needed to evaluate how digital transformation aligns with the ethical objectives of *tautheeq* and *maqāṣid al-shariʿah,* especially regarding confidentiality, consent, and equitable enforcement.

ENVIRONMENTAL POLLUTION IN THE NIGER DELTA: THE NECESSITY FOR REVIEW OF THE ANTI-POLLUTION LAWS OF NIGERIA

Okpako Omudhowo* and Okeja Thaddeus Ofilibe **

Abstract

Environmental pollution and degradation are the most serious of all environmental problems and in the Niger Delta, they pose a serious threat to the inhabitants and the ecosystem in the face of the anti-pollution laws of Nigeria. Thus, securing environmental justice has been so difficult despite the fact that the protection of the environment is recognised by the Constitution of the Federal Republic of Nigeria, 1999. This difficulty is largely because the constitutional provision which requires the State to protect and improve the environment as well as safeguard the water, air, land, forest and wild life of Nigeria is not justiciable amidst the limitations imposed on non-State actors by public law procedures in compelling authorities to comply with the provisions of laws through the doctrine of locus standi. The situation is further compounded because State actors appear inactive and insensitive to the plight of the victims of environmental pollution and their efforts if any, have been insignificant and have not yielded the desired results, which have, caused the involvement of non-governmental organisations (NGOs) in the struggle for environmental justice. Although the efforts of the NGOs have produced some good results, much still needs to be done in view of the incessant and persistent environmental pollution and consequent degradation in the Niger Delta. This study therefore examines the problems of environmental pollution in the Niger Delta and the necessity for the review of the Nigerian anti-pollution laws. The study adopts the doctrinal methodology through the study of relevant statutes, textbooks and articles by scholars. Recommendations were offered which if implemented would correct the situation in the Niger Delta.

Keywords: Environment, Conservation, Environmental Pollution, Environmental Degradation, Justiciability

1. Introduction

The Niger Delta is the triangular-shaped landmass formed by sediment deposit where the River Niger meets the Atlantic Ocean. It is located in southern Nigeria specifically in the coastal region of the Gulf of Guinea on the Atlantic Ocean. Spanning across nine States in Nigeria namely, Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers States, the Niger Delta is situated within latitudes 4◦N and 7◦N and longitudes 5◦E and 9◦E. It covers about 36,000 square kilometres with a flat, low-lying and swampy environment whose vegetation is mainly mangrove forest with high connectivity of creeks.

[1]

Just like Nigeria, the Niger Delta region is multi-ethnic with different dialects and a population of about 40 million people. Although it is rated as rural and poor, the Niger Delta has some rapidly growing cities like Port Harcourt, Warri, Calabar just to mention but a few and it is the home of the crude oil reserves of Nigeria. Apart from businesses resulting from indusrialisation and public service, the rural and swampy environment dictated the economic activities of the people. Consequently, peasant crop farming, fishing, hunting and carving of canoe are some of the occupations of the inhabitants.[2]

As expected, the interaction of the millions of people that are resident in the Niger Delta with their environment has left indelible mark on the landscape. Man's interaction with the environment has resulted to urbanisation, deforestation, desertification, and pollution of the various components of the environment such as land, water and air. The above changes in the environment occur as the people attempt to acquire their seemingly endless desire for food, shelter, recreation and infrastructural developments. It is pertinent

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[1] Akinlawon Ladipo Mabogunje, Niger River. Available at Britannica https://www.britannica.com > accessed on 24/8/2025 @ 4:50 am.

[2] Udumubrai, U. G., *History of Isoko People in the Niger-Delta*, (Glorious Printing Press, 2021), p. 46.

to remark that environmental degradation and pollution are the most serious of all environmental problems and constitute a major threat to the health and well-being of the millions of inhabitants and the entire ecosystem of the area.

Arising from the duty of the State[3] to protect and improve the environment and as a way of proffering solutions to the emerging problems confronting the Niger Delta environment, there have been some efforts[4] by the government to safeguard the water, air, land, forest and wild life of the area but the obvious inadequacies of the efforts have given rise to the emergence of many non-governmental organisations (NGOs) who are interested in championing the crusade of having a healthy environment and ameliorating the environmental problems of the Niger Delta area. Beyond ensuring that legislation and policies of government are directed towards the preservation of the environment, with a view to achieving sustainable development,[5] the NGOs have through litigation removed the long standing barrier or impediment on non-State actors otherwise known as the doctrine of *locus standi* in bringing an action to compel the authority to comply with the provisions of law as it concerns the environment. Despite the above, there is still incessant oil spillage in the Niger Delta which has prompted this study.

Consequently, this paper is divided into nine sections. Section one is the introduction of the study while section two deals with conceptual analysis where the concepts of environment, conservation, preservation, pollution, degradation and NGOs were x-rayed. In section three, environmental pollution in the Niger Delta was examined while section four was devoted to the study of the legal framework for controlling environmental pollution in the Nigeria. In section five, the paper discussed the enforcement of environmental laws under the following subheadings: agencies for the enforcement of environmental laws, the jurisdiction of environmental matters resulting from oil and gas, environmental degradation by indiscriminate disposal of domestic waste, enforcement of

[3] Section 20 of the Constitution of the Federal Republic of Nigeria, 1999.
[4] Creation of Parks, Reserves and Other Protected Areas in Nigeria, Source: UNEP-WCMC, World Database on Protected Areas. Available @ Parks.it > https://www.parks.it > accessed on 27/10/2025 @ 10:25 am.
[5] Ibanichuka, G., "A Legal Approach to Environmental Pollution and Degradation in Nigeria" *African Journal of International Energy and Environmental Law*, (2023), vol. 8, number 1, pp. 1-9.

environmental laws by NGOs in the Niger Delta, and NGOs in the international sphere. Section six discusses NGOs and environmental justice in Nigeria while section seven focuses on the perceived inadequacies of the anti-pollution laws of Nigeria. Conclusion to the study was handled in section eight while recommendations were offered in section nine.

2. Conceptual Analysis

It is considered necessary to clarify some terms especially those that are connected with the concept of environment and which shall be routinely used in this paper. Consequently, the paper shall briefly highlight the meanings of environment, conservation, preservation, degradation, pollution and non-governmental organisation.

i. **Environment:** This is the natural world in which people, animals and plants live.[6] By statute,[7] environment includes water, air, land and all plants and human beings and or animals living therein and the interrelationships which exist among these or any of them.[8] Thus, the concept of environment refers to both physical structures such as land, water, plants, animals and human beings; non-physical components of those structures like their biological and chemical qualities; and the relationships among everything that constitutes the environment.

ii. **Conservation:** Conservation as it relates to environment is the management and wise use of natural resources to ensure their sustainable availability at the moment and for future generations. It aims at responsible management of resources and prevention of damages that are irreversible. Such sustainable management includes afforestation and forestry, wild life management and habitat restoration projects.[9]

iii. **Preservation:** Preservation as it relates to environment simply means protecting the environment in its natural state through prohibition or restriction of human

[6] Hornby, A. S., *Oxford Advanced Learner's Dictionary of Current English*, (Oxford University Press, 2005), p. 490.
[7] National Environmental Standards and Regulations Enforcement Agency (Establishment) (NESERA) Act, 2007.
[8] *Ibid.* See section 37.
[9] Irene Park, Conservation vs. Preservation: How Different and Similar these Environmental Approaches Are, June 5, 2023. Available at Population Education https:///populationeducation.org > accessed on 27/10/2025 @ 11:20 am.

interference in the natural area. It aims at maintaining natural resources in their untouched and original state by limiting human interference to the protection or guarding of the site from the destructive activities of humans. This may occur in the form of the designation of a place as a "reserve" or an "evil or spirit forest" with strict control of human access.[10]

iv. **Degradation:** Degradation as it relates to environment refers to the deterioration of the natural environment resulting from the depletion of natural resources and the destruction of the ecosystems. It is caused by a variety of human activities such as industrialisation, unsustainable extraction of resources like deforestation or lumbering, burning of fossil fuel and pollution.[11]

v. **Pollution:** The term pollution is a derivative of the word "Pollute" which means to corrupt or defile especially to contaminate the soil, air, or water with obnoxious substances.[12] It is essentially to make something dirty or no longer pure especially by adding harmful or unpleasant substances to it. It is defined by the United States National Research Council Committee on pollution as, "an undesirable change in physical, chemical or biological characteristics of the air, land and water that may or will harmfully affect human life or that of other desirable species, the industrial processes, living conditions and cultural assets that may or will waste or deteriorate the raw material resources."[13] Pollution exists in different forms such as air pollution, water pollution, land pollution and noise pollution but may be classified into two main sources namely, point source and non-point source. While point source pollution comes from specific, localised, and identifiable sources, such as sewage; pipeline or industrial smoke stacks, non-point source pollution comes from dispersed or uncontained sources, such as contaminated water, run off from urban areas or automobile emissions.[14] The effects of these pollutants may be immediate or delayed. It is immediate

[10] *Ibid*.
[11] Philippe Lazaro, Causes, Effects and Solution to Environmental Degradation, March 15, 2023, Plant With Purpose https://plantwithpurpose.org > accessed on 27/10/2025 @ 11:38 am.
[12] Bryan A. G., *Black's Law Dictionary,* (Thomson West, 2004), p. 1197.
[13] <https://www.britannica.com/science/pollution-environment > accessed 20 July 2025 at 12:32 pm.
[14] <https://www.vedantu.com/biology/types-of-pollution > accessed 20 July 2025 at 5:00 pm.

when the primary effects of pollution such as death of marine plants and wild life occur immediately after the pollution like the contamination of water after oil spills while it is delayed when the effect is unnoticed immediately or persists in the environment into the future perhaps for many years. The delayed effects may threaten the survival of species. Types of pollution that affects man in the society includes, Air pollution, water pollution, land pollution and noise pollution to mention but a few.

vi. **Non-Governmental Organisations (NGOs):** An NGO is a non-governmental entity that is established by individual(s) for social, humanitarian and environmental goals with advocacy, service delivery and mobilisation for citizens' participation in community development as it tools. NGOs are non-profit organisations and could be organised at the local or community level as well as at the national and international levels. They engage in a wide range of activities such as activism or advocacy for human rights and policy change, environmental protection, community development, health, social justice and accountability. Their funds are derived from membership dues, private donations and grants. They are united in their goal for the public good and sustainability.[15]

3. Environmental Pollution in the Niger-Delta

Although environmental pollution has been with mankind from time immemorial,[16] it started assuming a level that calls for concern in Nigeria in the 1950s when crude oil was discovered and the consequent exploration and exploitation of it in the Niger Delta area. The discovery of crude oil in Nigeria thus, came with both positive and negative impacts. On the positive side is the fact that the discovery of crude oil was not only accompanied by much inflow of multi-national oil companies and the resultant development which occasioned more revenue for the State; improved income and standard of living for the inhabitants; but also the establishment of industries in some parts of the Niger Delta. On the negative side is the fact that the activities of the oil companies, industries and

[15] Lugard, A. E., "The Role of Non-Governmental Organisation in Formulating Policies on Environmental Laws in Nigeria". *International Journal of Research Publication and Reviews Journal (*2022) (4) (11)1395-1400.

[16] Ikhide, E., *Environmental Protection Law*, (Warri, New Pages Law Publishing Co., 2007), p. 3.

machineries became sources of pollution of the components of the environment namely, water, air and land.

The pollution of the air component of the Niger Delta environment came through the emissions of smoke from the machines, generators, factories and vehicles including large earth moving trucks and gas flaring with the attendant danger to health. Also, the sounds coming from the industries, machines and other equipment became a source of noise pollution which caused the migration of many wild lives into the deep sea and far-away lands. Noise pollution can also impact on the inhabitants of the area through insomnia, emotional disturbances, hearing impairment and psychological disorders. It is important to state that besides the health hazards that are associated with air pollution which could be suffered by human beings, the depletion of the ozone layer which increases radiation and penetration of the sun through the atmosphere to the earth crust is a consequence of air pollution.[17]

Similarly, the activities of the multi-national oil companies and the industries did not spare the water and land components of the environment of pollution. This is because their oil exploration and exploitation have always been accompanied by oil spillage especially from oil pipelines. It is germane to remark that environmental pollution in the Niger Delta took a new dimension that attracted global discourse in 1988 when an Italian trader deliberately dumped about 3,800 tons of toxic waste at Koko port which is situated in Koko Community, the Warri North Local Government Area administrative headquarters of Delta State.[18] Ever since then, there have been very many oil spillage incidents in the Niger Delta that have claimed so many lives and polluted the environment. Some of the incidents are hereby highlighted below:

On October 18, 1998, there occurred a pipeline explosion at Jesse Community in Delta State which is regarded as the deadliest pipeline explosion so far in the history of Nigeria. The fire was so intense that it continued for six days until a firefighting company was engaged from the United State before it was extinguished. The cause of the incident was

[17] Ikhide, E., *Environmental Protection Law*, (New Pages Law Publishing Co., 2007), pp. 38 & 39.
[18] Amy McKenna, Koko / Nigeria, Summary, Incident of 1988, Toxic Waste. Britannica https://www.britannica.com > accessed on 24/8/2025 @ 23:00 pm.

a subject of controversy with some accounts attributing it to sabotage resulting from the intentional act of some criminals / scavengers who ruptured the pipeline with tools and ignited the blaze; and other accounts claiming that the explosion occurred due to negligence and lack of maintenance by the Nigerian National Petroleum Company. However, irrespective of the cause of the explosion, a death toll of 1,082 was recorded apart from the hazards of water and land or soil pollution in the area.[19]

In the same vein, on June 15, 2023, there occurred an oil spill from the pipeline of Heritage Energy Operational Services Limited, the operators of OML 30 who took over from Shell Petroleum Development Company at Uzere Community which is situated in Isoko South Local Government Area of Delta State. Aquatic lives were lost and the land was seriously degraded such that agriculture which is the main stay of the inhabitants was hampered. The people are worried about the health and environmental impacts of crude oil spills that have been occurring frequently for more than five decades.[20]

Besides, May 3, 2025 witnessed another oil spill near Oando's Ogboinbiri Flow Station located at Ogboinbiri Community of Southern Ijaw Local Government Area of Bayelsa State. According to a non-governmental organisation, the Environmental Defenders Network, "This spill marks the fourth equipment-related incident in the area between September 2024 and May 3, 2025."[21]

Furthermore, although oil exploration by Shell has stopped in Ogoniland following incessant crises and the clean-up that has not been done in the area, Ogoniland is claimed to be the epicenter of oil spillage having recorded 2,976 separate oil spills between 1976 and 1991.[22] Places that have been seriously affected by oil spills in Ogoniland include: Bonny, Kegbara-Dere, Eleme, Tai, Khana, Gokana, Bomu and Bodo where in June 2013,

[19] Munachi, I.,Sylvanus, Chukwuemeka Ekenta, Impact of Oil Pipeline Vandalisation on Land Value in Jesse Community of Delta State, Nigeria, 8 August, 2025. ResearchGate https://www.researchgate.net > accessed on 27/10/2025 @ 12:05 pm.
[20] Bob MajiriOghene Etemiku, "That oil spill in Uzere, Delta State", The Guardian Nigeria News, https//guardian.ng > accessed on 25/8/2025 @ 11:30 am.
[21] Visit: https://www.vanguardngr.com > accessed on 25/8/2025 @ 1:00 pm.
[22] Friends of the Earth International https://www.foei.org > accessed on 25/8/2025 @ 12:00 pm.

an explosion from Shell pipeline occurred spilling 6,000 barrels of crude oil into the creeks and waterways.[23]

It is pertinent to remark here that apart from immediate deaths that are recorded in some of the above highlighted incidents, the common features of all the spillage are water pollution and land pollution. The consequence of water pollution is that the water is made undrinkable for the inhabitants and the death of aquatic life (both vegetation and animals) making some species to go into extinction. On the other hand, land pollution through oil spillage and dumping causes land degradation which hampers agricultural production. Furthermore, industrialisation has given rise to urbanisation which in turn has caused rural to urban migration with over concentration of the population in some area and the attendant pollution of the environment.

4. Legal Framework for Controlling Environmental Pollution in Nigeria

Anti-pollution laws are the laws that are intended to address the unnatural or artificial alteration or disturbance of any of the components of the environment which include, air, water and soil. This is essentially so because man-made laws cannot prevent natural occurrences like rain, wind or earthquakes.[24] Thus, such artificial disturbances or alterations may be in respect of the quality or properties of the components of the environment whether it is the biological, chemical or physical property. It is noteworthy that a number of laws have been made in Nigeria to protect the environment from degradation or pollution resulting from oil and gas or petroleum products as well as environmental degradation through indiscriminate disposal of domestic waste, dirt accumulation from hawking, trading and lack of planning of land and housing projects.[25] Some of the enactments are briefly discussed hereunder.

i. **The Constitution of Nigeria**: Although the Nigerian Constitution[26] provided that "the State shall protect and improve environment and safeguard the water, air and land, forest and wildlife of Nigeria", the provision is in chapter II of

[23] Al Jazeera https://www.aljazeera.com > accessed on 25/8/2025 @ 12:08 pm.
[24] Ikhide, E., *Environmental Protection Law*, (Warri, New Page Law Publishing Co., 2007), p. 24.
[25] Bamgbose, O., & Akinbiyi, S., *Criminal Law in Nigeria*, (Ibadan, Evans Brothers Limited, 2015), p. 480.
[26] The Constitution of the Federal Republic of Nigeria, 1999 as amended. See section 20.

the constitution with the implication that it is not justiciable[27] being merely a "guide" to the State in the organisation of its policy.

ii. **The Criminal Code**: This law[28] which is enforceable in the southern part of Nigeria recognises and punishes the offence of common nuisance[29] through willful diversion or obstruction of the course of any navigable river so as to appreciably diminish its convenience for purposes of navigation; and the offence of fouling water so as to render it less fit for the purpose for which it is ordinarily used.[30]

iii. **Federal Environmental Protection Agency (FEPA) Act**: The Act established the agency whose responsibilities include the protection and development of the environment, establishment or formulation of environmental criteria, guidelines and standards for the protection of Nigeria's air, inter-state water as may be necessary to protect the health and welfare of the population from environmental degradation.[31] The Act prohibited the discharge in such harmful quantity of any hazardous substance into the air, or land or waters of Nigeria or adjourning shorelines except as permitted by any law in force in Nigeria with the punishment of ten years imprisonment or a fine of N100, 000 or both for an individual offender and N500, 000 fine and an additional N1, 000 fine per day for everyday the offence subsists for a corporate body who is found guilty under the Act.[32] The concept of "harmful quantities" was not defined in the Act and some "ready-made" defences like the discharge being caused by natural disaster, act of war or sabotage were provided in the Act.

iv. **Harmful Waste (Special Criminal Provision) Act**: This Act was enacted in reaction to the 1988 dumping of toxic waste at Koko town in Delta State. It prohibited the sale, purchase, transport, storage, deposit or dumping of any

[27] *Ibid*., See section 6(6).
[28] The Criminal Code, Cap. C38, Laws of the Federation of Nigeria, 2004.
[29] *Ibid*. See section 234(e).
[30] *Ibid*. See section 245.
[31] FEPA Act. See section 4.
[32] *Ibid.* See section 20.

harmful waste which is defined to include injurious, poisonous, toxic or noxious substances if the waste is of such quantity as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental health. The punishment of life imprisonment was provided for any person convicted under the Act and to forfeit any carrier used for the transportation of the harmful waste.[33]

v. **Petroleum Act**: By section 9(1) (b) (iii) of the Petroleum Act, the Minister of Petroleum Resources is empowered to make regulations for the prevention of the pollution of water courses and the atmosphere. Consequently, the Petroleum (Drilling and Production) Regulations were made to prevent oil pollution[34] and licencees are expected to adopt all practicable precautions including the provision of up to date equipment to prevent the pollution of inland waters, rivers, water courses, territorial waters of Nigeria or the High seas by oil, mud or other fluid or substances which might contaminate the waters, banks, or shoreline or which might cause harm or destruction to fresh water or marine life.[35]

vi. **Oil in Navigable Waters Act**: The Act was enacted to prevent the pollution of water with oil in the Nigeria sea area which means all areas within 50 miles from land and outside the waters of Nigeria.[36] It is an offence for any person to discharge oil or a mixture containing oil into water from any vessel or from any place on land or from any apparatus used in the transfer of oil from or to any vessel which amounts to an offence when oil is discharged into the navigable waters of Nigeria which stands at 30 nautical miles. Again, some ready-made defences such as, "that the mixture escaped as a result of damage to vessel or due to leakages; that the mixture of oil and water was discharged for the purpose of securing the safety of the vessel or cargo or of saving life"

[33] Section 6 of the Harmful Waste (Special Criminal Provision) Act.
[34] Petroleum (Drilling and Production) Regulation 40.
[35] *Ibid*. See Regulation 25.
[36] Oil in Navigable Waters Act. See section 1.

are contained in the Act.[37] Also, prosecution can only be initiated with the consent of the Attorney-General of the Federation.[38]

vii. **Associated Gas Re-Injection Act**: This Act seeks to stop and prevent gas flaring in Nigeria. This is essentially due to the hazards associated with gas flaring which include: excessive heat, deforestation, desertification, blurring of natural light for photosynthesis which is the process through which plants produce food and the depletion of the ozone layer which makes the sun rays to hit the earth directly. The Act compels oil producing companies to submit preliminary programmes for gas reinjection and a detailed plan for the execution of gas reinjection.[39]

viii. **Convention of the High Seas**: On the 30th day of September, 1962, Nigeria accepted the Convention of the High Seas[40] which was adopted in Geneva on 29th of April 1958. The convention aims at codifying the rules of international law relating to the sea which seeks to prevent the pollution of the sea by oil from ships and pipelines or resulting from the exploration and exploitation of the seabed. Other International Laws and Conventions relating to the protection of the environment include: Vienna Convention on the Protection of the Ozone Layer, International Convention on Civil Liability for Oil Pollution Damage, Convention on the Continental Shelf etcetera.[41]

5. Enforcement of Environmental Laws

As can be seen from the immediate preceding section, there are many environmental protection laws in Nigeria which if implemented in the spirit of their enactment in the Niger Delta area would guarantee the goals of conservation and preservation of the natural resources without the fear of the degradation and pollution of the environment. It follows that there is something wrong with the enforcement process. It is important to

[37] *Ibid.* See section 4.
[38] *Ibid*. See section 12.
[39] Sections 1 and 2 of the Associated Gas Re-Injection Act.
[40] Convention on the High Seas, 1958, United Nations Treaty Collection https://treaties.un.org > accessed on 27/10/2025 @ 12:50 pm.
[41] List of IMO Conventions: International Maritime Organisation htpps://www.imo.org > accessed on 27/10/2025 @12:59 pm.

state here that the reference to the enforcement process essentially refers to how the executive arm of government is enforcing the laws through it agencies and departments as well as how the courts have adjudicated matters bordering on environmental pollution especially as they relate to the Niger Delta.

It is germane to state that although the Nigerian Constitution supports the protection of the environment,[42] it deprived environmental issues the right to direct justiciability[43] just like the fundamental rights counterparts in chapter IV of the Constitution that are justiciable directly. In other words, nobody can sue the State in any law court on account of the State not protecting the environment. This is because the protection of the environment in the Constitution is merely a fundamental objective and directive principle of State policy or which is meant to "show" the direction which the policy of the State is to follow.[44] This is of course one of the clogs in the wheel of the protection of the environment in Nigeria in general and in the Niger Delta in particular. Notwithstanding the above, this paper briefly discusses the enforcement of environmental laws in the Niger Delta under the following subheads: agencies for the enforcement of environmental laws; jurisdiction of environmental pollution matters resulting from oil and gas; environmental degradation by indiscriminate disposal of domestic waste; the involvement of NGOs in the enforcement of environmental laws; and NGOs in the international sphere.

5.1 Agencies for the Enforcement of Environmental Laws

It is remarked here that although the Nigeria Police Force is saddled with the enforcement of all laws and regulations without any prejudice to the enabling Acts of other security agencies,[45] some agencies like the National Environmental Standards and Regulations

[42] The Constitution of the Federal Republic of Nigeria, 1999. See section 20.
[43] *Ibid*. See section 6(6) (c). The fundamental objectives and Directive Principles of State Policy in chapter II of the 1999 Constitution of Nigeria may only be justiciable or adjudicated upon indirectly through an extended interpretation to encompass a right to a clean and protected environment. See *Government of South Africa* v *Grootboom* (2001) 1 CHR 261; *Elf Petroleum Nigeria Limited* v *Umah* (2006) All FWLR (Pt.343) 1761 @ 1777.
[44] See the cases of *Attorney-General of Lagos State* v *Attorney-General of the Federation & Ors* (2003) FWLR (Pt.168) 909; *Morebishe* v *Lagos State House of Assembly* (2000) 3 WRN 134; *Okogie* v *Attorney-General of Lagos State* (1990) FRN 445.
[45] Police Act, 2020. See section 4(d).

Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency (NOSDRA) and the defunct Federal Environment Protection Agency whose duties are now being performed by the Federal Ministry of Environment have been established to enforce anti-pollution laws in Nigeria but it appears they lack the will to perform their duties creditably. This is because the results of their work are not noticeable when compared to the incessant pollution of the environment in the Niger Delta.

5.2 Jurisdiction of Environmental Pollution Matters Resulting from Oil and Gas

Unlike some other climes like Sydney Australia[46] where specialised courts were established to handle environmental crimes, jurisdiction of pollution matters concerning oil and gas in the Niger Delta is restricted to the Federal High Court. This is essentially so because the major environmental pollution in the Niger Delta is through oil and natural gas which are within the jurisdiction of the Federal High Court.[47] The consequence of this is that arraignment of environmental cases is not as easy as that of other criminal matters where many other courts of different levels can assume jurisdiction. Again, it is noteworthy that the initiation of criminal charges under the Oil in Navigable Waters Act can only be initiated with the consent of the Attorney-General of the Federation.[48]

5.3 Environmental Degradation by Indiscriminate Disposal of Domestic Waste

The interaction of human beings with their environment must doubtlessly result to some wastes. Often times, these wastes are dumped indiscriminately in different places producing very offensive odours. The deliberate policy to curb environmental pollution in Nigeria especially as it relates to domestic waste came during the military regimes where environmental sanitation was imbued into the "war against indiscipline" policy.[49] Through this policy, every last Saturday of the month was declared a special day for environmental sanitation and Magistrates of certain categories were constituted into "Mobile Courts" for the purpose of summary trials of sanitation offenders.[50]

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[46] Bamgbose, O., & Akinbiyi, S., *Criminal Law in Nigeria*, (Ibadan, Evans Brothers Limited, 2015), p. 480.
[47] Section 251(1) (n) of the 1999 Constitution of Nigeria.
[48] Section 12 of the Oil in Navigable Waters Act.
[49] Agbaje, A., The War against Indiscipline, 1988 AfricaBib htpps://www.africabib.org > accessed 27/10/2025 @ 1:54 pm. See also, Ikhide, E., *Environmental Protection Law*, (Warri, New Pages Law Publishing Co., 2007), p. 6.
[50] *Ibid*.

5.4 Enforcement of Environmental Law by NGOs in the Niger Delta

The failure of government agencies to bring about environmental justice in Nigeria and the persistence of environmental pollution and degradation in the face of our laws may have pushed many non-governmental organisations into participation in the enforcement of environmental laws. Their effort in the control of environmental pollution in Nigeria is commendable and they have adopted different strategies including litigation in their struggle for environmental justice in Nigeria. Other strategies include: negotiations[51] with the government and multinational companies, and organisations, town hall and public talks, orientations, organisation of seminars and public campaigns amongst others. Some NGOs at the vanguard of environmental protection in Nigeria include: the Nigerian Environmental Society (NES); Centre for Climate Change and Environmental Studies; Obudu Conservation Centre; Environmental Right Action (ERA); African Network for Environment and Economic Justice (ANEEJ). Some other prominent NGOs in Nigeria are: the Social and Economic Rights Action Centre (SERAC); the Centre for Economic and Social Rights; the Nigerian Conservation Foundation (NCF); Transparency International; and the Gani Fawehemi Movement for Good Governance. Truly, NGOs are an important constituent of the civil society movement in the Nigeria.[52]

5.5 NGOs in the International Sphere

The influence of NGOs in international law or governance is not a recent development because it has been in existence for more than 200 years. It gathered momentum in the era of the League of Nations in the early part of the 20th century[53] and by the 1990s, the proliferation of NGOs in the international arena has been massive such that their involvement in global governance has become almost indispensible. It is germane to remark that globalisation has been a major catalyst in the spread of NGOs in the international sphere. This spread has been facilitated by a variety of factors which include

[51] David Ogunkan, 2022, Achieving Sustainable Environmental Governance in Nigeria. ScienceDirect htpps:///www.sciencedirect.com > accessed on 27/10/2025 @ 2:26 pm.
[52] List of Non-Governmental Organisations with their Present Status Nairametrics https://nairametrics.com > accessed on 27/10/2:35 pm.
[53] Charnovitz, S., "Two Centuries of Participation: NGOs and International Governance", *Michigan Journal of International Law* (1997) (18) (2) 183-286.

internet and information technology, spread of democratic values and development amongst others. [54]

The United Nations is one of the few international organisations that collaborate effectively with NGOs.[55] The relevance of NGOs in international governance especially in environmental issues became recognised by the United Nations in Article 71 of the UN Charter which opened up the system to the participation of NGOs thus: 'The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence." It does this by drawing on NGOs expertise and views especially in the areas of policy and program design, implementation and evaluation. Examples of NGOs participation in international environmental governance include: the 1996 UN Conference on Human Settlements (Habitat 11) where NGOs were members of the drafting committees that drew up the declaration and programme of action; in the negotiation process that led to the drafting of the 1998 Aarhus Convention; and the Climate Change Convention of 1992 which had major contributions or inputs of NGOs.[56]

The roles of NGOs in intergovernmental negotiations in the UN are thus, invaluable and have expanded tremendously overtime. Expertise, technical know-how and the use of compelling arguments to support their cause(s) amongst other roles are brought to bear by NGOs.[57] This is why it has been posited that in the intergovernmental process, it is often NGOs who possess the energy and perseverance needed to carry proposals through negotiation to formal agreement.[58] The influence which NGOs exert in the UN system may be divided into four namely: (i) the setting of agenda through the use of high profile campaigns and lobbying to raise awareness; (ii) conferring legitimacy through their

[54] Esty, D. C., and Ivanova, M. H., "Global Environmental Governance: Options & Opportunities" *Yale School of Forestry and Environmental Studies,* (2002) (1).
[55] TG Weiss, T. G., "International NGOs, Global Governance and Social Policy in the UN System" *Globalism and Social Policy Programme* (1999).
[56] United Nations Framework Convention on Climate Change UNFCCC https://unfccc.int > accessed on 27/10/2025 @ 2:48 pm.
[57] Gemmill, B., and Bamidele-Izu, A. A., 'The Role of NGOs and Civil Society in Global Environmental Governance", cited in Esty, D. C., and Ivanova, M. H., (eds), Global Environmental Governance: Options & Opportunities, *Yale School of Forestry and Environmental Studies*, (2002) 1.
[58] United Nations Environnent Programme (UNEP).

democratic participation in the negotiations process; (iii) proposal of different solutions and initiatives in lieu of the initiatives sponsored by States;[59] and (iv) the implementation of negotiation of outcomes.

6. NGOs and Environmental Justice in Nigeria

Environmental justice refers to how justice can be brought into the environment. In other words, it means access to justice in relation to resources and includes the equitable distribution of environmental amenities, rectification and retribution of environmental abuses as well as restoration of nature and fair exchange of resources. NGOs are very important constituents of the civil society in Nigeria and they have been playing pivotal roles in ensuring environmental justice. Prior to their active involvement in trying to secure environmental justice in Nigeria, public interest litigations by private individuals were hampered by the doctrine of *locus standi*. For instance, in *Oronto Douglas* v *Shell Petroleum Development Company Ltd*,[60] the court held that the plaintiff who is a well-known environmental activist lacked the *locus standi* to sue Shell for its failure to observe the provisions of the Environmental Impact Assessment Act.

The NGOs never surrendered further struggle because of the decision in Oronto[61] rather, they made recourse to foreign courts in trying to hold the multi-national corporations liable for human rights abuses and environmental degradation / pollution cases. The foreign cases of *Wiwa* v. *Shell*[62] and *Botowo* v. *Chevron*[63] were some of the cases that were commenced as a result of the occurrences in the Niger Delta which tried to use the American statute, the Alien Torts Claim Act to hold the multi-national corporations liable for their deeds.

The unrelenting efforts and active involvements of the NGOs in environmental issues through enlightenment, negotiation and litigation however paid off and turned the

[59] Simmons, P. J., "Learning to Live with NGOs", Foreign Policy 112 (Fall) (1998) 82-96. <http://carnegieendowment.org/1998/10/01/learning-to-live-with-ngos> Accessed 20 July 2025.
[60] (1994) FHC/L/CS/573/96 [Unreported].
[61] *Supra.*
[62] *Wiwa v. Shell,* (2002) 96 8386
[63] *Botowo v. Chevron* F. Supp. 2d 1229 (N.D. Cal. 2004).

situation around in Nigeria when the court embarked on judicial activism that resulted to the reversal of the earlier ruling of lack of *locus standi* to institute court cases on environmental issues by non-State actors in *Center for Oil Pollution Watch v Nigerian National Petroleum Corporation (NNPC),*[64] where the Supreme Court held that environmental NGOs who were previously unable to institute actions under existing public interest litigation procedures could now institute action in their own rights to prevent or remedy environmental pollution in Nigeria. The following landmark decisions were reached by the Supreme Court of Nigeria.

1. That the appellant NGO had the standing to sue the respondent, thereby liberalising or broadening the rule of standing. Thus, "public spirited individuals and organisations can bring an action in courts against relevant public authorities and private entities to demand their compliance with relevant laws and to ensure the remediation, restoration, and protection of the environment."
2. That every person including NGOs, who bonafide seek the due performance of statutory functions or enforcement of statutory provisions or public laws, especially laws designed to protect human lives, public health and the environment, should be regarded as proper persons clothed with standing in law to request adjudication on such issues of public nuisance."
3. That recognising public interest litigation will help address some other barriers to access to justice since poor communities without "the financial muscles to sue" or litigate who usually and disproportionately bear the brunt of environmental and climate change problems will have the benefit of public spirited persons and organisations fighting their course.
4. That there is no gain saying in the fact that there is increasing concern about climate change, depletion of the ozone layer, waste management, flooding and global warming et cetera. Thus, requiring countries and both national and international organisations to adopt stronger measures to protect and safeguard the environment for the benefits of the present and future.

[64] *Centre for Oil Pollution Watch (COPW)* v *NNPC* (2018) SCN < **https://climatecasechart.com** > accessed 27 July 2025.

5. That Section 20 of the Nigerian Constitution[65] on the duty to protect the environment by the State is justiciable when read together with, and in the context of, a provision like section 4(2) of the Constitution, on the power to make laws to give effect to section 20. Also that section 33 of the Constitution[66] which guarantees the right to life implicitly includes and constitutes a fundamental right to a clean and healthy environment for all. Again that the environmental right in Article 24 of the African Charter on Human and Peoples' Rights as domesticated in Nigeria is enforceable.

Apart from the success recorded by NGOs through the above landmark decision of court that a public spirited individuals and organisations can bring an action in courts against relevant public authorities and private entities to demand their compliance with relevant laws and to ensure the remediation, restoration, and protection of the environment, the NGOs have through their activities awakened the international community to the plight of the victims of environmental degradation in Niger Delta. This is evident from the Ogoni crisis where an NGO / Community Based Organisation in coalition with both local and international NGOs brought to the attention of the world, the human rights violations and environmental degradation in that part of Nigeria. Through their efforts and sensitisation, Shell BP Corporation and other multinational corporations operating in Ogoni have been compelled to revise their codes of conduct to include human rights which in turn resulted to the regular training and retraining of personnel as well as constant consultations with stakeholders in the Nigerian oil and gas sector.[67]

So far, the existence and enforceability of environmental human rights have been confirmed in Nigeria in a manner that increases the possibility of successful environmental pollution and degradation litigation in the country. The decision demonstrates a significant positive paradigm shift in the attitude of the Nigerian Courts towards environment and related claims as well as providing additional human rights and

[65] The Federal Republic of Nigeria, 1999 as amended. See section 20.
[66] *Ibid*. See section 33.
[67] E Oshionebo, 'Transnational Corporations, Civil Society and social responsibility in Nigeria's oil and gas industry,' *African Journal of International and Comparative Law* (2007) (15) (1) 107-129.

constitutional tools for potential litigations concerning the environment in Nigeria.[68] This has impacted positively on the sands of time in environmental justice although there is room for improvement.

6. Perceived Inadequacies in the Anti-Pollution Laws of Nigeria.

[68] *Centre for Oil Pollution Watch (COPW)* v *NNPC* (2018) SCN < **https://climatecasechart.com** > accessed 27 July 2025.

As alluded to earlier, Nigeria is not lacking enactments that could be used to protect the environment and or stop or reduce environmental pollution to a level that could be tolerated with minimum discomfort. This is because if the laws are implemented in the spirit of their enactment, there would not be much problems of environmental pollution. Thus, the problem is more from the enforcement angle. This notwithstanding, a study of the Nigerian environmental laws revealed a lot of inadequacies which have not helped in the control of environmental pollution in the Niger Delta, some of which include:

i. Oil and gas which are the major pollutants in the Niger Delta are matters in the exclusive legislative list which only the Federal government can legislate on. The implication is that even when there is oil spillage that needs some urgent legislative inputs, the problem must persist until the National Assembly takes action on it.

ii. Prosecution or initiation of charges must receive the consent or approval of the Federal Attorney-General before an accused person could be arraigned under the Federal Environmental Protection Agency Act. The implications are that some offenders would go unpunished where the Attorney-General of the Federation fails to give his consent for whatever reason.

iii. Some of the laws incorporated some ready-made defences for potential offenders for example, in the Federal Environmental Protection Agency Act, defences like "the discharge being caused by natural disaster and act of sabotage"[69] and in the Oil in Navigable Waters Act, defences like "that the mixture escaped as a result of damage to vessel or due to leakages; that the mixture of oil and water was discharged for the purpose of securing the safety of the vessel or cargo or of saving life."[70] The question that comes to mind is, "which counsel and his client (offender) will not rely on any of those provided defences?" The sure answer to this poser is, none.

[69] Federal Environmental Protection Agency Act. See section 20.
[70] Oil in Navigable Waters Act. See section 4.

iv. Some important concepts that were used in the laws which are even the foundation of the offences created by them were not defined, for example the concept of "harmful quantities" as used in section 20 of the Federal Environmental Protection Agency Act was not defined. Thus, the meaning of what constitutes the offence may be variable depending on the person who is interpreting the concept and the interpretation that is given to the concepts. This is because the quantity that may be seen or interpreted by one person as "harmful" may not be seen and interpreted by another person as "un-harmful".

v. Jurisdiction for matters concerning oil and gas are exclusively reserved for the Federal High Court. Apart from the fact that the Court may not be close to the venue or location of the violation of the law, justice is indirectly being taken far away from the common victims. Added to this is the fact that the cost of litigation on the victims will increase and the work load on the Federal High Court may be much since the Divisions of the court are not many.

vi. Inadequate number of agencies and personnel to enforce environmental laws in the Niger Delta considering the number and rate of spillage in the Niger Delta.

7. Conclusion

So far this paper has brought to the fore the magnitude of the problem of environmental pollution in the Niger Delta and has examined the legal framework for the prevention and control of the menace of environmental pollution in the Niger Delta. It is a serious cause for concern that pollution of the environment is persistent in the Niger Delta in the face of the anti-pollution laws of Nigeria. One of the major factors that encouraged the persistence of pollution in the Niger Delta is the fact that our laws have not encouraged non-State actors to take legal actions to compel authorities to comply with the provisions of law concerning the environment. Added to this is that despite the fact that the protection of the environment is recognised by the Nigerian Constitution, it has the non-justicability status such that the State cannot be held accountable for non-protection of the environment.

It is gratifying to note however, that the impediment of the doctrine of *locus standi* on non-State actors as regards the life threatening phenomenon of environmental pollution is gradually being liberalised through judicial activism and the involvement of non-governmental organisations in the struggle for the attainment of environmental justice. Much is still needed to be done because many victims (both individuals and organisations) are not aware of this development and in creating this awareness and other struggles the State and even the NGOs must live above board in accountability, transparency and integrity as he who comes to equity must of necessity come with clean hands.

9. Recommendations

This paper has identified some reasons for the persistence of pollution in the Niger Delta environment in the face of the environmental laws in Nigeria. It is observed that despite the fact that there are many laws dealing with the environment, there are many inadequacies in the laws which make the review of environmental laws a necessity. Consequently, this paper recommends a general review of statutes concerning the environment and in specific terms, the following suggestions are hereby offered:

i. Since environment is everything about humanity and it is capable of threatening human existence, issues concerning the environment should be removed from chapter II to chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 to make them justiciable just like their fundamental rights counterparts.
ii. Oil and gas which are the major pollutants in the Niger Delta are matters in the exclusive legislative list, the Federal government should establish and equip a specialised agency to promptly handle all cases of oil spillage and bring perpetrator to book within a specified period of time in a transparent manner.
iii. Initiation of charges and prosecution of offenders should not be based on Attorney-General's consent because there may be denial of consent which may not be in the interest of the victims of such crime.

iv. The Federal Environmental Protection Agency Act and the Oil in Navigable Waters Act should be reviewed to qualify or condition the "inbuilt" ready-made defences for potential offenders to only be applicable in exceptional circumstances where the defence is reasonably justifiable by overwhelming evidence.

v. The laws should be reviewed to incorporate definitions for some important concepts in the laws such as what amounts to "harmful quantities" as used in section 20 of the Federal Environmental Protection Agency Act. This is to enable everybody know with certainty when somebody has committed an offence under the law.

vi. Specialized courts should be established for environmental cases and should be close to the possible locations of violations.

vii. There should be enlightenment of the inhabitants of the Niger Delta regarding recent developments and progress in environmental litigations for them to be aware of their rights and to seek redress where necessary.

EXAMINATION OF THE COLLABORATIVE ROLE OF THE COURT AND THE POLICE IN THE PROTECTION OF SUSPECTS STATUTORY AND CONSTITUTIONAL RIGHTS.

Abdullahi Liman Nuhu * and Ahmed Aliyu Zanwa**

Abstract

Suspect is someone who is accused or suspected of committing a crime. Every suspect is presumed to be innocent and also enjoy certain basic rights that are inalienable as well as undeniable. These rights are Constitutional and Statutory. All suspects enjoy right to life, dignity of human person, right to freedom of movement, and association, right to be informed of the offence, right to consult a legal practitioner and right to be granted bail or be taken to Court in good time. The Police has the Constitutional power to investigate crime while the Court adjudicate on all matters. In the course of investigation, there could be lawful arrest, search, detention, restriction of movement and prosecution. The process of the investigation should comply with the extant laws. Life of a suspect cannot be taken without court order. The pervasive problems are in the inhuman treatment, degradation, unlawful arrest, over detention, torture and physical abuse of suspect in custody which are clear violation of the suspect rights. This work adopted the doctrinal method of data collection which is basically a desk and library research. This work find out that Police Act 2020 and Administration of Criminal Justice Act 2015 and other laws, brought about robust reforms that gave hope and ensured that suspects rights are guided and protected through fairness, justice, speedy dispensation of cases and award of damages, disciplinary action, cum punitive measures for all erring Police officers The court served as a monitor to all violators of the right of a suspect

KEYWORDS*:* Rights of Suspect, Constitutional Protection of Rights, Role of Court, Police

Introduction

The Court and the Police are key players in administration of criminal justice system in Nigeria. Statutorily and Constitutionally the Court adjudicate

[1] while the Nigeria Police investigate[2] all crime committed within Nigeria. In the process of investigation,[3] and enforcement of law and order, there could be arrest,[4] search,[5] detention and prosecution[6] of those indicted with evidence or found to have violated the law. It is imperative to know that the process of detection, prevention and investigation of crime must certainly be in line with the provision of law. The long-aged concept of beating, maltreating, forcing, and degrading a person merely because he is accused of committing an offence is considered as an old fashion and not acceptable. All over the world, the pervasive direction is that every suspect is presumed to be innocent[7] unless and until proven otherwise. In Nigeria the rights of suspect are guided and protection by the constitution and statutory laws.

As often said it is better for one hundred accused persons to go free than one innocent person to suffer.[8] Unlike before, where the procedure was to force suspect to confess, admit their offence, detain for ever and ever, kept for so long without trial, food or even denied the right to know the rationale for their detention in the cell or reason for them being charge to court as the case may be. Every suspect is entitled to right to life[9] and dignity of his person. No Police or any other person has the right to take another person's life for whatever reason it may without going through court or found guilty as provided by law.[10]The constitution protects every citizen irrespective of whether you are a rich

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[1] Section 4 of the Constitution of Federal Republic of Nigeria, 1999 .
[2] Section 4 of the Police Act 2020
[3] Section 3 ACJA, 2015.
[4] Section 38 P.A 2020
[5] Arrest with warrant or without warrant.
[6] Section 174/211 of CFRN, 1999
[7] *T.O. Dada, general Principles of Law* (Manure-Joe Production Print,1998)
[8] F.A Worrey, *The Prosecutor in Public Prosecution* (Published by Jasedeen Nigeria limited, 2000) P.25
[99] Section 33 and 34 of the CFRN, 1999.
[1010] *Y.K. George, Administration of Criminal Justice Act, 2015, With Explanation* (Mike Press LTD,2017)

person, poor, a widow, teacher, teacher, master or a suspect. Being a suspect is not a conclusion that such a person is a criminal or that he has committed the said alleged offence without evidence. The laws manifestly put all state apparatus to respect the right of suspect in all situations. Mere suspicious that led to an arrest of a person is not a conclusion that such person is a criminal.[11] every suspect should be well treated with respect and honour. The courts[12] played a crucial role and also stand firm in the protecting the rights of a suspect. The courts also provide a check on law enforcement agencies ensuring that they do no abuse the their powers or violates suspect rights. The 1999 constitution[13] has laid down the rights of the suspects as thus;

Suspect's Safeguards under the CFRN 1999 (as amended)

A suspect/defendant person at law, is a person who has committed an offence, or who is linked to the commission of an offence; and upon the issuance of a warrant of arrest by the appropriate authorities, such person shall be kept in custody not longer than the reasonable time[14] as provided by the law; and thereafter charged to a Court of competent jurisdiction to be tried for the offence. During detention, which should not be an unreasonable period,[15] Moreso, an accused person shall not be subjected to torture or inhumane treatments that are a violation of his Right to dignity of human person, as provided[16] by the CFRN 1999; as such person is presumed innocent until his guilt is proved. The constitutional rights of an accused person are provided in the Constitution of the Federal Republic of Nigeria, 1999 (As Amended). They are as follows:

1. The right to be informed the crime alleged: A suspect/defendant has the right to be informed promptly and, in the language, he understands, the offence he's alleged to have committed, as provided in Section 36 (6) CFRN 1999. Its importance is to give the suspect/defendant an ample time to prepare adequately for his defense. A breach

[11] J. Bodede, *Criminal Evidence in Nigeria* (Princeton publishing Co. Ltd, (2022)
[12] IGP & Ubah V Ubah & ors (2014) LPELR 23968 (CA)
[13] Chapter IV
[14] *Nigeria Custom service Board v Chukwuma* (2016) LPELR 41479 (CA)
[15] ection 35(5) CFRN, 1999.
[16] Section 34

of this provision will render the trial a nullity.[17] NB: An exception to this rule is where the accused person is caught in the act of committing the offence.[18] the court held that where a person is arrested committing an offence or strongly suspected to have committed an offence, his arrest and detention is lawful. A suspect cannot complaint In AMYN Investment ltd v EFCC & Ors[19]

> Section 35 of the Constitution leave no one in doubt that the section is not absolute. Personal liberty of an individual within the contemplation of Section 35(1) of the Constitution is a qualified right in the context of this particular case and by virtue of Subsection (1)(c) thereof which permits restriction on individual liberty in the course of judicial inquiry or where, lightly as in this case, the appellant was arrested and put under detention upon reasonable suspicion of having committed a felony. A person's liberty, as in this case, can also be curtailed in order to prevent him from committing further offence(s). It is my belief as well that if every person accused of a felony can hide under the canopy of Section 35 of the Constitution to escape lawful detention, then an escape route to freedom is easily and richly made available to persons suspected to have committed serious crimes and that will not augur well for the peace, progress, prosperity and tranquility of the society.

2. Right to fair hearing: The right to fair hearing provides a suspect/defendant[20] with the constitutional backing for his case to be properly heard by the court; as he puts up his defence, Section 36 (1) CFRN 1999. Two Latin maxims border on this safeguard: 'Nemo Judex in causa sua'– which means 'one cannot be the judge in his own case' and 'Audi Alteram Partem' – which means 'both sides must be heard.' In view of these, the principle of fair hearing is applicable at the police and also cuts across all Courts and tribunals.[21] The police should allow the suspect respond to the complainant's allegation. Also, as stated in the case of *Odessa v.*

[17] *Yahaya v. State [2002] 3 NWLR (PT.) 754*.
[18] Section 352 of the Criminal Procedure Act.
[19](2020) LPELR 58713
[20] *B.C. Okoro, Police and your Rights* (Pricenton Publishing CO,2013)
[21]*Falodun v. Ogunse* (2009) LPELR-CA/IL/35/2008.

FRN [22]. For fair hearing,[23] Police and the Court should be able listen and consider the evidence of everybody involved in the case. In a situation where the investigating Police Officer, (IPO) or a judicial officer has interest in any of the parties or the subject-matter, or the outcome of the proceedings; he should refrain from presiding over the matter.[24].

3. Presumption of innocence: Every person suspect/ defendant under investigation or charged with a crime is presumed innocent, until the contrary is proved.[25] In Idris v State[26] it was stated that "an accused person is presumed innocent until it is proved otherwise by due process of law." The burden of proof lies on the Prosecution, to prove the guilt of the accused person, as provided for in the evidence Act 2011.The burden of proof lies on the Prosecution, to prove the guilt[27] of the accused person, as provided for in the evidence Act 2011.[28]

In the case of *Olawoye v. C.O.P* [29]an application for bail was refused at the Magistrates' Court and High Court on grounds that cultism was rampant. Held, the refusal was wrong. However, an exception to this constitutional safeguard is where an accused person is to prove facts within his knowledge, e.g. defense of insanity,[30] intoxication, etc. And also, a convict appealing against his conviction is no longer presumed innocent.[31]

4. Right to adequate time and facilities for defence: As provided in Section 36 (6) B, CFRN 1999, an accused person is to be given adequate time and facilities for the preparation of his defence. The Court[32] is to grant an adjournment to the accused person, in order to secure a counselor attendance of witnesses. As in the case of

[22] (2006) 3 EFCLR AT 50
[23] Section 36 of the 1999 Constitution.
[24]*Garba v. University of Maiduguri* (1986) 1 NWLR (Pt 18) 550
[25] Section 36 (5) CFRN 1999
[26] (2021) LPELR 54581 (CA)
[27] K. Kharisu Chukkol, *Defence to Criminal Liability in Nigeria Law: A critical Appraisal* (Published by A.B.U Press, 1993)
[28] 135 of the Evidence Act 2011.
[29] (2006) 2 NWLR pt 965 p. 427
[30] Okonkwo and Naish, *Criminal Law in Nigeria* (Spectrum Books Limited, 2009)
[31] J. Bodede, Criminal Evidence in Nigeria (Princeton publishing Co. Ltd, (2022)
[32] *Y.K. George, Administration of Criminal Justice Act, 2015, With Explanation* (Mike Press LTD,2017)

Akabueze v. FRN[33].In capital offences, t the Court must grant adjournment once the accused person's counsel is absent.

5. Right to counsel: An accused person has the right to defend himself in person or by a counsel of his choice, as provided in Section 36 (6) C, CFRN 1999. It is also mandatory that an accused person charged for a capital offence, must be represented by a legal practitioner, as provided in Section 352 Criminal Procedure Act.: however, exceptions to this rule are; if the counsel is under legal disability or the right is in abeyance. E.g. the counsel is disqualified from practicing or has not paid his practicing fees; or if the counsel is a foreigner, and has not fulfilled the immigration requirements or conditions to be allowed to appear in Nigerian Court.[34]
6. Right to examine prosecution's witnesses: This right is provided in Section 36 (6) d, CFRN 1999, and may be exercised personally or through a counsel. Where the Court refused the accused to cross-examine or re-call witnesses that tendered a written document in evidence, it is a breach of this right, as in the case of *Idrisu v. The State* [35] however, Exceptions to this rule are; if the accused person or his counsel ask irrelevant questions and if questions are asked to harass the witness., as provided in Sections 224 – 226 Evidence Act, 2011.
7. Right to be tried for an offence known to law: Section 36 (12) CFRN 1999, provides that a person shall not be convicted of a criminal offence, unless that offence is defined and the penalty is prescribed in a written law. In *Aoko v. Fagbemi*[36], the Court quashed the conviction in the case and held that adultery is unknown to the Criminal Code and therefore not an offence. Also, in *A.G Federation v. Isong*[37], the Supreme Court held that the accused person could not be convicted of unlawful possession of firearms contrary to S. 3 and unlawful possession of ammunition contrary to S. 9 of Firearms Act 1996, because neither

[33] (2010) 17 NWLR (pt. 1223) 525 at 544
[34] Awolowo v Min Interna Affairs & Anor (1952) LLR 177
[35] (1998) 9 NWLR (Pt.566) 389, (1998) 7 S.C (Pt I) 96.
[36] (1961) 1 All NLR 400
[37] (1986) 1 Q.L.R.N 75 at 92-93

of the sections stated the penalty for the alleged offence. Therefore, a person cannot be charged upon a section of law that merely defines the offence without providing for its penalty.[38]

8. Right to silent: Section 36 (11) CFRN 1999, provides that no person who is tried for a criminal offence shall be compelled to give evidence at the trial. An accused person has a right not to say anything at his trial[39] because the prosecution has the burden to prove the accused person's guilt.

Furthermore, when an accused person exercises his right to silence, the prosecutor cannot comment on the accused person's failure to give evidence in his defence, as provided in Section 181 Evidence Act. The right may avail an accused person, where it is manifestly clear that the prosecution has failed to prove the guilt of the accused.[40]

A detriment of this right is that it could be risky to hold on to that right, where an explanation from him could have made a difference; as held in the Supreme Court case of Igabele v. State[41] This right however does not apply during the stage of taking plea.

9. Right to one trial to one offence: If an accused person claims he has already been tried, he can raise either of the following: 1. Autre fois Acquit – that he has already been 'acquitted' for the offence he is standing trial for; and 2. Autre fois Convict – that he has already been 'convicted' for the offence he is standing trial for. No criminal proceedings[42] shall be conducted against any person in respect of crime for which the accused person had previously been tried by a court of competent jurisdiction[43] and for which he was either convicted or acquitted, except upon the order of a superior Court. The objection to the charge must be before taking plea.[44]

[38] B.C Okoro, *Police Law and Your Rights* (Princeton Publishing CO., 2013)
[39] B.C Okoro, Police Law and Your Rights (Princeton Publishing CO., 2013)
[40] ibids
[41] (2006) 6 NWLR (Pt. 975) 100.
[42] E O. Onoja, Fundamental Principles of Nigeria Criminal Law (Green world Publishing Co.Ltd, 2015)
[43] T.A. Aguda, *The Law of evidence* (spectrum Publishing, CO ltd, 1998)
[44] *Edu v. C.O.P (1952) 14 WACA 163.*

10. Right to an interpreter: Section 36 (6) E CFRN 1999, provides that every person who is charged with a criminal offence is entitled to have, without payment, the assistance of an interpreter, if he cannot understand the language[45] used at the trial of the offence.[46]

In *Zaria Native Authority v. Bakari*[47], it was held that "an interpreter should interpret whatever is said immediately it is said, sentence by sentence; he should not wait till everything has been said, and then state what he remembers of it or what he thinks it was, but should interpret the whole and every part of it. However, it is the duty of the accused person to inform the Court that he does not understand the language of the Court, through his counsel.

Suspect/Defendant's Safeguards under the ACJA 2015

The introduction of the ACJA 2015, introduces a number of innovations. They are discussed below.

1. Records of arrest: During arrest, the arresting officer should inform the suspect of the reason for his arrest and his right to remain silent until after consultation with a legal practitioner of his choice or a legal practitioner from the legal aid council, if he cannot afford one.

The arresting officer is also required[48] to document details of the suspect- height, photograph, fingerprint or such other means of identifying the suspect[49]. Everyone therefore has the right to be informed of the nature of his offence; his right to be represented by a legal practitioner and a proper documentation of the records of his arrest.

[45] Okonkwo and Naish, *Criminal Law in Nigeria* (Spectrum Books Limited, 2009)
[46] J. Bodede, Criminal Evidence in Nigeria (Princeton publishing Co. Ltd, (2022)
[47] (1962) NWLR 30
[48] A. L Charles and W Paul, *Criminal Investigation: basic Perspectives* (Published by Pearson Ltd, 2009)
[49] s. 6 & 15 ACJA. See also s. 36(6) of the 1999 Constitution (as amended)

2. Arrest in lieu or proxy prohibited [50]. No person is to be arrested for an offence committed by another person. The long-aged practice of arrested father or mother for the offence committed by their children is prohibited. Punishment is personal and can only be enforced on the offender.
3. Timelines: The ACJA has zero tolerance for frivolous adjournments as it sets timelines for legal advice; remand; objection to a charge and day to day trial of a defendant[51] These timelines by the ACJA ensure speedy trial in line with the constitutional provision in s. 36(1) 1999 Constitution that a person charged with a criminal offence is entitled to a fair hearing within a reasonable time.
4. The establishment of a Central Criminal Records Registry (CCRR) at the NPF: The ACJA provides for the collation of records of arrest and the decisions of the court to be kept and transmitted to the CCRR[52]. Prior to the enactment of the ACJA, s. 30 of the Police Act, LFN 2012, provides that such records be destroyed or handed over to the defendant upon his discharged or acquittal.

However, the ACJA now clearly overrides this provision to expunge records by providing for the retention of records in the CCRR, the culture of which has been nonexistent in Nigeria for a long time. This procedure encourages accessibility to data, monitoring, accountability and transparency.

5. Electronic recording of a confessional statement: The ACJA has also provided for the admissibility of electronic recording of a confessional statement on a video/audio disc. [53]
6. Speedy trial: In a bid to amplifying the provisions of the constitution to ensure speedy dispensation of justice, the ACJA makes the following provisions among others:

a. Stay of proceedings: the new position of the law now is that application for stay of proceedings shall no longer be heard in respect of a criminal matter before the

[50] S.7 ACJA 2015
[51] 296, 376, 396 ACJA
[52] . See s. 16 ACJA
[53] See s. 15(4) ACJA and also s. 84 of the Evidence Act, CAP E14, LFN 2004 that makes provision for computer generated evidence to be admissible in Nigerian courts.

court. This unprecedented provision puts a gag on the delays occasioned to the trial process by interlocutory applications to stay proceedings pending appeal on preliminary matters even when the substantive issues are yet to be tried on the merits.

b. Day-to-day trial: Upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial. Where day-to-day trial is impracticable, the Act provides that parties shall be entitled to only five adjournments each. The interval between each adjournment, according to the Act, shall not exceed two weeks each. Where the trial is still not concluded, the interval for adjournments will be reduced to seven days each.

c. Assignment of information and issuance of notice of trial: By virtue of this section, information filed are to be assigned to courts by the Chief Judge within fifteen days and the Judge in turn, is to issue notice of trial within ten working days of the assignment of the information to his court.

d. Objection to the validity of charge: Any objection to the validity of the charge or information raised by the defendant shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment.

Right to Plea bargain: the suspect/defendant has right to initiate plea bargain.[54] Under subsection (4) of section 270, ACJA, the prosecutor and the defendant or his legal practitioner may before the plea charge enter into agreement in respect of the sentence to be recommended to the Judge and guilty plea by the defendant to the offence charged or to a lesser offence. The suspect also has the right to abide or withdraw[55] from the plea bargain.[56] Plea Bargain is defined in Albert v FRN[57]

> Plea bargain can be by way of charge bargain or sentence bargain. Charge bargain is a plea bargain in which a prosecutor agrees to drop some of the counts or reduce the charge to a less serious offence in exchange for a plea

[54] Section 270(4) ACJA, 2015
[55] Section 270(7) ACJA, 2015
[56] *Roomrig Nigeria Ltd v FRN (2014) LPELR 22759(CA)*
[57] (*2021) LPELR 56144(CA)*

of either guilty or no contest from the defendant while Sentence bargain is a plea bargain in which a prosecutor agrees to recommend a lighter sentence in exchange for a plea of either guilty or no contest from the defendant.

Suspect/Defendant's Safeguards under the Police Act, 2020

The Police Act 2020 was specifically amended to among other things promote and protect the right of persons in Police custody as guaranteed by the Constitution[58]

1. A Person shall not be arrested in place of a suspect

It is a trite law that no person can be unlawfully arrested and detained when he has committed no offence. A person who has committed a criminal offence or reasonably suspected to have done so, may be arrested for the purpose of being arraigned in a Court of Law. The Police Act 2020 warned heavily the idea of arresting a person for the offence committed by another person. The usual and illegal[59] way of arresting father when the son is not seen id forbidden. Doing so would amount to violation of the fundamental right of that person arrest.[60]

2. Right to remain silent

A suspect /defendant is protected by law and has the right to remain silent or avoid answering any question until after consulting any person of his choice or a legal practitioner. The suspect can as well refuse to endorse or write any statement unless and until he consults his legal practitioner.[61]it is also the responsibility of the arresting authority to inform the next of kin or the relative of the suspect at no cost to the suspect. The Police as an institution must improve on how to respect the right of a suspect. Right to remain silent is not only accommodated by ACJA and Police Act, but above all a constitutional right of a suspect. By suspect keeping quite or silence is not an offence of disrespect to the Police. The best of what the police IPO can do is to take the suspect to

[58] Section 5 PA, 2020.
[59] *Abuja Leasing CO. LTD v Maidoya & Ors* (2020) 61049 (CA)
[60] *Ifemeje v Umuch community Bank (NIG) LTD & Ors* (2020) LPELR 50623(CA)
[61] Section 35(2)(a)(b) PA 2020.

Court and the Court will su moto treat the suspect in the direction of due procedure of law. In Jibrin v Nigeria Army[62] the court held that,

> It is the constitutional right of the Accused Person to remain silent and donate no iota of evidence to the Prosecution. However, this right has a consequence which is that the learned trial Judge is at liberty to make inferences from vital and incriminating evidence left unchallenged by the Accused Person. Furthermore, where an Accused Person elects to jettison his right to remain silent, whatever he proffers by way of rebutting the case of the Prosecution must be compelling and must meet the basic standard of proof.

3. Human treatment of the arrested person[63]

A suspect/defendant shall not be subjected to any form of inhuman treatment, torture, cruel or degrading treatment. The suspect is to be accorded with superb human treatment, having regards to his right to the dignity of human person. Every suspect has right. Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. And when they are protected as legal rights they then become known as fundamental human rights which are protected by the grundnorm of the society i.e. the Constitution of the Federal Republic of Nigeria.[64]

4. Notification of the cause of arrest

A suspect/ defendant arrested must be inform immediately[65] the reason (s) for his arrest[66] except when the suspect is in the actual cause of the commission of the offence or is pursued immediately after the commission of the offence or has escape from lawful custody.

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[62] (*2021) LPELR 55398 (CA)*
[63] Section 36 PA, 2020
[64] *Fort Royal Homes Ltd & Anor v EFCC & Anor @017) LPELR 42807 (CA)*
[65] *A. M. Criminal law: Text. Comment & Cases* (Princeton Publishing CO. Ltd, 2018
[66] Section 35(1)

5. No arrest for Civil wrong

There is no gain saying that the Police has no right to investigate civil cases. Any arrest of a suspect on the basis of civil case or action is breach to the fundamental right of that suspect. The Police must not make arrest for a mere civil transaction.[67] If one can ask Whether the duty of the police includes the settlement of civil dispute or debt collection and in the process make arrest. In Goni v Haruna[68] it was held that:

> Now, is the Police a debt collection outfit/centre? In IGP & ORS Vs. GOMBE (2016) LPELR-40816 (CA), this Court per George will, JCA at pages 30-32 held: "The powers of the Police going by the combined effect of the succinct provisions of Section 214 of the Constitution of Nigeria 1999 as amended and Section 4 of the Police Act 2004 and all other laws enabling the Police to act, are indeed very enormous but yet not left at large and in my view does not cover intermeddling or interfering with the judicial powers of a Court of law

Therefore, for Police to carry out civil transaction has interfered with the court duty and they cannot in anyway make arrest or detain for mere civil wrong. In Kore v State[69] the Court held that

> As I went through the facts of this case, I was wondering how a purely civil matter could easily metamorphose and transubstantiate into a purely criminal case. The end result now is that the Appellant has suffered irreparable damage, disgrace, shame, odiousness and untold hardship in the hand of the Police that is constitutionally and legally saddled with prosecution of criminal offences. The police have muzzled the rights and freedom of Nigerians even where cases are clearly outside their jurisdiction, power or corridor. If this is not curbed, everybody including the judicial officers will suffer always from floodgates of civil matters being hijacked by the police and transmuted into crimes. If this is not

[67] Section 32(2)
[68] (2022) LPELR 58525 (CA)
[69] (*2020) LPELR 49378 (SC)*

> tackled, everybody would have suffered in the merciless hand of the police who has become a law unto itself in this country. The primary duty of the Police by Section 4 of the police Act is the prevention of crime, investigation and detection of crime and the prosecution of offenders

Right to be granted bail

Bail is a constitutional and statutory right of a suspect. A suspect/ defendant is to be granted an administrative bail in the Police station for an offence other than offence punishable with death.[70] This always comes when it is impracticable to complete investigation, there will be no need to detain the suspect beyond the maximum hours[71] in order not to infringe on his fundamental human right. The Police can always apply to court for the extention of detention days.it is to be noted that there is no obligation on the Police to grant bail and find surety for the suspect.[72] And where you cannot bring surety, the suspect should not complain.[73] Therefore, over detention is unlawful and a violation of suspect human rights. The duty of the Police is protecting the right of everybody as stated in Nnaji for v FRN[74]

> In any event, one of the core duties of the police as stated in Section 4(d) of the Police Act is to "enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies". By Section 5(1) of the Act, the police force is responsible for promoting and protecting the fundamental rights of persons in police custody as guaranteed by the Constitution.

6. Right to demand for I-D before search[75]

The Police has the right to search the body of a suspect/ defendant arrested committing an offence. Or obtained a warrant where a premises needs to be search.[76] Where a warrant is

[70] I. O. Agbaii, Criminal trial and Procedure in Nigeria (Logic gate Mediate Ltd, 2019)
[71] Section 62 and 63 P.A, 2020
[72] *Y.K. George, Administration of Criminal Justice Act, 2015, With Explanation* (Mike Press LTD,2017)
[73] *Ekpu v AGF* (1998) Human right Law reports of Africa.
[74] (2024) LPELR 62599(SC)
[75] Section 50(4) PA, 2020
[76]Ibid Section 47

issued, the police office shall identify himself to the suspect, if not in uniform, shall produce his official identify card, and equally give the suspect a copy.[77]

7. Right of an interpreter

Where a suspect does not understand, write or speak English, an interpreter shall record and read over the statement to the understanding of the suspect before he endorses the said statement. The statement taken must be in the initial language spoken by the suspect before same is interpreter to English.[78]where that is not done, the statement becomes inadmissible in court. It is a Constitutional right of an accused to have the assistance of an interpreter if he cannot understand the language used at his trial. The suspect must not compel to pay the interpreter. In Musa v State, it was held that;

> Now, by Section 36 (6) (e) of the Constitution FRN 1999 (as amended), every person who is charged with a criminal offence shall be entitled to have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence. To give effect to this constitutional requirement

8. The right of a suspect to refuse to collect search record[79]

An officer who carried out a search shall make a written record. It is the right of a suspect to ensure that he endorsed the search record immediately after the search. A searched suspect may refuse to collect a search record that his signature is not appended.[80] Even where the suspect to searched is unwilling to provide detailed of his information about himself, the office is not to detain him, he shall be allowed to go unless unlawful items are found in his possession or in the vehicle searched.[81] When it become necessary for a suspect to be search, the must be carry by an officer of same sex. A male officer is not allowed by law to search a female suspect as the case may be.

[77] Ibid section 59(4)
[78] *Ahmed v State* (2021) LPELR 56565(CA)
[79] Section 56(4)
[80]Section 56(4) P.A 2020/
[81] Ibid section 56(5)

Remedies Available for Suspect/Defendants

There are multifarious and multidimensional judicial remedies for victims of human rights violations. Thus, irrespective of the nature of violation, appropriate remedies exist for it. As noted by Oputa, J.S.C: The law is an equal dispenser of justice, and leaves none without a remedy for his right. It is thus a basic and elementary principle of common law that whenever there is a wrong, legal wrong or injuries that is, there ought to be a remedy to redress that wrong.[82]

The High Court has been empowered to hear and determine any application alleging a breach of any of the guaranteed rights to "make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing and securing the enforcement of any rights to which the person (is) entitled." It is note-worthy that no reference is made in the foregoing provision to specific remedies. In spite of this, the courts in practice, have used and continued to use the traditional remedies such as injunction, writ of habeas corpus,[83] Declaratory judgments, Damages,[84] Order of Certiorari,[85]Order of prohibition,[86]Order of Mandamus,[87] in redressing human rights violations.

Conclusion

The rights of a suspect are both Constitutional and Statutory. These rights are fundamental and are needed to be protected and all the key players in the administration criminal justice system, The dignity of each person under investigation or undergoing

[82] J. A. Dada, Judicial Remedies for Human Rights Violation in Nigeria: A critical Appraisal, *Journal of Law, Policy and Globalisation* , (vol. 10, 2013) at www.iiste.org accessed on September 15th,2022

[83] It is used primarily to challenge the detention of any person either in official custody or in private hands. Its utility is to ensure that a person wrongfully detained is released forthwith.

[84] **:** Damages are monetary awards made to litigants to assuage them for the loss suffered

[85] An order which enables a superior Court to call upon an inferior Court to bring up the record upon which the inferior court based its decision of a judicial or quasi-judicial nature

[86] prohibition is a prerogative order. It lies to restrain an inferior tribunal or body of persons which has a legal authority to determine questions affecting the right of a subject from exceeding its jurisdiction

[87] Mandamus was a prerogative writ directed to some person, or body to compel the performance of a public duty

trial should safe guided. The role of the police and court is crucial in protecting the right of every Nigeria, whether as a suspect or an ordinary individual. The duty of Court and the Police is to uphold rule of law and also promote fairness, justice in a way that will attract public trust and confidence by all and sundry,

Though each suspect has the right to his life, dignity or human person, right to remain silent etc. All these rights can be taken away on the order of court or in situation where the individual commit an offence either simple or felonious offence. Where your right ends another person right begins. you cannot eat a cake and still have the cake. A thief, murderer, assaulter, cheater and the like will have no reason if their freedom of movement is curtailed.

Administration of Criminal justice Act[88] and the Police Act[89] are deliberate efforts put in place to ensure that inhuman treatment, delay in Justice delivery, use of coercion in investigation, detention without release and torturing is put to an end. This is by ensuring that erring police officers and Judicial officers are brought to book The Court collaborate with the Police in the area of supervision and monitoring of all Police detention facilities so as to ensure that the rights of suspect are duly protected.

[88] 2015
[89] 2020

EXPLORING CONSIDERABLE FACTORS TOWARDS CHOOSING A GOOD RESEARCHABLE LEGAL TOPIC

Ahmed Abiodun Muhammed-Mikaaeel*, Shehu Kazeem Hassan and Kamaldeen Olaitan Salman*****

Abstract

Choosing a researchable topic is an inevitable point of call for any intending researcher. It is the foundation that dictates the trends throughout the study. However, the process of choosing a good researchable topic is herculean. This is because an intending researcher cannot afford to undergo certain systematic laid-down procedures. This has made most upcoming academic researchers run away from research activities. Against this backdrop, this paper examines the process of choosing a good researchable legal topic with sole reliance on the doctrinal method of legal research. The paper finds that a good research topic has certain characteristics such as being clear, straightforward, unambiguous and easily comprehensible; being tailored towards areas of interests and competencies of the researcher; not representing a moral, spiritual or esoteric situation etc. The paper finds further that factors for choosing a good researchable legal topic include FINE techniques and FRIENDS modes, amongst others. The paper reveals that generating ideas to choose a good researchable topic could be achieved vide attending viva, conferences, literature reviews, and brainstorming to mention but a few. The paper equally finds that certain tools could assist a researcher to achieve choosing a good researchable legal topic. These tools include selecting appropriate areas of research, replica study of the past related research, studying recommendations for future research etc. The paper finds also that the significance of choosing a good researchable legal topic is deeply rooted in its uniqueness and identity from the previous research in conformity with the rule against plagiarism. The paper finally finds that a good researchable legal topic is susceptible to changes, modifications and amendments depending on the developments and trends in the course of the research. The paper recommends constant and continuous engagement in research activities for the upcoming academic researchers to attain perfection.

Keywords: Research, Legal Research, Researchable Topic, Factors, Techniques

1.0 Introduction

Many upcoming researchers shy away from research activities, especially academic research, due to its systematic nature.

[1] The systematic nature of the research makes it imperative on every researcher to consider certain laid down procedures which cannot be bypassed according to one's whims and caprices.[2] It is thus incumbent on every researcher to rigorously learn the systematic way of conducting academic research for optimum result.[3]

Legal research is principally divided into academic and non-academic legal research.[4] The focus, therefore, in this paper is on academic legal research. It is therefore not gainsaid that given the nature of academic legal research, the processes of coming up with a good researchable topic might be daunting and frustrating, especially to upcoming researchers.[5] This is because it is sometimes not easy to come by a good researchable legal topic, having regard to the fact that every research has to be unique and different from the previous one.[6] Therefore, this is not something that could be achieved in the twinkle of an eye.[7] It may take days, months or even years, depending on the seriousness of the intending researcher.

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[1] M Kaweesi, 'Scholarly Conceptions of the nature of Academic research in Universities: A Literature Review' *Interdisciplinary Journal of Education* (2018) 1(2) 209-223

[2] ibid

[3] Y Aboki, *Introduction to Legal Research Methodology*: *A Guide for Writing Long Essays, Thesis, Dissertations and Articles* (Tamaza Publishing Company Ltd, Wusasa, Zaria, 2001) 1-114

[4] SI Ali, *et al*. 'Legal Research of Doctrinal and non-Doctrinal' *International Journal of Trend in Research and Development* (2017) 4(1) 493-494

[5] D Wintersberger, and M Saunders, 'Formulating and Clarifying the Research Topic: Insights and guide for the Production Management Research Community' *Production* (2020) 30(e20200059) 1-8

[6] A Taiwo, *Basic Concepts in Legal Research Methodology* (2nd Ed, Princeton & Associates, Ikeja, 2017) 1-50

[7] Wintersgerber and Saunders, (n 4)

The foregoing thus informs the reason this paper shifts attention to the topical discussion of the considerable factors towards choosing a good researchable legal topic. This is with a view to adding to the existing knowledge owing to the recurrent problems being faced when it comes to choosing or arriving at researchable topic.

2.0 Understanding Legal Research

The conceptualization of research has been a subject of divergent opinions among academic scholars. This is because different scholars have accorded different connotations to research. To this end, Redman and Merry define research as "systematized efforts to gain knowledge."[8] Manheim, in the same vein, viewed research "as the careful, diligent and exhaustive investigation of a specific subject matter, which has as its aim the advancement of mankind's knowledge."[9] Stephenson conceptualised research as "the manipulation of things, concepts or symbols to generalise to extend, correct or verify knowledge."[10] Lundberg equally perceives research "as a method sufficiently objective and systematic to make possible classification, generalisation and verification of the data observed."[11]

Webster's Dictionary defines research as "a careful, critical inquiry or explanation in seeking facts or principles."[12] The Encyclopedia Dictionary equally defines research "as an act of searching into a matter closely and carefully, inquiry directly to the discovery of truth and particular scientific investigation of the principles and facts of any subject."[13] Research is likened to a systematic enquiry or investigation geared towards verifying a fresh theory or confirming/supplementing previous theories by way of new knowledge contribution.[14] Knowledge in this wise is an extension of the existing knowledge by the

[8] C Soren, 'Legal Research Methodology: An Overview' *Journal of Emerging Technologies sand Innovative Research* (2014) 8 (10) 442-284
[9] ibid
[10] ibid
[11] ibid
[12] Merriam-Webster, 'Research' retrieved from https://www.merriam-webster.com/dictionary/research accessed 23 October 2025
[13] A Singh, 'Meaning and Definition of Research' <htpps://www.google.com/search?q=encyclopedia+dictionary> accessed 23 October 2025
[14] M Islam, 'The Importance of Research in the Advancement of Knowledge and Society' *International Journal of Basic and Clinical Studies* (2023) 8(4) 1-3

previous researcher. This is because it is an undisputable fact that no research can be said to be entirely new, having regard to the previous literature. A researcher undertaking a certain study is presumed to possess much knowledge or information about it, and while conducting research, he/she proceeds onward to acquire more knowledge or information about it based on the research objectives.[15] Research is therefore a scientific or systematic consideration of existing knowledge with a view to either confirming or disagreeing with it by way of new knowledge acquisition. It involves the systematic identification of a problem to find a solution to it.

In legal parlance, research is decoded as legal research as generally viewed as an original and fundamental contribution to the knowledge on the legal subject which involves a continuous process of acquiring knowledge through enquiry into existing laws to make reforms, amendments or recommendations for enactment of new laws.[16] Be that as it may, legal research therefore refers to that branch of knowledge dealing with investigation regarding the principles of law and existing legal institutions.[17] Legal research could thus be defined as the systematic investigation of a problem in law to find a solution to it at the end of the day.

The law aims to regulate human behaviour in present-day society.[18] Legal research must be directed to the study of the relationship between the world of the law and the world that the law purports to govern. Legal researchers do systematic research into social, political and other fact conditions which give rise to individual rules, acts or codes. They also examine the socio-legal and other effects of those acts or rules. Research of this kind is called, "Fact research in law."[19] Research may be pursued to obtain better knowledge

[15] ibid
[16] P Chynoweth, 'Legal Research' in A Knight, and L Ruddock (Eds) *Advanced Research Methods in the Built Environment* (Blackwell Publishing Ltd, 2008) 28-37
[17] ibid
[18] PM Marzuki, 'The Essence of Legal Research is to Resolve Legal Problems' *Yuridika* (2022) 37(1) 37-57
[19] ibid

and understanding of any problem of legal philosophy, legal history, comparative study of law or any system of positive law.[20]

3.0 Characteristics of a Good Researchable Legal Topic

A good researchable legal topic has several characteristics, the list of which is inexhaustible. Nevertheless, some of the characteristics of a good researchable topic are that it should:[21]

i. Relate to the previous theories to show areas of contribution to knowledge;
ii. be clear, straightforward, unambiguous and easily comprehensible;
iii. be tailored towards areas of interests and competencies of the researcher;
iv. not represent a moral, spiritual or esoteric situation;
v. be risk-free in terms of duration and cost;
vi. not be tailored towards jeopardizing religious or moral values;
vii. be verifiable for further investigations and ascertainment;
viii. be important from a theoretical and practical point of view;
ix. clarify the relationship between two or more variables, and
x. be about enhancing the existing body of knowledge.

4.0 Generating Ideas for a Potential Researchable Legal Topic

According to Adhikari in his article entitled "Strategies for Selecting a Research Topic", he identifies several useful strategies for generating useful ideas for a good researchable legal topic. The strategies include:[22]

i. Constantly attending as many viva voce as possible: The discussions during the oral defence of the thesis can spring up ideas for potential topics.
ii. Attending conferences, workshops, and seminars to useful ideas: attending such events and paying attention to recommendations canvassed in the events can generate useful ideas for research regarding current and future research needs.

[20] ibid

[21] NA Herma, 'Basis of Selecting Research Topic: An Analytical Study' *An International Multidisciplinary e-Journal* (2022) IV 15

[22] GR Adhikari, 'Strategies for Selecting A Research Topic' *Mining Engineer's Journal* (2020) 22 (1) 27

iii. Carefully searching through the internet from secure and trustworthy websites: to this end, the intending researcher needs to be very cautious so as not to rely on unreliable information from fake websites.

iv. Conducting a thorough literature review around the subject of interest: By doing so, the major recommendation for future research gives enough clues to an intending researcher.

v. Organising brainstorming sessions among people who are professionals and experts in the field of interest to generate ideas for potential topics.

A good use of the foregoing strategies makes the voyage of discovery of good research seamless. What is noticeable from the above is that generating ideas towards achieving a good researchable topic is a tedious exercise which an intending researcher must contend with. The foregoing thus points irresistibly to the fact that the art of researching is a systematic process or procedure that cannot be bypassed but be perfected to have a unique research outcome.

5.0 Factors to be considered: FINER Techniques vis-à-vis FRIENDS Modes

The FINER techniques[23] and FRIENDS' modes[24] seek to achieve the same result. FINER techniques are interpreted as feasible, interesting, novel, ethical, and relevant. While the acronym "FRIENDS" is decoded as feasible, relevant, interesting, ethical, narrow and disciplined. The areas of difference are the "narrow" and "discipline" in FRIENDS as well as "novel" in FINER. Without much ado, an intending researcher must, as a matter of course, ensure that the proposed topic leads to a novel discovery or a new contribution to the existing body of knowledge.[25] Be that as it may, The FRIENDS' modes seem to encompass the FINER techniques.

[23] SM Praharaj, and S Ameen, 'How to Choose A Research Topic' *Kerala Journal of Psychiatric* (2020) 33(1) 83-84

[24] Adhikari (n 20)

[25] Praharaj, and Ameen, (n 21)

Thus, the FRIENDS' modes shall be the focus of discussion. It is important to note that the FRIENDS' modes of selecting a good researchable topic are simple. The FRIENDS' modes thus poised the intending researcher to be inquisitive about certain important aspects as the road map to his discovery of a good researchable topic. The intending researcher needs to ascertain the feasibility of the proposed topic in terms of manpower, timeframe, finance or cost implications and capability to undertake the study.[26] In the same vein, the intending researcher has to be sure that the proposed topic is relevant practically, socially, scientifically and even personally to him or the general public.[27] The intending researcher also enquires about whether the proposed topic interests him in terms of having strong curiosity, passion and motivation for the study.[28] Still, under the FRIENDS' modes, an intending researcher will have to ensure that the proposed topic does not offend ethical issues, whether concerning human beings or animals generally. By so doing, he eschews offending any laid-down codes of ethics.[29]

Moreover, an intending researcher seeking to arrive at a good researchable legal topic must narrow down the proposed topic so that it is neither too narrow nor too broad but must have a sufficiently specific focus.[30] Discipline is another important area to be ascertained by an intending researcher seeking to frame a researchable topic. With respect to discipline, he ensures which area of discipline his topic of interest falls. Is it within his core discipline or a related discipline, and whether there exist any specifications and standards for the focused area?[31] And finally, the availability of a supervisor for the proposed topic is part of the considerations under the FRIENDS' modes. The intending researcher must ensure that to come up with a good researchable legal topic, he must take into consideration whether there is the availability of a

[26] Adhikari (n 20)
[27] ibid
[28] ibid
[29] ibid
[30] ibid
[31] ibid

supervisor with adequate knowledge in the subject area who will show commitment, honesty and interest in the proposed topic.[32]

According to Bolaji Abdulkadir,[33] certain inevitable factors to be considered in choosing a good researchable legal topic are summarised thus:

- Conducting background information or checking on the intended area of research;
- Choosing a reasonable topic in a familiar area;
- Sourcing for material to prosecute the research;
- Choosing researchable topics in areas of interest;
- Considering available funds to prosecute the research to completion; and
- Narrowing down the topic to a focused and manageable area.

6.0 Tools for Choosing a Good Researchable Legal Topic

Tools for selecting a good researchable topic are numerous. Some of the tools are discussed below.[34]

6.1 Selecting Area of Research

For an intending researcher to come up with a good researchable legal topic, one of the tools for achieving that is selecting areas of research.[35] Research areas are wide depending on the interested discipline. Even within a discipline, there could be a sub-area of research for convenience.[36] Doing this will enable the researcher to be able to narrow down when selecting or choosing a researchable topic. This shows that every researchable topic is tied to a particular area.[37] Selecting and identifying a particular area of research goes a long way in achieving a smooth voyage towards coming up with a good researchable topic.

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[32] ibid
[33] AB Abdulkadir 'Lecture Note on Legal Research Methodology' (Lecture delivered in First Semester, 2023/2024 Session at Faculty of Law, Al-Hikmah University, 2024) 1-10
[34] Herma, (n 19)
[35] BK Passi, 'Selecting Research Areas and Research Design Approaches in Distance Education: Process issues' <https://www.irrodl.org/index.php/irrodl/article/view/203/285> accessed 26 April 2024
[36] ibid
[37] ibid

6.2 Comprehensive Reading in the Selected Area of Research

Having selected an interesting and relevant area of research, an intending researcher would find thorough reading in the selected area inevitable.[38] The comprehensive reading will expose the researcher to broad knowledge in the selected area to be able to discover areas of the gap to pick interest to fill the gap in the existing literature.[39] Thus, in the course of the comprehensive reading in the selected area, several topics would be calling for the attention of the intending researcher, thereby leading him to a good researchable legal topic.

6.3 A Replica Study of Past Related Research

To come up with a good researchable legal topic, the study of the related previous research is a useful tool.[40] This will enable the researcher to be able to distinguish between the previous study and the intention to improve on the previous research.[41] It is important to note that subsequent research should tilt towards reviewing the existing studies for better discovery of new knowledge.[42] This is therefore what should inform framing a researchable topic. This is in line with trends in the recent research, which frowns at descriptive research, but rather prefers analytical research that exposes the weakness in the previous studies by preferring pragmatic recommendations.

6.3 Studying Recommendations for Future Research

One of the tools towards coming up with a good researchable legal topic is through the study of recommendations for future research.[43] It is a fact that some researcher at the end of their discovery usually exposes the limitations in the outcome of their study and provide recommendations for future research. Therefore, an intending researcher can have useful clues to a good researchable topic through the cautious study of such

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[38] RAQ Alava, *et al.* 'Importance of Comprehensive Reading: Its Value in Basic' *International Research Journal of Engineering, IT & Scientific Research* (2020) 6(3) 1-8

[39] C Muller-Bloch, and J Kranz, 'A Framework for Rigorously Identifying Research Gaps in Qualitative Literature Review' (paper presented in the International Conference on Information Systems, 2015) 1-19

[40] M Marabelli, and E Vaast, 'Unveiling the Relevance of academic Research: A Practice-Base View' <https://www.sciencedirect.com/science/article/abs/pii/S1471772720300385> accessed 26 April 2024.

[41] ibid

[42] ibid

[43] LM Connelly, 'Recommendations for Future Research' *Medsurg Nursing* (2023) 32(1) 62-64

recommendations for future research. The rationale behind this is that it is practically impossible to solve all related problems vide particular research.[44] Other researchers will thread the same path to solve yet unresolved problems suggested in the recommendations for future research.

6.4 Observing and Reviewing the Latest Trends in Research.

Observing the latest trends in research can assist an intending researcher in the discovery of a good researchable topic.[45] During the era of COVID-19, most researchers tried to have their bite of the trends to gain relevance and currency in the current topical issues. So, observation of the current trends in research could suggest good researchable research to an intending researcher.[46]

6.5 Meeting with Previous Researchers in the Selected Area of Research

A good starting point or a good first point of call for an intending researcher struggling to come up with a good researchable topic is to meet with experts in his or her chosen field for consultation and robust discussions surrounding his areas of interest. Public academic gatherings such as conferences, seminars, workshops, etc. could afford this opportunity.[47] This will enable the researcher to identify areas of problem and where to focus their research. This exercise will no doubt assist in coming up with a good researchable topic in the narrowed subject area.

6.6 Identification of Flaws in the Previous Research

Identifying flaws in the previous research is a good way to lead to the voyage of discovery of a good researchable topic. This is because the purpose of subsequent research is to improve on the flaws discoverable from the previous research. An intending researcher should be mindful of the fact that his or her proposal should be purposeful.

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[44] JN Buonincontro, and R Anderson, 'A Review of Articles Using Observation Method to Study Creativity in Education (1980-2018)' *Journal of Creative Behaviour* (2018) 0(0) 1-17

[45] ibid

[46] Herma (n 19)

[47] S Subramanian, 'The Importance of Conferences and Networking in PhD and Postdoctoral Training' *Current Protocols Essential Laboratory Techniques* (2020) 21(44) 1-8

One of the purposes of this is to review, critique and analyse the previous studies.[48] Having this at the back of his mind, spotting any noticeable flaws in the previous research constitutes a source of inspiration for coming up with a good researchable topic.

It is important to note that the above tools for choosing a good research topic are some of the tools an intending researcher can utilise to choose a good researchable topic. The lists are endless, depending on the level of exposure of the intending researcher. Bolaji Abdulkadir[49] added that brainstorming, identifying key issues in the selected areas of research and due consultations with experts also constitute useful tools for choosing a good researchable topic.

7.0 Significance of Choosing a Good Researchable Legal Topic

The significance of choosing a good researchable topic cannot be over-emphasized. The reason is that it is highly important to ensure choosing a good researchable topic for uniqueness and identity. A good researchable legal topic is unique and different from previous related studies. Therefore, it is better to tread cautiously while choosing a researchable topic. As a matter of practice, a good researchable topic is one that which could be differentiated from the previously related work both in form and in substance. The reason is that the rule against plagiarism equally applies to choosing researchable topics.[50]

It could be an exercise in futility when a researcher reaches an advanced stage of result reporting, just for him to discover that another researcher has undertaken virtually similar research in the past. This becomes very painful and traumatic at this stage. That is why it is better to go through the rigour of selecting a good researchable topic than to suffer failure at an advanced stage. It is imperative to note that by conventional rule, no

[48] H Snyder, 'Literature Review as a Research Methodology: An Overview and Guidelines' *Journal of Business Research* (2019) (104) 333-339

[49] AB Abdulkadir 'Lecture Note on Legal Research Methodology' (Lecture delivered in First Semester, 2023/2024 Session at Faculty of Law, Al-Hikmah University, 2024) 1-10

[50] ST Green, 'Plagiarism, Norms, and the Limits of Theft Law: Some Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights' *Hastings Law Journal* (2002) (54) 167-242

virtually identical or similar researchable topic is allowed. Even, when a researcher intends to review a particular previous study, he should carefully frame a researchable topic to achieve that purpose and not by adopting the same previous topic.

8.0 A Good Researchable Legal Topic and Susceptibility to Changes

It is important to note that the process of choosing a good researchable topic could be tedious. This is because the researcher must ensure that he is coming up with new ideas, and to showcase that, it is not lazy work. Careful consideration of the FINER techniques and FRIENDS' modes is inevitable. More so, the processes of generating ideas for discovering a good researchable topic are also herculean tasks to contend with. In a similar vein, an intending researcher cannot afford not to make use of useful tools recommended towards selecting a good researchable topic. After passing through these rigours, the pertinent question is, does the chosen researchable topic attain permanent status or unchangeable status? The answer to this poser is both in the affirmative and negative.[51]

The fact is that as research progresses, even after discovering a good researchable topic, it is still susceptible to changes due to the trend in research.[52] This may be a result of new developments in the law during the research. The changes may also be a result of a shift in the predetermined research focus. Where a researchable topic is fine-tuned purposely to analyse certain weaknesses in a particular legislation and the weaknesses are cured by amendment by the legislature before the research is finalized, this occurrence may foist a situation of changes in the already settled researchable topic to blend with the new development.

In another vein, where a researcher in a focused-based research topic slips away to a different focus during his research, the result may suggest changing the already settled researchable topic to blend with the real focus of his research. This is to show that changes can still be effected to a researchable topic in the middle of the research or at the

[51] A Sahay, 'Choosing A Research Topic' https://www.researchgate.net/publication/35395515 accessed 23 April 2024
[52] ibid

advanced stage, depending on the objective(s) intended to be achieved through the research. It is thus important to note that where there is a reason for such changes, such a modified topic should not offend the conventional rule of research topic modification.[53]

9.0 Conclusion

Choosing a good researchable topic becomes easier by acquaintances with the skills and tools laid for such as well as the factors that must be considered to achieve that purpose.[54] It is thus important to state that acquaintances with the skills, tools and considerable factors are not an end but a means to an end. Simply because it is not only the researchers' acquaintances with all the skills for choosing a good researchable topic that is required but mastery of the practical utilization of the skills and tools as well as the considerable factors.

This paper showcased FINE techniques[55] and FRIENDS Modes,[56] among others, as the important factors to be considered for choosing a good researchable topic. The paper also gave credence to some useful tools such as brainstorming, identifying key issues in the selected areas of research and due consultations with experts among others as important for choosing a good researchable topic.[57]

Choosing a good researchable topic is not an easy task but a product of serious efforts on the part of the intended researcher. The efforts do not even stop at the discovery of a good researchable topic. It continues till the completion of the study. That is why the already settled research topic is susceptible to changes at any time before the research is completed.[58]

While some experts pride themselves on the mastery of the practical skills for choosing a good researchable topic as a result of their long years of experience in the field of

[53] That is, the topic should be modified in such a way that it does not virtually adopt a similar or previously related research topic.
[54] J Topalov, and BR Bojanic, 'Academic Research Skills of University Students' *Romanian Journal of English Studies* (2013) 10(1) 145-152
[55] Praharaj and Ameen, (n 21)
[56] Adhikari, (n 20)
[57] Herma, (n 19)
[58] Sahay, (n 49)

academic research, it is thus recommended that upcoming researchers should not despair but continue to constantly engage in research activities to attain mastery and perfection needed as it is said that practice makes perfection.

FROM POLICY TO PRACTICE: ADDRESSING IMPLEMENTATION CHALLENGES IN THE ISPS CODE TO ADVANCE SDG 8

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Abstract

The International Ship and Port Facility Security (ISPS) Code, adopted under the auspices of the International Maritime Organization, represents a critical framework for safeguarding maritime facilities and operations from security threats. Beyond its security mandate, the effective operationalisation of the ISPS Code holds significant potential for advancing Sustainable Development Goal 8 (SDG 8) promoting sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all. This paper critically examines the extent to which Nigeria has operationalised the ISPS Code and identifies persistent implementation gaps undermining its efficacy. Drawing on legal analysis, policy review, and empirical findings from relevant maritime stakeholders, the study interrogates structural, institutional, and capacity-related challenges, including inadequate funding, limited technical expertise, weak enforcement mechanisms, and inter-agency coordination deficits. The analysis further explores the socio-economic implications of these shortcomings for the maritime workforce and broader economic productivity. The paper argues that closing these implementation gaps is imperative not only for enhancing maritime security but also for creating a safe, enabling, and productive work environment within the maritime sector. In conclusion, it offers policy recommendations for strengthening regulatory frameworks, capacity building, and stakeholder collaboration to align Nigeria's ISPS Code implementation with the objectives of SDG 8.

Keywords: ISPS Code, maritime security, implementation gaps, SDG 8, decent work, economic growth.

1. Introduction

Maritime security has emerged as a cornerstone of global economic stability and sustainable development. In recognition of the growing threats to international shipping and port operations, the International Maritime Organization (IMO) introduced the International Ship and Port Facility Security (ISPS) Code in 2004 as part of the amendments to the Safety of Life at Sea (SOLAS) Convention.

[1] The Code provides a comprehensive framework for preventing and responding to security risks that could disrupt maritime trade and endanger lives, property, and the marine environment. This was necessitated in the wake of the terrorist attack on the United States of America (USA) on September 11, 2001 and the possibility of similar attacks in the maritime domain.

The Code promotes cooperation between government agencies, shipping companies, and port administration in identifying security threats and preventing security incidents that may affect ships or port facilities. It introduces effective preventive and deterrence measures against terrorism, within the maritime domain, in all its forms and plays a significant role in enhancing maritime and ensuring the efficiency of international maritime transport.[2]The ISPS Code creates a unified legal instrument under the auspices of the IMO, to facilitate cooperation between the SOLAS contracting port states and the shipping industry to address the problem of port security as a sub-set of maritime security. The measures in the Code require security adjustments to be made by the parties and this could go a long way to enhance international trade. The ISPS Code applies to ships on international trips (including passenger ships, cargo ships of 500 gross tons or more, and mobile offshore drilling rigs), as well as port facilities that serve such ships.[3]

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[1] International Maritime Organization (IMO), International Ship and Port Facility Security (ISPS) Code, adopted 12 December 2002, entered into force 1 July 2004, IMO Doc. SOLAS/CONF.5/34.

[2] TA Mensah, 'The Place of the ISPS Code in the Legal International Regime for the Security of International Shipping' [2004] (3) *World Maritime University Journal of Maritime Affairs* 17.

[3] ISPS Regulation, para. A/3.1.

Beyond its security-oriented purpose, the ISPS Code also plays a crucial role in fostering economic resilience and productivity, particularly in maritime-dependent economies such as Nigeria.[4] Nigeria's maritime sector, which contributes significantly to national revenue through international trade and port operations, remains central to the realisation of Sustainable Development in the country. Ensuring that the maritime sector is run as a decent work environment, with the aim of realising SDG 8, is also connected to the promotion of sustained and inclusive economic growth.[5] Yet, the effectiveness of the ISPS Code's implementation in Nigeria has been met by several constraint.[6]

This paper therefore interrogates the extent of Nigeria's compliance with and operationalisation of the ISPS Code. It situates the discussion within the broader context of maritime governance and sustainable development, examining how lapses in implementation impede economic efficiency, employment generation, and decent working conditions in the maritime industry. Through a critical analysis of legal and policy frameworks, stakeholder engagement, and empirical observations, the study highlights the nexus between maritime security and economic growth. Ultimately, it argues that bridging these implementation gaps is vital not only for strengthening maritime security but also for advancing SDG 8 and achieving Nigeria's long-term development objectives.

2. Examination of the Extent of Implementation of the ISPS Regulation Code

Since the Passage of the ISPS Code Implementation Regulations in 2014, Nigeria has continued to take steps towards the implementation of the ISPS Code, to enhance the state of the ship and port security which directly influences the decent maritime work environment. NIMASA was designated as the DA for implementing the ISPS Code in 2013, replacing and taking over the responsibilities of the Presidential Implementation Committee on Maritime Safety & Security (PICOMSS). NIMASA guided the drafting of

[4] International Maritime Organization, SOLAS Consolidated Edition 2020 (IMO Publishing 2020).
[5] United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development* (UNGA Res 70/1, 25 September 2015) Goal 8.
[6] Nigerian Maritime Administration and Safety Agency (NIMASA), *ISPS Code Implementation Guidelines in Nigeria* (NIMASA, 2021).

the ISPS Regulation with the assistance of the Ministry of Transport and the Ministry of Justice. A substantial part of the Regulation is implemented through physical inspection. As a result, the appointment of the Lead RSO and other RSOs was a necessary step needed to fill the capacity gap in the physical assessment of port facilities. Actions like the Verification Inspection Exercise (VIE), and inspection of certification documents became possible under the authority of the DA. Based on the power granted in the Regulation, as far back as 2018, NIMASA sealed off erring jetties for failure to comply with the provisions of the ISPS Regulation, which affected Heyden Petroleum Jetty, Index Petroleum Oil Jetty, Waziri Jetty operated by Hemsmor Nigeria Limited, NIPCO in Lagos, while the Pinnacle Oil and Gas Petroleum, Warri.[7] In 2018, the United States Coast Guard (USCG) expressed satisfaction bout the extent of implementation of the ISPS Code at the Nigerian ports, as the nation was said to have achieved 90% compliance. Unfortunately, in 2019, there was a relapse, as a result of which the country was sanctioned, including the imposition of conditions to be met before port entry can be granted to ships that have visited some port terminals in Nigeria in the course of their last five port calls.[8] It was presumed that the Nigerian ports were not in compliance with port security measures as a result the measures were aimed at protecting the US ports from security risks that may be posed by ships from Nigeria, including the risk of port terrorism.

So far, it has been nine years since the enactment and implementation of the ISPS Code Regulation in Nigeria, yet safety and security issues are persistent. In an interview with The President of the Maritime Security Providers Association of Nigeria (MASPAN), Emmanuel Maiguwa, he identified some major challenges undermining the efficiency of the ISPS Code Regulation. According to him, several ports are at security level one, this being the lowest level of security creates an avenue for the perpetration of maritime crimes including the trafficking of hard drugs routed through Brazil, which also creates an avenue for the problem of stowaways. Another major security challenge is the inflow

[7] 'NIMASA seals off erring jetties over non-implementation of ISPS code' *Blue Print* (Lagos, 27 July 2018) https://blueprint.ng/nimasa-seals-off-erring-jetties-non-implementation-isps-code/

[8] 'ISPS Code implementation and US sanctions on Nigeria' *Ships & Ports*, (Lagos 15th April 2019) https://shipsandports.com.ng/isps-code-implementation-and-us-sanctions-on-nigeria/

of dangerous drugs often discovered during Customs examinations. This speaks to the inadequacy of the system of cargo checks which may also be traced to the inadequate implementation of the International Cargo Tracking Note (ICTN). Other challenges that were identified include the smuggling of narcotics and fake products, trafficking of firearms, and dumping of contraband. [9]

Earlier in the year 2024, the United States Coast Guard (USCG) evaluated the level of implementation of the ISPS Code and reached an agreement with NIMASA. They decided to work on a three-year plan that would involve a bi-annual assessment of the level of compliance with the implementation of the ISPS Code at Nigerian ports, under the supervision of NIMASA. The agency has collaborated with relevant stakeholders over the years to achieve its mandate, and the United States Coast Guard has provided the necessary support and assistance to achieve safer and more secure waterways in Nigeria and the Gulf of Guinea.[10]

3. The State of Ship and Port Security in Nigeria Today

The ISPS Code supports major improvements to the operation of ship and port security. The Code though not expressly mandatory, and without the actual specification of security-related offenses and punishment thereof. However, it set out measures for preventing and responding to maritime security issues at the ports and its adoption is mandatory for state parties to the SOLAS convention. Thus, the ISPS Code leaves much to be done by the state parties in the course of domestication and implementation. An analysis of the ISPS Code shows that the implementation of the security measures prescribed therein would be sufficient to guard against common security threats. Unfortunately, Nigerian ports are still confronted with numerous security incidents, including stowaway problems, smuggling of drugs and weapons, and illegal migration, all pointing to inadequate implementation of the provisions of the code.

[9] Adaku Onyenucheya, 'Nine years after ISPS domestication, maritime insecurity persists' *The Guardian* (Lagos, 27 September 2023) https://guardian.ng/business-services/maritime/nine-years-after-isps-domestication-maritime-insecurity-persists/

[10] Amaka Anagor-Ewuzie, 'US moves to remove condition of entry on American-bound vessels from Nigeria *Businessday* (Lagos, 10 February 2024).

Since Nigeria domesticated the ISPS Code in 2014, Ship and port security incidents have been through an undulating curve, from the period of high occurrence during which the Nigerian waters were considered a hot spot for maritime insecurity, through a steep reduction in attacks and the current reemergence of various security threats at the port and onboard vessels within the Nigerian maritime domain. By 2018, the frequency of security breaches at the Nigerian ports led stakeholders to point an accusing finger of indifference towards port security, at the Nigerian Ports Authority (NPA). This followed a series of attacks on several ships at the port including MV Pamyat; MV Asia Ruby, MV Aquata, MT Sichem New York, MV Kiana, and MV Dino. Bandits mounted and attacked MV Pamyat on the 2nd of March 2018, while the ship was berthed at berth 14 of the Lagos Port Complex (LPC) Apapa. The attackers were armed robbers who simply stole 11 buckets of paint from the ship. The attack on MV Ruby occurred on the 24th of April, at berth 8 of the LPC, while the ship was discharging cargoes. The robbers carted away several of the goods from the ship, without being cautioned by security operatives. Similarly, on the 3rd of March 2018, at the Tin Can Island Port Complex (TCIPC), also in Lagos, MV Aquata and MT Sichem New York were attacked at berths 2 and 1 of the port, while discharging cargo. The robbers approached the waterfront, in an outboard engine boat, three of them gained access onboard and severely injured the armed watchman onboard in the course of making their escape. Sea robbers also attacked MV Kiana on the 22nd of March 2018, while the ship was discharging its cargo of bulk sugar belonging to the Bua Refinery. [11]

This disturbing pattern continued in 2019, in that year, the IMB reported that Nigeria recorded the highest incidents of port security attacks across the country, with about 11 reported cases of actual armed robbery by the third quarter of that year. On the 24th of March 2019, an anchored oil tanker secured at the anchorage in the Lagos Port was boarded by two armed robbers who succeeded in stealing oil cargo from the ship using hose pipes. Also, on the 25th of July 2019, 10 armed robbers attacked and stole the ship's store of a berthed ship from the pain locker, while cargo operation was ongoing. At Onne,

[11] Shulammite Foyeku, 'Security breaches rock Nigerian ports; stakeholders accuse NPA of indifference' (*Ships & Ports* (Lagos, May 8, 2018) https://shipsandports.com.ng/security-breaches-rock-nigerian-ports-stakeholders-accuse-npa-indifference/

on the 14th of August 2019, a berthed offshore supply vessel was attacked by two armed robbers who carted away properties from the ship's pump room.[12] In 2020, there was a slight reduction in the incidents of armed robbery within the Nigerian ports as the country recorded 46 cases by the third quarter of the year. There was a further reduction in 2021 as the country recorded 27 incidents of armed robbery against vessels at port anchorages.[13] Although this is said to be a drastic reduction compared to the previous years, the aim of enhancing the security of the maritime work environment is far from being achieved.

In March 2022, members of the Maritime Workers Union of Nigeria (MWUN) protested against the escalating security threats at the ports and on private jetties across the country, traced to the inadequacy of ship and port security, which made the maritime space porous and opened to large shipment of illicit drugs, arms, and ammunition.[14] Likewise, there is a report of a rise in insecurity within the GoG in 2023 and this extended to incidents of armed robbery at the Nigerian ports. According to the IMB, there has been a series of incidents of armed robbery at various ports in West Africa, including Nigeria. The first nine months of 2023 recorded 21 cases, compared to 14 cases recorded within the same duration in 2022. Out of those 21 incidents of attacks, 17 were armed robberies and only four were piracy.[15] One such incident is the illegal boarding of a Liberia-flagged cargo ship MSC Wave F, on the 28th of April 2023. The ship was illegally boarded by 8 armed robbers while being berthed at the Tin Can Island Terminal, but when the security crew were alerted, the robbers took to their heels.[16]

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[12] Caroline Tokulah-Oshoma, 'Piracy, armed robbery in Gulf of Guinea and other Maritime Offences Act 2019' *The Guardian* (Lagos, 18th February 2020) https://guardian.ng/features/piracy-armed-robbery-in-gulf-of-guinea-and-other-maritime-offences-act-2019/

[13] 'Nigeria marks 27 attacks on ships at port anchorage' (Safety4sea editorial team, December 21, 2021) https://safety4sea.com/nigeria-marks-27-attacks-on-ships-at-port-anchorage/

[14] Victor Ahiuma-Young,' Workers raise alarm over security threats at nation's ports' *Vanguard* (Lagos31 March 2022) https://www.vanguardngr.com/2022/03/workers-raise-alarm-over-security-threats-at-nations-ports/

[15] 'IMB confirms rise in Gulf of Guinea piracy' *Ships&Ports*, (Lagos, October 12 2023) https://shipsandports.com.ng/imb-confirms-rise-in-gulf-of-guinea-piracy/

[16] 'Maritime Threats in the Gulf of Guinea – An Update' (ARETE 2nd June 2023) https://areteafrica.com/2023/06/02/maritime-threats-in-the-gulf-of-guinea-an-update/

4. Efforts Made to Enforce the ISPS Regulation

Since the domestication of the ISPS Code in 2018, certain further efforts have been made to implement the provisions of the ISPS Code regulation in Nigeria. These efforts are however interconnected with maritime safety and security initiatives, since ship and port security are indeed aspects of maritime security. The efforts will be discussed below.

4.1 Nigerian Ports, Port Infrastructure and ISPS Implementation

As of 2023, Nigeria has six major seaports, including the Tin Can, Lekki Deep Sea Port, and Apapa Quays in Lagos, Onne and Port Harcourt ports in Rivers state, Warri Port, and Calabar Port. The Apapa Quays, established in 1913, has since been the major seaport in Nigeria. The port is accessible to all for use for all forms transportation and is often utilised for heavy cargo conveyances. The Tin Can Port, located 7km Northwest of Apapa Quays, is a derivate of the merger of Roro and Tin Can Island Port, it is the second largest port in Nigeria, engaged in facilitating international shipping. The Lekki Deep Sea Port was recently concluded in 2022 for facilitating shipping in the Lekki Free Trade Zone. The Lekki Deep Sea Port is however the largest seaport in Nigeria and one of the largest in Africa, with a depth that doubles that of the Apapa Port and the capacity to take 2.5 million TEUs. The Onne Port is an oil and gas-free zone, one of the largest of such across the globe, built to facilitate production and operations in Nigeria's oil sector. The Port Harcourt Port is another port built to facilitate Nigeria's oil business. The port, with a quay length of 1259 meters, is sighted in the Niger Delta, and built with 16 mass storage, with a capacity of 3,048 tonnes. The port is known for serving pilotage and towage services. The Calabar Port Complex was built nine years after Nigeria gained independence, as a trade center to service the Eastern and Northern regions of the country as well as facilitate international trade, as a transshipment port for oil products from Calabar and Akwa Ibom. The Warri Port was specifically built to aid the shipment of cargo to Anambra, Imo, Edo, Delta, and any other part of the country. It supports swift cargo and documentation clearance. A general assessment of the ports shows that the Tin

Can Island Port and Apapa Port jointly handle 70% of imports in the country, while the Onne Port handles 80% of crude oil exports in the country.[17]

As far as the implement the ISPS Code is concerned, the government has continued to make efforts by putting in place both soft and hard infrastructure. Some of these include the passage into law of the Suppression of Piracy and Other Maritime Offences (SPOMO) Act 2019 for the punishment of piracy, armed robbery, and other maritime crimes, the launching of the Integrated National Security and Waterways Protection Infrastructure, otherwise called the Deep Blue Project (DBP), and the erection of a concrete fence and the installation of an automated access control gate at the Tin Can Island ports.[18] Another such development is the introduction of Electronic Cargo Tracking Notes across all the Ports, this will make information about the cargo and their content easily accessible.[19] It will enhance the flow of inbound outbound vessel flow and create space for docking and equipment unloading. The various efforts made have driven some results as reports have shown a drop in the cases of armed robbery at the Nigerian ports. For instance, Nigeria recorded 31 cases of piracy and armed robbery in 2018 and 21 cases in 2019, out of which were 17 cases of armed robbery and 4 cases of piracy.[20] However, there is still a lot to be done to see to the full implementation of the ISPS Code, to have the desired state of security necessary to create a decent port work environment.

In terms of security equipment, in May 2022, the Nigerian Navy (NN) took delivery of a new landing ship transportation called NNS KADA, which is 100 meters in length. It is a tool for non-kinetic operation and for delivering humanitarian services, peace enforcement and carrying military hardware to neighboring states. Furthermore, the NN has facilitated the construction of offshore patrol vessels, fast attack crafts, and steward

[17] Ovuokeroye Edih *et al*, 'The effect of optimal port operations on global maritime transportation: a study of selected ports in Nigeria'[2022] (2) (2) *Journal of Money and Business* 172-186.
[18] Anozie Egole, 'NPA boosts TinCan ports security' *Punch Newspaper* (Lagos, 9th March 2023) https://punchng.com/npa-boosts-tincan-ports-security/
[19] Anozie Egole, 'Truckers divided over NPA's electronic call-up system' *Punch Newspaper*, (Lagos, 26 October 2023). https://punchng.com/truckers-divided-over-npas-electronic-call-up-system/?utm_source=auto-read-also&utm_medium=web
[20] Kunle Sanni, 'Nigeria records drop in sea robberies, piracy attacks – Report' *Premium Times* (Nigeria, 21 July, 2022) https://www.premiumtimesng.com/news/top-news/544222-nigeria-records-drop-in-sea-robberies-piracy-attacks-report.html?tztc=1

boats to promote maritime security. Some of these vessels have already been received. A Respondent interviewed at the Nigerian Navy disclosed that in March 2023 that two High-Endurance Offshore Patrol Vessels (HE-OPV) have been received from Dearsan Shipyard, Turkey, to boost maritime security. This is in line with the objective of fleet renewal policy aimed at developing a system capable of sustaining effective and round-the-clock presence in the exclusive economic zones. He noted that the naval shipyard was also constructing 20 houseboats for operations in the brown water.

The NN has also recently acquired new combat helicopters and strategic military drones under its short, medium, and long-term fleet renewal plans. In February, the navy received two helicopters (document number 1), and several other platforms, including two 38m fast patrol craft, another 409m fast patrol boat, and three 46m fast patrol boats, are currently under construction or expected to launch soon. The long-term plan includes the delivery of the high endurance offshore patrol of 76m and 20 houseboats under construction by the Naval Shipyard Limited. Additionally, the Navy War College's curriculum is being improved to keep up with the evolving maritime environment. The Naval Warfare Course 8 has 24 participants, including 17 naval officers and two officers each from the air force and army.[21] Maritime domain awareness activities like the Falcon Eye have been useful in detecting illegal activities. For instance, the detection of vessels loading LNG without necessary documentation and approvals from relevant authorities. Eg The arrest of Very Large Crude Carrier (VLCC), MT Heroic Idun 26 Indian, Pilipino, Sri Lankan and Polish nationals in August 2022. Though some of these vessels were later released.[22]

4.2 Enactment of the Suppression of Piracy and Other Maritime Offences (SPOMO) Act. 2019

To combat piracy and other maritime crimes, Nigeria passed into law the Suppression of Piracy and Other Maritime Offences Act, 2019 (POMO Act). The law aims to tackle

[21] 'Naval War College Graduates 30 In Course 9 In Calabar' (TVC News, 12th September, 2025) https://www.tvcnews.tv/naval-war-college-graduates-30-in-course-9-in-cal/ accessed 30th September 2025.
[22] Tola Adenubi, 'Nigerian Navy releases Norwegian vessel convicted of oil theft' (Tribune Online, 1st June, 2023) https://tribuneonlineng.com/nigerian-navy-releases-norwegian-vessel-convicted-of-oil-theft/

piracy, armed robbery, and all forms of illegal activities against ships and maritime infrastructure including fixed and floating platforms. The Act also gives legal effect to UNCLOS and SUA Convention. It expressly recognizes that illegal activities can be committed against ships, aircraft, fixed or floating platforms, persons, or cargo onboard. This by implication spread to the scope of the ISPS Code.[23] Interestingly, SPOMO like the ISPS Code designates NIMASA as the agency of government responsible for coordinating other law enforcement agencies towards realizing its implementation.[24] To avoid the hindrance that may be caused by the lack of access to funding, the act set aside the Piracy and Maritime Offences Fund" (the "Fund") to be used for financing its implementation.[25]

Whereas the SPOMO is a welcomed development, it does have certain limitations capable of inhibiting its effectiveness. These limitations include the failure to coordinate anti-piracy efforts in the regional arena and the omission of giving a detailed prescription of how to apply proceeds of piracy in a manner that will enhance the realization of deterrence. It also fails to take cognizance of sociological and environmental factors that engender maritime crimes.[26] However, on the other hand, its implementation will facilitate the efforts to address some of the maritime threats that the ISPS Code hopes to address.

4.3 The Deep Blue Project, and the Launching of Operation Calm Water and Operation Sanga Sung

The duo of Operation Calm Water and Operation Sanga were launched by NIMASA, in collaboration with the NN, to check the extent to which the security operatives are ready to respond to security threats. In addition, the administration of former President Muhammadu Buhari launched the Integrated National Security and Waterways Protection Infrastructure, commonly referred to as the Deep Blue Project (DBP) in 2021.

[23] Section 4 of SPMOA; This section itemises a total of 18 acts that constitutes maritime offences within SPMOA
[24] Section 17 (2) of the SPMOA.
[25] Ibid Section 19.
[26] Maurice Ogbonnaya, 'Nigeria's anti-piracy law misses the mark' (*Institute for Security Studies'* https://issafrica.org/iss-today/nigerias-anti-piracy-law-misses-the-mark (7th May 2020).

The DBP is a $195 million investment in vessels, maritime domain awareness platforms, and land and sea assets, obtained with the sole aim of helping the country to have a better grasp of the security of her maritime domain, by combating piracy, armed robbery and other security threats within the Nigerian internal waters and in the GoG. The Deep Blue Project is a joint initiative of the Federal Ministry of Transportation and Federal Ministry of Defence, being implemented by NIMASA, with personnel drawn from various security agencies including the Nigerian Air Force, Nigerian Navy, Nigerian Army, Nigeria Police, and the Department of State Services. The project aims to prevent illegal activities within Nigeria's Exclusive Economic Zone (EEZ), enforce maritime regulations, enhance the safety of lives at sea, and prevent illegal activities in the inland waterways.[27] To effectively tackle maritime security issues in Nigerian waters up to the Gulf of Guinea, the project has deployed land, sea, and air assets. DBP operates through a comprehensive maritime security infrastructure, comprising both civilian and military personnel. Its key operational components include the Command, Control, Communication, Computer, and Intelligence (C4i) Centre, as well as marine, air, and land assets. The C4i Centre functions as the operational hub of the DB project and operates around the clock. Its personnel are on constant surveillance of the security systems, namely the C4i and Intelligence systems, to identify and coordinate responses to maritime security threats and other suspicious activities within the Nigerian maritime domain.[28]

To facilitate the implementation of the DBP, several security facilities were put in place, including the Command, Control, Computer, Communication, and Intelligence (C4i) Centre for Domain Awareness and Intelligence gathering, to aid in gathering intelligence information that could aid early detection of impending security attacks and prevention of such attacks. Security equipment was also acquired, including 16 armored vehicles meant to be used for coastal patrol, and a 600-strong Maritime Security Unit having specific

[27] NIMASA, 2020, 'Deep Blue Project: Facing Maritime Security Head-On' (The Voyage, (8) (4) Available Online: https://nimasa.gov.ng/deep-blue-project-facing-maritime-security-head-on/ Accessed 21 November 2021.

[28] Guy Martin, 'NIMASA Getting Ready for Major Deep Blue Deliveries' *Defence Web*, (Nigeria, August 3, 2020) https://www.defenceweb.co.za/featured/nimasa-getting-ready-for-major-deep-blue-deliveries/

training for interdiction. Besides the equipment to be used on land, other equipment was also acquired for use in the air space, these are two Special Mission Aircraft (SMA) for EEZ surveillance, three Special Mission Helicopters (SMHs) which can be used for conducting search and rescue missions, and four Unmanned Aerial Vehicles (UAVs). Some sea assets were also acquired, these comprise two Special Mission Vessels (SMVs) and 17 Fast Interceptor Boats (FIBs).[29]

The DBP is targeted at achieving effective implementation of relevant maritime instruments including IMO Resolutions A. 584(14) and A. 584 (13) which implore state parties to address threats to the safety and security of ships, and persons onboard in case of the former and the latter focusing on the need for efforts to address piracy and armed robbery in adjacent waters.[30] Resolution A.584(14), adopted 20th November 1985, spelt out, "measures to prevent unlawful acts which threaten the safety of ships and security of their passengers and crew", and particularly, resolution A. 545(13) of 17th November 1983, which "urges Governments to take, as a matter of highest priority, all measures to prevent and suppress acts of piracy and armed robbery against ships in or adjacent to their waters, including strengthening of security measures" (IMO, 2019). The DBP also works as a tool for the implementation of maritime safety and security provisions of international law instruments like UNCLOS, the 1988 SUA Convention, its 2005 amendment and its Protocol, the SOLAS Convention, and the ISPS Code. [31]

4.4 Establishment of the Nigerian Government and Industry Joint Working Group (NIWG)

Established in May 2020, the NIMASA/Industry Working Group (NIWG) is the first coordinated effort between industry and the Nigerian Government (represented by

[29] Philip Kyanet, 'President Buhari: Deep Blue Project Offers Robust Infrastructure to Secure our Waters' (NIMASA 10 June 2021) https://nimasa.gov.ng/president-buhari-deep-blue-project-offers-robust-infrastructure-to-secure-our-waters/

[30] Curtis Bell *et al,* 'A Report on Pirates of the Gulf of Guinea: A Cost Analysis for Coastal States' *Stable Seas* (West Africa, November 2021) https://www.unodc.org/documents/Maritime_crime/UNODC_Pirates_GoG_A_Cost_Analysis_for_Coastal_States.pdf

[31] Peter Udochukwu Ohagwa, 'Analysis of Nigeria's Deep Blue Project: a new paradigm for maritime security in the Gulf of Guinea' (Masters Dissertation, World Maritime University, 2022) https://commons.wmu.se/cgi/viewcontent.cgi?article=3099&context=all_dissertations

NIMASA, Ministry of Transport, Nigerian Navy, Interpol, Marine Police, Customs and Nigerian Ports Authority) to address the issues of maritime security. The NIWG is comprised of several agencies of government and stakeholders in the Nigerian maritime industry. These are NIMASA, the Ministry of Transport, Nigerian Navy, Nigeria Ports Authority, Marine Police Interpol, representatives of the Nigerian oil industry (OCIMF), and representatives of the shipping industry ICS, BIMCO, INTERCARGO, INTERTANKO, and the Nigerian Shipowners' Association). The formation of the NIWG is the first collaboration between government agencies and industry stakeholders to address maritime security issues. This has helped to carry along other security agencies like Interpol, Marine Police, Customs, and Nigerian Ports Authority (NPA) to enable them to make their input to address the maritime security problem facing the country.[32] The main goal of creating the NIWG is to speed up efforts to address maritime security threats by facilitating stakeholder interaction, pursuing projects through mutual collaboration, and improving transparency between government and industry in addressing the shared goal of achieving the region-wide permanent prevention of piracy and armed robbery. Therefore, Nigeria and other coastal states in the Eastern Gulf of Guinea will be able to realize the full potential of their Blue Economies if maritime operations and seafarers are kept safe in the area. Another significant advancement made under the auspices of the NIWG is NIMASA's ability to collaborate directly with the IMO in the efforts to implement a National Maritime Security Strategy. As a result, the Maritime Industry's Best Management Practices West Africa Guidelines were approved.[33]

4.5 Ship Documentation Compliance and Security Levels

Since the domestication of the ISPS Code, NIMASA has been collaborating with other security operatives to see to its implementation. This includes measures adopted to

[32] 'NIMASA and Industry Working Group claim progress on maritime security efforts' *Safety4Sea* (London, 12 October 2020) https://safety4sea.com/nimasa-and-industry-working-group-claim-progress-on-maritime-security-efforts/

[33] 'Nigerian Government and Industry Joint Working Group (NIWG) statement on maritime security collaboration' (OCIMF, 9th October 2020) https://www.ocimf.org/news-and-events/news/bulletins/nigerian-government-and-industry-joint-working-group-niwg-statement-on-maritime-security-collaboration.

prevent or respond timorously to any security threat within the Nigerian maritime domain. These include the requirement that ship Captains submit Security-Related Pre-Arrival (SRPA) information to the Designated Authority (DA) at least 48 hours before the ship arrives at the port. Also, the Captain of the ship must submit a DOS to the PFSO within 72 hours preceding the arrival of the ship at the port and such shall be sent to the DA not later than 48 hours before the arrival of the ship. Every ship shall a 24-hour surveillance to detect any movement or threat that may not be spotted via the radar. A pre-departure search shall be conducted on every vessel before leaving the port, the ship shall ensure that the Automatic Identification System is turned on, to ease communication and response from the NN or any other NN or other Regional Maritime Rescue Coordination Centre (RMRCC). [34]

5. Challenges Undermining Effective Implementation of the ISPS Regulation Code in Nigeria

Certain limitations are inherent in the wording and provisions of the ISPS Code, which are capable of undermining the effectiveness of the Code in addressing modern security threats. While there are other limitations relating to the provisions made for its implementation at the national level. These limitations will be examined as follows:

5.1 Inherent Limitations in the Provisions of the ISPS Code

One of the inherent limitations of the ISPS Code is the inability to identify and capture emerging ship and port security threats and make adequate provisions to address them. At the time of enacting the ISPS Code in 2004, the possibility of a cyber security attack in the shipping industry was not immediate. However, the extent of development of modern technology today makes cyber security attacks a major potential threat to the shipping industry. Today, cargo ships have increased capacity and they are interconnected due to the monitoring software used by companies often employed for online monitoring of those ships. Furthermore, international business transactions are largely conducted online and this implies further interconnectedness, through which the shipping industry may be

[34] Osagie Edward, 'NIMASA Issues Advisory to Forestall Maritime Threats, Stowaways' *NIMASA Report* (Nigeria, 4th November 2021) https://nimasa.gov.ng/nimasa-issues-advisory-to-forestall-maritime-threats-stowaways/

exposed to cyber-attacks. For example, in 2017, Maersk, a global shipping company lost over $300 million (three hundred million US Dollars) to the NotPetya attack, in the aftermath of cyber warfare between Ukraine and Russia. Considering that Maersk is a shipping giant calling at over 76 ports across the globe and accounting for over 800 cargo ships which is about one-fifth of the global trade volume, the cyber threat could have gone out of hand.[35]

The downside is the avenue for security attacks in cyberspace to spread easily thereby causing large havoc. It is therefore necessary for the ISPS Code to contain provisions capable of preventing cyber security attacks and in the event of such an attack, curtailing its spill-over effects. In this age of digital technology and digital transactions, it is inadequate for ship and port security regulations to omit provisions capturing cyber security threats.

Another inherent limitation of the ISPS Code is the provision relating to the security assessment of cargo at the ports. PSA is to be conducted to identify dangerous goods meant to be security targets or to be used for launching security attacks. This includes explosive and dangerous materials that may be stored in a port. It is therefore crucial to implement security measures to prevent threats to and from dangerous materials. However, while ports and contracting governments are responsible for ensuring adequate implementation of these measures, it would require that security measures and risks be assessed constantly. It may however not be feasible to reassess holistic port security every time new cargo arrives. Therefore, the security assessment of transiting cargo mainly accounts for stationary risks rather than transitory and adaptive threats.

It is also an observable limitation of the ISPS Code is the restricted applicability to SOLAS ships, and the deliberate exclusion of government ships, warships, fishing vessels, and vessels weighing less than 500 tons. Meanwhile, the vessels expressly excluded are found everywhere within the maritime domain, thereby compromising the security operations of the port states and those vessels to which the Code applies.

[35] Jill Leovy, 'Cyberattack cost Maersk as much as $300 million and disrupted operations for 2 weeks' *Los Angeles Times* (USA 17 August 2017). https://www.latimes.com/business/la-fi-maersk-cyberattack-20170817-story.html

Although the IMO considered the adoption of procedures for the safe operation of non-SOLAS ships, however, because the ISPS Code does not prescribe mandatory guidelines or minimum standards, regulation of the activities of such ships was resolved to be at the discretion of the contracting government.[36] In the case of Nigeria, the ISPS Code regulation is silent on the fate of non-SOLAS ships, this leaves a lacuna that is capable of constituting implementation challenges as well as exposing the country's maritime space to security threats in the future.

Another obvious limitation of the ISPS Code is that the measures prescribed therein are strictly preventive and less responsive to attacks. Although there are skirmishes of reference to access control, the ISPS Code lacks substantial provisions on how to respond to security attacks.

The ISPS Code does not mention the aftermath of security incidents.

5.2 Lack of Centralized System of Communication of Adopted Security Level

One of the fundamental provisions of the ISPS Code is the obligation imposed on contracting governments to decide the security level to apply to the ship and port facility, which may be security levels 1, 2, and 3. Directly connected to this is the requirement that a ship shall only dock at a port with the same security level as the ship and this must be promptly communicated through the DOS, before entering the port territory. A ship having a lower security level must increase its security level to be granted access to the port. The process of increasing security level is costly, time-consuming, and may not be immediately achievable at the point of entering a port. However, the process of communication of security level becomes cumbersome in the absence of a database, duly updated to enable shipping companies to take necessary steps to upgrade ship security as the need may rise or designate ships to ports at commensurate security level. This is capable of hindering all the parties involved from preparing and implementing proper

[36] Rupert Herbert-Burns, Sam Bateman and Peter Lehr, 'Lloyd's MIU Handbook of Maritime Security' (2008) (CRC Press, Illustrated).

security measures on visiting vessels.[37] The ISPS Code only requires that information about the security levels be provided when a vessel approaches the port, which limits its effectiveness in achieving its core objective of facilitating early and efficient exchange of maritime security-related information at national, regional, and international levels.

More recently, NIMASA introduced a system for checking illegal port activities which requires that the captain of every ship present their DOS to the PFSO of the point of call within a maximum of 72 hours before arrival and such shall be further conveyed to the DA within 48 hours. Furthermore, the SSO must ensure that 24-hour surveillance is maintained on the ship to detect any illegal movements by persons, small boats, or skiffs that the radar may be unable to capture.[38] Although these are important developments, however, where there is a disparity between the security level of the ship and the port being approached, 72 hours may not be sufficient to beef up security if needed by the port or the ship, thus causing a hindrance to the transaction.

Moreover, regardless of a vessel's level of preparedness in terms of security measures, maritime security threats such as armed robbery can occur at any time in the course of navigation or at anchorage. Thus, the effectiveness of the ISPS Code may be dependent on available information through statistics on the status of the vessel during an attack. When information about security incidents in a particular country is not available, analyzing statistics on attacks that occur while ships are at berth or anchor can be a useful way to evaluate the effectiveness of the ISPS Code.

5.3 Inadequate Skilled Manpower

Implementation of the ISPS Code regulation, at a level that will enhance the state of port security requires specialized training. One of the major issues capable of hindering the adequate implementation of the ISPS Regulation in Nigeria is the lack of the requisite technical know-how among the security and port officers. However, efforts are being

[37] Ersi C. Likmeta, 'ISPS CODE: The Effectiveness, Its Drawbacks and Potential Improvements' (United Nations, January 20, 2022) https://nomikospalmos.wordpress.com/2022/01/20/isps-code-the-effectiveness-its-drawbacks-and-potential-improvements/

[38] Osagie Edward, 'NIMASA Issues Advisory to Forestall Maritime Threats, Stowaways' (NIMASA, November 2021) https://nimasa.gov.ng/nimasa-issues-advisory-to-forestall-maritime-threats-stowaways/

made to address this issue, the efforts include the establishment of a Port Training Institute at Apapa Dockyard, under the auspices of the NPA, through which a marine harbor situation center was commissioned for the training of NPA staff. This training is expected to enhance the capacity of operation personnel, pilots, marine officers, tug masters, and radio signal operators, to improve their ability to carry out port security operations. It also includes the adoption of stimulators to verify the capacity and suitability of berths available to shipping lines and their operation.[39]

Furthermore, there was a series of training organized under the auspices of the West and Central Africa Port Security Project (WeCAPS). WeCAPS is an initiative adopted to reduce vulnerabilities and reinforce the capacity to respond to maritime accidents and security attacks to enhance safety and security at sea. Assessment of the Lagos ports was conducted, particularly the Lagos port complex (Apapa) and Tin Can Island port complex, to ascertain the readiness of the ports to detect security threats and respond to such threats. The assessment produced a long list of security training that is required, including training of officials to aid compliance with the obligations under the ISPS Code. These include mandatory training of port staff prescribed in the ISPS Code, particularly provisions of articles 18.1 and 18.2. The former is the training of the PFSOs. There is a need to train Senior Security Staff on the conduct of security inspection, cyber security situation analysis, and responses to cyber threats. Other training that is required are basic pilot training for patrol crews, training on the conduct of evaluation of security situations and risks, surveillance monitoring, and procedures for response to port security threats, ship security threats, and security threats in the waterway. In the event of a suspected threat, procedure for control of access to restricted areas, management, and use of Integrated Security Management Systems The exhaustive list of areas where training is lacking shows the lack of readiness for adequate implementation of the ISPS Regulation and points to the lack of political will.[40]

[39] 'NPA Port Training Institute Commissions Marine and Harbour Simulation Centre' (Maritime News Roundup, June 2019) (Dreging & Drill Haull), https://www.ddhmag.com/nigerian-maritime-news-roundup/

[40] 'Technical support to port security in the port Lagos, Nigeria - West and Central Africa port security project (M/W)' (Département Paix, stabilité, sécurité - P2S > Pôle Menaces globales et criminalité

The problem of inadequate skilled manpower was related to inadequate intelligence and hinted on by the Chief of Naval Staff, when he said that the vast area of the NMD poses a challenge for effective policing of the area. Therefore, intelligence plays a crucial role in ensuring maritime security. Due to limited resources and the need to meet operational mandates while saving costs on logistics, the Navy relies on both human and technologically-driven intelligence.[41]

5.4 Lack of Adequate Funding

The purchase of maritime security equipment is capital-intensive and requires deliberate acts by the government, however, lack of adequate funding makes it difficult to meet the requirement. Meanwhile, the ISPS Code has specific requirements that shall be met by installing and purchasing security equipment, these equipment are expensive but failure to acquire them may hinder ports in developing states in their efforts to implement the provisions of the Code. Some of the Port Facility Security equipment includes Fencing, gates, vehicle barriers and lighting, Closed-circuit television (CCTV), Communications and x-ray equipment, Archway and hand-held metal detectors, Perimeter/intruder detection systems, Automated access control equipment (e.g. identification readers or keypads), Information and computer protection systems, Explosive trace and vapor detection equipment. [42]Also, the Code specifies three security levels 1, 2, and 3 with the requirement that the ship be berthed at a port having the same security level. In most of the Nigerian ports, there is a need to increase the security level, in the wake of the recurring armed robber and other attacks at the ports. However, increasing the level of security will come at a huge cost, requiring deliberate investment and requisite political will. Most developing countries including Nigeria have found it difficult to pump money into increasing their security level as this will affect the profit obtainable from the ports. On the other hand, the failure to enhance port security increases port vulnerability and makes the ports less attractive to investors and ships calling at the port.

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organisée, (24/06/2022) https://expertise-france.gestmax.fr/8037/1/technical-support-to-port-security-in-the-port-lagos-h-f

[41] Chief of Naval Staff, Vice Admiral Emmanuel Ogalla (March 15th 2023)

[42] 'Port Facility security' (Seably) https://www.seably.com/courses/port-facility-security-personnel-awareness/lessons/0/steps/2 3rd September 2020.

5.5 Lack of Adequate Port Security Equipment and Maintenance Deficit

The full implementation of the ISPS Code places a huge responsibility on the government in terms of the security equipment required to be put in place. Whereas the Nigerian Government has been proactive in its efforts to implement the requirements of the Code, as a result of which significant progress has been made, there is a lot that is yet to be done. Similarly, in 2020 some maritime security equipment was donated by the United States to the NN to provide support to enhance the capacity of the NN to secure the Nigerian coastline. These equipment includes best-in-class sensors and radars, communications and networking equipment, thermal-imaging cameras, and software that can be harnessed to enhance the capacity to counter imminent threats.[43] However, Nigeria has seven ports and several port terminals and facilities that require adequate security as a result, there is a need to purchase other security equipment to aid the full implementation of the ISPS Code.

Recently, the European Union (EU) called out the Nigerian government regarding the security equipment that ought to be put in place to aid the full implementation of the ISPS Code and enhance port security. These include the installation of CCTV cameras at different parts of the ports to enhance the much-required 24-hour surveillance, the erection of perimeter fencing of the port, and putting on ground access badges to monitor and prevent illegal access to the port premises.[44]

5.6 The Challenge of managing Vessels outside the Scope of the ISPS Code

The ISPS Code expressly excludes some vessels, to which its provisions will not be applicable, these are commercial vessels and barges having less than 500gt weight, warships, manual fishing boats, and old fishing boats that are used for non-commercial purposes. The knowledge of these types of vessels that constitute exceptions in the Code may be used to the advantage of attackers who may use such boats and vessels to

[43] Soonest Nathaniel, 'U.S Boosts Nigeria's Maritime Security With New Surveillance Equipment' (Channels News, 11 December 2022) https://www.channelstv.com/2020/12/11/u-s-boosts-nigerias-maritime-security-with-new-surveillance-equipment/

[44] Adedapo Adesanya, 'EU Tasks Nigeria on Seaport Security' *Business Post* (Lagos, 3rd May, 2023) https://businesspost.ng/general/eu-tasks-nigeria-on-seaport-security/

perpetrate attacks. This leaves the contracting state with the option to cover such boats in the domesticated version of the Code. However, Nigerian ISPS regulation did not capture those vessels. As a result, attacks may be launched using those vessels thereby making it difficult to have full implementation.

To summarize, the ISPS Code does not apply to several types of vessels that are susceptible to terrorist attacks or exploitation. These vessels comprise fishing vessels, container ships built before July 2001, vessels not involved in international voyages, and cargo ships with tonnage of less than 500.[45] It's important to note that the ISPS Code does not cover yachts and marinas. This is because yachts are typically less than 500 tons, and marinas are not equipped to handle ISPS vessels. However, small vessels and ports can threaten security as they fall outside the scope of the ISPS Code. Even without domestic legislation or law enforcement, it's still necessary to address the potential threats posed by non-SOLAS vessels. To this end, the IMO has provided non-mandatory guidelines to help mitigate these risks.[46]

6. Conclusion

The ISPS Code remains a pivotal instrument for ensuring maritime safety and security, yet its broader developmental relevance often goes underappreciated. In the Nigerian context, the Code's implementation has revealed deep-seated structural, institutional, and capacity-related deficiencies that hinder both maritime security and economic progress. The persistence of these challenges has significant implications for the realization of SDG 8 in the maritime sector, as insecure and inefficient port environments deter investment, disrupt trade, and limit decent employment opportunities for maritime workers.

Bridging these gaps requires a deliberate shift from policy rhetoric to actionable practice. Strengthening regulatory oversight, enhancing inter-agency coordination, and investing in

[45] McNaught, Fiona, 'Effectiveness of the International Ship and Port Facility Security (ISPS) code' in addressing the maritime security threat (*Geddes Papers* 200 (2005)) 89-100.

[46] Damir, Z. E. C., Vlado FRANČIĆ, and Marija ŠIMIĆ HLAČA, 'Ports Security Organization and Functionality–Implementation of the ISPS Code in Medium and Small Countries' [2010] (28) *Human Systems Integration to Enhance Maritime Domain Awareness for Port/Harbour Security* 41.

technical and human capacity development are essential steps. Moreover, integrating the ISPS Code into Nigeria's broader economic and labour policies can create a synergistic framework that promotes security, productivity, and sustainable employment.

In conclusion, operationalising the ISPS Code effectively is not merely a maritime security imperative, it is also a developmental necessity. By aligning implementation strategies with the goals of SDG 8, Nigeria can transform its maritime sector into a secure, inclusive, and economically vibrant space that supports national growth and global competitiveness. Although efforts to implement the ISPS Code has been continuous, including the area of intelligence gathering where the NN is using area surveillance to inspect the region and identify vessels that are illegally positioned for this purpose. However, more efforts must be put-in to reaslise SDG 8, by creating secured work space needed to enhance the productivity of the sector and aid economic growth and development.

IMPROVING THE INSTITUTIONAL AND LEGAL FRAMEWORKS FOR CONSUMER CREDIT IN NIGERIA FOR THE BENEFIT OF INDIVIDUALS AND SMALL & MEDIUM ENTERPRISES.

Ayokunmi Comfort Thomas* and Kolapo Omidire**

Abstract

Consumer credit which allows people to purchase goods or services before earning the money to pay for them, is a practice that has long been recognised as an essential tool for stimulating demand and providing comfort to people worldwide. It plays a vital role in developed economies by enabling individuals to access funds for consumption, education and emergencies, thus driving demand, production and economic growth. In Nigeria, the consumer credit landscape has expanded in recent years with increased participation from banks, microfinance institutions and financial technology (fintech) companies. However, the growth in Nigeria is hindered by structural challenges such as high interest rates, fragmented credit information systems, and limited consumer protection. Notably, Nigeria lacks a comprehensive legislative framework specifically addressing consumer credit unlike countries such as the United Kingdom. This article conducts a critical evaluation of the institutional and legal frameworks applicable to consumer credit in Nigeria with a view to addressing the shortcomings forestalling an effective consumer credit system, making recommendations for the improvement of the institutional and legal framework. The study adopts a doctrinal research approach, drawing on texts in primary and secondary materials, with appropriate references to experience on the subject in some jurisdictions where the consumer credit system has been developed to the benefits of economies and the people. The study finds that while multiple institutions are involved in the provision of credit to individuals and small and medium enterprises, the absence of unified regulation or legislation hampers effectiveness. The paper concludes that a consolidated consumer credit law, improved credit infrastructure and expanded access to credit are required to foster financial inclusion and economic resilience in Nigeria.

Keywords: Consumer Credit, Financial Inclusion, Financial Institutions, Non-Bank Financial Institutions, Nigeria, SMEs.

1 Introduction

Since President Bola Ahmed Tinubu resumed office, he has been working tirelessly towards improving the state of consumer credit in Nigeria. On December 21, 2023, a Technical Working Committee was established by the Presidential Council on Industrial Revatalisation, comprising key stakeholder members from the Central Bank of Nigeria (CBN), the National Identity Management Commission (NIMC), and the Federal Competition and Consumer Protection Commission (FCCPC)

[1] to evaluate the existing institutional framework for consumer credit, and make recommendations to make it effective.[2] The committee's mandate was a timely and strategic initiative aimed at investigating the present state of consumer credit, identifying the multifaceted challenges faced by both consumers and financial institutions alike, and proposing a comprehensive regulatory framework that can significantly improve the consumer credit landscape.[3]

During the inaugural meeting of the Technical Working Group for Consumer Finance, Dr. Doris Uzoka-Anite reportedly pointed out that -

> ... an efficient consumer credit system works to improve market efficiencies and fill gaps in consumption and productivity by providing consumers immediate access to credit, allowing them to purchase ahead of ability. The absence of a well-structured consumer credit system has been a significant impediment to financial inclusion and economic prosperity. Nigeria has numerous financial institutions and credit schemes, but many Nigerians still face substantial hurdles in accessing credit due to stringent eligibility criteria, high interest rates, identity-

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[1] Sami Tunji, 'FG introduces N100 billion Consumer Credit Fund in 2024 Budget' (2024) <https://nairametrics.com/2024/01/02/fg-introduces-n100-billion-consumer-credit-fund-in-2024-budget> accessed 21 April 2024.

[2] Business Day, 'FG moves to improve Consumer Credit in Nigeria' *Business Day* (21 December 2023) <https://businessday.ng/news/article/fg-moves-to-improve-consumer-credit-in-nigeria/> accessed 21 April 2024.

[3] ibid.

> related challenges, fragmented data sources for proof of livelihood and financial worth, lack of awareness or understanding of credit processes and inadequate credit available for lending.[4]

To kick start the process of improvement, the Federal Government (FG) further included a 100 billion Naira consumer credit fund in the 2024 budget in response to the growing cost of living and increasing borrowing trends among Nigerians.[5] The move was made by the FG as statistics revealed that Nigerians borrowed approximately 740 billion Naira from banks between January and September 2023, reflecting the economic challenges posed by persistent inflation and the dwindling purchasing power of the Naira.[6] These figures indicate that banks hardly scratch the surface in meeting the credit finance needs of individuals and small and medium enterprises (SMEs), especially when the amount advanced to that segment is compared with the total volume of credits provided by Deposit Money Banks (DMBs), which stood at 71.7 trillion Naira at the end of the first quarter in 2023.[7] The realignment of consumer credit to the needs of people and businesses as envisaged by the credit fund is therefore a necessity to drive the government's effort to stimulate economic growth and alleviate financial challenges faced by individuals in the country.[8]

In a move similar to the establishment of a credit fund for consumer credit discussed above, President Bola Ahmed Tinubu, on April 3, 2024, signed into law the *Student Loans (Access to Higher Education) Act* 2024[9] to provide timely and essential interest free loans to students in need, through the Nigerian Education Loan Fund (NELFUND) enabling them to pursue their educational goals without undue financial stress.[10] It was

[4] ibid.
[5] Tunji (n 1).
[6] ibid.
[7] See 'Nigerian Deposit Insurance Corporation (NDIC) Financial Performance3 and Condition of Deposit Money Banks in the First Quarter 2023' <https://ndic.gov.ng/wp-content/uploads/2024/02/NDIC-Quarterly-Vol-38-No-12-2023-Financial-Performance-and-Condition-of-Deposit-Money-Banks-in-the-First-Quarter-2023.pdf> accessed 16 August 2025.
[8] ibid.
[9] See <https://statehouse.gov.ng/news/in-detail-the-student-loan-access-to-higher-education-act-2024/> accessed 16 August 2025.
[10] See 'Simple Steps to Secure Your Student Loan' available at <https://nelf.gov.ng https://nelf.gov.ng> accessed on 16 August 2025; See also Tosin Oyediran, 'NELFUND approves student loan disbursement'

estimated that the beneficiaries of the first batch of NELFUND would be about 1.2 million Nigerian students in tertiary institutions and government-recognised skill acquisition centres.[11]

Notwithstanding these initiatives, access to credit by individuals and SMEs remain an intractable challenge. It is against this backdrop that this article undertakes a critical examination of the issues involved, with a view to ultimately recommend panacea that will provide workable solutions to plug the gaps identified in the course of the study thereby improving the law in this important area of development. The article is in five parts. In addition to this introduction, parts 2 and 3 consider the legal and institutional frameworks for consumer credit in Nigeria respectively each pointing out the bane of the effectiveness of each. Part 4 is an extensive consideration of the challenges forestalling the effective provision of credit to individuals and SMEs in Nigeria. Part 5 contains a conclusion based on the previous discussion of issues, and recommendations to improve the law applicable to consumer credit to individuals and SMEs in Nigeria.

2 Legal Frameworks for Consumer Credit in Nigeria

The legal framework regulating consumer credit services in Nigeria comprises constitutional, legislative and regulatory provisions designed to promote a stable lending environment and protect consumers. The need to facilitate a stable lending environment arises because operators in the credit industry lend money others have saved; therefore, it is essential to ensure that lenders can recover the money lent. The Constitution is the source from which the legislative and regulatory provisions derive their authority. Its relevance is discussed in the next section.

Punch (27 June 2024) <https://punchng.com/just-in-nelfund-approves-student-loan-disbursement/> accessed 15 July 2024.

[11] Vanguard, 'Student loan: 1.2m beneficiaries to be in first batch' *Vanguard (*18 April 2024) <https://www.vanguardngr.com/2024/04/students-loan-1-2m-beneficiaries-to-be-in-first-batch/> accessed 16 July 2024.

2.1 The Constitution of the Federal Republic of Nigeria 1999

The *Constitution of the Federal Republic of Nigeria* 1999,[12] is the foundation upon which every law in Nigeria derives its validity. This was encapsulated in section 1(1) of the CFRN, providing that -

> This Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

Although the CFRN does not explicitly address the issue of consumer credit, it is still the ultimate legal authority that validates the creation and enforcement of laws and policies addressing consumer credit and more broadly, access to credit. The CFRN is however not completely silent on the issues affecting the economic and social interest of the people. Although not justiciable,[13] sections 16 and 17 of the CFRN imposes obligations on the governments at federal, state and local levels to *inter alia* –

> ...control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;[14] [and] without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.[15]

Similarly, section 17(3) (a) of the CFRN in providing for the social objectives of the government requires the government to direct its policy towards ensuring that "all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment."

[12] Herein after referred to as the CFRN.
[13] See section 6(6)(c) CFRN.
[14] See section 16(1)(b) CFRN.
[15] See section 16(1)(d) 1999 Constitution.

The provisions therefore justify that the legislature and government agencies should put in place appropriate regulations and policies which will facilitate access to credit to all persons as that is one of the means by which people could participate in economic activities as required by the CFRN. Specific laws like the *Credit Reporting Act 2017*[16]and the *Banks and Other Financial Institutions Act 2020*[17] complement these constitutional provisions by regulating the collection and sharing of credit information, ensuring that consumers have rights regarding their credit data. The relevant statutes are discussed in the next succeeding paragraphs.

2.2 The Banks and other Financial Institutions Act 2020

The *Banks and Other Financial Institutions Act* 2020[18] is a legal instrument applicable to banking and financial services in Nigeria including consumer credit provided by licensed institutions. BOFIA bestows on the Central Bank of Nigeria (CBN) powers to grant[19] and revoke licenses to commercial banks and other financial institutions operating in Nigeria and regulation of lending activities.[20] While not exclusively a consumer credit law, BOFIA contains provisions that protect consumers and promote responsible lending practices. BOFIA aims to ensure that financial institutions operate transparently, fairly and responsibly safeguarding consumers' rights and interests in credit transactions.[21] Section 2 of BOFIA 2020 defines "banking business" to include providing loans, advances and credit facilities. This section sets the scope for activities regulated under BOFIA directly impacting consumer credit products offered by banks. Section 30 of BOFIA empowers the CBN to issue regulations, guidelines, and policies aimed at promoting competition within the Nigerian financial system. This affects consumer banking by ensuring a competitive market environment that can lead to better loan terms and protection for consumers. Section 102 of BOFIA establishes a Special Tribunal to enforce and recover eligible loans from banks and financial institutions. This Tribunal

[16] Herein after referred to as CRA 2017.
[17] Herein after referred to as BOFIA 2020.
[18] BOFIA 2020 Act No 5 LFN 2020.
[19] See BOFIA 2020, s 3.
[20] See BOFIA 2020, s 5.
[21] See BOFIA 2020, s 30.

streamlines and speeds up loan recovery processes, reducing delays typical of regular courts. It helps protect lenders' interests, encourages timely loan repayments, and promotes financial stability by ensuring expert handling of credit enforcement cases in consumer banking and credit.

2.3 Credit Reporting Act (CRA) 2017

The *Credit Reporting Act*[22] provides a legal framework for credit reporting and promotes financial discipline in the Nigerian economy. The Act sets standards and conditions for the establishment, regulation and operations of credit bureaus in Nigeria.[23] One of the objectives of the CRA 2017 as covered by section 1(e) is to promote responsibility in the credit market by encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers and discouraging reckless credit granting by credit providers and contractual default by consumers. Any person or organisation desirous of establishing, operating or conducting business as a credit bureau must be duly incorporated as a company limited by shares under the relevant laws of Nigeria. Upon being licensed, a credit bureau may perform all or any of the functions set out in section 3 of the Act. The CRA 2017 safeguards both borrowers and lenders in the credit market. The CRA 2017 protects borrowers by ensuring their credit information is accurate, confidential, and accessible for correction while promoting responsible lending to prevent over-indebtedness.[24] For lenders, it provides reliable access to borrowers' credit histories, legal safeguards against fraud and improved market transparency.[25]

2.4 The Secured Transactions in Movable Asset Act (STMA) 2017

The *Secured Transactions in Movable Assets Act* (STMA) 2017 was enacted by the National Assembly to fulfill the following objectives set out in section 1 of the STMA, one of which is facilitating access to credit secured with movable assets.[26] The STMA is a legal framework for consumer credit in Nigeria especially in relation to improving

[22] (2017) Act No 3 LFN 2017.
[23] See the CRA 2017, s 1(1).
[24] See the CRA 2017, s 9.
[25] See the CRA 2017, s 12.
[26] See the STMA 2017, 1(e).

access to credit by enabling borrowers/consumers to use movable assets, including tangible and intangible property other than real property as collateral.[27] The STMA was enacted to enable individuals particularly MSMEs who do not readily have immovable assets preferred by financial institutions to easily access credit by entering into secured transactions using their movable assets such as their machinery, vehicles etc. as collateral to secure loans.[28] To achieve this purpose, a National Collateral Registry headed by a Registrar was established by section 10 of the STMA to supervise and administer the operational provisions of the STMA, and to manage the Collateral Registry.[29] The Collateral Registry serves as an information storehouse about security interests in movable assets used by individuals.[30]

2.5 Assessment of the Legal Framework for Consumer Credit

The absence of a direct and specific provision in the 1999 Constitution in relation to consumer credit may be a reason why the sector is not so developed in the financial services industry. The absence of a constitutional provision exacerbates the potential for credit discrimination, exploitation and financial exclusion in the long run. Hence, there is a need for a justiciable constitutional provision recognising access to credit or at minimum, its protection as a socio-economic right as a matter of economic justice like what is obtainable in South Africa's Constitution where socio-economic rights are not only justiciable but well protected.[31] This could be achieved by making the relevant sub-sections of sections 16 and 17 of the 1999 Constitution justiciable.

Although the *Central Bank of Nigeria (CBN) Act* 2007 does not contain any explicit provision focused on consumer credit, it remains impossible to meaningfully discuss consumer credit in Nigeria without reference to the CBN as the apex financial regulator.

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[27] See the STMA 2017, s 63(1).
[28] Merit Okafor, 'Secured Transactions in Movable Assets Act 2017: Impact on finance transactions' *Business Day* (13 April 2023) <https://businessday.ng/news/legal-business/article/secured-transactions-in-movable-assets-act-2017-impact-on-finance-transactions/> accessed 22 July 2025.
[29] See the STMA 2017, s 10(3).
[30] See the STMA 2017, s 11.
[31] See the 1996 South African Constitution, ss 26, 27, 7(2); Although, there is no explicit mention of access to credit in the South African Constitution, it is recognised as part of the broader socio-economic right structure that is justiciable and protected.

The Bank plays a central role in shaping monetary policy, setting interest rate guidelines and supervising credit reporting systems all of which directly affect consumer credit access. For instance, section 57 of the *CBN Act*[32] allows banks to request credit information only when loan amounts exceed one million Naira, effectively excluding many low-income borrowers from the benefits of credit data-driven risk assessment and reducing the incentive for banks to report smaller consumer loans. This undermines the inclusiveness and comprehensiveness of Nigeria's credit reporting ecosystem. Furthermore, despite the existence of licensed private credit bureaus, there is no centralised and publicly managed credit information system in the financial services industry within the CBN. While section 35 mandates that the CBN disclose the Monetary Policy Rate (MPR), the absence of a consumer lending rate monitored across financial institutions leads to volatility and uncertainty, as interest rates vary depending on lenders' discretion.

Meanwhile, BOFIA 2020 primarily reinforces the regulatory powers of the Central Bank of Nigeria (CBN) but lacks explicit provisions addressing consumer credit protection or facilitation thus leaving consumer credit largely unregulated and consumers exposed to potential unfair lending practices. Although section 102 of BOFIA 2020 provides for the establishment of a tribunal for the enforcement and recovery of eligible loans,[33] the Act fails to provide clear procedural guidelines on how this tribunal will operate, who qualifies as an eligible borrower. This lack of details undermines an effective enforceability of the provision.

Furthermore, BOFIA 2020 does not set specific standards for fair lending practices which are critical for protecting consumers from exploitative lending. The implication is that the BOFIA 2020 impact on consumer credit is limited and highlights the need for a consolidated legal framework specifically addressing consumer lending practices.

The Credit Reporting Act 2017 plays a vital role in Nigeria's consumer credit landscape by establishing the legal basis for credit information sharing aimed at enhancing

[32] (2007) CAP C4, LFN 2007.
[33] See BOFIA 2020, s 102.

transparency, improving risk assessment and facilitating access to credit. However, while the CRA 2017 mandates that credit bureaus must obtain the consent of the data subject, a critical implementation gap lies in the practical verification of consent because the law lacks clear guidelines on what constitutes a satisfactory form of consent. This creates ambiguity for credit bureaus and users in validating and enforcing consent. Moreover, given the large volume of data subjects handled by credit information users like financial institutions, obtaining individual written consent for every transaction is impractical.

Equally important, it remains unclear how credit bureaus are to ensure that entities requesting data genuinely intend to use the information for lawful, permissible purposes, especially given the growing number of fintech lenders and informal financial actors operating with minimal oversight. For a law that touches directly on privacy, financial inclusion and borrower rights, stronger regulatory enforcement, digital safeguards and consumer redress mechanisms are essential to ensure that its objectives are not just theoretical nut genuinely achieved in practice.

Although the STMA 2017 is not explicitly focused on consumer credit, it plays a pivotal role in facilitating credit by allowing security interests over movable assets. However, the STMA raises critical concerns one of which is extending security interests to proceeds of collateral without requiring that these proceeds be specifically described in the security agreement, which presents overreaching borrowers' rights and reducing clarity on what is encumbered. In addition, section 13(3) of the STMA presumes that the mere existence of a security agreement suffices to establish consent from the grantor for such interests, potentially compromising genuine informed consent, especially for ordinary consumers who may not fully understand the implications.

The effectiveness of consumer credit in Nigeria depends on coordinated institutional frameworks which will be discussed in the next part.

3 Institutional Frameworks for Consumer Credit

The institutional framework for consumer credit must be considered from two perspectives. First, there are institutions saddled with the regulation of the operators, and

secondly, there are different classes of operators to provide consumer lending services to different segments of the population. The operating institutions are often financial institutions providing credit facilities to individuals for personal consumption purposes such as purchasing goods, paying for services or covering expenses, and to SMEs for business purposes. These institutions typically offer various types of loans, including personal loans, auto loans and credit cards tailored to meet the needs of consumers in Nigeria. These institutions are considered in the following sections of this part.

3.1 The Central Bank of Nigeria

The Central Bank of Nigeria (CBN) was established by the Central Bank Act 2007, as the apex regulatory authority for the financial sector in Nigeria.[34] The CBN oversees and regulates the operations of banks and other financial institutions, including those offering consumer credit services.[35] The CBN sets policies, regulations[36] and guidelines aimed at promoting financial stability, fostering economic growth and protecting consumers' interests in the credit market.[37] This includes supervising credit bureaus,[38] setting lending guidelines and enforcing compliance with consumer protection laws. The CBN Act 2007 empowers the CBN to regulate money lending activities, and to provide guide for setting the applicable interest rates for commercial banks, financial companies and microfinance banks.[39] As the apex financial sector regulator, the CBN plays a crucial role in facilitating the provision of consumer credit through various channels by promoting financial inclusion and supporting economic growth. By regulating and supervising financial institutions, the CBN facilitates access to credit for individuals and small businesses, thereby enhancing financial stability and development in Nigeria.

[34] See the CBN Act 2007, s 1(1) and s 1 (3).
[35] See the CBN Act, s 1(3).
[36] An example of such regulation is the CBN Consumer Protection Framework 2016.
[37] See the CBN Act 2007, s 33(1)(b).
[38] See the CBN Act 2007, s 57.
[39] See the CBN Act 2007, s 33(1)(b) which covers the regulatory authority of the CBN which includes money lending practices, loan classifications, risk managements and interest rate policy.

3.2 The Nigerian Consumer Credit Corporation (Credicorp)

The Nigerian Consumer Credit Corporation (Credicorp) is a Development Finance Institution established by the Federal Government of Nigeria,[40] whose sole mission is to accelerate consumer credit access to 50% of working Nigerians by 2030.[41] Credicorp plans to achieve this objective by addressing cultural barriers to accessing consumer credit in Nigeria, and catalysing the market with capital, guarantees and policy.[42]

Credicorp including its consumer credit guarantee fund, will be working closely with the Central Bank of Nigeria (CBN), which provides liquidity to banks and other financial institutions, enabling them to lend more to consumers. The CBN issues guidelines and regulations to ensure consumer credit is granted responsibly, with considerations for borrowers' income, debt-to-income ratios and credit history. It sets the Monetary Policy Rate and issues guidelines including interest rate caps to ensure affordable and responsible lending practices.[43] Additionally, Credicorp collaborates with other players in the financial services sector, including those serving as identity management organisations, credit registries, fintechs, consumer protection agencies, and policy makers regarding the actualisation of its objectives.

As indicated above, the second aspect of the institutional framework for consumer credit is the various categories of the operators. These are discussed in the next section of this part.

[40] Oluwakemi Abimbola, 'CREDICORP wins Credit Access Company of the Year award' *Punch Newspaper* (17 October 2025) <https://www.google.com/amp/s/punching.com/credicorp-wins-credit-access-company-of-the-year-award> accessed 17 October 2025.
[41] Credicorp, 'Nigerian Consumer Credit Corporation' (2024) <https://www.credicorp.ng/about> accessed 6 May 2024.
[42] ibid.
[43] CBN Act 2007 s 12; See As of March 2024, the CBN interest rates are as follows: Monetary Policy Rate (MPR) IS 24.75%; Prime Lending rate-15.70%; Maximum Lending Rate-29.38%.

3.3 Commercial Banks

A commercial bank is a financial institution that carries out the operations related to the deposit and withdrawal of money for the general public, providing loans for investment and other such activities.[44] Lending and borrowing are the two major characteristics of commercial banks.[45] The bank receives the deposits, constituting borrowing from their customers and gives money to customers for various projects on which the banks earn interest which constitutes lending.[46]

Commercial banks[47] offer consumer products like personal loans and credit cards to consumers. These loans in turn, allow individuals to make large purchases or cover expenses that they may not be able to afford immediately.

Lending, by commercial banks is predicated upon their customers having satisfied what the industry regard as the "critical 5 Cs of credit,"[48] comprising 'character,' which represents the borrower's good credit history and reputation; 'capacity,' which represents a demonstration of both the borrower's ability to borrow money and judiciously use the fund for the purpose for which it is lent, and the ability to repay the loan at the agreed time; 'capital,' which stands for the borrower's net worth and financial stability underlying the borrower's continued credit worthiness; and 'collateral,' which is provided by the borrower in the form of asset owned by the borrower, the quality and value of which exceeds the loan value. The collateral is required from the borrower as a secondary source of payment in the event that the loan could not be repaid from the asset or project for which the loan is given. The fifth 'C' represents the 'conditions' both precedent and subsequent, imposed on the borrower and which must be satisfied throughout the tenor of the credit facility. The conditions represent factors peculiar to the borrower and some external factors which enables the lender to continue to monitor the

[44] BYJU's, 'Functions of Commercial Banks: Primary and Secondary Functions' <https://byjus.com/commerce/functions-of-commercial-banks/> accessed 12 October 2024.
[45] Geeksforgeek, 'Functions of Commercial Bank: Primary and Secondary Functions' (15 April 2025) <https://www.geeksforgeeks.org/functions-of-commercial-bank-primary-functions-and-secondary-functions/> accessed 15 June 2025.
[46] BYJU's (n 44).
[47] Access Bank, Zenith Bank and First Bank are examples of commercial banks.
[48] Titilola Falaiye, 'Banking and Finance Industry Credit Risk in Nigeria' (19 June 2024) <https://www.icanigeria.net/banking-and-finace-industry-credit-risk/> accessed 25 November 2024.

borrower's ability to repay the loan.[49] Commercial banks play a crucial role in providing consumer credit to individuals and SMEs thereby facilitating the growth of the economy. The benefits of the activities of commercial banks to their customers, and the economy in the long run are discussed in the following sections of this part.

3.3.1 Credit evaluation

Credit evaluation is the process of assessing a borrower's creditworthiness to determine the likelihood of repaying a loan.[50] Banks assess the creditworthiness of consumers before granting loans. They analyse factors such as credit history, income, employment status and debt-to-income ratio to determine the risk of lending to a particular individual.[51] The 5 Cs of credit comes in handy at this point.

3.3.2 Disbursing funds

Upon the approval of a credit application from a customer, the commercial bank disburses the funds directly into the borrower's bank account or through various means, such as issuance of debit card or through Electronic Funds Transfer (EFT), by which the funds are transferred electronically to the borrower's account or to other accounts for the purpose for which the loan is granted.[52] Financial institutions provide the loan amount to consumers either as a lump sum or via credit limits depending on the nature of the transaction and the agreement between the parties. Disbursement is the final step of the lending process, as it marks the completion of the loan origination process.[53] Thereafter, the bank continues to monitor the performance of the borrower in satisfying the conditions imposed, the most important of which is the repayment either in whole or in part until the loan is fully liquidated.

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[49] ibid.
[50] Fintrak, 'Credit Evaluation: Overview and its Importance in Financial Institutions' (20 February 2024) <https://www.fintraksoftware.com/importance-of-credit-evaluation/> accessed 15 June 2025.
[51] ibid.
[52] Jaivinder Bhandari, 'Personal Loan Disbursement Process: A Complete Guide' (15 May 2025) <https://lendingplate.com/blog/personal-loan-disbursement> accessed 15 June 2025.
[53] Apoorva Kumar, 'Loan Disbursement Process: What is it. What are the steps' (11 December 2024) <https://decentro.tech/blog/loan-disbursement-process/> accessed 15 June 2025.

3.3.3 Interest rates

Banks set interest rates on consumer loans based on factors such as policies set by the CBN market conditions and industry competition. Other relevant factors include the borrower's creditworthiness and the type of credit facility. The monetary policy rate set by the CBN directly affects banks' funding costs and consequently, the interest rates they offer to their customers.[54]

The issues discussed above collectively shape the economic landscape in which commercial banks' operate, and largely determine whether or not their loan transactions succeed. It is however important to evaluate the role of commercial banks in facilitating the credit finance process for the benefit of their customers on the one part, and the economy on the other.

3.3.4 Assessment of the effectiveness of commercial banks as credit providers in Nigeria

While commercial banks in Nigeria remain central to consumer credit delivery, their effectiveness in expanding credit remains limited due to several systemic barriers. Interest rates on consumer loans are often prohibitively high, with maximum lending rates reaching nearly 30% as of late 2024.[55] The maximum lending rate remains high as of 2025, averaging 27% reflecting persistent monetary policy tightening.[56] As indicated above, interest rates are driven by monetary policy conditions and high default risk. The ever-present high interest rates thus make it difficult for individuals to borrow for non-investment purposes like healthcare, education or personal emergencies. The implication is that commercial banks prefer extending credit to the elite and high net-worth individuals who they believe could repay loans thereby excluding the low, and middle-

[54] See the CBN Act 2007, s 35.
[55] Kayode Tokede, 'Banks' Customers Growl as Maximum Lending Rate Hits 30.28%, 22-Month High' (2025) <https://www.thisdaylive.com/2024/11/25/banks-customers-growl-as-maximum-lending-rate-hits-30-28-22-month-high> accessed 19 August 2025.
[56] Central Bank of Nigeria, ,Weekly Interest Rates as at February 21 2025' (2025) <https://www.cbn.gov.ng/Out/2025/BSD/WEEKLY%20INTEREST%20RATES%20AS%20AT%20FEBRUARY%2021,%202025.pdf> accessed 17 October 2025.

income segments of the population. Regrettably, that segment of the population is also in need of consumer credit facilities if they are to thrive in society.

Even in present circumstances and time, many Nigerians find it difficult to access consumer loans from commercial banks due to collateral demands usually in the form of real property which the customers do not have, and where they have real property, such is largely unregistered thereby unfit as collateral.[57] There are other strict eligibility criteria which have been discussed above. As a result, many consumers rely on micro lenders and technology-driven quasi financial institutions colloquially referred to as 'fintechs', who are able offer faster and less onerous but more expensive credit.

Commercial banks when compared to fintechs, have longer and more complex loan processing times, which have the potential to discourage many would-be borrowers from seeking loans through formal banking channels. In practice, commercial banks appear more motivated by profit and risk minimisation than by financial inclusion. Until consumer credit becomes more inclusive, the role of commercial banks in meaningfully improving access to credit for average Nigerians is likely to remain limited and uneven. It is important to note that the provision of credit facilities to individuals and SMEs is not restricted to commercial banks and given their limited reach or ability to serve the individuals and SME segments of the market effectively, it is obvious that other operators will attempt to fill the vacuum. The vacuum is one of the underlying reasons for the emergence of the non-bank financial institutions discussed in the next section.

3.4 Non-Bank Financial Institutions (NBFIs) Providing Consumer Credit

Non-Bank Financial institutions (NBFIs) are financial institutions that do not have a full banking license and as such, cannot accept deposits from the public.[58] Notwithstanding, NBFIs play a significant role in the financial services sector by offering specialised

[57] See Kolapo Omidire '*Prospects for the Law in Resolving the Challenges of Retail Banking in Nigeria*' (ISBN 978-978-60337-2-3 Horizon Prints and Publishing 2024) 22.

[58] World Bank, 'Global Financial Development Report: Non-banking Financial Institution' (2016) <www.worldbank.org/en/publication/gfdr-2016/background/nonbank-financial-institution> accessed 21 May 2024.

services, especially to individuals and SMEs. Microfinance banks, cooperative societies and fintech companies are selected examples of NBFIs which are discussed below.

3.4.1 Microfinance Banks (MFBs)

Microfinance banks (MFBs) are specialised financial institutions that provide financial services to low-income individuals or groups, who are typically excluded from traditional banking.[59] The aim of microfinance institutions is to improve financial services for marginalised groups comprising individuals and SMEs including women and the rural poor to promote self-sufficiency.[60] They play a significant role in providing consumer credit to individuals and small businesses, especially in developing economies like Nigeria.[61]

The role of MFBs in financial intermediation and facilitation of consumer credit is very important. They typically offer relatively affordable interest rates when compared to commercial banks.[62] By providing affordable interest rates MFBs make it easier for individuals and small businesses, who wouldn't stand a chance in conventional banks due to stringent conditions, to obtain loans to meet their financial needs without incurring excessive costs, thereby promoting financial inclusion and economic empowerment. It is however important to note that rates vary based on loan amount, term and client risk profile. For instance, LAPO[63] Microfinance Bank a leading microfinance institution has provided financial services to millions of Nigerians with its considerable loan portfolio. Other microfinance institutions in this category have fared reasonably well in relation to consumer credit and the promotion of financial inclusion.

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[59] Finca, 'Microfinance' (2024) <https://finca.org/ourwork/microfinance#:~:text=Microfinance%20refers%20to%20the%20fnancial,sometimes%20called%microloans%20or%20microcredit.> accessed 24 July 2024.

[60] ibid.

[61] Olufemi Aladejebi, 'The Impact of Microfinance Banks on the Growth of Small and Medium Enterprises in Lagos Metropolis' (2019) *European Journal of Sustainable Development* 8(3) 261-274 <https://ecsdev.org/ojs/index.php/ejsd/article/download/871/866/> accessed 19 October 2025.

[62] Credit Nigeria, 'Interests Rates for Personal Loans in Nigeria' <https://creditnigeria.com/interests-rates-for-personal-loans-in-nigeria/> accessed 15 June 2025.

[63] LAPO stands for Lift Above Poverty Organisation; 'LAPO Microfinance Bank' <https://www.lapo-nigeria.org/about> accessed 17 October 2025.

Microfinance banks attempt to solve a seemingly intractable problem which commercial banks are not able to solve, which is how to originate loans not necessarily backed by collateral. MFBs offer loans to individuals and small businesses that may not have access to traditional banking services.[64] They typically offer collateral-free loans, in that there is no requirement for traditional collateral such as assets or necessarily in the form of real property, which a major bane in the lending process of commercial banks. Rather, alternative forms of collateral such as group guarantees or cash deposits are required.[65] These collateral-free loans are in turn repaid in a flexible tenor which could be daily, weekly, or bi-weekly instalments to accommodate the borrowers' cash flow. MFBs are known to have granted temporary suspension of repayments during financial difficulties of their credit obligors.[66]

3.4.2 Cooperative Societies

Cooperative societies, also known as 'co-ops,'[67] can be rightly regarded as consumer credit institutions in Nigeria. They provide financial services to their members, including loans and credit facilities. Most times, they operate on a not-for-profit basis, aiming to serve the financial needs of their members.[68] In Nigeria, cooperative societies are regulated by the National Assembly under the *Cooperative Societies Act* 2004.[69] As a consumer credit institution, a cooperative society may offer various financial services, including loans (which could be for personal, agricultural or business purposes); credit facilities in the form of overdrafts and credit cards, microfinance services etc. The first

[64] CFI Team, 'Microfinance' <https://corporatefinanceinstitute.com/resources/commercial-lending/microfinance/> accessed 15 June 2025.
[65] CGAP, 'Microfinance Consensus Guidelines: Developing Deposit Services for the Poor' (October 2003) <https://www.cgap.org/sites/default/files/CGAP-Consensus-Guidelines-Developing-Deposit-Services-for-the-Poor-Feb-2005.pdf> accessed 15 June 2025.
[66] MicroBank, 'Grace period for a loan: what it is, how it works and the types' <https://www.microbank.com/en/blog/p/grace-period-loan.html> accessed 15 June 2025.
[67] National Cooperative Business Association Clusta International (NCBA CLUSTA), 'What is a Co-op?' <https:ncbaclusta.coop/resources/what-is-a-co-op/> accessed 19 October 2025.
[68] Damilola Olaniyan, 'How Cooperative Societies foster Financial Inclusion' (17 August 2024) <https://creditprosme.com/how-cooperative-societies-foster-financial-inclusion/> accessed 15 June 2025.
[69] The Nigerian Cooperative Societies Act CAP 98 LFN 2004 (formerly Decree No. 90 of 1993); The Cooperative Societies Regulations (2007) provide detailed guidelines for the operation of cooperative societies including their financial services and lending activities. Cooperative societies are in turn regulated by the Central Bank of Nigeria.

legal step is registration. The cooperative society must be registered with the State Director appointed by the State Governor at the designated Ministry responsible for cooperatives[70] or the Federal Director appointed by the President of the Federal Republic at the Federal Ministry of Employment, Labour and Productivity.[71] Upon registration, the cooperative society becomes a body corporate with perpetual succession and a common seal.[72] The required information for documentation includes the proposed name and address of the society; objectives and purposes for fund application; and membership rules and by-laws.[73] The requisite documents to be submitted for registration include: a certified copy of the resolution from the first meeting; feasibility study report; letter of intent from prospective members and payment proof for registration fees.[74] The second legal step to be taken is adherence to laws. The cooperative society must adhere to the Nigerian *Cooperative Societies Act* and must also obtain a licence from the state or the federal department of cooperatives now (under the umbrella of the Federal Ministry of Employment, Labour and Productivity)[75] if engaging in banking and financial services). The third legal step to be taken is around loan policies. The cooperative society must grant loans primarily to members and comply with CBN regulations on consumer lending. The fourth legal step concerns capital requirements. The cooperative society must maintain adequate capital and reserve requirements. The fifth legal step to be taken

[70] This ministry differs from state to state for instance in Nasarawa state, the ministry in charge of cooperatives is the Ministry of Trade, Industry and Investment while in Oyo state, the Ministry of Trade, Investment and Cooperatives in charge of cooperative societies.

[71] Barinor Paul Kue, 'What you need to know about Cooperative Societies in Nigeria' (26 January 2024) <https://linkedin.com/pulse/what-you-need-know-co-operative-societies-nigeria-kue-barinor-paul-tudrf/> accessed 18 December 2024.

[72] See the Nigerian Co-Operative Societies Act 2004, s 6(1)(a).

[73] Resolution Law Firm, 'Procedure for The Establishment of a Cooperative Society in Nigeria' <https://www.resolutionlawng.com/procedure-for-the-establishment-of-a-cooperative-society-in-nigeria> accessed 17 December 2024.

[74] Emmanuel Ekpenyong, 'Procedure for Registration of Cooperative Society in Nigeria' (4 April 2017) <https://www.mondaq.com/nigeria/industry-updates-analysis/582630/procedure-forregistration-of-cooperative-society-in-nigeria?> accessed 17 December 2024.

[75] Eseose Animhiaga, 'Can I use a Cooperative License to Lend in Nigeria' (8 February 2024) <https://blog.lendsqr.com/can-i-use-a-cooperative-license-to-lend-in-nigeria/> accessed 19 October 2025.

is in the area of compliance regulations. The cooperative society must adhere to the AML/CTF[76] regulations.

3.4.3 Technology-Driven Financial Institutions (Fintechs)

Technology-driven financial institutions commonly referred to as 'Fintechs'[77] are alternative credit providers or lenders. They have successfully developed business models based on innovative use of the internet, mobile devices and data analysis technologies.[78] These lenders use technology designed to meet customer expectations for increased speed and convenience (e.g. online applications, documentation transfer, quick decisions on loan approval); provide more clarity and convenience on loan extensions (e.g, pricing, terms, borrower identification); broaden customer sourcing and automate loan funding.[79] They provide a wide range of financial solutions such as online payments, digital wallets, peer-to-peer lending, crowdfunding, blockchain and mobile banking. Examples of fintech companies that provide consumer credit in Nigeria include Opay, Palmpay, Interswitch, Paga,[80] etc.

Fintechs facilitate consumer credit by offering short-term loans for online purchases;[81] providing consumers with poor or no credit score a way to secure credit and build their credit history; offering consumers in the developing world microloans by analysing their smartphone transaction history, providing automated investment advice to lower costs and increase accessibility; and giving consumers better options than local banks, unregulated lenders and microfinance institutions.

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[76] AML/CTF stands for Anti-Money Laundering while CTF stands for Combating the Financing of Terrorism. Together, AML/CFT regulations aim to prevent the financial system from being used for illicit activities including: money laundering, terrorist financing and proliferation financing.

[77] Central Bank of Nigeria, 'FinTech Evolution and Department in Nigeria: Lessons from other Jurisdiction' (December 2022) <https://www.cbn.gov.ng/Out/2023/RSD/OCCASIONAL%20PAPER%2076%20-%Fintech%20Evolution%20and%20Development%20in%20Nigeria.pdf> accessed 18 October 2025.

[78] Tim Marder, 'Fintech for the Consumer Market: An Overview' (2016) <https://www.consumercomplianceoutlook.org/2016/third-issue/fintech-for-the-consumer-market-an-overview/> accessed 16 June 2025.

[79] ibid.

[80] FinTech news Africa, 'Top FinTech in Nigeria of 2025' (14 September 2025) <https:Fintech news.africa/45002/fintech-nigeria/> accessed 16 October 2025.

[81] Julia Kagan, 'Financial Technology (Fintech): Its Uses and Impact on our lives' (25 March 2024). <https://www.investopedia.com/terms/f/fintech.asp> accessed 21 May 2024.

4 Challenges Forestalling Effective Provision of Consumer Credit to Individuals, and SMEs

From the foregoing discussion, it would appear that necessary legal and institutional frameworks have been put in place coupled with recent government initiatives to kick start consumer credit to individuals and SMEs. However, the fact that the segment of the population and businesses affected still face challenges in accessing credit is a pointer to the fact that the problems have not been solved. The succeeding paragraphs consider the issues which continue to constitute stumbling blocks to effective consumer credit to individuals and SMEs in Nigeria.

4.1 Licensing of Credit Bureaus

Upon assuming office as the Governor of the Central Bank of Nigeria (CBN) in May 2009, the current Emir of Kano State, Sanusi Lamido, adopted the creation of a credit reporting system as one of his key strategies.[82] This led to the establishment of three credit bureau firms[83] to assist in the effective management of credit risk within the financial system, promote credit reporting and enhance credit-decision making.[84] The credit bureaus are licensed to establish a credible database of aggregated information on the credit status and behavior of borrowers.[85] The move was also aimed at facilitating access to finance by providing relevant credit information that enables lending institutions to make sound decisions.[86] The CBN licenses and regulates credit bureaus, which collect and share credit information on borrowers, enabling lenders to assess creditworthiness. The CBN requires financial institutions to report credit information to credit bureaus.

Despite this laudable initiative, there are reports of several loan obligors escaping the radar of credit bureaus and still able to obtain loans which eventually become non-performing. Other instances of failure include incomplete and outdated histories of

[82] Abiola Odutola, 'The Hurdles before Credit Bureaus' (2013) 25 *Tell Magazine* 28.
[83] XDS Credit Bureau, CR Services Credit Bureau and CRC Credit Bureau.
[84] Odutola (n 82).
[85] ibid.
[86] ibid.

obligors, as well as mismatched credit records.[87] If credit financing is to become optimal the challenges associated with the operations of credit bureaus must be addressed.

4.2 Interest Rate Regulation

The Central Bank of Nigeria (CBN) aims to balance economic growth, inflation and financial stability by collaborating with financial institutions to implement interest rate policies. The CBN sets interest rate caps or guidelines to ensure affordable lending rates for consumers. As of early 2025, the CBN interest rates were as follows: Monetary Policy Rate (MPR)[88] is 27.5%; Prime Lending rate[89]-18.19%; Maximum Lending Rate[90] is 30.50%. The CBN also reviews and adjusts interest rates periodically to respond to economic changes.

High interest rate is a challenge to consumer lending. Rates could be as high as 30% for loans to individuals and SMEs.[91] It is unlikely that any SME business endeavour can profitably do business at such rates, especially when other operational costs are added to expenses.

4.3 Consumer Protection Framework

The CBN's Consumer Protection Framework, issued on 7 November 2016 to enhance consumer confidence in the financial services industry, protects lenders from misrepresentation, hidden or excessive fees, unfair contract terms, borrower fraud and other unfair practices.[92] The CBN has put in place specific initiatives to protect lenders, some of which include the Credit Bureau System, which provides lenders with access to credit history and risk management tools to make informed lending decisions; the National Collateral Registry, which allows lenders to register and search for collateral to

[87] See '5 Issues that Lenders have with Nigerian Credit Bureaus' <https://blog.lendsqr.com/5-issues-that-lenders-have-with-nigerian-credit-bureaus/> accessed 17 August 2025.
[88] MPR is the rate at which CBN lends to commercial banks.
[89] Prime Lending Rate is the rate at which commercial banks lend to their best customers.
[90] Maximum Lending Rate is the highest rate at which commercial banks can lend.
[91] See 'Credit Nigeria Interest Rates for Personal Loans in Nigeria' <https://creditnigeria.com/interests-rates-for-personal-loans-in-nigeria/> accessed 17 August 2025.
[92] Citi Group, 'Central Bank of Nigeria Consumer Protection Regulation' (2016) <https://www.citigroup.com/rcs/citigpa/akpublic/storage/public/central-bank-of-nigeria-consumer-protection-regulation.pdf> accessed 5 December 2024.

reduce risk and prevent multiple lending on the same collateral;[93] and the Loan Recovery Framework through the Global Standing Instruction, which provides guidelines for lenders to recover loans in a fair and transparent manner.[94] By protecting lenders from unfair lending practices, the CBN aims to promote a stable and sound financial system and protect the interest of both lenders and borrowers. The foregoing discussion indicates that the consumer protection framework can only work if the other issues impacting effective consumer credit are effectively addressed.

4.4 Liquidity Support

Although the Central Bank of Nigeria (CBN) provides liquidity to banks and other financial institutions to enable them lend more to consumers for productive purposes such as education, health care and entrepreneurship. The instruments used by CBN include Open Market Operations (OMO), Standing Facilities (SF), Loan Guarantee Scheme, Targeted Credit Facilities (TCF) and others. However, the benefit of such support to banks does not appear to have been effectively passed down to individuals and SMEs.

The CBN's Loan Guarantee Scheme is a liquidity mechanism whereby the CBN acts a third party and guarantees the repayment of loans issued, especially to small and medium-sized enterprises (SMEs) that often lack sufficient collateral and credit history, thereby removing barriers to their growth.[95] Furthermore, in response to the COVID-19 pandemic, the CBN introduced the N50 billion Targeted Credit Facility as a stimulus package to support households and micro, small and medium enterprises (MSMEs).[96] The scheme was open to households with verifiable of livelihood adversely impacted by COVID-19; existing enterprises with verifiable evidence of business activities adversely

[93] National Collateral Registry, 'About the Registry' <https://www.ncr.gov.ng/home/about> accessed 5 December 2024.
[94] Gbemi Oladunjoye, 'Global Standing Instruction (GSI) so far' (8 May 2024) <https://oystr.hashnode.dev/global-standing-instruction> accessed 5 December 2024.
[95] Jeremiah Ifeanyi Ubah, 'Credit Guarantee Scheme: How to become a CBN credit guarantor' (2021) <https://nairametrics.com/2022/03/31/credit-guarantee-scheme-how-to-become-a-cbn-credit-guarantor/> accessed 6 December 2024.
[96] Central Bank of Nigeria, 'Guidelines for the Implementation of the N50 Billion Targeted Credit Facility' (March 2020) <https://www.cbn.gov.ng/out/2020/fprd/n50%20billion%20combined.pdf> accessed 8 December 2024.

affected by the pandemic; and enterprises with bankable plans to take advantage of opportunities arising from the COVID-19 pandemic.[97]

Recommendations to address the challenges and provide solutions to the problems enumerated are proffered in the next part of this article.

5. Conclusion

Consumer credit institutions play a vital role in fostering financial inclusion, empowering individuals, and stimulating economic development in Nigeria. This paper has demonstrated the breadth of Nigeria's consumer credit ecosystem, encompassing both banks and non-bank financial institutions. However, despite these developments, significant structural challenges persist—including fragmented legal frameworks, high interest rates, underdeveloped credit reporting systems. Ultimately, strengthening consumer credit institutions and frameworks will not only improve individual financial resilience but also contribute to national economic stability and growth. It is imperative that policymakers, regulators and financial service providers collaborate to build a more inclusive, transparent and efficient consumer credit system in Nigeria.

The issues highlighted above point to the fact that more could still be done to improve consumer credit availability to individuals and SMEs.

For instance, the Credicorp's claim that every economically active Nigerian has a dependable credit score stands in sharp contrast to its practice of offering consumer credit primarily to federal and state government employees. This selective provision contradicts the notion of universal credit access, effectively excluding a large segment of economically active citizens—particularly informal sector workers despite their supposed credit worthiness. Credicorp's stance reveals the need for more inclusive lending strategies that genuinely reflect the financial realities of the majority.

Furthermore, despite the grass root appeal of microfinance banks (MFBs), their overall effectiveness in delivering consumer credit is hampered by some structural limitations.

[97] ibid.

Loan sizes offered by microfinance banks remain small and often insufficient to meet broader consumer needs such as housing, healthcare or education. Additionally, while interest rates are often described as affordable, in practice, many MFBs charge relatively high interest rates due to short loan tenures and high default risks—making repayment burdensome for borrowers.

On the part of cooporative societies, their effectiveness is hampered by challenges such as limited capitalisation, weak regulatory oversight and occasional issues with transparency and governance. These factors limit their capacity to manage credit risks effectively. However, despite these shortcomings, cooperative societies remain vital for extending consumer credit to underserved communities, but improvements in regulation, capacity building and financial discipline are necessary to enhance their role in Nigeria's consumer credit market.

Meanwhile, although fintechs have emerged as dynamic NBFIs that significantly enhance consumer credit provision in Nigeria by leveraging technology to offer more flexible lending solutions than traditional banks. They face challenges including regulatory uncertainty, high operational risks, data privacy concerns and limited integration with existing credit infrastructure. Despite these hurdles, fintechs are increasingly pivotal in diversifying Nigeria's consumer credit landscape and driving innovation, but their long-term effectiveness depends on stronger regulatory frameworks and improved consumer protections.

The following recommendations can help improve consumer credit institutions in Nigeria. They include:

1) Enactment of a comprehensive Consumer Credit Act modeled on the UK's Consumer Credit Act 1974 to consolidate existing provisions, regulate consumer credit transactions holistically, and enhance consumer protection.
2) Strengthening and expanding the operations of credit bureaus to ensure greater coverage, reliability and accuracy of credit data, while encouraging broader participation of financial institutions in data sharing.

3) Introduction of statutory interest rate caps tailored to borrower risk profiles to prevent exploitation and make credit more affordable.
4) Implementation of a nationwide, harmonised identity verification framework by integrating systems such as the NIN (National Identity Number) and BVN (Bank Verification Number) to enhance KYC (Know Your Customer) compliance and improve credit access.
5) Promotion of financial literacy initiatives aimed at improving consumer understanding of credit products, responsibilities and rights especially in underserved and rural communities.

INTERROGATING LEGAL IMPLICATIONS OF CONTEMPORARY ARTIFICIAL INTELLIGENCE EXPLORATIVE REGIME

Mohammed Bashir Badr*

Abstract

The intersection of law and artificial intelligence (AI) is rapidly evolving, presenting both opportunities and challenges. The paper adopts doctrinal method to explore the legal implications of AI technologies, focusing on issues such as accountability, liability, privacy, and ethical considerations. As AI systems become more autonomous, questions arise regarding the allocation of responsibility for decisions made by these systems. It also examines the lawyers' professional responsibility to client with the emergence of AI. The paper examines existing legal frameworks and their adequacy in addressing the unique characteristics of AI, proposing potential regulatory approaches to ensure that AI development and deployment align with societal values and legal standards. Additionally, the ethical dimensions of AI, including bias, transparency, and fairness, are discussed, highlighting the need for interdisciplinary collaboration to create robust and adaptive legal structures. By analyzing current case studies and legal precedents, this paper aims to provide a comprehensive overview of the challenges and potential solutions in the realm of law and AI.

Keywords: Accountability, Artificial intelligence, Data Protection, Ethics, Legal Frameworks, Liability and Privacy

1.0 Introduction

The Covid-19 pandemic was a wakeup call to many countries including Nigeria. The pandemic forced many countries to adopt shelter-in-place (quarantines) directives, as well as partial or total lockdown and social distancing orders to contain the spread of the virus. As opined by Olubukola and David, Universities around the globe have been profoundly affected by stay-at-home orders, which have required them to close their doors and shift to online education. Courts also gave directives on the use of virtual hearing (Remote Court Proceedings, RCP) across the globe including Nigeria.

[1]Providing leadership, the remote court proceeding was recommended by the then Chief Justice of Nigeria by way of circular NJC/CIR/HOC/II/656 in April 2020 to mitigate the suspension of courts activities during Covid-19 pandemic.[2]

The reluctance and long-standing skepticism to online teaching and learning compared to active and in-person education was put to test. Online teaching became the main platform for education during the pandemic, creating colossal pedagogical changes. One of the biggest challenges that universities have had to confront due to the unexpected and sudden shift to online education concerns what kind of assessment techniques are appropriate in an online environment.[3] The intersection of law and artificial intelligence (AI) is rapidly evolving, presenting both opportunities and challenges.

Today, many legal practitioners are increasingly utilizing various types of AI and data analytics tools and smart virtual assistants to enhance their work efficiency, streamline tasks, and improve client services.[4] These virtual assistants can vary in complexity and

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[1] O Olubukola and A David *Remote Court Proceedings in Nigeria: Justice Online or Justice on the Line*. 13(2) International Journal for Court Administration (2022). Available at www.https://doi.org/10.36745/ijca.448 assessed on 7 July 2024.

[2] See National Judicial Council Covid – 19 Policy Report: Guidelines for Court Sitting and Related Matters in the Covid-119 Period, National Judicial Council, 2020, Circular No. NJC/CIR/HOC/II/660 [accessed 24 April 2022].

[3] L Colonna,*Legal implication of Using AI as an Exam invigilator*(Nordic Yearbook of Law and Informatics 2020-2021). https://irilaw.org/wp-content/uploads/2022/02/law-in-the-era-of-artificial-intelligence.pdfdate of access?

[4] D Linna and WMuchman*Ethical Obligations to Protect Client Data when Building Artificial Intelligence Tools: Wigmore Meets AI.* The Professional lawyer (2020) 21(1) . available at:

functionality; with some being standalone platforms and others integrated into existing legal software or practice management systems. Evidently, the goal of those tools is to assist lawyers in managing their workload more efficiently, improving client services, and enabling them to focus on higher-level legal tasks that require human expertise, resulting in the transformation of legal tasks – from legal research and review to contract management and the prediction of litigation outcomes.

This paper explores the legal implications of AI technologies, focusing on issues such as accountability, liability, privacy, and ethical considerations. As AI systems become more autonomous, questions arise regarding the allocation of responsibility for decisions made by these systems. The paper examines existing legal frameworks and their adequacy in addressing the unique characteristics of AI, proposing potential regulatory approaches to ensure that AI development and deployment align with societal values and legal standards. Additionally, the ethical dimensions of AI, including bias, transparency, and fairness, are discussed, highlighting the need for interdisciplinary collaboration to create robust and adaptive legal structures.

The reality of AI has also become more relevant as the African Union (AU) and some African sub-regional groups have started paying attention to AI.[5] For example, the African Union High-Level Panel on Emerging Technologies (APET) has held consultative expert meetings on AI and recommended developing a continental AI strategy for Africa.[6] This was followed up by a draft of an AU-AI Continental Strategy for Africa is being finalized to be submitted to the AU member states for review and validation, after which a continentally-adopted version will be launched at the beginning of 2024 at the AU Africa Heads of State and Government summit.[7] Sometimes in 2023,

https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/ethical-obligations-protect-client-data-when-building-artificial-intelligence-tools-wigmore-meets-ai/date of access?

[5] Diplo *Artificial intelligence in Africa: Continental policies and initiatives*(Diplomacy Education Resources, 2023). https://www.diplomacy.edu/resource/report-stronger-digital-voices-from-africa/ai-africa-continentalpolicies/author's initials and date of access missing?

[6] AUDA-NEPAD (2022) *The African Union artificial intelligence continental strategy for Africa*. https://www.nepad.org/news/african-union-artificial-intelligence-continentalstrategy-africa. ditto

[7] AUDA-NEPAD (2023) *Artificial intelligence is at the core of discussions in Rwanda as the AU High-level*

the African Commission on Human and Peoples' Rights (African Commission) commenced a focal point study and expert consultation on the impact of AI, robotics and other new and emerging technologies on African human and peoples' rights.[8]

According to Daniel and Wendy, in conducting legal research, there are several AI tools available to assist lawyers in their research. Examples are e-Discovery, Casetext, ChatGPT, LawGeex, voice dictation and idea generation.[9] There are others like Gavel, Harvey AI and Blue J L&E.[10]The authors have noted that these tools can quickly retrieve relevant case law, statutes, regulations, and legal articles to support attorneys in building strong legal arguments and staying up to date with legal developments. This role for AI is now quite well established. These can save lawyers from embarrassment especially of incompetence.[11]

The latest developments in the evolution of AI technology suggest the need to reconsider the history of AI in Law. Paliwala discovered that despite the significant changes in the application of information technology to legal work, which is largely due to common information technology processes (processing, storage, retrieval and data management in combination with communication with rich, fast and global information through internet resources). However, so far, in the opportunities when information technology has been applied to deeper legal processes (which involve the very nature of Law), the result has not been very successful — a good example of this concerns to the application of IA systems to Law.[12] At the 35th Nordic Conference on law and information technology[13]

Panel on Emerging Technologies convenes experts to draft the AU-AI continental strategy.
29 March 2023 available at: https://www.nepad.org/news/artificial-intelligence-core-of-discussionsrwanda-au-high-level-panel-emerging/. ditto

[8] African Commission 'Press Release: Inception workshop and experts' consultation on the study on human and peoples' rights and artificial intelligence (AI), robotics and other new and emerging technologies in Africa, 8-9 June 2023. Nairobi, Kenya', https://achpr.au.int/en/news/press-releases/2023-06-08/inception-workshop-and-experts-consultation-artificialintelligence/

[9] D Linna and WMuchman, Ethical Obligations to Protect Client Data when Building Artificial Intelligence Tools: Wigmore Meets AI.incomplete citation?

[10] 5 AI Tools Lawyers can Use Today. Available at: https://gavel.io/resources/5-ai-tools-lawyers-can-use-today/. No date of access?

[11]*Dangote Cement Plc Vs Peter Ager* (2024) 10 NWLR (Pt.1945) 1

[12]APaliwala 'Rediscovering artificial intelligence and law*:* An inadequate jurisprudence*?' International Review of Law, Computers* & *Technology*, 30(3): 107-114. DOI: https://doi.org/10.1080/13600869.2016.1229651.

artificial intelligence is seen as a very useful tool for law and legal science. In AI there is a called “artificial intelligence and law” which aims to apply knowledge in AI to solve or at least facilitate solution of some legal problems. At the same time tools and techniques developed to solve specific problems in law are further utilized by AI in general.

2. What is Artificial Intelligence?

In Hizroglu’s paper on Artificial Intelligence and Application, Artificial intelligence (AI) is described as “intelligence demonstrated by machines, unlike the natural intelligence displayed by humans and animals, which involves consciousness and emotionality”. The distinction between the former and the latter categories is often revealed by the acronym chosen. "Strong AI" is usually labelled as artificial general intelligence (AGI) while attempts to emulate 'natural' intelligence have been called artificial biological intelligence (ABI). Leading AI textbooks define the field as the study of "intelligent agents" ‘any device that perceives its environment and takes actions that maximize its chance of successfully achieving its goals’. Informally, the term "artificial intelligence" is often used to describe machines that mimic "cognitive" functions that humans associate with the human mind, such as "learning" and "problem solving".[14] Oluwole corroborated that today, AI is playing a critical role in digitalisation in Africa, including in countries that are developing so-called “smart cities”.[15] In general, Scherer says, ‘an AI system includes both hardware and software components. It thus may refer to a robot, a program running on a single computer, a program run on networked computers, or any other set of components that hosts an AI’.[16] Goldberg and Carson posited that, AI is most often

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[13] L Colonna and S Greenstein (eds) *Law in the Era of Artificial Intelligence* (Nordic Yearbook of Law and Informatics 2020-2021). The Swedish Law and Informatics Research Institute. Available at https://irilaw.org/wp-content/uploads/2022/02/law-in-the-era-of-artificial-intelligence.pdf assessed on 7th July 2024

[14] A Hızıroğlu (2022) *Artificial Intelligence Theory and Application.* İzmir BakırçayÜniversitesi Available at https://dergipark.org.tr/en/pub/aita/aim-and-scope assessed on 7 July 2024

[15] V. Oluwole (2023) *Africa's smartest cities: Top countries embracing Urbanisation and Technology.* Business Insider Africa. July 28, 2023, https://africa.businessinsider.com/local/lifestyle/africas-smartest-cities-top-countries-embracing-urbanisation-and-technology/hszfjqk

[16] MU Scherer (2016) *Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies.* Harvard Journal of Law & Technology. 29(2), pp. 353-400. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/hjlt29&start_page=353&collection=journals&id=365.

considered as work resulting from creative activity and is, therefore, protected by intellectual property as software through copyright.[17] Schaal found some impediments to AI under certain conditions, which he said can also be protected by a software patent. Also, AI software patents are, however, questionable regarding the level of protection. They might be infringed in a specific manner due to the continuous development and a possibility of being manipulated by a user.[18] AI systems in a form of software[19] as well as AI systems inseparably incorporated into physical devices such as robots (cyberphysical systems) are considered as products. In general, every product should meet certain safety and quality standards as well as reasonable expectations of an ordinary customer. If a product is defective, for instance when it does not properly operate or causes damage, its manufacturer can be held liable. An injured party can potentially sue for product liability, service liability, malpractice or negligence. A result of each case depends on many factors. Not only manufacturers of AI systems but also their users must take reasonable care to avoid mistakes and causing harm.[20] Complications in determining a liable person could occur in case of custom-made AI systems combining knowledge of a manufacturer with client's specifications. Moreover, specificities in product liability can be identified in various application domains, such as in automated driving.[21]

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[17] MD Goldberg and DO Carson (1991) *Copyright Protection for Artificial Intelligence Systems.* Journal of the Copyright Society of the U.S.A. 39(1), pp. 57-75. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/jocoso39&start_page=57&collection=journals&id=1.

[18] EJ Schaal (2004) *Infringing a Fantasy: Future Obstacles Arise for the United States Patent Office and Software Manufacturers Utilizing Artificial Intelligence.* Villanova Sports & Entertainment Law Journal. 11(1), pp. 173-202. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/vse11&start_page=173&collection=journals&id=179

[19] K. Alhelt (2001) *The Applicability of the EU Product Liability Directive to Software.* Comparative and International Law Journal of Southern Africa. 34(2), pp. 188-209. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/ciminsfri34&start_page=188&collection=journals&i=194.

[20] GS Cole (1990) *Tort Liability for Artificial Intelligence and Expert Systems.* Computer/Law Journal. 10(2), pp. 127-232. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/jmjcila10&start_page=127&collection=journals&id=131.

[21] BW Smith (2017) *Automated Driving and Product Liability.* Michigan State Law Review. (1), pp. 1-74. Available: https://www.heinonline.org/HOL/Page?handle=hein.journals/mslr2017&start_page=1&collection=journals&id=3.

Article 22 of GDPR[22] provides for the right not to be subjected to a decision based solely on "automated processing, including profiling" with legal or significant impact. AI laws also refer to driverless vehicles. This paper will define Artificial intelligence as that area of computer science that mainly focuses on the making of such kind of intelligent machines that work and give reactions same like human beings, faster and more accurate.

3. Legal Frameworks and AI

A. Existing legal frameworks applicable to AI (International laws and regulations)

The European Union General Data Protection Regulation (GDPR) of 2019 was the foremost legislation on AI. Article 22 of GDPR provides for the right not to be subject to a decision based solely on "automated processing, including profiling" with legal or significant impact. AI laws also refer to driverless vehicles.[23] Although, some sources refer to the Council of Europe (CoE) 1981 Convention for the Protection of Individuals with regards to automatic processes of individual Data as the first international legislation on personal data protection which came to force in 1985.

However, the convention and its proposed protocol has yet assumed the force of law.[24] In 2024, the parliament of the European Council adopted the Artificial Intelligence Act in March 2024 and the Council followed with its approval in May 2024.[25] Countries with specific legislation to AI in their respective national laws include: Argentina, Belarus, China, Denmark, Egypt, Estonia, Finland, Greece, Hungary, Iceland, Kazakhstan, Kyrgyzstan, Lithuania, Macau, Mauritius, Norway, Peru, Poland, Portugal, Qatar, the Republic of Ireland, the Russian Federation, Saudi Arabia, Serbia, the Slovak Republic, Spain, Sweden, Taiwan, the United Arab Emirates, the United Kingdom, and Uzbekistan. While legislation referring to AI has been proposed and is at various stages of the

[22] European Union General Data Protection Regulation EU (GDPR) (2019)
[23] PV Kadam and AP Kadam (2021) *Legal Framework and Artificial Intelligence: A Macro Review.* Journal of Emerging Technologies and Innovative Research (JETIR). JETIR December 2021, Volume 8, Issue 12
[24] K. Cantekin (2023) *Regulation of Artificial Intelligence Around the World.* The Law Library of Congress, Global Legal Research Directorate. Available at https://www.loc.gov/research-centers/law-library-of-congress/about-this-research-center/
[25]https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence

legislative process in the following national jurisdictions: Argentina, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Israel, Mexico, Panama, the Philippines, South Korea, and Thailand.[26]

B. Existing National and Regional Laws

In Nigeria, the National Assembly is still working in the bill on Artificial Intelligence and related subject.[27] However, there are some legislations that could be said to contemplate AI operation in Nigeria. In Africa generally, Nigeria was first country in the region to institutionalize a National Centre for AI and Robotics (NCAIR); and the establishment of dedicated government institutions who are fostering a knowledge-based economy and promoting the research and development of AI systems in Nigeria.[28] AI development and deployment techniques can impact data protection and ethical principles such as transparency, data minimization, purpose limitation, accountability, fairness, and so forth.[29] Nigeria has passed a number of legislation although not particularly targeting operation of AI. Some of which are Nigeria Data Protection Regulation (NDPR) 2019, Nigeria Data Protection Act (2023), Freedom of Information Act (FOIA) 2011, Cybercrime (Prohibition, Prevention, etc.) Act (CPPA) 2015, National Information Technology Development Agency (NITDA) Act 2007, Consumer Protection Council Act (CPCA) which birthed Consumer Protection Framework which includes, Central Bank Consumer Protection Framework (CBN-PF), National Pension Commission Consumer Protection Framework (NPCCPF). There is also African Union Convention on Cyber Security and Personal Data Protection (AUCC&PDP) which was adopted in 2014 to

[26] K. Cantekin*Regulation of Artificial Intelligence Around the World,* Ibid. p. 2

[27]The Guardian Newspaper. 10th NASS to provide legal framework for AI Regulation. Available at https://guardian.ng/10th-nass-to-provide-legal-framework-for-ai-regulation/ published on 22nd April 2024

[28]JO Effoduh (2021) *Towards A Rights-Respecting Artificial Intelligence Policy for Nigeria.* Paradigm Initiative publication. Available at https://link.springer.com/chapter/10.1007/978-3-031-08215-3_5

[29] E. Salami & I. Nwankwo (2024) *Regulating the privacy aspects of artificial intelligence systems in Nigeria:*
A primer. (2024) 1. African Journal on Privacy & Data Protection 220-247 available at https://research.ulapland.fi/en/publications/regulating-the-privacy-aspects-of-artificial-intelligence-systems

establish a legal framework for cyber-security and personal data protection entered into force in June 2023.[30]

On Thursday, 20 March 2025, the Nigeria Data protection Commission (NDPC) issued the Nigeria Data Protection Act- General Application and Implementation Directive (NDPA-GAID). The GAID seeks to enhance the understanding, implementation and effectiveness of the NDPA. By virtue of Article 3(3) of the GAID, the Nigeria Data Protection Regulation (NDPR-2019) and consequently the NDPR Implementation Framework (2020) cease to be operational as data protection regulation. By implication, the primary data protection instruments applicable and effective in Nigeria from 20th March 2025 are the Nigeria Data Protection Act 2023 and the Nigeria Data Protection Act-General Application and Implementation Directive.[31]

The ongoing process of digital transformation[32] is being accomplished in part with the use of artificial intelligence (AI), an interdisciplinary technology that aims to use large data sets (Big Data), suitable computing power, and specific analytical and decision-making procedures in order to enable computers to accomplish tasks that approximate human abilities and even exceed them in certain respects.[33] In Nigeria especially, legislation to regulate AI is still inadequate. National Information Technology Development Agency (NITDA) has begun drafting a Code of Practice for AI to regulate AI tools such as ChatGPT.[34] These legislations could not have been said to be adequate until they become tested at the courts.

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[30] See "Status List" at <https://au.int/sites/default/files/treaties/29560-sl-AFRICAN_UNION_CONVENTION_ON_CYBER_SECURITY_AND_PERSONAL_DATA_PROTECTION_0.pdf.> accessed 22 March 2025

[31] https://www.olaniwuajayi.net-introduction-the-nigeria-data-protection-commission/> accessed on 22/3/2025

[32] T. Cole (2017) *Digitale Transformation*. 2nd edn. Franz Vahlen, München. Available at https://www.vahlen.de/cole-digitale-transformation/product/17678749

[33] S. Russell and P. Norvig (2012) *KünstlicheIntelligenz. Ein moderner Ansatz*. 3rd edn. Pearson, Hallbergmoos. available at https://vowi.fsinf.at/images/b/bc/TU_Wien-Einf%C3%BChrung_in_die_K%C3%BCnstliche_Intelligenz_VU_%28Eiter%2C_Tompits%29_-_K%C3%BCnstliche_Intelligenz-_Ein_moderner_Ansatz_%283.%2C_aktualisierte_Auflage%29.pdf

[34] E. Ojukwu (2019) NITDA *drafting the Nigeria Code of Practice for artificial intelligence tools such as ChatGPT and others*. Available at: https://www.tekedia.com/nitda-drafting-the-nigeria-code-of-practicefor-artificial-intelligence-tools-such-as-chatgpt-and-others/.

4. Accountability and Liability

According to Sirvastava, all countries welcome AI trends. It is his position that AI is present everywhere, focusing on developed and underdeveloped countries and competing for supremacy in this area. China has ambitions to become a global superpower in the field of AI. China has announced that it will become a leader in AI by 2030, investing 150 billion USD. The goal is perfectly achievable, as it is already a leader because they already lead in research in this area, and the United States is competing fiercely with them. The future of AI in the US has become unclear and declining due to state involvement, funding cuts, increased education costs and strict immigration restrictions for international research experts. The UK is a leader with more than 121 AI companies as the country extensively funds and supports robotics and research in AI. Russia invests about $12.5 million a year in AI. Germany is technically efficient, having the appropriate skills to implement and promote technological innovation and play a leading role in robotics.[35]

However, a very important question often raised about AI is its trustworthiness. It has been asked who will take responsibility for the changes AI brings to the world? The competitive efforts of nations to outshine one another in AI supremacy may make the trustworthiness of AI to be a herculean task. Therefore, in the context of AI, accountability refers to the responsibility and transparency in the development, deployment, and outcomes of AI systems. The responsible AI accounting should involve ensuring that:

1. **Developers and Organizations**: Clearly define who is responsible for the AI system's decisions and actions. This includes developers, companies, and stakeholders involved in the AI lifecycle.
2. **Transparency**: Maintain openness about how AI systems function, including the data they use, the algorithms they employ, and the decision-making processes they follow.

[35] S. Sirvastava (2019) *Top 10 Countries Leading the Artificial Intelligence.* Retrieved from https://www.analyticsinsight.net/top-10-countries-leading-the-artificial-intelligence-race/

3. **Ethical Standards**: Adhere to ethical guidelines and standards to prevent harm and ensure fairness, bias mitigation, and respect for user privacy and rights.
4. **Oversight and Regulation**: Implement mechanisms for oversight, such as audits, compliance checks, and regulatory frameworks to monitor and enforce accountability.
5. **Responsiveness**: Address and rectify issues or errors in AI systems promptly, including unintended consequences or biases that may arise.
6. **User Awareness**: Inform users about the use of AI, its capabilities, and its limitations to ensure informed consent and understanding.

5. Legal Liability for AI-induced harm

Weng gave an illustration of a scenario in 1981 as narrated by Yueh-Hsaun Weng,[36] would make this question clearly appreciated. "In 1981, a 37-year-old Japanese employee of a motorcycle factory was killed by an artificial-intelligence robot working near him. The robot erroneously identified the employee as a threat to its mission and calculated that the most efficient way to eliminate this threat was by pushing him into an adjacent operating machine. Using its very powerful hydraulic arm, the robot smashed the surprised worker into the operating machine, killing him instantly, and then resumed its duties with no one to interfere with its mission. Unfortunately, this is not science fiction, and the legal question is: Who is to be held liable for this cold-blooded, premeditated murder? In the 1964, Isaac Asimov wrote 'The rest of Robots'[37] where he proposed laws of robot. In the first law, Asimov wrote, 'A robot may not injure a human being, or through inaction, allow a human being to come to harm. The second law says, 'A robot must obey orders given to it by human beings, except where such order would conflict

[36] YH. Weng, et al. (2009) *Toward the Human-Robot Co-Existence Society: On Safety Intelligence for Next Generation Robots.* No.1 International Journal Society, ROBOT 267, 273 (2009). Available at https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.researchgate.net/publication/39730975_Toward_The_Human-Robot_Co-Existence_Society_On_Safety_Intelligence_For_Next_Generation_Robots&ved=2ahUKEwj_gKXVvKeHAxUZU0EAHU7YCccQFnoECBUQAQ&usg=AOvVaw1AuOWaU_R8q3pTDLoqCQgx

[37] I. Asimov (1963). *The Rest of the Robots.* Available at: https://www.google.com/search?si=ACC90nzvCy6rkx5htLqWK8ZOeUaRl2vHVIDFhU1_SmRtMI6N2nlsYEe-xUJs1x_BeRzj7ES6yqF0QwJFfYf_oFSz4gWoQ1y6ftXmeTy3RXqskW6uL-eGyxmiyYVvP_zMCeAbrC2lSdW6&hl=en-NG&q=the+rest+of+the+robots+quotes&kgs=cb416b53f549b7b7&shndl=17&source=sh/x/kp/osrp/m5/2.

with first order'. Now, where the programming of the AI does not conform to the laws of robot who takes responsibility or what kind of laws or ethics are correct, and who is to decide?[38]

It becomes necessary to define legal liability. What is legal liability? Greenstein[39] defined liability as "the state of being legally responsible for something: the state of being liable for something … something (such as the payment of money) for which a person or business is legally responsible … someone or something that causes problems."[40] According to law.com[41] liability is:

> One of the most significant words in the field of law, liability means legal responsibility for one's acts or omissions. Failure of a person or entity to meet that responsibility leaves him/her/it open to a lawsuit for any resulting damages or a court order to perform (as in a breach of contract or violation of statute). To win a lawsuit, the suing party (plaintiff) must prove the legal liability of the defendant if the plaintiff's allegations are shown to be true. This requires evidence of the duty to act, the failure to fulfill that duty and the connection (proximate cause) of that failure to some injury or harm to the plaintiff. Liability also applies to alleged criminal acts in which the defendant may be responsible for his/her acts which constitute a crime, thus making him/her subject to conviction and punishment.

Therefore the ability to make informed and useful predictions about potential legal outcomes of a case puts understanding liability as one of the primary skills of lawyering.[42] Because lawyers are routinely called upon to make predictions in a variety of legal settings, a typical scenario may be where a client provides the lawyer with a legal

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[38] H. Gabriel (2010) *The Criminal Liability of Artificial Intelligence Entities - from Science Fiction to Legal Social Control.* Akron Intellectual Property Journal: Vol. 4: Iss. 2, Article 1. Available at: https://ideaexchange.uakron.edu/akronintellectualproperty/vol4/iss2/1.

[39] S. Greenstein (2020) *Liability in the Era of Artificial Intelligence.* Article is based on a presentation given at the 35th Nordic Conference on Law and IT, 10-11 November, 2020, which had the general theme of law in the era of
Artificial Intelligence (AI).

[40]Merriam-Webster legal dictionary. https://www.merriam-webster.com/dictionary/liability#legalDictionary

[41] LAW.COM https://dictionary.law.com/Default.aspx?selected=1151&bold

[42] T. Rostain (1998) *Ethics Lost: Limitations of Current Approaches to Lawyer Regulation*. 71 S. CAL. L. REV. 1273, 1281–82.

problem involving a complex set of facts and goals.[43]A lawyer might employ a combination of judgment, experience, and knowledge of the law to make reasoned predictions about the likelihood of outcomes on particular legal issues or on overall issue of liability, often in contexts of considerable legal and factual uncertainty.[44] On the basis of these predictions and other factors, the lawyer might counsel the client about recommended courses of action.

In the proposal of Surden where he contends that that machine learning techniques have often been able to produce "intelligent" results in complex, abstract tasks, often not by engaging directly with the underlying conceptual substance of the information, but indirectly, by detecting proxies and patterns in data that lead to useful results. It becomes useful that adopting these principles, it may be suggested that there is a subset of legal tasks often performed manually today by attorneys, which are potentially-partially automatable given techniques such as machine learning, provided the limitations are understood and accounted for.[45]

It should be emphasized that these tasks may be partially automatable, because often the goal of such automation is not to replace a lawyer, but rather, to act as a complement, for example in filtering likely irrelevant data to help make a lawyer more efficient. Such a dynamic is discussed below in the case of automation in litigation discovery document review. There, the machine learning algorithms are not used to replace (nor are they currently capable of replacing) crucial attorney tasks such as of determining whether certain ambiguous documents are relevant under uncertain law or will have significant strategic value in litigation.

[43] P. Brest and LH Krieger. (2010) *Problem Solving, Decision Making, and Professional Judgment: A Guide for Lawyers and Policymakers*. 1st Edition. Oxford University Press 2010. Available at: https://global.oup.com/academic/product/problem-solving-decision-making-and-professional-judgment-9780195366327?cc=us&lang=en&.

[44]E. Malemi. (2017) *The Nigerian Constitutional Law with Fundamental Rights (Enforcement Procedure) – Rules 2009.* Princeton Publishing Company, Lagos, 3rd Edition

[45] H. Surden. (2014) *Machine Learning and the Law.* Volume 89 Number 1 Symposium: Artificial Intelligence and the Law. Available at: https://digitalcommons.law.uw.edu/wlr/vol89/iss1/.

6. AI and Human Rights

Human rights are very fundamental rights that every human is entitled to regardless of their colour, nationality, ethnicity, religion, language or any other status. Human rights are universal, inalienable and indivisible so much so that persons cannot live without them. Human rights are what enable a person to continue his humanity.[46] Without human rights, life is meaningless, worthless and a mere shadow.[47] To wit, human rights are too precious to be infringed upon without sufficient and convincing justification. Human right was succinctly defined by Kayode Eso J.S.C (as he then was) in the case of *Ransome Kuti & ORS v. A.G Federation & ORS*[48]as thus:

> *[Human rights] are rights that have always existed, even before orderliness prescribed rules for the manner they are to be sought. It is a primary condition to a civilized existence which stands above the ordinary laws of the land.*

Since AI cannot be classified as human, where the machine infringes on the rights of humans, how will the law resolve this matter? In Germany, the German Federal Constitutional Court as early as 1983, elaborated a 'fundamental right to informational self-determination' in response to the risks to the protection of the right of privacy that were associated with emerging digitalisation.[49] In 2008 the Court took the innovative step of extending the reach of fundamental rights protection to the 'fundamental right to the guarantee of the confidentiality and integrity of information technology systems'.[50]Although owing to the subject matter of the dispute, this decision was directed at online searches of an individual's personal computer, the Court later held in 2016 that the protection afforded to information technology systems covers more than simply the computers used by individuals but also includes the networking of those computers with other computers, such as in connection with storage of data in the cloud.[51]

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[46] Ibid.
[47] ibid
[48]*(1985) 2 NWLR*
[49] W. Hoffmann-Riem (2020). *Artificial Intelligence as a Challenge for Law and Regulation.*Bucerius Law School. Available at: Regulating Artificial Intelligence. https://doi.org/10.1007/978-3-030-32361-5_1.
[50] ibid
[51] ibid

7. Privacy and Data Protection

The right to privacy is an element of various legal traditions that intends to restrain governmental and private actions that threaten the privacy of individuals.[52] Privacy has been determined to be the right to be left alone; freedom from interruption, intrusion, embarrassment or accountability; control of the disclosure of personal information; protection of the individual's independence, dignity and integrity; secrecy, anonymity and solitude; the right to protection from intrusion into your personal life.[53] The right to privacy involves rules governing the collection and handling of personal data, the protection of physical autonomy, the right to limit access to oneself and the right to control one's identity.

Privacy and data protection have long been leading concerns with eLearning, and when it comes to online proctoring systems the issues only multiply.[54] A first concern is that of the legality of processing, especially concerning the processing of biometric data like student' faces as well as student's living spaces. The rights of a data subject become significant in discussing data protection and privacy. A data subject is any individual person who can directly or indirectly be identified via an identifier such as a name, an ID number, and location data or via factors specific to the person's physical, psychological, genetic, mental, economic, cultural or social identity.[55] Regional and international instruments such as the African Union Convention on CyberSecurity and Personal Data Protection,[56] the Organisation for Economic Co-operation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data,[57] and the General Data Protection Regulation (GDPR) of Europe have laid down data rights to

[52]Wikipedia,'Right to Privacy'<https://en.wikipedia.org/wiki/Right_to_privacy> accessed 16 July 2024.
[53] Law Teacher, 'The Right to Privacy'<https://www.lawteacher.net/free-law-essays/human-rights/right-to-privacy.php> accessed 20 October 2021.
[54] FF. Kharbat, and AS. Abu Daabes. (2021) *E-proctored Exams During the COVID-19 Pandemic: A Close Understanding, Education and Information Technologies.* Article is based on a presentation given at the 35th Nordic Conference on Law and IT, 10-11 November, 2020, which had the general theme of law in the era of Artificial Intelligence (AI).
[55]https://www.atinternet.com/en/glossary/data-subject/.
[56] African Union Convention on Cyber Security and Personal Data Protection. Available at: https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf.
[57] OECD (2013) *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.* Available at: https://one.oecd.org/document/C(2013)79/en/pdf.

rights include the right to access personal information, the right to prevent the processing of personal data, and the right of individuals to be informed of the intended use of their personal data, including in cases of automated data processing where the decision significantly affects the data subject.[58] Data protection embodies the underlisted principles:

i. Lawfulness, fairness and transparency: Processing of personal data should be done lawfully and fairly, and data subjects should be consulted to ensure transparency.
ii. Purpose limitation or specification: Personal data must be collected for a specific purpose and a lawful purpose.
iii. Storage Limitation: The data must be retained for a period which the purpose serves.
iv. Data minimisation: Personal data should be processed for a specified purpose and should be relevant, adequate and not excessive.
v. Accuracy: All personal data that is collected should be complete, accurate, up-to-date and not misleading.
vi. Integrity and confidentiality (security): Security safeguards should be in place for personal data to ensure the integrity and confidentiality of data and to safeguard the data against loss or damage and unlawful access.
vii. Accountability: The responsible party should ensure that all measures and conditions in place are complied with to ensure that all principles are given effect.

Therefore, a data collector must ensure strict adherence to the listed principles. Although, concerns have been raised especially with respect to AI's automated programmed system's ability to respect and adhere to these principles.

Canadian government has enacted several laws at the federal and provincial levels that relate to the protection of personal information. The Personal Information Protection and Electronic Documents Act (PIPEDA) is a federal privacy law that is applicable to the

[58] General Data Protection Regulation (GDPR). Available at: https://gdpr-info.eu/.

private sector.[59] In 2017, the Privacy Commissioner of Canada appearance before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, stated that:

> Consent has always been considered a foundational element of PIPEDA. Legally, organizations must obtain consent to collect, use and disclose an individual's personal information, subject to a list of specific exceptions. But obtaining meaningful consent has become increasingly challenging in the age of big data, the Internet of Things, artificial intelligence and robotics.[60]

It therefore becomes expedient that the privacy rule in AI should be concerns of legal practitioners.

8. Ethical Considerations

Stahl in his paper, 'Artificial Intelligence for a better future' enumerated about 40 ethical issues.[61] Ethical problems in AI can lead to a variety of consequences with different levels of severity; these consequences include everything from increased inequality to extended litigation processes to resist social uprising. While in most cases one might intuitively accept that the issues can be seen as ethically relevant, no context or reason is provided as to why they are perceived to be ethically problematic. Many of them are not only ethically problematic but also directly linked to regulation and legislation. Being an ethical issue thus clearly does not exclude a given concern from being a legal issue at the same time.

The ethical issues are furthermore highly diverse in their specificity and likelihood of occurrence. Some are certain to come to pass, such as issues around data protection or data accuracy. Others are conceivable and likely, such as misuse or lack of trust. Yet

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[59] Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, as amended, http://lawslois.justice.gc.ca/eng/acts/P-8.6/FullText.html archived at https://perma.cc/KY5R-7YEM.

[60] Appearance before the Standing Committee on Access to Information, Privacy and Ethics (ETHI) on the Study of
the Personal Information Protection and Electronic Documents Act (PIPEDA), OFFICE OF THE PRIVACY
COMMISSIONER OF CANADA (Feb. 16, 2017), https://www.priv.gc.ca/en/opc-actions-and-decisions/advice-toparliament/2017/parl_20170216/ archived at https://perma.cc/6VQX-Y6LW.

[61] BC Stahl (2021) *Artificial Intelligence for a Better Future, Springer Briefs in Research and Innovation Governance*. Available at: https://doi.org/10.1007/978-3-030-69978-9_4.

others are somewhat diffuse, such as a negative impact on democracy, or on justice. The question as to who should be interested in AI ethics is answered as everyone. Citizens, businesses, governments, and academia are all users or adopters of AI applications and technologies. They all face, or will face, AI-related ethical challenges that will impact their lives or livelihoods in some way. And they all have a perspective to add to our society's conversation surrounding ethical AI use.

The most frequently raised ethical issues in AI are data protection and privacy. An example of this risk is captured by Jernigan and Mistree[62] when they identified sexual orientation from Facebook friendship. In Australia, concerns relating to maintaining the data privacy of global indigenous peoples in the face of new AI technologies have been raised as well. One example is Maori Principles for Data Sovereignty.[63] There are other AI guiding principles adopted by different organizations and that are fixed in internationally recognized documents, such as the Montreal Declaration for Responsible AI.[64]

9. Regulatory Approaches

In September 2021, the Secretary-General of the United Nations, António Guterres, released the report Our Common Agenda. It made broad proposals for the future of multilateralism, which built on the 2020 Roadmap for Digital Cooperation. It proposed a Global Digital Compact to be agreed at the Summit of the Future, which will be held in 2024. In October 2022, the President of the UN General Assembly appointed the

[62] C. Jernigan and BFT Mistree (2009) *Gaydar: Facebook friendships expose sexual orientation.* First Monday 14. https://firstmonday.org/ojs/index.php/fm/article/download/2611/2302. Accessed 17 July 2024

[63] Maori Principles of Data Sovereignty. (2016) Available at: https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/.

[64] The Montréal Declaration for Responsible AI Development. (2018) Université de Montréal. https://monoskop.org/images/d/d2/Montreal_Declaration_for_a_Responsible_Development_of_Artificial_Intelligence_2018.pdf.

Permanent Representatives of Rwanda and of Sweden as Co-facilitators to lead the intergovernmental process.[65]

The problem of regulating artificial intelligence or creating a specialized legal framework for it lies in the very nature of AI. There exist a few definitions of AI but none of them is universally pertinent while being truly unequivocal at the same time. This is mainly due to the ambiguities pertaining to defining the very concept of intelligence. In general, "an AI system includes both hardware and software components. It thus may refer to a robot, a program running on a single computer, a program run on networked computers, or any other set of components that hosts an AI."[66]

The Secretary-General's 2020 Roadmap for Digital Cooperation recommended action to support global cooperation on AI. The Roadmap set out a vision for AI that is trustworthy, human rights based, safe and sustainable, and that promotes peace.[67] To achieve this goal, we strongly believe there is a need to promote research that is independent, interdisciplinary, and international. We propose four principles to guide these efforts, along with four recommendations for the Global Digital Compact. International corporations also play several critical roles in the regulation of artificial intelligence (AI). International corporations often participate in the development of global standards for AI technologies. They contribute to organizations like the International Organization for Standardization (ISO) and the Institute of Electrical and Electronics Engineers (IEEE), which set technical and ethical standards for AI. Corporations ensure that their AI systems comply with international regulations and ethical guidelines. They implement governance frameworks to oversee the development and deployment of AI, ensuring responsible use. International corporations engage with policymakers and regulators to influence the creation of AI regulations.

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[65] Gray et al. (2023) *Knowledge across boundaries: Promoting global cooperation on AI Regulation.* A Supplementary Report ART-AI submission to the Global Digital Compact. Theme: 6 Available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&/.

[66] MU. Scherer. (2016) *Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies.* Harvard Journal of Law & Technology. 29(2), pp. 353-400. Available at: http://heinonline.org/HOL/Page?handle=hein.journals/hjlt29&start_page=353&collection=journals&id=365

[67] Gray et al. ibid, p.7

The corporations advocate for policies that balance innovation with safety and ethical considerations. Corporations collaborate with governments, academic institutions, and other organizations to promote the responsible development and use of AI. These partnerships can help shape regulatory frameworks and ensure they are informed by the latest technological advancements. By promoting transparency in their AI practices, corporations help build trust and accountability. They publish reports on their AI activities, engage in public discourse, and participate in initiatives that promote ethical AI. Corporations invest in AI research and development, which can inform regulatory approaches. Their innovations can highlight new areas where regulation is needed and provide insights into effective regulatory strategies. Corporations often support education and training programs to build a workforce skilled in AI. They also provide resources and training for policymakers and regulators to better understand AI technologies and their implications.

10. Future Directions

The current state of licensing for most open-sourced AI models is dominated by a mix of permissive software licences such as Apache 2.0 or MIT and open data licences such as Creative Commons (CC). While these licences are mainly designed to prioritise rapid development and establish guardrails for ownership of the software or data, users are given minimal usage restrictions. These include the freedom to use, modify, redistribute, and build over current work without substantial emphasis on responsible use. Permissive licences also do not require developers to adhere to any specific ethical guidelines or principles, which can lead to ethical concerns regarding the use of AI.[68]

Responsible AI Licences or RAILs[69] are a special type of responsible licence that acts as a contractual agreement between developers and downstream users who want full access to a model. Specifically, these responsible licences contain explicit behavioural-use

[68] P. Keller and N. Bonato (2023) *Growth of Responsible AI Licensing. Analysis of License Use for ML Models* Published on OpenFuture. Available at: https://openfuture.pubpub.org/search/. Assessed on 17th July 2024

[69] D. Contractor, et al. (2022) *Behavioral Use Licensing for Responsible AI*. In 2022 ACM Conference on Fairness, Accountability, and Transparency (FAccT '22), June 21–24, 2022, Seoul, Republic of Korea. ACM, New York, NY, USA, 11 pages. https://doi.org/10.1145/3531146.3533143/.

clauses, which, in contrast to permissive software and data licences, are designed to promote responsible AI practices. They do so by requiring developers to adhere to specific ethical principles and guidelines. Moreover, any downstream derivations, including redistribution and transformation from AI models licensed with RAIL, must also abide by use restrictions clauses. This approach means that any AI-based technology can be developed and deployed in a way that is more aligned with specific values and principles, including those set out in instruments like the OECD Principles or in legislation.

11. Conclusion and Recommendations

The evolution of AI presents opportunities and challenges for personal data. With increased digitalisations, data subjects may have no option but to surrender data to AI systems to access goods and services including from government and financial institutions, and in business and trade. Amidst the challenges and ethical considerations posed, maintaining a balance between innovation and privacy protection is crucial. This balance can be achieved through reinforcing legal and regulatory frameworks, advocating for transparency and accountability, and cultivating education and awareness. Through this approach, it is possible to leverage the advantages of AI while ensuring the protection of the fundamental rights and privacy of individuals. In view of the risks associated with digitalization generally and the use of AI, it is doubtlessly indispensable to have law that is set by state authorities, or in which they at least play a role, and that is furnished with sanctioning options. The verbal acknowledgement of ethical principles must not be used as an alibi for dispensing with legal constraints. As a result of territorial break-downs, which are also typical for the use of AI national efforts, including national legal rules, are often insufficient for solving the problems in this area. What are needed, therefore, are also transnational and globally effective tools that, ideally, are based on corresponding transnational and international agreements, at least where they are intended to take legal form. This includes new concepts, agreements, and institutions of transnational governance[70] in which public actors collaborate with the stakeholders

[70] One example is the (not binding) NETmundial Multi-stakeholder Statement of 24 April 2014, which outlines a set of 'Internet Governance Principles' and contains a 'Roadmap for the future evolution of the

concerned, i.e. with associations and companies in the digital economy, but also with NGOs and other entities representing the interests of civil society. To have any sustained effect, such transnational agreements require law that is set by state authorities, or in which they at least play a role, and that is coupled with measures for enforcing it.

Lawyers are increasingly utilizing various types of AI and data analytics tools to enhance their work efficiency, streamline tasks, and improve client services. Smart virtual assistant tools based on ML and NLP are proving useful to assist lawyers in legal research and e-discovery, document automation, predictive legal analysis, legal review, case management, legal advice and expertise automation, and information and marketing. On the African level, at least 36 African countries have enacted data protection and privacy laws that regulate the collection and processing of personal data.[71] Similarly, the African Union Convention on Cyber Security and Personal Data Protection which was adopted in 2014 to establish a legal framework for cybersecurity and personal data protection entered into force in June 2023.[72] Legislation across African states is still deficient in addressing emerging AI challenges. The role of AI in accessing an effective remedy is straightforward. What is not in doubt is that AI has the potential to violate and perpetrate abuse of the rights of human and the data subject. To this end, this paper recommends thus:

i. Policymakers urgently need a stronger interdisciplinary evidence base to understand and formulate effective responses to the challenges AI presents for our societies.
ii. AI is inherently interdisciplinary. We must draw on a richer ecology of knowledge to develop, practice, and regulate AI. This requires the creation of new vocabularies[73] and plural methodologies.
iii. Regulation must be underpinned by inclusive policy processes and research practices. These processes should draw on the insights and leadership of communities likely to be impacted by

Internet Governance Ecosystem'. Available at: https://www.alainet.org/images/NETmundial-Multistakeholder-Document.pdf.

[71] Data Protection Africa, https://dataprotection.africa/

[72] "Status List" at https://au.int/sites/default/files/treaties/29560-sl-AFRICAN_UNION_CONVENTION_ON_CYBER_SECURITY_AND_PERSONAL_DATA_PROTECTION_0.pdf

[73] Y. S. Benitez(2021) *AI Now, A New Lexicon: Technologies.* Available at: https://ainowinstitute.org/publication/a-new-ai-lexicon-technologies/. Assessed 17th July 2024

AI. This must also be supported by a more equitable distribution of research resources, including funding and compute power.

iv. AI regulatory policy should be informed by research which is independent[74] and conducted according to the highest ethical standards.[75] Integrity in AI research also includes considerations about labour exploitation,[76] data governance, and climate.

[74] N. Ahmed et al. (2021) *The growing influence of industry in AI research Industry is gaining control over the technology's future.* Insight. Policy Forum. VOL 379 ISSUE 6635. Available at: https://ide.mit.edu/wp-content/uploads/2023/03/0303PolicyForum_Ai_FF-2.pdf assessed on 17/7/24

[75] UNESCO (2017) *Recommendation on Science and Scientific Researchers.* Document code SHS/BIO/PI/2017/3 rev. available at: https://unesco.org/.

[76] M. Gray and S. Suri (2019) *Ghost work: How to stop Silicon Valley from building a new Global Underclass.*

INTERROGATING THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION OF INTERNATIONAL ENVIRONMENTAL AGREEMENTS IN NIGERIA

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Abstract

The threat of global environmental harm is real and imminent. The world continues to exert unrelenting efforts in the quest to provide viable and sustainable solution to the ever-depleting global environment resulting in climate change and global warming. Treaties, conventions and protocols have been entered into by the international community in a bid to save and sustain the environment for the present and future generations. There are presently numerous international environmental agreements in existence; but the effectiveness of these international agreements is worrisome and questionable. Using doctrinal approach, this paper interrogates the efficacy of the overwhelming litany of global environmental agreements in existence. It examines the challenges facing the legal and institutional frameworks in Nigeria responsible for the implementation of international environmental agreements. It finally made some recommendations on how the law and relevant authorities can be retooled to attract effective compliance and implementation of international environmental agreements in Nigeria.

Keyword: Institutional, compliance, international, environmental, agreement.

1. Introduction

The global environment being as old as human history is believed not to have received early regulatory attention. But today, there is a global drive through numerous legal and institutional frameworks to adequately address the use of the natural environment."

[1] Existing side by side with legal frameworks in any nation are the institutions that ensure the effectiveness of the rules. Nigeria is not an exception. All targets sustainability of human environment part. More so, the need for and importance of international agreements among sovereign nations cannot be over-emphasized. Such necessity of agreement among different countries of the world continue to grow as days go by. Today, treaties, conventions, protocols, and numerous International Environmental Agreements (IEAs) have been pioneered and developed yet it appears as if these efforts are not yielding.[2] Studies show that about seven hundred (700) MEAs are currently in place.[3]

However, it is not about the existence of these agreements. It is to what extents states comply with its obligation to comply and implement the rules and letters embedded in this international environmental law. This is because the nature of compliance to be accorded to the agreement and extent of implementation will solely be dependent on the domestic realities of individual nation that took part in the negotiation process. To achieve national implementation of, and compliance with, treaty provisions is always a herculean task. For instance, United State of America non-participation in global environmental institutions or failure to ratify IEAs often pose threats to climate

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[1] Farrier and P Stein, (Eds.) The Environmental Law Handbook: Planning and Land Use in NSW 4th Edition, David (Redfern Legal Centre Publishing, 2006) 3

[2] C Bruch and E Mrema, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (United Nations Environmental Program, 2006) 15

[3] B Bowling, 'Multilateral Environmental Agreements: A Handbook for Afghan Officials' *United Nations Environment Programme Post-Conflict and Disaster Management Branch* (2008) 8

agreements.[4] Overall, some of these factors nevertheless determine the relative success and bottlenecks that will arise from the agreements. Research shows that as at today, Nigeria is a state party to a handful numbers of international environmental agreements. To properly xray the relevant questions related to this research, this paper is divided into five parts. Apart from the introduction, this paper looks at the second part highlights some IEAs that Nigeria has ratified. The third part examines the legal and institutional frameworks responsible for the implementation of international obligation, and particularly IEAs. The fourth part looks at the factors constituting the impediments for Compliance and implementations of international environmental agreements in Nigeria. The fifth part offers some viable recommendations capable of inducing effective compliance and implementations of IEAs. Finally, the conclusion follows.

2. Some International Environmental Agreements Nigeria is a State Party

International Environmental Agreements (IEAs) are sometimes used interchangeably with Multilateral Environmental Agreements (MEAs). 'Conventions',[5] whichever nomenclature adopted, International environmental agreements play significant role in every global legal agenda or bases towards achieving safe and sustainable environment for mankind. It is an essential mainstream effort that complements national legislations in any framework that address environmental issues. Thus, the role of multilateral environmental agreements in achieving sustainable development has long been applauded by experts.[6] In the global Environmental governance, MEAs are products of multilateral processes which guide national, regional and global steps on environmental issues. The MEAs are often regarded as non-binding and unenforceable principles of law in the international legal stage They however command influence. .[7] Some of the agreements are examined below.

[4] G Bang, *et al* 'US presidents and the failure to ratify multilateral environmental agreements' *Climate Policy* (2012). Available at< https://www.tandfonline.com/doi/abs/10.1080/14693062.2012.699788> Accessed on 16 January 2022

[5] B Pisupati 'Roles of Multilateral Environmental Agreements(MEAs) in Achieving the Sustainable Developments Goals (SDGs)' (2016) 7- 8. Available at <https://wedocs.unep.org/rest/bitstreams/35153/retrieve> Accessed on 22 January 2022

[6] ibid

[7] ibid

(a) The Paris Agreement on Climate Change

This agreement was adopted by 196 parties (countries) at the Conference of parties (COP) 21 in Paris of which Nigeria is a signatory. Came into force in 2015. Nigeria signed in September 2016 and ratified it in March 2017.[8] There have been quite a few efforts on the side of Nigerian government. It undertook that by 2030 it would unconditionally reduce its GHG (GREENHOUSE GAS) emissions by 20% and 45% with the support of international bodies. Further, with regards to achieving this, certain steps were put in place, which include updating its Nationally Determined Contributions (NDCs) and integrating climate goals into its Economic Recovery and Growth plan, ending gas flaring by 2030.[9] Though Nigeria has set up the NDCs as stipulated under the agreement, but challenges remain in balancing economic growth with environmental sustainability. Nigeria needs to step up in its climate action if it means business. There is need to clamp down on rate of deforestation, use of biomass such as wood and production of charcoal from wood – used by exporters and producers etc. Thus, climate change is not given the needed attention and importance. This gave rise to calls for Nigeria to undertake more ambitious efforts to combat climate change and adapt to its effects.[10]

(b) **Convention on Wetlands of International Importance Especially on Waterfowl Habitat, (Ramsar Convention), 1971**

This is signed by Nigeria on February 2, 1971 and ratified in October 2, 2000. The purpose of the Convention is to conserve wetlands and promote their sustainable use. Members to the convention agreed to promote wetlands and waterfowl through the establishment of nature reserves on wetlands.[11] Under the Convention, members are under obligations to designate a wetland that would be included in the list of wetlands of

[8] U Aliogo, 'Paris Climate Change Agreement: How Has Nigeria Fared?' *Thisday Newspaper Report* (2017), < https:// www.thisdaylive.com/index.php/2017/12/28/paris -climate-change-agreement-how-has-nigeria-fared/> accessed on 21 March 2025.

[9] V Chime, 'EXPLAINER: What is Paris Climate Agreement and is Nigeria on Track to Meet its Targets' The Cable of 10th May 2021, <https://www.thecable.ng/explainer-what-is-paris-climate-agreement-and-is-nigeria-on-track-to-meeting-its-targets/> accessed on 20 March 2025.

[10] SS Shuaibu, *et al*, 'Examining The Impact of Nigeria's Participation in Paris Agreement Towards Climate Change Policy' *Zamfara Journal of Politics and Development,* (2022) 3(3) 1 – 11

[11] See Preamble to RAMSAR Convention at where, please indicate?

international importance (Ramsar List)/ The wetlands shall be selected in accordance of the importance in relation to international biology, ecologic, botanic or hydrology nature.[12] Nigeria has Wetlands internationally recognized by the Convention. They are APOI Creek forest in Bayelsa state, BATURIYA Wetland in Kano, DAGONA Sanctuary Lake in Yobe, Lower Kaduna-Middle Niger Floodplain in Kwara and Niger states, MALADUMBA Lake in Bauchi, Oguta Late in Imo State, PANDAM AND WASE Lakes in Nasarawa State, UPPER ORASHI Forest in Rivers State.[13] However, human activities, like sewage and dumping, bush burning, dredging activities, overfishing, overgrazing, poaching etc. have constituted threats to their existence.

(c) International Convention for The Prevention of Pollution from Ships 1975/1978 (MARPOL)

This convention, adopted by the International Maritime Organisation in 1973, is the basic treaty, created to prevent pollution from ships through routine operations or accident.[14] Nigeria is a signatory to the MARPOL75/78/97 Conventions, and their amendments and consolidations.[15] The Convention was ratified by Nigeria in May 2002, and domesticated via the International Convention for the Prevention of Pollution from Ships 1973 and 1978 Protocol (Ratification and Enforcement) Act, No. 54 of 2007.[16] In further implementation of this Convention, the Merchant Shipping Act (MSA) of 2007.[17] and the Merchant Shipping (Ship Generated Marine Waste Reception Facilities) Regulations

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[12] L Kurukulasuriya & NA Robinson, *Training Manual on International Environmental Law, (*2nd edn, United Nations Environment Programme (UNEP), 2006) 168

[13] A. Ibobo, Overview of Wetlands in Nigeria, (SAMSUNG E&A, Ambassador Report: 2018), <https://tunsa.eco-generation.org/ambassadorReportView.jsp?viewID=44368#:~:text=9%20Wetlands%20in%20Nigeria%20are,Rima%20valleys%2C%20Hadejia%20Komadugu%20floodplains%2C> accessed on 21st March 2025

[14] IMO Publication, 'International Convention for the Prevention of Pollution from Ships (MARPOL)' < <http://www.imo.org/en/About/Conventions/pages/International-Convention-for-the-prevention-of-pollution-from-ships-(MARPOL).aspx> accessed 23rd March, 2025.

[15] J Dimka, 'The IMO Regulations on Emission by Ships' *Financial Nigeria <https://www.financialnigeria.com/the-new-imo-regulations-on-emissions-by-ships-blog-522.html>* accessed 23rd March, 2025.

[16] See the preamble to the Act.

[17] Section 336 of the Merchant Shipping Act, 2007, made the provisions of the Convention applicable in Nigeria. It went further to vest the responsibility for preventing Pollution and for making regulations with respect to the Convention on the Minister in charge of merchant shipping.

2012 ("2012 Regulations") were also enacted. Further, the convention shall have the force of law in Nigeria and shall be given full recognition and effect and be applied by al authorities and persons exercising legislative, executive and judicial powers.[18] Moreover, the marine environment departments of Nigerian Ports Authority (NPA) and the Nigerian Maritime Administration and Safety Agency (NIMASA) are to fashion out modalities for implementation. However, all these efforts of Nigeria have not solved the problem related to the safety of the marine environment.

(d) The 1958 Convention on the High Seas:

Nigeria ratified this Geneva Convention on June 26, 1961. However, an examination of the United Nations Treaty Collections did not show the exact date that Nigerian signed the Convention.[19] Be that as it may, this convention is basically historical, and contains the traditional law of the sea. Thus, there was a complete overhaul of this convention at the Third United Nations Conference on the Law of the Sea in 1982. [20]

(e) United Nations Convention on The Law of The Sea, (UNCLOS) 1982:

This Convention, which came into force on November 16, 1994, was signed and ratified by Nigeria on 10th December, 1982, and 14th August 1986 respectively.[21] This convention, sometimes called the 'constitution' for the oceans', established the international legal order of the oceans[22]. In relation to environmental protection, the convention established material rules concerning environmental standards as well as enforcement provisions dealing with pollution of the marine environment.[23] After

[18] See Section 1(a), (b) and (c) of the Act No 54 of 2007

[19] International Union for Conservation of Nature (IUCN), *Treaty >> Convention on the High Seas*, The Gateway to Environmental Law, ECOLEX <https://qqq.ecolex.org/details/treaty/convention-on-the-high-seas-tre-000144/ > accessed on 23rd March 2025.

[20] Tullio Treves, 1958 Geneva Conventions on the Law of the Sea, *Audiovisual Library of International Law,* United Nations, 2023. <https://legal.un.org/avl/ha/gclos/gclos.html> accessed on 23rd March 2025.

[21] Depository, "United Nations Convention on the Law of the Sea", United Nations Treaty Collection, <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en > accessed on 23rd March, 2025.

[22] DB. Sandalow, 'Law of the Sea Convention; should the Us Join?' *Brookings Policy Brief Report*, (19 August 2004) <http://www.brookings.edu/research/law-of-the-sea-convention-should-the-u-s-join/> accessed on 23rd March, 2025.

[23] See Part XII of the Convention.

ratification, Nigeria domesticated its provisions in the Suppression of Piracy and Other Marine Offence Act (SUPMAO), and participated in international bodies that deals with its compliance, such as the International Seabed Authority. In compliance with the terms of this Convention, Nigeria also established Nigerian Maritime Administration and Safety Agency.[24] In fact, Nigeria benefitted from this convention. In May 2009.[25]It submitted a request to extend its continental shelf to the United Nations Commission on the Limits of the Continental Shelf (CLCS). This extension was gotten in May 15, 2024.[26]

3. Legal Frameworks and Institutional Framework:

(i) Legal Frameworks:

a. The Constitution of the Federal Republic of Nigeria

The Constitution of the Federal Republic of Nigeria (Amended 1999 Constitution) is the foremost legal framework on international treaties. It stipulates under Section 12(1) that no treaty shall have force of law in Nigeria except to the extent to which such a treaty has been enacted into law by the National Assembly.[27] Clearly, this provision is a dualist ideology which upholds that national and international law operate in different spheres. In the dualist ideology it is taken that international law can only operate at domestic level after a domestic process has brought international law into the national legal system. Therefore, "in the dualists' world, domestic law determines the applicability of

[24] See Nigerian Maritime Administration and Safety Agency Act, 2007; see also NIMASA, "International Seabed Association", reportgov.ng, < https://nimasa.gov.ng/service/legislation/international-seabed-association/#:~:text=In%202013%2C%20the%20Commission%20elected,polymetallic%20sulphides%20and%20cobalt%20crusts).&text=The%20credentials%20committee%20consists%20of,to%20the%20Assembly%20for%20adoption.> accessed 23rd March, 2025

[25] See Federal Republic of Nigeria, "Executive Summary – A Submission of Data and Information on the Outer Limits of the Continental Shelf of the Republic of Nigeria Pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea" <https://www.un.org/depts/los/clcs_new/submissions_files/nga38_09/nga2009_executivesummary.pdf> accessed 23rd March 2025

[26] State House Press Release, "Extended Continental Shelf: Nigeria Gains Additional Territory as President Tinubu Receives Report from Committee", (2023), The State House, Abuja <https://statehouse.gov.ng/news/extended--missions_files/nga38_09/nga2009_executivesummary.pdf> accessed on 23rd March 2025.

[27] Amended Constitution of the Federal Republic of Nigeria 1999 (Amended 1999 Constitution section 12(1)

international law."[28] Monism, on the other hand, is of the view that both the national and international law exist simultaneously within the national legal system.

The constitutional provision that requires domestication of international agreement was brought to test before the Supreme Court of Nigeria in the case of Abacha v Fawhinmi.[29] In that case, the Respondent at the Supreme Court was Chief Gani Fawehinmi who was arrested without warrant at his Lagos residence on 30th January, 1996 by the combined team of the men of Directorate of Security Service (DSS) and the Nigeria Police. He was first taken to Bauchi State where he was detained without charge nor being informed of his offence. He applied to Federal High Court Lagos Division for the enforcement of his fundamental praying among other things for the court to declare that his arrest and detention was illegal and contrary to the Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (ACHPR Act), and that the respondents be ordered by the court to arraign him before a properly constituted Court or Tribunal as required by Article 7 of the ACHPR Act**.**

The Defendants at the Federal High Court and Respondents at the Court of Appeal) by way of a preliminary objection challenged to the jurisdiction of the Court. In allowing the preliminary objection and striking out the Appellant's case, the Court decided that the Inspector General of Police had power to detain a person by the provisions of the State Security (Detention of Persons) Decree No. 2 of 1984 as amended by the State Security (Detention of Persons) (Amendment) Decree No. 11 of 1994. The Court ruled that any of the provisions of the African Charter on Human and peoples' Rights which was in conflicts with the Constitution (Suspension and Modification) Decree No. 107 of 1993 was void to the extent of its inconsistency.

On further appeal, the Supreme Court, among other things, looked at the ACHPR Act with reference to the provisions section 12 (1) of the 1979 Constitution of the Federal Republic of Nigeria which is stipulated that "no treaty between the Federation and any

[28] E O Okebukola 'The Application Of International Law In Nigeria And The Façade Of Dualism' Nnamdi Aziliwe University Journal of International Law and Jurisprudence 11 (1) 2020 pages 15 - 20
[29] Abacha v Fawehinmi [2000] 6 NWLR Part 660 p 228

other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly" and held that "before its enactment into law by National Assembly, an international treaty has no such force of law as to make its provisions justiciable in our courts." The Supreme Court relied on other foreign cases to arrive at its decision.[30] Similarly, in the case of Higgs & Anor. V. Minister of National Security & Ors the Privy Council held that:

> Treaties formed no part of domestic law unless enacted by the legislature. Domestic Courts had no jurisdiction to construe or apply a treaty, nor could unincorporated treaties change the law of the land. They had no effect upon citizens' rights and duties in common law or statute law. They… might give rise to a legitimate expectation by citizens that the government, in its act affecting them, would observe the terms of the treaty.[31]

b. The National Environmental Standards and Regulations Enforcement Agency (NESREA)

As have been explored earlier in this work, one of the efforts geared towards ameliorating the pains of millions of people all over the world is ensuring regional and national policy frameworks to match the already established international agreements. This has undoubtedly provoked the needs to establish environmental policies and enforcement agencies around the world and in Nigeria. NESREA is one of such legal mechanisms.[32]

The Act empowers the Agency to be responsible for enforcing all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforcing compliance with provisions of international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory. NESREA has responsibility for the

[30] The Supreme Court quoted the decision of the Privy Council in Higgs & Anor. V. Minister of National Security & Ors,25 where it was held that the law of England and the Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the Crown and that Treaties formed no part of domestic law unless enacted by the legislature. See also the case of Oshevire v British Caledonian Airways, where the Court of Appeal held that any domestic legislation in conflict with international conventions is void. Similarly, in the case of Chae Chin Ping v. United States, where it was held that treaties are of no higher dignity than acts of Congress, and may be modified or repealed by Congress

[31] [2000] 2 AC 228; The Times, December 23, 1999.

[32] S R Monsurat, R M Olalekan and S H Olawale 'A Deep Dive into the Review of National Environmental Standards and Regulations Enforcement Agency (NESREA) Act' International Research Journal of Applied Science 1 (4) 2019 pg 10

protection and development of 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 enforcement of environmental standards, regulations, rules, laws, policies and guidelines. While NESREA has received wide commendation as a good development in view of the relatively ambiguous environmental regulation in Nigeria,[33] its effectiveness has been challenged by numerous factors ranging from corruption, inadequate public awareness and weak enforcement mechanism.

c. **The Petroleum Industry Act 2021**

Nigeria's Petroleum Industry Act (PIA) 2021, which was recently signed into law sometime in August 2021 became one of the is one of the most viable attempts towards compliance negotiated multilateral environmental agreements targeting international standard of operation in Nigeria. The Act targets to provide legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry

The Environmental Management Plan of the Petroleum Industry Act obviously considered the high risk of negative environmental impacts and as such, carved out the need to have a plan to manage the resulting effects of the situation. For instance, the provision of the PIA requires operators to submit for approval, an environmental management plan in respect of projects which require environmental impact assessment. As such the plan should be submitted within 12 months from the effective date of the PIA or six months after the grant of the applicable licence or lease.[34]

Considering the rate of environmental pollution that emanates from oil exploration and production with negative effects on the human health, and the immediate environment, authors redefined, 'good oil field practice' to mean the concept of environmental

[33] N. Okechukwu, (NESREA) and The Challenges of Environmental Regulation in Nigeria (2024) *British Journal of Mass Communication and Media Research* 4(1)pg 5

[34] L Afuye and D Abdulai 'Petroleum Industry Act, 2021: The Road To Compliance For Upstream Companies' 10 May 2022 Available at: <Petroleum Industry Act, 2021: The Road To Compliance For Upstream Companies - Oil, Gas & Electricity - Nigeria (mondaq.com> Accessed on 20th March, 2025

protection and sustainability. Interestingly PIA 2021, stipulated under the Act, the term 'good international petroleum industry practices' which suggests:

> Those uses and practices that are, at the time in question, generally accepted in the international petroleum industry as being good, safe, economical, environmentally sound, and efficient in petroleum operations and should reflect standards of service and technology that are either state-of-the-art or otherwise appropriate to the operations in question and should be applied using standards in all matters that are no less rigorous than those in use by petroleum companies in global operations[35]

This shows a concerted effort of the local legislation to comply with international standard of practice which is the thrust of MEAs.

Evidently, the coming on board of PIA has not only encouraged economic growth but has gone far to positively transform the petroleum sector in the opinion of authors thus:

> The PIA has made some novel changes to the legal and institutional framework of the petroleum sector in Nigeria. Sweeping changes to the powers of the Minster of Petroleum resources, creating the Upstream Petroleum Regulatory Commission, Downstream and Midstream Petroleum Regulatory Authority, the NNPC Limited, Gas Infrastructure Fund, oil exploration in the frontier basins all appear to work towards achieving Nigeria's economic objectives.[36]

(i) Institutional Framework:

- **The Judiciary**

In the 2002, A United Nation Environmental Program (UNEP) Global Judges Symposium was held on the eve of Johannesburg World Summit on Sustainable Development-WSSD, whereupon the Principles on the Role of Law and Sustainable Development was adopted. The principle amongst other things, maintain that 'an independent judiciary and judicial process is vital for the implementation, development

[35] M Ele 'Oil Spills in the Niger Delta-Does the Petroleum Industry Act 2022 Offer Guidance for Solving this Problem?. *The Journal of Sustainable Development, Law and Policy* 2022 pg 134

[36] P.I. Onuh 'An Analysis of the Petroleum Industry Act 2021 as a Panacea to Achieving the Economic Objectives in Chapter Two of Nigeria's Constitution'(2021) Benue State University Law Journal(10)pg 217

and enforcement of international environmental law'.[37] The gathering offered an ample opportunity for cross pollination of idea and shared expertise on environmental law and policy among the judiciaries, and by extension, law faculties and the entire legal profession across the region.[38]

The courts in Nigeria derive their power from section 6 of the Constitution of the Federal Republic of Nigeria, 1999, (As Amended). Section 6(5) specifically empowers the Federal government and State government to establish such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly and State Assemblies may make laws. The judicial powers vested in the courts in Nigeria are to be exercised and shall extend to all inherent powers and sanctions of the courts of law. The judicial powers shall extend to all matters between persons or between government or authority and to any person in Nigeria and to all actions or proceedings relating thereto for the purpose of determining any question as to the civil rights and obligations of that person.[39]

To this regard, the main roles of the judiciary in Nigeria like in other countries of the world are "adjudication, interpretation of laws and exercising supervisory and judicial review functions over administrative bodies."[40] There is no doubt that "it is pursuant to these judicial powers that the courts in Nigeria exercise jurisdiction over persons, authorities and companies, over conducts that infringe or breach environmental laws."[41] The courts are therefore expected to be seen to exercise jurisdiction by making pronouncements that punish offenders and prevent action or in-actions that injurious to environment at the same time provide compensation for victims of environmental harms.

The United Nations Economic Commission for Europe (UNECE) on 25th June 1998 birthed an international law known as Aarhus Convention which advanced litany of rights

[37] C Redgewell 'National Implementation' 'The Oxford Handbook of International Environmental Law'..Edited by D Bodansky, J Brunnee and E Hey(2007, Oxford University Press) pg 930
[38] United Nation Environmental Program Global Judges Program 2005. Available at: <UNEP judges> Accessed on 19th November, 2025
[39] See Section 6(5) CFRN(As Amended 1999).
[40] S. A. Fagbemi And A. R. Akpanke 'Environmental Litigation in Nigeria: The Role of The Judiciary (2019) Naujilj 10 (2) Pg 29
[41] Ibid

to the public with respect to environmental governance that entered into force on 30th October, 2001. One of the core principles of the convention is Access to justice standing as the third pillar of the Convention.[42] As contained in article 9 of the convention, access to justice implies:

1. review procedures with respect to information requests
2. review procedures with respect to specific (project-type) decisions which are subject to public participation requirements, and
3. Opportunity of challenging the breaches of environmental law in general

- **Non-Governmental Organisation (NGOs)**

NGOs are institutionalized groupings of people and resources, often from multiple societies, operating outside the direct authority of any government or collection of governments. For instance, individuals, not nations, are generally the constituent elements of an NGO. They are, in this sense, regarded as international institutions operating in parallel with the state leadership such presidents, Governors, ministers and all the arrays of state actors who dominate national affair.[43] Between 1968-1969, the United Nation General Assembly (UNGA) by Resolutions 2398 and 2581 resolved to conduct a conference which main object would be to "create a basis for comprehensive consideration within the United Nations of the problems of the human environment," and to "focus the attention of Governments and public opinion in various countries on the importance of the problem**."**[44] This resolution arguably contributed to the birth of the Stockholm Conference (1972), which is 'The United Nations Conference on Human Environment' (UNCHE).

In recognising the roles of NGOs Principles 11 & 25 of Stockholm Conference (1972), particularly Principle 11 states that the environmental policies of all States should

[42] UNCE, 'Access to Justice' Available at <Access to Justice | UNECE> Retrieved on 10th November, 2024
[43] Jeremi Suri 'Non-Governmental Organizations and Non-State Actors' available at <*NGO-3-article-scan.pdf (jeremisuri.net)> pg 223 Accessed on 20th June, 2022
[44] S C Valson 'Everything you need to know about the Stockholm Declaration'(2020) Available at: <Everything you need to know about the Stockholm Declaration - iPleaders> Accessed on 20th June 2022

enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures. Principle 25 followed suit and stipulated that States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.[45]

Over the time, the NGOs have played significant roles towards sustainable environment and emergence of several IEAs as such actively shaped by international institutions on issues such as ozone layer depletion which the United Nations Environmental Programme (UNEP) helped to shape. So also, climate change where World Meteorological Organization (WMO and UNEP) played active role. In the same manner, the Transboundary Movements of Hazardous Wastes witnessed the help of UNEP. Food and Agriculture Organisation (FAO and UNEP) helped in shaping Persistent Organic Pollutants.[46]

The Socio-Economic Rights and Accountability Project (SERAP) was birthed in 2004 and as a non-governmental registered under the instant laws Nigerian. Its role span using legal and human rights machineries to propel the government towards transparency, accountability and protection of economic and social rights in Nigeria. It targets amongst other things use human rights law to address developmental and human rights issues generally.[47]

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[45] S C Valson 'Everything you need to know about the Stockholm Declaration'(2020) Available at: <Everything you need to know about the Stockholm Declaration - iPleaders> Accessed on 20th June 2022

[46] B H Desai 'Creeping Institutionalization Multilateral Environmental Agreements & Human Security' InterSecTions 'Interdisciplinary Security ConnecTions' Publication Series of UNU EHS No. 4 (2006) pg. 12 Available at: < (PDF) Multilateral environmental agreements (researchgate.net)> Accessed on 30th June, 2022

K. kumar 'International Environmental Agreements: A Historical Overview' Available at: 8146b10ffe6909b7ddf87dadfe62039c.pdf (shivajicollege.ac.in). Accessed on 20th June 2022

[47] Adetokunbo Mumuni '**SERAP: promoting transparency and respect for socio-economic rights**: **Introduction from the Executive Director, SERAP' Available at** <Who We Are – Serap Nigeria> Accessed on 20th March, 2025

SERAP has featured in many cases in Nigeria in getting Nigeria to comply with its international obligations particularly with respect to international environmental treaty obligation. For instance, among numerous litanies of cases, in 2009, SERAP file against the Federal Government of Nigeria and six oil companies over alleged violation of human rights and associated oil pollution in the Niger Delta.

In that case, SERAP basically alleged "Violations of the right to an adequate standard of living, including the right to food, to work, to health, to water, to life and human dignity, to a clean and healthy environment; and to economic and social development – as a consequence of: the impact of oil-related pollution and environmental damage on agriculture and fisheries."[48] In reaching a decision Court unanimously found the Nigerian government responsible for abuses by oil companies adding that Nigeria violated articles 21 (on the right to natural wealth and resources) and 24 (on the right to a general satisfactory environment) of the African Charter on Human and Peoples' Rights by its failure to protect the Niger Delta from the harm orchestrated on them by the oil companies that have for many years devastated the region.[49]

- **National Human Rights Institutions**

National Human Rights Institutions (NHRI) have become viable tools towards achieving international obligations especially as it relates to human rights. For instance, in pursuit of the 2030 Agenda on SDG, Goal 16 stipulates recommends the "Existence of independent national human rights institutions in compliance with the Paris Principles."[50] In the same vein, in October 2015, the Global Alliance of NHRI (GANHRI) agreed on the Merida Declaration on The Role of NHRIs in implementing the 2030 Agenda for Sustainable Development, the Declaration states "NHRIs are uniquely placed to play a

[48] Available at< Serap Nigeria – Official Website> Accessed on 28rg February 2025
[49] Ibid
[50] Steven L. B. Jensen 'The Role of National Human Rights Institutions in the Implementation of the 2030 Agenda' (Paper for UN Expert Group Meeting on Tackling global challenges to equality and inclusion through the gender responsive implementation of the 2030 Agenda for Sustainable Development) pg 1 Available at < One pager> Accessed on 15th March, 2025

bridging role between stakeholders and promote transparent, participatory and inclusive national processes of implementation and monitoring…"[51]

The National Human Rights Commission (NHRC) in Nigeria plays similar role by its act of establishment in ensuring compliance with international human rights treaties. For instance, article 5(a) provides that:

> The Commission shall deal with all matters relating to the promotion and protection of human rights guaranteed by the Constitution of the Federal Republic of Nigeria, the United Nations Charter and the Universal Declaration on Human Rights, the International Convention on Civil and Political Rights, the International Convention on the Elimination of all forms of Racial Discrimination, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights and other international and regional instruments on human rights to which Nigeria is a party[52]

So far, the NHRC, even though has limited powers to enforce compliance, it has via its complaint structure attended to numerous cases emanating from corporate abuse by exercising its mediatory power on victim corporate abuses thereby offering viable and binding recommendations.[53]

4. Challenges of Compliance and Implementation

In interrogating the legal and institutional framework on the compliance and implementation of IEAs in Nigeria emanates mostly from poor implementation. Many factors are responsible for the lack of compliance or poor implementation of negotiated IEAs.

i. **Poor Negotiation Attitude by Individual Countries**: Process leading to adoption and ratification treaties plays significant role towards compliance and its domestic implementation. While research are mostly focused on the challenges of climates

[51] Ibid
[52] See Article 5(a) National Human Rights Commission Act 2010
[53] O.M Atoyebi 'Analyzing the Role of the National Human Rights Commission in Protecting Victims of Corporate and State Abuse' August 21st 2025. Available at: <Analyzing the Role of the National Human Rights Commission in Protecting Victims of Corporate and State Abuse - The Loyal Nigerian Lawyer> Accessed on 21st November, 2025

change and poor attitude of states on compliance with international obligation, the process of treaty negotiation becomes and overlooked aspect. The process of negotiation is an essential platform that provides the opportunity for resolving every foreseeable barrier and diplomatic intricacies associated with the treaty under discussion. Non-participation of the relevant authority during negotiation of treaty is one of the major challenges that inhibits compliance and implementation of international obligation required by that treaty.[54] For instance, there is a recent global call to end plastic pollution. In preparation for the potential treaty, Nigeria Plastic Treaty Preparatory Session was convoked and was hosted by Community Action Against Plastic Waste (CAPws). This was done in collaboration with Federal Ministry of Environment.[55] However, beyond preparation is an actual participation during negotiation.

ii. **Proliferation of Treaties:** "Treaty congestion" is a serious inhibiting factor to effective implementation of multilateral environmental agreements said Prof Weiss.[56] Recent years have witnessed serious proliferation of environmental treaties. Although Art. 30 Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (1986),[57] such surge in the number of environmental agreements gives room for inconsistencies, overlapping provision, duplication of aims and incoherency.

iii. **Domestic Constraints**: peculiarity in legal and socio-economic situation often make domestic compliance and application of negotiated treaties difficult. There is the challenge of peculiarity of internal difficulties faced by developing countries such as modus of translating treaties into domestic laws for effective implementation. Section 12(10) of the CFRN, 1999 (As Amended) makes clear

[54] C.E Okeke and M.I. Anushein 'Implementation of Treaties in Nigeria: Issues, Challenges and the Way Forward' (2028) NAUJILJ 9 (2) pg 226

[55] Ahmed Tiamiyu - Community Action Against Plastic Waste *(*CAPWS), Nigeria Plastic Treaty Preparatory *Session(2023)*. Available at<Nigeria Plastic Treaty Preparatory Session - GAIA> Accessed on 27th March, 2025

[56] E. B. Weiss, International Environmental Law: Contemporary Issues and the Emergence of New World Order 81 Geo L.J 675(1993) pg 697

[57]Art. 30 Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (1986)

stipulations to the effect that no such international treaty shall have force of law in Nigeria unless to the extent such law is domesticated by the National Assembly.

5. Conclusion and Recommendations

As the world continue to grow and countries of the world become more aware, the gap between international law and domestic law continue to fizzle out. In essence, the barrier that inhibits compliance and implementation of negotiated international environmental agreements becomes more visible, and easy to tackle. On the face of strict legal and poor institutional arrangements towards IEAs, this paper reveals the inherent challenges such as poor or lack of awareness, corruption, poor implementation mechanism. It offers some potential solutions that can ensure effective compliance and implementation of IEAs. As global environmental harm knows no bound so also the journey towards effective solution demands cross sectoral and more advanced approach. This paper recommends thus:

i. **Provision of Pre-negotiation and Technical Assistance to Ministries, Departments and Agencies (MDA) from Participating Countries:** Quite often, regular information and proper briefings are usually not readily made available to relevant participating MDAs nor are these they exposed to strategic advice that are required in preparation for the complex negotiation. The recent Plastic Treaty Preparatory Session which was convoked and hosted by Community Action Against Plastic Wastes (CAPWs) in collaboration with Federal Ministry of Environment is one of its kind.

ii. **Training and capacity building for government and judicial officers on civilized and international standard of environmental governance**: Considering the continuous rise and proliferation of international environmental agreements many of which a purpose driven on specific environmental challenges, there need for more in-depth and unceasing training opportunities on government, judicial officers and by extension, all stakeholders on environmental matters to improve the capacity. This practice will ensure a more robust training program where every stakeholder including the members of the public and civil society bodies are kept in

tune with recent mechanisms for environmental governance. It is recognized that the lack of information and capacity in turn inhibits political will to act.

iii. **Encourage the roles of Non-governmental Institution on creating awareness:** In this work, the efforts and contributions of non-governmental IEAs were explored and shown in good light. Their interests are not state-centric as such have always provided and taken unbiased position.[58] Overall, they have "played an increasingly important part in environmental treaty making. In similar trend, NGOs can be employed to use their expertise in creating awareness on the need for compliance and implementation of IEAs.

[58] L. E. Susskind and S. H. Ali, in their book, 'Environmental Diplomacy: Negotiating More Effective Global Agreements'(2nd Edition, Oxford : Oxford University Press 2015) pg 36

INTERSECTIONALITY OF HUMAN RIGHTS, BUSINESS AND DISABILITIES

Ahmed Rufai Ahmed*

Abstract

As businesses face increasing expectations to uphold human rights, disability remains a largely marginalized concern within corporate agendas. This paper investigates the intersection of human rights, business practices, and disability, arguing that an inclusive approach not only fulfils ethical and legal obligations but also unlocks innovation and long-term value creation. Drawing on analyses of international frameworks most notably the UN Convention on the Rights of Persons with Disabilities and a series of global corporate case studies, the paper demonstrates how embedding disability into human rights due diligence enables companies to identify and remediate discrimination, design universally accessible products, and cultivate inclusive work environments. An intersectional lens further reveals how gender, race, and socioeconomic status can intensify barriers for people with disabilities, highlighting the need for differentiated policy responses. The study concludes by proposing a multi-stakeholder roadmap encompassing policy reform, cross-sector partnerships, and sustained stakeholder engagement to integrate disability rights into corporate governance and foster truly inclusive business ecosystems.

Keywords: Intersection, Human Rights, Businesses and Disabilities

1. Introduction

The World Health Organization (WHO) reported that approximately 16 percent of the global population, over 1.3 billion people worldwide, have some form of disability, and that an additional 190 million people that is 3.8 percent of people over 15 years of age experience serious difficulties in functioning normally daily.

[1] In 2017 UN Global Compact and the International Labour Organization reported that roughly one-third of all persons between the ages of 50 and 64 had "impairments" within the meaning of the UN Convention on the Rights of Persons with Disabilities (CRPD), this number however, increases to 50 percent for people over the age of 65 and grows considerably for those beyond the age of 70 and 75 and the number of people with disabilities in the population is also affected by factors such as the presence of and exposure to socio-economic and socio-political conflict in the country.[2]

While the number of persons with disabilities is large, their experiences are diverse and not all people with disabilities are equally disadvantaged.[3] Persons with disabilities face a comprehensive different types of barriers such as attitudinal, internalised and societal barriers which over the time denied people with disabilities various opportunity.[4]

Businesses today operate within a complex human rights landscape that extends far beyond compliance checklists.[5] As private entities wield significant economic and social

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[1] World Health Organization (WHO) <https://www.who.int/news-room/fact-sheets/detail/disability-and-health> accessed 22 July, 2025.

[2] How business can respect and support the rights of persons with disabilities and benefit from inclusion. Guide for business on the rights of persons with disabilities<https://www.ilo.org/publications/guide-business-rights-persons-disabilities> accessed 22 July, 2025; Article 1 of the CRPD explains that "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

[3] Disability inclusion (2015) <https://gsdrc.org/wp-content/uploads/2015/11/DisabilityInclusion.pdf> accessed 22 July, 2025.

[4] Ibid.

[5] Business and Human Rights: A geography of corporate risk, Amnesty International (UK) and (The Prince of Wales International Business Leaders Forum, London: 2002).

influence, they are increasingly expected to respect, protect, and fulfil fundamental rights ranging from non-discrimination to decent work to contribute to a more equitable world.[6] Yet persons with disabilities often remain on the periphery of corporate human rights agendas. The principle of intersectionality reminds us that disability intersects with other identities such as gender, race, and socioeconomic status to compound barriers in access, opportunity, and participation. Recognising these layered disadvantages is essential for designing inclusive policies and practices.

This paper explores how integrating disability rights within business human rights frameworks not only addresses moral and legal imperatives but also unlocks innovation, talent, and market growth. The examined international norms, due diligence processes, and corporate case studies to chart a path toward genuinely inclusive business ecosystems.

2. Theoretical Foundations of Intersectionality and Disability

Intersectionality is a concept coined by Kimberlé Crenshaw[7] and further developed by many scholars.[8] "Intersectionality was developed by Black feminists to counter approaches that failed to consider how multiple intersecting identities together shape our experiences of oppression and privilege".[9] By now, intersectionality is used to cover many intersecting marginalised identities and has moved towards the realm of

[6] Business as Partners in Development: Creating wealth for countries, companies and communities, Jane Nelson/The Prince of Wales Business Leaders Forum, in collaboration with The World Bank and The U.N. Development Programme, London: 1996

[7] Crenshaw, K. 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics'. *Univ. Chic. Leg. Forum* (1989) 5; Intersectionality of Disabled People through a Disability Studies, Ability-Based Studies, and Intersectional Pedagogy Lens: A Survey and a Scoping Review.<https://www.researchgate.net/publication/383885389_Intersectionality_of_Disabled_People_through_a_Disability_Studies_Ability-Based_Studies_and_Intersectional_Pedagogy_Lens_A_Survey_and_a_Scoping_Review> accessed 22 July 2025.

[8] Aiyegbusi, A. Holding the Broken Pieces: An Intersectional Approach to Group Analysis for Women in Prison. In *Intersectionality and Group Analysis*; Nayak, S Forrest, A Eds.; (Routledge: London, UK, 2024)26–47.

[9] Ibid.

organisational change.[10] For example, the "European Union-Intersectionality Framework" has been proposed "to dissect the varied and conflicting ways in which intersectionality is operationalised within EU policies".[11]

Intersectionality is employed as a lens to analyse many topics, such as a sense of belonging,[12] armed conflict, environmental conflict, human rights abuses and crisis. It is argued that the concept of intersectionality has an important role in many field such as socio-legal aspect of the law, and intersectionality is seen to fit into the overarching goal of bioethics to work toward social justice in health care.[13] Intersectionality is used as a lens in many fields, such as peace, law, human rights, conflict studies, organisation studies,[14] critical autism studies,[15] disability studies,[16] and the intersectionality of disability, and environmental studies.[17]

Being a disabled person is one marginalised identity that often intersects with other marginalised identities, which in turn frequently leads to intersectionality-based problems disabled people have to deal together with problems they encounter based on their identity of being a disabled person. However, it is argued that disabled people are often neglected in the intersectionality discourse. Therefore, the first aim of this study was to

[10] Armstrong, M.A.; Jovanovic, J. The intersectional matrix: Rethinking institutional change for URM women in STEM. Divers. J *High. Educ*. (2017) 10.

[11] Debusscher, P.; Maes, E.L. 'the European Union-Intersectionality Framework: Unpacking Intersectionality in the Union of Equality Agenda' *Political Stud. Rev.* (2024) 1–21.

[12] Shi, Q.; Phillips, K.; Davis, J. Latina English Learners' 'Sense of Belonging in STEM Undergraduate Programs at Hispanic-Serving Institutions (HSIs) and Non-HSIs: An Intersectional View' *Divers. High. Educ.* (2023).

[13] Brunig, L.; Kahrass, H.; Salloch, S. 'the concept of intersectionality in bioethics: A systematic review' *BMC Med. Ethics* (2024) 25.

[14] Allison, R.; Banerjee, P. 'Intersectionality and social location in organization studies, 1990–2009' *Race Gend. Cl.* (2014) 67–87.

[15] Mallipeddi, N.V.; Vandaalen, R.A. 'Intersectionality within Critical Autism Studies: A Narrative Review' *Autism Adulthood* (2022) 2.

[16] Ben-Moshe, L.; Magana, S. 'an Introduction to Race, Gender, and Disability: Intersectionality, Disability Studies, and Families of Color' *Women Gender. Fam. Colour* (2014) 2 (1) 105–114

[17] Bentley, J.K; Conrad, S; Hurley, S.; Lisitza, A.; Lupinacci, J.; Lupinacci, M.W.; Parson, S.; Pellow, D.; Roberts-Cady, S.; Wolbring, G. *The Intersectionality of Critical Animal, Disability, and Environmental Studies: Toward Eco-ability, Justice, and Liberation Lexington Books*: (Washington, DC, USA, 2017).

identify on the extent of coverage of disabled people, business and human rights within the intersectionalism.

3. Etymology of intersectional thought

The concept of intersectionality reflects an evolution of thought and values that originated with philosophical and social movements in the West that sought to establish human rights and freedoms as the legal foundation of society.[18] These movements emerged as a social and political force in the 19th and early 20th century to abolish slavery and the slave trade in most European countries and colonies.[19] In the United States, the slave trade was abolished in 1818; slavery was abolished after the Civil War in 1865; and the Civil Rights Act established legal racial equality in1866.[20] Suffragist movements successfully secured voting rights for American and most European women early in the 20th century, but establishing full legal equality was a more protracted challenge.[21] Despite human rights achievements in much of the world, various forms of institutional slavery and subjugation of women have continued with legal protections in parts of the world along with lax law enforcement that fails to protect women and marginalised groups such as disabled people from exploitation, subjugation, and oppression.[22]

Human equality, rights, and freedoms were especially important in the United States where English colonies had asserted their independence to establish a constitutional democracy enshrined in the Charters of Freedom the Declaration of Independence, the Constitution, and the Bill of Rights as foundational principles protecting equality, rights,

[18] Christensen, C., Ojomo, E., & Dillon, K. 'The Prosperity Paradox: How Innovation Can Lift Nations Out of Poverty – Pro Quest. New York NY: (Harper Business Press 2019).

[19] Arhin, K. 'Trade, Accumulation, and the State in Asante in the Nineteenth Century' *Journal of the International African Institute* (1990) 60(4), 524–537.

[20] Baepler, P. White Slaves, African Masters: An Anthology of American Barbary Captivity Narratives. University of Chicago Press(1999)<https://www.scribd.com/document/448846383/Paul-Baepler-White-Slaves-African-Masters-An-Anthology-of-American-Barbary-Captivity-Narratives accessed 22 July 2025

[21] Crenshaw, K. *Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. (University of Chicago Legal Forum, 1989).

[22] Delgado, R., & Stefancic, J. *Critical Race Theory: The Cutting Edge. Philadelphia PA* (Temple University Press 2000)

and freedoms of all citizens under the law.[23] As waves of ethnically diverse immigrants successfully asserted their constitutional rights and status as "white Americans," disparities of race and gender became glaringly evident and difficult to ignore for those who were excluded from opportunities afforded primarily to white men. Indigenous Americans, African Americans, Hispanic Americans, and Asian Americans some of whom claimed longstanding cultural traditions of participative self-governance disrupted by colonisation or slavery organised to ensure equal treatment under the law.[24]

Throughout the 20th century, discussions about fundamental human values transcended national borders, culminating in the 1948 United Nations Declaration of Human Rights (UDHR). The UDHR codified a global consensus on inalienable rights civil, political, economic, social, and cultural that states and other actors should respect. As a nonbinding yet morally authoritative instrument, it has guided multilateral treaties, national constitutions, and corporate responsibility codes ever since. Despite these legal and policy advances in regions such as in the developed and developing world, real-world outcomes reveal persistent inequities. Marginalised groups including persons with disabilities continue to face barriers to full enjoyment of UDHR-enshrined rights.[25] Discrepancies between written guarantees and lived experience underscore the limits of Universalist approaches that treat all rights-holders as if they occupy equal social positions.

4. Conceptual clarification

a. Meaning of Business

A lot of issues and concepts have been advanced on what business is all about. These concepts and precepts vary according to individual contentions about what they assume

[23] Eltis, D., & Richardson, D. *Routes to Slavery | Direction, Ethnicity and Mortality in the Transatlantic Slave Trade*. (London: Rutledge 1997)

[24] Flynn, J. P., Gascon, G., Doyle, S., Koffman, D. M. M., Saringer, C., Grossmeier, J., 'Supporting a Culture of Health in the Workplace: A Review of Evidence-Based Elements' *American Journal of Health Promotion* (2018) 2(3).

[25] Baker, B. 'Anti-Fascist (Antifa) Fallacies: A Primer for Businesses' *Journal of Applied Business and Economics*, (2023) 25(1) 1–38.

Business is all about.[26] To better understand the many hypotheses and propositions about the construct "Business" the following issues are subject to critical examination:

Business encompasses the creation, procurement, and provision of goods and services to meet human needs in appropriate quantities, qualities, times, and places at satisfactory prices.[27] It involves a range of profit-driven activities aimed at sustaining and expanding enterprises by satisfying consumer demands.[28] Operating within a social system, business relies on the interaction and interdependence of individuals or groups working toward shared goals, contributing to both individual well-being and the broader economic environment.[29] Ultimately, it serves as a vital mechanism for maintaining a nation's standard of living through commercial and economic engagement.[30]

Whichever angle one looks at the definitions about business as advanced above one obvious fact is that the word "Business" is a broad and inclusive term that can apply to the many activities people undertake, on a daily basis to earn a living based on the degree or level of benefits or profits accruable to such undertakings.

b. Understanding Human Rights

Human rights was defined by Donnelly[31] who also referred to it as "the rights of man" as "literally the rights that one has because one is human." As pointed out by Bantek and Oette[32] a lot of people and groups use human rights in a loose way to mean rights available to every person because they are human. As loosely as that understanding might be, it actually reflects on a basic level, the essence of the two words that came together to

[26] Asheghian, P. and Ebrahimi, B. *International Business: Economics, Environment, and strategies*, (New York: Harper and Row, Publisher 1990) 221.

[27]See Aremu, M. A. "Strategic Marketing Planning and Entrepreneurship in a Developing Economy" in Management and Entrepreneurship in Societal Transformation: Perspectives from Africa, Adebola, S. A. & Gbadeyan, R. A. (eds.) 47 – 69. Published by Department of Business Administration, Faculty of Management Sciences, University of Ilorin, Nigeria 2013.

[28] Ibid

[29] Ibid

[30] Ibid

[31] Donnelly, *Universal Human Rights in Theory and Practise, 3rd edn*, Cornell University Press, (New York 2013)

[32] Bantek S and Oette L *International Human Rights Law and Practice*, 2nd edn (Cambridge University Press 2019).

form the term. Human refers to everyone on earth irrespective of their age, ethnicity, nationality, ideology, orientation, sex or creed. Rights refers to privileges that one compulsorily deserves irrespective of his or her age, ethnicity, nationality, ideology, orientation, sex or creed. Rights are usually legally enforceable in character and application. Human rights are therefore privileges and opportunities which a person is entitled to by the simple virtue of the fact that he is a human being.

However, the definition of Human Rights is more technical and "to take the meaning of human rights for granted, or simply to refer to formulas denoting rights that we have by virtue of being human, would ignore the controversy surrounding their foundations and validity." According to the United Nations[33] human rights are rights inherent to all human beings, regard less of race, sex, nationality, ethnicity, language, religion, or any other status.[34] These rights include "the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and everyone is entitled to access to these rights, without discrimination.[35]

Article 4 of the African Charter on Human and Peoples Rights[36] states that "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." Human rights have been viewed from three main categories, namely: Civil and political rights, which protects people from the infringements of governments, organisations or other people; Socioeconomic and cultural rights, which includes right to education, housing and satisfactory living conditions; and Solidarity rights, which recognizes the importance of equality and non-discrimination.[37]

Human rights apply in two main dimensions, namely: entitlements based on specific values or principles; and legally enforceable entitlements and freedoms. The underlying notion behind it, is that it is necessarily available to a person because he or she is a

[33] United Nation <https://www.un.org/en/global-issues/human-rights> accessed 22 July 2025
[34] ibid
[35] Ibid
[36] Article 4 of the African Charter on Human and Peoples Rights
[37] ibid

human being. However, it is not every legal right that applies in the perspective of human rights. Legal right is "a right created or recognized by law. Its breach is usually remediable by monetary damages. It is also a right historically recognized by common law courts and so would include equitable rights. Legal rights can further be described as the capacity of asserting a legally recognized claim against one with a correlative duty to act.[38] These rights are not only enjoyed by human beings, but by corporate bodies and even animals.[39] Human rights can be an integral part of legal rights and legal rights go far beyond human rights and encompass other units of rights.[40]

c. Meaning of Disabilities

The UN Department of Economic and Social Affairs (UNDESA) has noted that disabled persons "are entitled to the same rights as all other human beings and to equal opportunities and too often their lives are handicapped by physical and social barriers in society which hamper their full participation".[41] There is no single definition of disability, and WHO noted that defining disability is complicated since it is "complex, dynamic, multidimensional and contested." [42] When defining disability, the UNDESA referred to the distinctions that had been made by WHO between the following concepts in its International Classification of Impairments, Disabilities and Handicaps released in 1980.[43]

1. **Impairment**: Any loss or abnormality of psychological, physiological, or anatomical structure or function.[44]

[38] Ishay, M.R. The History of Human Rights from Ancient Times to the Globalization Era. Berkeley, California: (University of California Press, 2004)
[39] Ibid
[40] Ibid
[41] The quotes attributed to the UN Department of Economic and Social Affairs in this discussion are included in World Programme of Action Concerning Disabled Persons, UN Department of Economic and Social Affairs. Cited from *Definitions and Models of Disability*. <https://www.researchgate.net/publication/372101267_Definitions_and_Models_of_Disability> accessed 22 July 2025
[42] WHO definition on disabilities https://www.who.int/news-room/fact-sheets/detail/disability-and-health accessed 22 July, 2025
[43] Ibid
[44] Ibid

2. **Disability**: Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.[45]
3. **Handicap**: A disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.[46]

WHO explained that disability refers to difficulties encountered in any or all three areas of functioning" and "disability arises from the interaction of health conditions with contextual factors environmental and personal factors.[47] Environmental factors mentioned by WHO included products and technology, the natural and built environment, support and relationships, attitudes (e.g., negative imagery and language, stereotypes and stigma) and services, systems, and policies, while personal factors included factors, such as motivation and self-esteem, that could influence how much a person participates in society.[48]

5. Intersectionality and the disabilities framework

The International Covenant on Civil and Political Rights (ICCPR)[49] and International Covenant on Economic, Social and Cultural Rights (ICESCR)[50] were joined successively by a number of human rights treaties for particular marginalised groups of people: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);[51] the Convention on the Elimination of All Forms of Discrimination against

[45] Ibid
[46] Ibid
[47] World Report on Disability (Geneva: World Health Organization, 2011), 5 (describing The International Classification of Functioning, Disability and Health (Geneva: World Health Organization, 2001).
[48] Ibid
[49] UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966.< International Covenant on Civil and Political Rights | OHCHR> accessed 18 October 2025
[50] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966.< International Covenant on Economic, Social and Cultural Rights | OHCHR> accessed 18 October 2025
[51] UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, Treaty Series, vol. 660, p. 195, 21 December 1965.< International

Women (CEDAW); and the Convention on the Rights of the Child (CRC).[52] Each has its own treaty body: the UN Human Rights Committee (HRC);[53] the UN Committee on Economic, Social and Cultural Rights (CESCR Committee);[54] the UN Committee on the Elimination of Racial Discrimination (CERD Committee);[55] the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee);[56] and the UN Committee on the Rights of the Child (CRC Committee).[57]

Thus, international human rights law has evolved in the direction of adopting group-specific human rights treaties following the adoption of the ICCPR and ICESCR. While these human rights treaties were drafted with particular categories in mind, those who belong to more than one category have often received limited consideration. An unwanted consequence of international human rights law, therefore, is that a number of historically marginalised groups of people are getting particular attention but without full

Convention on the Elimination of All Forms of Racial Discrimination | OHCHR> accessed 18 October 2025

[52] UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989.< https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf> accessed 18 October 2025

[53] UN Human Rights Committee (HRC), concluding Observations on the fourth periodic report of Nigeria, CCPR/C/NGA/CO/4, 29 August 2019.< https://www.rightofassembly.info/assets/downloads/Human_Rights_Committee_Concluding_Observations_on_Nigeria_(2019).pdf> accessed 18 October 2025

[54]*UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), E/C.12/1999/10, 8 December 1999< https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999>* accessed 18 October 2025

[55] UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation XXX on Discrimination Against Non-Citizens, 5 August 2004<https://www.refworld.org/legal/general/cerd/2004/en/39027> accessed 18 October 2025

[56] UN Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/C/GC/35, 14 July 2017.< https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based> accessed on 18 October 2025

[57] UN Committee on the Rights of the Child (CRC), General Comment No. 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25, 2 March 2021.< https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation> accessed 18 October, 2025

consideration for those who also share characteristics that belong to several such marginalised groups of people.

While the problem is inherent to the development of international human rights law, it's important to ensure that the interpretation of human rights treaties remains coherent and to undertake efforts of harmonisation towards this end.[58] The fact that there are people who simultaneously come within the remit of different group-specific human rights treaties creates the necessity of building bridges between the various categories. Although the UN treaty bodies have given these people some consideration, they have done so unequally. There is a tendency to concentrate on monolithic identities, thereby downplaying the multiple characteristics of individuals. Categories are mainly formed on the basis of the life experience of a group's most dominant members, disregarding that of the group's more disadvantaged ones.[59] A focus on monolithic identities, however, obscures the differences and even possible struggles between the members of such a group. Intersectionality can help to recognise that individuals are actually not constituted by any single essence.

Prior to the CRPD, only some of the UN treaty bodies paid attention to disability. The CRC Committee is the one that went furthest in doing so, but this is partly due to the CRC itself focusing on disability. The Convention was indeed the first human rights treaty ever to do so, not only by referring explicitly to disability amongst the grounds listed in its non-discrimination clause but also by including a separate article on disabled children.[60] The CRC Committee, therefore, had to pay attention to disability. It adopted a general comment on disabled children, which provides a detailed examination of matters specifically relating to them.[61] The CESCR Committee also issued a general comment on

[58] John T, 'Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation', *Harvard Human Rights Journal* (2010) 23.

[59] Crenshaw, 'Mapping the Margins', 1298; Makkonen, Multiple, Compound and Intersectional Discrimination, 18–22.

[60] CRC, Articles 2 and 23.

[61] CRC Committee, General Comment No. 9: The Rights of Children with Disabilities, 27 February 2007, CRC/C/GC/9 (CRC Committee GC 9). Cited from *(PDF*) Intersectionality and disability in international human rights law.

disabled people,[62] in which it clarified that disability is covered by the term 'other status in the ICESCR's non-discrimination clause, clarification which the HRC has failed to follow up on with respect to the ICCPR's own non-discrimination clause.

The CEDAW Committee similarly adopted a general comment on disabled women.[63] Several UN treaty bodies have also made a number of recommendations on disability-related issues in their concluding observations. The number of these recommendations has steadily grown following the adoption of the CRPD, even though there are still significant variations amongst them.[64] The CRPD itself was preceded by a series of non-binding international legal instruments that gradually shaped its content.[65] It was adopted on 13 December 2006 after four years of negotiations initiated by the Mexican government.[66]

The UN Committee on the Rights of Persons with Disabilities (CRPD Committee) was created to monitor its implementation. The CRPD fills an important normative gap in international human rights law, as disabled people were disregarded in previous human rights treaties (with the exception of the CRC). In comparison with other human rights treaties, the CRPD stands out for its consideration of intersectionality. According to its Preamble, States Parties are concerned about the difficult conditions faced by persons

<https://www.researchgate.net/publication/335702431_Intersectionality_and_disability_in_international_human_rights_law> accessed 22 July 2025

[62] CESCR Committee, General Comment No. 5: Persons with Disabilities, 9 December 1994, E/1995/22 (CESCR Committee GC 5). Cited from *(PDF) Intersectionality and disability in international human rights law*. <https://www.researchgate.net/publication/335702431_Intersectionality_and_disability_in_international_human_rights_law>

[63] CEDAW Committee, General Recommendation No. 18: Disabled Women, 30 January 1991, A/46/38 (CEDAW Committee GR 18).

[64] Kjersti S, and Michael A.S 'Mainstreaming Disability in the United Nations Treaty Bodies' *Journal of Human Rights* (2018) 1(7).

[65] See Arlene K, *The Development of Disability Rights under International Law. From Charity to Human Rights* (London/New York: Rutledge, 2015), 31–5; Gerard Quinn, 'Disability and Human Rights: A New Field in the United Nations', in International Protection of Human Rights: A Textbook, ed. Catarina Krause and Martin Scheinin (Turku: Institute for Human Rights, 2009), 250–2; Rosemary Kayess and Phillip French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities', Human Rights Law Review 8, no. 1 (2008): 14–17.

[66] UN General Assembly, Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 26 February 2002, A/RES/56/168.

with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

This provision is the first such one ever to be found in a human rights treaty. The CRPD further prohibits discrimination against disabled people 'on all grounds'.[67] As set out below, the CRPD moreover deals with several groups of disabled people.[68] Besides provisions that refer explicitly to gender and age, it has separate articles on disabled women and children. The CRPD Committee has also issued a general comment regarding disabled women and girls.[69] It even paid further attention to such groups in a recent general comment on equality and non-discrimination.[70]

Finally, the CRPD is the most recent group-specific human rights treaty there is for now. As its drafters found inspiration in previous human rights treaties, this Convention generally contains the most developed and updated provisions on human rights to date. It therefore provides a promising opportunity for examining the question of intersectionality in the field of international human rights law.

6. Intersectionality of Business and Human Rights Frameworks

The UN Guiding Principles on Business and Human Rights (UNGPs)[71] establish that companies "should respect" all human rights, including those of persons with disabilities, through due diligence and remedy mechanisms. Academic critiques note, however, that reporting under the UNGPs rarely disaggregates data by disability, perpetuating

[67] CRPD, Article 5(2).
[68] Ibid
[69] UN Committee on the Rights of Persons with Disabilities (CRPD), *General Comment No. 3 (2016) on Article 6: Women and girls with disabilities*, UN Doc. CRPD/C/GC/3, 2 September 2016.< General comment No.6 on equality and non-discrimination | OHCHR> accessed on 18 October 2025
[70] ibid
[71] UN Human Rights Council, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," UN Doc. A/HRC/17/31 (21 March 2011).< Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework | OHCHR> accessed 18 October, 2025

invisibility within corporate accountability systems.[72]The Guiding Principles contain three chapters, or pillars: protect, respect and remedy. Each defines concrete, actionable steps for governments and companies to meet their respective duties and responsibilities to prevent human rights abuses in company operations and provide remedies if such abuses take place.[73]

(a) The State Duty to Protect

The Guiding Principles affirm that under existing international human rights law, States have the duty to protect against human rights abuses by all actors in society, including businesses.[74] This means States must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations.[75] Furthermore, The Guiding Principles recommend that States set clear expectations that companies domiciled in their territory/jurisdiction respect human rights in every country and context in which they operate.[76]

(b) The Corporate Responsibility to Respect

The Guiding Principles clarify what is expected of business enterprises with regard to human rights and outline the process through which companies can identify their negative human rights impacts and demonstrate that their policies and procedures are adequate to address them.[77] The Guiding Principles affirm that business enterprises must prevent, mitigate and, where appropriate, remedy human rights abuses that they cause or

[72] Augenstein, D, Boyle, A, Ghaleigh, N.S (Eds.): Study of the Legal Framework in Human Rights and the Environment Applicable to European Enterprises operating outside the European Union. Edinburgh: University Edinburgh.

[73] Ibid

[74] UN Human Rights Council, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," UN Doc. A/HRC/17/31, 21 March 2011, Principle 1.< GuidingPrinciplesBusinessHR_EN.pdf> accessed 18 October 2025

[75] ibid

[76] ibid

[77] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc. A/HRC/17/31, 21 March 2011, Principles 15–24.< Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework | OHCHR> accessed 18 October 2025.

contribute to.[78] Businesses must seek to prevent or mitigate any adverse impacts related to their operations, products or services, even if these impacts have been carried out by suppliers or business partners.[79] The responsibility to respect applies to all internationally recognized human rights expressed in the International Bill of Human Rights and the International Labour Organization Declaration on Fundamental Principles and Rights at Work.[80] Though the actions businesses need to take to meet the responsibility to respect will depend on their scale or complexity, the responsibility itself applies to all businesses regardless of size, sector or location.[81]

To meet the responsibility to respect, business enterprises must have the necessary policies and processes in place.[82] The Guiding Principles identify three components of this responsibility. First, companies must institute a policy commitment to meet the responsibility to respect human rights. Second, they must undertake ongoing human rights due diligence to identify, prevent, mitigate and account for their human rights impacts.[83] Finally, they must have processes in place to enable remediation for any adverse human rights impacts they cause or contribute to.[84] Human rights due diligence refers to the process of identifying and addressing the human rights impacts of a business enterprise across its operations and products, and throughout its supplier and business partner networks.[85] Human rights due diligence should include assessments of internal procedures and systems, as well as external engagement with groups potentially affected by its operations.[86]

[78] ibid
[79] ibid
[80] ibid
[81] Ibid
[82] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 15
[83] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 16
[84] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 17
[85] ibid
[86] ibid

(c) The corporate responsibility to respect applies to all internationally recognized human rights

The Guiding Principles include operational provisions that recommend concrete actions for States to meet their duty to protect human rights in the context of business operations.[87] This includes enacting and enforcing laws that require businesses to respect human rights; creating a regulatory environment that facilitates business respect for human rights; and providing guidance to companies on their responsibilities.[88] The Guiding Principles also stipulate that States should ensure that policies are coherent across departments and functions, and that their participation in multilateral institutions is aligned with their human rights obligations.[89]

The human rights obligations of States, from providing security to delivering utilities, are not voided when such functions are carried out by state-owned or private business enterprises.[90] As conflict-affected areas pose a heightened risk of gross human rights abuses, including by businesses, the Guiding Principles stipulate that States (home and host) should provide guidance, assistance and enforcement mechanisms to ensure that business enterprises are not involved with such abuses in conflict-affected areas.[91]

A company is exposed to multiple human rights challenges depending on its sector and on the countries in which it operates. The Guiding Principle Number 24 states that it might be necessary to prioritize the most severe human rights abuses or those in which a late response would make the adverse impact irremediable.[92] Any company operating in countries with weak human rights enforcement has to make sure that its suppliers and other business partners are not using these loopholes to get an advantage over their

[87] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 12 and 3.
[88] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 12
[89] Ibid
[90] See UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 3.
[91] Ibid
[92] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 24

competitors.[93] In some situations, the host country might have laws that contradict international laws, such as the lack of freedom of association, excessive working hours, maternity protection, and the right to collective bargaining, gender or ethnic equality, treatment of migrant workers, and privacy or habeas corpus rights.[94]

In such cases, Ruggie[95] recommends to respect the international laws to the greatest extent possible. If a company risks being complicit in egregious human right abuses, it should handle this as a legal compliance issue and dissolve the business relation. Companies have different issues they might look into more thoroughly.[96] The challenges for an agribusiness that plants cotton with a high input of pesticides and herbicides as well as a high water use has a different impact on workers and communities, as a bank that might be more challenged to offer equal access to credit for men and women or for different ethnic groups.[97]

Today the challenging question for a business is no longer whether it should implement human rights into its business operations, but how it should implement them.[98] The Guiding Principles on Business and Human Rights provide a framework that shows which human rights are relevant for businesses, what the fundamental steps for implementation are, and how a business should prioritize the handling of adverse impacts of their operations.[99] Within a single company, and between the different business sectors, depending on the country of operations, different human rights challenges might arise.[100] Therefore, each company needs to address the specific challenges that might arise, utilizing various human rights impact assessments. Governments and business

[93] Social Accountability International. *The Social Accountability International (SAI) Fire Safety Checklist*. (New York: SAI 2013).
[94] Ibid
[95] Ruggie, John G. '*Just Business. Multinational Corporations and Human Rights* (London: W.W. Norton, 2013)
[96] ibid
[97] ibid
[98] See UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 11–24
[99] ibid
[100] See UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy"* Principles 11

associations, as well as labour unions and nongovernmental organizations started to put into actions the Protect, Respect, Remedy framework.[101] As a result the UN Guiding Principles on Business and Human Rights will become even more relevant as reference point for good business conduct that guarantees service provided and goods produced in a healthy, safe and fair work environment.[102]

7. When human rights are violated by companies, governments must provide a robust and appropriate remedy for those affected.

An accessible, predictable, equitable, transparent and rights-compatible.[103] Simply put, they must provide genuine remedies for victims of human rights violations by companies and must not amount to communications or political exercises.[104] Operational-level mechanisms should be based on engagement and dialogue with the stakeholder groups whose rights they seek to remedy.[105]

One of the fundamental principles of the international human rights system is that when a right is violated, victims must have access to an effective remedy.[106] The Guiding Principles affirm that the State duty to protect rights includes ensuring that when human rights are violated by companies within their territory and/or jurisdiction, the State must ensure access to an effective remedy for those affected.[107]

The state duty to provide access to effective remedy includes taking appropriate steps to ensure that State-based domestic judicial mechanisms are able to effectively address

[101] Shift Implications of the UN Guiding Principles on Business and Human Rights for the Fair Labour Association. (New York: Shift 2012).
[102] ibid
[103] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Principles 25–27.
[104] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Principles 25.
[105] Ibid
[106] UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 16 December 2005.< Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law | OHCHR> accessed on 18 October, 2025
[107] Ibid

business-related human rights abuses, and do not erect barriers such as administrative fees or lack of language interpreters that prevent victims from presenting their cases. It does not simply mean that countries should fortify their court systems.[108] States should also provide effective and appropriate non-judicial grievance mechanisms with the capacity to hear and adjudicate business-related human rights complaints as part of a comprehensive State-based system for remedy.[109] The access to remedy principles do not only apply to States.

They also stipulate that business enterprises should provide for, or participate in, effective mechanisms for fielding and addressing grievances from individuals and communities who may be adversely impacted by the company's operations.[110] They further maintain that multi-stakeholder and other collaborative initiatives based on human rights-related standards can also contribute to providing effective access to remedy.[111]

8. Conclusion

The intersectionality of human rights, business, and disabilities underscores that disability cannot be treated in isolation from other social identities and systemic inequalities. Applying an intersectional lens reveals how corporate practices hiring, product design, supply chains often perpetuate compounded barriers when they fail to account for gender, race, class, and disability together. Despite existing frameworks like the UN Guiding Principles and the UN Convention on the Rights of Persons with Disabilities, disability often remains invisible in corporate due diligence and reporting. This gap stems from the absence of explicit disability references, inadequate data disaggregation, and limited engagement with disabled persons' organizations, all of which undermine genuine accountability and remedy. To transform business and human rights from rhetoric into reality, companies must: Embed disability explicitly in policy commitments and due

[108] Ibid
[109] ibid
[110] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc. A/HRC/17/31, 21 March 2011, Principles 29–30.
[111] Ibid

diligence processes. Foster meaningful dialogue with diverse stakeholders to co-design accessible grievance and remediation mechanisms. Align voluntary frameworks with binding domestic laws to ensure enforceable standards and remedies. Only by successively intersectionality can businesses fulfil their human rights obligations, unlock inclusive innovation, and contribute to a world where the rights of all persons including those with disabilities are fully respected and realized.

LEGAL AND POLITICAL IMPLICATIONS OF WITHDRAWAL OF MEMBERSHIP IN ECOWAS

Joel Adelusi Adeyeye*, Eunice Awaji Kolo and Elijah Oluwakorede Adeyeye*****

Abstract

This article discusses the legal and political implications of withdrawal of membership in the Economic Community of West African States (ECOWAS), by Mali, Niger and Burkina Faso. There were unconstitutional changes of government in these states for which sanctions were imposed on them. On 28 January 2024, the governments of countries issued a coordinated joint communiqué on national televisions in their respective countries announcing their withdrawal from ECOWAS. The aim of this article is to unravel the constitutionality of their respective notices. Withdrawal is an act by which a member of an international organization willingly terminates its membership. The right to withdraw is most of the time contained in the legal instrument of such an organization and this varies from one to the other. There have been previous withdrawal from ECOWAS by Mauritania and it was done according to the enabling Treaty. Doctrinal methodology is adopted and quantitative analysis of data is also used. The finding of this work shows that the three states of ECOWAS did not follow the provisions of the legal instrument of withdrawal. This work recommends that ECOWAS should not allow itself to be stampeded into lifting sanctions against a recalcitrant state.

Keywords: ECOWAS, Withdrawal, Legal Implication, Political/Economic Implications, Re-admission

1.0 Introduction

On 28 January 2024, the governments of Burkina Faso, Mali, and Niger issued a coordinated joint communiqué on national televisions in their respective countries announced their withdrawal from the Economic Community of West African States (ECOWAS).

[1] All the three countries; have been under political and economic sanctions from ECOWAS following *coup d' etats* or unconstitutional changes of government in their individual countries. Commentators on West Africa observed that these withdrawals seem designed to undermine ECOWAS' authority.[2] Multiple crises are affecting all three countries, including an ongoing insurgency from jihadist groups in the Sahel region, and in their joint communiqué all three States cited the inability of ECOWAS to assist them as grounds for their withdrawal.[3]

ECOWAS came into being in 1975 through a Treaty that was initially signed in Lagos, Nigeria by sixteen nation states.[4] The original Treaty was revised in 1993 (ECOWAS Treaty, 1993). The initial objective of the body was for economic development of the sub-region. This she started pursuing by removing barriers to movement of persons and goods, trying to create a common currency, gas pipeline, regional court of justice and so

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[1] F Cowell, 'ECOWAS Withdrawal and the Law of Treaty Withdrawal', *EJIL*, 2024 https://www.ejiltalk.org/ecowas-withdrawal-and-the-law-of-treaty-withdrawal/ accessed 15 July, 2024

[2] Institute for Security Studies, 'Proposed ECOWAS Exit leave West Africa at a Cross Road, 2024 https://issafrica.org/iss-today/proposed-ecowas-exits-leave-west-africa-at-a-crossroads accessed 16 July, 2024

[3] European Parliament, 'Sahel Exit' in West Africa: Implications for ECOWAS and the EU https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762295 accessed 16 July, 2024.

[4] ECOWAS Treaty, 1975 https://www.ecowas.int/publication/treaty/#:~:text=The%20Economic%20Community%20of%20West,in%201975%20in%20Lagos%2C%20Nigeria accessed 17 July, 2024.

on.[5] In pursuing the objectives, the sub-regional body was faced by conflicts and this made her to set up peacekeeping operations (code named, ECOWAS Monitoring Force, ECOMOG) that intervened in Liberia, Sierra Lone and Ivory Coast. On democracy, there had been democratic transitions in nearly all the countries, and there have been cases where incumbents lost re-elections, for example in Senegal, Ghana and Nigeria. ECOWAS is a regional reference point for other sub-regional organizations on African continent.[6] ECOWAS is presently a union of 15 sovereign West African States, but at formation in 1975, they were 16, Mauritania has withdrawn her membership in year 2000. ECOWAS constitutes a total area of 5.12 million km^2 and a population of about 397.21 million people, of which Nigeria has over 200 million people (ECOWAS History). The lingua franca in which it operates is English, French and Portuguese. These official languages, somewhat essentially, underpin the histories of colonization of the member states.[7] Today, uncertainties or challenges to regional governance have remarkably pushed organizations to now operate a complex-based approach and institutional structures in facilitating the performance of their roles. The ECOWAS has developed six institutions and 10 specialized agencies with varying responsibilities.[8] Even with such a number of institutions and agencies performing certain roles, most views have portrayed the ECOWAS as non-effective and in a more general description of 'failure'.[9]

[5] N Nwafor, E Onyebuchi & O Alozie, 'The Economic Community of West African States and its members: A Success Story of Integrated Development https://www.africabib.org/rec.php?RID=A00005428 accessed16 July, 2024.

[6] H A Idowu, 'Historical Patterns of Democratization in Ghana & Nigeria *NILDS Journal of Democratic Studies 2(2)https://ir.nilds.gov.ng/handle/123456789/1403*accessed 16 July, 2024; Ibrahim J., 'Democratic Transition in Anglophone West Africa CODESRIA, 2003 https://bookshop.codesria.org/index.php/product/democratic-transition-in-anglophone-west-africa/ ' accessed 16 July, 2024.

[7] A A Boahan, 'General History of Africa'(1935) <https://unesdoc.unesco.org/ark:/48223/pf0000134379> accessed 15 July, 2024.

[8] G I Kowla, 'Economic Community of West Africa Study Regional Integration Process: A Study of the New Regionalism Phenomenon in Africa, Being a Master of Science in International and European Relations, Department of Management & Engineering Linkopingas Jhttp://www.diva-portal.org/smash/get/diva2:208290/FULLTEXT01.pdfeconomic accessed 16 July, 2024.

[9] Ibid.

Withdrawal or cessation of membership is an act which a state member of an international organization willingly terminates her membership.[10] Of course the right to withdraw from a treaty based organization is included in almost all the legal instruments creating such an organization.[11] In the case of ECOWAS, this is contained in the ECOWAS Protocol on Democracy and Good Government This contains what can be described as series of anti-coup provisions, such as prohibiting States from altering election law in the six months prior to an election and allows for the suspension of States from ECOWAS if there is an unconstitutional transfer of power. The Protocol was ratified by all three parties (Burkina Faso, Mali and Niger) and came into force in 2005 and contains its own withdrawal clause – interestingly the Protocol and ECOWAS Treaty withdrawal clause are not interlinked. Niger has previously been suspended from ECOWAS under the Protocol in 2010 after a coup following an attempt by the then President to remain in office more than his term limit, but was readmitted in 2011 following a transfer to civilian rule.[12]

Bilateral and multilateral relations between states have a very long history, but the establishment of public international organizations functioning as institutions is essentially a development of the late nineteenth century.[13] The nineteenth century has been described as the era of preparation for international organization, this chronological period being between 1815 and 1914, while the years which have passed since the momentous events of 1914 must in a sense be regarded as the era of establishment of international organization, which, in these terms comes to be regarded as a phenomenon of the twentieth century. International organization means an organization established by treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in

[10] V Rashica, The Right, Procedure and Reasons of Withdrawal from International Organizations, https://intapi.sciendo.com/pdf/10.2478/seeur-2019-0019 accessed 16 July, 2024.
[11] Ibid.
[12] Cowell (n 1).
[13] Sinclair between Functionalism and Hegemony: Regional International Organization in the History of Int'l Law, 2024 <https://researchspace.auckland.ac.nz/bitstream/handle/2292/68780/Sinclair%20-%20Between%20Functionalism%20and%20Hegemony-%20Regional%20International%20Organizations%20in%20the%20History%20of%20International%20Law%20%282024%29.pdf?sequence=1&isAllowed=y> accessed16 July, 2024

addition to states, other entities.[14] The Peace of Westphalia in 1648, the Congress of Vienna in 1815, the Congress of Berlin in 1871, The Hague Conferences in 1899 and 1907, and the Treaty of Versailles in 1919were international conferences that preceded the establishment of international organizations.[15] It was in 1919 during the aftermath of the tragedy and suffering caused by World War I and after the Treaty of Versailles, when the League of Nations was created in 1920, as an attempt to create a political organization of an open and universal character.[16]

The League of Nations was an absolute novelty in the history of international relations. An organization on such a scale, covering all fields of international cooperation, never existed before.[17] This organization was designed to promote international cooperation and to achieve peace and security based on open, just, and honorable relations between nations.[18] By the late 1930s, the League was discredited as an instrument of collective security and is demise was rapid. After the outbreak of World War II in September 1939, the League's operations in Geneva were suspended. The League continued to exist in the United States and Canada but without a significant role in international relations. Plans began to be made toward the end of the war for a new, stronger international organization to replace it, this was the United Nations in 1945. The members of the League gathered for a final meeting in April 1946 at which they voted the organization out of existence.[19]

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[14] D Boyd & K Crawford, Critical Questions for Big Data: Provocations for a Cultural, Technological, and Scholarly Phenomenon. Information, Communication, & Society, 2012. <https://www.scirp.org/reference/referencespapers?referenceid=1519557> accessed 7 October, 2024.

[15] S Patton, 'The Peace of Westphalia as it affects on International Relations, Diplomacy and Foreign Policy' https://digitalcommons.lasalle.edu/cgi/viewcontent.cgi?article=1146&context=the_histories accessed 16 July, 2024

[16] C F Amerasinghe, Principle of Institutional Laws of International Organizations, Cambridge University Press 2009, <https://www.cambridge.org/core/books/principles-of-the-institutional-law-of-international-organizations/04E1704996E6E64DDBEFAD5446895FBA> accessed 7 October 2024, 2024.

[17]Baietti, K. and Ginneken, Characteristics of Well-Performing Public Water Utilities. Water Supply and Sanitation Sector Board of the Infrastructure Network of the World Bank Group. Water Supply & Sanitation Working Notes, Journal of Environmental Protection (2006) <https://www.scirp.org/reference/referencespapers?referenceid=2157612> accessed 7 October 2024.

[18] M Herren, Networking the International System: Global Histories of International Organizations, 2014. <https://link.springer.com/book/10.1007/978-3-319-04211-4> accessed 7 October 2024.

[19] P Lamb F R Snape, Historical Dictionaries of International Relations: Historical Dictionaries of International Organizations 2017. <https://www.amazon.com/Historical-Dictionary-International-Dictionaries-Organizations/dp/1538101688> accessed 7 October 2024.

By the revised ECOWAS Treaty,[20] which sets out that States wishing to withdraw must give to the Executive Secretary one year's notice in writing and during that period a member state shall continue to comply with the provisions of this Treaty. However, on 7 February 2024, the government of Mali issued a statement saying it would not follow the one year wait period in Article 91 and it would withdraw without delay from ECOWAS due to the violation by the organization of its own texts, as well as the other legitimate reasons.[21]

1.1 **Withdrawal Clauses from International Treaties**

According to Cowell, the Vienna Convention on the Law of Treaties (VCLT) which stipulates that withdrawal from a treaty may take place in conformity with the provisions of the treaty which entails that where there is a withdrawal clause it should be used to withdraw from a treaty.[22] Most treaties concluded since 1945 have withdrawal clauses. Duration, or waiting provision, regulating the time between the depositary receiving a notification of denunciation by a state party and the termination of legal obligations as withdrawal becomes effective, are a relatively common feature of withdrawal clauses. Of the treaties with withdrawal clauses a plurality require a wait period of a year between denunciation and withdrawal becoming effective, with Weapons and Disarmament treaties[23] being the only type of treaty where the majority of wait provisions are under in length.[24] In 1999 Mauritania formally announced its withdrawal from ECOWAS, in part

[20] Article 91 of the revised ECOWAS Treaty, 1993.
[21] Premium Times, 2024. <https://www.premiumtimesng.com/> accessed 7 October, 2024.
[22] Art 54 of the Vienna Convention on the Law of Treaties (VCLT).
[23] The following are the list of some key International Disarmament Treaties and Agreement: Anti-Personnel Mine Ban convention, 1987, Arms Trade Treaty,2013, Biological Weapons Convention,1972, Chemical Weapons Convention, 1992, Comprehensive Nuclear-Test-Ban Treaty, 1996 and the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearm Protocol), 2021, among others,<https://disarmamenthandbook.org/handbook/annexes/list-of-key-international-disarmament-treaties-and-agreements/>accessed 4 March, 2024
[24] S Yee, 'Towards an International Law of Co-progressive, Amasons, 2014 https://www.amazon.com/Towards-International-Co-Progressiveness-Part-Responsibility/dp/9004250603 accessed 17 July, 2024.

out of concern about the organization's plans for a West African currency, but in line with Article 91 its withdrawal did not become effective until 2000.[25]

Withdrawal clauses are indivisible from the rest of the provisions in a treaty and, as Article 42 (2) of the VCLT sets out, the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty.[26] It is not open to a state to claim that their original act of consent to that treaty is invalidated by its issuing of a notice of denunciation, as a withdrawal clause specifically constrains a state in respect of future actions.[27] Burkina Faso (under its old name, Upper Volta), Mali and Niger had all become party to the original ECOWAS Treaty of 1975 and would have been aware of, and had consented to, its withdrawal clause, which were also incorporated, unmodified, into the revised 1993 ECOWAS Treaty. There is no basis in customary law for the existence of an independent right to retract from a treaty that can operate outside a treaty's express withdrawal clause.[28] Even in circumstances where there is no withdrawal clause, as the Inter-American Court of Human Rights held in *Ivcher-Bronstein v Peru,*[29]Article 56(2) of the VCLT imposes a 12-month wait provision that under the requirements of good faith…according to the law of treaties means there is no possibility of a termination or release with immediate effect.

If there is no way of effecting an instantaneous termination of obligations to the ECOWAS Treaty, there are two additional possibilities suggested by the Malian statement of 7 February 2024; that ECOWAS actions in suspending the three States and imposing various sanctions on them constituted a material breach of the treaty on the part

[25] The New Humanitarian, Mauritania Pulls out of ECOWAS https://www.thenewhumanitarian.org/news/2000/12/28/mauritania-pulls-out-ecowas*accessed* 16 July, 2024.

[26] L R Helfer, 'Terminating Treaties, *OUP*, 2012' https://scholarship.law.duke.edu/faculty_scholarship/2662/ accessed 16 July, 2024.

[27] J Quigley., 'The United States' Withdrawal from Int'l Court of Justice Jurisdiction in Consular Cases: Reasons and consequences Duke Law Scholarship Repository, 2009 https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1057&context=djcil accessed 16 July, 2024.

[28] S P Mulligan, 'Withdrawal from Int'l Agreement: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement, Congressional Research Science, 2017 https://sgp.fas.org/crs/row/R44761.pdf accessed 16 July, 2024.

[29]*Ivcher-Bronstein v Peru* https://www.corteidh.or.cr/docs/casos/articulos/seriec_74_ing.pdf accessed 4 April, 2024

of ECOWAS institutions[30] (engaging Article 60 of the VCLT); or that the current crisis and ECOWAS actions constitutes a change of circumstances (as envisaged by Article 62 of the VCLT). These could provide a route for the departing States to avoid the one-year duration provision.[31]

Most International Organizations constitutive instruments contain a provision on withdrawal from the organization, but some do not. The UN, the World Health Organization (WHO) and – until 1954, the United Nations Educational, Scientific and Cultural Organization (UNESCO) are three prominent examples of organizations with constitutive instruments that lack such a provision.[32] Still, the UN in 1965 received a declaration of withdrawal from Indonesia;[33] in 1949 the USSR had given notice of withdrawal to the WHO, followed by a number of countries in the Soviet political sphere;[34] and in the years preceding the insertion of a withdrawal clause in its Constitution in 1954, UNESCO received withdrawal notifications from Czechoslovakia, Poland and Hungary.[35] This practice is not entirely conclusive as to the consequences of these notifications, but arguably suggests that such withdrawal is unlawful, or in any case without legal effect. In this case the legal relations bounce back to the sphere of the law of treaties, where especially article 54 (Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal) of the VCLT is relevant. If no consensual basis can be found, withdrawal from an organization amounts to unilateral withdrawal from the constitutive treaty, that is, treaty denunciation without the consent of the co-contracting parties.[36] Such would be lawful only in the –

[30] See art 60 of the VCLT.
[31] Mulligan (n 28).
[32] Klabbers J, 'The EJIL Foreward: The Transformation of Int'l Organization Law *European Journal of Int'l Law 26 (1) 2015https://academic.oup.com/ejil/article/26/1/9/497508*accessed 16 July, 2024.
[33] Letter dated 20 January, 1956 from the First Deputy Prime Minister and Minister for Foreign Affairs of Indonesia to the Secretary-General, UN Docs/6157 (20 January, 1965); Indonesia resumed collaboration in 1966 <https://www.jstor.org/stable/20689903> accessed 4 March, 2024.
[34] J Siddiqi, World Health and World Politics: The World Health Organization and the UN System (University of South Carolina Press, 1995) 104.
[35] CF M van Rij, Withdrawing from international organizations in the absence of a withdrawal clause (LLM Thesis, University of Amsterdam, 28 June 2018).
[36] L Brilmayer & I. Y.Tesfalidet, (2011) Denunciation and Withdrawal from Customary Interventional Law: An Erroneous Analogy with Dangerous Consequences, *The Yale Law Journal* 1990 https://www.yalelawjournal.org/forum/treaty-denunciation-and-qwithdrawalq-from-customary-international-law-an-erroneous-analogy-with-dangerous-consequences accessed 15 July, 2024.

unlikely – case that articles $6_0 – 6_2$ of the VCLT are successfully invoked and therewith trump the foundational rule of *pacta sunt servanda*.[37]

Having said this, many constitutive treaties do contain provisions on withdrawal. The withdrawals from the ICC serve as an example.[38] Furthermore, in December 2017 both the US and Israel gave UNESCO notification of withdrawal on the terms of article II (6) of the (in 1954 amended) UNESCO Constitution. With a withdrawal clause in the constitutive instrument, withdrawal comes to fall under the remit of institutional law. A question that may arise in these cases, however, is to what extent the law of the organization then covers the withdrawal and its legal consequences. What is the scope and reach of the pertinent institutional rules – in the pertinent case, is all general law of treaties rules subsumed in the rules of the organization, or only some? The more complex and densely regulated the organization, the more perplexing this question may become. This is illustrated in the Britain exit from European Union (Brexit) processes, when discussion focused on pending debt and outstanding payments. In 2017, when the general political mood was perhaps more categorical than it is now ('no deal is better than a bad deal'),[39] the House of Lords (European Union Committee) published Brexit and the EU Budget, in which it held that 'Article 50 (of the) *TEU* allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a withdrawal agreement is concluded which resolves this issue' and that '(t)he ultimate possibility of the UK walking away from negotiations without incurring financial commitments provides an important context'.[40]

1.2 The Legal Implications of the Suspension

Of course, a lawful exercise of powers under the Protocol could not constitute a material breach by ECOWAS as defined in Article 60(3)(b) of the VCLT, entitling the three

[37] Ibid.
[38] Leon-Perez-Acevedo, 'Why Retain Membership of the International Criminal Court? Victim-Oriented Considerations' (2018) 15(2) International Organizations Law Review.
[39] L Elliott, 'Theresa May's Election Victory will prove Pyrrhic indeed' *The Guardian (online)*, 11 June 2017.
[40] European Union Committee, Brexit and EU Budget (House of Lords Paper125, session 2016-17 (2017) (135) and 3.

countries to suspend their participation in ECOWAS. It could be argued that ECOWAS suspensions are contrary to the object and purpose of the ECOWAS treaty under Article 2(a) to promote co-operation and integration and maintain and enhance economic stability. However, the Protocol is expressly clear that ECOWAS may impose certain sanctions as she has done to some other states, for example, Niger in 2011. On the other hand, the fact that ECOWAS was not negotiating with the suspended state, or was not recognizing its transition to democracy, this would still be unlikely to justify a breach justifying termination. In the Gabcikovo-Nagymaros Project the International Court of Justice (ICJ) held that only a material breach would justify termination and that a violation of other rules would not necessarily justify termination, even though it may justify counter measures from the affected state.[41]

There is a school of thought that instruments like the Protocol are too politically inflexible and ECOWAS overall political decision-making has come in for criticism. However, the Protocol and ECOWAS Treaty are still legally binding instruments and the 'wait' provisions provide an important function, giving time for disputes to be resolved, property claims to be dealt with and arrangements for protecting individual rights to be put in place, prior to termination of a treaty coming into effect. Asserting the right to instant termination, which has no obvious legal basis, risks a much broader threat to the international rule of law in the region, especially when ECOWAS contains a complex array of trading agreements and is linked to the regional monetary union.[42]

Termination of membership may clearly take place when an organization is dissolved. But, while the organization continues to exist, membership may be terminated by withdrawal (a voluntary act of the member state), by expulsion (a measure taken by the organization against the member state) and by the loss of membership upon failure to accept an amendment of the constitution of the organization. Another reason for

[41] E K Proukaki, 'The Problem of Enforcement in International Law (2009) *accessed* 16 July, 2024 https://library.oapen.org/bitstream/id/d5c7d75a-7b27-4737-bc04-3f5294d1362f/external_content.pdf accessed 16 July, 2024 '

[42] S Raube, 'An International Law Assessment on ECOWAS' Threat to use Force in Niger Just Securely 2023 https://policycommons.net/artifacts/4650020/an-international-law-assessment-of-ecowas-threat-to-use-force-in-niger/5474521/ accessed 16 July, 2024

termination not often mentioned is the disappearance of the member state or loss of its essential characteristics as a state.[43] As earlier noted, the right to withdraw is expressly referred in the constitutions of most of international organizations and the conditions attached to the right of withdrawal vary. Some organizations impose clear limitations on withdrawal, in some cases it is not permitted during an initial period, so as to allow the organization time to become established.[44] Whereas in some cases, a period is prescribed between the giving of notice to withdraw; and the coming into effect of withdrawal; a kind of 'cooling-off period, to allow for reconsideration and other possibilities for example, a change of mind.[45]

Another condition sometimes attached to withdrawal is that outstanding obligations must be fulfilled before withdrawal is effective. In general the obligations specified are simply the financial obligations incurred as part of the budgetary commitment, but in some cases the fulfillment of obligations other than financial ones is required. It should be emphasized that when an organization finances itself, as is the case with the financial organizations, the settlement of accounts with a withdrawing member is even more complicated. Policy considerations favoring the view that withdrawal is permissible even in the absence of express provision have been based on the concepts of sovereignty and self-determination, equity, expediency and general principles of law. There is a question whether a member state can suspend its notice, once given. The answer should be that it cannot, unless the rest of the members agree.[46]

The difficult question is what happens in the absence of a withdrawal clause. Some have argued that in such a situation member states have no right of unilateral withdrawal, this view being sometimes expressed as a consequence of the applicability of Articles 54 to 56 of the Vienna Convention on the Law of Treaties to the constitutions of international

[43] Helfer (n 26).
[44] Rashica (n 10).
[45] P. S Abrib, F. O Blazquez, & J M Exora, 'The Right of Withdrawal in Consumer Contract: A Comparative Analysis of American and European Law (2018)' https://indret.com/wp-content/uploads/2019/01/1403-1.pdf accessed 15 July. 2024.
[46] P Carley, 'Self-Determination Sovereignty, Territorial Integrity, and the Right to succession Report from a Roundtable held in Conjunction with the US Deport of States' Policy Planning Staff.(1996)

organizations as to any other treaty. The Article 54 states that the termination of a treaty or the withdrawal of a party may take place:

i. In conformity with the provisions of the treaty;

ii. At any time by consent of all the parties after consultation with the other contracting States.

The Article 55 is about reduction of the parties to a multilateral treaty below the number necessary for its entry into force which highlights that: 'unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force'. Withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal is emphasized on the Article 56 that states:

> A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless: It is established that the parties intended to admit the possibility of denunciation or withdrawal; A right of denunciation or withdrawal may be implied by the nature of the treaty. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1. Article 56, which applies to both bilateral and multilateral treaties, distinguishes between three terms: the termination of a treaty, the denunciation of a treaty and the withdrawal from a treaty.[47]

This is the legal position and best practice all over the world.

1.3 Political/Economic Implications of the withdrawal

Experts are predicting a possible import inflationary effect on food commodities from Burkina Faso, Niger and Mali as a result of those countries' withdrawal from the ECOWAS bloc.[48] Global Credit Rating (GCR) – a subsidiary of Moody's – has indicated that leaving ECOWAS will have a general inflationary impact in the domestic markets of all the three countries, which will inevitably be transferred to the price of food

[47] Art 56 of the EU Treaty.
[48] Raube (n 42).

commodities imported into neighbouring countries including Ghana.[49] It says the movement of people across various borders and trading in these countries will likely be limited – a situation that could possibly promote commodity hoarding with price hikes. The GCR also noted that the three countries' withdrawal will further weaken economic development in the three Sahel nations, who already rank among the worlds poorest.[50]

Ghana currently imports 90% of its fresh tomatoes from Burkina Faso, with a national consumption demand in excess of 800,000 metric tons per annum, according to data from the Ghana Incentive-Based Risk-Sharing System for Agricultural Lending (GIRSAL).Trade data from the Ghana Vegetable Producers and Exporters Association show that the country imports some US$400million worth of tomato from Burkina Faso each year. Burkina Faso and Mali also account for almost 70% of Ghana's livestock import.[51] Similarly, Niger remains a key exporter of dry onions in the region; responsible for almost two-thirds of total exports according to market intelligence platform, index box. In 2021, the main destinations of onion exports from Niger and Ghana are (US$21.7million), Ivory Coast (US$1.15million), Benin (US$451,000), Togo (US$84,500) and Nigeria (US$35,100.[52] In 2022, onion import from Niger, according to the Ministry of Food and Agriculture, was valued at US$26million – with that amount expected to reach US$30million by the end of this year. Indeed, market watchers have also predicted that the cost of a box of imported tomato – which fell by 43% from GHc3,000 in the first and second quarter last year to GHc1,700 by December, and currently sells between GHc1,000 and GHc1,200 – may double again the coming weeks. This development is also expected to affect prices of imported legumes, cereals and grains from Nigeria and Mali due to their exit from the bloc. Mali, according to the Peasant Farmers Association of Ghana (PFAG), has equally in recent years increased

[49] M Chirikure, O Abimbola, & G Chelwa, 'How are the 'Big Three' rating Agencies Impact African Countries African Policy Research Institute, 2022 https://afripoli.org/how-are-the-big-three-rating-agencies-impacting-african-countries-54 accessed 15 July, 2024.'

[50] P O Idisi, (2021) Food Security, Economic Growth and Price Stability Nexus and Conceptual Issues, *Central Bank of Nigeria, comic and Financial Review https://www.cbn.gov.ng/Out/2024/RSD/Food%20Security,%20Economic%20Growth%20and.pdf* accessed 16 July, 2024

[51] EJZ Robinson & S Kolavalli, 'The of Tomato in Ghana Marketing' <https://cgspace.cgiar.org/items/d92f4a30-4d63-46f3-a6fb-c35e526d3a28> accessed 4 November, 2025.

[52] Ibid.

exports of beans, millets and corns to Ghana. To initiate solutions to these unforeseen events and reduce food imports from neighboring countries, key agriculture sector stakeholders and have been advocating support for research institutions to undertake seed development in greenhouse environments to enable year-round nursery. There are also calls for mechanized irrigation, inputs and access to capital to combat changing trends in the current erratic climate circumstances.[53]

The political implications of the withdrawal are enormous. The sub-region has been enjoying the Protocol on Free Movement of Persons, Goods and Services for so many years now which the three countries will no longer enjoy.[54] In addition, the three countries are landlocked and it will affect their transportation system to the coastal area in the sub-region. Added to this is the issue of the war against insurgency and terrorism which will be greatly impaired by the reason of the withdrawal. Chad, Niger, Central Africa Republic (CAR), Cameroon and Nigeria are members of the Multi-National Task Force (MJTF) fighting the Boko Haram insurgency in the Lake Chad Basin, the withdrawal may significantly affect the narratives.[55]

1.4 Specific cases of Withdrawals

Under this sub-heading this paper will discuss various withdrawals from international organizations. The organizations to be considered include the United Nations, the European Union, the African Union and so forth.

1.4.1 Withdrawal from the United Nations

The Charter of the UN contains no express provision prohibiting, permitting, or regulating the question of withdrawal from the organization, and the organization has on

[53] FAO, 'The State of Food and Agriculture 2020' <https://openknowledge.fao.org/server/api/core/bitstreams/6e2d2772-5976-4671-9e2a-0b2ad87cb646/content > accessed 4 November 2025.
[54] M. L Brown, 'Nigeria and the ECOWAS Protocol on Free Movement': *The Journal of Modern African Studies* 27 (2) 1989 https://www.africabib.org/rec.php?RID=058835962 accessed 15 July, 2024.
[55] P Dadur & S K Aliyu, 'View of the Impact' of Multinational Joint Task Force Counter-Operation in the Fight against Boko Haram Insurgency (2021). https://gijmss.com.ng/index.php/gijmss/article/view/86/70 accessed 15 July, 2024.

only one occasion had to deal with this situation.[56] The only case of withdrawal that can be cited is that of Indonesia in 1965, when this state announced and put into effect its intention to withdraw from the UN as a protest against the election of Malaysia as a non-permanent member of Security Council.[57] Notice of withdrawal was given in a letter to the Secretary General. Although in his letter of reply, the Secretary left open the issue of the legality of Indonesia's conduct, the UN'S acquiescence to the withdrawal-defined as 'inactive membership' can be inferred from a series of conclusive acts of the Organization, such as the cancellation of Indonesia from the list of members, the removal of the Indonesian flag and plate from the UN, its exclusion from the budget documents, and so on.[58]

However, at the end of 1966, Indonesia informed the Secretary-General that Indonesia had decided to resume participation in its activities starting with the Twenty-First Session of the General Assembly.[59] Flowing from its peculiar characteristics, and especially because of the rather tenuous and *sui generis* justification brought by Indonesia as grounds for withdrawal, this case seems to testify to the view that each member state has a complete and unconditional right to withdraw from the UN. According to the UN Handbook on the Final Clauses of Multilateral Treaties, the words denunciation and withdrawal express the same legal concept. Denunciation (or withdrawal) is a procedure initiated unilaterally by a state to terminate its legal engagements under a treaty.

Nonetheless, two articles of the UN Charter should not be overlooked because they relate to the compulsory withdrawal or to expulsion of states from the UN. Article 5 states that a Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the

[56] L. B Sohu, 'Expulsion or Forced Withdrawal from an Int'l organizational (1964) Harvard Law Review' <https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751410/EPRS_BRI(2023)751410_EN.pdf> accessed16 July, 2024

[57] D Akande., 'Withdrawal from the United Nations World it have been Lawful for Philippines? Blog of the European Journal of International Law 2016' <https://www.ejiltalk.org/author/blogeditor/page/2/?pagenum=24> accessed 15 July. 2024

[58] Ibid.

[59] Blum Y. Z., 'Indonesia's Return to the United Nation (1967) *JSTORT* <https://www.jstor.org/stable/757388> accessed 16 July, 2024.

Security Council. The exercise of these rights and privileges may be restored by the Security Council. Whereas Article 6 states that a Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.[60]

In considering the legality of withdrawal from the UN, two questions will need to be addressed. First, is withdrawal possible at all? Second and this question will only arise if one gives a positive answer to the first question: what are the circumstances under which, and by which procedure may a state withdraw?[61] Thus, even if withdrawal were possible in the abstract, were the circumstances of the Philippines scenario such that it would have been permitted to withdraw? Unlike BREXIT and withdrawal from the European Union, the absence of a withdrawal clause in the UN Charter means that the answer to the first question must be derived from the general law of treaties.

After all, withdrawal from the UN is a case of withdrawal from a treaty, the UN Charter. Art. 56(1) of the Vienna Convention on the Law of Treaties provides that where a treaty does not explicitly provide for the possibility of withdrawal, withdrawal is not legally permissible unless it is established that the parties intended to admit of that possibility or a right of withdrawal may be implied by the nature of the treaty. In the case of the UN Charter, a proposal to include a withdrawal clause was rejected by a small margin. Nevertheless, the drafting history of the Charter indicates quite clearly that the parties intended to admit of the possibility of withdrawal and that despite the permanent nature of the organization created by the Charter, the treaty was not regarded as one that would admit of no right of withdrawal.

In the discussions around the drafting of what was to become Article 108 dealing with amendments to the Charter, the Committee and the Plenary of the Conference adopted a declaration that contemplated the possibility of withdrawal in a number of cases. According to this declaration, withdrawal might occur in exceptional circumstances. The

[60] Ibid, Rashica (n 10).
[61] Akande (n 54).

declaration went on to state that where the organization was unable to fulfill its role of maintaining peace or where a member was unable to accept an amendment that had come into force, or in cases where an amendment was accepted by a majority of the Assembly but failed to secure sufficient ratifications to bring it into force, members could withdraw.[62]

1.4.2 Withdrawal from the European Union

While it has always been generally assumed that the EU could be dissolved and individual withdrawals permitted by an agreement of all the member states, most publicists believed before the entry into force of the Treaty of Lisbon' in 2009 that the European treaties in their nice version did not permit unilateral withdrawals, in view of express provisions stating that these treaties were concluded for unlimited periods.[63] The Lisbon Treaty for the first time defined the possibility of voluntary withdrawal of a member state from the EU according to the Article 50 which states that:

> If a member state decides to leave the EU, initially notifies the European Council for its intention, then the EU negotiates and reaches an agreement with that state, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the EU. This agreement shall be concluded on behalf of the EU by the EC, acting by a qualified majority, after obtaining the consent of the European Parliament. If no agreement is reached two years after the withdrawal notice, the BC in agreement with the member state unanimously decide to extend this period.[64]

Brexit is a term formed by the unification of the words "Britain and Exit", referring to the referendum held on 23 June 2016 in the United Kingdom, in which the British voted 51.9 % with 48.1% in favor of withdrawal from the EU. The British Government on 29 March 2017 confirmed to the EU its decision to activate the Article 50 and the EC on 22 May 2017 approved the authorization decision to open Brexit negotiations, the commission

[62] Ibid.
[63] European Parliament, 'The Treaty of Lisbon: Historical Development of European Union (2007)' https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon accessed 16 July, 2024.
[64] Art 50 of the EU Treaty.

and negotiating directives. The European Council has adopted a decision to extend the period under Article 50, in the context, of the UK's intention to withdraw from the EU.[65] This is a third extension of Brexit that lasted till 31 January 2020 to allow more time for the ratification of the withdrawal agreement. European Council adopts decision to extend the period under Article 50 The European Council has adopted a decision to extend the period under Article 50.[66]

1.4.3 Withdrawal from African Union (AU)

In 1976, and after being pressured by Algeria and Libya, the Organization of African Unity (OAU) Committee, based at the time in Maputo, Mozambique, recognized the Polisario Front calling as a Liberation movement in Africa. The separatist movement had self-proclaimed the Sahrawi Arab Democratic Republic. At the OAU conference held in Khartoum, Sudan, on the 17th of July 1978, leaders of the participating countries called for a cease-fire in Western Sahara urging the two parts to find a political solution for the conflict. The summit was concluded by the establishment of a committee of five African leaders, including Sudanese, Guinean, Malian, Nigerian and Tanzanian presidents, to study the Western Sahara conflict in order to put forward a number of concrete proposals at the next African summit. The summit that was held on November the 12th, 1984 in the Ethiopian capital, Addis Ababa was attended for the first time by a delegation representing SADR and led by Mohamed Abdelaziz. This was the reason why Morocco decided to withdraw from the OAU.[67]

On July the 9th, 2002, the African Union (AU) was created upon the ruins of the Organization of African Unity (OAU). The new members of the organization remained the same, including the separatist movement. More than three decades after Morocco's withdrawal from the Organization of African Unity, the situation in Africa has dramatically changed. The Algerian and Libyan influence started to fade away and many

[65] F F Fabbrini & Schmidt (2019) 'The Extension of UK Membership in the EU, causes and Consequences, European University Institute' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448598 accessed 16 July, 2024

[66] Ibid.

[6767] L Louw-Vaudran, 'The Meaning of Morocco's Return to the African Union' (2018) <https://issafrica.s3.amazonaws.com/site/uploads/nar-1.pdf> accessed 4 November 2025.

African countries have stopped recognizing SADR as a state.[68] On the 18th July, 2016, King Mohammed VI sent a letter to the 27th Summit of the Union, held in Kigali, Rwanda of her interest to r-join the union. At the African Union summit held in Addis Ababa at the end of January, 2017, Morocco's request to formally join the African Union was accepted, despite the opposition of the SADR delegation, Algeria and South Africa.[69]

1.5 The Lifting of the Sanctions and the Re-admission

Leaders of the Economic Community of West African States (ECOWAS) met to address a political crisis in the coup-hit region that deepened in January with military-ruled Niger, Burkina Faso and Mali's decision to exit the 15-member bloc. After closed-door talks, ECOWAS said it had decided to lift the sanctions including border closures, the freezing of central bank and state assets, and the suspension of commercial transactions with immediate effect. In a communiqué it said this was done for humanitarian reasons, but the move will be seen as a gesture of appeasement as ECOWAS tries to persuade the three junta states to remain in the nearly 50-year old alliance. Their planned exit would bring a messy disentanglement from the bloc's trade and services flows, worth nearly $150 billion a year.

The bloc 'further urges the countries to reconsider the decision in view of the benefits that the ECOWAS member states and their citizens enjoy in the community', it said. It also said it had lifted certain sanctions on junta-led Guinea, which has not said it wants to leave ECOWAS but like other junta states has not committed to a timeline to return to democratic rule. ECOWAS Commission President Omar Touray said some targeted sanctions has been lifted, but the political sanctions remained place for Niger, without giving details.

[68] Y Dahmani, 12 November 1984 'Whem Morocco Withdrew from the Organization of African Union (2017) https://en.yabiladi.com/articles/details/59322/november-1984-when-morocco-withdrew.html ' accessed 15 July, 2024.
[69] Ibid.

1.6 Conclusion

In this work withdrawal from treaty based organizations has been discussed. Provisions from treaty based organizations have been illuminated upon; and where there is no provision in the treaty, VCLT have filled the lacuna. Some states that hesitate to transfer parts of their sovereignty within international organizations choose the option of withdrawal, which means a voluntary act of the member state to withdraw its membership in the organization. The right to withdraw is expressly referred to in the treaties of most of international organizations and the conditions attached to the right of withdrawal vary. In general, the specified obligations of states that decide to withdraw are mostly the financial ones. Some international organizations have emphasized on their statutes the procedures which must be followed by states that decide to withdraw, whereas some organizations only insert the reasons of the expulsion of states. While the article that regulated the withdrawal of states was part of the Covenant of the League of Nations, the Charter of the UN does not have any provision by which a member state may withdraw. With the exception of the League of Nations, a considerable part of the withdrawals of states from international organizations were made during the Cold War, a period characterized by various ideological clashes. Nevertheless, the 21st century is facing serious threats of some of the most important states in the world with big political and economic importance, to withdraw from international organizations, whether universal or regional, that has a major role in the international arena.

1.7 Recommendations

This work in the light of the submissions will therefore make the following submissions.

One, West African countries should imbibe the tenets of democracy and good governance as a medium of best practice. West African cannot afford to be the weeping child of the African continent. Out of about five countries under military dictatorship in Africa, three are from West Africa; this ought not to be so. Two, in as much as we do not advocate the total disintegration of ECOWAS, at the same time, her leaders must not succumb to cheap blackmail of threat of withdrawal by any of her members by whittling down her legal framework so as to sooth any of her members. This may lead to dire consequences of gales of military rule in West Africa thereby destroying the democratic rules already attained.

Three, passionate appeal is hereby made to Non-Governmental Organizations (NGOs) to be awake and educate the citizenry more about democratic governance as the acceptable mode all over the world. In some of this countries, the citizens were rejoicing that the military government is back, thereby giving tacit approval to their come back. Finally, following from the above, civilian administrations ought to perform better than their military counterparts, political offices holders should imbibe good democratic principles and ensure that the populace actually feel and enjoy democratic dividends**.**

PERSONAL DATA PROTECTION IN ISLAMIC FINTECH ECOSYSTEM: TOWARDS A SHARĪʿAH-GOVERNED PRIVACY FRAMEWORK

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Abstract

This paper examined the ethical and legal imperatives of personal data protection within the context of Islamic fintech, proposing a Sharīʿah-governed privacy framework as a normative response to the digital challenges of the contemporary Islamic financial ecosystem. The paper was premised on the observation that, while Islamic fintech platforms have advanced in providing Sharīʿah-compliant financial products, their data governance practices often lacked a correspondingly rigorous Islamic ethical foundation. Using doctrinal analysis and conceptual clarification, the paper explored foundational Sharīʿah principles of amānah (trust), ḥuqūq al-ʿibād (rights of individuals), maṣlaḥah (public interest), and ḍarar (harm) to assert that personal data constitutes a moral and legal trust whose misuse is a violation of both divine and societal obligations. The paper identified major risks in current Islamic fintech practices, including unauthorised access, algorithmic profiling, unethical monetisation, and limited Sharīʿah oversight in digital operations. It further demonstrated that these risks could not be fully addressed by conventional data protection frameworks such as the General Data Protection Regulations and Nigerian Data Protection Regulations, as these often lacked the theological and ethical depth intrinsic to Sharīʿah. In response, the paper proposed a comprehensive Sharīʿah-compliant data governance model incorporating Digital Sharīʿah Supervisory Boards, Ethical Impact Assessments, and the application of Islamic legal maxims within platform policies. The framework also emphasized user empowerment and cross-jurisdictional harmonisation grounded in Islamic legal epistemology. This paper contributed to the development of an ethically sound, spiritually coherent, and operationally practical model of data protection. It concluded that effective personal data governance in Islamic fintech was not only a technical necessity, but a Sharīʿah obligation aimed at preserving human dignity, justice, and trust in the digital age.

Keywords: Personal Data Protection, Islamic Fintech Ecosystem, Shari‘ah-Compliance, Privacy Framework, Shari‘ah Ethical Concern

1.0 Introduction

In the era of digital transformation, financial technology (fintech) has emerged as a disruptive force redefining global financial services. With the expanding intersection between technology and Islamic finance, a new sector i.e., Islamic fintech,has taken shape, combining Sharīʿah-compliant financial innovation with digital efficiency. This sector is experiencing exponential growth, particularly in Muslim-majority countries and among ethically conscious investors.

[1] According to the Global Islamic Fintech Report 2024/25,[2] the global Islamic-fintech market was estimated at USD 161 billion in the 2023/24 cycle, representing approximately 1.4% of the total fintech market, based on transaction volumes and assets under management. The Report projects continued growth, with a forecast that the market will reach USD 306 billion by 2028 under a compound annual growth rate (CAGR) of 13.6%.[3] For 2025, the market is projected to continue its strong growth trajectory.[4] Using the compound annual growth rate (CAGR) of 13.6% provided in the Global Islamic Fintech Report 2024/25, the estimated market size for 2025 would be approximately USD 183 billion.[5] This projection is derived from the stated CAGR and the 2023/24 base figure, as the report forecasts the market to reach USD 306 billion by 2028.[6] Yet, while Islamic fintech has demonstrated potential in enhancing financial inclusion and market accessibility, it also brings forth novel legal and ethical challenges, especially in the area of personal data protection.

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[1] Global Islamic Fintech Report 2024/25, cited in 'Islamic fintech and our emerging role', *Dawn.com* (8 September 2025) https://www.dawn.com/news/1940431 accessed 27 November 2025

[2] Global Islamic Fintech Report 2024/25, *Executive Summary*, SalaamGateway (2024) https://salaamgateway.s3.us-east-2.amazonaws.com/special-coverage/islamic-fintech-2024/GIFT%202024-25%20Executive%20Summary.pdf?utm_source=chatgpt.com accessed 27 November 2025

[3] Dinar Standard and Elipses, Global Islamic Fintech Report 2024/25 (Qatar Financial Centre, 2025) https://www.qfc.qa/-/media/project/qfc/qfcwebsite/documentfiles/research/global-islamic-fintech-report-2024-25.pdf accessed 29 June 2025

[4] Ibid,

[5] ibid,

[6] ibid,

Islamic fintech platforms rely heavily on data-driven technologies including application programming interfaces (APIs), artificial intelligence (AI), cloud computing, and biometric identification to deliver services such as *robo*-advisory (*e.g., Wahed Invest*), crowdfunding (*e.g., Ethis*), and digital banking (*e.g., Insha and TakafulTech*).[7] These technologies, although efficient, introduce complex risks to consumer privacy, particularly in the absence of uniform Islamic standards governing the acquisition, use, and storage of personal data.[8]

From the perspective of Islamic jurisprudence (fiqh), personal data is not merely an economic asset but a trust (*amānah*) that must be preserved and protected. The Qurʾān commands: "O you who believe! Do not enter houses other than your own without first seeking permission"[9] and "Do not spy on one another*"[10]* which classical jurists interpreted as the foundation for the right to privacy (*khuṣūṣiyyah*). Al-Ghazālī regarded concealment of personal information as an extension of human dignity (*ʿirḍ*),[11] while Ibn Qudāmah and al-Shāṭibī linked transparency in data handling with the *maqāṣid al-Sharīʿah* (Objectives of Islamic Law), particularly the protection of life, intellect, and property.[12] Thus, the misuse or negligent management of personal data does not only raises issues of legal liability (*ḍamān*) but may also amount to moral breach of trust (*khiyānah*) in Islamic ethics.

Concurrently, secular data protection regimes such as the European General Data Protection Regulation (GDPR), Nigeria's Nigerian Data Protection Requlation, and Malaysia's Personal Data Protection Act (PDPA) have developed sophisticated rules governing consent, data minimization, and cross-border transfers. However, while these frameworks promote accountability and user rights, they often operate within a secular ethical paradigm, which may not fully align with Islamic notions of trust, divine

[7] ibid; also see Umar Munshi, 'The Rise of Islamic Fintech: Ethics, Regulation, and Innovation' *Islamic Finance News Journal* (2022) 14(3) 21–25
[8] Ibid,
[9] Qurʾān 24:27
[10] Qurʾān 49:12
[11] Al-Ghazālī, *Iḥyāʾ ʿUlūm al-Dīn* (Vol. 2, Dar al-Maʿrifah 2005) , 146–150
[12] Ibn Qudāmah, *al-Mughnī* (Vol. 4, Dar al-Fikr 1997) 142; al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿah* (Vol. 2, Dar Ibn ʿAffān 1997) 305–308

accountability, and spiritual harm. This divergence invites the question: How can the principles of *Shari'ah* be operationalised in data governance structures within the Islamic fintech ecosystem? Studies on Islamic fintech address digital banking, sukuk, and contract governance,[13] while data protection research focuses on compliance and risk management.[14] However, few studies integrate *Shari'ah* principles into personal data governance, leaving a gap that this paper seeks to fill by bridging Islamic ethics and modern fintech data policies.

The paper benefits multiple stakeholders: regulators can align policies with *Shari'ah* ethics; fintech operators can design systems with ethical oversight; users and investors gain assurance that data is protected both legally and spiritually; and academics and policymakers receive a framework for further research and policy development. This paper explores the question by articulating a Sharīʿah-governed privacy framework for Islamic fintech. It bridges the gap between classical Islamic jurisprudence, contemporary data protection norms, and the practical needs of digital finance.

2.0 Conceptual Clarification of Terms

2.1 Personal Data

The term "personal data" has evolved into a central legal and technological concept in the modern digital economy. It refers to any information that relates to an identified or identifiable individual.[15] Under Article 4(1) of the General Data Protection Regulation (GDPR), personal data is defined as: "any information relating to an identified or identifiable natural person ('data subject')."[16] This includes names, email addresses, biometric identifiers, location data, financial details, and online behavioural profiles. The Nigerian Data Protection Regulation (NDPR) similarly defines personal data as data

[13] Regulation (EU) 2016/679 (GDPR) (2016); National Information Technology Development Agency, *Nigeria Data Protection Regulation* (2019)
[14] Muhammad Ayub, *Understanding Islamic Finance* (3rd edn, Wiley 2014) 145–162; Aliyu Ismail and Mohammad Hashim Kamali, 'Sharīʿah Compliance in Digital Finance' (2022) *Journal of Islamic Finance* 12(2) 34–50
[15] See Art. 1, Nigeria Data Protection Regulations
[16] Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) art 4(1)

"relating to an identified or identifiable natural person," incorporating both direct and indirect identifiers.[17] While these definitions are technologically precise, they are rooted in secular legal constructs, where individual autonomy, consent, and harm are the dominant normative anchors.

From the perspective of Islamic law (Sharīʿah), however, personal data must be conceptualized within a broader spiritual and ethical framework. Islamic jurisprudence does not historically contain the term "data", yet analogical reasoning (*qiyās*) and public interest (*maṣlaḥah*) permit the extrapolation of traditional doctrines to contemporary realities. The classical Islamic legal system recognized the inviolability of private information, as part of the broader concept of *ḥuqūq al-ʿibād* (the rights of individuals) as enunciated in the relevant verses of the Book of Allah (SWT). The Qurʾān affirms that one's privacy and private matters are inviolable. For example: "Do not spy on one another"[18] prohibits invasive acquisition of information. Another verse, "Do not enter houses other than your own without seeking permission"[19] underlines the principle of consent and respect for private space.

Although the above verses reference physical spaces, contemporary Islamic scholars including Ibn ʿĀshūr and Mohammad Hashim Kamali have argued that these rulings extend to non-physical forms of privacy, such as one's thoughts, secrets, correspondences, and digital footprints.[20] In *Iḥyāʾ ʿUlūm al-Dīn*, al-Ghazālī equated unlawful exposure of someone's private affairs to theft of dignity and trust, framing information confidentiality as a matter of *amānah* (entrusted obligation).[21] Similarly, Ibn al-Qayyim regarded the concealment of private flaws and sensitive facts about others as part of the believer's moral and social duties.[22]

[17] Nigeria Data Protection Regulation (NDPR) 2019, s 1.3
[18] Qurʾān 49:12
[19] Qurʾān 24:27
[20] Ibn ʿĀshūr, *Maqāṣid al-Sharīʿah al-Islāmiyyah* (Dar al-Nafāʾis 2001) 218; Muṣṭafā Zarqāʾ, *Al-Madkhal al-Fiqhī al-ʿĀmm* (Vol. 2, Dār al-Fikr 1968) 948–950; Mohammad Hashim Kamali, *The Dignity of Man: An Islamic Perspective* (Islamic Texts Society 2002) 43–46
[21] Al-Ghazālī, *Iḥyāʾ ʿUlūm al-Dīn* (Vol. 3, Dar al-Maʿrifah 2005) 125–128
[22] Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn* (Vol. 2, Dar Ibn al-Jawzī 2002) 142–144

Consequently, in the view of these writers, personal data within Sharīʿah may be defined as any piece of information,tangible or intangible,relating to an identifiable individual the misuse or unwarranted disclosure of which violates the trust (*amānah*), dignity (*ʿirḍ*), or security (*amn*) of the person in contravention of the principles of Sharīʿah. This definition integrates the *fiqhī* doctrines of *amānah, ḥuqūq al-ʿibād,* and *ḥifẓ al-ʿirḍ*, and goes beyond utilitarian or consent-based frameworks. It imposes on data handlers not just a contractual obligation, but a divine accountability (*taqwā*) to use or disclose information only within ethically sanctioned boundaries.

Therefore, unlike secular data definitions which rest on legal personhood and regulatory scope, the Islamic definition anchors data protection in the *maqāṣid al-Sharīʿah*, particularly the protection of *al-nafs* (life), *al-ʿaql* (intellect), *al-ʿirḍ* (honour/dignity), and *al-māl* (wealth).

2.2 Islamic Fintech: Definition, Features, and Juristic Foundations

The term "Islamic Fintech" is a fusion of two domains: Islamic finance and financial technology. Though contemporary in terminology, the underlying concepts trace their roots to centuries-old in Sharīʿah principles of commerce (*fiqh al-muʿāmalāt*) and innovation in financial instruments. However, the emerging landscape of digital Islamic financial services demands a precise and principled definition that aligns technological advancements with normative Islamic values.

Fintech is broadly defined as the use of technological innovation to enhance or automate the delivery of financial services.[23] When this innovation is embedded within Islamic finance principles, the result is termed Islamic fintech. According to the Islamic Fintech Alliance (IFA), Islamic fintech refers to technology-enabled innovation in financial services that is designed and operated in accordance with Islamic law (*Sharīʿah*), including its prohibitions on interest (*ribā*), excessive uncertainty (*gharar*), and

[23] DW Arner, *et al,* 'The Evolution of Fintech: A New Post-Crisis Paradigm?' *Georgetown Journal of International Law*(2016) 47(4) 1271–1319

investment in unlawful industries.[24] Similarly, Dinar Standard, in its 2023 Global Islamic Fintech Report, describes Islamic fintech as any digital financial solution or platform that serves Muslim consumers or institutions in a manner that is compliant with Sharīʿah rules.[25]These definitions, while operationally useful, require sharper juristic elaboration to address the normative frameworks that Islamic law imposes on financial relationships, digital contracts, and algorithmic governance.

From the Sharīʿah perspective, any financial activity whether analog or digital must comply with the five pillars of Islamic commercial law: prohibition of *ribā* (interest); avoidance of *gharar* (excessive uncertainty); exclusion of *harām* activities (alcohol, gambling, etc.); implementation of permissible contracts (e.g., *murābaḥah, mushārakah, ijārah*); and upholding of ethical values: transparency, fairness, and mutual consent.[26] Thus, in Islamic fintech, these principles are applied to digital contexts through mechanisms such as smart contracts embedded with Sharīʿah-compliant terms, AI-driven robo-advisory platforms offering only halal investment portfolios (e.g., Wahed Invest), Islamic crowdfunding platforms that fund halal enterprises based on profit-and-loss sharing (e.g., Ethis, Blossom Finance) and Blockchain-based zakāh and ṣadaqah distribution systems ensuring transparency and traceability.[27]

Sharīʿah Supervisory Boards (SSBs) are often engaged to issue *fatāwā* on digital product design, compliance standards, and the permissibility of specific financial structures used in coding contracts. However, it is worthy to note that, despite the growing use of Islamic fintech, scholars have expressed caution about two issues. Firstly, some platforms claim Sharīʿah compliance but merely replicate conventional finance structures (e.g., *murābaḥah* contracts mimicking interest-based credit) and lastly, the use of AI and big

[24] Islamic Fintech Alliance, 'What is Islamic Fintech?' https://www.islamicfintech.org accessed 25 June 2025
[25] Dinar Standard, *Global Islamic Fintech Report 2023* (DinarStandard & Elipses, 2023) 6–9
[26] Ibid,
[27] MD Bakar, *Fintech in Islamic Finance: Theory and Practice* (Amanie Media 2019) 51–75

data raises concerns about fairness, bias, and informed consent, especially in the absence of Islamic ethical oversight in algorithmic design.[28]

Thus, the conceptual scope of Islamic fintech must extend beyond financial compliance to include Sharīʿah-oriented data ethics, consumer protection, and purpose-driven innovation grounded in the *maqāṣid al-Sharīʿah*. Drawing from classical legal norms and contemporary scholarship, Islamic fintech may be defined as follows: A technology-driven financial solution or platform that operates in full conformity with the legal, ethical, and spiritual principles of Islamic law (Sharīʿah), ensuring that its instruments, processes, data practices, and market objectives reflect the prohibitions, permissions, and higher objectives (*maqāṣid*) of the Sharīʿah. This definition acknowledges not only regulatory compliance but also juristic supervision, ethical integrity, and systemic accountability i.e., attributes essential for a holistic Islamic fintech model.

2.3 Sharīʿah-Governed Privacy Framework

The notion of a "Sharīʿah-governed privacy framework" lies at the heart of reconciling Islamic jurisprudence with contemporary data protection regimes. In secular legal systems, privacy frameworks are typically structured around principles of autonomy, consent, proportionality, and harm prevention.[29] However, within Islamic law (*Sharīʿah*), the conception of privacy transcends individual autonomy to incorporate notions of divine trust (*amānah*), moral restraint, and social accountability before God (*taqwā*).[30] Therefore, any Islamic data protection regime must not only replicate regulatory safeguards but also embody the ethical-spiritual imperatives of Sharīʿah.

Legal systems such as the General Data Protection Regulation (GDPR) and the Nigerian Data Protection Regulation (NDPR) articulate privacy as a set of data subject rights: the right to access, rectification, erasure, portability, and informed consent.[31] While these

[28] Iqbal Asaria, 'Sharīʿah and Fintech Ethics: A Necessary Symbiosis' in Nabil Maghrebi and Abbas Mirakhor (eds), *Islamic Economic Institutions and the New Digital Era* (Routledge 2021) 198–210
[29] DJ Solove, 'Understanding Privacy' (Harvard University Press 2008) 84–103
[30] Ayman Shabana, 'Privacy in Islamic Legal Tradition' *Arab Law Quarterly* (2010) 27(2) 1–29
[31] GDPR art 15–21; NDPR Part II

rights protect individual liberty and data integrity, they are secular constructs, developed under philosophical assumptions rooted in Enlightenment liberalism and data utilitarianism.

In contrast, Sharīʿah's conception of privacy (*ḥuqūq al-khuṣūṣiyyah*) is rooted in: Revelation (waḥy), which identifies privacy as a divine right, Dignity (ʿirḍ), one of the maqāṣid al-Sharīʿah, and Trust (amānah), an ethical imperative in handling others' secrets and belongings. For example, the Qurʾān states: "Do not spy on one another…"[32] and "Indeed, Allah commands you to render trusts to whom they are due"[33] These verses, interpreted by scholars such as al-Qurṭubī[34] and al-Rāzī,[35] form the foundational basis for Islamic privacy obligations.

Moreover, Sharīʿah does not regard data as a neutral commodity but as a protected extension of the self i.e., analogous to wealth, blood, or honour. Mishandling personal information may be construed not merely as a civil tort but as a spiritual transgression (*ithm*) and breach of *ḥuqūq al-ʿibād*.[36] To conceptualise a Sharīʿah-compliant data governance system, the framework must rest upon five essential components:

i. *Amānah* (Trust): Data is treated as a moral trust held by a custodian, not as a commercial asset to be exploited.
ii. *Niṣf wa ʿAdl* (Fairness and Justice): Use of data must be proportionate, with equitable access and redress mechanisms.

[32] Qurʾān 49:12
[33] Qurʾān 4:58
[34] Al-Qurṭubī's tafsir, *Al-Jāmiʿ li-Aḥkām al-Qurʾān*, is primarily a jurisprudential tafsir, focusing on the legal rulings (*ahkām*) derived from the Qur'an. It systematically analyzes the verses in light of Shari'ah law, covering civil, criminal, and social obligations. Al-Qurṭubī combines linguistic analysis, explanations of variant readings, and discussions of Hadith supporting legal derivations. His work is valued for its comprehensive incorporation of fiqh perspectives, historical context, and practical guidance for jurists.
[35] Al-Rāzī's tafsir, commonly referred to as *Al-Tafsīr al-Kabīr* or *Mafātīḥ al-Ghayb*, is a comprehensive and rational tafsir. It emphasizes theological, philosophical, and exegetical reasoning, integrating logic, kalām (Islamic theology), and linguistic analysis. Al-Rāzī examines Qur'anic verses with attention to cosmology, ethics, and rational arguments, often addressing potential objections and differing scholarly opinions.
[36] Al-Qurṭubī, *Tafsīr al-Jāmiʿ li Aḥkām al-Qurʾān* (Vol. 16, Dar al-Kutub al-ʿIlmiyyah 2000) 333; Fakhr al-Dīn al-Rāzī, *Tafsīr al-Kabīr* (Vol. 29, Dar al-Fikr 1999) 249

iii. *Ḥifẓ al-ʿirḍ* (Protection of Honour): Preventing reputational harm or unlawful exposure of private details.

iv. *Maṣlaḥah* (Public Interest): Data may be used to promote public benefit, but not at the expense of individual dignity or consent.

v. *Taqwā and Iḥsān* (God-consciousness and Moral Excellence): Internal moral restraint is as vital as external legal enforcement.[37]

Thus, to these writers, a Sharīʿah-governed privacy framework may be defined as: A data protection system structured around the legal, ethical, and spiritual obligations of Islamic law, ensuring that all collection, storage, processing, and dissemination of personal data uphold the *maqāṣid al-Sharīʿah* particularly the sanctity of honour, trust, and divine accountability. This goes beyond secular legalism to integrate the spiritual dimension of privacy and lays the foundation for a comprehensive data protection regime aligned with both *Sharīʿah* compliance and technological innovation in fintech.

3.0 The Sharīʿah Foundations of Privacy and Data Protection

The legal bases of data protection in Islamic law can traced to the holy Qur'an, Sunnah as well as some doctrinal concepts which underpins data protection within the ambit of Sharīʿah law. Therefore, this subheading discusses these bases of protection in Islamic legal system.

3.1 Qurʾānic and Prophetic Foundations

Islamic law derives its primary ethical and legal authority from the Qurʾān and the Sunnah of the Prophet Muhammad (peace be upon him). Within these sources, the principle of privacy (*khuṣūṣiyyah*) is not merely a social courtesy but a divinely ordained right, interwoven with the broader Islamic concept of human dignity (*karāmah*), trust (*amānah*), and accountability (*masʾūliyyah*). These concepts underpin Islamic rulings on personal information, surveillance, consent, and disclosure.

[37] MH Kamali, *Maqāṣid al-Sharīʿah Made Simple* (International Institute of Islamic Thought 2008) 21–24

The Qurʾān clearly articulates the sanctity of private life in numerous verses. One of the most explicit is: *"*O you who believe! Do not enter houses other than your own until you have asked permission and greeted their inhabitants..."[38] This verse establishes the requirement of consent before entering a private domain. Classical exegetes such as al-Qurṭubī, al-Rāzī, and Ibn Kathīr interpreted this not only as a ruling on physical entry but also as a universal principle of informational privacy requiring permission before accessing what belongs to others.[39] Modern Islamic legal scholars argue that the verse lays the moral foundation for informed consent in data collection.[40]

Another critical verse is: *"*And do not spy on one another..."[41] The Arabic verb, *tajassasū* (translated "spy"), contained in the verse connotes deliberate attempts to uncover hidden matters.[42] Al-Ghazālī viewed this verse as a prohibition against unjustified surveillance, backbiting, and data disclosure.[43] According to Ibn ʿĀshūr, it includes all forms of unjust investigation, including modern analogues such as data mining, wiretapping, or cyber tracking, when done without necessity or public interest.[44]

In the *Sunan of Abū Dāwūd*, the Prophet said: "If a man peeps into your house without permission, and you throw a stone at him and put out his eye, you will not be blamed*."*[45] Although this ḥadīth relates to physical intrusion, the underlying ethical principle extends to unauthorized intrusion into one's informational privacy. Prophet SAW was also reported to have said ''There should be neither harm nor reciprocating harm.''[46] Scholars of *qawāʿid fiqhiyyah* (legal maxims) extrapolate from this ḥadīth the rule: "Harm must be eliminated" *(al-ḍarar yuzāl),* which is applicable to privacy breaches in the digital age.

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[38] Qurʾān 24:27
[39] Al-Qurṭubī, *al-Jāmiʿ li Aḥkām al-Qurʾān* (Vol. 12, Dar al-Kutub al-ʿIlmiyyah 2000) 229; Fakhr al-Dīn al-Rāzī, *Tafsīr al-Kabīr* (Vol. 24, Dar al-Fikr 1999) 267; Ibn Kathīr, *Tafsīr al-Qurʾān al-ʿAẓīm* (Vol. 6, Dar Ibn Ḥazm 2000) 74
[40] MH Kamali - The Right to Life, Security, Privacy and Ownership in Islam (Islamic Texts Society, UK, 2008) 56–61
[41] Qurʾān 49:12
[42] See al-Qurtabi, n39
[43] Al-Ghazālī, *Iḥyāʾ ʿUlūm al-Dīn* Vol. 3, (Dar al-Maʿrifah 2005) 124
[44] Ibn ʿĀshūr, *Maqāṣid al-Sharīʿah al-Islāmiyyah* (Dar al-Nafāʾis 2001) 214–218
[45] Sunan Abū Dāwūd, 5153
[46] Sunan Ibn Mājah (Hadith 2340)

3.2 Doctrinal Concepts Underpinning Data Protection in Sharīʿah

The classical Islamic legal tradition developed an extensive jurisprudence (*fiqh*) of ethical responsibility, trust, harm prevention, and social justice. Notably, Islamic law does not explicitly mention "data" as a legal category. However, several core doctrines provide a strong foundation for Islamic data protection principles, especially within the fintech ecosystem. These will be discussed under this subheading.

The first concept is that of *amānah*. *Amānah* is one of the most central ethical principles in Islamic law. It refers to an entrusted obligation whose violation constitutes betrayal (*khiyānah*). The Qurʾān repeatedly invokes the concept of trust: "Indeed, Allah commands you to render trusts to whom they are due…"[47] Thus, Data collected by Islamic fintech platforms such asnames, biometrics and financial information constitutes a form of *amānah*. As such, misusing, misrepresenting, or failing to protect that data amounts to a breach of trust both legally and morally. Ibn al-Qayyim argued that every possession or secret delivered to another person is governed by the principle of *amānah*, even if not contractually formalised.[48]

The Prophet Muhammad (PBUH) further stated: *"*He who is not trustworthy has no faith*."*[49] Modern jurists such as Shaykh Wahbah al-Zuḥaylī and Taqi Usmani agree that data protection must be approached through the lens of *amānah*, making the platform operator a trustee (*amīn*) before God and society.[50]

The second concept is *Ḥuqūq al-ʿIbād* (The Rights of Human Beings). In Islamic jurisprudence, a distinction is drawn between: *Ḥuqūq Allāh* (rights of God, e.g. prayer, fasting), and *Ḥuqūq al-ʿIbād* (rights of individuals).[51] Violating the rights of humans, whether financial, reputational, or personal, has a graver implication, as violator must

[47] Qurʾān 4:58
[48] Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn* (Vol. 2, Dar Ibn al-Jawzī 2002) 108–112
[49] Musnad Aḥmad, 12512
[50] Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh* (Vol. 4, Dar al-Fikr 2006) 207–210; MT Usmani, *An Introduction to Islamic Finance* (Maktaba Ma'ariful Qur'an 2006) 183
[51] Ibid, 1

account for it on the Day of Judgment unless forgiveness is approved by the victim.[52][53] Personal data is increasingly viewed by modern scholars as falling within *ḥuqūq al-ʿibād*, meaning:

i. The data subject owns the right to their personal information.
ii. Any violation (e.g., unauthorized access, third-party sharing, profiling) may constitute a sin and legal offence.
iii. Legal remedies should ensure redress, compensation, and possibly *taʿzīr* (discretionary punishment) if public harm occurs.

This makes Sharīʿah more protective than Western legal traditions, which often reduce harm to contractual breach or statutory penalty, rather than spiritual transgression.

Additionally, the doctrine of *maṣlaḥah mursalah* refers to considerations of public interest not explicitly addressed by revelation, but consistent with *Sharīʿah* goals. Imam al-Ghazālī defined *maṣlaḥah* as: "The preservation of the ends of the *Sharīʿah*: religion, life, intellect, lineage, and property."[54] In the context of data governance, *maṣlaḥah* supports:

1. The collection and use of personal data when clearly beneficial (e.g., fraud prevention, public health, risk profiling)—provided safeguards are in place.
2. The balancing of privacy with legitimate needs, such as national security, Sharīʿah compliance verification, or financial integrity.

Yet, jurists such as al-Shāṭibī warned that *maṣlaḥah* must never override explicit prohibitions or cause greater harm.[55] Thus, using data for commercial or political purposes without consent violates the principle, even if claimed to be "beneficial."

[52] Al-Shahrastānī, *Nihāyat al-Iqdām fī ʿIlm al-Kalām* (Dar al-Maʿrifah 2002) 154
[53] This is unlike the right of Allah which can be forgiven by Allah as a result of *Istigfar*, good deeds or other reasons, not necessarily known by human being.
[54] Al-Ghazālī, *al-Mustaṣfā min ʿIlm al-Uṣūl* (Vol. 1, Dar al-Kutub al-ʿIlmiyyah 1993) 286
[55] Al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿah* (Vol. 2, Dar Ibn ʿAffān 1997) 289–312

Lastly, the legal maxim "*al-ḍarar yuzāl*" (harm must be eliminated) is foundational. The Prophet (PBUH) said: "There shall be no harm nor reciprocating harm.*"*[56] In digital contexts, data breaches, identity theft, and emotional trauma are modern manifestations of *ḍarar*. Similarly, *gharar*, or excessive uncertainty, is prohibited in financial transactions.[57] Failure to disclose how user data is stored, shared, or monetized may introduce *gharar* and may make the contract or service ethically defective.

4.0 Risks of Data Misuse in Islamic Fintech Operations

The rise of Islamic fintech has introduced an innovative intersection of financial technology and Sharīʿah-compliant finance. However, with this growth comes an expanding array of data-related risks that threaten to undermine Shari'ah values particularly those of privacy (*khuṣūṣiyyah*), trust (*amānah*), and justice (*ʿadl*). This section examines key risks associated with personal data misuse in the Islamic fintech ecosystem, using both theoretical analysis and practical illustrations.

4.1 Unauthorised Access and Data Breaches

One of the most prevalent risks is unauthorised access to personal data.[58] This includes hacking, internal employee abuse, or inadequate security protocols that expose sensitive user information to third parties without consent. In a Sharīʿah context, such actions amount to clear violations of *amānah* and *ḥuqūq al-ʿibād*. The Qurʾān commands: "Do not betray the trust of Allah and the Messenger, and do not betray your mutual trusts knowingly."[59]

In fintech systems, such breaches often occur through:

i. Weak encryption protocols;
ii. Poor access control by staff;

[56] Sunan Ibn Mājah, 2340
[57] Ibn Nujaym, *al-Ashbāh wa al-Naẓāʾir* (Dar al-Kutub al-ʿIlmiyyah 1999) 85–90
[58] IFN Fintech, *Fintech and Data Privacy: A Muslim Consumer's Dilemma* (2021) https://www.ifnfintech.com accessed 25 June 2025
[59] Qurʾān 8:27

iii. Reliance on unregulated cloud services.

Thus, for instance, lack of end-to-end encryption and used third-party servers with insufficient privacy guarantees Islamic finance apps creates cyber insecurity.[60] Such practices not only breach user trust and data confidentiality, but also violate Sharīʿah requirements of *ḥifẓ al-ʿirḍ* (protection of dignity) and *ʿadālah* (justice).

4.2 Profiling and Algorithmic Bias

The use of artificial intelligence and big data in Islamic fintech enables user profiling for credit scoring, product marketing, and risk prediction. However, profiling algorithms can reinforce bias, particularly if built on discriminatory or opaque data sets. The Qurʾān explicitly warns: "Let not hatred of a people cause you to act unjustly. Be just: that is nearer to piety."[61]

Thus, unjust profiling contradicts the Islamic imperative for fairness (*ʿadl*) and non-discrimination. For example, if a platform denies a Muslim woman microfinance services due to location or ethnic background (even implicitly, through algorithmic inference), it violates the principle of universal dignity (*karāmah*) and can lead to systemic exclusion, despite operating under a Sharīʿah-compliant label. Recent studies by Dinar Standard[62] and Cambridge Islamic Finance Leadership Programme[63] highlight the risk of algorithmic injustice in Islamic robo-advisory platforms that cater to high-income earners while ignoring the *maṣlaḥah* of poorer users.

4.3 Monetisation of User Data without Consent

The commodification of user data where data is shared, sold, or monetised without informed consent is a serious Sharīʿah breach. This trend, inherited from the global tech industry, is now being replicated by some Islamic fintech startups, particularly those

[60] IFN Fintech, *Fintech and Data Privacy: A Muslim Consumer's Dilemma* (2021) https://www.ifnfintech.com accessed 25 June 2025
[61] Qurʾān 5:8
[62] Dinar Standard, *Global Islamic Fintech Report 2023* (DinarStandard & Elipses 2023) 14–18
[63] CIFLP, *Islamic Digital Ethics in Fintech* (Cambridge Islamic Finance 2022) 22–24

relying on ad-driven revenue or venture capital incentives. Sharīʿah jurists consider such practices to be a breach of:[64]

(a) Amānah, since users have not granted explicit authority;
(b) Gharar, as users are often unaware of what data is collected or how it is used;
(c) Ḍarar, as such disclosure can cause reputational or financial harm.

In classical *fiqh*, the unauthorised sale of a person's belongings, words, or likeness (e.g., a letter, testimony, or even personal secrets) was forbidden under the principle of *tasarruf fī māl al-ghayr* (unauthorised dealing in another's property).[65] By analogy (*qiyās*), user data is a non-tangible asset protected under this rule.

4.4 Weak Sharīʿah Oversight in Technical Implementation

While many fintechs maintain a Sharīʿah Advisory Board (SAB), their focus is often limited to financial instruments (e.g., *murābaḥah* or *ijārah* contracts), and not extended to data handling, algorithms, or digital infrastructure. This creates a serious compliance vacuum where:

- code is written by developers unfamiliar with Sharīʿah;
- data analytics are outsourced to secular firms; and
- privacy policies are copied from conventional apps without juristic vetting.

Such separation between Sharīʿah advisory and digital governance violates the objective (*maqṣad)* of integration, which mandates that all aspects of a business (not just its profits) must be Shari'ah-compliant.[66]

5. Towards a Sharīʿah-Governed Privacy Framework for Islamic Fintech

In light of the ethical principles, doctrinal concepts, and operational risks identified earlier, it becomes imperative to formulate a Sharīʿah-governed privacy framework that

[64] Ibid,
[65] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ* (Vol. 6, Dar al-Kutub al-ʿIlmiyyah 2005) 130–132
[66] MD Bakar, *Sharīʿah Minds in Islamic Finance: An Inside Story of a Sharīʿah Scholar* (Amanie Media 2016) 201–204

guides Islamic fintech institutions in the digital age. Such a framework must combine legal enforceability, technological functionality, and theological legitimacy. Unlike secular data protection regimes that prioritize autonomy and compliance, an Islamic privacy framework must be anchored in *maqāṣid al-Sharīʿah*, particularly the protection of dignity (*ḥifẓ al-ʿirḍ*), trust (*amānah*), and public welfare (*maṣlaḥah*). The framework should contain the following key principles and structural elements orchestrated below.

5.1 Ethical Foundations of the Framework

The ethical vision of Islamic data governance should rest on the following interrelated principles:

1. *Taqwā* (God-Consciousness): All actors in the data ecosystem—developers, fintech platforms, regulators, and users—should act with awareness that Allah is watching. The Qurʾān says: *"And Allah is ever, over all things, an Observer."*[67] This transcends mere legal compliance.
2. *Amānah* (Trust): As discussed earlier, data entrusted to a platform must be treated as a moral and legal trust. Misuse constitutes betrayal (*khiyānah*).
3. *ʿAdālah* (Justice): All data practices from collection to deletion must avoid discrimination, bias, or harm.
4. Sharīʿah Integration: Privacy is not an external regulatory imposition but a core Sharīʿah requirement that should be built into the design of digital services (Sharīʿah-by-design).
5. Public Interest (*Maṣlaḥah*): Where data use benefits the public (e.g. combating fraud or zakāh distribution), it should be permissible—subject to safeguards.

[67] (Qurʾān 33:52)

5.2 Institutional Elements of a Sharīʿah-Governed Privacy Framework

To operationalize the above principles, the following components are essential:

A. Digital Sharīʿah Supervisory Boards (DSSBs)

Unlike traditional SABs which only review financial contracts, DSSBs should:

6. Audit fintech data collection and usage protocols
7. Review privacy policies from an Islamic perspective
8. Ensure compliance with *amānah*, consent, and harm principles
9. Engage in fatwā issuance regarding ethical data innovations (e.g., biometrics, blockchain IDs)

DSSBs should include Islamic legal scholars, data scientists, and cybersecurity experts working synergistically..

B. Ethical Impact Assessments (EIAs)

Before launching any data-intensive service, an Islamic Ethical Impact Assessments should be conducted, evaluating:

(i) Whether the data collected is necessary (*ḍarūrī*) or superfluous (*kāmilī*)
(ii) Whether consent is informed and freely given
(iii)Whether data retention periods are justified under *maqāṣid* principles

This concept builds upon the secular model of Data Protection Impact Assessments (DPIAs), but infuses it with Sharīʿah ethics.

C. Data Governance Policies Based on Islamic Legal Maxims

Internal platform policies should reflect major *qawāʿid fiqhiyyah* (Islamic legal maxims) after the Arabic phrase, such as:

a) *Al-ḍarar yuzāl* (Harm must be eliminated)
b) *Al-ʿādah muḥakkamah* (Custom is a basis for judgment)

c) *Al-yaqīn lā yazūlu bi al-shakk* (Certainty is not overruled by doubt)

These principles can guide decisions on data sharing, breach response, and anonymisation techniques. Thus, for instance, the practical implementation of Islamic data governance principles necessitates the adoption of robust encryption technologies and stringent access control mechanisms to mitigate harm. This is in accordance with the Sharīʿah maxim *al-ḍarar yuzāl* (harm must be eliminated). Furthermore, in accordance with the maxim of *al-ʿādah muḥakkamah* (custom is an authoritative source of law) data privacy frameworks should be harmonized with prevailing legal standards and sociocultural norms. Additionally, the establishment of clear, consistent, and transparent security protocols is imperative to ensure reliability and foster trust, in line with the legal maxim *al-yaqīn lā yazūlu bi al-shakk* (certainty is not overruled by doubt).

D. User Empowerment Tools (UETs)

Empowering users with:

- Granular consent options (per action, per dataset)
- Sharīʿah-compliant data rights portals (e.g., for data erasure, opt-outs, and rectification)
- Access to spiritual guidance on digital behaviour, such as reminders of Qurʾānic principles while navigating platforms

5.3 Comparative Advantage over Secular Frameworks

Unlike GDPR, which is often reactive and rights-based, a Sharīʿah-governed privacy framework is:

i. Proactive, emphasizing virtue (*iḥsān*) and responsibility (*masʾūliyyah*)
ii. Value-oriented, aiming at ethical excellence rather than minimal compliance
iii. Community-aware, integrating public good and theological accountability

This framework has the potential to reshape global privacy discourse by offering a spiritually enriched and socially conscious model that resonates with both Muslims and values-driven innovators.

6.0 Policy Recommendations and Best Practices

In order to ensure that Islamic fintech platforms protect personal data in accordance with Sharīʿah principles, while also complying with national and international data protection standards, a set of comprehensive policy recommendations and best practices is needed. These recommendations must integrate the ethical-legal insights from Sharīʿah jurisprudence with operational and regulatory frameworks found in the fintech industry.

The goal is to institutionalise Sharīʿah governance in data protection while enabling innovation and compliance. The following are strategic recommendations addressed to Islamic fintech firms, regulators, and Sharīʿah supervisory boards.

6.1 For Islamic Fintech Platforms

A. Establish Dedicated Sharīʿah-Compliant Data Governance Protocols

Islamic fintech companies must go beyond generic data protection statements by:

2.0 Drafting Sharīʿah-specific privacy policies, explicitly referencing Islamic legal principles (e.g., *amānah*, *ḥuqūq al-ʿibād*)

3.0 Designing internal controls to avoid unlawful data sharing, algorithmic bias, and consent violations

4.0 Aligning all third-party data processing contracts with Sharīʿah values and juristic approval

For example, a fintech startup offering *murābaḥah*-based credit must ensure that user income and expenditure data—collected during risk profiling—is not reused for unauthorised commercial gain.[68]

B. Integrate Sharīʿah Audits into Technology Development

i. Sharīʿah audit teams must include technologists and IT professionals trained in Islamic ethics.
ii. Platforms should conduct Sharīʿah-compliant DPIAs before launching any service involving personal or biometric data.
iii. *Digital ijtihād* (juristic reasoning for new technologies) should be institutionalised through joint Sharīʿah-IT task forces.

This avoids the danger of "form-over-substance" compliance, where financial products are Sharīʿah-compliant but their digital infrastructure is ethically negligent.

C. Provide Ethical User Education

a) Platforms should educate users about their Sharīʿah-based data rights and obligations.
b) Notifications should cite Qurʾānic principles when collecting sensitive data, e.g., "Your information is an *amānah* (trust) and will only be used with your consent."
c) User dashboards should include "ethical consent" settings and a record of donations (*ṣadaqah*) facilitated via data-enabled Islamic apps.

6.2 For Regulators and Policymakers

A. Formulate Islamic Data Protection Standards

International and National Islamic finance authorities (e.g., AAOIFI, IFSB, or country-specific Sharīʿah councils) should:

[68] Taqi Usmani, *An Introduction to Islamic Finance* (Maktaba Maʿariful Qur'an 2006) 190–193

a) Issue Sharīʿah-based data governance standards, integrating fiqh principles into regulatory compliance.
b) Require Islamic fintechs to conduct Ethical Impact Assessments (EIAs).
c) Provide licensing guidance for platforms using sensitive data technologies like AI, blockchain, and biometrics.

Such guidelines can complement existing laws like the NDPR in Nigeria, the GDPR in the EU, or the PDPL in Saudi Arabia, while anchoring them in the *maqāṣid* framework.[69]

B. Encourage Cross-Jurisdictional Harmonisation

Islamic fintech often operates cross-border, but inconsistent regulations on data pose a challenge. Regulators should:

a) Facilitate Sharīʿah-compliant mutual recognition agreements (MRAs) on data privacy standards
b) Promote regional sandboxes for testing Sharīʿah-governed privacy protocols (e.g., ASEAN, GCC, OIC)\

6.3 For Sharīʿah Supervisory Boards (SSBs)

A. Expand the Scope of Sharīʿah Governance

SSBs must move beyond vetting financial contracts and address:

a) Data lifecycle integrity: from collection, storage, processing, to disposal
b) Algorithms and artificial intelligence
c) Digital marketing practices and behavioural nudges
d) Biometric and location tracking ethics

They must review source codes, app permissions, and consent flows—not just *murābaḥah* clauses.

[69] Nigeria Data Protection Regulation 2019; Saudi Personal Data Protection Law 2021; European GDPR 2018

B. Issue Ethical Fatāwā on Emerging Data Use Cases

Fatāwā must address:

a) Whether facial recognition for Know Your Customer violates *ḥuqūq al-ʿibād*
b) Whether behavioural profiling in halal investment apps infringes on privacy
c) Whether cloud data storage abroad complies with *amānah* obligations

These rulings should be based on *ijtihād al-jamāʿī* (collective reasoning) involving legal, technical, and ethical specialists.

7. Conclusion

The exponential growth of Islamic fintech in recent years has raised critical ethical and legal questions concerning personal data governance. While these platforms strive to deliver Sharīʿah-compliant financial services, their handling of user data often remains under-examined. This paper addresses this gap by constructing a Sharīʿah-governed privacy framework rooted in classical jurisprudence, Qurʾānic ethics, and contemporary digital realities. Through an extensive analysis of Sharīʿah sources, it has been demonstrated that the Islamic tradition provides a robust foundation for privacy, grounded in concepts such as *amānah* (trust), *ḥuqūq al-ʿibād* (rights of individuals), *maṣlaḥah* (public interest), and the imperative to eliminate *ḍarar* (harm). These principles mandate the protection of personal data as both a moral obligation and a legal duty, transcending the proceduralism of secular data protection regimes.

The discussion of risks including unauthorised access, algorithmic bias, data monetisation, and weak Sharīʿah oversight revealed that Islamic fintech platforms are vulnerable to the same exploitative tendencies as their conventional counterparts. Yet, the ethical accountability imposed by Sharīʿah is deeper and more comprehensive, binding stakeholders not only to users and regulators, but also to God (*taqwā*) and the moral universe of Islamic law. To address these challenges, a model Sharīʿah-compliant privacy framework was proposed. This framework recommends establishing Digital Sharīʿah

Supervisory Boards, conducting Ethical Impact Assessments, embedding Islamic legal maxims into data governance policies, and educating users in ethical digital literacy. These measures would ensure that Sharīʿah compliance is not confined to the financial layer of fintech products but extends holistically to data, infrastructure, algorithms, and user experience.

Consequently, data protection in Islamic fintech is not a technical add-on but a Sharīʿah imperative. Protecting human dignity (*karāmah*), ensuring informed consent, eliminating harm, and preserving trust are essential objectives (*maqāṣid*) of Sharīʿah. As the digital economy continues to evolve, Islamic fintech must lead by example by offering a value-driven, spiritually anchored model of ethical data governance that resonates not only with Muslim consumers but with global discourses on digital justice.

The paper impacts regulators, fintech operators, and users. Regulators can align data protection laws with Shari'ah ethics, fintech developers can integrate ethical governance structures, and users gain assurance that their data is safeguarded. Stakeholders should implement Shari'ah-compliant audits, ethical training, and awareness campaigns to operationalize the framework effectively. Future studies could examine cross-jurisdictional integration of Shari'ah-compliant data governance, assess the effectiveness of Digital Shari'ah Supervisory Boards, and explore algorithmic accountability and AI ethics in Islamic fintech, contributing to a more globally relevant ethical fintech discourse.

RECONCEPTUALIZING TAX ADMINISTRATION IN NIGERIA: THE IMPERATIVE OF A SPECIALIZED TAX ENFORCEMENT COMMISSION

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Abstract

In Nigeria, combination of tax legislations provides punitive measures for tax defaulters. However, enforcing these sanctions necessitates procedures like arrests, investigations, detentions, and prosecutions. A major hurdle lies in the fact that, while the responsibility for these processes falls on the shoulders of tax authorities, they aren't equipped with inherent police powers. As a result, their effectiveness often relies on collaborations with the Police and other law enforcement bodies. Unfortunately, these entities, already grappling with internal complexities, find themselves stretched thin amidst Nigeria's escalating insecurity challenges. This paper adopts the doctrinal research method and relies on the primary and secondary sources of Nigerian Laws. The aim of this paper is to delve deep into the intricacies of tax crime enforcement in Nigeria, analyzing the current collaboration dynamics. In light of the evident challenges and inefficiencies, it underscores the pivotal recommendation of establishing a new, sui generis police force, akin to the Economic and Financial Crimes Commission (EFCC), dedicated solely to tax enforcement. This dedicated entity would streamline tax law enforcement, ensuring rigorous oversight and more efficient prosecution of tax-related crimes.

Keywords: Tax Enforcement, Specialized Police Unit, EFCC, Law, Nigeria

1.0 Introduction

The concept of taxation, though universally understood, eludes a singular, universally accepted definition. Over time, numerous scholars and institutions have endeavored to define it, often presenting variations that highlight different aspects of taxation. For instance, the Oxford Dictionary delineates taxation as a "compulsory contribution to the support of government levied on persons, property, income, commodities, transactions, etc., now at a fixed rate mostly proportionate to the amount on which the contribution is levied.

[1]" Similarly, Omotosho perceives tax as a "compulsory charge imposed by a public authority on the income of individuals and companies as stipulated by the government decrees, acts or case laws, irrespective of the exact amount of services rendered to the payer in return.[2]"

Further expanding on this theme, the Australian Court in **Mathews vs. Chicory Marketing Board**[3] posited that tax represents a "compulsory exaction of money by a public authority for public purposes." Abdulrazaq offers a more streamlined definition, identifying tax as an "enforced contribution of money, extracted pursuant to legislative authority[4]." Even the Black's Law Dictionary delves into the essence of taxation, defining it as a "monetary charge imposed by the government on people, entities, or property to yield public revenue[5]."

Despite these varying definitions, certain consistent factors emerge: the obligatory nature of a tax, its role as a source of government revenue, its imposition on both natural persons and corporate entities, its application for the public good, and the necessity for its

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[1]A.S. Hornby, Oxford Advanced Learner's Dictionary, 7th edn (Oxford University Press, Oxford 2005) 1516.
[2]M.O. Omotoso, *Principles of Taxation*, 1st edn (First Shepherd Investment, Ibadan 2001) 3
[3](1838) 60 C.L.R. 260, P. 276
[4]A. Abdurrazaq, *Nigeria Tax Guides and Studies* (1st edn, Chartered Institute of Taxation of Nigeria, Lagos 2002)
[5]B.A. Garner, *Black's Law Dictionary*, 8th edn (2004) 1496.

imposition to be sanctioned by a legislative act. These criteria highlight the fundamentals of taxation. Furthermore, the renowned economist Adam Smith articulated that taxes should adhere to the principles of fairness, certainty, convenience, and efficiency[6]. The inherent compulsion associated with taxation suggests a latent coercive element, implying that the enforcement of tax often entails instilling a sense of apprehension and obligation among taxpayers.

2.0 Brief Overview of the Evolving Landscape of tax Legislation in Nigeria.

The narrative of taxation in Nigeria is rich and intertwined with the nation's socio-political history. Before the colonial epoch, Nigeria's approach to taxation was fundamentally different from contemporary models. In the absence of a structured taxation policy, traditional leaders assumed the role of tax collectors, directing the proceeds towards the development of their respective territories[7].Interestingly, the Northern regions of Nigeria exhibited a more centralized taxing mechanism. This inclination was perhaps influenced by the prevailing Islamic ethos in these regions. Islam mandates the collection of Zakat – a form of obligatory almsgiving, intended for religious, educational, and spiritual endeavors. This might have paved the way for a more organized tax system in the North[8].

Contrastingly, the South did not echo the North's organized taxing structure. The West, however, had customary practices like 'Ishakole' and 'Owo-Ori,' which obligated individuals to make contributions to community leaders or chiefs for communal objectives[9]. The weight of these traditional taxes was palpable, as defaulters faced dire repercussions, ranging from incarceration to potential exile. According to Femi Kehinde, the penalty for tax defaulters in the old western region is detention at the regional tax Office at Mapo in Ibadan. A detained tax defaulter usually found it difficult to get

[6]Olalekan Soyode and Godwin Emanuel Oyedokun, 'Relevance of Adam Smith Canons of Taxation to the Modern Tax System' (2019) 18(3) Journal of Taxation and Economic Development.
[7]O. Ogunba et al, 'An Appraisal of the Efficiency of Local Property Tax Administration in Nigeria (A Case Study of the Five Local Councils in Ibadan Metropolis)' (2006) 2:1:2 Journal of Land Use and Development Studies.
[8]Ibenegbu G, 'History of Taxation' (2017) <www.legit.ng/1119115-history-taxation-nigeria.html> (accessed 29 August 2019).
[9] Ibid.

someone to bail him out, because most adults were tax evaders, and an attempt by a tax evader, to bail a tax evader, would certainly land the rescuer in detention[10].

The turn of the 20th century marked the formal inception of the modern income tax system in Nigeria, courtesy of British colonial intervention. Introduced in 1904, the colonialists piloted an income tax paradigm termed "Community Tax." Subsequently, the Land Revenue Proclamation Law emerged in Northern Nigeria. This underwent several adaptations, eventually culminating in the "Native Revenue Ordinance" that was instrumental in the Western Region. These reforms were emblematic of the colonial intent to foster a unified tax system within the burgeoning Nigerian federation[11].

However, this transition was not without resistance. The introduction of Personal Income Tax in Eastern Nigeria catalyzed the Aba Women's Riot in 1929, underscoring the socio-political ramifications of taxation[12]. By 1939, a more encompassing tax ordinance was in effect across all regions, Lagos being the sole exception. This ordinance was further augmented in 1943, introducing elevated tax rates on income within or derived from Nigeria[13]. With the advent of constitutionalism, there arose an imperative to delineate tax responsibilities between the central and regional administrations. Before 1961, tax legislations, both direct and indirect, were region-specific. However, the establishment of the Raisman Commission in the same year was a game-changer. Its recommendations, which found their way into the constitution, streamlined and harmonized tax collection and administration across Nigeria. This heralded the enactment of the Income Management Act and the Companies Income Tax Act in 1961, both of which underwent

[10]Femi Kehinde, 'Agbekoya and the Yoruba Armoury' (2021) https://www.premiumtimesng.com/opinion/440884-agbekoya-and-the-yoruba-armoury-by-femi-kehinde.html?tztc=1 (accessed 30 September 2023)

[11] Ibid. (note 8)

[12] Newman Enyioko, 'Aba Women's Riots (November to December, 1929)' (January 2021) SSRN Electronic Journal https://www.researchgate.net/publication/350695182_Aba_Women's_Riots_November_to_December_1929 (accessed 29 October 2025)

[13] Clement Ejiofor Okeke and Yinka Mashood Salaudeen, 'Effect of Tax Reforms on the Tax Compliance Level of Companies in Nigeria' (16 October 2023) Munich Personal RePEc Archive (MPRA) Paper No 124365 https://mpra.ub.uni-muenchen.de/124365/1/MPRA_paper_124365.pdf (accessed 29 October 2025)

several modifications, eventually resulting in the Personal Income Tax Act 2004 and the Company Income Tax Act 2004[14].

3.0 The Significance of Tax Compliance and its Broader Economic Implications.

Tax compliance, in essence, encompasses the act of abiding by tax obligations as defined by law, executed voluntarily and comprehensively[15]. In the Nigerian context, the significance of tax compliance cannot be understated, profoundly influencing the national economic trajectory and, by extension, the standard of living of its citizens[16]. The followings are some economic benefits of tax compliance

Revenues for Nation Building: At the very core, taxes represent the lifeline of governmental fiscal policies. They constitute the primary source of revenue, ensuring that the machinery of government remains operational. These revenues, amassed through diligent tax compliance, are pivotal in bankrolling an array of state-endorsed undertakings[17].

Economic Stability: Regular and predictable tax inflows, stemming from widespread compliance, provide a robust foundation for economic planning. A stable revenue stream equips governments with the confidence to make long-term commitments, investments, and initiatives that contribute to steady economic growth. This stability often reverberates, instilling consumer confidence and fostering a conducive environment for businesses to thrive[18].

Improvement of Public Services: Tax revenues, being the backbone of public financing, directly influence the quality and reach of public services. From health to education,

[14] Ibid. (note 8)
[15]L. O. Marti (2010) 'Taxpayers' Attitudes and Tax Compliance Behaviour in Kenya' African Journal of Business and Management, (1), 112-122
[16]Oladele Rotimi, 'Impact of Tax Compliance on Standard of Living in Nigeria' (2021) https://dj.univ-danubius.ro/index.php/JAM/article/view/933/1311 (accessed 30 September 2023)
[17]OlubunmiAdegbie&Tomomewo, 'Tax Revenue and Economic Growth in Nigeria: Achieving the 21st Century Agenda' (2023) https://www.researchgate.net/publication/368871406_Tax_Revenue_and_Economic_Growth_in_Nigeria_Achieving_the_21st_Century_Agenda (accessed 30 September 2023)
[18]Ihenyen&Mieseigha (2014) 'Taxation as an Instrument of Economic Growth (The Nigerian Perspective)' Information and Knowledge Management Vol. 4, No. 12, 2014.

transportation to security, the spectrum of services that benefit from tax funds is vast. Enhanced public services invariably lead to improved human capital, raising the nation's global competitiveness[19].

Strengthening of Social Contract: Beyond the tangible, tax compliance fortifies the implicit social contract between the government and the governed. In fulfilling their tax obligations, citizens anticipate, if not demand, improved governance, transparency, and accountability, thereby fostering a more engaged citizenry.

Attracting Foreign Investments: A compliant and transparent tax system signals economic stability and a well-regulated market, both of which are pivotal for foreign investors. An environment where tax compliance is the norm often translates to reduced investment risks, attracting foreign direct investments that can spur economic growth[20].

Enhancing National Reputation: In the interconnected global arena, nations are perpetually under scrutiny. A consistent record of tax compliance elevates Nigeria's stature, showcasing it as a country committed to responsible fiscal practices, potentially facilitating international collaborations and trade relations.

Diversification of Country's Economy: While Nigeria historically has leaned heavily on its oil and gas sector, tax compliance offers avenues for diversification. Reliable tax revenues can be channeled into research, development, and the nurturing of emerging sectors, thereby reducing economic vulnerabilities associated with over-reliance on a single revenue source[21].

[19]Omodero&Dandago, 'Tax Revenue and Public Service Delivery: Evidence From Nigeria' (2019) https://www.researchgate.net/publication/332321918_Tax_Revenue_and_Public_Service_Delivery_Evidence_From_Nigeria (accessed 28 September 2023).

[20]Etim&Mfon, 'Attracting Foreign Direct Investment (FDI) in Nigeria through Effective Tax Policy Incentives' (2019) https://www.researchgate.net/publication/335912547_Attracting_Foreign_Direct_Investment_FDI_In_Nigeria_through_Effective_Tax_Policy_Incentives (accessed 28 September 2023)

[21]Aladesawe, 'Diversification of Nigerian's Economy Through Tax Revenue 1' (2019) https://www.academia.edu/30676487/DIVERSIFICATION_OF_NIGERIANS_ECONOMY_THROUGH_TAX_REVENUE_1 (accessed 28 September 2023)

4.0 **Tax Evasion and Punitative Measures**

Tax evasion stands as a collective term denoting the myriad of tactics employed by indivxiduals, corporations, trusts, and other entities to circumvent their tax obligations through illicit means. Muhammed describes tax evasion as the artful and disingenuous manipulation or obscuration of facts and figures, orchestrated with the sole intent of either skirting the payment entirely or lessening the due tax amount[22]. Drawing from Soyode and Kajola's perspective, tax evasion manifests as a calculated, willful disregard for disclosing the entirety of taxable income, thereby diminishing the tax payable[23]. This act isn't merely an oversight; it's a conscious breach of tax regulations, evident when there's a fraudulent reduction in tax liability or when deceptive claims dot revenue tax forms.

The mechanics of tax evasion often hinge on deliberate actions, either of omission or commission, both of which are flagged as criminal offenses under the prevailing tax regulations. Illustrative examples include, but are not limited to: neglecting to remit taxes such as withholding tax, bypassing the submission of returns, omitting certain items from returns, making spurious relief claims like fictitious dependents in Personal Income Tax calculations, underreporting incomes, fabricating transactions, inflating expenses, or sidestepping official inquiries[24].

Extrapolating from these definitions, tax evasion crystallizes around three primary tenets:

i. Deceptive recalibration of figures to avoid or minimize tax payments.
ii. A steadfast, deliberate denial to disclose, driven by a motive to evade payment.
iii. A brazen non-payment, devoid of any valid justification.

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[22] Tanko Mohammed et al, 'The Correlation between Multiple-Taxations and Tax Evasion, Tax Avoidance and Tax Payers' Obligation in Lagos State, Nigeria' (2013) 7(2) International Journal of Business, Accounting and Finance 138

[23]L. Soyode and S.O. Kajola, Taxation: *Principles and Practice in Nigeria*, 1st ed. (Ibadan: Silicon, 2006) P.156

[24] Meshach Nnama Umenweke, 'Tax Avoidance and Evasion in Nigeria: A Critical Examination of the Legal Framework' (2024) 1(1) Nnamdi Azikiwe University Journal of Private Law 107

Contrastingly, tax avoidance, while sharing thematic parallels with tax evasion, veers towards the domain of legalities. It encompasses strategies meticulously devised to minimize tax liabilities, exploiting existent gaps or ambiguities in tax legislations. Tax avoidance is a choreographed dance around the edges of the tax code, with Fatoki quoting Professor Wheat Craft's apt characterization: "Tax avoidance is the skill of playing the game without overtly cheating, outmaneuvering both the internal revenue system and the government."[25]

However, the demarcation between tax avoidance and tax evasion is razor-thin yet profoundly significant. A tax avoider navigates within the legal boundaries, employing mechanisms like permissible deductions, property arbitrage, or deferring tax liabilities. In stark contrast, a tax evader operates outside the ambit of the law, resorting to misrepresentations, deceptive claims, or outright non-payment.[26] While tax avoidance, though within the legal framework, is often critiqued as unpatriotic and socially irresponsible, tax evasion is unequivocally illicit, reprehensible, and punishable, potentially leading to incarceration or financial penalties.[27]

The difference was established by the USA Supreme Court in Bullen V Wisconsin[28], the court held that;

> *When the law draws a line, a case is either on one side of it or the other. And if on the safe side, the tax payer should not worry about what any authority or person may say, provided it is within what the law permits. When an act is considered as an evasion what ismeant is that it is on the wrong side of the law*[29]

[25]J.O. Fatoki 'An Empirical Study of Tax Evasion and Tax Avoidance: A Critical Issue in Nigeria Economic Development' (2014) 5(18) Journal of Economics and Sustainable Development 22-26.
[26] D A Agbu and J O Onoja, 'Examination of the Legal Framework on Tax Avoidance and Evasion under the Personal Income Tax' (2023) 5(3) International Journal of Comparative Law and Legal Philosophy (IJOCLLEP) 137.
[27] MT AbdulRasaq, *Nigeria Tax Offences and Penalties* (2nd edn, Princeton & Associates Publishing Co Ltd 2014) 11
[28] (1916) 240 US 625
[29]B.D. Kiabel and G.N. Nwokah 'Boosting Revenue Generated by State Government in Nigeria: The Tax Consultant Option Revisited' (2009) 8(4) European Journal of Social Sciences 592

According to Sections 94 of the repealed Personal Income Tax (Amendment) Act[30], 2011 a person who contravenes or fails to comply with any of the provisions of the Act shall be liable on conviction to a fine of N 200 and where the offence is the failure to furnish a return, statement or information or to keep records required, a further sum of forty naira for every day during which the failure continues, and, in default of payment, to imprisonment for six months, and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the Court may order. In Addition, sub section 3 of the above provisions provides that, notwithstanding any of the provisions of the Criminal Procedure Act or the Criminal Procedure Law or Code of a State, a magistrate may dispense with the personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner.

In the case of failure by a person to comply with the requirements of a notice given by the relevant tax authority under the provisions of section 41 of this Act may, in lieu of the institution of proceedings against the person under the provisions of subsection (2) of this section, impose a penalty on the defaulter an amount equal to the income tax chargeable on him for the preceding year of assessment. By Sections 95, a person who, without reasonable excuse- (a) makes an incorrect return by omitting or understating any income liable to tax under this Act; or (b) gives an incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person, is guilty of an offence and liable on conviction to a fine of 10 per cent of the correct tax and double the amount of tax which has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct. However, no person shall be liable to a penalty under this section unless the complaint concerning the offence was made in the year of assessment in respect of or during which the offence was committed or within six years after the expiration thereof.

Furthermore under sections 96 of the act, a person who knowingly makes a false statement or false representation of their tax details is guilty of an offence and liable on conviction to a fine of N 5, 000 or imprisonment for five years or to both such fine and

[30] Cap. P8 Laws of the. Federation of Nigeria, 2004

imprisonment: Provided that where an offence under this section is committed by a person in relation to tax payable by, or repayable to him for a year of assessment, there shall be substituted for the amount of the fine as aforesaid, the amount of N 1,000 or treble the tax chargeable on the person for that year, whichever is the greater.

In addition, Section 51 and 52 of Petroleum Profit Tax Act provides that any person guilty of an offence against the Act shall be liable to a fine of NI 0,000, and where such offence is one under subsection (1) of section 24 of this Act, a further sum of N 2,000 for each and every day during which such offence or failure continues.

According to Section 45 of Federal Inland Revenue (Establishment) Act[31] any person who, in the commission of an offence under this Act, is armed with any offensive weapon commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years. (2) A person who, while armed with an offensive weapon, causes injury to any officer or authorized officer of the Service in the performance of any function or duty under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 10 years.

Such activities are deemed illegal and can be prosecuted summarily in Magistrate Courts or in the High Courts[32]. Additionally, tax evasion like other criminal acts cannot be settled through arbitration.

5.0 Current Enforcement Mechanisms: Shortfalls and Challenges

Given the categorization of tax evasion as an illicit act, the enforcement of associated laws and regulations becomes indispensable. The essence of "enforcement" lies in ensuring adherence to specific laws or regulations, or compelling individuals to act in a particular manner[33]. Within the framework of Nigeria's tax system and administration, the

[31] Cap. C 15. LFN 2004

[32] *FIRS vs. N.N.P.C.* (2012) 6 TLRN 1

[33] A.M. Mohammed, 'An Appraisal of Income Tax Enforcement Procedures under the Nigerian Tax System' (LLM Thesis, Amadu Bello University Faculty of Law 2014) http://kubanni.abu.edu.ng/jspui/bitstream/123456789/5878/1/ASSESSMENT%20OF%20THE%20CONTRIBUTIONS%20OF%20THE%20NIGERIAN%20COPYRIGHT%20COMMISSSION%20TOWARDS%20CONTROLLING%20BOOK%20PIRACY%20IN%20NIGERIA.pdf (accessed 17 August 2023).

relevance of tax enforcement is accentuated, primarily due to the adeptness of taxpayers in withholding amounts rightfully owed to the government or circumventing full payment to the tax authority. Tax enforcement in Nigeria comprises two primary pillars: the tax authorities and the processes they employ for enforcement. The procedural aspects of this enforcement encompass:

5.1 Filing of Annual Returns

In the realm of tax compliance, the filing of annual returns stands paramount. As stipulated in Section 41 of the Personal Income Tax Act: Every taxpayer is obligated to submit an income return to the tax authority corresponding to the state where they reside. This return should encompass a comprehensive and accurate statement which includes:

(a) Income accrued from all sources in the previous assessment year, calculated in alignment with this Act's provisions and any accompanying rules or regulations.

(b) Specific details mandated by the return, relevant to income, allowances, reliefs, deductions, or other factors pivotal under this Act or the rules and regulations formed under it.

(c) As per Section 41(2), the return should encompass a declaration affirming the accuracy and veracity of the contents.

A taxpayer's failure to submit these return forms by the specified deadline infringes upon the Self-Assessment Regulations, rendering the taxpayer susceptible to predetermined fines, penalties, and interest charges as detailed in the pertinent tax laws[34]. As a timeline, the Personal Income Tax Act necessitates the filing of self-assessment returns by or before the 31st of March each year, whereas the Companies Income Tax Act mandates a deadline of six months post the end of the accounting year[35].

5.2 Assessment by Tax Authority

The scope of tax assessment encompasses the earnings of individuals or enterprises either resident in Nigeria or generated within Nigerian territory. Assessment is the meticulous process of evaluating a taxpayer's financial liability. Upon a taxpayer's return submission

[34]Regulations 27(1) & (2) Tax Administration (Self-Assessment) Regulations, 2011
[35]Regulations 12(1)& (2) Tax Administration (Self-Assessment) Regulations, 2011

to the tax office, an assessment officer scrutinizes the accounts to deduce tax liability, subsequently registering the determined account. The document, stamped with the officer's endorsement, is then dispatched to the taxpayer, enlightening them about their tax obligations[36]. Section 65 of the Companies Income Tax Act vests the Board with the authority to assess every tax-eligible company, especially when there's a delay in annual return submissions. It's imperative that an assessment notification be delivered to the taxpayer, as this stands as a preliminary condition for tax liability. As per the judgment in the **Okupe vs. FBIR**[37] case, neglecting to serve this statutory notice infringes upon the taxpayer's rights, offering a legitimate basis to contest the tax authority's assessment.

5.3 Objection and Appeal

The tax statutes grant any individual, perturbed by an assessment, the right to contest it within a span of 30 days, appealing to the designated Appeal Tribunal. An illustrative case, **Federal Board of Internal Revenue vs. Owena MOTELS Limited**[38], saw the Federal High Court in Akure rule that the unchallenged service of the notice of assessments spanning 1993-1998, implied its conclusive and final nature, necessitating payment within thirty days post the assessment notice's service. This verdict was unequivocally in favor of the Federal Inland Revenue Service, anchored upon the prevailing evidence before the Court.

6.0 Powers and Operational Challenges of tax Authorities Authority to Exercise Distrain

"Distrain" refers to the procedural act where an entity confiscates another's tangible property as recompense for an outstanding claim[39]. Tax authorities often deploy this tool to tackle defaulters who evade their tax obligations. In the case of **Sam Nig. Ltd. vs. Lagos State Internal Revenue Service**[40], the judiciary elucidated on the scope and application of this power:

[36] Ibid.
[37](2010) 2 TLRN
[38](2010) 2 TLRN
[39]Ibid. (Mohammed n 27)
[40](2011) 5 TLRN

> Where a taxable person fails and/or refuses to make the necessary tax payments, sanctions are prescribed in the relevant tax laws, which include, but are not limited to the power to distrain. There is no doubt that the claimant has the right to distrain for nonpayment of tax.... ***This section also empowers an officer authorized in writing by the relevant tax authority to break open any building or place in the day for the purpose of levying distress and he may call for the services of the Police to assist in that regard***. Things distrained may be kept at the cost of the taxable person for a period of fourteen days, and if all outstanding are not paid, the goods may be sold. (The Emphasis is ours)

This particular authority finds its genesis in Sections 34 of the Federal Inland Revenue Service Act and 104 of the PITA. Both these sections empower both the Federal and State Boards of Inland Revenue to initiate distress actions against assets owned by any taxpayer in default, ensuring they comply with their tax responsibilities. Notably, the purview of the distrain power is confined chiefly to Personal Income Tax, exempting Company Income Tax and Petroleum Profit Tax from its ambit. For a distrain action to hold water, a lawful warrant is obligatory. Such a warrant should meticulously detail the defaulter's identity, the tax amount in question, accrued tax arrears, the business address, and must bear the date and the endorsement of the authorized body. This power is only wielded when the tax assessment achieves definitive status. Notably, real estate assets remain insulated from distrain actions unless sanctioned by a High Court order.

In the landmark case of **Sam Nig. Ltd. vs. Lagos State Internal Revenue Service**[41], the court astutely commented on the taxing authority's power, particularly emphasizing the authority's right to distrain in cases of non-payment of tax. The judgment clearly notes that while tax officers have the mandate to ensure compliance, they are, perplexingly, reliant on the police force when it comes to breaking into a property to levy distress. This reliance is arguably a weak link in the chain of tax enforcement.

Such a stipulation in the legal framework raises immediate concerns. First, it causes inevitable delays in enforcing tax compliance. In a country where the police force is

[41] Supra

stretched thin with multiple challenges ranging from lack of manpower, technology modern equipment, etc[42], prioritizing tax default cases can become a logistical nightmare. This not only delays the process but can also potentially reduce the efficacy of the tax enforcement mechanisms.

Furthermore, the need to collaborate with the police paints tax authorities as entities lacking full autonomy in their operations. For an institution as crucial as the tax authority, this perceived lack of autonomy can undermine their perceived authority and effectiveness in the eyes of the public. Taxpayers, noting this gap, may feel emboldened to default, understanding the logistical hurdles involved in enforcement. The judiciary's emphasis (as highlighted in the statement "he may call for the services of the Police") underscores this undue dependency. This provision can be seen as an inadvertent acknowledgment of the inherent limitations within the system.

To remedy this situation, it is imperative to rethink the enforcement mechanism. Drawing parallels with bodies like the EFCC, which operates with a certain degree of policing powers, the tax authority too should be fortified with similar capabilities. By equipping tax officers with policing powers, the system can ensure a streamlined, efficient, and more authoritative process of enforcement. Such a move will not only enhance the effectiveness of tax collection but will also send a clear message about the government's commitment to ensuring fiscal compliance.

In conclusion, while the judgment in **Sam Nig. Ltd. vs. Lagos State Internal Revenue Service** offers clarity on the present state of affairs, it inadvertently shines a light on the systemic gaps that need addressing. Establishing police powers for tax authorities is not just a strategic move; it's an essential step toward fortifying the nation's fiscal framework.

It is also important to say that Section 35(1) of the Federal Inland Revenue Service (Establishment) Act established Special Enforcement Unit to adopt criminal tax investigation, as a method of tax enforcement. The Section provides that

[42]Edime& Usman (2022) 'Obstacles to Effective Policing in Nigeria' International Journal of Social Sciences and Humanities, 10(03), 310-326

> "The Service shall employ Special Purpose Tax Officers to assist any relevant law enforcement agency in the investigation of any offence under this Act."

The key word here is "assist." This implies a supplementary or supporting role in conjunction with other law enforcement agencies. It does not indicate full autonomy or authority in par with traditional law enforcement bodies like the Police.

While the SEU might possess certain enforcement capabilities specifically tailored for tax-related infractions, equating its powers to that of the broader scope and mandate of the Nigerian Police might be an overstretch. The Nigerian Police has a wider range of duties, powers, and responsibilities that encompass more than just tax-related offenses. Their jurisdiction spans across all criminal activities and maintaining public order, among other duties.

Furthermore, the very necessity for the SEU to "assist" points towards a reliance on other established law enforcement agencies for certain aspects of investigations, which again hints at a distinction in powers and functions. In conclusion, while the Special Enforcement Unit has a critical role in assisting with investigations related to tax offenses, it would be a mischaracterization to say they hold functions and powers fully equivalent to the Nigerian Police. Their domain, as per the Act, appears to be specialized and specific to tax-related infractions, rather than a comprehensive law enforcement mandate.

6.1 Power to Impose Fine and Penalty

Sections 44, 45, 46, 47, 48 and 49 of the FIRS Act aim to set out offences and corresponding penalties for violations committed by both authorized and unauthorized individuals. These provisions cover a spectrum of offences, from overcharging taxpayers to internal embezzlement by tax officials. While the Act's attempt to comprehensively capture potential malpractices is commendable, its real-world application, and the feasibility of enforcement, are matters of serious concern[43]. A core issue is the trust deficit that arises from the fact that the Act acknowledges potential malfeasance by

[43]*Nigerian Breweries Plc. vs. Lagos State Internal Revenue Service***s** (2009)1 QCCL vol. 2, p.155, 192

authorized tax officials. Such provisions, while necessary, inadvertently reflect on the integrity of the system and the individuals who operate within it. With episodes of unauthorized withholdings and the possibility of officials rendering false returns, the pressing question is: Who polices the police?

The ambiguity surrounding the enforcement mechanisms further muddies the waters. The requisite that the tax authority must conclusively prove the commission of an offence before levying penalties sounds rigorous on paper but poses pragmatic challenges. Such determinations often involve intricate investigations which can be long-winded and cumbersome.

But herein lies the crux of the matter: If the FIRS Act envisions and enumerates such diverse offences, shouldn't there be an equally specialized force to counteract and deter these potential malpractices? The Economic and Financial Crimes Commission (EFCC) stands as a testament to the effectiveness of specialized policing bodies in Nigeria. Drawing inspiration from the EFCC, it is high time to advocate for the establishment of a dedicated tax enforcement body, characterized by stringent recruitment processes, specialized training, and autonomous oversight mechanisms. Such an institution could focus not only on the enforcement of tax laws but also on safeguarding the integrity of tax collection processes, ensuring that both taxpayers and officials adhere to the letter and spirit of the law.

In its current form, the FIRS Act's provisions, though well-intentioned, fall short of ensuring effective compliance and deterrence. The establishment of a dedicated, specialized police force for tax matters is not just an advisable step; it's a critical necessity to restore public faith and ensure a robust, transparent, and efficient tax system.

7.0 Analysis of the Existing Mechanisms and their Limitations.

While Nigeria has a reasonably comprehensive legal framework for criminal sanctions, the prescribed fines are insufficient to serve as an effective deterrent. However, despite the existence of these laws and the enforcement mechanisms, how many of defaulters have been arrested, investigated, prosecuted and visited with the full weights of any of

these laws? Unlike European countries where high profile individuals are often arrested, investigated, prosecuted, convicted and imprisoned for tax related offences[44]. The former minister for Finance Mrs. Kemi Adeosun in an event organized in University of Lagos in December 2017 submitted that only 13 % of Nigerians are active tax payers and they are taxes deducted under Pay As You Earn (PAYE) categories[45]. This implies that a vast majority of Nigerians do not pay taxes.

The success or failure of any tax system depends on the extent to which it is properly managed; the extent to which the tax law is properly interpreted and implemented. Adegbie and Fakile argued that Nigeria revenue derived from income taxes has been grossly understated due to improper tax administration, assessment and collection[46].The management of tax evasion is generally low because the tax defaulters often go unchecked most especially personal Income tax payers. Olokooba Et al. argued that tax compliance in Nigeria is at the rate of 12%, further argued that the tax authorities in Nigeria often a time don't use the criminal sanction in enforcing tax crimes because they are more interested in revenue than ensuring the punishment[47].This implies that, tax evasion exists in Nigeria by 88%.

This research was corroborated by the findings of Ogbonna in 2009. It was argued that taxation has no place in the Nigeria source of annual revenue, Oil and gas sector now contributes about 83% of Nigeria annual revenue[48]. Modugu and Omoye opined that the most common form of tax evasion in Nigeria is through failure to render tax returns to the

[44] Attiya Waris and Dick Osala, 'Lionel Messi: Image Rights, International Financial Flows, Tax Havens and its Impact on Africa and Kenya' (Academia, 2018) https://www.academia.edu/36940278/Lionel_Messi_Image_Rights_International_Financial_Flows_Tax_Havens_and_its_Impact_on_Africa_and_Kenya accessed 30 October 2025
See also Robert W Wood, 'Lessons From Europe's Big Soccer Tax Evasion Cases' (Wood LLP) https://www.woodllp.com/Publications/Articles/pdf/Lessons_From_Europe.pdf accessed 30 October 2025
[45]O. Odimegwu, 'Millions of Dollars Lost in Nigeria to Tax Evasion Due to Incoherent Policies' (2019) <www.thenigeriavoice.com/news/275531/millions-of-dollars-lost-in-Nigeria-to-tax-evasion-due-to-in.html> (accessed 29 August 2023)
[46]F.F. Adegbie& A.S. Fakile (2000) 'Company Income Tax and Nigeria Economic Development' European Journal of Social Sciences, 22(2), 309-319`.
[47]Olokooba, Awodun, Akintoye& Adebowale (n 36)
[48]G.N. Ogbonna (2009) 'Burning Issues and Challenges of the Nigerian Tax System with Analytical Emphasis on Petroleum Profit Tax' International Journal of Accounting, Finance and Economic Perspective, 1, 85-87

relevant tax authority[49]. Further quoting Sosanya argued that tax evasion has become the favorite crime of the Nigerians; so popular that it makes armed robbery seem like minority interest[50]. It has become so widespread that there now exists a cash economy of vast proportions over which the taxman has no control and which is growing at several times the rate of the national economy. No doubt, tax evasion has robbed the Nigerian government of substantial tax revenue. Under direct personal taxation as practiced in Nigeria, the major problem lies in the collection of the taxes especially from the self-employed individuals such as the businessmen, contractors, professional practitioners like lawyers, doctors, accountants, architects and traders in shops among others.

Ayua argued that self-employed persons blatantly refuse to pay tax by reporting losses every year and many of them live a lifestyle inconsistent with reported incomes, which is usually unrealistically low for the nature of their businesses. Civil Servants and other salaried workers are the only class of people that actually pay tax in Nigeria[51]. Tax evasion is not limited to personal income tax alone; it runs through the whole taxing system in Nigeria. In 2009, Nigerian Stock Exchange disclosed that 85% of the corporate tax revenue generated in the country actually came from 196 listed companies as against the 30,000 companies registered in the country[52].

This challenge is applicable to the three government agencies responsible for tax collection in Nigeria. According to a survey carried out by Peat, Marwick, Ani, Ogundele and Co., Chattered Accountants revealed that each State Board of Internal Revenue was loosing between N12 million and N30 million annually to tax evasion[53].

This suggests that the enforcement mechanism in Nigeria is quite low. There has been age-long relationship between the Tax authorities and Nigeria Police. There have been

[49] Kennedy Prince Modugu and Alade Sule Omoye, 'An Appraisal of Personal Income Tax Evasion in Nigeria' (2014) 4 Asian Economic and Financial Review 32, 33
[50] Ibid.
[51]Ayua, I.A., 1999. *The Nigeria Tax Law*. Ibadan: Spectrum Law Publishing. 17
[52]Kiabel B.D &Nwokah. (n 29)
[53]S.O. Adum (2018) 'Burning Issues in the Nigerian Tax System and Tax Reforms on Revenue Generation: Evidence from Rivers State' International Journal of Finance & Accounting, 7:2, 36-48.

repeated calls for a strengthened partnership between the Tax Authorities and the Nigeria Police Force by the relevant authorities[54].

8.0 Jurisdictional Comparison with United Kingdom and Making Case for a Dedicated Tax Enforcement Body

The tax laws and administrations in the United Kingdom is quite similar to Nigeria, this is probably because Nigeria laws generally, tax laws inclusive gain their inspiration from UK laws. The administration of tax in UK is done by Her Majesty Revenue and Customs (HMRC) at the central level and District Tax revenue services at the local level. Virtually all the taxes applicable in Nigeria are also applicable in the UK. However, tax compliance in UK is better than Nigeria[55]. Tax evasion is a global menace and UK is not excluded, in 2016 HMRC announced that tax evasion has cost the government the sum of E5.3 Billion. However, the crime of tax evasion is better managed in the UK compare to its Nigeria counterpart. In 2013, UK government created a new criminal offence in relation to tax evasion; "aiding tax evasion" is now an offence. Tax offences are now strict liability offences, that is, intention to evade tax will no longer be a requirement to secure conviction of the tax offender. Also, in 2014/2015, 1,258 people were prosecuted for tax offences in the UK[56]. According to a research by Slemrod, it was revealed that tax evasion exists in the UK by 8% to 9% of the GDP[57]. This implies that tax evasion is reduced to the minimum in the UK.

The HMRC has power like that of a conventional police and other UK law enforcement agencies but their power is limited to tax related power. They have power to tackle tax crimes like conventional crimes. In fact, tax evasion and avoidance is being tackled aggressively, HMRC has power to arrest, power to enter, search and seize properties from any premises with warrant, interview and interrogate offenders, use handcuffs, use

[54]Federal Inland Revenue Service, 'FIRS, Nigeria Police Partner to Raise Revenue' (FIRS, 25 September 2023) https://www.firs.gov.ng/firs-nigeria-police-partner-to-raise-revenue/ accessed 1 October 2024.
[55] Lovette Osavie Patrick, Taiwo Ademola and Bankole Sodipo, 'A Comparative Analysis of the Tax System in the United Kingdom and Nigeria' (2023) 2(3) International Tax Law Review 47
[56]www.wikipedia.org/wiki/tax_evasion> (accessed 1 September 2023)
[57]J. Slemrod (2007) 'Cheating Ourselves: The Economics of Tax Evasion' The Journal of Economic Perspectives, 21(1), 25-48.

intrusive surveillance, and exercise their powers all over the UK[58]. The agencies investigate all sorts of individuals including famous and rich individuals. HMRC has recovered E332m from professional footballers since 2015. Over 90 footballers, 38 clubs and 13 agents have been investigated[59]. HMRC officials maintain the rank and file of conventional police officers. It is also on record that HMRC has approximately 1,500 officers with the power to arrest only on tax related matters. The fact that a tax offender is under facing a civil litigation does not stop officers of HMRC to investigate as well. However, prosecution is not done by HMRC; they would rather liaise with Crown Prosecution Service for prosecution[60].

The difference between tax evasion in UK and Nigeria is not the law, the laws are basically the same. The difference is not in the body responsible for collection; HMRC collects in UK while FIRS collects in Nigeria. The basic difference is in the enforcement of the tax evasion as a crime. The figure reveals that tax prosecution is done in thousands while Nigeria can hardly boost of one. Further, the HMRC does not have to wait or depend on another police agency to discharge their duties; they have trained officers that tackle tax evasion on daily basis while Nigeria will have to wait on the police to assist them. Indeed, assisting the FIRS is not the primary duty of the police; they will always take it as a secondary issue, and little wonder tax evasion flourishes at 88% in Nigeria.

Tax Laws in Nigeria criminalize tax evasion but fail to set up enforcement mechanism to ensure that the laws are executed to the letters. Despite the fact that the law criminalizes non-payment of tax, payment remains at the discretion of respective tax payers, poor level of compliance mars our tax administration and government remains helpless because there is a weak enforcement mechanism. This paper recommends that Nigeria establish a dedicated policing system, akin to that of the United Kingdom, with the mandate to protect, prevent, and combat tax evasion. The specialized police, like United Kingdom HMRC should have men in thousands who will be available in each locality to

[58]<www.gov.uk/government/publications/criminal-investigation/criminal-investigation> (accessed 1 September 2019).
[59]www.bbc.com/sport/football/4594868> (accessed 1 September 2019).
[60] Ibid.

ensure compliance with the provisions of tax laws that incriminated manipulation and nonpayment of tax particularly Personal Income tax among people that are subjected to PAY-AS-YOU-EARN (PAYE) system and people that are in Small and Medium Enterprise (SME).

The specialized police unit should be one that has access to ammunitions, power to arrest, summon, and investigate and all other powers of a conventional police staff. However, their power should be limited to tax offences and caution must be taken, so, that in the exercise of their power, they don't breach the fundamental rights of innocent citizens. The police should have headquarters in each local government in Nigeria and each local station should have officers in charge of each district, villages and street. The proposed police should maintain data base of the people under their jurisdiction which should comprise their names, source of livelihood, number of dependants, assets, liabilities and some other relevant information that will aid in the computation of tax. This system can only work where the payment of tax or penalty is done by electronic platforms. This is important to minimize corruption, ineffectiveness, favoritism and nepotism. The police should be agents of Federal Government and their remuneration should be taken from the government budget. The police should adequately work with State Board of Inland Revenue and Local Government Committee of their different jurisdictions, with the aim of ensuring that taxes are paid and proof or certificate of payment are generated electronically to the tax payers. The police should also collaborate with other security agencies like Nigeria Custom Service, Seaports, Manufacturer Association of Nigeria, Standard Organization of Nigeria and other professional associations in the country to ensure that tax are paid on each goods and services rendered.

The implementation of a specialized policing system will facilitate the following outcomes:

a. Resolve the challenge of different tax authorities waiting on Nigeria Police Force (NPF) in the fulfillment of its statutory duties.
b. Boost tax compliance in Nigeria and eradicate or reduce to minimal level; the tax evasion menace.

c. The presence of the specialized police will serve as sensitization and publicity for tax compliance in Nigeria.
d. The arrest, investigation and arraignment of tax offenders will serve as deterrence to others and will as well serve as encouragement to the regular tax payers.
e. It will also assist in keeping of comprehensive data base of tax payers in Nigeria.

The establishment of specialized policing units presents a dual-edged proposition for economic governance. On one hand, their potential benefits for both the state's fiscal health and the operational environment for individual businesses are significant. Such units can enhance revenue assurance, foster a more stable and predictable business climate, and directly combat economic crimes that undermine market integrity. However, the implementation of such a system is fraught with considerable challenges that must be strategically addressed. Primary among these are the financial challenges associated with funding a new, technically proficient agency. Furthermore, the success of any policing initiative is contingent upon societal acceptance and public trust, which cannot be assumed. The perennial issues of bribery and corruption pose a direct threat to the unit's integrity and effectiveness, potentially eroding its very purpose. Finally, in a federal context like Nigeria's, the initiative must navigate the complex constitutional and political debate surrounding the state policing challenge, which questions the very structure of law enforcement authority

9.0 Conclusion

Taxation remains an indispensable financial instrument through which governments generate revenue to fulfill their civic obligations. In Nigeria, while there are established statutes aimed at ensuring tax compliance, the practical enforcement of these laws raises intricate challenges. The relationship between tax authorities, exemplified by the Special Enforcement Unit, and the Nigerian Police force is emblematic of these complexities.The legal framework grants the SEU specific powers to assist in investigations pertaining to tax-related offenses. Yet, the word "assist" underscores the SEU's supplementary role, indicating a reliance on established law enforcement entities, notably the Nigerian Police. This collaboration, while designed to bolster tax compliance, has inherent limitations.

The SEU's specialized focus on tax matters contrasts with the Police's broader mandate, which might lead to overlapping priorities or diluted efficiency in joint operations.

Public trust and perception are pivotal for successful tax enforcement. Therefore, any perceived inefficiencies or operational challenges in the collaboration could jeopardize public confidence in the system. Furthermore, the success of tax compliance efforts isn't solely dependent on enforcement but also on public awareness, simplification of tax processes, and ensuring taxpayers see tangible benefits from their contributions. Given the nuanced challenges faced, there's a pertinent need to reassess and fortify the collaborative framework between tax authorities and law enforcement agencies. One potential approach is the establishment of a specialized police unit dedicated to tax enforcement, akin to the EFCC's role in financial crimes. Such a unit would harmonize the enforcement objectives and might circumvent some of the challenges inherent in the existing inter-agency cooperation. In sum, while Nigeria has made commendable strides in tax legislation and enforcement, the dynamic nature of the economy, combined with evolving challenges, necessitates continual introspection and adaptive strategies to ensure maximal tax compliance and thereby fortify the nation's financial foundation.

RESTORATIVE JUSTICE: EMERGING STRATEGIES FOR DEALING WITH CRIME AND THE INTERESTS OF STAKEHOLDERS

Simeon Olaosebikan Oni* and Godwin Emmanuel Oyedokun**

Abstract

This article explores the growing relevance of restorative justice (RJ) as a viable alternative to the traditional retributive criminal justice system. Rooted in indigenous conflict resolution mechanisms, RJ prioritizes healing, accountability, and reintegration over punitive responses. Drawing on global experiences from New Zealand to South Africa the article examines the conceptual foundations of RJ, including its emphasis on restoration, reconciliation, and stakeholder participation. The study outlines key RJ practices such as victim-offender mediation, community conferencing, circle sentencing, and emerging digital platforms. Particular attention is given to the interests and rights of stakeholders: victims are afforded a voice and restitution; offenders benefit from opportunities for rehabilitation and reintegration; communities are engaged in conflict resolution and healing; and the state gains cost-effective justice outcomes. The article also analyses legal and policy frameworks that support RJ, referencing international instruments such as the UN Basic Principles on the Use of Restorative Justice Programmes and comparative national examples. Through selected case studies, it evaluates the outcomes and limitations of RJ, addressing critical concerns around voluntariness, power imbalances, secondary victimization, and challenges in handling serious crimes. The paper concludes by proposing legislative reforms, stakeholder training, institutional support, and public sensitization as pathways for integrating RJ into formal justice systems. Ultimately, it argues that RJ offers a transformative model that fosters dignity, social harmony, and sustainable peace.

Keywords: Accountability, Conflict resolution mechanisms, Justice, Reconciliation, Restorative justice, Stakeholders

1.0 Introduction

The quest for a fair and effective justice system has long occupied the centre of legal and criminological discourse, particularly in the face of rising crime rates, prison overcrowding, and recidivism. Traditional criminal justice systems across the globe have primarily embraced the retributive model, which centres punishment as the principal response to crime, with the offender as the main subject of legal attention. Under this paradigm, justice is perceived as achieved when a proportionate penalty is imposed on the wrongdoer, often neglecting the needs of victims and communities affected by crime. However, growing evidence suggests that retributive mechanisms frequently fall short in addressing the broader social, emotional, and relational consequences of criminal conduct.

[1] These shortcomings have intensified calls for alternative models that shift the focus from punitive responses to inclusive and reparative solutions.

Restorative justice (RJ) has emerged as one such paradigm, gaining traction in both theoretical and policy circles as a model that prioritises healing, accountability, and reintegration. Rooted in indigenous justice traditions and reinvigorated by contemporary legal reforms, RJ emphasises dialogue, restitution, and community involvement in resolving the aftermath of crime. Jurisdictions such as New Zealand, Canada, and South Africa have implemented restorative mechanisms, such as victim-offender mediation and community conferencing, as viable alternatives to formal adjudication, particularly in juvenile and less serious criminal matters.[2] The adoption of RJ is increasingly supported by international frameworks, including the United Nations Basic Principles on the Use of

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[1] Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press 1990).
[2] John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press 2002).

Restorative Justice Programmes in Criminal Matters, which advocate for a more participatory and human-centred approach to justice.[3]

This article, therefore, seeks to explore the conceptual foundations and practical applications of restorative justice in dealing with crime, with a particular focus on its responsiveness to the interests of key stakeholders: victims, offenders, communities, and the state. It asks the following questions: How does restorative justice differ from and potentially improve upon retributive justice? What strategies within RJ have proven most effective across diverse legal systems? How can stakeholder interests be balanced within RJ frameworks, and what are the challenges to broader adoption? By critically engaging with these questions, the paper demonstrates that restorative justice is not merely a complementary tool but a transformative philosophy capable of reshaping our understanding of justice in the modern era.

The significance of this study is particularly pronounced within the Nigerian criminal justice system, where the persistent challenges of prison congestion, trial delays, and high recidivism rates undermine public confidence in justice institutions.[4] The Administration of Criminal Justice Act 2015 (ACJA) and various state-level reforms have introduced measures aimed at promoting efficiency, but they remain largely anchored in retributive paradigms.[5] Restorative justice (RJ), by contrast, offers a complementary framework that prioritises victim participation, offender accountability, and community healing. Its potential to reduce reoffending and enhance victim satisfaction directly addresses systemic deficiencies, thereby positioning RJ as a transformative alternative for Nigeria.[6]

The study is also significant because it responds to Nigeria's broader obligations under international and regional human rights instruments, such as the African Charter on

[3] United Nations Office on Drugs and Crime (UNODC), *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (ECOSOC Resolution 2002/12).
[4] Amnesty International, *Nigeria: 'Prisoners of Their Own System': The Mass Trial of Boko Haram Suspects in Nigeria* (AI 2019).
[5] Administration of Criminal Justice Act 2015 (Nigeria).
[6] Heather Strang and Lawrence W Sherman, *Restorative Justice: The Evidence* (Smith Institute 2007).

Human and Peoples' Rights, which emphasises dignity and reintegration.[7] By engaging with both doctrinal and practical dimensions, this research contributes not only to scholarly debates but also to policy discourses on criminal justice reform. For policymakers, it provides a blueprint for embedding RJ into legislation and practice; for practitioners, it highlights procedural safeguards and best practices; and for communities, it affirms indigenous traditions of reconciliation and mediation that resonate with restorative ideals.

This article employs a doctrinal, socio-legal, and comparative research methodology to provide a comprehensive appraisal of restorative justice in Nigeria. The doctrinal method is used to analyse the statutory framework, particularly the provisions of the Administration of Criminal Justice Act 2015 and state-level laws such as the Lagos State Administration of Criminal Justice Law 2011, both of which provide discretionary space for non-custodial measures and plea bargaining.[8] Judicial pronouncements, including *FRN v Ibori*, have also been considered, as they illustrate the limits of current sentencing practices and the potential space for restorative interventions.[9]

The socio-legal approach situates RJ within the broader Nigerian socio-cultural and institutional context.[10] This involves drawing upon secondary literature, government reports, and empirical insights from restorative practices in pilot projects, such as community mediation centres in Lagos and Abuja. Comparative analysis further enriches the study by examining established RJ frameworks in other jurisdictions,[11] most notably the *Daubert* standard in the United States, circle sentencing in Canada, and community conferencing in South Africa, highlighting lessons that could guide Nigeria's integration of RJ principles.[12]

[7] African Charter on Human and Peoples' Rights (1981) OAU Doc CAB/LEG/67/3 rev 5.
[8] Lagos State Administration of Criminal Justice Law 2011 (Nigeria).
[9] *FRN v James Onanefe Ibori* (Unreported, Federal High Court, Asaba, 2010).
[10] United Nations, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (ECOSOC Res 2002/12, 24 July 2002).
[11] Shaileshkumar Jadhav, 'Restorative Justice: Emerging Global Models and Challenges in Implementation' (2020) 14(2) *International Journal of Law, Crime and Justice* 101.
[12] Gerry Johnstone and Daniel W Van Ness, *Handbook of Restorative Justice* (Willan Publishing 2007).

Finally, a case study method is employed to examine both Nigerian initiatives and international models. The inclusion of Nigerian-specific case studies ensures contextual relevance, while the comparative element underscores transferable lessons and pitfalls. This triangulated methodology enhances the robustness of findings and strengthens the foundation for the recommendations proposed in the concluding section.

2.0 **Concept of Restorative Justice**

2.1 Overview of Restorative Justice

The concept of restorative justice (RJ) has generated significant scholarly attention as a viable alternative to the traditional retributive model of criminal justice. At its core, RJ is premised on the idea that crime constitutes not only a violation of the law but also an injury [13]to relationships between victims, offenders, and communities. Howard Zehr, often regarded as the pioneer of modern RJ, emphasises that restorative processes seek to repair harm through dialogue, accountability, and reintegration, contrasting this with punitive models that prioritise deterrence and incapacitation.[14]

A substantial body of literature identifies the benefits of RJ for victims, offenders, and society. Strang and Sherman argue that RJ mechanisms, including victim–offender mediation and conferencing, tend to increase victim satisfaction and reduce recidivism when compared to conventional adjudication.[15] Similarly, Braithwaite contends that the emphasis on "reintegrative shaming" enables offenders to take responsibility for their actions without being permanently stigmatised, thereby enhancing prospects for rehabilitation.[16] These perspectives highlight RJ's transformative potential in addressing systemic shortcomings of punitive justice systems, such as prison overcrowding and offender alienation.

International frameworks have also legitimised RJ as a component of modern justice systems. The United Nations Basic Principles on the Use of Restorative Justice

[13] John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989).
[14] Howard Zehr, *Changing Lenses: Restorative Justice for Our Times* (Herald Press 2015).
[15] Heather Strang and Lawrence W Sherman, *Restorative Justice: The Evidence* (Smith Institute 2007).
[16] Braithwaite (n 1).

Programmes in Criminal Matters (2002) recommend its integration at all stages of the criminal process, subject to voluntariness, fairness, and proportionality.[17] Comparative scholarship further shows that RJ has been effectively institutionalised in countries such as New Zealand, where family group conferencing is embedded in juvenile justice legislation, and in Canada, where circle sentencing draws upon indigenous traditions of reconciliation.[18] These models demonstrate the adaptability of RJ to diverse cultural and legal contexts.

In the African context, scholars have observed that restorative practices resonate with indigenous mechanisms of dispute resolution. Ubink and Van Rooij argue that African customary law, with its emphasis on reconciliation and community harmony, naturally aligns with restorative ideals.[19] South Africa provides a notable example, where RJ was incorporated into the Child Justice Act 2008 as part of a post-apartheid shift towards participatory justice.[20] These experiences suggest that RJ can serve as both a culturally rooted and globally relevant approach to justice reform.

Within Nigeria, the literature acknowledges the pressing need for alternatives to the punitive model, given systemic challenges of trial delays, prison congestion, and high recidivism. Amnesty International reports that pre-trial detainees account for over 70% of the Nigerian prison population, underscoring the inefficiencies of the existing system.[21] While the Administration of Criminal Justice Act 2015 introduced innovations such as plea bargaining and non-custodial sentencing, scholars like Akinseye-George argue that these remain underutilised and insufficiently restorative.[22] Empirical studies also show

[17] United Nations, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (ECOSOC Res 2002/12, 24 July 2002).
[18] Gabrielle Maxwell and Allison Morris, *Family Group Conferences and the Youth Justice Process in New Zealand* (Victoria University Press 2006); Ross Gordon Green, *Justice in Aboriginal Communities: Sentencing Alternatives* (Purich Publishing 1998).
[19] Janine Ubink and Benjamin van Rooij, 'Towards Customary Legal Empowerment in Africa' (2011) 44 *Journal of Legal Pluralism and Unofficial Law* 1.
[20] Child Justice Act 2008 (South Africa).
[21] Amnesty International, *Nigeria: 'Prisoners of Their Own System': The Mass Trial of Boko Haram Suspects in Nigeria* (AI 2019).
[22] Yemi Akinseye-George, *Legal System, Corruption and Governance in Nigeria* (New Century Law Publishers 2019).

that limited awareness, weak institutional support, and lack of legislative clarity have constrained the practical adoption of RJ in Nigeria.[23]

At the same time, Nigerian scholarship increasingly advocates for structured integration of RJ into the justice system. Ogwezzy and Ajiboye contend that RJ could enhance victim participation and promote community-based solutions to crime, aligning with Nigeria's cultural traditions of reconciliation.[24] Similarly, Adeyemi stresses the potential of RJ to alleviate prison congestion and complement the objectives of the Nigerian Correctional Service Act 2019, which emphasises rehabilitation and reintegration.[25]

Taken together, the literature underscores both the promise and challenges of RJ. While global experiences and African traditions affirm its viability, Nigeria's legal system still lacks a coherent framework for its systematic adoption. This gap in scholarship and practice provides the justification for the present study, which seeks to evaluate RJ's emerging strategies and their alignment with the interests of victims, offenders, communities, and the state.

Restorative justice (RJ) represents a paradigmatic shift from conventional retributive approaches to crime, prioritising healing, accountability, and the repair of social harm over punitive sanctions. It is predicated on the recognition that crime is not merely a breach of state authority but a violation of relationships between individuals, communities, and the broader social fabric. The United Nations defines restorative justice as "any process in which the victim and the offender, and where appropriate, any other individuals or community members affected by a crime, actively participate together in the resolution of matters arising from the crime, generally with the help of a facilitator."[26] This definition highlights the participatory, dialogic, and inclusive character of RJ,

[23] Olanrewaju Olaniyan, 'Restorative Justice in Nigeria: Potentials and Challenges' (2020) 11(2) *Nigerian Journal of Human Rights* 145.
[24] Ogwezzy Michael and Ajiboye Oladipo, 'Restorative Justice and the Nigerian Legal System: Opportunities and Prospects' (2018) 5(1) *Journal of Law, Policy and Globalisation* 33.
[25] Adegbite Adeyemi, 'Correctional Reforms and the Role of Restorative Justice in Nigeria' (2021) 25(3) *African Journal of Criminology and Justice Studies* 201.
[26] United Nations, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (ECOSOC Res 2002/12, 24 July 2002).

distinguishing it from adversarial criminal proceedings that often marginalise victims and depersonalise offenders.

At its core, restorative justice creates opportunities for dialogue and collaborative problem-solving between victims, offenders, and communities.[27] Unlike retributive models that perceive crime primarily as an affront to legal norms, RJ views wrongdoing as relational harm requiring remedies that restore dignity, trust, and social harmony.[28] Its application, once confined to juvenile justice and minor offences, has broadened significantly to include serious crimes such as homicide, sexual violence, and even transitional justice contexts in post-conflict societies where conventional systems have collapsed or lost legitimacy.[29] This expanded scope demonstrates RJ's adaptability to different cultural and institutional contexts while affirming its potential as a complementary or alternative framework to state-driven justice.

The philosophical underpinnings of RJ rest on three interrelated values: restoration, reconciliation, and accountability. Restoration requires recognition of harm and active efforts to repair it, whether through apology, restitution, or symbolic gestures.[30] Reconciliation emphasises rebuilding trust and facilitating dialogue, thereby enabling victims and offenders to engage in processes of remorse, forgiveness, and mutual understanding. In many communal societies, reconciliation is essential, since crime disrupts not only individuals but also collective harmony. Accountability within RJ differs from the punitive imposition of penalties; it entails offenders voluntarily accepting responsibility, acknowledging the human impact of their actions, and making amends directly to those harmed.[31] Together, these principles promote a humane and relational approach to justice, one that empowers all parties rather than reinforcing alienation or exclusion.

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[27] Howard Zehr, *Changing Lenses: Restorative Justice for Our Times* (Herald Press 2015).
[28] Gerry Johnstone and Daniel W Van Ness, *Handbook of Restorative Justice* (Willan Publishing 2007).
[29] Elrena van der Spuy, 'Restorative Justice in Post-Apartheid South Africa: Prospects and Challenges' (2008) 12(3) *Restorative Justice Online* 14.
[30] Kathleen Daly, 'Restorative Justice: The Real Story' (2002) 4(3) *Punishment and Society* 55.
[31] Allison Morris, 'Critiquing the Critics: A Brief Response to Critics of Restorative Justice' (2002) 42(3) *British Journal of Criminology* 596.

A distinctive feature of restorative justice is its engagement of multiple stakeholders. Victims, who are often sidelined in formal legal proceedings, gain voice, validation, and closure through RJ processes. Offenders benefit by confronting the consequences of their actions in a constructive setting, which research suggests reduces recidivism by fostering empathy and responsibility. Communities, traditionally marginalised in state-centred justice, reclaim an active role in maintaining social order, supporting reintegration, and promoting long-term cohesion. Finally, the state, while retaining oversight, plays a facilitative rather than punitive role, reaping benefits such as reduced incarceration costs and enhanced public trust in justice institutions.[32] In this way, RJ functions as a holistic system in which justice is co-created by those most affected by harm rather than imposed from above.

Two seminal theoretical models provide a foundation for restorative justice scholarship and practice. John Braithwaite's theory of reintegrative shaming distinguishes between stigmatising shame, which labels offenders and fosters social exclusion, and reintegrative shame, which denounces the wrongful act while affirming the offender's capacity for reintegration.[33] According to Braithwaite, reintegrative shaming is most effective when supported by strong community networks capable of combining moral condemnation with pathways to rehabilitation. Complementing this, Howard Zehr's restorative justice theory advocates a shift in perspective from the punitive "lens of justice" to a restorative lens that emphasises relational harm, community healing, and shared responsibility.[34] In *Changing Lenses*, Zehr underscores that restorative processes rooted in empathy, dialogue, and accountability provide a more just and sustainable response to crime than adversarial, state-dominated procedures.[35]

Taken together, these conceptual and theoretical perspectives confirm that restorative justice is not merely an adjunct to formal legal systems but a transformative model of justice. By centring human dignity, accountability, and social restoration, RJ challenges

[32] Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Clarendon Press 2002).
[33] John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989).
[34] Zehr (n 2).
[35] Ibid

prevailing punitive paradigms and reimagines how societies might respond to wrongdoing. Its principles of restoration, reconciliation, and reintegration offer not only a normative ideal but also a practical framework for criminal justice reform in contexts as diverse as advanced democracies, transitional societies, and developing states such as Nigeria.

2.2 Comparative Practices in Restorative Justice

Restorative justice (RJ) has gained traction globally as a flexible and context-sensitive alternative to retributive justice. Its adaptability lies in its ability to incorporate local cultural practices while responding to modern legal frameworks, thereby allowing jurisdictions to address crime in ways that resonate with their socio-political contexts. A comparative review of select jurisdictions highlights both the strengths and challenges of RJ models worldwide.

New Zealand stands as a pioneering jurisdiction in embedding RJ within its statutory justice system, particularly in relation to juvenile justice. The *Children, Young Persons, and Their Families Act 1989* introduced Family Group Conferencing (FGC), a model influenced by Māori indigenous traditions that emphasises communal participation, family involvement, and culturally grounded solutions.[36] Research demonstrates that FGCs not only reduce reoffending but also enhance victim satisfaction and empower families in the resolution process.[37] The integration of Māori customs illustrates the potential of RJ to thrive when rooted in indigenous epistemologies and supported by legal structures.

Canada represents another strong example of institutionalised RJ, with practices extending across both formal and community-based contexts. Indigenous sentencing circles and victim-offender mediation are widely applied, particularly in rural and Indigenous communities.[38] The *Youth Criminal Justice Act 2003* explicitly endorses RJ,

[36] Children, Young Persons, and Their Families Act 1989 (NZ).
[37] Gabrielle Maxwell and Allison Morris, *Family, Victims and Culture: Youth Justice in New Zealand* (Social Policy Agency and Institute of Criminology, Victoria University of Wellington 1993).
[38] Rupert Ross, *Returning to the Teachings: Exploring Aboriginal Justice* (Penguin 1996).

emphasising reintegration, fairness, and the reduction of systemic discrimination.[39] Furthermore, the annual *Restorative Justice Week* and government-funded RJ initiatives reflect a policy environment conducive to sustainable RJ practices. Evaluations show positive outcomes in terms of offender accountability and victim healing, highlighting how state endorsement enhances the credibility and reach of RJ.[40]

In South Africa, RJ gained prominence during the country's transition from apartheid. The Truth and Reconciliation Commission (TRC) remains one of the most widely studied RJ-inspired mechanisms. It offered conditional amnesty in exchange for full disclosure of politically motivated crimes, thereby privileging truth-telling and national healing over strict retribution.[41] While the TRC has been critiqued for its perceived neglect of victims' justice and limited reparations, it nonetheless demonstrated the potential of RJ in post-conflict societies, providing a platform for collective memory and reconciliation.[42] Its legacy continues to influence transitional justice frameworks globally.

Nigeria and other African jurisdictions present a distinct trajectory where indigenous justice systems long practised restorative principles even before formal legal codification. Traditional mechanisms, often led by village elders or community leaders, prioritised restitution, reconciliation, and social harmony over punitive sanctions.[43] However, colonial legal legacies and the predominance of centralised statutory systems have constrained the incorporation of these indigenous models into formal judicial structures. Scholars have increasingly argued for hybrid frameworks that integrate statutory rights with customary practices, thereby legitimising RJ within modern legal systems while preserving cultural authenticity.[44]

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[39] Youth Criminal Justice Act 2003, SC 2002, c 1 (Canada).
[40] Julian Roberts and Carolyn Hoyle, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (Routledge 2019).
[41] Truth and Reconciliation Commission of South Africa, *Final Report* (1998).
[42] Richard A Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge University Press 2001).
[43] Elias O Aiyedun, 'Customary Justice Systems and Restorative Justice in Nigeria' (2019) 3 African Journal of Criminology and Justice Studies 45.
[44] Chinedu U Okafor, 'Hybridising Justice: The Future of Restorative Justice in African Legal Systems' (2020) 12 African Human Rights Law Journal 67.

These comparative experiences affirm that RJ is not a monolithic or universal model but one that must be tailored to each jurisdiction's cultural and institutional realities. Jurisdictions with supportive legal frameworks, adequate resourcing, and well-trained facilitators consistently demonstrate stronger outcomes, including reduced recidivism, greater victim satisfaction, and enhanced community cohesion. The evidence suggests that the success of RJ lies less in its form and more in the alignment of its principles with the broader values and needs of the societies in which it is applied.

2.3 Stakeholder Impact Analysis of Restorative Justice

Restorative justice (RJ) fundamentally reshapes the architecture of justice delivery by redistributing focus from the state as the sole custodian of justice to the immediate stakeholders victims, offenders, communities, and justice officials.[45] This pluralist orientation stands in contrast to the adversarial criminal justice model, which privileges punishment, deterrence, and state authority over the relational and human dimensions of harm. By rebalancing power among stakeholders, RJ advances a justice framework that is dialogic, participatory, and relational rather than adversarial and punitive.[46]

Victims occupy a particularly central role in RJ processes, as they are no longer treated merely as witnesses for the state but as rights-holders entitled to voice, recognition, and restitution.[47] The victim's ability to describe their harm, demand accountability, and negotiate remedies such as financial compensation, community service, or symbolic gestures of repair contributes to a stronger sense of closure. Empirical evidence from jurisdictions like New Zealand and Canada shows that victims who participate in RJ are more satisfied with the process and its outcomes compared to those engaged in conventional trials.[48] Moreover, victims report higher perceptions of fairness, emotional

[45] John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press 2002) 55.
[46] Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (2nd edn, Routledge 2011) 33.
[47] Shadd Maruna, 'Reentry as a Rite of Passage' (2011) 13 Punishment & Society 3.
[48] Gabrielle Maxwell and Allison Morris, *Family, Victims and Culture: Youth Justice in New Zealand* (Victoria University Press 1993) 71.

healing, and safety after participating in victim-offender mediation.[49] Yet challenges persist, including the possibility of coercion, power imbalances between victim and offender, and secondary victimisation, especially in cases involving gender-based violence.[50] As such, safeguards such as voluntary participation, trained facilitators, and judicial oversight are indispensable to prevent RJ from re-traumatising victims.[51]

Offenders are similarly transformed under RJ models. Instead of being passive recipients of punishment, offenders are required to actively engage with the consequences of their actions.[52] Confronting the victim directly often provokes genuine remorse and can foster empathy, leading to behavioural change.[53] Reintegrative mechanisms, such as public apologies, restitution agreements, and community service, allow offenders to restore their moral standing and reduce social stigmatisation. Studies indicate that offenders participating in RJ exhibit lower rates of recidivism compared to those subjected to conventional punitive sanctions.[54] Nonetheless, voluntariness remains essential: coerced admissions or forced participation may erode the legitimacy of the process and compromise offender rehabilitation.[55] Moreover, there is an ongoing scholarly debate about whether RJ is sufficiently robust to deal with serious crimes, where offenders may manipulate the process to secure leniency without genuine reform.[56]

Communities are critical stakeholders in RJ, as they serve both as moral guardians and as reintegration platforms. In adversarial systems, crime is treated as a violation of state law; in RJ, however, it is understood as a violation of relationships within a community.[57] Mechanisms such as peace circles, family group conferences, and community panels

[49] Lawrence W Sherman and Heather Strang, *Restorative Justice: The Evidence* (Smith Institute 2007) 64–67.
[50] Heather Strang and John Braithwaite (eds), *Restorative Justice and Family Violence* (Cambridge University Press 2002) 9–10.
[51] Joanna Shapland and others, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (Routledge 2011) 92.
[52] Howard Zehr, *Changing Lenses: Restorative Justice for Our Times* (3rd edn, Herald Press 2015) 45.
[53] Carolyn Hoyle, 'Restorative Justice: Assessing the Evidence' (2010) 20 Crim LR 83.
[54] Sherman and Strang (n 5) 73.
[55] Theo Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy* (European Institute for Crime Prevention and Control 2007) 76.
[56] Kathleen Daly, 'The Limits of Restorative Justice' in Dennis Sullivan and Larry Tifft (eds), *Handbook of Restorative Justice* (Routledge 2006) 134–136.
[57] Braithwaite (n 1) 99.

empower local actors to define harm, negotiate remedies, and reassert collective values.[58] This participatory approach strengthens social bonds, restores collective responsibility, and reduces the alienation often produced by state-led punitive justice. In fragile or post-conflict societies such as Rwanda and South Africa, community-driven RJ initiatives have proven instrumental in rebuilding trust where state institutions were either weak or delegitimised.[59] Nevertheless, the extent to which communities can be entrusted with justice functions remains debated, particularly where entrenched hierarchies risk reinforcing discrimination against women, minorities, or vulnerable groups.[60]

Justice system officials, including judges, prosecutors, and police officers, also experience a profound shift in roles under RJ frameworks. Instead of acting primarily as arbiters or enforcers of state sanctions, their role becomes that of facilitators, gatekeepers, or monitors of RJ processes.[61] For example, judges may refer cases to mediation, prosecutors may negotiate diversion agreements, and police officers may act as facilitators in community conferencing. This shift can reduce case backlogs and improve efficiency in criminal justice delivery, while enhancing public trust in the system.[62] However, it requires structural reforms, extensive training, and a cultural transformation within the judiciary and law enforcement agencies to align institutional practices with RJ's principles of dialogue and restoration.[63] Without these adjustments, RJ risks being perceived as a marginal or tokenistic diversion rather than a meaningful alternative to adversarial justice.[64]

Finally, a critical concern across all stakeholder groups is the balancing of interests and rights. While RJ offers flexibility and empowerment, it must not undermine fundamental

[58] Kay Pranis, *The Little Book of Circle Processes: A New/Old Approach to Peacemaking* (Good Books 2005) 22–23.
[59] Luc Huyse, *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (International IDEA 2008) 41–42.
[60] Christine Alder and Joy Wundersitz, *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (Australian Institute of Criminology 1994) 58.
[61] Daniel Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* (5th edn, Routledge 2015) 121.
[62] Ibid 125.
[63] Gerry Johnstone and Daniel W Van Ness (eds), *Handbook of Restorative Justice* (Willan Publishing 2007) 399.
[64] Gavrielides (n 11) 102.

legal safeguards such as voluntariness, due process, equality before the law, and proportionality of sanctions.[65] Particularly in cases involving power asymmetries, such as domestic violence, sexual offences, or crimes involving vulnerable populations, RJ must operate under judicial supervision to avoid reinforcing existing inequalities or trivialising serious harm.[66] International practice demonstrates that RJ thrives not as a replacement for conventional justice but as a complementary paradigm that enhances justice delivery by embedding dialogue, empathy, and accountability within the criminal justice process.[67] In this respect, RJ's stakeholder-centred approach enriches justice systems by humanising outcomes while preserving the rule of law.

3.0 Historical Evolution and Global Developments

3.1 Global Developments of Restorative Justice

The roots of restorative justice (RJ) are deeply embedded in indigenous and customary justice systems, long before its formal adoption by modern legal frameworks. Indigenous societies across the globe, including the Māori of New Zealand, the Navajo in North America, and various ethnic communities in Africa, developed dispute resolution models centred on restoration, reintegration, and communal healing rather than retribution.[68] In these traditional systems, crime was often perceived not merely as a violation of the law but as a disruption of social harmony requiring reparative action among affected parties.[69]

The formal integration of restorative justice into national legal systems began in earnest during the latter half of the 20th century. New Zealand was among the first to institutionalize RJ in its youth justice system through the *Children, Young Persons, and Their Families Act 1989*, which introduced Family Group Conferencing (FGC) as a statutory alternative to court proceedings.[70] This model drew heavily from Māori conflict resolution traditions, illustrating how indigenous principles could be adapted into formal

[65] Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 201.
[66] Strang and Braithwaite (n 6) 15.
[67] Van Ness and Strong (n 17) 139.
[68] Zehr H, *Changing Lenses: Restorative Justice for Our Times* (Herald Press 2015) 31–35.
[69] Braithwaite J, *Crime, Shame and Reintegration* (Cambridge University Press 1989).
[70] New Zealand Ministry of Justice, *Youth Justice Indicators Summary Report 2021* (NZMoJ 2022).

legal processes. In Canada, RJ gained traction through victim-offender mediation, sentencing circles, and other community-based approaches, particularly within Indigenous communities seeking to decolonize criminal justice structures.[71] The Canadian *Youth Criminal Justice Act 2003* further solidified RJ as a viable mechanism in mainstream justice policy.

South Africa's adoption of RJ mechanisms during its transitional justice period also reflects its historical significance. The Truth and Reconciliation Commission (TRC), established in 1995, operationalized RJ principles such as truth-telling, amnesty for full disclosure, and public acknowledgment of harm in addressing the atrocities of apartheid.[72] Though controversial, the TRC provided a model of how RJ could function at a national, post-conflict level and shaped global discourse on transitional justice.

Internationally, RJ has received significant endorsement from multilateral institutions. The United Nations Economic and Social Council (ECOSOC) adopted the *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* in 2002, advocating for the development of RJ schemes and the incorporation of restorative practices in criminal justice systems.[73] These principles stress voluntariness, procedural safeguards, and the centrality of victim-offender engagement. Global organisations such as the European Forum for Restorative Justice and the International Institute for Restorative Practices have since emerged as influential bodies promoting training, research, and legislative reforms.

Today, RJ is embedded to varying extents in the legal frameworks of over 80 countries, reflecting its growing legitimacy as both a complementary and alternative justice paradigm.[74] Its continued expansion, however, depends on the delicate balance between

[71] Ross R, *Returning to the Teachings: Exploring Aboriginal Justice* (Penguin Canada 1996).
[72] Tutu D, *No Future Without Forgiveness* (Random House 2000) 59–65.
[73] United Nations ECOSOC Resolution 2002/12, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, 24 July 2002.
[74] Van Ness D and Strong K, *Restoring Justice: An Introduction to Restorative Justice* (5th edn, Routledge 2014).

cultural adaptation, procedural integrity, and respect for legal rights—particularly in pluralistic and rights-based legal systems.

3.2 Emerging Restorative Justice Strategies

Contemporary restorative justice (RJ) practices have evolved into structured and diverse models that seek to facilitate healing, accountability, and reintegration among stakeholders. These models are applied in a range of legal systems and social contexts, often tailored to cultural values and institutional capacities. Among the most prominent strategies are victim-offender mediation, community conferencing, circle sentencing, family group conferencing, and more recently, online restorative practices facilitated through digital platforms.

Victim-offender mediation (VOM) remains one of the most established forms of RJ. It involves a structured dialogue between the offender and the victim, typically facilitated by a trained mediator. This process allows victims to express their pain and receive acknowledgment, while offenders are encouraged to take responsibility and offer restitution.[75] Studies have shown that VOM leads to higher satisfaction rates among victims and reduced recidivism among offenders when compared to traditional adjudication.[76]

Community conferencing, also referred to as restorative conferencing, involves not just the victim and offender, but also their families, supporters, and community members. The process is collaborative, aiming to build a collective agreement on how to repair the harm caused. It places emphasis on community healing and shared responsibility, aligning with Braithwaite's theory of reintegrative shaming, which advocates for condemnation of the act but not the individual.[77]

Circle sentencing is another strategy, often rooted in indigenous traditions. Participants sit in a circle symbolizing equality and discuss the impact of the offence and possible

[75] Umbreit MS and Armour MP, *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (Springer 2011) 47–53.
[76] Sherman LW and Strang H, *Restorative Justice: The Evidence* (The Smith Institute 2007) 14–18.
[77] Braithwaite J, *Crime, Shame and Reintegration* (Cambridge University Press 1989).

reparative measures. This method has been used effectively in Canadian Indigenous communities and has gained international recognition for its potential to build community trust and foster offender reintegration.[78]

Family group conferencing (FGC), originally developed in New Zealand's juvenile justice system, involves extended family networks in the decision-making process. FGC empowers families to support both victims and offenders, making it particularly effective in cases involving young people. It is now adopted in jurisdictions beyond New Zealand, including Australia, the United Kingdom, and parts of the United States.[79]

In recent years, online restorative practices and digital conferencing platforms have emerged as innovative responses to logistical and accessibility barriers. The COVID-19 pandemic significantly accelerated the adoption of virtual RJ sessions, expanding opportunities for participation from remote areas or diasporic communities.[80] While digital methods can enhance inclusivity, they also raise ethical and technical questions regarding confidentiality, trauma sensitivity, and digital literacy. Nevertheless, with appropriate safeguards, virtual RJ remains a valuable tool in the modern justice toolkit.

Collectively, these emerging strategies demonstrate the flexibility and adaptability of restorative justice across cultures and technological landscapes. They provide scalable models that can be applied in schools, workplaces, and criminal justice systems, with growing empirical support for their effectiveness in conflict resolution and offender rehabilitation.[81]

3.3 Legal and Policy Framework for Restorative Justice

The institutionalisation of restorative justice (RJ) across jurisdictions reflects a growing shift in legal and policy thinking, from punitive to reparative approaches to justice. This

[78] Ross R, *Returning to the Teachings: Exploring Aboriginal Justice* (Penguin 1996).
[79] Maxwell G and Morris A, *Family Group Conferences: Aotearoa New Zealand Style* (2001) 2 *Youth Justice* 235.
[80] Zinsstag E and Kersten J, 'Online Restorative Justice: Responses to the COVID-19 Pandemic and Beyond' (2021) 18 *Restorative Justice: An International Journal* 67–84.
[81] Van Ness D and Strong K, *Restoring Justice: An Introduction to Restorative Justice* (5th edn, Routledge 2014).

shift has led to the gradual incorporation of RJ into national legal frameworks, guided by international norms, best practices, and local adaptations. In many jurisdictions, the process has involved legislative reform, judicial guidelines, administrative policies, and pilot programs that serve as precursors to nationwide adoption.

Several countries have integrated restorative justice into their formal legal systems through statutes and judicial practices. New Zealand stands as a global pioneer, having enshrined RJ in its *Children, Young Persons, and Their Families Act 1989*, which made family group conferencing mandatory for certain categories of juvenile offenders.[82] Canada followed suit through its *Youth Criminal Justice Act 2003*, which encourages the use of extrajudicial measures, including RJ processes, especially for youth and Indigenous populations.[83] South Africa, in recognition of its customary law traditions, introduced RJ in its *Child Justice Act 2008* and further supported it through judicial sentencing guidelines that emphasize rehabilitation and reintegration.[84]

Internationally, RJ is endorsed by several legal and normative instruments. The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002) encourage member states to develop RJ programs that emphasize voluntariness, offender accountability, and victim empowerment.[85] The European Council's Recommendation (2018) on RJ in criminal matters calls for legal safeguards, training, and institutional support to mainstream restorative mechanisms within national criminal justice systems.[86] Furthermore, the Commonwealth Secretariat has promoted RJ as a means to enhance access to justice, particularly in post-conflict and transitional justice contexts.[87] These frameworks provide states with adaptable models that protect participants' rights while delivering flexible, community-based justice solutions.

[82] Children, Young Persons, and Their Families Act 1989 (New Zealand), s 208.
[83] Youth Criminal Justice Act 2003 (Canada), ss 3 and 4.
[84] Child Justice Act 2008 (South Africa), s 61; see also Ann Skelton, 'Restorative Justice as a Framework for Juvenile Justice Reform' (2013) 20 *Restorative Justice International Journal* 89.
[85] United Nations Office on Drugs and Crime, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (UN 2002).
[86] Council of Europe Recommendation CM/Rec(2018)8 on Restorative Justice in Criminal Matters.
[87] Commonwealth Secretariat, *Restorative Justice for All: Preventing and Addressing Harm* (2020).

In Nigeria, restorative justice is gaining traction but remains at the periphery of formal criminal justice structures. The Lagos State Ministry of Justice took the lead by adopting RJ principles in its Administration of Criminal Justice Law (ACJL) 2011, which allows for plea bargaining and encourages victim-offender dialogue.[88] Additionally, pilot RJ programs have been implemented in correctional facilities and juvenile courts, often supported by NGOs and donor agencies. However, the absence of a national RJ policy or statute limits widespread adoption. Calls for legislative reform have intensified, urging the National Assembly to enact a *Restorative Justice Bill* that would codify RJ procedures, establish diversion programs, and provide judicial guidance.[89]

Nigeria's experience illustrates the challenges and opportunities in incorporating RJ within a plural legal system that blends common law, Sharia law, and customary justice traditions. Effective implementation requires harmonization of legal provisions, stakeholder training, and public sensitization to bridge the gap between legal theory and operational reality.

4.0 Stakeholders' Interests and Rights

Restorative justice (RJ) rests on a stakeholder-centered model that seeks to balance the interests, rights, and responsibilities of all those affected by crime—most notably the victims, offenders, communities, and the state. Unlike the retributive model that focuses primarily on the state versus the accused, RJ emphasizes inclusive dialogue and participatory processes that address harm and promote healing.

One of the primary contributions of RJ is its victim-centered approach. Traditional criminal justice systems often marginalize victims, relegating them to the role of witnesses rather than active participants in justice delivery. In contrast, RJ recognizes victims as key stakeholders deserving of emotional healing, active participation, and material or symbolic restitution. Victims are given the opportunity to express their pain, ask questions, and receive apologies or restitution from offenders. This process not only

[88] Lagos State Administration of Criminal Justice Law 2011 (Nigeria), ss 75–77.
[89] Chika Eze and Adeyinka Aderemi, 'Towards a Legislative Framework for Restorative Justice in Nigeria' (2022) 46 *Nigerian Journal of Law Reform* 215.

aids psychological closure but also affirms their dignity and agency.[90] Studies from jurisdictions like Canada and the UK have shown that victim satisfaction rates are significantly higher in RJ processes compared to conventional court proceedings.[91]

For offenders, RJ is designed to promote meaningful accountability rather than mere punishment. Offenders are encouraged to understand the impact of their actions, accept responsibility, and actively engage in repairing the harm caused. This process fosters empathy and remorse, often resulting in behavioral transformation. RJ also supports the rehabilitation and reintegration of offenders into society by providing them with pathways to reconcile with victims and communities. Unlike incarceration, which often alienates offenders, RJ fosters a sense of belonging and responsibility that has been linked to lower recidivism rates.[92]

Communities are often the silent victims of crime, experiencing fear, tension, and a breakdown in trust. RJ empowers communities to become active participants in the justice process, facilitating collective problem-solving, rebuilding relationships, and strengthening social cohesion. Through community conferencing, neighborhood boards, and peace circles, local voices are incorporated in the resolution of conflicts, thus enhancing legitimacy and resilience.[93] This approach is especially relevant in post-conflict and transitional societies where communal involvement is crucial for reconciliation and nation-building.

4.1 The State: Cost-Effectiveness, Crime Reduction, and Justice Outcomes

From a macro perspective, RJ aligns with the state's broader objectives of maintaining social order, reducing crime, and ensuring efficient justice delivery. Empirical evidence suggests that RJ programs are often more cost-effective than traditional court proceedings

[90] Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2002).
[91] Joanna Shapland et al, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (Routledge 2011).
[92] Lawrence W Sherman and Heather Strang, *Restorative Justice: The Evidence* (Smith Institute 2007).
[93] John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989).

and imprisonment.[94] By diverting minor and non-violent cases away from overloaded courts and prisons, RJ reduces public expenditure while achieving better restorative outcomes. Additionally, the focus on victim satisfaction and offender reintegration supports long-term crime prevention, which in turn fosters public confidence in the justice system.

Despite its transformative potential, restorative justice (RJ) is not without significant criticisms and practical challenges. These concerns revolve around the foundational principles of voluntariness and fairness, its applicability to serious crimes, and questions of procedural and legal enforceability. For RJ to be truly effective and ethically sound, these issues must be critically examined and addressed through policy design, professional training, and judicial oversight.

A fundamental tenet of RJ is that participation by all parties must be voluntary. However, critics argue that voluntariness can be compromised, especially where victims or offenders feel pressured to participate due to systemic, social, or institutional expectations.[95] Power imbalances especially in cases involving gender-based violence, economic disparities, or familial authority may further distort the RJ process, undermining the autonomy and safety of weaker parties. Where facilitators are not adequately trained to recognize and manage these imbalances, outcomes may reflect coercion rather than genuine consent.[96]

While RJ aims to promote healing, it can unintentionally cause further harm to victims, particularly when the process is not properly managed. Facing the offender in dialogue, especially in traumatic cases, may re-traumatise victims rather than empower them.[97] This challenge is more pronounced when offenders fail to demonstrate genuine remorse or when the process centers more on reconciliation than restitution. As such, careful

[94] Latimer, Dowden & Muise, 'The Effectiveness of Restorative Justice Practices: A Meta-Analysis' (2005) *The Prison Journal* 85(2) 127–144.
[95] Kathleen Daly, 'Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases' (2006) 46 *British Journal of Criminology* 334.
[96] L Walgrave, *Restorative Justice, Self-interest and Responsible Citizenship* (Willan Publishing 2008).
[97] Heather Strang and Lawrence Sherman, *Repair or Revenge: Victims and Restorative Justice* (Oxford University Press 2003).

screening, psychological support, and victim readiness assessments are essential safeguards.

Another debated issue is the appropriateness of RJ in cases involving serious crimes such as sexual assault, homicide, and terrorism. Critics contend that such crimes require punitive justice to reinforce legal norms, deter offenders, and affirm societal condemnation.[98] There is concern that offering restorative processes in these cases could trivialize the gravity of the offence or undermine public confidence in the justice system. However, proponents argue that even in serious crimes, RJ can play a complementary role particularly in addressing victim needs and facilitating offender accountability post-conviction.

RJ processes often operate outside the formal court system and may lack binding legal authority. This raises concerns about the enforceability of restitution agreements, protection of due process rights, and consistency in outcomes.[99] Without clear procedural standards, RJ may fail to uphold the legal principles of impartiality, evidence evaluation, and proportionality in outcomes. To mitigate these risks, some jurisdictions have incorporated RJ within statutory frameworks and linked outcomes to formal judicial oversight.

Restorative justice (RJ) has transitioned from theory to practice in various jurisdictions, demonstrating its adaptability and potential for effective conflict resolution within diverse cultural and legal frameworks. This section examines selected case studies from New Zealand, South Africa, Canada, and Rwanda, highlighting outcomes and drawing lessons for legal reform and policy-making.

New Zealand has been a pioneer in institutionalizing RJ, particularly through the *Children, Young Persons, and Their Families Act 1989*, which mandates Family Group Conferencing (FGC) as a central mechanism in youth justice. FGC convenes offenders,

[98] J Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press 2002).
[99] Daniel W Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* (Anderson Publishing 2015).

victims, families, and community members to discuss the offence and agree on reparative measures. Empirical studies report high victim satisfaction, reduced rates of reoffending, and enhanced community participation.[100] This model is often cited as a benchmark for jurisdictions seeking alternatives to traditional punitive youth justice approaches.

In South Africa, restorative principles have been integrated at both community and national levels. The *Truth and Reconciliation Commission (TRC)* embodied restorative ideals in addressing crimes of apartheid, while community-based victim-offender mediation initiatives have shown positive effects in healing and accountability, especially in cases of interpersonal violence.[101] Despite promising results, challenges related to institutional capacity, public awareness, and formal legal recognition remain significant obstacles to broader RJ adoption.

Canada has adapted RJ practices to align with Indigenous justice traditions, notably through Sentencing Circles and Healing Circles utilized by First Nations communities. The Supreme Court's decision in *R v Gladue*[102] emphasized the need to consider culturally appropriate restorative alternatives when sentencing Indigenous offenders. These approaches have contributed to decreased incarceration rates and strengthened cultural reconciliation.

Following the 1994 genocide, Rwanda implemented the *Gacaca* courts, a hybrid system combining customary justice with restorative principles to address an overwhelming backlog of genocide cases.[103] Offenders who confessed received reduced sentences and reintegrated through community service and apologies. While the Gacaca system accelerated case resolution and promoted communal healing, criticisms include inconsistent procedural fairness and limited victim agency.

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[100] Gabrielle Maxwell and Allison Morris, *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart Publishing 2001) 75-102.
[101] Ann Skelton, 'Restorative Justice as a Framework for Juvenile Justice Reform: A South African Perspective' (2002) 42 *British Journal of Criminology* 496, 501-507.
[102] R v Gladue [1999] 1 SCR 688.
[103] Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice Without Lawyers* (CUP 2010) 128-145.

These cases highlight that RJ's success depends on cultural compatibility, institutional support, legal integration, and inclusive stakeholder participation. Such insights are vital for countries like Nigeria seeking to incorporate RJ into their justice frameworks.

4.2 Pathways for Integrating Restorative Justice into Formal Justice Systems

Integrating restorative justice (RJ) into formal justice systems requires a multifaceted approach involving legislative reform, capacity building, community engagement, and sustained institutional support. This section outlines key pathways to facilitate this integration effectively.

Legislative reform is fundamental to embedding RJ within the legal framework, providing clear statutory mandates for its use and outlining the scope of judicial discretion. Jurisdictions such as New Zealand and Canada have enacted laws enabling courts to refer appropriate cases to restorative processes, thereby formalizing RJ as a complement to traditional adjudication.[104] Such reforms must ensure that RJ is available as a voluntary option, with safeguards for fairness and victims' rights.

The training of legal professionals, police officers, and mediators is critical to RJ's success. Specialized education equips stakeholders with the skills necessary for facilitating restorative processes sensitively and competently. For example, South Africa's Judicial Education Institutes have developed curricula focused on RJ principles, enhancing judicial awareness and enabling informed discretion in case management.[105] Similarly, mediator certification programmes reinforce best practices and ethical standards.

Public awareness and community engagement efforts cultivate understanding, trust, and acceptance of RJ among citizens. Effective campaigns, inclusive of victim and offender voices, reduce misconceptions and increase participation rates. In Rwanda, post-genocide

[104] Gabrielle Maxwell and Allison Morris, *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart Publishing 2001) 85-90.
[105] Ann Skelton, 'Restorative Justice and Judicial Training in South Africa' (2013) 16 *International Journal of Restorative Justice* 35, 42-45.

community mobilization was vital to the acceptance of the *Gacaca* courts, demonstrating the importance of grassroots involvement.[106]

Finally, institutional support and dedicated funding ensure sustainability and scalability of RJ initiatives. Governments must allocate resources for establishing RJ units within justice ministries, supporting research, and monitoring outcomes. The experience in Canada's Indigenous justice programs exemplifies how ongoing funding underpins continuous development and evaluation.[107]

Together, these pathways form a comprehensive strategy to integrate RJ, balancing formal legal requirements with community-oriented justice goals.

5.0 Conclusion and Recommendations

Restorative justice (RJ) has emerged as a transformative paradigm in contemporary criminal justice, shifting the focus from retribution to repair, reconciliation, and reintegration. Its core premise lies in addressing the harm caused by crime through processes that actively engage victims, offenders, and communities, thereby fostering accountability, healing, and social cohesion.[108] As demonstrated in comparative practices from New Zealand, Canada, and South Africa, the successful institutionalisation of RJ depends on cultural sensitivity, legal recognition, and sustained state support.[109] Empirical research further underscores its effectiveness in enhancing victim satisfaction, reducing recidivism, and offering cost-efficient alternatives to adversarial proceedings.[110]

Nevertheless, RJ is not without its limitations. Concerns remain regarding voluntariness, the risk of coercion, unequal bargaining power, and the potential for re-traumatisation of

[106] Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (CUP 2010) 153-158.
[107] Jennifer Llewellyn and Gabrielle Maxwell, *Restorative Justice, Healing and Reconciliation: Bridging the Cultural Divide* (Routledge 2014) 112-115.
[108] John Braithwaite, *Restorative Justice and Responsive Regulation* (OUP 2002).
[109] Gabrielle Maxwell and Allison Morris, 'Restorative Justice in New Zealand' in Gerry Johnstone and Daniel Van Ness (eds), *Handbook of Restorative Justice* (Willan 2007).
[110] Lawrence W Sherman and Heather Strang, *Restorative Justice: The Evidence* (Smith Institute 2007).

victims if adequate safeguards are absent.[111] Similarly, inconsistent institutional commitment and lack of legal frameworks in certain jurisdictions undermine the stability and scalability of RJ programmes.[112] These challenges indicate that RJ, while promising, requires careful design and integration into broader justice systems to achieve legitimacy and sustainability.

To advance restorative justice in Nigeria and comparable jurisdictions, several recommendations are apposite:

First, legislative reforms should explicitly define the scope of RJ, prescribe eligibility criteria, and incorporate procedural safeguards that ensure due process and equality before the law.[113] Judicial discretion should be preserved but exercised within clear statutory guidelines to protect the rights of participants, especially vulnerable victims.

Secondly, capacity building is essential. Structured training for judges, prosecutors, police officers, and mediators will strengthen competencies in facilitating RJ processes, while also instilling the ethical standards necessary for impartiality and fairness.[114]

Thirdly, community awareness and sensitisation must be prioritised. Public education campaigns can demystify RJ, encourage victim participation, and promote societal buy-in, which is indispensable for its legitimacy.[115] At the institutional level, sustainable funding, monitoring mechanisms, and policy support are critical. Without financial backing and policy alignment, RJ risks being treated as a peripheral experiment rather than a viable alternative to conventional justice. Jurisdictions such as New Zealand, where Family Group Conferencing is legislatively entrenched, and Canada, where

[111] Joanna Shapland and others, *Does Restorative Justice Affect Reconviction? The Fourth Report from the Evaluation of Three Schemes* (Ministry of Justice Research Series 10/08, 2008).
[112] Daniel W Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* (5th edn, Routledge 2015).
[113] Yvon Dandurand, 'Legislating Restorative Justice' (2007) 10 *Contemporary Justice Review* 401.
[114] Mark S Umbreit, Robert B Coates and Betty Vos, *The Impact of Restorative Justice Conferencing: A Review of 63 Empirical Studies in 5 Countries* (University of Minnesota, Center for Restorative Justice and Peacemaking 2002).
[115] Tony F Marshall, 'Restorative Justice: An Overview' (Home Office Research Development and Statistics Directorate 1999).

sentencing circles and mediation are widely supported, illustrate the importance of embedding RJ within statutory and community frameworks.[116]

Finally, in Nigeria, effective integration of RJ requires a hybrid approach that aligns indigenous dispute-resolution traditions with statutory law. By leveraging communal practices of reconciliation while ensuring conformity with constitutional rights and international human rights standards, the justice system can provide a uniquely contextualised model of RJ.[117] In doing so, Nigeria can move towards a more humane, inclusive, and effective response to crime, one that respects the dignity of all stakeholders and contributes to sustainable peace and justice.

[116] Kathleen Daly and Gitana Proietti-Scifoni, 'Defining Restorative Justice' (2009) 62 *Contemporary Justice Review* 79.
[117] Chukwuma Innocent, 'Traditional Methods of Crime Control in Nigeria: A Restorative Justice Perspective' (2002) 1 *Nigerian Journal of Human Rights* 45.

RETHINKING THE PUBLICATION OF NAMES AND PHOTOGRAPH OF CYBERCRIME SUSPECTS IN CYBERSPACE IN NIGERIA: LESSONS FROM THE USA AND SOUTH AFRICA.

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Abstract

The increase in the commission of cybercrimes, especially internet fraud, at the domestic and international levels, has put Nigerian cybercrime investigators in the global searchlight. This is arguably due to questions of competency and efficiency in enforcing the implementation of cybercrime legal frameworks and curtailing the upsurge of cybercrimes by Nigerians. Oftentimes, cybercrime investigators, after the apprehension of cybercrime suspects, resort to displaying their names and photographs in cyberspace before the conclusion of an investigation. While drawing lessons from the USA and South Africa, this paper argues that this act of the cybercrime investigators is a cyberspace parade and trial, which is unlawful and a breach of the fundamental human rights of cybercrime suspects. The aim of this paper is to evaluate the legal implications of cyberspace parade and trial in Nigeria and the main objective is to demonstrate that cyberspace parade and trial is unlawful. This paper adopts the doctrinal research design and data is sourced from primary and secondary sources. The paper found that the practice of cyberspace parade and trial is unlawful and unconstitutional. Considering the foregoing, it is recommended that a federal law banning cyberspace parades and trials should be enacted.

Keywords: Human Rights, fair hearing, privacy, cybercrime investigation and prevention, cyberspace parades and trials.

1. Introduction

Internet fraud or cybercrime involves the application of technology infrastructure to defraud victims or take advantage of them for commercial gain, and it is a non-violent crime.[1] It could be in the form of romance scams, business email compromises (BEC) scams, advance fee fraud, investment fraud, obtaining by false pretences, scams, bitcoin/cryptocurrency fraud, etc. Undoubtedly, there is an increase in the involvement of Nigerians in the perpetration of cybercrime and internet fraud at the domestic and international levels.[2] Reports from the United States of America (USA) show that several Nigerians have been arrested, prosecuted, and convicted in the USA for internet fraud-related offences.[3] In the same vein, in 2024, Nigeria was ranked 5th globally among the countries with the greatest threat of cybercrime (internet scams).[4] The involvement in internet fraud impacts negatively on the reputation of Nigeria and this fact was noted by the courts in *Federal Republic of Nigeria v. Hassan Adesegun Adewale*.[5]

Nigerian Cybercrime investigators, to curtail the proliferation of internet fraud/cybercrimes adopted certain cybercrime investigation measures or cybercrime enforcement strategy that arguably infringes on the rights of suspects. Some of these strategies involve the display of the names, details and pictures or photographs in cyberspace of cybercrime suspects before

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[1] N.U. Richards & F.E. Eboibi, 'Cybercrime perspectives to the ENDSARS protest in Nigeria' (2022) *African Security Review*, (2023) 32(1), 1.

[2] Ibid.

[3] Federal Bureau of Investigation, Internet Crime Complaint Center, 2020 Internet Crime Report, 17. Available at <https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3Report.pdf> accessed 20 September 2022.

[4] M. Bruce, J. Lusthaus, R. Kashyap, N. Phair, and F. Varese 'Mapping the global geography of cybercrime with the World Cybercrime Index' (2024) *PLoS ONE* 19(4) doi:10.1371/journal.pone.0297312

[5] Suit No: FNC/1B/52C/2019, Judgment delivered on 27 May 2019 by Justice J.O. Abdulmalik. Federal High Court, Ibadan (Unreported).

the conclusion of an investigation.[6] Cybercrime investigation institutions in Nigeria such as the Economic and Financial Crimes Commission (EFCC), take pictures of suspected internet fraudsters and display, post or publish them with their identity on their websites and social media channels before the conclusion of an investigation.[7] The EFCC, just like proponents of similar measures of booking photos, perp walk, and mug shots in the US and Europe,[8] considers its actions as legal and standardized law enforcement strategy. It argues, amongst others, that the institution only takes and publishes photographs or parades cybercrime suspects in cyberspace upon being profiled and incriminating evidence is found or recovered from the investigations or against the suspects. Moreover, it appears the EFCC considers it as an avenue to communicate and acquaint the public with their work, arguably to deter people from cybercrime or internet fraud and to facilitate guilty pleas and cooperation in current investigations.[9]

Consequently, this paper seeks to answer the following questions: is it lawful for Nigerian cybercrime investigators to take photographs of cybercrime suspects and display/publish the same in cyberspace? Are there implications for taking photographs of cybercrime suspects and displaying/publishing the same in cyberspace? From a comparative perspective, what can be done to prevent cybercrime investigators from taking the said photographs and displaying them in cyberspace? In seeking answers to these questions, the paper argues that when a cybercrime suspect is arrested by cybercrime investigators and the photograph is taken and posted on cyberspace, i.e., website, social media (Facebook, Instagram, Twitter, etc.), before the conclusion of an investigation or before the suspect is charged before a court of competent jurisdiction (otherwise referred to as a cyberspace parade and trial), it is a breach of the human rights of the suspect. Arguably, no domestic or comparative law from developed and developing economies approves any form of arbitrary cyberspace parade and trial. On the contrary, it is a misuse of the freedom of expression in cyberspace, which

[6] Oyindamola Olubajo, 'SPECIAL: How EFCCs illegal media parade damages reputation of innocent Nigerian youths, 12 October, 2021, available at <https://gazettengr.com/special-how-efccs-illegal-media-parade-damages-reputation-of-innocent-nigerian-youths/> accessed 27 September 2022.

[7] Ibid.

[8] Ernest F. Lidge III, 'Perp Walks and Prosecutorial Ethics', (2006) 7(55) *Nevada Law Journal*, 56-72

[9] Olubajo, (n 6).

distorts the administration of criminal justice and negates or violates the rights of suspected internet fraudsters.[10] Also, it negates the cybercrime suspect's right to a fair trial and presumption of innocence until proven guilty as guaranteed by international conventions and section 36(5) & (6) of the Constitution of the Federal Republic of Nigeria.[11]

Furthermore, considering that some publications in cyberspace are inaccurate[12] and could be reposted and retweeted, especially with the increasing usage of the internet and social media.[13] Reactions and opinions on the posted photographs of the cybercrime suspects by other persons, undermine the fair trial of suspects, as it could also prejudice the minds of judges before adjudicating on the matter[14] and erode the presumption of innocence[15] guaranteed by CFRN, s.35(6). Even when the suspects have been cleared of the alleged crime, they arguably do not remove or bring down the posts displaying pictures of those found innocent or who were not charged to court. This set of Nigerians are allowed to go through mental torture, psychological trauma and public humiliation,[16] plausible loss of employment, discrimination, neglect and isolation from members of the society and family members.

The paper is set out by laying a background to the subject of discourse. It examines the increasing involvement of some Nigerians in global internet fraud, which raises the question of Nigerian cybercrime investigators' competence and effectiveness in enforcing cybercrime legal frameworks. Secondly, it critically highlights the increasing instances of cyberspace parades and trials by cybercrime investigators, with particular reference to the EFCC, and

[10] LAV Robis, 'Balancing the Freedom of Expression and the Right of the accused to the Presumption of Innocence and Fair Trial: Is Social Media a Game Changer' (2015) 60(2) *Ateneo Law Journal* 398-399

[11] CFRN, 1999 (as amended).

[12] William Geoffrey Kastin, 'Presumed Guilty: Trial by the Media - The Supreme Court's Refusal to Protect Criminal Defendants in High Publicity Cases' (1992) 10(1) *New York Law School Journal of Human Rights,* 135

[13] Rachel Gimson, 'Captured Red Handed: The Impact of Social Media on the Evolving Concepts of the Criminal Defendant and the Presumption of Innocence,' 78, available at <http://sro.sussex.ac.uk/id/eprint/67121/> accessed 28 September 2022

[14] Ariana Tanoos, 'Shielding the Presumption of Innocence from Pretrial Media Coverage' (2017) 50(3) *Indiana Law Review* 997.

[15] Zia Akhtar, 'Social Media Access, Jury Restraint and the Right to a Fair Trial' (2020) 8(2) *University of Baltimore Journal of Media Law & Ethics,* 4.

[16] Olubajo, (n 6).

gives instances of alleged internet fraudsters arrested and whose pictures were displayed on the institution's website and social media channels prior to the conclusion of an investigation. Thirdly, it examines the legal implications of cybercrime investigators' display and publication of pictures of alleged internet fraudsters in cyberspace. Fourthly, the paper looks at what is obtainable in other jurisdictions such as the USA and South Africa and suggests a federal regulation banning the display of pictures of alleged internet fraudsters in cyberspace by cybercrime investigators before the conclusion of investigation and trial.

2. Review of Displayed/Published Apprehended Cybercrime Suspects' photographs in cyberspace by cybercrime investigators in Nigeria.

The EFCC and its officials regularly engage in the practice of cyberspace parade and trial by taking pictures of arrested cybercrime suspects and publishing the same, including their names and alleged crime, on its official website and social media channels (Facebook, Twitter, Instagram) prior to the conclusion of investigation and trial. For instance, between 2020 and 2022, the EFCC arrested over 1,200 suspected internet fraudsters and published their photographs, personal details, including some digital gadgets (laptops, computers, mobile phones) belonging to these suspects in cyberspace through its official handles (website, Facebook, Twitter, Instagram) prior to the conclusion of the investigation and formal charge before a court of competent jurisdiction.[17] The parade of suspected cybercriminals before conviction by the EFCC is also visible on its social media handles.[18] Even the welcome page on the EFCC website is saturated with photographs of suspected internet fraudsters.[19] This is even though not everyone arrested by the EFCC would eventually be charged before a court of competent jurisdiction at the conclusion of the investigation. For instance, 12 suspected internet fraudsters were arrested in Calabar, Cross River State. At the conclusion of the investigation, 10 out of the 12 were formally charged to

[17] See the EFCC website < https://www.efcc.gov.ng/news > accessed 20 October 2023.
[18] Facebook: https://www.facebook.com/officialefcc ; Twitter: @officialEFCC, Youtube: @OfficialEFCC and Instagram: <bit.ly/3olzD2F . accessed 20 October 2023.
[19] Ibid.

court and convicted.[20] Two of the suspects earlier displayed on the internet were arguably not part of the other 10 persons charged and convicted by the court, as findings from the investigation may not have linked them to the commission of any crime. In another instance, 10 suspected internet fraudsters were arrested and their photographs displayed by the EFCC, but one of them was not charged to court at the conclusion of the investigation, despite his photographs having been displayed by the EFCC.[21] It is argued that the display of the photographs of cybercrime suspects without a statement expressly stating that the suspects are presumed innocent of the crime until a court finds them guilty would suggest to any reasonable person that they are guilty of the crime alleged against them even without a trial.

Based on the preceding, cyberspace parade and trial are nothing but an unacceptable practice which is aimed at punishing and shaming alleged internet fraudsters prior to the conclusion of investigation and trial in a court of competent jurisdiction. Apart from negating the right to presumption of innocence, it is an instrument of preferentialism where it has been alleged that cybercrime investigators often do not display the photographs of influential suspects on their websites and social media handles but that of the poor.[22] Moreover, it is difficult to see the relevance and impact of cyberspace parades and trials in the fight against the proliferation of internet fraud in Nigeria, as the practice does not seem to have deterred internet fraudsters from perpetrating internet fraud, especially as cybercrimes are still on the increase.

3. Negative implications of the practice of cyberspace parade and trial on victims

The publication of the pictures and details of apprehended suspected internet fraudsters in cyberspace prior to the conclusion of the investigation and possible arraignment before a court of competent jurisdiction by cybercrime investigators, especially the EFCC, has a

[20] EFCC, Fake 'Foster Scolt', 9 Other Internet Fraudsters Jailed in Calabar, 1 April 2020, available at <https://www.efcc.gov.ng/efcc/news-and-information/news-release/5683-fake-foster-scolt-9-other-internet-fraudsters-jailed-in-calabar> accessed 9 March 2023.

[21] EFCC, 'EFCC Arrests 10 For Alleged Internet Fraud In Lagos' 9 January 2021, available at <https://www.efcc.gov.ng/news/6386-efcc-arrests-10-for-alleged-internet-fraud-in-lagos> accessed 9 March 2023.

[22] John Chuks Azu, 'How Media Trial Affects Suspects' Cases' 8 August 2021, available at <https://dailytrust.com/how-media-trial-affects-suspects-cases> accessed 5 October 2022.

grave and negative impact on the lives of the suspects, as it affects the alleged internet fraudster's psychology, credibility, character and reputation.[23] Oftentimes, the suspect is ostracized from his immediate and extended family, community and society due to his battered reputation in cyberspace despite having not been found guilty of the crime. There is the likelihood of these consequences being extended to members of the family of the alleged internet fraudster, their wife and children (if any) and anyone in any way connected to them.[24] Publishing the picture in cyberspace for the general public to access without restrictions tarnishes the image of the alleged internet fraudster, as it denotes that the person shown in the picture has been confirmed or adjudged to be an internet fraudster. The cyberspace court of public opinion inflicts a reputational penalty on an alleged internet fraudster with the possibility of it persisting many years after the release of the internet fraudster or conclusion of the matter.[25] Even when the cybercrime investigator releases the alleged internet fraudster without a formal charge before a court of competent jurisdiction, his reputation has already been damaged in an irreparable fashion. Again, if for any reason the alleged internet fraudster is arraigned before a court of competent jurisdiction on a charge of internet fraud and the court finds him guilty at the end of the trial, the internet fraudster would have been made to face double penalty and sentence (double jeopardy); the first being for subjecting him or her to cyberspace parade and trial and secondly, the sentence passed by the court.[26]

Moreover, even when they are released for being innocent of allegations of internet fraud or discharged and acquitted by a court of competent jurisdiction after a trial, the alleged internet fraudster whose pictures have been published in cyberspace will find it difficult to socialize in the society, community and amongst family members based on the guilty stigma arising

[23] Adetayo Omotoyosi, 'OPINION: Damage media parade is doing to Nigerian youths' 8 July 2021, available at < https://www.vanguardngr.com/2021/07/opinion-damage-media-parade-is-doing-to-nigerian-youths/> accessed 5 October 2021.

[24] Lidge III (n 8) 58.

[25] Robis (n 10) 399.

[26] Thisday, 'The Legality or Otherwise of Public Parade of Suspects by Security Agencies' (Part 1) available at <http://www.thisdaylive.com/index.php/2021/07/27/the-legality-or-otherwise-of-public-parade-of-suspects-by-security-agencies-part-1/> accessed 5 October 2022.

from the cyberspace parade and trial.[27] In essence, the practice resonates with communal mockery, a kind of public penalty that translates into perpetual stigmatization from the community's perspective, even if the internet fraudster is eventually released at the conclusion of the investigation or acquitted. The corollary is that the alleged internet fraudsters presumption of innocence is immaterial and his reputation in the court of public opinion is adversely affected.[28]

The practice of cyberspace parade and trial can translate into loss and denial of job opportunities, including scholarships at the domestic and international levels arising from the reputational damage on an alleged internet fraudster. This is exemplified by Omotoyosi[29] comment on the apprehension of Pankeeroy for internet fraud by the EFCC that:

> popular Instagram comedian Pankeeroy who was arrested for alleged computer-related fraud. His arrest trended on social media making room for public condemnation even though the court is yet to find him guilty. After a month in detention, the comedian regained his freedom. Pankeerovs legal representative later dismissed the allegations against the comedian saying that no petition was written against him and he was not found guilty of any crime. But what many failed to see is the damage, media trial has done to the reputation of Pankeerov. Many brands might want to work with him but due to his arrest which is a form of scandal may decide to stay put.[30]

When the practice is weighed against the backdrop of the conventional recruitment practice of some Nigerian and international companies, the negative impact becomes more obvious. Some of these companies specifically request applicants to state in their applications or employment application forms (as the case may be) if they have, prior to their application, been subjected to arrest by law enforcement agents. In this regard, should a background

[27] Azu (n 22).
[28] Tanoos, 2017 (n 14) 1012.
[29] Omotoyosi, (n 23).
[30] Ibid.

investigation be carried out by the proposed employer, alleged internet fraudsters whose pictures and details are published on the EFCC website and social media channels are likely to be denied the available employment opportunities even when they were later exonerated of the allegations.

In a related development, the practice establishes external effects which results in psychological trauma and mental torture against alleged internet fraudsters.[31] The experience of Mr Jonathan, cybercrimes suspect upon his released by the EFCC is apt in this regard when he disclosed how awful he feels each time he thinks about his published picture in cyberspace as an internet fraudster surfaces. According to him:

> When I got outside, it was then I saw my pictures online as a Yahoo boy. They released me because they didnt see anything on my phone. I feel bad because if I am going and I see people looking at me, my mind goes to my picture, and I think they probably saw my picture on the internet. I cant walk freely again... Sometimes, I just want to stay home and not go anywhere.[32]

4. Legal protection of Cybercrimes Suspects against cyberspace parade and trial in Nigeria

Several laws regulate the operations of cybercrime investigators in Nigeria. Unfortunately, some of these laws have been relied on to justify the practice of cyberspace parade and trial.[33] However, a critical look at some of these laws shows that cybercrime investigators are not empowered to engage in the practice, *albeit,* arbitrarily. For illustration, Sections 6, 7 and 46 of the EFCC Act 2004 empowers the EFCC to investigate and prosecute perpetrators of economic and financial crimes, including internet fraud. In addition, the comprehensive law on cybercrime in Nigeria, the Cybercrimes (Prohibition, Prevention etc) Act 2015 (Cybercrimes Act) prohibits and prevents the perpetration of cybercrimes and gives all law

[31] Olubajo (n.6); Warren Freedman, 'News Media Coverage of Criminal Cases and the Right to a Fair Trial' (1961) 40(3) *Nebraska Law Review*, 401.
[32] Ibid.
[33] Ibid.

enforcement agents the powers to detect, prosecute and punish perpetrators of cybercrimes. Sections 7(2), 14, and 22, amongst others, prohibit internet fraud perpetration. Also, section 4 and Part VII of the extant Nigeria Police Act 2020 vest the Nigerian Police with the general function and powers of arrest, protection of lives and properties, and prevention, detection and prosecution of crimes. Specifically, Section 68, under Part VII of the Police Act 2020, which reiterates Section 15 of the Administration of Criminal Justice Act 2015, mandates cybercrime investigators to take record of suspects' details including their name, occupation, residential address, particulars of alleged crime and for identification purposes, the suspects' height, photograph and fingerprint impression.

Contrary to the assertion and reliance of the above legal provisions in justification of cyberspace parade and trial by cybercrime investigators, those provisions do not in any way permit cybercrime investigators to engage in the practice. It must be noted that this practice infringes on the fundamental human rights of the cybercrime suspect. These rights include, amongst others, the right to privacy, the presumption of innocence, and fair hearing. The right to privacy denotes the right to protect the personal details and information of a person from unauthorized use or use in a manner that may be prejudicial to the personal interest of the person. A mandatory and arbitrary taking of a person’s photogragh and uploading it on cyberspace violates the right to presumption of innocence and privacy.

In Nigeria, fundamental rights are protected in chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) (CFRN 1999). Specifically, Section 36(1) provides to the effect that every person charged with a criminal offence is entitled to a fair hearing within a reasonable time before a court of competent jurisdiction. While Section 36(5) of CFRN 1999 provides that all criminal suspects are presumed innocent until proven guilty. In the same vein, section 37 of CFRN 1999 protects the right to privacy of all Nigerian citizens.

Undoubtedly, the cyberspace parade and trial by cybercrime investigators contravenes’ section 36(5) of the CFRN, which guarantees alleged internet fraudsters the right to be presumed innocent until they are proven guilty beyond reasonable doubt. It must be noted that this presumption survives the investigation, arrest, and arraignment of the alleged internet fraudster for the crime alleged to have been committed. The presumption is still

intact in the course of giving evidence in the trial, the address by counsel and until a court finds the internet fraudster "guilty". The taking and posting of an alleged internet fraudster picture on cyberspace before the conclusion of the investigation could result in the emergence of different opinions concerning the innocence or guilt of the suspected internet fraudster. These opinions are in the absence of a genuine and real presentation of evidence and facts which ordinarily should have been the basis for a well-informed opinion on the crime in question.

Cyberspace parade and trial negate the fair trial rights of those whose pictures are taken and published on cyberspace by cybercrime investigators, as enshrined in section 36 of the CFRN. A fair trial requires the presiding judicial personnel or judge to be independent and impartial.[34] This impartiality and independence could be affected by the parade and trial of cybercrime suspects who have already been adjudged to be internet fraudster or cybercriminal in cyberspace even before they are brought before a competent court for trial.[35] Moreover, the neutrality of presiding officers of the courts could inadvertently be affected by the published pictures and public opinions concerning alleged internet fraudsters in cyberspace during the trial. This could have some implications on the outcome of the trial and the right of the cybercrime suspects to a fair trial.[36] These practices prejudge the alleged cybercriminal by the investigation agencies and tends to encroach on the duty of the court to pass a verdict of guilt or acquittal and denies the alleged cybercriminal the right to fair hearing.[37]

The foregoing shows that apart from cyberspace parade and trial being illegal, it is a violation of the human rights of cybercrime suspects. It is therefore argued that the act of cyberspace parade and trial could make cybercrime investigators liable in criminal prosecution for assault and civil redress. In the United States case of *Gow v. Bingham*[38] at the time Gow was arrested by the police and subsequently charged to court, there was no law

[34] Kastin, (n 12) 135.
[35] Ibid.
[36] Marder, NS (2014) 'Jurors and Social Media: Is a Fair Trial Still Possible' 67(3) *SMU Law Review* 626-628.
[37] *Ndukwem Chiziri Nice v. AG, Federation & Anor* (2007) CHR 218 at 232.
[38] Supra.

that empowered police to take photographs, impression and measurements of those in custody for record purposes. Gows photograph, measurements and imprint were taken by the police despite the absence of law in that respect. In determining the legality or otherwise of the police practice, the court noted that in the absence of any legislative authority, the acts of the police were unlawful and that a police custom of taking photographs of those in their custody is not a justification for the exercise, especially as it is a breach of the persons human rights which can only be violated by a legislative enactment. The court further noted that the act of the police is criminal and consequently liable for criminal assault and damages in civil redress.

Gow v. Bingham[39] supports the argument that Nigerian cybercrime investigators cannot rely on its conventional practice of cyberspace parade and trial as justification since there is no legislative enactment in support. Nevertheless, section 15 of the Administration of Criminal Justice Act 2015 (ACJA) and section 68 of the Police Act 2020 empower cybercrime investigators to take record of suspects immediately after they are arrested including their names, photographs, fingerprint impressions and other means of identification. Therefore, the question is whether section 15 of ACJA and section 68 of the Police Act are justifications for cyberspace parade and trial? Unfortunately, the answer is in the negative. Although the provisions provide for taking suspects' photographs and details for record purposes only, it did not empower cybercrime investigators to arbitrarily publish them in cyberspace, which is a breach of the suspects' human rights and consequently unconstitutional.

It might be argued that cybercrime institutional frameworks such as the EFCC and its operatives have the constitutional right to freedom of expression as guaranteed under section 39 of the CFRN. However, this right must be in agreement with responsibilities and duties and possibly be constricted to guarantee high regard for the human rights and reputation of other persons, in this case, alleged internet fraudsters.[40] For instance, cybercrime investigators are obligated under section 34(1)(a) of the CFRN to respect the dignity of alleged internet fraudsters. Taking the pictures of alleged internet fraudsters prior to the conclusion of the investigation and trial and publishing the same in cyberspace, with its

[39] 107 N. Y. S. 1011 (1907).
[40] Robis (n 10) 399.

attendant humiliation and psychological trauma, is nothing but arbitrarily subjecting the internet fraudster to torture or inhuman or degrading treatment' which contravenes section 34(1)(a) of the CFRN.[41] The United States Court of Appeals for the Sixth Circuit in Detroit Free Press Inc. v. U.S Department of Justice (2016)[42] concerning the similar practice of mug shots in the US stated thus:

> The internet and social media have worked unpredictable changes in the way photographs are stored and shared. Photographs no longer have a shelf life, and they can be instantaneously disseminated for malevolent purposes. Mugshots now present an acute problem in the digital age: these images preserve the indignity of a deprivation of liberty, often at the (literal) expense of the most vulnerable among us.

Again, Section 37 CFRN guarantees the right to privacy. The publication of alleged internet fraudsters' photographs, names and digital gadgets prior to investigation and finding of guilt by a court of competent jurisdiction contravenes this provision. The alleged internet fraudsters have privacy interests in the photographs, their details and digital gadgets. In *Von Hannover v. Germany*[43] the European Court of Human Rights (ECtHR) recognized that the publication of the complainants photograph in the press is not of general interest and hence held the said publication to be a breach of the complainants right to privacy. Most recently in the case of *Google Spain and others v. Gonzles*[44] *a*s a sequel to the publication of the respondent's data on cyberspace, the Court of Justice of the European Union directed its removal on the ground that privacy right outweighs public interest irrespective of the type of information.

Furthermore, the Nigerian Data Protection Act[45] (NDPA) was enacted to among other things, safeguard the right to privacy encapsulated in Section 37 of CFRN. Article 1(3) and (4) of the NDPA provides to the effect that every person is entitled to the protection of their

[41] Olubajo, (n 6)
[42] No. 14-1670, 2016 WL 3769970 (6th Cir.2016).
[43] (2004) cited in Robis (n 10).
[44] Ibid.
[45] 2023.

fundamental human rights subject to the derogations in the processing of their personal data. Relevant authority's owe a duty of care to ensure that the right to privacy of suspects is not breached in the course of processing their personal data including criminal records.[46] This implies that there is an obligation on investigating agencies to ensure that any personal data including photographs of suspects which forms part of their criminal records should be handled in a manner that does not infringe on the privacy and dignity of the suspect.[47] It is argued that the posting of photographs of suspects on cyberspace by cybercrime investigators requires the consent of the suspects[48] because it is a deviation from the original purpose of obtaining the photographs which is criminal investigation. Also, the display of photographs of suspects on cyberspace impliedly, is sharing the personal data of suspects with third parties without their consent.[49] This is more so as data must be processed in a manner that does not violate any extant law or international law.[50]

In essence, nobody should be denied the enjoyment of his right to privacy, the presumption of innocence, and fair hearing without due process of law. Therefore, the exercise of the cyberspace parade and trial practice by cybercrime investigators, which invades the fundamental rights of alleged internet fraudsters to privacy, the presumption of innocence, and fair hearing, must be expressly provided for by a law for the same to be lawful. In the absence of any law approving the practice, it is evident that the alleged legitimacy of its exercise by cybercrime investigators is in doubt. Arguably, it is a violation of the rights of alleged internet fraudsters to take and publish their pictures in cyberspace on mere allegations of perpetrating internet fraud. The foregoing is fortified by the decision of the Federal High Court, in *Kennedy Izuagbe v. EFCC*[51] where the court in an action by the plaintiff challenging the publication of his name on the official website of the EFCC and declaring him a "wanted person" in the absence of the leave or order of the court, held that the action of the EFCC is unlawful and a breach of the fundamental rights of the plaintiff.

[46] Art 2(a) and 2(b)(4) NDPA).
[47] Ibid, art 41(1).
[48] Ibid, art 18(1)c.
[49] Ibid art 41(9).
[50] Ibid, art 20(1)I and ii.
[51] 2021, suit no. FHC/L/CS/2127/2021, Judgment by Justice Lewis Allagoa, Federal High Court, Lagos (Unreported).

Similarly, in *Ottoh Obono v. Inspector General of Police*,[52] the Federal High Court per Aneke J. held that the practice of parading suspects alleged to be involved in crimes before the media is unconstitutional and illegal.

5. Lessons from USA and South Africa

Enacting specific legislation to ban cyberspace parade and trial will follow a legislative process which will further discourage cybercrime investigators from continuing in their illegality. As the experience of the US shows, there is a need for the Attorney General of the Federation to direct institutions and personnel involved in cybercrime investigation and prosecution to desist forthwith from engaging in the practice. Interestingly, in the US, while prosecutors and investigators were involved in perp walks, mug shots and booking photos, the US Circuit Court of Appeals, Second Circuit in *United States v. Kelly*[53] noted that all United States attorneys and marshals are instructed by the Attorney General not to make *public photographs*, Bertillon measurements or fingerprints prior to trial (emphasis added). From this perspective, the directive should specifically request all cybercrime investigators and prosecutors not to publish photographs of cybercrime suspects in cyberspace before the conclusion of the investigation and trial.

Although, subsequently in *Detroit Free Press, Inc. v. Department of Justice (Free Press I* (1996)[54] the US Court of Appeals for the Sixth Circuit decided that persons accused of crimes have no privacy interest in booking photos which allowed the public publication of booking photos. After twenty years and two circuit court contradictory decisions, the US Court of Appeals for the Sixth Circuit in *Detroit Free Press, Inc. v. Department of Justice (2016)*[55] overruled its earlier decision as being untenable. It stated that a person enjoys a significant privacy interest in his or her booking photo, which works against the publication of booking photos of criminal defendants. This decision was somewhat influenced by the development of technology or information and communication technology, hence the court stated that:

[52] Decision of the Federal High Court, Sitting in Calabar, 18 July 2011, suit no. FHC/CA/CS/91/2009.
[53] 55 F.2d 67 (2d Cir. 1932).
[54] 73 F.3d 93 (6th Cir.1996) at 97.
[55] 2016, (n 42).

> …modern technology only heightens the consequences of disclosure - in today's society the computer can accumulate and store information that would otherwise have surely been forgotten …a disclosed booking photo casts a long, damaging shadow over the depicted individual. In 1996, when we decided *Free Press I*, booking photos appeared on television or in the newspaper and then, for all practical purposes, disappeared. Today an idle internet search reveals the same booking photo that once would have required a trip to the local library's microfiche collection. In fact, mug shot websites collect and display booking photos from decades old arrests…

This decision greatly impacted US criminal prosecutors' approach to investigation, especially concerning booking photos, mug shots and perp walks. The US Department of Justice has arguably stopped these practices following the said decision. Comparatively, Nigerian cybercrime investigators and prosecutors need to draw lessons from the US and stop the publication of photographs and personal details of suspected internet fraudsters in cyberspace prior to the conclusion of the investigation and trial.

Another impact of the Detroit Free Press, Inc (2016) decision is the enactment of a law by the US State of California called AB 1475, which outrightly bans sheriff's office or police departments from publishing booking photos of individuals alleged to have committed non-violent offences on social media. It is an amendment of the California Penal Code which has to do with law enforcement by adding section 13665. The law was approved by the Governor of California on 23 July 2021 and filed with the Secretary of State 23 July 2021. Section 1 recognizes that the publication of booking photos on social media is against the rights to a fair trial, the presumption of innocence and a breach of Californians right to privacy without an equivalent interest to public safety. It also notes the recent use of social media channels (Instagram, Twitter, Nextdoor and Facebook) by law enforcement agents to communicate with the general public and to publish booking photos of suspects. It recognizes the implications of these acts, from a similar perspective of cyberspace parade and trial. Consequently, section 13665(2) of the California Penal Code prohibits or bans the sheriff's

office or police department from sharing or publishing booking photos of suspected persons arrested for committing nonviolent crimes. Among other exceptions, the section provides that such an image can only be published upon valid order given by a court of competent jurisdiction. A breach of the section by law enforcement agents mandates the removal of the published photo within 14 days upon request by the person affected or his or her representative. Interestingly, section 3 makes this law apply retroactively to any image published on social media.

In addition, Section 69 of the South African Police Service Act of 1995 prohibits law enforcement agents from taking and publishing photographs or sketches of alleged suspects in cyberspace prior to being formally charged before a court of competent jurisdiction.[56] The publication of a photograph or sketch must be with the written consent of the national or provisional commissioner. For the purpose of the section, photograph means any picture, visually perceptible image, depiction or any other similar representation of the person concerned.[57] Concerning a photograph, publish, means to exhibit; show, televise, represent or reproduce; and also take means the performance of any act which by itself or as part of a process or as one of a sequence of acts renders possible the production of a photograph.[58] Moreover, a violation of the section attracts a punishment of a fine or term of imprisonment not exceeding 12 months upon finding the perpetrator guilty.[59]

While the preceding California and South African Laws are recommended for adaptation by the Nigerian Federal Government to regulate the practice of cyberspace parade and trial, it is interesting to note that a combination and consideration of both laws in legislating on the subject matter would provide the necessary legal content to curb the practice in Nigeria. For instance, the California Law did not differentiate between taking and publishing a photograph, which the South African Law seems to have done. Again, the California Law subjects the publication of a photograph to an order of a competent court of jurisdiction,

[56] Jyothi Laldas, 'Posting suspects photo on WhatsApp could land you in trouble,' available at <https://www.news24.com/witness/news/kzn/posting-suspects-photo-on-whatsapp-could-land-you-in-trouble-20210220> accessed 10 March 2023
[57] S.69(1), South African Police Service Act of 1995.
[58] Ibid.
[59] Ibid s.69(2) & (3).

which the Nigerian Government is strongly advised to adopt. While the South African Law subjects same to an executive or administrative body (national or provisional commissioner) which could arguably be abused in Nigeria if adopted due to corruption and nepotism. The provision for the consequences of violation of both the Californian Law and South African Law should be retained by a proposed Nigerian Law regulating cyberspace parade and trial. This implies prosecuting law enforcement agents, where found guilty, should be made to pay a fine and term of imprisonment of 12 months based on the lessons from the South African Law. In addition, the perpetrator shall be ordered by the court to remove the said photograph and other details of the alleged internet fraudster from the institution's website and social media channels within 14 days upon request based on the lessons from the California Law. Importantly, the Nigerian regulation should be made to apply retroactively to photographs published 0n cyberspace, just like the California Law.

In Nigeria, there is an urgent need to introduce a comprehensive legislation to outlaw the practice of displaying the photographs and details of alleged cybercriminals in cyberspace. The closest effort in this direction is section 9(a) of the Lagos State Administration of Criminal Justice (Amendment) Law, 2021, which bans the parade of suspects by law enforcement agents in the media. Unfortunately, except other Nigerian States pass a similar law, the practice will arguably persist in other states. A further drawback is that internet fraud or cybercrime is a federal offence within the legislative powers of the National Assembly Consequently, what is required is a federal law that should apply in all 36 states of the federation banning the practice of cyberspace parade and trial of cybercrime suspects.

6. Conclusion

In a bid to curb the increasing perpetration of internet fraud by Nigerians at the domestic and international levels, the Nigerian cybercrime investigators and prosecutors, often, publish photographs and details of arrested suspected internet fraudsters in cyberspace prior to the conclusion of the investigation and formal charge before a court of competent jurisdiction. A practice that is mostly and commonly practiced by the EFCC and evidenced on its website and social media channels. While the quest to curb internet fraud is a good development, resorting to unlawful means and practices, such as cyberspace parade and trial with its

attendant negative implications is a breach of the fundamental rights of suspected internet fraudsters, which is unacceptable. Despite attempts to use the judiciary to halt the continued deployment of the practice, it has not yielded any positive results as cybercrime institutions and investigators have risen in defence of the legality of the practice in Nigeria. Interestingly, the experiences of the US State of California and South Africa have shown the need to regulate the practice. Hence, this paper advocate for the adaptation of California Law (AB 1475) and the South African Police Service Act of 1995, which prohibits the taking and publication of photographs or sketch of persons arrested for alleged involvement in crimes. The paper notes the introduction of the recent Lagos State Administration of Criminal Justice (Amendment) Act in Lagos State, which bans the parade of suspects in the media by the police. However, considering that cybercrime or internet fraud is a federal offence there is the need to enact a federal law to regulate and consequently ban the practice of cyberspace parade and trial. This could be done by amending the ACJA to expressly outlaw cyberspace parade and trial and the amendment of the Cybercrimes Act to expressly ban the publication of the details of cybercrime suspects on cyberspace. In the interim, the Attorney General of the federation should issue a directive to all investigating and prosecuting agency to henceforth stop the publication of the details of cybercrime suspects on cyberspace.

REVIEW OF THE REGULATORY FRAMEWORK FOR TRADE LIBERALISATION AND TRANSNATIONAL COOPERATION IN NIGERIA.

Ondale Akor* and Anokwuru Faith Sandra**

Abstract

Nigeria is one of the largest economies in Africa, with prospects for international trade and investments; and operating under the aegis of trade liberalisation as a national economic and investment policy. However, these potential are largely undermined by systemic policy failure, dysfunctional institutions and infrastructural deficit in the Nigerian economic and investment environment. Extant literature overwhelmingly emphasis the role of international trade to national development, with scant reference to the impact of trade liberalisation in promoting a competitive and transnational market economy in Nigeria. The study therefore, examines the regulatory framework on trade liberalisation and impact on investment dynamics and transnational market economy in Nigeria. The doctrinal method is adopted by the study with reliance on national laws on trade liberalisation, including the Constitution of the Federal Republic of Nigeria (CFRN) 1999. The CFRN provides for an open market economy with market liberalisation as the national economic policy, and serving as stimulant for competitive international trade and multilateral cooperation between Nigeria and the global community. The potential for competitive market economy that promotes investments and international trade; free movement of goods and services; exchange in knowledge and technology; direct foreign investments; with capacity for impacting positively on the national economy, are core incentives from trade liberalisation. The Nigerian liberalisation policy entrenches a solid framework for promoting investment dynamics and supranational cooperation, capable of engendering a competitive business clime that positively impacts on national development. In order for Nigeria to enjoy the economic potential under supranational cooperation, there is need for continuous reforms aimed at strengthening the regulatory and institutional frameworks on trade liberalisation, to align with standard global practices; and establishment of a functional dispute resolution mechanism, with underpinning for stabilizing market dynamics and changing the economic trajectory in Nigeria.

Keywords: Regulatory Framework; Trade Liberalisation; Transnational Economy; National Development.

1.0 Introdudction

Nigeria has a growing population of more than two hundred million people [1] with abundant human and natural resources. The Nigerian rich economic profile, complemented by her strategic location within the gulf of Guinea, undoubtedly seems to provide the needed clime, serving as the vintage point for cross border trade and investment with the global community. Global trends indicate increasing dynamics in economic relationships between nations, based on mutual expectations, with underpinning for promoting trade and investments across borders. Given the enormous potential in cross border trade and investment, supranational cooperation has become a widely accepted trend in contemporary economic relations between states; with nations forging alliances based on reciprocal terms. Undoubtedly, the prosperity that flows from the shared economic relationships is anchored on the foundation of trade liberalisation.

Trade Liberalisation as an economic and political concept is opined by this study to be polysemous in nature, and subject to a broad scope of interpretation, that traverses the legal and economic lexicon of states. At one end of the spectrum, the concept refers to the removal or reduction of trade restrictions by states[2]; with the objective of increasing trade and investment across borders; as well as promoting interstate or regional economic cooperation on reciprocal terms. On the other hand, trade liberalisation conceptualises the removal or reduction of government influence over business entities and economic activities in a given state. Related to this process of deregulation, is the minimization of state control or absolute relinquishment of economic entities, to allow for enhanced private sector participation. Trade liberalisation, whether articulated across borders or within the domestic arrangement of states, has advantages of promoting competitive

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[1] https://www.google.com/search?client=firefox-b-d&q=Nigeria+has+a+growing+population+of+more+than+two+hundred+and+fifty+million+people+; Accessed on October 20, 2025.

[2] https://www.investopedia.com/terms/t/trade-liberalization.asp#:~:text=Trade%20liberalization%20refers%20to%20the%20removal%20or%20reduction%20of%20barriers,weaker%20ones%20at%20a%20disadvantage.; Accessed on October 30, 2025

markets that encourage foreign direct investment, enhancing efficiency, innovation and economies of scale.

Nigeria operates an open market economy designed to promote[3] trade liberalisation as the national economic policy. The policy has influenced the enunciation of a robust regulatory regime to regulate investments in Nigeria and shape her economic relations with the global community under the framework of a just economic order[4]. This as evidenced by the execution of bilateral and multilateral treaties, such that Nigeria presently subscribes to the membership of major global economic organisations like the World Trade Organisation (WTO), the African Economic Community (AEC) and the relatively recent African Continental Free Trade Agreement (AfFTA). Within the African sub union, Nigeria is a major stakeholder and player in the Economic Communities of West African States (ECOWAS). These multilateral organisations have ambitious plans for promoting economic cooperation and investment under the framework of supranational cooperation and solidarity.

The study argues that the policy of trade liberalisation is critical in promoting transnational trade and supranational cooperation, with sustained economic growth as a derivative benefit in Nigeria. However, the investment clime is beleaguered by a myriad of challenges spanning systemic policy failure, dysfunctional institutions, infrastructural deficit and insecurity. These challenges seem to impede the business clime and consistently undermine the enormous potential in transnational cooperation in Nigeria. In view of contemporary global economic realities, the need to address these problems has necessitated an examination of the legal framework on trade liberalisation.

The objective of the study therefore, is to examine the regulatory framework on trade liberalisation and impact on investment dynamics and transnational cooperation in Nigeria. While the international framework on market liberalisation is largely defined by multilateral treaties, the legitimacy of these frameworks is predicated on their incorporation into national laws. Aligning the national with international frameworks on

[3] Section 16 of the Constitution of the Federal Republic of Nigeria(1999) as amended
[4] Section 19 of the Constitution of the Federal Republic of Nigeria(1999) as amended

liberalisation, arguably sets the stage for realizing the ambitious objective of establishing a globally liberalised, interdependent and competitive market economy, with potential for promoting economic growth and supranational cooperation in Nigeria. The study is structured into five sections beginning with the general background. The second part of the study appraises the legal and institutional frameworks for trade liberalisation in Nigeria, while the role of trade liberalisation in promoting supranational cooperation and economic growth in Nigeria is examined under section three of the study. Identified constraints to trade liberalisation and supranational cooperation are considered in section four. Section five forms the concluding part of the study with the necessary findings and recommendations

2.0; Legal and Institutional Frameworks for Trade Liberalisation in Nigeria

2.1. General Agreement on Trade and Tariffs (GATTS)

GATTS provides the beginning legal foundation for the international trading system used by the bulk of the world's trading nations. The agreements were the outcome of the 1947 to 1994 rounds of negotiations, with underpinnings for expansion of world trade under the framework of economic cooperation. Trade liberalisation and competitiveness under a free market economy are core elements that characterise, and reflected in all regional trade integration across the globe. The GATT agreement of 1947 bounded contracting members to a multilateral free trade which provided the legal and institutional framework intended to substantially reduce impediments to international trade[5]. Anchored on the foundations of reciprocity and mutual economic benefits, the agreement introduced drastic changes, and superintended over international trade agreements between 1947 and 1994 when the WTO was established[6].

[5] Sam Laird, Multilateral Approaches to Market Access Negotiations; http://ctrc.sice.oas.org/trc/Articles/laird.pdf;aceesed on March 21, 2022
[6] ibid

2.2. **World Trade Organisation (WTO)**

The treaty that established the World Trade Organization (WTO) is the Marrakesh Agreement[7]. The WTO replaced the GATTS as an international trade regulator. The WTO is anchored on, and operates on the principles of trade liberalisation and competitiveness; a practice that has influenced global trade and investment at all material times[8]. Today, the WTO significantly impacts the global economy by fostering sustained economic growth through the reduction of trade barriers and the promotion of free and predictable trade flows across regions and nations[9].

2.3. **African Economic Community**

From the African perspective, the economic philosophy on Trade liberalism was preceded by African Economic Community (AEC), serving as the umbrella for the subsequent establishment of Resident Economic Communities in the continent. The *AEC*, also referred to as the Abuja Treaty[10], had an ambitious target of promoting trade and economic relationship among African nations[11], with a broader vision for a subsequent continental framework in free trade and economic cooperation that was birthed with the advent of the AfCFTA in 2018

2.4. **African Continental Free Trade Agreement in 2018[12].**

The African Continental Free Trade Agreement in 2018 (*AfCFTA)* is an economic union of member states within the African Union, operating under an established single

[7] Signed in Marrakesh, Morocco, on April 15, 1994. It officially came into force on January 1, 1995, and incorporated the rules and agreements from the previous General Agreement on Tariffs and Trade (GATT), along with new agreements from the Uruguay Rounds of negotiations.
[8] Articles 2 and 4 of the WTO Agreement.
[9] ibid
[10] The Treaty of Abuja laid the framework for African integration, emphasizing African solidarity, self-sufficiency, and an endogenous development approach. Furthermore, the Abuja Treaty suggested a framework for continental integration, as well as the economic segmentation of the continent along sub-regional lines, as the foundations for a united African economy under the auspices of the African Economic Community (AEC)
[11] Article 3 (a) (b) (c) (d) (e) of the treaty establishing the African Economic Community.
[12] The African Continental Free Trade Area (AfCFTA) is an agreement aimed at creating the world's largest free trade zone by eliminating tariffs and other trade barriers across the African continent. Its main goals are to boost intra-African trade, facilitate the free movement of goods, services, and capital, and promote economic integration, industrialization, and development across 54 African nations

continental market for trade and investment. The trade regime is anchored on a coordinated process of trade liberalization, which allows for the best possible exploitation of trade possibilities within the continental market, with the advantages of promoting economies of scale and fostering efficient use of resources. The *AfCFTA* opened a new phase in the continental economic narratives by providing for a single continental market that is premised on a harmonised process of trade liberalisation, economic interconnectedness and cross border trade and investments.[13]

2.5 Economic Community of West African States Liberalisation Protocols and Rules 2004

The Economic Community of West African States (ECOWAS) Trade Liberalisation Scheme Protocol and Rules was enacted in May 2004. The protocol has the ambitious objective of encouraging socio-economic development of people within the region, through the enunciation of a legal and institutional framework that promotes harmonious economic cooperation and trade liberalisation. This policy, if properly and fully implemented, has potential to facilitate a strong and resilient regional economy through the convergence of state sovereignties into a harmonised regional economic framework, with prospects of impacting on the regional economy.

2.6. Constitution of the Federal Republic of Nigeria 1999.

The Constitution of the Federal Republic of Nigeria (1999) as amended, (hereinafter referred to as CFRN) 1999, provides the legal basis for all commercial and economic undertakings in Nigeria. The Nigerian president is empowered by the constitution to administer the national economy directly or through his ministers in specific ministries and agencies[14]. The National Assembly is also mandated by the constitution to manage the economy alongside the president through legislative oversight[15]. In the light of the foregoing, it can be said that the state has the mandate to determine economic policies in

[13] Article 3 of the Agreement.
[14] Section 5(1) CFRN 1999
[15] Sections 80-88 CFRN 1999

the process of managing the Nigerian economy. Section 16 of the constitution[16] is quite elaborative and provides for the management of state resources as a means of promoting prosperity and efficiency in the national economy, based on the principles of equity and fairness.

The constitutional requirements for equality and justice are consistent with the current notion of liberalism, with inherent principles of social justice and opportunities implicit in the global philosophy regulating trade. This underscores why the government must ensure that all citizens engaged in significant economic activity are protected[17]. According to Section 16(2) of the constitution, the government is responsible for maintaining a "balanced and planned economy" in which material benefits are distributed in a way that promotes economic growth and where the nation's material resources are used for the benefit of all citizens. It is worth noting that, in recent times, national governments, including successive Nigerian governments, have chosen trade liberalism as a viable economic strategy to fulfill their constitutional mandates of managing the nation's economy in a manner that allows for the optimum utilisation of the investment and transactional potential within their respective climes. This economic posture has no doubt, influenced the execution of various bilateral and multilateral agreements[18] with states and international bodies.

2.7. **Public Enterprise (Privatization and Commercialisation) Act 1999[19]**

The Public Enterprise (Privatization and Commercialisation) Act 1999 is the current piece of legislation in Nigeria that governs privatisation. Preceded by the Privatisation and Commercialisation Decree of 1988[20], the National Privatization Council (NPC) is established, in accordance with the law, to regulate the process of privatization in Nigeria. The Act also outlines two main procedures for selling government's ownership

[16] CFRN 1999
[17] Section 16(1) (d)
[18] African Continental Free Trade Agreement 2017; Treaty establishing the Economic Community of West African States 1975 etc.
[19] *Cap*. C25, *Laws* of the. Federation of Nigeria, 2004.
[20]privatization is the Privatization and Commercialization Act No; 25 of 1988

interest in privatised public companies, which can be either through public offering or a private placement.

2.8. **Federal Consumers Protection and Competition Act 2018**[21]

The Federal Consumers Protection and Competition Act (FCCPA) 2018 is an Act of the national Assembly, enacted with the aim of promoting competitive markets in Nigeria. The FCCPA is a synthesis for integrating the clusters of competition policies and legislations goals that had existed, prior to its enactment into a single statutory instrument. The Act essentially covers all business dealings that take place in, or have an impact on Nigeria. It also covers projects in which the federal, state, or any of their agencies has a monopolistic stake. The primary objectives of the FCCPA are to; promote economic efficiency; protect consumer rights and welfare; foster and maintain competition in Nigerian market; outlaw unfair and discriminatory business practices, and guarantee the expansion of the Nigerian economy[22].The FCCPA applies to natural and juristic persons and economic entities in Nigeria that are profit driven[23]; Individuals engaged in the supply or acquisition of goods or services in Nigeria; individuals who purchase shares or additional assets outside of Nigeria and Nigerian nationals or anyone residing in Nigeria.[24].

Notably, the scope of the competition regime extends to actions taken outside of Nigeria[25] if they hinder, restrict, or harm the freedom of competition, or considered crimes under the Nigerian FCCPA. The FCCPA provides an integrated framework that promotes institutional protection[26] for consumers and competition[27] rights in Nigeria, and reminiscent of the majority of the fundamental elements of the US[28] and EU competition laws[29]. The goals of US antitrust law under reference are to encourage competitive

[21] 2019 No. 1. A5. 18
[22] Section 1 of the FCCPA
[23] Section 2 (2) (c)of the Act
[24] Section 2(3) of the Act
[25] Section 3 of the FCCPA; hereinafter referred to as the Act.
[26] Sections 17 and 39 of the Act
[27] Section 1 of the Act
[28] Sections 1 and 2 of the Sherman Antitrust Act 1890
[29] Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)

markets that lower consumer prices, whereas the focus and goals of EU competition law include a wider range of objectives, with the integration of European markets, the creation of the Single Market, and the promotion of a balanced and sustainable development of economic activities taking priority.

The FCCPA establishes the Federal Competition and Consumer Protection Commission[30]. The responsibilities of the commission include conducting inquiries and investigations into issues pertaining to the FCCPA's stipulations; banning anticompetitive agreements as well as unfair deceptive or unreasonable marketing and trading practices and imposing penalties. The FCCPA grants the Commission concurrent authority with other sector-specific regulatory organizations over matters relating to consumers and competitive protection[31].

A Competition and Consumer Protection Tribunal (the Tribunal) is created by the FCCPA.[32] The tribunal has the authority to hold trials regarding actions that are forbidden by the Act. Additionally, the courts have authority to consider appeals of the Commission's (or sector-specific regulatory bodies') rulings and to apply sanctions for such unlawful behavior[33]. The tribunal is also conferred with authority to hear arguments from judgments or decisions taken by any sector-specific regulatory authority and to assess those judgments on matters related to consumer and competition protection[34].However, it should be noted that while the tribunal can consider challenges against decisions made by sector-specific regulatory bodies, it can only do so after the Commission has examined the appeals or reviews in question.[35] In a manner that is indicative of the powers reposed on the tribunal, the Act also provides for the registration of the decisions of the tribunal with the Federal High Court as a condition for its enforcement[36], while appellate jurisdiction lies with the court of appeal[37].

[30] Section 17 of the Act
[31] Section 18 of the Act
[32] Section 39
[33] section 39(2) and Section 47(1) of the Act
[34] Section 47(1) of the
[35] Section 47(2) of the Act
[36] Section 54(b) of the Act

Generally, it should be noted that the Act forbids all agreements between businesses or decision made by an association of businesses with the intention of blocking, restricting, or distorting competition in any market. Such actions are deemed illegal and void pursuant to Section 61 of the Act. Additionally, conducts that directly restrict or control the production or distribution of goods and services, technological advancement, or investments are all prohibited. Moreover, abuse of market dominance is prohibited by Section 72 of the Act.

When a business in a dominating position charges outrageous price, refuses to let rivals use a crucial facility when it is financially feasible to do so, or engages in exclusive activity, it is abusing its market dominance. A firm that abuses its dominant position in the market is subject to a fine of 10% of its prior fiscal year's revenue or higher amounts as the court may consider suitable in the particular circumstances[38]. If an organization engages in abusive behavior regularly, any director of such organization may be sentenced to a prison term or a fine of up to fifty million naira upon conviction[39]. In summary, it is stated in this study that the Federal Competition and Consumers Protection law of Nigeria is tailored towards creating an environment for the smooth operation of the policy on market liberalisation and competitiveness.

2.9. **Export (Incentives and Miscellaneous Provisions) Act 1986** [40]

The Export (Incentives and Miscellaneous Provisions) Act has as its primary objective, the encouragement of exports, particularly raw materials and unprocessed agricultural products[41]. The key emphasis of the law is on providing the framework for granting benefits like suspension or reduction of duties for qualified exporters; provision of duty refunds to allow for manufacturing under given circumstances and establishment of funds to provide assistance to exporters[42].

[37] Section 55(1) of the Act
[38] Section73(3)
[39] Section 74(2)
[40] CAP. E19 L.F.N. 2004
[41] Section 2 of the Act
[42] Section 3 of the Act

2.10. **Nigerian Export Promotion Council Act 1976** [43]

The Nigerian Export Promotion Council Act establishes the Nigerian Export Promotion Council (NEPC) with the mandate of promoting policy implementation on export related matters; render incentives for the promotion of export oriented industries in Nigeria as well as the coordination and monitoring of export promotion activities.

2.11**. Nigerian Investment Promotion Commission Act 1995**

The Nigerian Investment Promotion Commission Act 1995[44] is established to encourage and promote investment in the Nigerian economy[45]. The Act established a commission[46] with the mandate of inter alia, coordinating and monitoring all investment promotion activities to which the Act applies; initiating and supporting measures which shall enhance the investment climate[47]e in Nigeria for both Nigerian and non-Nigerian investors; promoting investments in and outside Nigeria through effective promotional means and advising the Federal Government on policy matters, including fiscal measures designed to promote the industrialisation of Nigeria or the general development of the economy.

A unique feature of the Nigerian Investment Promotion Act is the provisions for dispute resolution. The law provides that in the event of any dispute between an investor and any Government of the Federation, in respect of an enterprise, all efforts shall be made through mutual discussions to reach an amicable settlement[48]. However, in the event that an amicable settlement cannot be reached, the aggrieved party can proceed to arbitration[49]. The dispute settlement procedure as adopted in the Act is commendable in

[43] Nigerian Export Promotion Council Decree No. 26 of 1976
[44] Cap 117 LFN 2004
[45] Section 4 of the Act
[46] Section 1(1) of the Act
[47] Section 4© of the Act
[48] Section 26(1) of the Act
[49] Section 26(2) of the Act

the light of the fact that effective dispute resolution is coterminous with, and constitutes an incentive to trade and investment globally.[50]

2.12. Investment and Securities Act, 2025

The Investment and Securities Act (ISA) 2025, is the main law regulating investments in the Nigerian capital market. Its goals are to protect investors, ensure fair and efficient markets, and build trust in the financial system. The Act empowers the Security and Exchange Commission (SEC) with powers to oversee and regulate the market, ensure a fair, transparent market and to reduce systemic risks. Essentially, the SEC can enforce the rules more effectively to protect investors and maintain the market. Ponzi schemes and other fraudulent investment schemes are expressly banned by the new law, with the prescription of penalties, including jail terms for anyone promoting or operating such schemes. The Act also introduces a requirement for using Legal Entity Identifiers (LEIs) in the capital market. This means that every market participant like companies issuing securities or major investors will need LEI for their transactions.

Additionally, the law also provides a framework to regulate critical market infrastructure (like clearing houses and trade repositories), and makes it easier for state governments to raise funds through the capital market. Undoubtedly, the new ISA has real implications for how Nigeria's capital market functions and its reputation globally. The law has embraced innovation such as the recognition of digital assets like crypto, as part of the regulated market. This obviously, presupposes that the Nigerian stock exchange market is showing dynamism in embracing financial innovations in the operation of the market. This is in alignment with global standard practices in the regulation of the market. The *safeguards* provided in the law underscore the importance the law attaches in protecting investors and the operation of a transparent market.

[50] Ondale Akor, "Energy Arbitration and Investment Prospects in Nigeria under a Liberalized Market Economy". Nnamdi Azikiwe University Journal of Property and Commercial Law, Vol. 11 No. 2 (2024).

2.13. **Central Bank Act 2007**[51]

The Central Bank of Nigeria (CBN) Act establishes the central bank of Nigeria[52] as the apex financial institution with the mandate of *inter alia*, ensuring monetary and price stability; promote a sound financial system in Nigeria and provide economic and financial advice to the Federal Government[53]. The central bank of Nigeria is critical in the initiation of economic and monetary policies that shape the investment clime in Nigeria.

2.14. **Companies and Allied Matters Act of Nigeria 2020**[54]

The Companies and Allied Matters Act (CAMA) 2020 repealed the Companies and Allies Matters Act, Cap C20, Laws of the Federation of Nigeria, 2004. It is the extant regulatory regime on the incorporation of companies, limited liability partnerships, and limited partnerships, reservation of business names and registration of incorporation bodies. .governs the establishment and management of companies in the country. The Act establishes a commission[55], with the mandate *to inter alia*, administer the registration, regulation and supervision of incorporation, management, winding up of companies, businesses names and incorporated trustee's etc.[56].

The foregoing constitutes the legal framework for trade liberalisation in Nigeria. Notably, the liberalisation regime plays the role of regulating business clime for trade and investment within Nigeria. This presupposes the regulation and optimum functioning of all institutional frameworks and deployment of the needed incentives for private sector participation, that promotes the ease of doing business in Nigeria. This aims to encourage Foreign Direct Investment (FDI) with prospects for impacting on the Nigerian economy. Secondly, the trade liberalisation regime enhances the promotion of economic cooperation between Nigeria and the global community. This platform encourages

[51] Cap 192 LFN 1990
[52] Section 1 of CBN Act
[53] Section 2 of the CBN Act
[54] Act No. 3 of 2020
[55] Section 1 of the CAMA 2020
[56] Section 8 of CAMA 2020

mutual investments and creates the enabling environment for forging partnerships and collaborations with the regional and international business community.

3.0 Supranational Cooperation and Sustained Economic Growth in Nigeria

The interdependence of states has made international trade and investments the basis of shared prosperity and economic growth among nations. This aligns with the postulations by the classical theorists. Like Adam Smith In opposition to mercantilism, classical liberals like Adam Smith advocated for a free market economy that promotes efficiency in local and international markets, primarily driven by the division of labor. The conviction is predicated on the premise that wealth is not produced by the government, rather by people working together in an environment of economic freedom where they are free to respond voluntarily to one another's needs[57].

One of the advantages of market liberalisation is that it opens the borders of a country to international trade and investment. Cross border free market economy, regulated by market forces, encourages the free market economy and mutual cooperation between nations on reciprocal basis; creating innovation that efficiency; promoting technology transfer and competition. Such a marker allows for private sector participation and creativity with corresponding impact on the economies of scale[58]. No doubt, Smith explored and expounded on broad-based economic ideas that are not only foundational to modern political economics, but have inspired policies that influenced an intellectual paradigm shift from mercantilism towards a free market economy.

Trade liberalisation also promotes supranational cooperation. This has influenced the formation of economic conglomerations across the various regions of the world. These economic blocs, otherwise referred to as regional trade or free trade agreements, depending on their terms and objectives, have become a common phenomenon under

[57] Smith, A. (1759). *The theory of moral sentiments*. London, Printed for A. Millar, and A. Kincaid and J. Bell.
http://galenet.galegroup.com/servlet/MOME?af=RN&ae=U101116867&srchtp=a&ste=14&locID=edmo69826.; visited on October 30, 2025.
[58]Ricardo, David, 1772-1823. The Principles of Political Economy & Taxation. London: New York: J.M. Dent; E.P. Dutton, 1911.

contemporary global economic order. Increasing trends in international trade law and investment have increasingly evidenced the inclusion of the principles of liberalisation in the economic objectives of the various regional treaties and the legal economic architecture by national governments. Therefore, the study states that political economy of market liberalism has the ambitious objective of facilitating enhanced cross border trade which has influenced the rapid expansion in supranational cooperation globally.

Nigeria has a population of more than two hundred million people and endowed with abundant natural resources spanning agricultural, maritime and forest sectors. Her rich energy profile, being the major stay of the national economy is characterised by an extensive gas reserve estimated at about 206.53 trillion cubic feet worth over 803,4trn dollars[59]. The country also has an abundance of renewable energy from a variety of sources, inclusive of hydrogen, bioenergy, wind, solar, marine, geothermal and nuclear. Strategically located along the West African coastline, Nigeria is linked to the regional and International market. This has increased her prospects for cross border trade and investments with potential for impacting on the national economy.

The national policy for trade and investment has influenced bilateral and multilateral agreements on regional cooperation within the African region and global community. The latest and perhaps the most significant of such multilateral agreements is the execution of the African Continental Free Trade Area Agreement (*AfCFTA*) in 2018. The underlying objective in the formation of *AfCFTA* is to promote transnational trade, as precursor to the ambitious aspiration of integrating the continent into the global economic framework of development[60]. As at March 2023, 46 African nations, including Nigeria, had ratified the agreement with the African Union Commission[61]. Particular goals are laid forth in Article 4 of the treaty, while its 12 guiding principles are listed in Article 5which includes

[59] Punch newspaper of 29th April 2022

[60] Ondale Akor, "African Continental Free Trade Agreement and Prospects for Energy Security in Nigeria". West African Union University Journal of International Affairs and Contemporary Studies (WJIACS) Vol.3 (1) April, 2023

[61] https://www.google.com/search?client=firefox-b-d&q=when+did+nigeria+rectify+the+african+contionental+free+trade+agreement visited on October 30, 2025.

among other things, Flexibility and special treatment, openness with regard to disclosure, the protection of acquired property, reciprocity, and significant liberalisation.

The predicted economic advantages of supranational cooperation for Nigeria under the aegis of *AfCFTA* are significant. With an estimated market population of about 1.5 billion-persons,[62] and market GDP of 3.1 trillion US dollars[63], it is expected that the gradual removal of all obstacles to intra African trade will facilitate rapid expansion of the regional economy. With adequate measures put on ground, Nigerian investors can tap into, and maximally harness the investment potential from the continental market. Additionally, the *AfCFTA* will gradually remove obstacles to intra-African trade, making it easier for Nigerian businesses and investments to expand across the continent. Without a question, the *AfCFTA* has the potential to become the economic gold mine for the African continent, if its broad objectives are successfully carried out.

AfCFTA has the potential of boosting intra African trade by 52.3%, and impacting positively on the economy of contracting states like Nigeria. This is achievable through the elimination of import duties and gradual removal or relaxation of non-tariff barriers to trade[64]. This can impact on industrial exports with implication of diversifying the economy of Nigeria that is presently reliant on oil majorly [65]. Considering the uncertainties that characterize the extractive industry, particularly the oil sector, the anticipated diversification into a non-oil economy under the *AfCFTA* is quite strategic in changing the fortunes of the continent and Nigeria.

The potential impact of supranational cooperation on the agricultural economy of the Nigerian state are enormous. The optimal harnessing of the agro based resources in the country will not only promote food security but also leverage the platform for cross

[62] https://www.worldbank.org/en/news/press-release/2021/02/05/nigeria-to-improve-electricity-access-and-services-to-citizens, last accessed on the 9th of August, 2024

[63] https://www.statista.com/statistics/1300858/total-gdp-value-in-africa/.last accessed on the 9th of August, 2023.

[64] Report of the United Nations in 2021. https://unctad.org/press-material/afcfta-could-boost-maritime-trade-africa. Last accessed on the 9th of April, 2025

[65]United Nations Conference on Trade and Development (UNCTD) NCTAD/WEB/DITC/2017/1, 2018. From Regional Economic Communities to A Continental Free Trade Area: Strategic Tools to Assist Negotiators and Agricultural Policy Design in Africa.

border trade provided by the continental trade regime to facilitate increased exports to other parts of the region. The value chain from agro allied exports can significantly impact on job provision and poverty eradication within Nigeria and beyond. Moreover, the exchange of technology and knowledge can lead to improved innovation that would foster industrialization and revamp the monolithic economy in Nigeria.

Supranational cooperation Under the *AfCFTA* framework can also provide guarantees that Small and Medium Scale Enterprises (SMEs) in Nigeria will have the benefit of engaging into regional exports, by utilising the platform presented by regional markets to connect with the wider global market. SMEs can also benefit through the supply of feed stocks and inputs to larger regional companies for onward exportation.[66] The continental market also provides the platform for formalizing trade transactions that were otherwise illegal and orchestrated human rights violations.

Considering the porous borders between African countries, there have been informal and illegal trade by citizens, which have often led to degrading treatments meted on them in the event they are caught by the host countries. Many Nigerians are victims of these informal trades. However, under the *AfCFTA* platform, this narrative can be changed. For instance, women who are estimated to account for about 70% of informal cross border trade in Africa[67] and Nigeria inclusive, also stand to benefit from the *AfCFTA*. Informal cross border trading makes women vulnerable to sexual harassment, violence, and human rights violations.[68]*AfCFTA*, through tariff reduction will make informal traders operate through legitimate avenues, thus reducing areas of vulnerabilities for women. This can be further enhanced through the enunciation of coherent and attainable trade regime with reduced tariffs for small scale traders.[69]The foregoing is indicative that market liberalism is the gate way to international trade, economic growth and promotion of supranational cooperation in Nigeria.

[66]ibid
[67]ibid
[68]ibid
[69]ibid

Through the open market economy policy, the Nigerian state has also shown strong commitment and support for multilateral financial institutions in Africa. These institutions are very critical in the supranational economic cooperation framework as they provide incentives for private sector participation in critical areas of the regional economy in Africa. The recent establishment of the African Energy Bank shows the commitment of the Nigerian state to regional development. Africa. [70].The African Energy Bank is the brain child of strategic collaboration between the African Petroleum Producers Organization (APPO) and the African Export-Import Bank (Afreximbank). It is a Pan African energy development initiative whose cardinal objective is funding the development of the abundant energy resources and bridging the energy gap in Africa. The goal of the bank is to promote a just energy transition tailored towards meeting the developmental needs of the African continent ,by addressing funding and encouraging robust private sector participation in energy trade and investments[71]. With an initial capital base of Five billion US Dollars, the AEB represents a platform for robust investment in renewable energy and arguably, a great boost to the supranational cooperation to energy transition in Africa.

In a similar heartwarming development, there is the newly established Regional Maritime Development Bank (RMDB)[72] The RMDB also known as the Regional Maritime Bank, is a proposed financial institution intended to facilitate maritime development in West and Central Africa. It was conceived by the Maritime Organisation of West and Central Africa (MOWCA) and aimed at boosting maritime development and trade in West and Central Africa, by providing funding for port infrastructure, ship financing, and other related projects. The RMDB marks a significant milestone for Nigeria and the wider West and Central African sub-region; it is also considered a vital tool for accelerating maritime development in the region and providing easier access to financing for related projects. The establishment of the bank in Nigeria reaffirms Nigeria's commitment to regional integration, maritime development, and economic cooperation.

[70] **The Africa Energy Bank (AEB) | APPOosecretariat.org/the-africa-energy-bank/;**
[71]https://www.doa-law.com/wp-content/uploads/2024/07/The-Role-of-the-Africa-Energy-Bank-in-Driving-Just-Energy-Transition-in-African-Countries.pdf; **/; last accessed in May 19, 2025.**
[72] Business Day Newspaper of May 22, 2025; https://businessday.ng/news/article/after-16-years-regional-maritime-development-bank-takes-off-with-aderogba-as-ceo/ Accessed on May 30. 2025.

Within the framework of the *AfCFTA*, Institutional corroboration between the *AfCFTA* and regional financial institutions like the African Energy Bank, the African Development bank and the Regional Maritime Development Bank can create the platform for supporting the Nigerian private sector in critical areas of investment like energy, maritime, capacity building and manufacturing. The financial intervention of these regional multilateral organisations by way of incentives like grants or loans can accelerate the process for energy transition, increased maritime investment and manufacturing in Nigeria. The deployment of resources for building infrastructure stands to complement the private sector investment which can be leveraged on to transform the Nigerian space to a haven of economic activities and investment. The positive impact of this development driven by supranationalism on the GDP of the Nigerian state will be enormous.

4.0. Constraints to Cross Border Trade and Supranational Cooperation in Nigeria.

Regardless of the many advantages and opportunities that potentially accrue to the Nigerian economy under the framework of market liberalism, there are some major constraints to the operation of a liberalised market economy, which also culminate as impediments to supranational cooperation and economic development in Nigeria. These constraints include; corruption, dysfunctional institutions in Nigeria; complexities of doing business in Nigeria; infrastructural deficit; insecurity; some protectionist state policies and the manifest absence of an effective dispute resolution mechanism in Nigeria.

Regulatory bodies and public agencies are hampered by inefficiency, corruption, and a lack of accountability, making it difficult to implement and sustain meaningful reforms. Nigeria ranked 145th out of 180 countries and scored 25 out of 100 in the 2023 Corruption Perception Index (CPI), published by Transparency International[73]. The revenue losses incurred as a result of corruption in Nigeria's cross-border businesses, especially at ports, costs the country an estimated $7 billion annually. This includes

[73] https://businessday.ng/news/article/economic-analysis-fragile-foundations-public-data-gaps-and-weak-institutions-threaten-nigerias-future/; last accessed on May 23,2025

losses to government revenue and the private sector, with some estimates reaching $8.15 billion. The annual cost of maritime corruption in the import of bulk products alone is estimated at $163 million[74]

Nigeria ranks high in the league of corrupt countries globally. For instance in the 2024 Corruption Perceptions Index (CPI), Nigeria was rated 26 among 100 and ranked 140th out of 180 countries.[75] Deep rooted corruption in the country weakens public institutions and constitutes a clog to the ease of doing business and supranational cooperation in Nigeria. This development is a disincentive and seems to discourage potential investors from coming to invest in the country.

Another perceived impediment to international trade is some of the provisions of the local Content Act as implemented by the Nigerian Content Development and Monitoring Board (NCDMB) established under the Nigerian Oil and Gas Industry Content Development Act. 2020[76]. The philosophy behind the local content regime in Nigeria is to encourage the participation of Nigerians in sensitive sectors like the oil and gas as well as the maritime industries.[77] The law gives priority to the use of locally manufactured products, equipment and services as a first option before recourse to external supplies. However the exercise of the Act may be seen as undermining the smooth flow of international trade and economic relations, and contravening the liberalisation policy in Nigeria, as well as relevant principles of the World Trade Organisation. The state of insecurity in Nigeria may also constitute[78] a clog to trade and supranational cooperation in Nigeria. For a country that is confronted by different shades of conflicts ranging from banditry, terrorism to kidnapping and ethnic related tensions, the needed environment for cross border trade and supranational cooperation is seriously being threatened.

[74] https://www.google.com/search?client=firefox-b-d&q=how+much+is+lost+in+cross+border+business+in+nigeria+becouse+of+corruption; accessed on May 23, 2025.
[75] Ibid
[76] Cap. PlO, LFN 2004.
[77] Sections 3 and 4 of the Act.
[78] U.S. EnergyInformationAdministration,"Nigeria,"p.1httpwww.eia.gov/countries/analysis briefs: Nigeria/nigeria.pdf• accessed 21 September 2014.

The problem of infrastructural deficit as observed in Nigeria is also capable of undermining trade and supranational cooperation, Nigeria is presently suffering from gross infrastructural deficit in virtually all areas of her economic architecture including energy[79]. Energy infrastructure is critical in establishing a sustainable business clime system, the absence of which will impede the ambitious investment drive as reflected in the various laws on trade liberalisation. The adverse impact of infrastructural deficit on Nigeria are many and include unreliable power supply; inadequate roads; limited digital connectivity and increased operational costs; reduces productivity and discourages both local and foreign investment. The negative effects of these on Nigerian businesses encompass increasing their production costs; difficulty in accessing market and inability to expand. According to the World Bank, the international benchmark for infrastructure stock was 70% of the country's GDP few years back. However, Nigeria's total infrastructure stock is currently 30% of its GDP. This highlights Nigeria's massive infrastructure deficit and the need for infrastructure outlays of over $2.3 trillion, which is expected to be invested over 30 years to bridge this deficit[80].

5.0; Summary, Conclusions and Recommendations

Nigeria has a population of more than Two Hundred Million and strategically located at the Gulf of Guinea in West Africa. Nigeria is blessed with abundant natural and human resources, with a growing population that has prospects of benefiting from international trade and investment. Nigeria operates an open market economy that is anchored on the foundation of market liberalisation. The trade policy promotes international trade and supranational cooperation between Nigeria and the International community. This has influenced the articulation of a robust regime on trade liberalisation that has been incorporated, and forms part of the regulatory landscape in Nigeria. Against the background of her national laws on trade liberalisation, Nigeria has actively participated in the promotion of regional integration and economic cooperation globally, as

79 https://www.researchgate.net/publication/393385068_Nigeria%27s_infrastructural_deficit_A_Bane_to_Economic_Growth; Accessed on October 25,2025.

80 https://www.verivafrica.com/insights/the-economic-impact-of-infrastructure-investment-2; accessed on May 23, 2025.

exemplified by her relatively recent rectification of the African Continental Free Trade Agreement (*AfCFTA). AfCFTA,* being the largest market within the African continent, promises to provide a platform for accelerated economic development within the framework of market liberalism. The framework on market liberalism in Nigeria can be leveraged upon to implement the regional policy on trade and investment, with prospects for fast tracking overall economic development in the Nigerian state.

In the face of the overwhelming economic benefits associated with the concept of market liberalism and supranational cooperation, the study identifies some constraints to the seamless operation of a liberalised market economy in Nigeria. They can also impede supranational cooperation and economic development in Nigeria. These include; existence of dysfunctional institutions in Nigeria; infrastructural deficit; insecurity; some protectionist state policies and the manifest absence of an effective dispute resolution mechanism in Nigeria. The study also finds that Nigeria has a robust legal and institutional framework that can address the myriad of problems confronting the business environment. This is possible with reforms that align with regional policies for trade and infrastructural development in the African continent. For instance, the partnership between the AfCFTA and the multilateral financial institutions can be leveraged to address the infrastructural challenges in the Nigerian business clime. The study finds that the commitment by the Nigerian state to regional cooperation can help facilitate this process. Furthermore, the framework for institutional collaboration can be leveraged to help national institutions in Nigeria to carry out seamless cross border investment,

Supranational cooperation is pivotal to the economic growth and development of transitional economies like Nigeria. The study therefore recommends for the strengthening of the institutional and regulatory framework in Nigeria to allow seamless transactions of cross border businesses. The recent reform process by the Nigerian Government that seeks to streamline the passport procurement process,[81] to enhance security, and improve efficiency is a welcomed development. These reforms include the introduction of an enhanced e-passport with 10-year validity and the automation of the

[81] https://www.google.com/search?client=firefox-b-d&q=The+recent+reform+process+by+the+Nigerian+Government+that+seeks+to+++streamline+the+passport+procurement+process%2Cvusuted on October 20, 2025

issuance process will lead to meeting timelines and eliminate associate bottlenecks. This reform will no doubt encourage the seamless movements of persons across Nigerian borders, with prospect for promoting investment in Nigeria. The study also recommends the articulation of national policies that align with regional and international provisions on market liberalism. There is need to explore the potential in the economic cooperation framework at the regional level and collaborate with multilateral financial institutions to pursue the deployment of resources towards building a strong infrastructure base in Nigeria. This is critical; otherwise, the anticipated gains from cross border investment under the economic framework on regional cooperation may remain a mirage.

REVISITING CLASSICAL AND CONTEMPORARY CANONS OF TAXATION: AN ASSESSMENT OF THE NIGERIAN CORPORATE TAX SYSTEM

Ayobola Bamidele Afolabi*

Abstract

Taxation remains an indispensable instrument of governance and economic coordination. It serves not only as a means of revenue generation but also as a mechanism for redistribution and socio-economic development. Taxation system in Nigeria has been said to be combating several challenges. Thus, this paper revisits the classical and contemporary canons of taxation to assessing the Nigerian company taxation system. The paper adopts doctrinal method of legal research to interrogating the multifaceted concept of taxation by tracing its definitional complexities through dictionary meanings, case law interpretations, and scholarly perspectives. The paper explores the essential constituents of a good tax system and evaluates the enduring relevance of Adam Smith's classical canons equity, certainty, convenience, and economy in the context of modern tax administration. The paper pays special attention to Nigeria's corporate tax system by assessing its alignment with contemporary canons of taxation of neutrality, flexibility and administrative efficiency as refined by the Meade Committee. The paper interrogates the tension between theoretical ideals and applied fiscal policy to determining the feasibility of harmonizing the classical tax canons with the dynamic needs of emerging economies. The paper finds that while Nigeria's tax framework nominally embraces these principles, practical implementation is undermined by legal ambiguity, perceived inequity, high administrative costs, and inter-agency disjunctions. The paper concludes that a principled, coherent, and context-sensitive tax policy is essential to fostering compliance, transparency, and sustainable economic growth in Nigeria. The paper proffers actionable recommendations aimed at simplifying legislation, enhancing equity, strengthening institutional coordination, and modernising administrative processes.

Keywords: Taxation, Nigerian Company Tax, Adam Smith's Canons, Tax Equity, Tax Reform, Meade Committee

1.0 Introduction

Taxation remains a foundational pillar of economic governance, shaping revenue mobilisation, redistribution, and national development. Although taxation is often described as a fiscal tool, its conceptualisation extends beyond revenue generation to include broader social, economic, and regulatory functions. Within this broad context, the Nigerian corporate tax system has attracted sustained scholarly attention due to persistent concerns regarding legal ambiguity, administrative inefficiency, inequity, and inconsistencies in policy implementation.

Existing literature on Nigerian taxation has extensively examined definitional issues, historical evolution, statutory provisions, and administrative challenges. However, a critical gap persists many studies analyse taxation either doctrinally or administratively without systematically assessing how Nigeria's corporate tax framework aligns or fails to align with both classical and contemporary canons of taxation**.** Furthermore, while some scholarship engages Adam Smith's canons, very little interrogates their continued relevance alongside modern principles such as neutrality, flexibility, simplicity, and administrative efficiency, as refined by the Meade Committee. This gap creates uncertainty in determining whether Nigeria's corporate tax system is normatively sound or merely operationally functional.

This paper therefore revisits the theoretical foundations of taxation to provide a structured assessment of the Nigerian company income tax system through the dual lenses of classical and contemporary tax canons. It begins by unpacking the definitional complexities of tax through dictionary meanings, judicial interpretations, and scholarly perspectives, highlighting the pluralistic and evolving nature of the concept. It then evaluates the characteristics of a sound tax system by examining Adam Smith's principles of equity, certainty, convenience, and economy, alongside the Meade Committee's expanded canons of neutrality, simplicity, flexibility, and administrative efficiency.

Against this conceptual background, the study interrogates the extent to which Nigeria's corporate tax regime reflects these enduring principles. The research problem it addresses is the persistent disconnect between the normative ideals embodied in tax canons and the realities of Nigeria's tax administration manifested in legal ambiguities, inconsistent enforcement, administrative bottlenecks, and perceived inequities. These gaps undermine compliance, increase transaction costs, and hinder the achievement of broader fiscal objectives.

The significance of this study lies in its contribution to bridging this theoretical–practical divide. By synthesising classical frameworks with contemporary evaluative criteria, the paper offers a holistic assessment of Nigeria's company tax system and provides reform-oriented insights. The findings demonstrate that although Nigeria's tax laws nominally reflect canonical principles, their practical implementation remains weak due to structural, administrative, and interpretive challenges. The paper therefore lays a conceptual foundation for policy reforms aimed at simplifying tax legislation, enhancing equity, strengthening institutional coordination, and modernising administrative processes.

2.0 Concept of Taxation

Taxation serves as a fundamental mechanism through which both developed and developing countries generate revenue for national development and the execution of governance functions. It involves the compulsory transfer of resources from private individuals, entities, and, in certain instances, minors (in cases such as Value Added Tax), to the state for the purpose of financing public expenditure and advancing collective welfare.

[1]

Despite the centrality of taxation to economic governance, the term "tax" lacks a universally accepted definition and, more critically, is not expressly defined under

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[1] O Akanle, *Tax Law and Administration in Nigeria* (Ibadan: Spectrum Books, 1995) 4.

Nigerian tax statutes.[2] Nigerian tax legislation, including the Federal Inland Revenue Service (Establishment) Act, the Companies Income Tax Act (CITA), and the Personal Income Tax Act, merely describe taxation through its incidence and application rather than by way of a comprehensive legal definition. Even the Nigerian National Tax Policy fails to provide a precise definition, opting instead to describe taxation in operational terms.[3] This definitional gap contributes to persistent ambiguity regarding tax classification and the jurisdictional authority of Nigeria's three-tier federal structure. As a result, the concept of "tax" is often interpreted through judicial reasoning and academic literature rather than statutory authority.[4]

This absence of a statutory definition is not peculiar to Nigeria. In the United States, for instance, federal tax legislation is primarily codified in the Internal Revenue Code (IRC), which constitutes Title 26 of the United States Code.[5] While the IRC extensively delineates various tax types such as income tax, estate tax, and excise tax it does not provide a singular, definitive articulation of the term "tax."[6] Supplementary interpretations are issued through Treasury Regulations and administrative guidelines from the Internal Revenue Service (IRS), which help clarify tax obligations and procedures, albeit without offering a holistic definition.[7]

The United Kingdom likewise adopts a fragmented approach to tax definition through its statutory architecture. Tax laws in the UK derive primarily from parliamentary enactments, such as the Income Tax Act 2007, which details the assessment and charge of income tax, and the annually enacted Finance Acts, which update rates, thresholds, and

[2] AA Alli, 'Taxation in Nigeria: A Critical Analysis' (2020) 41(2) *Journal of African Law* 158, 160.
[3] Federal Republic of Nigeria, *National Tax Policy* (2017) para 1.1.
[4] K Naiyeju, Improving Tax Administration in Nigeria (Lagos: ICAN, 2010) 26.
[5] 26 United States Code (IRC), esp. ss 1–1400.
[6] Bittker and Lokken, *Federal Taxation of Income, Estates and Gifts* (Vol. 1 & 1.1. Thomson Reuters, 2022) p. 15.
[7] US Department of the Treasury and Internal Revenue Service, *Treasury Regulations* (2023) https://www.irs.gov accessed 10 July 2025.

reliefs.[8] While these instruments collectively create the legal framework for taxation, they do not offer a single, encompassing definition of the term "tax."[9]

In the Nigerian context, this legislative silence on the definition of tax has generated considerable interpretative uncertainty. The judiciary, in attempting to fill this void, has variously characterised tax as a compulsory contribution imposed by law, payable by individuals or legal entities to the government, for which no direct benefit or quid pro quo is expected in return.[10] However, even these judicial definitions vary depending on the facts and contexts of the cases in which they arise. Consequently, scholars and practitioners have argued that the attempt to fashion a universal definition of tax may, paradoxically, exacerbate ambiguity rather than resolve it.[11]

In light of the foregoing, it may be more analytically productive to assess the functional attributes of a fiscal measure to determine its tax character, rather than insist upon a singular conceptual definition. The dynamic nature of taxation shaped by socio-economic objectives, administrative realities, and political context necessitates a flexible, principle-based approach to understanding its core elements.

2.1: Dictionary Definitions of Tax

Dictionary definitions provide a foundational but often limited understanding of taxation. **Black's Law Dictionary** defines tax as *"a deductible portion of the produce or the property and labour of the individual citizen, taken by the nation in the exercise of its sovereign rights for the support of the government, for the administration of the laws, and as a means for continuing in the operation of the various legitimate functions of the state."*[12] This definition captures the essence of taxation as a sovereign act and highlights its role in supporting state functions. However, it may be critiqued for its formal tone,

[8] Income Tax Act 2007 (UK), c. 3; Finance Act 2024 (UK), c. 1.
[9] HM Revenue & Customs, *The Taxation Framework Manual* (2023) https://www.gov.uk accessed 10 July 2025.
[10] *A.-G., Ogun State v Aberuagba* [1985] 1 NWLR (Pt. 3) 395.
[11] OJ Akanbi, 'Rethinking the Definition of Tax in Nigerian Jurisprudence' (2021) 10(1) *Nigerian Tax Review* 101, 103.
[12] BA Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters, 2019) 1682.

lack of contemporary emphasis on redistribution, and its failure to explicitly acknowledge taxation as an instrument of social policy.

The **New Oxford Dictionary of Current English** simplifies the definition as *"a compulsory contribution to the support of government levied on persons, property, income, commodities, and transactions at a fixed rate, mostly proportionate to the amount on which the contribution is levied."*[13] This version underscores the compulsory and proportionate nature of taxation but does not explore its policy-based dimensions or broader economic implications.

The Chambers Dictionary defines tax briefly as *"a contribution to revenue exacted by the state from individuals or business; a burden, drain, or strain."*[14] While evocative in its language, this definition is too concise to be analytically sufficient. It omits critical elements such as the legal foundation of taxation, the principle of compulsion, and the conditions of eligibility and enforcement.

It is noteworthy that these definitions commonly reduce the purpose of taxation to revenue generation. However, taxation serves multiple socio-economic objectives beyond this primary function. For instance, excise taxes on tobacco and alcohol are often used as regulatory tools to curb consumption and promote public health.[15] Similarly, progressive tax systems can redistribute wealth by imposing a greater burden on higher-income earners, thereby reducing income inequality.[16] Tax policy can also serve as a developmental strategy encouraging investment in local industries through targeted incentives and protective measures.[17]

In this broader sense, taxation is not merely an economic tool but a dynamic instrument of public policy, reflecting the evolving values and priorities of the state.

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[13] *The New Oxford Dictionary of Current English* (Oxford University Press, 2001) 934.
[14] *Chambers Dictionary* (12th edn, Chambers Harrap, 2011) 1535.
[15] J Stiglitz, *Economics of the Public Sector* (3rd edn, Norton, 2000) 468–472.
[16] R Musgrave and P. Musgrave, *Public Finance in Theory and Practice* (5th edn, McGraw-Hill, 1989) 320–325.
[17] SM Olokooba, *Nigerian Taxation: Law and Practice* (Ibadan: University Press, 2019) 119.

2.2: Case Law Definition of Tax

Judicial interpretations have played a crucial role in shaping the understanding of taxation, particularly in jurisdictions where statutory definitions are either absent or insufficiently precise. Courts have sought to define tax in terms that reflect its legal, economic, and constitutional characteristics, although these definitions often vary in scope and emphasis.

In *United States v. Butler*, the Supreme Court of the United States, per Justice Roberts, stated that *"a tax, in both the general understanding and the strict constitutional sense, is an exaction for the support of the government. The term does not imply the expropriation of money from one group to be expended for another, as a necessary means in a plan of regulation, such as the plan for regulating agricultural production."*[18] This definition highlights taxation as a financial obligation intended solely for the support of government functions. It draws a clear line between taxation and regulatory redistribution, situating tax within its narrow constitutional confines. However, its rigid approach arguably understates the broader redistributive and policy-based functions taxation serves in contemporary governance.

Similarly, the Australian High Court in *Matthews v. Chicory Marketing Board* defined tax as *"a compulsory exaction of money by a public authority for public purposes."*[19] While this definition establishes the core legal elements compulsion and public purpose it has been critiqued for its vagueness. It does not expressly clarify whether such exactions must be sanctioned by legislation, nor does it encompass modern complexities such as indirect taxes, levies on corporate entities, or taxes aimed at behavioural modification.

In *Michigan Employment Security Commission v. Patt*, the court described tax as *"a non-voluntary payment or donation but an enforced or compulsory contribution, exacted under legislative authority."*[20] This characterisation appropriately underscores the legal enforceability of tax obligations. However, the use of the term "donation" is misleading,

[18] *United States v Butler* 297 US 1 (1936) (USSC) 61.
[19] *Matthews v Chicory Marketing Board (Vic)* (1938) 60 CLR 263 (HCA) 276.
[20] *Michigan Employment Security Commission v Patt* 258 Mich 603, 610 (1932).

as it may suggest a voluntary element. The definition also omits reference to the wider economic and social objectives often pursued through taxation.

In the UK context, judicial pronouncements have been particularly concerned with the legal authority underpinning taxation. In *Coltness Iron Company v. Black*, Lord Blackburn held that *"no tax can be imposed on the subject without clear words in an Act of Parliament indicating an intention to burden them. But once that burden is sufficiently demonstrated, speculating on the fairest and most equitable method of levying that tax becomes futile."*[21]This definition reinforces the principle of legality in tax matters: that taxation must be authorised by explicit legislative language. Nonetheless, it is limited in its scope, as it neglects to address fairness, administrative efficiency, and broader socio-economic impacts principles which now inform much of modern tax discourse.

Likewise, in *Ayrshire Employers Mutual Insurance Association Ltd v. IRC*, Lord President Normand restated the principle that *"no tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him."*[22] This aligns with the UK's strong emphasis on parliamentary sovereignty and the rule of law in taxation matters.

In contrast, Nigerian courts have generally refrained from articulating a judicial definition of "tax." Even when the Supreme Court of Nigeria had the opportunity in *Shell Petroleum Development Company v. Federal Board of Inland Revenue*, it declined to offer a detailed definition. The Court merely observed that taxes are obligations owed to the government.[23] This judicial silence contributes to the definitional ambiguity that permeates Nigerian tax jurisprudence and leaves tax administrators and taxpayers alike with little judicial guidance on the concept's substantive meaning.

Thus, while case law across jurisdictions offers foundational insights into the nature of taxation, most definitions remain narrow, focusing on the elements of compulsion, authority, and purpose. However, modern tax policy demands a broader lens one that

[21] *Coltness Iron Co v Black* (1881) 6 App Cas 315, 330 (HL).
[22] *Ayrshire Employers Mutual Insurance Association Ltd v IRC* (1946) SC 17, 21.
[23] *Shell Petroleum Development Company v Federal Board of Inland Revenue* (1996) 8 NWLR (Pt 466) 256, 289 (SC).

captures not only the legal form of tax but also its economic, redistributive, and developmental functions.

2.3: Practitioners' Definition of Tax

Tax practitioners also referred to as tax professionals are individuals or organisations with specialised expertise in tax law, compliance, planning, and administration. These include tax advisors, accountants, lawyers, and firms that provide comprehensive tax-related services to individuals, businesses, and organisations.[24] Their core function is to assist taxpayers in understanding and meeting their fiscal obligations, optimising tax liabilities within legal bounds, and navigating the complexities of evolving tax regulations.[25]

Tax consultants provide strategic tax planning advice that guides financial decisions, transactions, and estate structures, with particular focus on minimising tax exposure. Tax accountants, on the other hand, manage compliance by preparing returns, maintaining tax records, and ensuring accuracy in calculating liabilities. Tax lawyers deal with legal interpretations of complex tax legislation, offer representation in disputes, and advocate for clients before tax tribunals or courts.[26] Together, these professionals constitute the backbone of both proactive and reactive tax management in modern economies.

Given the technical and evolving nature of taxation, practitioners often resort to descriptive rather than definitional approaches. For instance, some economists regard tax as *"a means of diverting resources from private to public use."*[27] While this characterisation captures taxation's resource-shifting function, it lacks precision in terms of purpose and legal foundation. The phrase may unintentionally suggest that taxation is an arbitrary or unjust exercise of state power, omitting its developmental, redistributive, and regulatory objectives.

A more structured view is offered by Whitehouse, who posits that taxation involves:

[24] SM Olokooba, (n 17) 41.
[25] RW McGee, *The Philosophy of Taxation and Public Finance* (Springer, 2004) 113.
[26] K Naiyeju, *Taxation: A Tool for Economic Development* (Lagos: Century Publishers, 2010) 18.
[27] J Stiglitz, (n 15) 480.

i. A required payment;
ii. Imposed by the government (or in some cases, local authority); and
iii. Taxation is often defined as a compulsory levy imposed by government, whose proceeds are used either to raise revenue or promote social justice.

This definition highlights key elements governmental authority, compulsion, and societal purpose. However, referencing "social justice" introduces ambiguity, as its meaning varies across political and cultural contexts. This subjectivity can blur the objective, legal, and technical understanding of taxation, making it less precise. [28] While socially aspirational, such normative language may undermine clarity in defining the true legal character of taxation.

In Nigerian tax scholarship, several authors have attempted to define taxation with varying levels of success. Ola defines tax as *"a demand made by the government of a country for compulsory payment of money by the citizens of that country."*[29]This definition, while correctly emphasising compulsion, is overly general and omits the legal frameworks, tax types, and societal roles taxation plays beyond mere revenue generation.

Akanle refines this by defining tax as *"a compulsory levy imposed on a subject or upon his property by the government having authority over him or the property."*[30]This better captures the essence of taxation's legal character but still falls short of addressing its economic functions, enforcement mechanisms, and international dimensions, particularly in light of cross-border tax treaties and digital economy challenges.

Umenweke describes tax as *"a peculiar burden laid upon individuals, persons or property to support the government and it is a payment enacted by legislative authority."*[31] The inclusion of legislative authority rightly anchors taxation within the doctrine of legality. However, terms such as "peculiar burden" are vague, and the

[28] R Musgrave and P. Musgrave, (n 16) 236.
[29] CS Ola, *Income Tax Law and Practice in Nigeria* (Ibadan: Heinemann, 1981) 2.
[30] O Akanle, (n 1) 3.
[31] MN Umenweke, *Tax Law and Administration in Nigeria* (Enugu: Nwamife Publishers, 2010) 6. Ditto as in Olokokooba

definition omits a clear distinction between direct and indirect taxation, as well as its dynamic role in policy formulation.

Agbonika's contribution *"an obligatory levy, exacted by the government on eligible persons, goods or activities for a particular purpose which may be expressed or implied in the interest of the nation"* is one of the more encompassing attempts.[32] However, the ambiguity of terms like "eligible persons" and "particular purpose" weakens its analytical utility. A definition of tax must not only be precise but also anticipate interpretative challenges in statutory and judicial contexts.

Ayua, while not offering an original definition, acknowledges that the defining feature of taxation lies in its status as a "payment by legislative authority."[33] While accurate, this is too skeletal to function as a stand-alone definition and omits critical elements such as enforceability, purpose, and scope.

Perhaps the most philosophical definition comes from Abdulrazaq, who describes tax as *"the annual price of citizenship and the price of civilisation."*[34] This captures taxation's foundational role in sustaining public institutions but is far too metaphorical to serve as a legal or policy definition. It romanticises tax while ignoring the structural, procedural, and distributive complexities that define modern tax systems.

In sum, practitioners' definitions of tax tend to emphasise compulsion and legality but vary widely in scope and clarity. An ideal definition must capture not only the legal and economic essence of taxation but also reflect its evolving roles in regulation, redistribution, and national development.

3.0 Constituents of a Good Tax System

The definitional ambiguity surrounding the concept of tax persists in literature. Most definitions, rather than clarifying its essence, tend to obscure it further. The absence of precision in tax terminology highlights the difficulty in formulating a mathematically or

[32] JAM. Agbonika and JAA Agbonika, *Topical Issues on Nigerian Tax Laws and Related Areas* (Ababa Press Ltd, 2018) 255.
[33] IA Ayua, *The Nigerian Tax Law* (Ibadan: Spectrum Books, 1996) 7.
[34] A Abdulrazaq, *Nigerian Tax Offences and Penalties* (Lagos: Batay Law Publications, 2002) 1.

universally acceptable definition. In the opinion of this researcher, tax should be conceptualised as a compulsory levy, imposed by a legitimate authority on individuals, companies, and entities within a sovereign jurisdiction, to support governance, redistribute wealth, and promote economic stability and social development.

A tax derives its legality and enforceability from a legislative enactment. As Ipaye rightly posits, the focus should not be on nomenclature but on the core attributes of taxation.[35] These attributes, as elucidated below, form the foundational constituents of an ideal tax system.

1. **Legal Obligation and Consequences**: Taxation is inherently a legal construct. For a charge to be recognised as a tax, it must emanate from an enabling statute or a law validly made by a legislative body.[36] The imposition of a tax is not a matter of discretion; rather, it is rooted in legal compulsion, thereby ensuring compliance through the coercive powers of the state.[37] This distinguishes taxation from voluntary financial contributions or moral obligations.
2. **The Nexus Between Tax and Law**: A legitimate tax must be expressly stipulated in clear legal terms.[38] The constitutional requirement for legislative authorisation reflects the broader principle of legality no tax without law.[39] This underscores the mandatory nature of taxation and protects taxpayers from arbitrary imposition.
3. **Socioeconomic Purpose and Governmental Role**: Taxes are not levied solely to generate revenue; they play a crucial role in funding essential public goods and services, including security, education, infrastructure, and healthcare.[40] Taxation is also a vital tool for economic management, influencing demand, investment, and wealth distribution.
4. **Taxpayer Identification and Age Demarcation**: Typically, individuals aged 18 and above are liable for taxes, as they are considered to have attained legal and economic

[35] A Ipaye, *Tax Law and Administration in Nigeria* (Lagos: Malthouse Press, 2014) 8.
[36] ibid
[37] FIRS v. Halliburton (2016) 15 TLRN 1, 24
[38] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 59(1).
[39] Coltness Iron Co v. Black (1881) 6 App Cas 315.
[40] SM Olokooba, (n 17) 18.

capacity.[41] However, indirect taxes such as Value Added Tax (VAT) may be borne by minors through consumption, reflecting the breadth of tax impact irrespective of age.

5. **Absence of Quid Pro Quo**: A key principle of taxation is that it is non-reciprocal.[42] Taxpayers are not entitled to specific benefits in proportion to their contributions. Rather, taxes fund collective needs, demonstrating the communal rather than transactional nature of public finance.
6. **Legitimate Collection Channels**: Taxes must be collected by lawfully constituted authorities such as the Federal Inland Revenue Service (FIRS) or State Boards of Internal Revenue.[43] Collection by unauthorised bodies constitutes illegality or extortion.[44] This legitimacy ensures accountability, trust, and efficiency.
7. **Clarity and Computability**: A good tax system must operate within a clear legal framework, using precise language and allowing for predictable calculation.[45] Ambiguity in tax laws undermines fairness, fosters litigation, and erodes taxpayer confidence.
8. **Annual Imposition and Income-Based Liability**: Taxes are typically assessed annually, based on the income or profits of individuals or corporations.[46] This ensures fairness, as liability correlates with financial capacity, thereby fostering equity and vertical fairness.
9. **Defined Scope of Taxation**: Taxes must be confined to assessable income, property, or transactions.[47] The scope must be precisely delineated to prevent overreach or arbitrary extensions of taxing power. This precision safeguards against fiscal oppression and affirms the legality of tax collection.

[41] Personal Income Tax Act, Cap P8, LFN 2004, s 2(1).
[42] Michigan Employment Sec Commission v. Patt, 123 NW 2d 767 (1963).
[43] Federal Inland Revenue Service (Establishment) Act 2007, s 8.
[44] A Naiyeju, (n 4) 25.
[45] Matthews v. Chicory Marketing Board (1938) 60 CLR 263.
[46] Companies Income Tax Act, Cap C21, LFN 2004, ss 9–11.
[47] T Akanle, *Tax Law and Administration in Nigeria* (Ibadan: Spectrum Books, 1995) 17. Ditto as in Olokooba.

Determining whether a levy qualifies as a tax requires scrutiny of the enabling statute, the purpose of the levy, its intended beneficiaries, the collecting authority, and the consequences of non-compliance.[48] These elements distinguish a tax from other forms of public or private levies, ensuring that taxation remains grounded in legality, transparency, and equity.

4.0 Evaluating the Effectiveness of Adam Smith's Canons in Modern Tax Systems

Taxation is an essential instrument for economic stability, public finance, and social governance. In the context of contemporary fiscal systems, the structure and effectiveness of taxation determine the functionality of a nation's financial architecture. Adam Smith's four canons of taxation equity, certainty, convenience (often rendered as administrative efficiency), and economy (or neutrality) remain foundational principles by which tax systems are assessed.[49] These canons, introduced in *An Inquiry into the Nature and Causes of the Wealth of Nations*, have been continually referenced by scholars and tax administrators to promote fairness, predictability, and economic rationality in tax design.[50]

Though formulated in the 18th century, Smith's principles remain remarkably relevant. As Kath Nightingale affirms, a good tax system must be logical, equitable, and free from arbitrariness or discrimination.[51] The enduring utility of these canons lies in their adaptability to contemporary challenges such as globalisation, digitalisation, and fiscal decentralisation.

4.1: Canon of Equity

Also referred to as the ability-to-pay principle, the canon of equity posits that taxation should be proportionate to an individual's income or wealth.[52] Those with greater

[48] MN Umenweke, (n 31) 31.
[49] A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (London: Methuen & Co., 1776) Book V, ch II. 15
[50] SM Olokooba, (n 17) 29.
[51] K Nightingale, *Principles of Taxation* (London: Pearson Education, 2001) 15.
[52] T Akanle, (n 47) 26.

financial capacity ought to bear a larger tax burden, reflecting the values of vertical equity, while individuals with similar incomes should contribute similarly, embodying horizontal equity.[53]

This principle is operationalised in Nigeria through the progressive structure of the Pay As You Earn (PAYE) system under the Personal Income Tax Act (PITA).[54] The Sixth Schedule of PITA introduces tax bands and graduated rates that impose higher liabilities on those with greater income, thereby ensuring compliance with the canon of equity.[55] This equity-driven structure enhances voluntary compliance and public confidence in the fairness of the tax system.

4.2: Canon of Neutrality

The neutrality principle asserts that tax policies should avoid creating distortions in market behaviour. Taxes should not unjustly favour or penalise particular goods, sectors, or forms of economic activity.[56] If taxation discriminates for example, through selective excise duties on tobacco or alcohol while subsidising agriculture it risks distorting consumption patterns and disincentivising investment in certain industries.

While some deviation from neutrality is permissible for regulatory or public health purposes, persistent sector-specific tax preferences can erode the integrity of the tax base.[57] For instance, excessive incentives to specific industries, such as the oil and gas sector, have historically skewed Nigeria's economic diversification agenda.

4.3: Canon of Certainty

Smith emphasised that tax obligations must be predictable and transparent: "The tax which each individual is bound to pay ought to be certain, and not arbitrary."[58] Certainty

[53] MN Umenweke, (n 31) 33.
[54] Personal Income Tax Act (PITA), Cap P8, LFN 2004 (as amended), Sixth Schedule.
[55] ibid
[56] J Oats, *Taxation Policy and Practice* (Birmingham: Fiscal Publications, 2020) 48.
[57] A Naiyeju, (n 4) 42.
[58] Adam Smith, (n 49) 15.

minimises disputes, discourages corruption, and empowers taxpayers to plan their finances with confidence.[59]

Modern tax systems achieve this through clear legislation, accessible guidelines, and predictable assessment processes. In Nigeria, ambiguity in the interpretation of tax statutes often leads to litigation and administrative bottlenecks.[60] In such instances, the principle of contra fiscum, which provides that tax ambiguities must be resolved in favour of the taxpayer, safeguards fairness.[61] Certainty is also essential for effective budgeting and fiscal planning by the government.

4.4: Canon of Administrative Efficiency

Also termed economy in collection, this principle requires that the cost of tax administration should not outweigh the revenue generated.[62] Efficient systems reduce compliance burdens, enhance taxpayer experience, and increase overall collection.

In Nigeria, inefficiencies in tax administration persist, exacerbated by bureaucratic hurdles, duplicative processes, and weak enforcement mechanisms.[63] The use of technology-driven platforms such as the Integrated Tax Administration System (ITAS) and e-filing represents efforts to improve cost-effectiveness.[64] The canon of administrative efficiency is not merely about collection; it extends to audit, enforcement, and dispute resolution processes.

5.0 Assessment of Equity, Neutrality, Certainty, and Administrative Efficiency in the Nigerian Company Tax System

The effectiveness of any tax system can be evaluated through the foundational canons of taxation as propounded by Adam Smith—equity**,** neutrality**,** certainty, and administrative efficiency. These principles serve as normative benchmarks against which modern tax

[59] S James and C Nobes, *The Economics of Taxation* (London: Prentice Hall, 2008) 67.
[60] FIRS v. Halliburton (2016) 15 TLRN 1.
[61] Shell Petroleum Dev. Co. Ltd v. FBIR (1996) 8 NWLR (Pt. 466) 256.
[62] A Ipaye, (n 35) 41.
[63] O Olatunji, "Challenges in Nigeria's Tax Administration and Revenue Generation" (2013) 6(2) *Journal of Business Management* 23.
[64] Federal Inland Revenue Service, *FIRS Strategic Plan 2020–2024* (Abuja: FIRS, 2020).

systems are assessed. In the context of Nigeria, the application of these principles within the corporate tax framework presents mixed results.

5.1: Equity

The canon of equity is predicated on the ability-to-pay principle, which posits that tax liabilities should be proportionate to a taxpayer's income or wealth.[65] In a corporate context, this would require that tax burdens reflect the relative profitability and size of business entities.

Implementation in Nigeria

Nigeria applies a flat corporate income tax rate to most companies, with few distinctions based on profitability. While small companies (with an annual turnover below ₦25 million) are exempt from Companies Income Tax (CIT), and medium-sized companies (with turnover between ₦25 million and ₦100 million) enjoy a reduced rate of 20%, the standard 30% rate applies across the board to larger companies, regardless of their marginal profit differentials.[66] This flat structure falls short of a fully progressive corporate tax model.

In contrast, equity is better achieved in Nigeria's personal income tax system, particularly under the Pay As You Earn (PAYE) scheme, where progressive tax rates apply.[67]

Challenges

The uniform application of tax rates to most corporations ignores disparities in financial capacity, undermining vertical equity. Tax evasion and avoidance by larger and more resourceful entities disproportionately shift the tax burden to smaller compliant businesses.[68]

[65] A Smith, (n 49) 20.
[66] Companies Income Tax Act (CITA), Cap C21, LFN 2004 (as amended), ss. 23(1)(o), 40.
[67] Personal Income Tax Act (PITA), Cap P8, LFN 2004 (as amended), Sixth Schedule.
[68] O. Olatunji, (n 63) 23.

5.2: Neutrality

Neutrality requires that taxes do not interfere with economic decisions or distort market outcomes. Ideally, tax systems should neither favour nor penalise specific industries, sectors, or transactions.

Implementation in Nigeria

Nigeria's tax framework attempts neutrality through standardised Value Added Tax (VAT) rates and uniform statutory CIT rates. [69] However, significant tax holidays, investment allowances, and exemptions granted to sectors such as oil and gas, agriculture, and export processing zones introduce substantial distortion into the economy.[70]

Challenges

Preferential treatment in the form of Pioneer Status Incentives and sectoral tax waivers distorts competitive neutrality.[71] Sectors like telecommunications and alcohol are subject to excessive excise taxes, which discourage investment and affect pricing.[72]

5.3: Certainty

Certainty ensures that taxpayers clearly understand their tax obligations including amounts, timelines, and methods of payment thereby reducing disputes and enhancing compliance.[73]

Implementation in Nigeria

The Federal Inland Revenue Service (FIRS) has implemented various initiatives to improve clarity, including issuing circulars**,** public notices**,** and practice directions to

[69] Value Added Tax Act, Cap V1, LFN 2004 (as amended), ss. 1, 2.
[70] Industrial Development (Income Tax Relief) Act, Cap I7, LFN 2004; Nigerian Investment Promotion Commission Act, Cap N117, LFN 2004.
[71] A Naiyeju, (n 4) 44.
[72] Finance Act 2020, ss. 21, 38; Excise (Control of Duties) Act, Cap E4, LFN 2004.
[73] S James and C Nobes, (n 59) 65.

interpret ambiguities in tax laws.[74] Legislative interventions such as the Finance Acts (2019–2023) have also sought to harmonise tax statutes and plug loopholes.

Challenges

Frequent amendments, inconsistent application, and overlapping jurisdictional claims (between FIRS and state revenue boards) continue to breed uncertainty.[75] Complex legal drafting and ambiguous provisions in laws like the Companies Income Tax Act **(**CITA**)** create confusion among taxpayers.[76]

5.4: Administrative Efficiency

Administrative efficiency demands that the cost of collection be as low as possible relative to the revenue raised.[77] Effective systems reduce compliance burdens and minimise leakages.

Implementation in Nigeria

Nigeria has adopted several digitised processes, including e-tax platforms**,** self-assessment schemes, and automated withholding tax systems, to improve efficiency.[78]

Challenges

The informal sector, which remains largely untaxed, increases the per-unit cost of tax enforcement.[79] Corruption, insufficient manpower, and bureaucratic inefficiencies at tax offices lead to revenue losses and weaken trust in the system.[80]

[74] Federal Inland Revenue Service, *Information Circulars and Guidelines*, www.firs.gov.ng (accessed 10 July 2025).
[75] Shell Petroleum Dev. Co. v. FBIR (1996) 8 NWLR (Pt. 466) 256.
[76] T Akanle, (n 47) 57.
[77] SM Olokooba, (n 17) 92.
[78] FIRS, *TaxPro Max and ITAS Systems Overview* (Abuja: FIRS, 2023).
[79] N Adegbie and A Fakile, "The Informal Sector and Revenue Generation in Nigeria" (2011) 3(1) *Pakistan Journal of Social Sciences* 37.
[80] D Ogunleye, "Public Sector Corruption and Revenue Performance in Nigeria" (2020) 7(2) *African Journal of Public Policy* 19.

6.0 The Meade Committee Perspective on an Effective Tax System

The **Meade Committee**, established in 1975 by the United Kingdom's Institute for Fiscal Studies under the chairmanship of Professor James Meade, offered an expanded and more contemporary articulation of the principles of an effective tax system, particularly with respect to direct taxation.[81] The Committee's report aimed to modernise and complement the classical Smithian canons by incorporating considerations more relevant to the realities of modern tax policy and administration.[82]

The Meade Committee outlined six critical criteria for assessing and designing a functional and equitable tax regime: incentives and efficiency**,** distributional effects**,** simplicity**,** flexibility**,** productivity**,** and diversity.

6.1: Incentives and Economic Efficiency

A central concern of the Meade Committee was that tax systems should avoid distorting economic behavior and instead foster productivity, innovation, and growth. Ideally, taxation should support saving, investment, and risk-taking without discouraging work or misallocating resources. This aligns with Adam Smith's canon of neutrality but adds a macroeconomic focus. In Nigeria, incentives like the Pioneer Status and investment allowances show partial compliance but are often criticized for opacity, inequity, and abuse. A truly efficient system would anchor incentives to clear economic goals, ensure transparency, and implement regular performance evaluations to ensure their effectiveness and alignment with national development priorities.

6.2: Distributional Effects

Closely aligned with Smith's canon of equity, this principle emphasises fairness in the distribution of tax burdens and access to public goods.[83] The tax system should reduce inequality without discouraging high earners or capital owners from contributing. In

[81] JE Meade, *The Structure and Reform of Direct Taxation: Report of a Committee Chaired by Professor J.E. Meade* (London: Allen & Unwin, 1978).
[82] R Bird and M Zolt, "Tax Policy in Emerging Countries" (2005) 4(2) *Environment and Planning C: Government and Policy* 99.
[83] Adam Smith, (n 58).

practice, this calls for a balance between progressive taxation and economic growth incentives.

In Nigeria, while the Personal Income Tax Act (PITA) adopts progressive rates, the Companies Income Tax Act (CITA) largely implements a flat tax, which dilutes vertical equity.[84] The absence of effective wealth taxes, coupled with limited enforcement mechanisms, further weakens the distributive power of the tax system.[85] For a developing country like Nigeria, embedding redistributive objectives into tax policy is critical for promoting social cohesion and poverty alleviation.

6.3: Simplicity, Administrative Cost, and Compliance

According to the Meade Committee, simplicity and transparency in the tax system are essential to enhance voluntary compliance, reduce administrative costs**,** and minimise opportunities for corruption and litigation.[86] Tax laws should be easily understandable, and the procedures for assessment and payment should be clear and consistent.

Nigeria's tax system has suffered from complex, ambiguous, and overlapping provisions, particularly where federal and state jurisdictions intersect.[87] The multiplicity of taxes such as education tax, information technology levy, and stamp duties creates a burdensome environment for businesses. Additionally, the legal language of many tax statutes lacks clarity, often resulting in litigation and interpretative uncertainties.[88]

Furthermore, poorly trained or unmotivated tax personnel can frustrate even well-intentioned taxpayers, highlighting the need for capacity building within tax authorities.[89]

[84] Personal Income Tax Act (PITA), Cap P8, LFN 2004 (as amended), Sixth Schedule; Companies Income Tax Act (CITA), Cap C21, LFN 2004 (as amended), s 40.
[85] O Olatunji, "Equity in Nigerian Tax Law" (2017) 5(1) *Nigerian Journal of Fiscal Studies* 12.
[86] JE Meade (n 81) 100–105.
[87] Shell v. FBIR (1996) 8 NWLR (Pt. 466) 256.
[88] T Akanle, (n 47) 82.
[89] N Adegbie and A Fakile, (n 79) 29.

6.4: Flexibility and Stability

An effective tax system must adapt to changing economic conditions, technological innovation, and shifting policy priorities, without being erratically revised. The Meade Committee underscored that while stability in tax laws ensures confidence among investors, flexibility ensures relevance and responsiveness.[90]

In Nigeria's volatile policy environment, frequent amendments via annual Finance Acts have enhanced flexibility. However, stakeholders have raised concerns about legislative unpredictability, especially where retrospective amendments are involved.[91] Tax reforms must balance agility with consistency to sustain long-term economic planning.

6.5: Productivity (Fiscal Adequacy)

A key concern for the Meade Committee was whether a tax system can generate sufficient revenue to meet the needs of government. This principle of fiscal adequacy is particularly vital in developing economies with significant budgetary constraints.[92]

Nigeria's tax-to-GDP ratio remains among the lowest in sub-Saharan Africa, hovering around 10%**,** far below the World Bank's recommended threshold of 15% for sustainable development.[93] Heavy dependence on oil revenue makes Nigeria's fiscal structure fragile and vulnerable to global price shocks. Strengthening non-oil taxation, especially through the corporate tax base, is essential for achieving fiscal productivity.

6.6: Diversity

The Meade Committee advocated for a diversified tax base, combining different types of taxes income, consumption, and property to spread risk and avoid excessive reliance on

[90] JE Meade (n 81) 113.
[91] Finance Act 2023, ss 10–12; see also Budget Office of the Federation, *Tax Reforms Digest* (Abuja: FGN, 2024).
[92] S James and C Nobes, (n 59) 89.
[93] World Bank, *Revenue Mobilization for Development* (Washington DC: World Bank Publications, 2023).

any single source.[94] This aligns with the principle of horizontal equity and enhances resilience in times of economic downturn.

Nigeria's over-reliance on petroleum profits tax and customs duties undermines this principle. The formal sector bears a disproportionate burden, while the informal sector remains largely untaxed.[95] A diversified tax regime would not only ensure a more equitable distribution of tax burdens but also stabilise government revenue flows.

7.0 Modern Perspectives on Tax Canons: The Meade Committee and Their Applicability in Nigeria

The Meade Committee's framework for evaluating modern tax systems offers an evolved perspective on Adam Smith's classical canons. It addresses contemporary fiscal realities, especially in the context of direct taxation, administrative efficiency, and economic development.[96] The Committee's approach encompasses broader concerns such as economic incentives**,** equity in distribution**,** simplicity**,** flexibility**,** fiscal productivity**,** and diversity of the tax base**,** each of which remains instructive for developing economies like Nigeria.[97]

7.1: Incentives and Economic Efficiency

The Meade Committee emphasised that a tax system should promote productive economic behaviour by encouraging savings, investment, innovation, and efficient allocation of resources.[98] These objectives aim at enhancing overall economic growth and competitiveness.

Applicability in Nigeria: Nigeria's tax policy includes a range of incentives for sectors such as agriculture, technology, and manufacturing, including tax holidays, investment

[94] JE Meade (n 81) 120–121.
[95] A. Fagbemi, "Broadening the Nigerian Tax Base" (2021) 10(2) *African Journal of Taxation and Economic Governance* 45.
[96] JE Meade, (n 81)122
[97] R.M. Bird and E.M. Zolt, (n 82) 87.
[98] ibid

allowances, and exemptions for pioneer industries.[99] Policies supporting research and development and infrastructure investment have also been introduced.

Challenges:

(i) *Implementation Gaps*: The effectiveness of these incentives is often undermined by poor regulatory oversight, lack of transparency, and bureaucratic inefficiencies.[100]

(ii) *Sectoral Distortions*: Overgenerous incentives to the oil and gas sector have skewed economic priorities and discouraged diversification.[101]

7.2: Distributional Effects

This principle advocates a fair allocation of the tax burden and equitable distribution of public goods. It aligns closely with the Smithian canon of equity by seeking to redistribute wealth without creating disincentives for high-income earners.

Applicability in Nigeria: Nigeria's Personal Income Tax Act adopts a progressive tax rate that aims to ensure vertical equity. Social investment initiatives, such as N-Power and TraderMoni, are funded through tax revenue and aimed at reducing poverty.[102]

Challenges:

a. *Weak Redistribution*: Rampant tax evasion by high-net-worth individuals and inefficiencies in welfare programs have limited the redistributive power of taxation.[103]

b. *Regressive Tax Burden*: Indirect taxes such as VAT disproportionately affect low-income earners, worsening inequality.[104]

[99] Industrial Development (Income Tax Relief) Act, Cap I7 LFN 2004.
[100] J Naiyeju, *Taxation and Fiscal Policy in Nigeria* (Lagos: Spectrum Books, 2011) 93.
[101] M Adebayo, "Tax Incentives and Distortions in the Nigerian Oil Sector" (2020) 8(1) *Nigerian Journal of Petroleum Economics* 14.
[102] National Social Investment Office, *Annual Report 2020* (Abuja: NSIO, 2021).
[103] SM Olokooba, (n 17) 55.
[104] A Fagbemi, "The Regressivity of Nigeria's VAT System" (2021) 10(2) *African Journal of Tax and Fiscal Studies* 33.

7.3: Simplicity, Cost of Administration, and Compliance

The Meade Report recommends that tax laws be comprehensible, consistent, and efficiently administered to reduce compliance and administrative costs.

Applicability in Nigeria: Efforts such as e-tax filing, the introduction of Tax Identification Numbers (TINs), and taxpayer education are steps in the right direction.[105]

Challenges:

a. *Complex Legislation*: Frequent amendments, overlapping jurisdictions, and technical drafting deficiencies contribute to taxpayer confusion and legal disputes.[106]

b. *High Administrative Costs*: Managing tax collection in Nigeria's vast informal economy increases costs and reduces efficiency.[107]

7.4: Flexibility and Stability

Tax systems must be adaptable to changing socio-economic conditions while maintaining predictability to foster investor confidence.

Applicability in Nigeria: The introduction of annual Finance Acts (since 2019) has demonstrated responsiveness to economic and policy shifts.[108]

Challenges:

(a) Policy Volatility: Frequent and often reactive amendments undermine predictability and long-term business planning.[109]

(b) Inflexible Enforcement: Tax laws are sometimes rigidly applied without regard for taxpayer circumstances or evolving industry realities.[110]

7.5: Productivity (Fiscal Adequacy)

This principle, also referred to as *fiscal adequacy*, requires that the tax system generate sufficient revenue to meet public expenditure needs without unsustainable borrowing or inflationary finance.

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[105] Federal Inland Revenue Service, *Strategic Plan 2020–2025* (Abuja: FIRS, 2020).
[106] Shell Petroleum Development Co. v. FBIR (1996) 8 NWLR (Pt. 466) 256.
[107] N Adegbie and A Fakile, "Challenges of Tax Administration in Nigeria" (2011) 3(1) *Journal of Business Studies Quarterly* 29.
[108] Finance Act 2020 (Nigeria).
[109] A Olasupo, "Legislative Overactivity and Taxpayer Uncertainty in Nigeria" (2023) 6(1) *Nigerian Law Review* 67.
[110] T Akanle, (n 47) 87.

Applicability in Nigeria: Nigeria generates tax revenue from a mix of corporate income taxes, VAT, and customs duties. Recent reforms have aimed to expand the tax base.

Challenges:

- Low Tax-to-GDP Ratio: At under 11%, Nigeria's tax-to-GDP ratio remains one of the lowest in Africa, undermining its fiscal sustainability.[111]
- Oil Revenue Dependence: Volatile global oil prices directly affect government revenue, compromising the reliability of fiscal planning.[112]

7.6: Diversity of the Tax Base

A diversified tax system reduces vulnerability and distributes tax burdens more equitably by drawing revenue from multiple sources.

Applicability in Nigeria: The Nigerian tax structure includes corporate and personal income taxes, VAT, excise duties, customs duties, and digital service taxes.

Challenges:

- Sectoral Concentration: Oil, telecommunications, and a few formal sectors bear the bulk of the tax burden, while the informal economy remains largely untaxed.[113]
- Imbalanced Revenue Structure: Overreliance on VAT and petroleum taxes has created exposure to price shocks and consumer resistance.[114]

8.0 Conclusion and Recommendations

Taxation remains a cornerstone of economic governance, evolving from a mere tool for revenue generation to a broader instrument for wealth redistribution, economic regulation, and social progress. Rooted in both classical principles such as Adam Smith's canons and modern frameworks like the Meade Committee's recommendations, taxation continues to influence global public finance systems.

[111] World Bank, *Nigeria Development Update* (Washington DC: World Bank Publications, 2023).
[112] Central Bank of Nigeria, *Statistical Bulletin* (2022).
[113] FIRS, *Tax Statistics Report* (2023).
[114] SA Ogunmuyiwa, "Diversifying Nigeria's Tax Base: An Assessment" (2022) 11(3) *West African Fiscal Policy Journal* 45.

This paper explored the conceptual foundations and definitional complexities of taxation, advocating a functional perspective that assesses levies based on their characteristics rather than nomenclature. It applied this understanding to critically evaluate Nigeria's company tax regime in light of key normative ideals: equity, certainty, neutrality, and administrative efficiency.

Despite several reform efforts, Nigeria's tax system faces significant challenges. The legal framework is often ambiguous and inconsistently enforced, creating uncertainty and undermining confidence. Perceptions of inequity persist, as large corporations and politically exposed individuals appear to bear less tax burden compared to SMEs and low-income earners. Moreover, tax compliance remains costly and administratively burdensome, particularly for small businesses, deterring voluntary compliance and weakening revenue mobilisation.

To address Nigeria's company tax challenges, this paper recommends simplifying tax laws, adopting a progressive structure, automating compliance for SMEs, and strengthening tax administration. Aligning with classical canons and modern realities requires integrated reforms combining legal clarity, institutional capacity, and a renewed social contract. Properly implemented, taxation not only funds governance but also builds public trust, promotes fairness, and supports sustainable national development.

In response to the legal ambiguities, perceived inequities, and systemic inefficiencies identified in this paper, the following streamlined reforms are recommended to improve transparency, equity, and operational effectiveness in Nigeria's company taxation framework:

1. **Simplify and Clarify Tax Legislation**: A comprehensive overhaul of tax laws is essential. This should include harmonizing existing statutes, eliminating obsolete provisions, and drafting regulations in clear, accessible language to reduce interpretative ambiguity. Regular issuance of circulars, FAQs, and explanatory notes with stakeholder consultations will further clarify complex provisions and promote legal certainty.
2. **Promote Tax Equity:** A more progressive tax structure should be adopted, allowing larger corporations to bear proportionately higher burdens while easing pressure on

SMEs. Ensuring both horizontal (equal treatment of similar taxpayers) and vertical (burden relative to capacity) equity will enhance fairness and inclusiveness in the tax system.

3. **Improve Administrative Efficiency**: Tax procedures should be streamlined via digital platforms that simplify filing and payment, particularly for SMEs. Simultaneously, expanding taxpayer education, digital helpdesks, and walk-in support centers will encourage voluntary compliance and demystify tax obligations.
4. **Reduce Administrative Costs**: Modernizing tax infrastructure through e-filing, automation, and AI-assisted audits can significantly cut costs, minimize errors, and curb revenue leakages. Periodic performance audits of tax authorities should be institutionalized to identify inefficiencies and optimize resource deployment.
5. **Introduce Responsive Legal Mechanisms**: A dedicated tax reform task force should be established to propose timely legislative updates aligned with economic realities and global standards. Legal harmonization between federal and state regimes will also ensure consistent application and reduce regulatory contradictions.
6. **Strengthen Growth-Oriented Incentives**: Tax incentives should be expanded and better targeted toward priority sectors like agriculture, ICT, manufacturing, and renewable energy. Instruments such as tax holidays, R&D credits, and employment-based deductions can stimulate investment. Awareness campaigns must accompany these measures to ensure accessibility and uptake, especially among SMEs.
7. **Enhance Inter-Agency Coordination**: Greater collaboration among the Federal Inland Revenue Service, state tax authorities, customs, and regulatory bodies is vital. Developing integrated data-sharing platforms will improve enforcement, eliminate redundancies, and support a unified national tax system.

THE ELECTRICITY ACT 2023: A GAME-CHANGER IN THE NIGERIA'S POWER SECTOR REFORM

Abdulwasi Musah*

Abstract

This paper analyses the Electricity Act, 2023, with a view to detailing its novel provisions aiming at effective, sufficient and efficient power sector reform in Nigeria. The Act is aimed at a total overhauling and developing of the Nigeria power sector in a sustainable way in order to make the country meet its energy requirements and demands. Nigeria requires steady electricity supply for it to realise its goals towards a sustainable economic development. The reality on the ground is that the sector is in a big mess, ranging from very short supply, incessant power failures resulting into power unreliability and inadequate electricity generation. The country, with over 200 Million people, has just around 6000 megawatts of electricity supply, a situation closely linked to varying factors including transmission and distribution losses, generation constraints and load demand. Approximately 40% of the citizens lack access to electricity from the national grid. This translates to roughly 92 million people and this has brought about stagnation, with the country's economy seriously affected. To reverse this trend, the country has, at different times, gone through legislation and regulatory adventures, with the latest efforts being the Electricity Act, 2023.

Keywords: Electricity reform, regulatory and legal frameworks, sustainable development.

I Introduction

Electricity is one of the bedrocks of a viable and prosperous economy. It is very critical to economic and social development as well as poverty alleviation.

[1] The country needs an intentional investment in the power sector to realize its economic goals. The extent to which a country may experience economic growth is dependent on how much they can harness electricity. A lot of economic variables are dependent on electricity and without it they may not see the light of the day. In a nutshell, electricity's importance pervades our daily life, ranging from job creation, house warming, medical services, water heating, house cooling, etc., to powering our offices and industries.

In 1929, the colonial administration established, Nigerian Electricity Supply Corporation (NESCO)[2] for the country.[3] This company was the first body to be established to oversee electricity generation, transmission and distribution.[4] This was decades after electricity was first generated in Nigeria in 1895[5]. The first legislative instrument to regulate the electricity sector came in 1959. That was the Act of Parliament establishing the Electricity Commission of Nigeria (ECN).[6] A 1979 Act No. 62 was used to establish the ECN. The said Act 62 was later amended twice, in 1988 and 1989 by Acts 32 and 19, respectively. ECN was made the apex government body with the statutory mandate to take total charge and control of the Nigerian energy sector in terms of policies formulation and execution so as to ensure that the country realises the best of energy provisions and to work towards introduction of other energy sources, alternative to

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[1]Erhun, M. O & Johnson, D.O (2018) "A *Legal Framework for Sustainable Electrical Energy Industry in* Nigeria" (2018) 8,(2) Journal of Sustainable Development Law and Policy.

https://etenders.com.ng/nigerian-electricity-supply-corporation-nigeria-limited-request-for-proposal-for-installation-of-starlink-for-nigerian-electricity-supply-corporation-nesco-nigeria-limited-bukuru-jos-south-plat/

[3]Olushuyi, L " *Deconstructing the past reforms and the current structure of Nigeria's electricity sector,* Business Day" (2024), *https://businessday.ng/opinion/article/deconstructing-the-past-reforms-and-the-current-structure-of-nigerias-electricity-sector/*

[4]Erhun, M. O & Johnson, D.O (2018) "A *Legal Framework for Sustainable Electrical Energy Industry in* Nigeria" (2018) 8,(2) Journal of Sustainable Development Law and Policy, ibid at 1.

[5]ibid

[6] https://energy.gov.ng/ecn_act.php

electricity for optimal realization of the energy targets of the government.[7]In short, the Acts make the ECN, not only the regulator but also the operator of the country's power sector.

To take charge of the Kainji hydroelectric dam and superintend the irrigation and hydropower activities around it[8], the Niger Dam Authority (NDA) came into being in 1962, following the ECN.[9]And, subsequently, the military administration, through a Decree, established the National Electric Power Authority (NEPA) through the merger of the NDA and the ECN.[10] On the formation of NEPA, it enjoyed monopoly and non-competition over its control of the Nigerian power sector. It has to be noted that at those periods, there were private power generating plants but NEPA was empowered by the Decree establishing it to oversee, regulate and maintain Nigeria power sector.

Nigerians had a lot of stories to tell under the NEPA regimes. The period was synonymous with hue and cry over electricity supply; there was erratic power supply at that time ranging from load shedding and non-connection of many towns to the national grids and so on. Under NEPA, the story of the country's power sector was not that good in terms of power generation and distribution with outrages here and there. There were calls, across the county, for a reform of the sector and a disbandment of NEPA. These, amongst others, informed the determination and commitment of the government to look for possible ways to make the electricity market more efficient. And, going by this determination, in 2001, the Olusegun Obasanjo presidency promulgated the National Electric Power Policy (NEPP)[11] with the idea of making the power sector a private concern, and privatizing it through a systemic process of handling both ownership and controlling machineries of the sector in the hands of the private individuals. And, to further enhance the power sector and in order to give a statutory backing to the privatization agenda, the government, introduced a new legislation, the Electric Power

[7]ibid
[8] https://archive.gazettes.africa/archive/ng/1972/ng-government-gazette-supplement-dated-1972-06-29-no-31-part-a.pdf
[9] ibid
[10] See the Military Decree Supplement to Official Gazette No.31, Vol. 59 of June 1972
[11]https://www.policyvault.africa/policy/national-electric-power-policy/

Sector Reform Act (EPSRA).[12] This new Act repealed the decree that established NEPA[13] and we then had the Power Holding Company of Nigeria (PHCN)[14] replacing NEPA. PHCN had 18 subsidiary companies in the following order:

i. It has 6 Power Generating Companies
ii. It has 11 Distribution companies and
iii. It has a Transmission Company (TCN)

With the provisions of the EPSRA, the Nigerian Electricity Regulatory Commission (NERC)[15] was created as the body saddled with the powers of regulation over the sector. It is important to mention here that as at December 2013, PHCN has gone into extinction. Also remarkable here is the fact that all the six generating companies established sequel to the PHCN, and ten of the eleven distribution companies immediately went into privatization. Before the end of 2014, the last distribution company was also privatized.[16] The only TCN, under the PHCN regime was, for administrative convenience, put under the control of the Federal Ministry of Power and it continues to remain a public entity.

The power sector reform has now led us to the new Electricity Act, 2023 (The Act). The new Act effectively repealed and ended the EPRSA regime in the country's power sector. The new Act is a privatization driven legislation as it allows for individual investors' participation across all the levels in the country's electricity supply chain, once such individuals fulfill necessary prerequisites and obtain requisite licenses.[17] These and more we shall discuss under subsequent headings.

[12]Federal Republic of Nigeria, Official Gazette No. 77, Vol. 92, 8th August, 2025
[13]Atoyebi, O.M "*Challenges Following the Privatization of the Nigerian Electricity Sector" (2004), https://omaplex.com.ng/challenges-following-the-privatization-of-the-nigerian-electricity-sector/*
[14]https://www.developmentaid.org/organizations/view/407784/phcn-power-holding-company-of-nigeria-formerly-nepa-national-electric-power-authority
[15]https://nerc.gov.ng/
[16]Privatizing these companies effectively made more than 50% of the shares in these companies to be sold to private investors.
[17]Olushuyi, L "*Deconstructing the past reforms and the current structure of Nigeria's electricity sector,* Business Day" (2024), *https://businessday.ng/opinion/article/deconstructing-the-past-reforms-and-the-current-structure-of-nigerias-electricity-secto*

2. The Act at a Glance

A few weeks after assuming office, President Bola Tinubu, on 08 June 2023 assented to the then Electricity Bill, effectively making it an Act.[18] The Act repealed the EPSRA 2025[19]and grants the component states of the country[20], juristic persons, i.e, private companies, and interested individuals, the powers of participation at every stage of the energy supply chains, including; power generation, power transmission, and power distribution.[21] By so doing, the Act stands to promote competitiveness and efficiency in the market.

As earlier discussed, Nigerian power sector, rather than been administered by a single codified document has always been administered by different legislation supported by policy documents. The Electricity Act 2023, however, comes with so many innovative highlights like no other legislation before it. It encapsulates many areas of power enhancement with the main goal of turning the power sector around in the area of generating, transmitting and distributing power. The Act is no doubt a game-changer for the country's power sector; however, its success is dependent on so many other factors and, more importantly, the readiness to do away with the customs of having effective legislation with ineffective regulators to administer it. That has been the case with regulators of statutory bodies round here.

The power generation from the national grids has been insufficient for the demands of the country's ever-growing population and highly expanding economy; hence, unlike its predecessors, the Act places a very high premium on promoting renewable energy and how the clean energy sources may integrate and enhance the country's energy framework[22] by making the sector sufficient and cleaner. No doubt, the power generation

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[18]Idowu, D., Peregrino T., Oyewole O., and Iwunze, C (2023) "*Review of the Electricity Act 2023 and its Implications on the Nigerian Electricity Supply Industry" (2023) (NESI)https://www.dlapiperafrica.com/en/nigeria/insights/2023/REVIEW-OF-THE-ELECTRICITY-ACT-2023-AND-ITS-IMPLICATIONS-ON-THE-NIGERIAN-ELECTRICITY-SUPPLY-INDUSTRY-NESI.html. Retrieved on 5/8/2025*

[19]Electricity Act,2023, Explanatory Memorandum.

[20] These are the 36 states of Nigeria and the Federal Capital Territory (FCT)

[21]Section 2 (2) Electricity Act, 2023. LFN

[22]Section 1 (l) Electricity Act, 2023.

from the renewable energy sources will contribute in no small measure to the power generation from the national grids and ancillary hydraulic sources.

The Act has come to change the story of Nigeria power sector, for good, on so many grounds. It is a forward-looking legislative effort with a very wide coverage. It streamlines the various segments of the power sector with proactive rather than reactive measures that could sustain sufficient power generation for the country. It decentralizes the power sector through its seamless embrace of privatization in the sector. The Act has simplified and demystified the mystery surrounding power generation, power transmission and power distribution by allowing willing individuals, incorporated bodies and government of the component states of the federation to get involved in the new energy supply chain. This alone is a departure from the monopoly which the federal government has always been exerting over the sector.[23] Apart from the fact that competition breeds effectiveness, this measure will also allow different states to develop their energy sector at their own pace. The Act also tilts towards new energy sources. It seeks to discourage the use of fossil fuels energy options and incentivizes the use of new energy sources with various benefits including tax holidays, tariffs and so on; it establishes the commission to develop hydroelectric power-producing areas; and most importantly, it allows for embedded generation of energy by requiring power generators to opt for renewable energy sources to augmenting their energy supplies.

In a nutshell, the Act detached system operations from transmission, creating the Nigeria Independent System Operator (NISO)[24] to manage the power system independently.[25] It also separates distribution and supply operations, allowing for specialized entities to handle each function.[26] The Act's focus on decentralization, renewable energy, and

[23]Section 2 (2) of the Electricity Act, 2023.

[24] The Nigerian Independent System Operator (NISO) is a newly established entity responsible for the operation and management of Nigeria's electricity grid. It was created by unbundling the Transmission Company of Nigeria (TCN) as mandated by the Electricity Act of 2023. NISO's primary functions include generation dispatch, grid coordination, market oversight, and ensuring the reliability and stability of the national grid

[25]PART IV Section 15 (1) Electricity Act, 2023. LFN

[26] PwC's Annual Power & Utilities Roundtable (14th edition), "The Electricity Act, 2023, Powering Nigeria." https://www.pwc.com/ng/en/assets/pdf/power-roundtable-2024.pdf. Retrieved on 04/08/24.

attracting investment is ultimately aimed at improving electricity access and reliability for both consumers and businesses.

It is important to note that under this Act, NERC continues to retain that power of regulating the sector pending the adoption of the Act by different states. NERC continues oversight on interstate transactions as well as undertaking processes involved connecting power generation to distribution, with the states so as to ensure that the process of transition is seamless.[27]

In addition, the National Integrated Electricity Policy and Strategic Implementation Plan[28] created by the Act is another new deal. This Plan aims to foster massive development of the power sector by providing for issuance of an Integrated National Electricity Policy and Strategic Implementation Plan, to be published in official gazette after due consultation with all government stakeholders in the industry. The Act stipulates a period of one year for this to be done and to be overseen by the Ministry of Power.

The National Hydroelectric Power Producing Areas Development Commission (NHYPPADEC)[29] puts in place by the Act as a body corporate and vests with the task of policies and guidelines formulation as regards promotion of areas where dams are situated to produce hydroelectric power, amidst the powers of the Minister to issue policy directives and the NERC's general authority over the general regulation of the electricity industry, is another good omen. We must take a particular note of the fact that the NHYPPADEC is a new Commission which was introduced for the first time, in the Act. The composition of this Commission as well as its seat of operation are as contained in sections 83 and 84 respectively and its statutory responsibilities are contained in section 89(a) – (h) of the Act. The NHYPPADEC has the powers to research into and dealing with factors affecting the development of the hydroelectric power producing areas as well as helping the component states of the country in the area of policies formulation which

[27]PwC's Annual Power & Utilities Roundtable (14th edition),The Electricity Act, 2023, Powering Nigeria. https://www.pwc.com/ng/en/assets/pdf/power-roundtable-2024.pdf. Retrieved on 04/08/24.
[28]Part II Section 3 (1) Electricity Act, 2023, LFN
[29]Part VIII Section 82 Electricity Act, 2023 LFN

could lead to purposeful utilization of the resources of the hydroelectric power producing areas and dealing with environmental concerns which could result from overloading of dams in such areas as well as issuing advisories to both the federal and state governments on preventive measures for floods and other forms of environmental hazards.

Another key component of the Act is that it establishes the Nigerian Electricity Management Services Agency ("NEMSA");[30] and vests it with the powers, to among others; work with the Standards Organization of Nigeria (SON) and other government agencies, in ensuring that the electricity appliances used in Nigeria power installations are not substandard and compromised materials, and, to ensure that all power networks and projects are executed with precision before being put into use so that such installation would guarantee safety for users, reliability in standard and foster a satisfactorily and enduring enjoyments to the power consumers. The power of the Agency in terms of quality control and safety requirements cut across; the national grids, all transmission systems and electrical installations.[31] Over the years, Nigerians have contended with power shortage due to poor and substandard electrical materials being deployed for electricity projects. This measure, as being championed by the NEMSA under the Act aims at putting an end to that era of compromise and business as usual, in project execution in the sector. However, the success of this noble idea and provisions is depended on further measures which may be necessary and required for effective implementation.

Also introduced in the Act is a transmission and distribution network. This, without any doubt introduces a new set of opportunities for would be investors, in the areas of substations, smart systems, transmission lines and distribution networks systems.[32] This provision will no doubt aid the economy of the country in so many ways as it would create reciprocal opportunities for new forms of investment and aid the country's local manufacturing stride in the areas of manufacturing of electrical materials and also

[30]Part XVIII Section 125 Electricity Act, 2023 LFN
[31]Part XVIII Section 176 (a-e) Electricity Act 2023, LFN.
[32]Part XIX Section 121 Electricity Act,2023,LFN.

enriches the local markets in terms of supplies of such electrical equipments. And, ultimately, it will promote local content in the power sector.

Moreover, it needs to be emphasized at this juncture that after the successful amendment of items listed at the 2nd schedule to the 1999 Constitution, and particularly, the listing of power distribution, transmission and generation, and sales, as matters upon which both the federal and state have powers over. The Constitution and the Act have adopted a decentralized power sector in the country, and this would ensure greater achievements in the sector. Each state may now develop its own electricity in its own pace. The onus now lies on the states to make electricity sufficient for their people as they want. We hope that this brings about healthy competition among the states wherein at the long run, stable and affordable electricity would be made available to the consumers at different states.

Finally, ample provisions are contained in the Act, for offences and penalties thereof. For any person who taps an electric connection or illegally loops, bypasses a meter or tampers with a meter in any way or destroys it in a way that it affects the normal metering system, or deploys the electricity to unauthorized use with compromised metering will be subjected after, conviction, to a fine as provided under this section or to a three year imprisonment or both. And, for electric line and material theft, a person on conviction is liable to a fine not less than N500,000.00 only, or at least a 3-year imprisonment term and a maximum of up to 5 years imprisonment, or both. An offender who had been convicted before is liable, after conviction, the second time, for a fine not less than N1,000,000.00 only, or a sentence of 5 years imprisonment. Other offences stipulated under the Act include deliberate power disruption, breaking or destruction of electricity materials negligently, wanton destruction of street lights, intentional connivance in false declaration, impersonation and obstruction of officers in carrying out their duties and so on.

The Act vests the Chief Law Officer of the country and of each state, that is, the Attorney-General of the Federation and Attorneys-General of the 36 states, the powers over prosecution of all crimes created under the Act. And, these powers may also be exercised by the relevant security agencies with the consent of the respective Attorney-

General, first obtained. And rightly so, both the states and federal High courts have jurisdiction over the Act.[33]

3. Promotion of Renewable Energy under the Act

Prior to the enactment of the Act,[34] renewable energy has not had a streamlined legal regime advancing it; rather, it had always been administered under series of legislation and policies rather than a single comprehensive document. The Environmental Impact Assessment Act, 1992,[i] for instance, which mandates the prior ecological assessment before project execution so as to determine the likely environmental effects of the conceived project on the environment where it will be sited. It goes without mentioning that this provision also includes renewable energy projects. This mandatory provision therefore requires that any power developer who plans to make do with renewable energy sources for power generation must register their projects with the Federal Ministry of Environment for an environmental impact assessment, as mandated by section 2 of the Act.

The National Energy Policy, 2003[35] aims at utilizing and deploying all the country's energy resources to better the life of the citizenry. The policy spells out these beautiful objectives and states the plans and strategies which the country intends to adopt to realise this. The EPSRA is tailored towards these objectives by bringing significant changes to Nigeria's electricity supply through its decentralization and the powers vested in NERC. The Act, in its section 88(1) establishes the Rural Electrification Agency (REA). It also establishes a fund to promote electricity access for the rural areas, most importantly, through renewable energy sources. Additionally, section 96 of the ESPRA, empowers the NERC to issue from time to time, regulations that are necessary to enhancing the power sector of the economy. Sequel to the provisions of section 96, NERC issued regulations on feed-in Tariffs for the promotion of renewable energy in 2015 and to encourage private generators of renewable energy in 2017. The coming of the Act has led to a repeal

[33]Section 223 Electricity Act 2023,LFN
[34] Environmental Impact Assessment Decree No 86 of 1992 Laws of the Federation of Nigeria
[35] https://rea.gov.ng/wp-content/uploads/2017/09/National_Energy_Policy_Nigeria.pdf

of all the regulations hitherto made by NERC among others and they have been codified and accommodated under the new Act.

The REMP, 2005 opines that, to maximize optimal growth of the power sector and to support the country's drive for a net-zero emission reduction through gradual drop of the fossil fuels makes case, for the new energy sources, craves for the campaign and promotion of new energy sources including solar, biomass, ocean, among others, as quite essentials to achieving the country's sustainable energy goals. The plan shows that these objectives could only be achieved when a designated funds is established and deployed for that promotional effort under a well structured agency. Hence, the establishment of the Renewable Energy Fund (REF) which is being administered by the National Renewable Energy Agency (NREA). Interestingly, provisions concerning REF and NREA are also now, accommodated under the Act.

The Nigeria's 2016 Renewable Electricity Policy Guidelines encapsulates the whole essence of renewable energy sources and, in particular, the onerous objectives of the government aiming at promoting renewable energy sources at all cost are well detailed in it. The aims of the government to integrate renewable energy into the country's energy framework in order to improve electricity supply as well as ensuring a reduction in greenhouse gases emission are fully highlighted. The guidelines align in totality, with the United Nations Sustainable Development Goal 7, which seeks for a global provision of new energy sources, devoid of climate change induced elements, for all. Good as these new energy options seem to be, financial constraints, technical challenges and so on are identified as some of the core obstacles in achieving the objectives.[36]

The Act has therefore come to address the renewable energy's importance in the power sector with all the necessary attention and full legislative backings. The Act generously promotes the new energy options and its inclusion into Nigeria's power framework. This is very clear and the Act reveals this, even from its Long Title. The Act grants the Minister for Power the authority to be deliberative in this regard by formulating policy

[36]Ater Solomon Vendaga, "An Appraisal of the Role of the Electricity Act, 2023 in the Actualization of Renewable Energy Adoption in Nigeria".

directives aimed at nurturing the renewable energy sector. Additionally, the Act empowers the Nigerian Electricity Regulatory Commission (NERC) to promote the growth of renewable electricity actively.[37]

A close perusal of the Act shows that when electricity is generated from the new energy sources, the generator of such electricity will be supported by the government. This, without an iota of doubt reveals the focus of the government in terms of the intendment of the Act. Also, the Act is deliberative in ensuring that all barriers in the way of renewable energy sources are removed to pave way for its integration into the country's energy framework. Having proven over time that many citizens are unaware of the benefits inherent in the new energy options over the traditional fossil fuels, the Act emphasises on public education initiatives to enhance investor confidence and promote the power sector growth.[38]

In a very novel initiative, the Act puts in place the National Integrated Electric Policy and Strategy Implementation Plan (NIEPSIP),[39]and empowers it to drive renewable energy development across the country. At section 3 of the Act, new energy sources like coal, solar, biomass and so on are meant to be promoted towards realising the overall objectives of the Act. It also provides for financial succor to address financial problems required for renewable energy infrastructures, through waivers and subsidies.[40]This, no doubt, is a legislative breakthrough for renewable energy development.

As mentioned earlier, the Act gives NERC the regulatory authority over the country's power sector. It also puts it in charge of renewable electricity projects across the country. NERC is mandated under the Act to ease licensing procedures for promoters of renewable energy projects. Additionally, NERC is obliged, in administering its pricing mechanisms, to be considerate, considerable and lenient with promoters and consumers of renewable energy sources over and above others.

[37]See the Long Title, Electricity Act, 2023, LFN
[38]Part XIX Section 185 Electricity Act, 2023, LFN
[39]Section 3, Electricity Act, 2023.
[40]Section 3 (2) (e) Electricity Act, 2023.

The Act establishes the REF to address the issue of high cost of renewable energy sources infrastructure and it puts in place the REA[41] to monitor the disbursement and general management of the funds.[42] To fully address and facilitate more incentives for the renewable energy investors and consumers alike, the Act provides for an affordable interest loans regime, for local renewable energy producers, which undoubtedly will further encourage investment in the new energy sector.[43]

Section 82 of the Act establishes the NHYPPADEC to ensure promotion of hydroelectricity development collaboratively between the federal and state governments. The NHYPPADEC, as afore-discussed, has the mandate to promote and support all initiatives aiming at hydroelectricity development and at the same time to address the ecological challenges that surface in the course of hydroelectric power production.[44]

In order to shift the people's attention towards the renewable energy options, the Act introduces financial mechanisms in terms of tariffs and obligations to purchase renewable energy sources.[45] The Act does this by making it compulsory for bulk buyers/traders of electricity to ensure that when they buy electricity, more concentration of their purchase must be on renewable sources. This is another way to encourage investment in the sector.

The Act has come to enhance and strengthen the new energy sources to complement the power generation from the national grid and to also support the country's drive of energy shift from the fossil fuels to the cleaner energy sources as encapsulated in renewable energy. How far this will succeed is yet dependant on NERC and other regulators, and most importantly, the readiness of the governments of the thirty states to embrace these legislative breakthroughs in the sector.

[41]Section 129, Electricity Act, 2023, LFN
[42]Part XVI Section 142 Electricity Act 2023, LFN
[43]Part XVII, Section 164-170 Electricity Act 2023, LFN
[44]Part VIII, Section 89, Electricity Act, 2023, LFN
[45]Section 164 Electricity Act, 2023, LFN

4. Decentralization of the Power Sector and the Act

To understand how the Act has impacted the power sector administration in Nigeria, let me first explain the movement of power supply from the generators to individual households or any other places where it is being consumed. And this will represent the power supply chain in Nigeria. The process is captured thus:

From power Generation – To power Transmission –

Then to power Distribution – and finally to Consumption

The Generating Companies of electricity, known as (GenCos) generate electricity through different media from their plants. After power has been generated, then the aggregated power would be harvested and set forth for transmission across the country through the Transmission Company of Nigeria (TCN) which trades these powers to the distribution companies otherwise known as the DisCos. Many who consume power in the country only relates with the DisCos as they are the only entity in the supply chain that deals directly with the people in term of power supply, billing and payment for power supply. Nigeria presently has eleven DisCos and each of them is assigned to handle power supply to different parts of the country.

In discussing the trajectory of decentralization of the Nigeria power sector, we must first agree that decentralization of the sector becomes necessary to mitigate and address the question of inadequate power supply. According to NERC, most of the generated power is not being deployed to use. The reason for this is not far-fetched; there are a lot of challenges facing gas supply and the power sector contends with numerous commercial challenges. This, in turn hinders the power distribution drives in the country. Hence, the decentralization of the NESI.[46] The argument that the federal government should not be left alone to address electricity gaps gained traction after all. The new order is for the state government to also have a say in it and put in place necessary machineries for its implementation.

[46] Onojason J., Ole C. O. and L. U. Alliance Law Firm, "The Electricity Act 2023 and the Constitutional Amendment: Implications for the Power Sector", (2023) Alliance Law Firm. www.lexicology.com. Retrieved on 01/08/25.

The first challenge was the exclusiveness of the federal government with all the powers to superintend the power sector. The 1999 Constitution provides for this until the recent amendments which now make matters concerning the administration of the power sector an item under the concurrent list to the effect that both the federal and state governments would have power over. Under the concurrent list of the amended 1999 constitution, paragraph 13(a) and (b), and paragraph 14(a) and (b) respectively grant the federal and state government the power over the power sector while the state may only exercise its own power to areas not covered by a national grid system within that state. The restriction imposed on the state to 'areas not covered by the national grid' later informed a further amendment of the concurrent list.[47]

The paragraph 14(b)[48] was later amended where the restriction, 'areas not covered by the national grid' was removed, thus effectively removing the earlier restriction placed on the states and donating to them unfettered powers over the power sector within their states. Hence, as the federal government has powers over the power sector, so as the state governments have.

The amendment also encourages private sector investments that would in turn drive the growth of electricity markets under a state driven and well structured regime. This will also better protect and support some of the states in Nigeria, such as Lagos, Oyo, Ekiti, Edo and Kaduna States, that had previously taken steps towards a state electricity market within their states.

The amendment has addressed the concurrency of both the federal and state government's power over the power sector. The Act is in total agreement with this new order introduced as it also reinforces a decentralized power sector. The Act allows state authorities to grant licenses to willing investors in the sector who may also be interested in investing and operating mini-grids and power plants in the state. It needs to be mentioned that an investor in the sector may choose to invest in any of the power supply chain or in more than one of them.

[47]ibid.
[48] Part II of the Second Schedule to the 1999 Constitution in March 2023

The Act allows individuals that are interested, to undertake a construction and operation of personally generated electricity, provided the generated electricity is not more than one megawatt of electricity at one single site, without a license. Also, it allows individual willing investors to undertake power distribution of not more than one hundred kilowatts on a single site, without a license, except the commission otherwise allows for more.

With the Act decentralizing the country's power sector, opportunities have presented themselves for healthy competition, which will ultimately result in productivity. The decentralization of the Nigerian communication sector by the Obasanjo administration is a good example of when competition can bring about efficiency and service delivery. With the state governments now empowered to have their respective power markets, private investors would find the power sector more lucrative to invest in and outshine their co-competitors in the industry.

5. Powers of the Nerc under Theact

The Act, as earlier pointed out, puts the NERC in a position to ensure a smooth operation of the NESI and by extension, its overall regulator.[49] NERC exercises various powers granted it under the Act and these include; the power to issue licenses and oversight over investors in the sector.[50]NERC is also empowered to exercise monitoring powers of activities going on in the electricity markets and it may issue warnings and when deserving, it may sanction any person in the power sector. The oversight powers of NERC extends to its powers to enter the premises of persons operating without a license or suspected to have committed an offence under the Act and it may seal the business undertakings of anyone found wanting.[51] NERC ensures that all players in the sector keeps to regulations issued by it from time to time and it performs quasi-judicial functions by helping in resolving disputes within the sector. It ensures due diligence in

[49]Part V, Section 33 Electricity Act,2023, LFN
[50]Section 34 (2) (d) Electricity Act 2023,LFN
[51]Section 34 (2) (f) Electricity Act 2023,LFN

the power sector operation and focuses on the effective realisation of objectives of the Act.[52]

The procedure for the application for a license is set out in the Act[53] to be initiated through an application to the Commission. The format for the application process is prescribed in the Act. An application for a license attracts the payment of prescribed fees and relevant documents as may be required by the Commission. It goes further to provide that an applicant must ensure the publication in national dailies, notice of his application to the Commission and the time frame for the publication is within thirty days of making the application. At least one of the two newspaper publications must be on a newspaper popular in the area where the licensee seeks to operate. Also, the notices must allow for the raising of objections to the application within the time prescribed by the Commission, and the Commission shall not issue any license until all objections or representations received by it have been addressed one way or the other. A licensee has the privilege of asking for a renewal before the expiration of a license.[54]

The Commission is always minded of the intendment of the drafters of the Act in terms of encouraging new energy sources over the traditional energy sources. In its *modus operandi*. The Commission gives preferences to licenses who intends to generate their power from renewable energy sources as well as embedded power generators and hybridized generators.[55]The reason for this is not far-fetched.

NERC may on its own discretions or acting upon a report made to it, question the performance of any player in the country's power sector. Its focus is the people and it would take any matter hindering the efficient use of the power infrastructures personal against any investor or stakeholder in the industry.[56]Where, base on the Commission's findings, after investigating a complaint against a licensee, and the commission is

[52]Section 34 (2) (b) Electricity Act 2023,LFN
[53]Section 71 (1-8) Electricity Act,2023, LFN
[54]Section 73, Electricity Act, 2023,LFN
[55]Section 80 (2) Electricity Act 2023, LFN
[56]Section 75 (1) Electricity Act, 2023, LFN

convinced about the liability of the licensee, the Commission may issue sanctions as may be necessary.[57]

The success or otherwise of the Electricity Act, 2023 is dependent upon the resilience, readiness and disposition to the statutory responsibility placed on the NERC. The Minister of power only has superficial, supervisory and ceremonial roles to play, the key operator of the power sector is the NERC, and hence, the responsibility placed on it in the Act must not be treated with disdain.

6 Conclusion and Recommendations

The enactment of the Act is no doubt a positive and progressive step towards solving the many problems confronting the country's power sector. It is also a game-changer in the Nigeria power sector development by decentralizing and promoting competition in the sector. The question regarding the likely clashes of the provisions of the Act with the Nigerian Constitution on the power of state governments to set up their own electricity outfits have also been put to rest through constitutional amendments. There is now a smooth field to operate the Act, and particularly, under which the states can on their own pace, develop and match up with their energy needs. The Act is a very good starting point for power stability and sufficiency in the country and, in view of its supports for renewable energy sources; it is well positioned to helping Nigeria meeting its net-zero emission targets by 2060 as per the Paris Agreement. By decentralizing the power sector, the Act seeks to encourage competition to enhance service delivery through collaboration among the competing parties and productivity. And, it promotes and incentivized electricity obtained through renewable energy sources to complement electricity supply from the hydro-electric source. The Act is far from being perfect but it is a good starting point and definitely a game-changer in the country's efforts to efficiency and adequate power developments. The recommendations set herein-under would definitely help to improve the implementation of the Act and at the same time provide areas of focus when opportunities arise for legislative improvements on it.

[57]Section 75 (2) (a-c)

Firstly, the states governments must put in place their electricity markets so as to maximize the advantages presented by the Act in terms of decentralizing the power sector and increasing both efficiency and improved service delivery which ultimately will bring about stable electricity to the people. Without the states putting in place their respective power markets, the utmost goals of the Act will be a myriad. Hence, each state is urged to put up necessary measures for setting up necessary entities in replica of NERC which is at the federal level.

Secondly, there is need for NERC to streamline the various regulators established by the Act, with a view to working within the extant regulatory and legal frameworks to ensure orderliness in operation to avoid clumsiness in the system. We do not envisage this could pose problems from the way the Act is arranged, however, NERC requires experts in various segments of the energy sector for proper coordination and implementation of the *corpus* of the Act.

Thirdly, the Act creates the REA and saddles it with various functions including managing the REF in order to promote electricity supply and renewable energy sources in the rural areas. No doubt, the rural areas are backyards of the state governments; each state must re-create these agencies in their respective states' Electricity Laws and support them to function towards power efficiency, sufficiency and promotion of renewable energy sources.

Moreover, to avoid a situation of operational overlapping among the component states of Nigeria, the newly created regional development commissions, could be used in building synergy among the states under the same region to work in relation to power generation, transmission and distribution under their respective regional development commission, instead of each state running its different entity. For instance, the South-West Development Commission could spearhead a regional electricity market for the South-West States of Nigeria. A future amendment to the Electricity Act could consider this, most especially, since the focus of these regional commissions is the social and infrastructural development of their regions.

Lastly, it is our humble view that the overall objectives of the Act will be more felt if the 774 local government areas, being the third tie of government and the closest to the grassroots are assigned roles under the Electricity Act, 2023. The local government areas are in best position to champion promotion of renewable energy sources and being the next to the people, grassroots mobilization, awareness creation and value orientation would be better served by the local government areas.

Overall, the success of the Act depends on the readiness of the political class, each of the Nigeria thirty six states and the Federal Capital Territory (FCT) must refocus their legislative arsenal and tune it in tandem with the extant constitutional provisions which now puts power generation, transmission, and distribution on the concurrent list and effectively making it possible for State Houses of Assembly to legislate over them. The Act will only meet up with the intended objectives of decentralizing the power sector when each state through their Houses of Assembly enact their respective Electricity Laws and constituting regulatory bodies like the NERC in various states to midwife the power sector at the state levels.

THE ROLE OF BLOCKCHAIN IN SECURING ONLINE TRANSACTIONS.

BY

Majebi Samuel Amune*

Abstract

In today's digital era, online commercial transactions have become an integral part of global trade, reshaping traditional marketplaces through the power of the internet. However, the growth of e-commerce has come with serious concerns surrounding the security, transparency, and trustworthiness of transactions conducted virtually. A major challenge remains the vulnerability of centralized systems to fraud, data breaches, and manipulation. This paper critically examines the role of blockchain technology in securing online transactions, offering a detailed analysis of how its features such as decentralization, immutability, transparency, and automation through smart contracts address existing shortcomings in traditional e-commerce systems. The paper adopts a doctrinal research methodology, relying on secondary data from academic journals, textbooks, online articles, and relevant case studies to provide a comprehensive understanding of the subject matter. The core objective of this paper is to establish how blockchain enhances the safety and credibility of online transactions, thereby boosting consumer confidence in digital marketplaces. It also aims to clarify the public misconception that blockchain is synonymous with cryptocurrency, while emphasizing its broader applicability. Findings suggest that blockchain significantly reduces human error, eliminates the need for third-party verification, and ensures transaction integrity through a decentralized and tamper-proof ledger. Smart contracts further automate and enforce agreements without the need for intermediaries, making transactions faster, more efficient, and more secure. The paper recommends the adoption of blockchain infrastructure by major online platforms, the education of stakeholders on its uses beyond cryptocurrency, and the creation of supportive regulatory frameworks to govern its deployment. In conclusion, blockchain stands out as a revolutionary tool in securing online transactions, promising a future of safer, faster, and more transparent digital commerce.

Keywords*: Blockchain, E-commerce, Online Transactions, Security, Smart Contracts.*

1.0 Introduction

Ideally, it is well established that human wants are unlimited, this then resulted in the need for making transactions to get what we want from whoever possesses it. Commercial transactions have not been traced to begin at a particular time, as the exchange of goods and services is traceable to, and is as old as man's existence itself. [1]

Traditionally, exchange of goods occurs in a local marketplace where two people meet to transact and facilitate their trades.[2] However, the facilitation of transactions has experienced a paradigm shift through the advent of technology. Thanks to the internet, transactions occur between parties without their meeting physically.[3]

2.0 Overview of Online Commercial Transactions

The advent of technology has taken itself as a monumental force in shaping transactions globally, making it a possibility for people to transact without meeting or even know each other. The most of it, is people transacting at the comfort of their homes.

In its simple term, E-commerce, fully known as electronic-commerce, is the exchange of goods and services through the use of the internet. An e-commerce typically involves two people meeting virtually at a designated online platform on their devices in order to conduct their transactions without setting up a physical meeting, which may at times occur.[4] As it has been staged, e-commerce requires an internet space for people to transact. Popular ones among e-commerce platforms include ***Shopify, Amazon, eBay,***

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[1] Ulrich M. Drubnig. "Commercial transactions". Available at https://www.britannica.com/topic/commercial-transaction accessed on 20th July, 2025.

[2] Indeed Editorial Team. "What is a marketplace? Benefits, importance and goals." Available at https://uk.indeed.com/career-advice/career-development/what-is-a-marketplace accessed on 20th July, 2025.

[3] Cameron Hashemi, Ben Lutkevich. "E-commerce". Available at https://www.techtarget.com/searchcio/definition/e-commerce accessed on 20th July, 2025.

[4] Andrew Bloomentha. "E-commerce Defined: Types, History, and Examples". Reviewed by Margaret James. Fact checked by Katrina Munichiello. Available at https://www.investopedia.com/terms/e/ecommerce.asp accessed on 20th July, 2025.

Etsy, Walmart, Alibaba.[5] While notable ones in Nigeria include ***Jumia, Konga, Jiji, Payporte, Slot*** etc. [6]

3.0 Introduction to Blockchain Technology

As the world evolves, information becomes power and security is paramount. A technological advancement which has turned into a backbone of transparency and ensuring security of information is the blockchain technology.

Blockchain is a shared, immutable digital ledger, which enables the recording of transactions and the tracking of assets within a business network and providing a single source of truth. [7] *Think of a game of whispers which includes 5 people, where the information whispered by the first person to the second person gets distorted or completely changed before it gets to the last person. A simple way to ensure the right information is passed to the last person from the first person is through the use of blockchain technology.* Blockchain technology is a collection of digital ledgers which is shared across different computers around the world where information stored on one computer is visible to all other computers, and any slight change in one is updated on the others[8].

How the technology works:

Blockchain uses a multi-step process that includes the following five steps:

- An authorized participant inputs a transaction, which must be authenticated by the technology.
- That action creates a block that represents the specific transaction or data.
- The block is sent to every computer node in the network.

[5] V Vineet Kumar. "10 Top Ecommerce Companies List and Guide" (2025). Available at https://www.shopify.com/ng/blog/ecommerce-companies accessed on 20th July, 2025.
[6] Sam. "Top 10 e-commerce websites in Nigeria". Available at https://avada.io/blog/ecommerce-websites-in-nigeria/ accessed on 20th July, 2025.
[7] Stephanie Susnjara & Ian Smalley. "What is blockchain?". Available at: https://www.ibm.com/think/topics/blockchain accessed on 20th July, 2025.
[8] https://www.ibm.com/think/topics/blockchain accessed on 20th July, 2025

- Authorized nodes validate transactions and add the block to the existing blockchain.
- The update is distributed across the network, which finalizes the transaction.

Once a transaction is completed, blockchain is updated across all nodes, making the transaction permanent, transparent, and tamper-proof. [9]

4.0 Concept of Blockchain

The blockchain technology is a digital ledger shared across different computer networks identified as nodes in which these ledgers are interconnected and information stored on one reflects and is visible to another to foster transparency and traceability. [10] Blockchain involves the use of blocks which are connected by chains, and once one is filled up, it is linked to previous blocks, and a new one is automatically created, which also links to previous ones once filled up as well. This ensures information stored are not in a centralized form under a single central authority, but in a decentralized form across different computer networks around the globe. [11]

In considering public understanding of the technology, a usual misconception among people is that the blockchain technology is the same as cryptocurrency. However, blockchain is an invention in its entirety, while cryptocurrency is just a specific use of the invention alongside other things which the technology is used for. The first cryptocurrency to adopt the use of the blockchain technology was Bitcoin by an anonymous person or group identified as Satoshi Nakamoto in 2009, who arguably is the creator of the blockchain technology also. Bitcoin used blockchain as a decentralized

[9] Kinza Yasar, Nick Barney& Mary K. Pratt. "What is blockchain? Definition, examples and how it works". Available at https://www.techtarget.com/searchcio/definition/blockchain accessed on 20th July, 2025.

[10] Stephanie Susnjara & Ian Smalley. "What is blockchain?". Available at https://www.ibm.com/think/topics/blockchain accessed on 20th July, 2025.

[11] Veera Budhi. "Advantages And Disadvantages Of Blockchain Technology". Available at https://www.forbes.com/councils/forbestechcouncil/2022/10/20/advantages-and-disadvantages-of-blockchain-technology/ accessed on 21st July, 2025.

public ledger to record transactions transparently and securely without a central authority. [12]

Flowing from the above, when defining the subject term ***Blockchain***, there are certain key things which are important to note in understanding what blockchain is, and what it entails. These terms are discussed in this paper below.

4.1 Key Features of the Blockchain Technology

As it has already been established above in this paper, the blockchain technology works through sharing transactions across different networks. This makes it characterized by features like decentralization - data shared across different nodes as opposed to being subjected to one single authority; immutability – data contained in the blockchain technology are permanent, and not subjected to unnecessary changes; transparency – since information is shared across different nodes, it fosters a sense of truth when there is nothing to hide from the other party. [13] It is however important to delve into the detailed explanation of each term.

Immutable: Immutability means the technology is permanent, unalterable and not subjected to an abrupt change. Blockchain works through a collection of computer networks identified as nodes. Once a transaction is initiated and completed, it is recorded, after which it cannot be modified or deleted. That ensures the technology is immutable and a tamper -proof ledger which provides a high level of trust and security.

Every computer network, node, has a copy of the ledger. When a transaction is initiated, before it is approved, it requires validation from majority of the nodes in the network which then approves the transaction and records it. This means a transaction is not approved and recorded by a single node, but by majority of the nodes or unanimously by

[12]Kriptomat. "A Brief History of Blockchain Technology That Everyone Should Read". Available at https://kriptomat.io/blockchain/history-of-blockchain/ accessed on 21st July, 2025.

[13] Ministry of Electronics and Information Technology, Government of India. "Features of BlockChain". Available at https://blockchain.gov.in/Home/BlockChain?blockchain=feature accessed on 21st of July, 2025.

all nodes. Once a transaction is validated and saved, it is irreversible and cannot be edited, change or deleted by any user of the network. [14]

Decentralized: In a blockchain, the framework is not under the oversight of a single entity or organization. The network takes the form of decentralization since it is maintained by a collection of nodes. This is one of the most important features of the blockchain technology given that it provides a great alternative to the centralized system. This gives users the autonomy and authority over the network as opposed to when it is under the control of a single individual or organization. This technology then provides the chance for us to access the network through the web from anywhere and save our assets since it is not subjected to certain regulations by any party or a certain regulating body.

This feature is a significant one, not only with it being opposed to a centralized system, but also on that there is a very low level of transaction failure, since transactions are regulated and not subjected to human approvals, resulting in lower chances of failure or errors.

Another thing this feature does is that even if a single node is compromised or attacked, it does not result in transaction failures since it is subjected to approval from majority of the nodes, and each node is distributed across networks globally. The decentralization of blockchain ensures individuals manage their assets independently without being under the control of centralized company. [15]

Transparent: Another important feature of blockchain is its transparent nature. This makes the system a new standard of transparency. It allows network participants to access the holdings and transactions of public addresses, with the user having his own private keys -password- to access the network. Every transaction, be it tangible or non-tangible, can be traced from the start to the finish with blockchain.[16] The blockchain technology aids traceable and unchangeable transactions which allows parties to trade with

[14] GeeksforGeeks. "Features of Blockchain". Available at https://www.geeksforgeeks.org/ethical-hacking/features-of-blockchain/ accessed on 21st July, 2025.

[15] Shardeum Content Team. "Key Features of Blockchain Technology". Available at https://shardeum.org/blog/what-are-the-features-of-blockchain/ accessed on 21st July, 2025.

[16] "What are the characteristics of Blockchain?" Available at https://how.dev/answers/what-are-the-characteristics-of-blockchain accessed on 21st July, 2025.

confidence without an intermediary. Although available for the public to see through public addresses, record owners' have the way to access their records privately using a public - private key pair. That way, users may remain anonymous and still maintain transparency.[17] This feature in particular makes blockchain suitable for things like voting, governing, and financial transactions. Other key features of the blockchain technology includes that it is ***Distributed***, it ensures ***Faster Settlement***, ***Smart Contracts,*** it is as well ***Secure.***[18]

5.0 Smart Contract in Blockchain Technology

To any enthusiast of technology who is familiar with the blockchain technology, ***Smart contract*** is no stranger. Smart contract can be seen as an automated, self-executing agreement that does not require human intervention or execution.

Smart contracts work by the following simple "if/when…then…" statements that are written into code on a blockchain. A network of computers executes the actions when the stipulated conditions are met, fulfilled and verified.

These actions might include releasing funds to the appropriate parties, registering a vehicle, sending notifications or issuing a ticket. The blockchain is then updated when the transaction is completed. That means the transaction cannot be changed, and only parties who have been granted permission can see the results. [19]

A simple illustration is given below on what smart contract is about.

Think of a situation where you go into a hotel where you want to sleep over for two weeks. For each day you spend in the hotel, there is a particular price, and there is a machine in the hotel that gives you the code to access the room you'll be staying throughout your stay in the hotel. Since you are spending 2 weeks, it brings out your price which you are to pay. After payment, the machine automatically brings out a code

[17] Shardeum Content Team. "Key Features of Blockchain Technology". Available at https://shardeum.org/blog/what-are-the-features-of-blockchain/ accessed on 21st July, 2025.
[18] GeeksforGeeks. "Features of Blockchain". Available at https://www.geeksforgeeks.org/ethical-hacking/features-of-blockchain/ accessed on 21st July, 2025.
[19] IBM Content Team. "What are smart contracts on blockchain?" Available at https://www.ibm.com/think/topics/smart-contracts accessed on 22nd July, 2025.

that doesn't work for a night that you didn't pay for, but for the two weeks that you paid for. The code then is what you use in accessing the rooms.

In the illustration given above, the only two parties there are the machine that brings out the code, and you visiting the hotel. What the machine that brings out the code does exactly is what a smart contract means. An agreement (the hotel pricing) has been inputted into a code for making the machine. All you are just required to do is your acceptance which is your payment, after which it gives you the code to access rooms. All these being done without human intervention is exactly what a smart contract is. A smart contract is a self-executing program that automates the actions required in a blockchain transaction. [20]

Smart contracts permit trusted transactions and agreements to be carried out among disparate, anonymous parties without the need for a central authority, legal system, or external enforcement mechanism. [21]

Smart contract works in the same way as a traditional contract while also automatically enforcing the contract. Smart contracts are programs that execute exactly as they are set up(coded, programmed) by their creators. As a traditional contract is enforced by the law, a smart contract is enforced by the code it was programmed with. [22]

5.1 What then are the Features of a Smart Contract and what are its Capabilities?

Distributed

Being a concept under blockchain technology, smart contract makes use of the distribution nature. Under a smart contract, every individual on the network is guaranteed to have a copy of all the terms, conditions and warranties of the smart contract and these

[20] Erika Rasure; Suzanne Kvilhaug. "What Are Smart Contracts on the Blockchain and How Do They Work?" By The Investopedia Team. Available at https://www.investopedia.com/terms/s/smart-contracts.asp accessed on 22nd July, 2025.
[21] Ibid
[22] GeeksforGeeks Content Team. "Smart Contracts in Blockchain". Available at https://www.geeksforgeeks.org/solidity/smart-contracts-in-blockchain/ accessed on 22nd July, 2025.

conditions are not subjected to be changed by either of the parties. A smart contract is copied and distributed by all the nodes connected to the network. [23]

Specificity

Smart contract as a programmed agreement designed by code does not do more, does not do less. What does this mean? Smart contract as an agreement designed by certain code for a specific function is only limited to the function which it has been designed to do, these functions can only be done when certain conditions which are part of the code it was designed with, are met or fulfilled. Smart contract can only perform functions for which they are designed only when the required conditions are met. The final outcome will not be different or change, regardless of who or how the person executes the smart contract. [24]

Immutable

Right from the time a smart contract is implemented, it is not subjected to any changes whatsoever. Smart contract cannot be changed, and it can only be removed if the functionality has previously been implemented by either of the parties.

Autonomy

Another notable feature of smart contract is the high level of freedom and autonomy it gives the dealing parties. Firstly, there is no existence of a third party in the contract. The contract is made by you and shared between the parties. No intermediaries are involved which minimizes bullying and grants full authority to the dealing parties. Additionally, the smart contract is maintained and executed by all the nodes on the network, thus removing all the controlling power from any one party's hand. Once a party is not satisfied with the terms, he may simply not agree to it, although could not be changed. [25]

[23] GeeksforGeeks Content Team. "Smart Contracts in Blockchain". Available at https://www.geeksforgeeks.org/solidity/smart-contracts-in-blockchain/ accessed on 22nd July, 2025.
[24] Ibid
[25] Ibid

Customizable

Although Smart contracts are immutable- cannot be changed once implemented, it then is subjected to modifications, only if it could be done before the deployment. Before deployment, either party or both parties have the chances and freedoms to modify it to suit their needs and meet their wants before implementing it. [26]

Transparent

Smart contracts are always stored on a public distributed ledger called blockchain due to which the code is visible to everyone, whether or not they are participants in the smart contract. [27]

Trustless

In a smart contract, integrity or trust is not required, as there is transparency for you to see what are the terms on the contract. By that, a smart contract only enforced when both parties fulfill their own side of the agreement. These are not required by third parties to verify the integrity of the process or to check whether the required conditions are met. [28]

6.0 Challenges in Online Transactions

Since serving as a substitute to the traditional method of conducting transactions, e-commerce has significantly gained the trust of people globally, with people adopting it due to its easiness, efficiency, and safety in conducting transactions. However, is there actually any guarantee that conducting transactions online is a safe way of conducting transactions? On its deeper look, the flow of online transaction is hindered by problems of online payments businesses face, including security concerns, mounting fees, regulatory compliance, and ensuring smooth customer experience. [29]

[26] Ibid
[27] Ibid
[28] Ibid
[29] DPO Pay Content Team. "Top 5 Challenges in Online Payments and How to Overcome Them". Available at https://dpogroup.com/blog/top-5-challenges-in-online-payments-and-how-to-overcome-them/ accessed on 21st July, 2025.

6.1 Security Threats

As the digital world evolves, consumers' information gets shared out more and more. This growth makes transactions easier. But it brings significant risks for customers and merchants.

Cyber criminals often target online payment systems, such as credit transactions, digital wallets, and online banking,. These include identity theft, phishing, and data breaches. According to Juniper's Research, companies risk losing over $362 billion globally due to these frauds between 2023 and 2028. [30]

6.2 Replication of Banking Sites

Sometimes, banking sites may be replicated by scammers. These sites are fake websites that imitate legitimate ones, causing significant issues for online payments. These sites trick users into entering their login credentials and allow scammers to access their real accounts.

When a customer enters any of these sites, and ignorantly inputs both his username and password unknowingly. Scammers then use this info to link the victim's mobile banking to their phone. This scam can lead to significant financial losses and compromised personal data. [31]

6.3 Cross-border transactions

Transactions vary, and may be done nationally and internationally between countries with two distinct currencies. This then is what is referred to as cross-border transactions. Cross-border payments can be slow, inefficient, and expensive, but they play an important role in global trade. Ordinarily, the infrastructure of local banks cannot handle cross-border payments, resulting in independent and non-uniform development in technologies and software platforms that complicate or stall cross-border transactions. [32]

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[30] Eugene Makieiev, BDM. "Top 5 problems with online payments in 2024". Available at https://integrio.net/blog/top-problems-with-online-payments accessed on 21st July, 2025.

[31] Ibid

[32]DPO Pay Content Team. "Top 5 Challenges in Online Payments and How to Overcome Them". Available at https://dpogroup.com/blog/top-5-challenges-in-online-payments-and-how-to-overcome-them/ accessed on 21st July, 2025.

6.4 **Data Breaches**

The growing sophistication of cyber-attacks and malware has made data breaches a pervasive threat for both businesses and consumers. From malware-infected POS terminals to phishing attacks targeting unsuspecting users, the risk of data compromise looms large in today's digital ecosystem. [33]

6.5 Transaction Errors and Disputes

Another challenge that faces digital payment systems is the potential for transaction errors or disputes. Resolving these disputes and managing chargebacks may be time-consuming and costly for all parties involved. Despite the advanced technologies, errors can occur during the payment process, leading to incorrect charges, double payments, or failed transactions.

Additionally, disputes may arise between merchants and customers over issues such as delivery discrepancies or unauthorized charges. Charge flow automated charge back management system efficiently handles these disputes, reducing the time and cost involved in managing charge backs.[34]

7.0 Blockchain as a Solution

Since the breakthrough of the ground-breaking, revolutionary blockchain technology, several companies, governmental agencies, financial institutions and non-profit organizations have started exploring ways in which they could employ the use of the technology in becoming a better version of themselves. The exploration stems from the ability of the technology to share data among entities, foster transparency and some other key benefits that could be gotten from its use.[35]

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[33] Chargeflow "Challenges of Digital Payment and Prevention Strategies". Available at https://www.chargeflow.io/blog/challenges-of-digital-payment-and-prevention-strategies accessed on 21st July, 2025.

[34] Ibid

[35] Mary K. Pratt. "Top 10 benefits of blockchain for business". Available at https://www.techtarget.com/searchcio/feature/Top-10-benefits-of-blockchain-technology-for-business accessed on 22nd July, 2025.

Having discussed on how commercial transactions conducted online are subjected to so many challenges that could hinder the effectiveness of electronic commerce, this part of this paper therefore seeks to bring to the limelight, the various solutions proposed by the use of the blockchain technology to e-commerce and the financial sector at large. [36]

The blockchain technology, through its proven characteristics proposes many solutions to the financial industry. The solutions the blockchain technology proposes are in detailed discussed below.

7.1 Trust

The first and foremost benefit of the blockchain technology is trust. In every course of transactions, trust serves as a backbone. Blockchain establishes trust between different entities such where there is neither trust, nor is it proven. Serving as a result, these entities are willing to engage in business dealings that involve transactions or data sharing they may not have otherwise done or would have required an intermediary.

Enabling of trust is one of the core benefits which the blockchain technology brings to the table. This is evident in early blockchain use cases that facilitated transactions among entities that did not have any direct or straight forward relationships yet without fear could share their data and information when making payments. The use of blockchain technology in the financial market like cryptocurrency is a typical example of how the technology enables trust between parties who do not know each other, or have no prior relationships. [37]

7.2 Security

Another important thing in e-commerce is security of data and privacy. The distributed consensus of blockchain technology nature eliminates every single point of failure and

[36] Veera Budhi. "Advantages And Disadvantages Of Blockchain Technology". Available at https://www.forbes.com/councils/forbestechcouncil/2022/10/20/advantages-and-disadvantages-of-blockchain-technology/ accessed on 22nd July, 2025.

[37] Mary K. Pratt. "Top 10 benefits of blockchain for business". Available at https://www.techtarget.com/searchcio/feature/Top-10-benefits-of-blockchain-technology-for-business accessed on 22nd July, 2025.

reduces the need for data intermediaries such as transfer agents, messaging system operators and inefficient monopolistic utilities. Blockchain also enables implementation of secure application code designed to be tamper-proof against fraud and malicious third parties, making it technically impossible to hack, manipulate or get tampered with. [38]

Blockchain creates an immutable record of transactions with end-to-end encryption to shield against fraud and unauthorized activities. Also, unlike the centralized system where only a copy of data is kept in a single computer network, which although may be secured, but if tampered with, risks the complete elimination of such data, blockchain technology stores the copy of its data in different computer networks which is virtually impossible to tamper with all the computer networks. Additionally, it is argued that blockchain easily addresses managing of data better than the traditional system by anonymizing data and, in some cases, requiring permission to limit access. [39]

7.3 Speed

Another solution which the blockchain technology poses is speed. After eliminating intermediaries and replacing many of the manual processes of transactions, blockchain easily functions quite faster than the traditional online methods of transactions. Some experts have concluded that blockchain is faster than other processes and technologies when all the steps including the manual ones are taken into account. For example, in one of the most prominent applications of blockchain, Walmart used the technology to trace the source of sliced mangoes in seconds a process that previously took seven days. [40]

Blockchain provides an efficient solution for reducing transaction costs and accelerating financial processes. Unlike traditional systems that involve multiple intermediaries and long processing times, blockchain technology enables direct transactions between parties without requiring third-party intervention. Additionally, RippleNet, a blockchain

[38] Consensys. "What are the Benefits of Blockchain in Finance?" Available at https://consensys.io/blockchain-use-cases/finance accessed on 22nd July, 2025.
[39] Mary K. Pratt. "Top 10 benefits of blockchain for business". Available at https://www.techtarget.com/searchcio/feature/Top-10-benefits-of-blockchain-technology-for-business accessed on 22nd July, 2025.
[40] Ibiid

platform used by banks such as Santander and American Express, facilitates near-instant cross-border transfers, eliminating delays associated with traditional processes. These improvements are particularly important for international payments, where time and costs are critical factors. Compared to traditional systems such as SWIFT, which can take several days to complete a transaction, blockchain significantly reduces processing time, sometimes to just a few seconds for specific transactions. [41]

7.4 Smart Contract

Talking of the solutions brought by blockchain technology, smart contract is a very significant and notable one. Without adding it to the list, it is not complete. As smart contract has been extensively discussed above to a an automated, self-executing, self-verifying agreement which is programmed through a code to perform specific functions when certain conditions laid down have been fulfilled by the parties to the contract. [42]

The modern method of finance is heavily based on papers, and human interventions which may lead to slowing down of works, lack of professionalism, infringement of privacy and lack of trust. Smart contract on the other hand, making use of automations and no human intervention promotes efficiency and an ideal solution to these services. Smart contracts enable seamless, secure transactions and various features ideal for the financial services industry. Smart contracts represent hope for smoother legal processes, workflow management, regulatory compliance, and clearing and settlement in the financial markets and international trade. Smart contracts in finance can help a business or individual to tokenize assets, use cryptocurrency, or automate transactions.[43]

7.5 Transparency and traceability

Traceability provides visibility and accountability throughout the transaction, validating safety, quality, and authenticity. In many ways, it serves as a safety net if a product seems

[41] T. G. Budisteanu. "Blockchain and the Banking Sector: Benefits, Challenges and Perspectives". Open Journal of Social Sciences, 13, 288-300, 2025. Doi: 10.4236/jss.2025.133019.
[42] IBM. "What are smart contracts on blockchain?" Available at https://www.ibm.com/think/topics/smart-contracts accessed on 22nd July, 2025.
[43] Headera. "Smart Contracts in Finance". Available at https://hedera.com/learning/smart-contracts/smart-contracts-finance accessed on 22nd July, 2025.

to be defective or contaminated, traceability allows for swift identification of the problem's source, minimizing damage. This safeguards consumers and helps companies avoid expensive recalls. It also helps to ensure that products adhere to quality standards and comply with regulations, an essential requirement in industries like food and pharmaceuticals. The immutability and transparency of blockchain make it an ideal technology for tracking and verifying the origins and movement of goods or data through supply chains. [44]

8.0 Legal and Regulatory Considerations

Having taken the time to explore what blockchain technology is, what are its structures, features, benefits, and solutions it brings to conduct of transactions online, it is then however important to know that, to almost every technological advancements, of which the blockchain technology is one, it is quite pertinent to check out for certain legal issues to be considered of which this section of this paper delves into the legal perspective as regards the blockchain technology and its functions, and how it performs these functions. On a deeper look of the works they do, the blockchain technology and smart contract deal with things related to privacy, data, and security of its users, which is what makes it important to consider the potential legal challenges of these technologies.

8.1 Regulatory Compliance

The first challenge blockchain poses to consider is on the regulations available for traditional oral and written contracts. Smart contracts, unlike traditional contracts which are enforced by the law, are enforced by codes. This then leads to a significant challenge for the legal system to address agreements enforced by codes, compare to those enforced by the law. [45] In the traditional contract law, elements of a contract include offer, acceptance, consideration, legality, capacity, while the smart contract technology poses challenges to these elements. Smart contracts allow anonymous parties to enter into

[44] Inēs Botelho. "Traceability and Blockchain: Transparency for Any Business". Available at https://cardanofoundation.org/blog/traceability-and-blockchain-transparency-for-any-business accessed on 22nd July, 2025.

[45] J. Szabo., C. Bernard, & L. Philip. "Legal Implications and Challenges of Blockchain Technology and Smart Contracts". Computer Life, 12(2), 6-10, 2024. https://doi.org/10.54097/ztn2w848

agreements, including someone who does not have the required capacity under the law, or for a subject matter of illegality. While a notable feature of the smart contract is its immutability, the traditional contract identifies and places significance on modifications of contractual terms on the mutual consents of parties to an agreement. This raises another issue of difficulty in addressing the immutability of a smart contract as opposed to the existing regulations on contracts. [46]

Currently, there is no framework guiding smart contracts, which provides the implication that smart contracts will be enforced by traditional contract laws. While the traditional contract laws recognizes certain elements like offer, acceptance among others, it may be challenging to identify all these elements in the case of a smart contract. However, traditional contract principles may still be applied to smart contract, but that will depend on certain factors.

8.2 Data Privacy and Protection

Another challenge that should be given regards to is on the issue of data management and privacy. Blockchain technology and data privacy are often contentious, in which balancing the transparency of data and the increasing demand for data privacy is becoming monumental. The transparent and immutable nature of a smart contract, although the core features and strength of blockchain, challenges the protection of data, and it's privacy. It goes against the purpose of data privacy regulations, particularly, the European General Data Protection Regulation, GDPR. The GDPR provides for key elements like consent of individuals in data privacy, right to access it, as well as the right to be forgotten (right to erasure) of data. [47]

Due to the immutability of the blockchain technology, data recorded are permanently stored and tamper-proof, however, this is as opposed to provision of article 17 of the regulation, GDPR. Article 17 of the GDPR guarantees the erasure of data on the request by the owner. The Article 17 gives the data subject the right to obtain from the controller

[46] GeeksforGeeks. "Smart Contracts vs Traditional Contracts". Available at https://www.geeksforgeeks.org/computer-networks/smart-contracts-vs-traditional-contracts/ accessed on 22nd July, 2025.
[47] Regulation (EU) 2016/679 (General Data Protection Regulation).

the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay provided certain circumstances are met. [48]

When a transaction is recorded on a blockchain, it becomes visible to everybody on the network transparency. However, this transparency is a double-edged sword. As it ensures accountability and promote trust, so can it lead to exposure of personal data and sensitive information of its users. Blockchain, with its inherent transparency and immutability, presents certain key challenges to the implementation of GDPR. In a blockchain, data, once recorded, cannot be altered or erased, potentially clashing with the principles of data rectification and right of erasure espoused by GDPR. Additionally, the decentralized nature of blockchain makes it difficult to identify a centralized 'controller' of data, another key requirement of GDPR. [49]

Tailored down to the Nigerian regulation on data protection, The Nigeria Data Protection Act, 2023, *NDPA***.** The Nigeria Data Protection Act 2023 ("NDPA") regulates the protection of personal information; establishment the Nigeria Data Protection Commission for the regulation of the processing of personal information; promotion of data processing practices that safeguard the security of personal data and privacy of data subjects; protection of data subjects' rights, and provision of means of recourse and remedies, in the event of the breach of the data subjects' rights; and strengthening the legal foundations of the national digital economy and guarantee the participation of Nigeria in the regional and global economies through the beneficial and trusted use of personal data.[50] Capital market operators are among the entities that must comply with the requirements of the NDPA. The NDPA mandates lawful data collection, minimal data usage, and limited retention periods. The Nigeria Data Protection Regulation Implementation Framework 2019 (deemed made pursuant to the NDPA) specifies

[48] Art 17, Regulation (EU) 2016/679 (General Data Protection Regulation).
[49] Financial Crime Academy. "Blockchain and Privacy: Navigating the Balance between Transparency and Data Protection". Available at https://financialcrimeacademy.org/blockchain-and-privacy/ accessed on 23rd July, 2025.
[50] DLA Piper. "Data protection laws in Nigeria". Available at https://www.dlapiperdataprotection.com/?c=NG&t=law accessed on 23rd July, 2025.

statutory retention periods for storing personal data. Personal information collected during the KYC process in smart contracts can be encrypted and stored in decentralised identity systems, allowing selective disclosure, updates, and erasure as necessary, ensuring protection from unauthorised access. The consent of the customers should also be obtained digitally regarding the processing of their date as a condition to proceed with the relevant transaction. [51]

8.3 Jurisdictions

Given the decentralized and distributed nature of the blockchain technology, it spans across different localities which makes it possible to conduct a borderless transaction using a blockchain network. As limitless as this seems, it makes vague the jurisdiction which a transaction falls when it involves parties who do not stay within the same jurisdiction. When disputes arise, it becomes an issue of determining what laws of what jurisdictions will be applicable to such dispute. When the ambiguity of determining what Jurisdiction will take over such dispute, conflict of law arises and this may be costly as different jurisdictions certain regulations all-embracing blockchain, whole some have stringent policies against the use of the technology. [52]

This challenge then is further supported by the anonymous nature of blockchain transactions which makes it difficult to identify and locate parties to a transaction. While having the difficulties of determining the jurisdictions, it is important to note that certain jurisdictions like Malta have taken themselves as a home for the technology, while in the jurisdiction of China, strict policies have been implemented against the technology.

As expected, the distributed nature of blockchain paralyzes the original intent of jurisdiction rules to allocate power among sovereigns. It compels a defendant to a case to defend their case in courts worldwide, which imposes undue burdens on the defendant.

[51] Udo Udoma & Belo-Osagie "Smart Contracts: Assessing Some Legal Implications Of Its Use In The Nigerian Capital Market". Available at https://www.mondaq.com/nigeria/fin-tech/1508146/smart-contracts-assessing-some-legal-implications-of-its-use-in-the-nigerian-capital-market accessed on 23rd July, 2025.
[52] Ibid

Furthermore, it has the potential to cause abusive lawsuits. Thus, jurisdictional rules have to adjust the standard for adopting the effect test correspondingly.

Although, the internet to a large extent is distributed and allows for cross borderless interactions, but the comprehensive distribution of blockchain complicates the distributed nature of the internet to a different wider level. The primary feature of blockchain is decentralization, meaning that an activity can be conducted by a group of people who do are not within the same vicinity and not under one centralization. Without a centralized institution having any authority over this group of people committing the activity, determining the conduct place of such activity could be challenging since they are not consolidated in one centralization. Under traditional jurisdiction rules, in cases involving multiple participating individuals, the place of any individual who participated the activity can serve as the conduct place. However, in the case of blockchain, the participating individuals are distributed worldwide. Therefore, in any jurisdiction where the conduct test is adopted over the effect test, such country can claim jurisdiction over a blockchain-based activity and paralyze the original intent of jurisdictional rules. [53]

The challenge posed by blockchain can be more intriguing. Blockchain participants often participate in the blockchain system (e.g., verify the records to be updated into the ledger) in their residences. If a plaintiff requests for the defendant to be liable for such conduct, the conduct place is very likely to be the residence place of the defendant. To that extent, blockchain compromises the conduct test and the principle of *actor sequitur forum rei*, the core principle of jurisdictional rules. [54]

9.0 Limitations of Blockchain

Given a groundbreaking and revolutionary instrument that blockchain has taken itself to be identified as, considering its features and functions, one may call it a limitless technology, in which however, it is no perfection. Blockchain due to some functions in

[53] Yueh-Ping (Alex) Yang. " When Jurisdiction Rules Meet Blockchain: Can the Old Bottle Contain the New Wine?". Associate Professor at National Taiwan University Department of Law. Available at https://stanford-jblp.pubpub.org/pub/jurisdiction-rules-blockchain/release/1 accessed on 23rd July, 2025.
[54] Ibid

which it performs may sometimes experience some challenges which could cause series of setbacks in the works it performs.

9.1 Scalability

Scalability in blockchain technology refers to speed in transactions. It is the capacity which a blockchain has to accommodate workload, transactions and speed. The scalability of a blockchain is determined by certain factors like the heaviness of the load on it, storage requirements and more. At the moment, transactions involving blockchain technology takes more to time to process compared to traditional methods of payment. The network's capacity is determined by scalability, which also affects the number of network nodes, the number of transactions the network can handle, how quickly the network can handle transactions, and other factors.

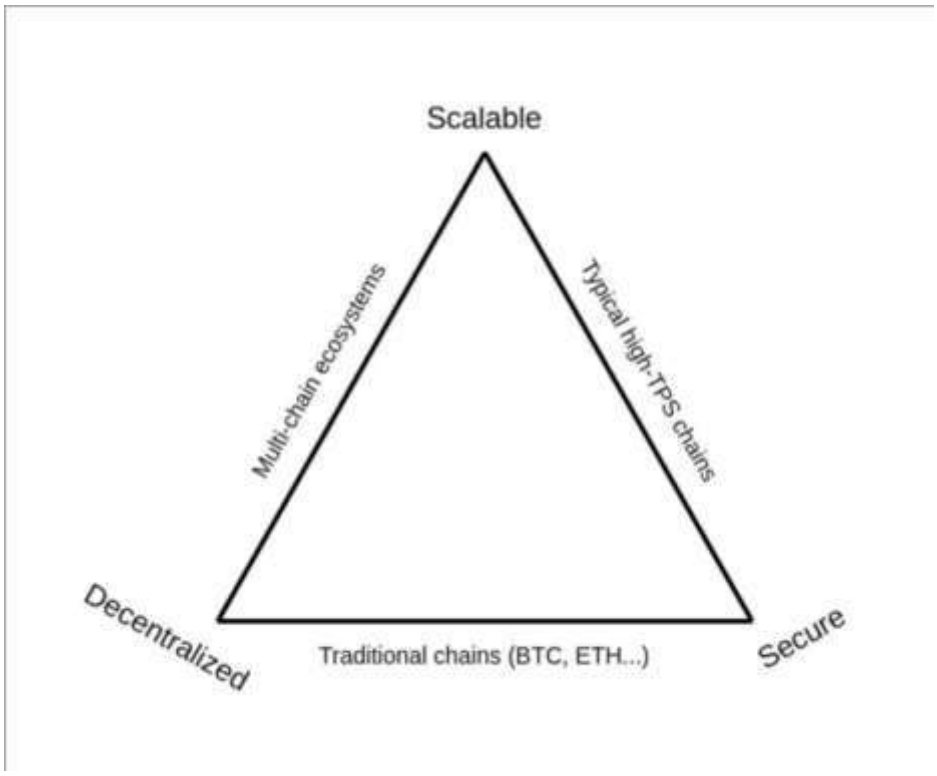
Scalability issues in blockchain technology refers to the challenges encountered in handling an increasing number of transactions. As blockchain networks like Bitcoin and Ethereum grow in popularity, they face difficulties in processing transactions quickly and efficiently due to limitations in transaction throughout, which may lead to higher fees and longer confirmation times. [55] In understanding how challenging is blockchain scalability, one key thing to understand is ***blockchain trillema.***[56] What does this mean?

As coined by Ethereum co-founder Vitalik Buterin, trillema is the conflict between 3 core aspects of the blockchain technology security, scalability and decentralization. ***Security*** refers to the organized defense measures that must be put in place for blockchain technology to prevent malicious attacks from different sources. The second aspect being ***scalability*** demands that blockchains accommodate a large number of transactions and users without increasing fees or transaction times substantially. The final aspect, ***decentralization*** is also a key feature of blockchain technology, where authority over the

[55]Shardeum Content Team "What is Blockchain Scalability? A Deep Dive Guide". Available at https://shardeum.org/blog/what-is-blockchain-scalability/ accessed on 23rd July, 2025.
[56] Cryptopedia Staff. "The Blockchain Trilemma: Fast, Secure, and Scalable Networks". Available at https://www.gemini.com/cryptopedia/blockchain-trilemma-decentralization-scalability-definition accessed on 24th July, 2025.

network is distributed around different computer networks rather than being under the control of a single centralized entity.

These concepts are core, as well overlapping such that ensuring all three would be virtually impossible, which makes possible for only two to be accomplished at a time, diminishing the significance of the third aspect. [57]



[58]

Scalability is the ability of blockchain to handle more work. The overarching goal for achieving scalability is to do so without reducing security and decentralization. On cryptocurrency blockchains, scalability translates directly to transactions per second. Because it is very decentralized and secure, the Bitcoin blockchain is not very scalable

[57] Nathan Crooks. "What is the blockchain trilemma?". Available at https://www.theblock.co/learn/249536/what-is-the-blockchain-trilemma> accessed on 24th July, 2025.
[58] Nathan Reiff. "Scalability: Blockchain Tech's Greatest Problem". Available at https://www.investopedia.com/investing/governance-blockchain-techs-greatest-problem/ accessed on 24th July, 2025.

without the help of external programming. Since Bitcoin's introduction to the public in 2009, many people have been interested in scaling the blockchain. [59]

9.2 Energy Consumption

Another challenge we have with the blockchain technology is its high consumption of energy. Blockchain transactions consume as much energy such that if it were a country, it would be ranked 41st among the countries consuming the most energy in world, almost as much as Austria.[60] A single Bitcoin transaction consumes as much energy as would be used for thousands of other things. What is behind every blockchain transactions is the consensus of all the nodes that every transaction on the blockchain is true. The competition between computers to arrive at that consensus by solving cryptographic puzzles is known as mining. And mining uses powerful, purpose-built computer chips and software, plus a reliable Internet connection and air conditioning to keep CPUs cool as they word 24/7 at complex calculations. All of that consumes an enormous amount of electricity. [61]

Additionally, computers joining in mining do not change the functionality of a blockchain, but only increase its energy use. The law of diminishing returns plays a big role here. Once a blockchain network reaches a critical number of nodes, security already meets a base requirement. But mining is lucrative, and more and more people own cryptocurrency. As a result, the Bitcoin blockchain alone currently uses 204,5 TWh of electricity per year, comparable to the power consumption of Thailand. And it's the amount of energy used itself that is the problem, not the source of that energy. Many miners are switching to renewable energy sources. But this simply moves the problem elsewhere. We don't yet have enough renewable energy production to cover all of our

[59] Ibid
[60] Christopher Koch. "Blockchain's energy crisis". Available at https://www.sap.com/blogs/blockchains-energy-crisis accessed on 24th July, 2025.
[61] Ibid

activities. So, if mining uses up renewable energy, that just increases the non-renewable energy used on other activities. [62]

9.3 Cost of Storage

Blockchain as a technology has been created to store transactions and keep them for future referencing. Although you could view them in the future, but you cannot have them as data store on the technology are non-editable and cannot be deleted. When talking of storage cost, it is important to put our attention more onto the Ethereum network, because it is mostly associated with storage challenges than other networks.

Just like nodes and miners keep the bitcoin blockchain functioning, Gas serves the pillar that keeps the Ethereum blockchain functioning. All activities, such as sending Eth from one account to another, creating smart contracts, making payments and all activities involving the Ethereum blockchain all have a specific fee charged. Gas serves as the unit in which each fee is charged. So therefore, any activity (creating contracts, making message calls, utilizing and accessing account storage and executing operations on the virtual machine) has a universally agreed cost in terms of gas. Every transaction performed have a specific amount dedicated to it, and this changes as the complexity of the transaction increases. The higher the complexity of the problem the larger volume of gas it will cost.[63]

How much then does GAS cost?

A gas is worth of 0.00000005 ETH and if you planning to store data or let's say a 256-bit word it will cost you 20,000 gas. A kilobyte is thus 640k gas or 0.032 ETH or 16.70 USD as per the current rate of Ethereum which is $528.3 Dollar.[64]

That serving as a guide, it makes interesting to blow your mind when you calculate the amount it costs to store up to a GB of data.

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[62] Ellen Meijer. "Blockchain and our planet: why such high energy use?". Available at https://pre-sustainability.com/articles/blockchain-and-our-planet-why-such-high-energy-use/ accessed on 24th July, 2025.

[63] Rohan Pinto. "Costs Of Storing Data On The Blockchain". Available at https://www.1kosmos.com/blockchain/cost-of-storing-data-on-the-blockchain/ accessed on 24th July, 2025.

[64] Ibid

9.4 High Level of Risk

The blockchain technology, most especially, smart contracts, rely heavily on codes. An error in the code will likely result in an error in the contract. Error in the contract may then lead to high level of risk, which may even lead to loss of funds, and private information.

Case study*:* ***Dao Hack***

A Decentralized Autonomous Organization is a blockchain-based cooperative that is collectively owned by its members, with rules set and executed through code. DAOs replace centralized management structures with a techno-democratic approach wherein decisions are voted upon by investor-stakeholders.

The Hack

It all just started through a bug in the development of DAO. Speculations had started going round that there was a potential hacking going on in the DAO system, but before the developers could go on to analyze the situation and check for what went wrong, a group of hackers have taken advantage of the situation by using the holes in the system to extort enough money from the DAO system. This was done due to a bug in the code the system was developed through. The system was programmed in such a way that, while on withdrawal, as long as the whole process is ongoing, the system does not update your Ethereum balance, rather it does that after the whole interactions between you and the system. So that gave the hacker the enough chance to withdraw up to 3.6 million coins out of the 12 million plus which has been raised.

The bug gave the hacker the enough chance to withdraw up to 3.6 million coins leaving the rest in the system. [65]

A simple illustration of the hack is given below.

[65] Andrew Loo. "What Was the Famous DAO Heist? *A real-life cryptocurrency heist from the early days of Ethereum that shook up the crypto world"*. Available at https://corporatefinanceinstitute.com/resources/cryptocurrency/dao-heist/ accessed on 24th July, 2025.

In a situation you are in need of cash, and decide going over to an ATM machine to make withdrawal. All you ordinarily have in your account is ₦20,000. You place a withdrawal of ₦10,000, and then stood for a while, with your debit card still in the machine, to check for an alert signifying debit in your account, you did not receive any text. You decided to open your bank app and discover your balance has not changed. You then go on to place another withdrawal of ₦10,000 to be well aware of the situation, still, balance remains the same. Seeing how it is, you decide to take advantage of the situation by withdrawing another ₦10,000. You kept on withdrawing, and withdrawing till you withdrew up to ₦250,000, whereas the amount in your account initially was never up to that. After you rejected your debit card from the ATM machine, it brings up an alert signifying you placed withdrawal, with your balance moving to ₦0.[66]

Using the DAO Hack as a case analysis of how the technology is exposed to high risk brings to our notice that, the system heavily relies code, and an error in the code may lead to loss of monetary funds.

10.0 Conclusion

In a world where human wants are unlimited, where humans have to interact in order to get what they so desire from another person, the need for transactions arises. This leads to the introduction of trade and commerce. This refers to the exchange of goods and services between different people who meet in a designated space to conduct the transaction.[67]

Traditionally, trade usually take places in a local centre identified as the market. However, as the world evolves, technology has taken over, the need to easily transact between individuals from distanced localities emerges, thus leading to the facilitation of

[66] Ernesto Frontera. "A History of 'The DAO' Hack." Available at https://coinmarketcap.com/academy/article/a-history-of-the-dao-hack accessed on 24th July, 2025.
[67] Dimple Tiwari. "Trade and Commerce: Definitions, Differences, and Importance Reviewed". Available at https://www.vedantu.com/commerce/difference-between-trade-and-commerce accessed on 24th July, 2025.

transactions in the internet space. This led to the introduction of Electronic Commerce, ***E-commerce.***[68]

E-commerce, unlike the traditional methods of transaction, is easily conducted between individuals who have never met, or interacted, right from the comfort of their homes. It has helped in facilitating trades through the use of the internet space and devices, which makes faster and efficient, reduce the cost in setting up a physical cost, makes easier to reach wide audience etc.[69]

As the world further evolves, only those with access to the right information hold power, and security becomes paramount, a groundbreaking technology, the blockchain technology comes up with its distinct features to turn the world of data storage around. Blockchain is a technology which comprises of several blocks connected together through a chain, where information stored on one is connected on the others, thereby enhancing transparency and traceability. [70] The blockchain technology has certain distinct features like **immutability** – information, once approved by computer networks identified as nodes, and is recorded on a block, becomes permanent. It is not subjected to change by any user, cannot be modified or even deleted.; **Distribution**: Information on a blockchain is distributed across nodes which makes it impossible to conceal information by a single user. Information is spread across different nodes across different areas which fosters transparency.; **Decentralization** - Blockchain technology is not limited to the control of a single centralized authority. It spreads its control across different users including those not confined within the same locality or jurisdictions.; **Consensus** - before a transaction is recorded and stored in a block in blockchain, such transaction requires approval from majority of the distributed computer networks, therefore reducing the likelihood of fraud or storing a corrupt data in a block. **Traceability –** since

[68] Amazon Content Team. "What is ecommerce?" Available at https://sell.amazon.com/learn/what-is-ecommerce accessed on 24th July, 2025.
[69] MailChimp. "What Are the Advantages and Disadvantages of E-commerce?" Available at https://mailchimp.com/resources/advantages-and-disadvantages-of-ecommerce/ accessed on 24th July, 2024.
[70] Stephanie Susnjara and Ian Smalley.. "What is blockchain?" Available at https://www.ibm.com/think/topics/blockchain accessed on 24th July, 2025.

transactions on blockchain are distributed to every computer in the network, it makes easy to track down any source of error in the system.[71]

Having discussed on what online transactions encompasses, it is then important to know that it is without its challenges hindering its efficiency. Such challenges include fraud, data breaches, lack of trust among several others. As the various challenges hindering the efficiency of e-commerce have been discussed above in this paper, we are tempted to imagine how easy things would be if the financial industry could actually employ the use of the blockchain technology. The blockchain technology, through its proven characteristics, proposes many solutions to the financial industry. The solutions include ***trust, transparency, traceability, speed, security*** amongst many others.

Furthermore, among the most significant applications of blockchain technology is in streamlining payment systems. It eliminates the need for intermediaries, which makes it facilitate payment faster, make it more secure and facilitate more affordable cross-border transactions. Trade finance, one of crucial components of international trade, at times suffers from slow and cumbersome processes, extensive paperwork and susceptibility to fraud. Blockchain technology will address these challenges by digitizing trade documents, streamlining processes and providing a tamper-proof environment for secure transactions. Also, blockchain technology can facilitate compliance by providing a secure, transparent and tamper-proof record of transactions, making it easier for regulators to monitor and audit financial activities. [72]

Glossary of Terms in Blockchain Technology

Blockchain

A blockchain is a distributed database or ledger shared across a computer network's nodes. They are best known for their crucial role in cryptocurrency systems, maintaining a secure and decentralized record of transactions, but they are not limited to

[71] Amazon Content Team. "What is Blockchain Technology?" Available at https://aws.amazon.com/what-is/blockchain/ accessed on 24th July, 2025.
[72] Imane Adel. "How Blockchain Is Transforming The Entire Financial Services Industry". Available at https://www.forbes.com/councils/forbestechcouncil/2023/06/07/how-blockchain-is-transforming-the-entire-financial-services-industry/ accessed on 24th July, 2025.

cryptocurrency uses. Blockchains can be used to make data in any industry immutable meaning it cannot be altered. [73]

Distributed Ledger

Distributed ledger technology (DLT) is a digital system for recording the transaction of assets in which the transactions and their details are recorded in multiple places at the same time. Unlike traditional databases, distributed ledgers have no central data store or administration functionality.[74]

Node

A blockchain node is a connection point within a blockchain network that receives, stores, verifies, and transmits data. A node ensures the integrity of transactions and blocks by maintaining a copy of the entire blockchain ledger, and is responsible for the network's security, decentralization, and consensus processes. [75]

Decentralization

Decentralization in blockchain refers to the distribution of authority and control across a network of participants. In this model, no single entity has unilateral control over data or decision-making, eliminating reliance on a central authority like a bank or government. Instead, decentralized networks rely on nodes independent participants that collectively verify and approve transactions.[76]

Block

A block is the fundamental unit of a blockchain that contains a set of validated transactions and cryptographic links to previous blocks, forming an immutable record in the blockchain network.

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[73] Adam Hayes. "Blockchain Facts: What it is, How it works and How it can be used." Available at https://www.investopedia.com/terms/b/blockchain.asp accessed on 24th July, 2024.

[74]Nick Barne. "Distributed ledger technology (DLT)". Available at https://www.techtarget.com/searchcio/definition/distributed-ledger accessed on 24th July, 2025.

[75] Corey Barchat. "What are blockchain nodes and how do they work?" Available at https://www.moonpay.com/learn/blockchain/what-are-blockchain-nodes accessed on 24th July, 2025.

[76] Starknet. "What is decentralization in blockchain?" Available at https://www.starknet.io/glossary/what-is-decentralization-in-blockchain/ accessed on 24th July, 2025.

Each block in the blockchain is a digital container that permanently stores transaction data for the network. When new transactions occur, they are processed and bundled into a block. Once the network validates these transactions, the block is sealed and linked cryptographically to previous blocks. This creates a chain where each block's contents can't be altered without affecting the others. [77]

Mining

Bitcoin mining is the process by which transactions are officially entered on the blockchain. It is also the way new bitcoins are launched into circulation. Mining is conducted by miners using hardware and software to generate a cryptographic number that is equal to or less than a number set by the Bitcoin network's difficulty algorithm.[78]

The above listed terms are a means to an end, neither the end, nor close to the end itself . More terms in blockchain technology are listed below, and could be explored.

Consensus Mechanism

Proof of Work (PoW)

Proof of Stake (PoS)

Cryptocurrency

Smart Contract

DApp (Decentralized Application)

Oracle

Wallet

Private Key

Public Key

Gas

Scalability

DeFi (Decentralized Finance)

NFT (Non-Fungible Token)

[77] Peter Gratton. "What Is a Block in the Crypto Blockchain, and How Does It Work?". Available at https://www.investopedia.com/terms/b/block-bitcoin-block.asp accessed on 24th July, 2025.

[78] Euny Hong. "How Does Bitcoin Mining Work? A Beginner's Guide." Available at https://www.investopedia.com/tech/how-does-bitcoin-mining-work/ accessed on 25th July, 2025.

UNSEEN, UNHEARD: AN EXAMINATION OF NIGERIA'S RESPONSE TO MALE SEXUAL ASSAULT AND ITS HUMAN RIGHTS IMPLICATIONS

Nengi Anita Banigo* and Grace Chanbee Ioryevese**

Abstract

Sexual assault is an offence which has left many broken, battered, and traumatised. The law has strived in many aspects to protect victims of this offence and apprehend their respective perpetrators. However, this is not the case when the victims are male. A significant proportion of the population have been overlooked and left helpless in their pursuit of justice for the abuse they have suffered. In Nigerian society, where strength and stoicism are tied closely to masculinity, male victims have been frequently met with disbelief, stigma, or outright denial. This silence has extended into law, where the existing legal frameworks have historically struggled to recognise and respond to the realities of male sexual victimisation. The article thus, examined the legal and institutional barriers which have denied redress to these victims, sometimes deliberately, sometimes unknowingly. Despite legislative changes and procedural amendments, it was found that the Nigerian criminal law is still a long way from being all encompassing and gender-neutral in its provisions on sexual assault, especially when compared with what is attainable in other notable jurisdictions. It was also found that sexual assault is a serious breach of one's fundamental human right, hence, recognising and protecting each one irrespective of their biological sex is not only a legal necessity, but a moral imperative of the Nigerian criminal justice system. This article, therefore, recommended urgent legal review, increased public education, and strengthened institutional support to break the silence surrounding male sexual assault, as well as to ensure justice for male survivors and thoroughly punish their violators.

Keywords: Male Victims, Human Rights, Sexual Assault, Criminal Justice, Violence.

1.0 Introduction

Sexual assault, a grave violation of human rights, is an old phenomenon that has ravaged societies and institutions for decades but has not yet been fully comprehended as a problem affecting both genders in society.[1]

This is arguably because it is majorly perceived as a tool used by men to exhibit dominance over women,[2] with concentration mostly placed on males exclusively as perpetrators and females exclusively as victims.[3] As a result, in contemporary society, the sexual abuse of males is massively denied, misunderstood and trivialised,[4] consequently contributing to the numerous challenges male victims of sexual assault often face, including societal stigma, legal neglect, and institutional silence. This article, therefore, begins by tracing the historical development of sexual abuse norms, drawing from Ancient Greek and Roman Mythologies, colonial influence on sexual assault laws in Nigeria, and conflict and post-conflict attitudes in the treatment of male victims.

The article then proceeds to examine male sexual assault as a breach of fundamental human rights under Nigerian law, such as, the rights to health, dignity, equality, liberty, and privacy; and goes further to critically analyse the effectiveness of existing legal protections for male victims of sexual assault, as well as the roles and limitations of primary institutional bodies in responding to such cases. Finally, the article undertakes a comparative analysis of legal responses to male sexual assault in other jurisdictions; specifically in South Africa, the United Kingdom, the United States of America and

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[1] K N Anugwom, 'How do I tell the Story?: Explaining Sexual Harassment and Victimisation among Male Students in Nigerian Universities' *Brazilian Journal of Science* [2024] (3) (4) 24.

[2] Ibid

[3] CM Bullock and M Beckson, 'Male Victims of Sexual Assault: Phenomenology, Psychology, Physiology' *The Journal of the American Academy of Psychiatry and the Law* [2011] (39) (2) 200.

[4] J Spiegel, *Sexual Abuse of Males: The SAM Model of Theory and Practice* (Taylor & Francis Books Inc., 2012) vii.

Canada, for the purpose of identifying best practices and potential reforms for the Nigerian legal system.

2.0 Historical Foundation

Historically, the Romans, Greeks, Persians and Iranians, among others, used male sexual assault as a punitive measure for men.[5] During those times, the act was used to render a man powerless.[6] However, in these societies, the concept of sexual assault, particularly against males, was virtually absent from legal discourse, and where it did exist, it was often framed in terms of dishonour rather than personal violation.[7]

Roman law, for instance, treated male sexual assault primarily as an offence against the dignity of a free male citizen rather than a sexual crime per se.[8] A Roman gentleman raised no eyebrows if a man took a pederastic interest in a slave, prostitute, or freedman, but seducing the son of a fellow citizen was a grave insult, comparable to adultery, because it deprived the young man of his future claim to unimpeachable masculinity.[9]

Medieval European legal traditions, including Canon Law, focused primarily on female chastity, ignoring male sexual victimisation.[10] Male rape, when acknowledged at all, was often conflated with the crime of sodomy and viewed through a lens of moral deviance rather than as a violent assault.[11]

This omission was codified into various legal systems that disseminated across the globe through colonialism. Prior to the advent of the British, the offence of sexual assault was framed as a classic example of a gender-oriented crime in Nigeria, in that it could only be

[5] DJ Porche, 'Male Sexual Assault: History, Description, Epidemiology, and Clinical Presentation' *The Journal for Nurse Practitioners* [2005] (1)(4) 196.
[6] ibid
[7] Porche, (n 5)
[8] CA Williams, 'Roman Homosexuality: Ideologies of Masculinity in Classical Antiquity' *The American Historical Review* [2001] (106) (1) 236.
[9] ibid
[10] J Boswell, *Christianity, Social Tolerance, and Homosexuality* (The University of Chicago Press, 1980) 119-167.
[11] *ibid*

committed by a male upon a female, shaped by rigid societal perceptions about masculinity and femininity.[12]

While many Nigerian cultures aimed largely to train men to be domineering, ruthless, and in control, and to see themselves as naturally superior to women, females were seen as being easily ruled or controlled and naturally inferior to men.[13] Thus, the law was primarily interested in upholding the virtue of women and protecting the female body from the 'male's property'.[14]

Illicit sexual offences were largely considered private family matters, with cultural mechanisms put in place to punish the offender and restore the honour of the victim's family.[15] These responses varied across ethnic groups but generally reflected a communal, rather than individual, approach to justice.[16] However, there are no recorded accounts of protections for male victims, or any indication that society acknowledged the possibility that men, too, could suffer unspeakable forms of sexual abuse.

During the colonial era, there was the introduction of British laws and traditions, which generally protected female victims of sexual assault and seldomly recognised male victims. This significantly shaped Nigerian criminal law, as despite gaining independence in 1960, the country's laws largely reflect colonial influences due to Section 32(1) of the Interpretation Act, which allows the continued application of English common law, equity, and statutes of general application which were in force in England on January 1, 1900, within federal legislative matters in Nigeria.[17]

It becomes imperative here to refer to the Criminal Law Amendment Act, 1885, an Act of the UK parliament, that prescribes severe punishments for persons who attempt to or

[12] I E Okagbue, *The Reform of Sexual Offences in Nigerian Criminal Law* (NIALS Press, 2007) 4.
[13]CO Izugbara, Patriarchal Ideology and Discourse of Sexuality in Nigeria (A paper presented at the Understanding Human Sexuality Series 2, Lagos, Nigeria, on 2 December, 2004).
[14] Okagbue, (n 12)
[15] VN Enebeli and A. P. Lilly-Tariah, 'Redefining Rape in Nigeria: Lessons from the United Kingdom' *Rivers State University Journal of Public Law* [2024] (12)(1) 143.
[16] Ibid
[17] IA Cap 123, LFN 2004, s 32(1).

unlawfully and carnally know any girl or woman; with no prescribed punishment for perpetrators of male sexual assault.[18]

The Criminal Code Act, governing southern Nigeria was built on statutes such as the aforementioned UK Act, and accordingly reflects the same gendered perspective on the offence of sexual assault, particularly in its Section 357.[19] Similarly, the Penal Code, which is applicable in the northern region, also mirrors the gender-biased language in terms of sexual offences of the Indian Penal Code of 1860, upon which it was modelled.

Notably, the mid-20th century brought further complications, particularly during and after major wars. Reports from World War II (1939-1945) and subsequent conflicts, such as the Vietnam War (1955-1975) and the Bangladesh Liberation War (1971), have documented the sexual assault of male prisoners of war, often as a form of torture, used to humiliate, dominate and instil fear in victims.[20]

In Africa, during civil wars and under military regimes, including the Biafran War in Nigeria (1967–1970), rape and other forms of sexual violence were perpetrated both by government forces and those who had initiated the conflict.[21] On the part of the Nigerian government, sexual violence was used as a tool of intimidation in response to the secessionist demand for an independent Biafra. It also served as a form of torture and punishment against individuals whose political views aligned with the secessionist cause.[22]

Conversely, forces on the Biafran side also employed sexual violence as a weapon, targeting ethnic communities that did not support the war effort and branding them as

[18] Criminal Law Amendment Act 1885, s 5.
[19] Criminal Code Act, s 357.
[20] A Ngari, 'Male Victims of Sexual Violence' *African Identities* [2016] <https://thisisafrica.me/african-identities/male-victims-sexual-violence-wars-silent-sufferers/?amp=1> accessed 15 May, 2025.
[21] AD Ikuomola, 'The Nigerian Civil War of 1967 and the Stigmatisation of Children Born of Rape Victims in Edo State' in R. Branche and F. Virgili (eds), *Rape in Wartime* (Palgrave MacMillan, 2012) 169-183.
[22] S Makhathini, 'Truth Seeking and Sexual Violence: Nigeria Human Rights Violations Investigation Commission' *African Transitional Justice Hub* [2023] <https://atjhub.csvr.org.za/nigeria-human-rights-violations-investigation-commission-1999-2002/> accessed 15 May, 2025.

saboteurs.[23] Sexual violence during this period manifested in various brutal forms, including mass gang rapes and the forced sterilisation of Igbo men during the Biafran War, yet this history remains under-explored and largely undocumented.[24]

As Zainab Hawa Bangura, the former United Nations Secretary-General's special representative on Sexual Violence in Conflict, pointed out: 'The crippling repercussions of rape in war are devastating for women, but our sons and brothers who are victims also suffer in silence'.[25]

It was not until the late 20th century that scholars and activists began to seriously consider male sexual assault as a legitimate form of victimisation.[26] The rise of feminist movements in the 1970s and 80s helped to expand the understanding of sexual violence, although early feminist discourse largely centred on female victims which were not taken seriously until the Bosnia-Herzegovina conflict in 1992.[27]

During this same period, awareness began to grow regarding sexual violence in male-only institutions such as prisons and the military.[28] In Nigeria, accounts of sexual abuse on men in correctional facilities and among displaced persons have increasingly surfaced, with survivors often facing ridicule, disbelief, or legal hurdles in seeking justice.[29]

Legal reforms have since begun to reflect these changing understandings. For instance, the UK Sexual Offences Act of 2003 provides for both male and female victims in defining sexual assault by not restricting the victim to a particular gender.[30] Similarly, in the United States, the Federal Bureau of Investigation (FBI) redefined rape in 2013 to encompass victims and perpetrators of any gender, deviating from nearly a century of gender-specific definitions. In South Africa, one of the pioneering African nations to

[23] ibid
[24] ibid
[25] Ngari, (n 20)
[26] M Vermeulen, 'Hidden Victims: The Story of Sexual Violence against Men in Armed Conflict' *E-International Relations* [2011] <https://www.e-ir.info/pdf/13572 > accessed 15 May, 2025.
[27] ibid
[28] ibid
[29] J Alagbe, 'Victims Share Agonising Tales of Sexual Assault by Fellow Male Inmates' (*The Punch* Lagos, 14 May 2016)18-19.
[30] Sexual Offences Act 2003, s 3.

enact gender-neutral sexual assault legislation in 2007, male sexual assault has progressively gained prominence in both legal and public discourse.

In recognition of the limitations inherent in its existing legal frameworks. Nigeria enacted the VAPP Act in 2015. This Act represented a substantial transformation by redefining the crime of rape in gender-neutral terms and emphasising the nature of the act rather than the gender of the individuals involved. Furthermore, it expanded the scope of sexual offences to encompass sexual harassment, stalking, indecent exposure, and other related offences.

3.0 Male Sexual Assault as a Breach of Fundamental Human Rights under Nigerian Law

Fundamental human rights are simply the rights a person has because he is a human being.[31] The court, in *Asemota v Yesufu*,[32] held that 'fundamental human right is an undoubted inalienable right, which corresponds to a 'jus naturale'. It is the greatest right, and when it is contained in the constitution of a nation, it enshrines a people's expression of political and civic or civil rights as endowed by nature'. It can be perceived as a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself.[33]

Sexual assault is one of the most grievous forms of human rights violation that can be committed against any person. It constitutes an infringement of human rights including a victim's right to health, dignity, freedom from torture, liberty, and privacy, among others. I. T. Muhammad, JSC, in *Magaji v Nigerian Army*,[34] condemned the accused, holding the perverse act of sexual abuse against two underaged boys, a crime against the order of nature; an offence that defies the laws of all human beings which is against God and the state.

[31] J Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 2003)10.
[32] [1982] 3 NCLR. 419
[33] *Ransome Kuti v AG Federation* [1985] 2 NWLR (Pt. 6) 211.
[34] [2012] 16 NWLR (Pt. 1326)318.

The Rome Statute of the International Criminal Court provides that rape and other forms of sexual crimes are crimes against humanity itself.[35] Following this, the International Criminal Court, in *The Prosecutor v Akayesu*,[36] issued a life sentence to the accused charged with this offence.

From the foregoing, there is no doubt that male sexual assault in Nigeria constitutes a clear violation of numerous fundamental human rights recognised both constitutionally and under international human rights instruments, as shall be discussed below.

3.1 Right to Health

Male sexual assault has become a significant public health problem, with dire consequences for victims, families and communities globally.[37] It has perverse physical, psychological, emotional and mental health implications on the victim that affects their wellbeing and quality of life.[38]

Although not recognised as a fundamental right which can be justifiable and enforced by individuals upon its breach unless under rigid circumstances, section 17(3)(d) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) provides that the state shall provide adequate medical and health facilities for all persons.[39] However, by virtue of section 13 of the Child Rights Act (CRA), every child is entitled to enjoy the best attainable state of physical, mental and spiritual health.[40]

International human rights instruments more broadly recognise this right, when they provide for the enjoyment by everyone, to the highest attainable standard of physical and mental health under Article 16 of the African Charter on Human and People's Rights (ACHPR),[41] Article 14 of the African Charter on the Rights and Welfare of the Child

[35] Rome Statute 1998, art. 7.
[36] Comm. No. ICTR-96-4-T, ICL 129 (ICTR 1998)
[37] SE Mgolozeli and S. E. Duma, 'An Exploration of the Consequences of Rape Victimisation for Men' *International Journal of Qualitative Studies of Health and Wellbeing* [2025] (20)1.
[38] MD Donne, *et al*, 'Barriers to and Facilitators of Help-Seeking Behaviour Among Men who Experience Sexual Violence' *American Journal of Men's Health* [2017] (12)(2) 189-201.
[39] CFRN 1999, Cap C23, LFN 2004, s 17(3)(d)
[40] CRA 2003, s 13
[41] ACHPR 1981, art. 16

(ACRWC),[42] and Article 3 of the Universal Declaration of Human Rights, 1948 (UDHR),[43] among others.

Male victims of sexual violence are more likely to come down with mental or psychological health challenges down the line, including post-traumatic stress disorder, insomnia, body image perception issues, personality disorder, low self-esteem, anxiety disorders, depression, and suicide; than non-victims of violence.[44]

A study showed how this kind of experience could lead to anal lacerations, causing unbearable pain which may make it difficult for victims to walk or even defecate.[45] It has also been reported that male sexual assault could lead to the contraction of sexually transmissible diseases, including HIV, hepatitis A and B, syphilis and gonorrhoea, especially when prevention methods are non-existent because the victim could not have reasonably expected the attack, or did not have the resources to do so.[46]

Conclusively, it is very apparent that in most instances of male sexual assault, the right to health is severely compromised, as it leads to immediate physical harm and can trigger long-lasting psychological consequences, which hinders the victim's ability to fully recover and may not be adequately addressed by the substandard healthcare facilities in Nigeria.

Moreover, due to the limited recognition of this right under the Nigerian legislation, it will be difficult for an affected victim to institute or pursue an action on the ground that the assault committed against him impacted his health negatively.

[42] ACRWC 1990, art. 14
[43] UDHR 1948, art. 3
[44]CJ Ngini, *et al* 'Knowledge, Attitude, and Prevalence of Sexual Violence Among Male Undergraduate Students in a Tertiary Institution in Lagos, Nigeria' *American Journal of Men's Health* [2025] (19)(3) 2.
[45] D J Porche (n. 5) 5.
[46] L Stemple, 'Male Rape and Human Rights' *Hastings Journal* [2009] (60)(3)609.

3.2 Right to Dignity and Freedom from Torture

The dignity of a human person is like a fabric that shields the societal value system from interpolation.[47] Invariably, sexual assault has become a tool of degradation, torture, and character assassination, which can debase human society into the animal kingdom.[48] All forms of sexual abuse are the epitome of torture, inhumane treatment, and servitude, in that they reduce victims to a tool of sexual gratification.[49]

Section 34 of the 1999 CFRN provides for the fundamental right of a citizen's dignity, and guarantees freedom from torture, inhuman, cruel or degrading treatment.[50] Section 11 of the CRA protects more specifically, a child's right to dignity.[51] In the same vein, regional and international instruments ratified by Nigeria generally recognise and protect this right. Article 1 and 5 of the Universal Declaration on Human Rights (UDHR) protects the right to dignity and freedom from torture,[52] as well as Article 5 of the African Chater on Human and People's Rights (ACHPR).[53]

In the case of *E. B. v Romania*,[54] the European Court of Human Rights ruled that the act of rape, the most common form of sexual assault, constituted a violation of the right to dignity and freedom from inhuman or degrading treatment. Similarly, the Supreme Court of South Africa, in *S v Chapman*,[55] described it as 'a humiliating, degrading and brutal invasion of the privacy, dignity and the person of the victim'. Considering the above, it is safe to conclude without hesitation that sexual violence robs people of their right to human dignity and, by extension, is a bottleneck in the wheel of enjoying their statutorily guaranteed fundamental human rights.[56]

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[47] A Follesdal and T Pogge, *Real World Justice: Grounds, Principles, Human Rights and Social Institutions* (Springer Publishing, 2005)229-293.
[48] M Mustapha, 'Rape as a Violation of Fundamental Human Rights: A Peculiarity of Developing Nations' *Redeemer's University of Nigeria Journal of Jurisprudence and International Law* [2022] (1)80.
[49] ibid
[50] CFRN 1999, s 34
[51] CRA 2003, s 11
[52] UDHR 1948, arts. 1&5.
[53] ACHPR 1981, art. 5
[54] App. No. 49089/10, (19/03/2019)
[55] [1997] ZAZSCA 45
[56] Mustapha, (n 48) 81

3.3 Right to Equality and Non-Discrimination

The right to be free from discrimination is enshrined in the Nigerian constitution and in several international human rights treaties, and like other rights of great consequence, it is held to be non-derogable.[57] This means that it must be always regarded and cannot be suspended or revoked under any circumstance.

The 1999 CFRN prohibits discrimination on any ground and guarantees the equality of all citizens, when it explicitly states in its Section 42, that no citizen of Nigeria shall be subjected to any disability or restriction, or be accorded any privilege or advantage, based on their community, ethnic group, place of origin, sex, religion, or political opinion.[58]

At the international level, the UDHR acknowledges that all human beings are born free and are equally entitled to all rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[59] Likewise, by virtue of Article 3 of the ACHPR, every individual shall be equal before the law and entitled to equal protection of the law.[60]

Due to the fact that the international human rights system is apparently one in which principles of non-discrimination are paramount, state parties are mandated to ensure the equal rights of men and women in the enjoyment of their civil and political rights, without discrimination on the basis of sex, inter alia, under the International Covenant on Civil and Political Rights (ICCPR),[61] which Nigeria is a signatory to.

In pursuance of this mandate, the Human Rights Committee, in the case of *Fulmati Nyaya v Nepal*,[62] found that the state of Nepal had violated several human rights enshrined in the ICCPR, including the victim's right not to be subjected to gender discrimination.

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[57] Follesdal and Pogge, (n46) 638
[58] CFRN 1999, s 42
[59] UDHR 1948, arts. 1&2
[60] ACHPR 1981, art. 3
[61] ICCPR 1966, art. 3
[62] Comm. No. CCPR/C/125/D/2556/2015

Nigerian legal frameworks fall considerably short in extending its protection of victims of sexual abuse to male survivors. It can therefore be asserted that excluding one sex from this protection breaches the right to equality and freedom from discrimination: an unacceptable derogation from its absolute nature.

3.4 Right to Privacy

The concept of privacy embodies the moral fact that a person belongs to himself and not others, nor to society.[63] Brandis J., in the American case of *Olmstead v United States*, defined privacy as 'the right to be let alone-the most comprehensive of rights and the right most valued by civilised men'.[64]

The law seeks to protect the personality of an individual because he is a human being, and the self-worth of his person.[65] As a result, every unjustifiable intrusion by anybody or even the government itself upon the privacy of an individual is deemed to be a violation of this right.

Section 37 of the 1999 Constitution provides thus: 'the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected'.[66] This right is also preserved for children under Section 8 of the CRA.[67] In a similar fashion, the UDHR provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.[68] Accordingly, every person is entitled to the protection of the law against such interference or attacks.

Male sexual assault embodies a wide range of sexual behaviours performed against a victim contrary to his will. It involves the unauthorised access or invasion into a person's body and removes their right to control their sexual and personal interactions.

[63] *Thornburgh v American College of Obstetricians and Gynaecologists* 106 U. S. 2169, 2187 (1986)
[64] 277 U. S. 438 (1928)
[65] ES Nwauche, 'The Right to Privacy in Nigeria' *CALS Review of Nigerian Law and Practice* [2007] (1) 65
[66] CFRN 1999, s 37
[67] CRA 2003, s 8
[68] UDHR 1948, art. 12

Consequently, one can reasonably conclude that male sexual assault strips away the right of the male victim to privacy and contravenes the provisions of the law which safeguard this right.

4.0 Analysis of the Effectiveness of the Laws Protecting Male Victims of Sexual Assault in Nigeria

The previous section addressed how sexual assault against men can encroach upon their fundamental human rights. It therefore becomes critical to ask: How effective is Nigerian criminal legislation in protecting these rights when violated through acts of sexual assault?

The Nigerian Criminal Code Act defines rape in subjective terms, when it provides that a person is said to have committed the offence of rape if he has unlawful sexual relations with a girl or woman without her knowledge or consent.[69] This has received judicial backing, as seen in the case of *Akpan v State*,[70] where the court held that 'rape is the unlawful carnal knowledge of a girl or woman without her consent'.

This definition is deeply problematic. It exclusively recognises male perpetrators and female victims, thereby excluding male victims from legal recognition under the offence of rape. In essence, men are only portrayed as potential offenders. The Act goes further to prescribe the punishment for rape as life imprisonment.[71] However, since the definition of rape itself does not extend to male victims, they are effectively excluded from the protections of this provision, and their assailants cannot be prosecuted for rape under this section.

Section 353 of the Criminal Code Act CCA attempts to acknowledge male victims through its prohibition of "unlawful and indecent assault" on males. However, the language and punishment betray the gravity of such violations. The section classifies male sexual assault as merely indecent, punishable by just three years' imprisonment

[69] CCA, s 357
[70] [2014] LPELR-22740 (CA).
[71] CCA, s 358

which is a gross underestimation of the harm suffered. Moreover, it fails to define what constitutes 'unlawful' or 'indecent', leaving the provision vague and open to subjective interpretation.

Section 353 attempts to acknowledge male victims through its prohibition of unlawful and indecent assault on males.[72] This section significantly underestimates the severity of male sexual assault by classifying it as 'indecent assault', punishable by a mere imprisonment term of three years, which grossly underestimates the gravity of male sexual assault. Moreover, it fails to define what constitutes 'unlawful' and 'indecent assault' on males, leaving the provision vague and open to multiple interpretations.

Accordingly, Section 282 of the Penal Code (PC),[73] applicable in the Northern part of Nigeria, also defines rape strictly in terms of male-on-female violence. The Act only extends its protection to male victims of abuse when it penalises acts of gross indecency upon the person of another without his consent.[74]

Yet again, there is no clarity whatsoever on what constitutes 'gross indecency'. In addition, the punishment for this offence is imprisonment for a term which may extend up to seven years along with the payment of a fine, which is relatively lenient in comparison to the provision on rape where the offender could serve his sentence for life.

To address these gaps, the Violence Against Persons (Prohibition) Act (VAPP Act), enacted in 2015, introduced a more inclusive approach. It provides that the offence of rape is committed if a person intentionally penetrates the vagina, anus, or mouth of another person with any part of his or her body or anything else, and the other person does not consent to the penetration.[75]This gender-neutral language marks a significant departure from older laws and is commendable.

The VAPP Act also recognises sexual assault, unlike the CCA and PC, and regards it as the intentional and unlawful touching, striking or causing of bodily harm to an individual

[72] CCA, s 353
[73] PC Cap P3 1960, s 282.
[74] PC 1960, s 285.
[75] VAPP Act, Cap A 2 2015, s 1.

in a sexual manner without his or her consent.[76] The Act also recommends the award of appropriate compensation to the victim by the court and the registration of the criminal in the sex offenders' list,[77] both of which are absent in the CCA and PC.

However, the Act is not without shortcomings. Firstly, it does not acknowledge that a man's penis can also be forcefully penetrated, thus failing to provide justice to victims of such abuse.

Secondly, its applicability is limited to only states which domesticate the Act. Although passed by the National Assembly, Section 47 of the Act restricts its applicability to the Federal Capital Territory (FCT), Abuja,[78] and Section 27 grants jurisdiction over crimes defined by the Act exclusively to the High Court of the FCT.[79]

While some states have adopted it, others are yet to do so, while some others opted to enact a similar legislation rather than domesticate it. It can thus be rightfully said that this Act has yet to achieve nationwide recognition, and this raises serious concerns for the male victims in states where the Act has not been domesticated.

Finally, there is a lack of judicial precedents abiding by the provisions of this Act, as there are no publicly reported or documented Nigerian court cases where the VAPP Act has been applied specifically to prosecute sexual assault against male victims.

A striking example is the 2016 case of *Darlington v Lagos state*,[80] which involves the repeated sexual abuse of male minors by a football coach. The state failed to prosecute the offender under rape charges. Instead, charges were brought under provisions related to sodomy, a categorisation that not only diminished the gravity of the offence but also failed to reflect the full extent of the harm inflicted on the victims.

[76] VAPP Act, s 46.
[77] VAPP, (n 75)
[78] VAPP Act, s 47
[79] VAPP Act, s 27
[80] [Unreported] <https://www.educatedus.com/male-rape-in-nigerian-law-legal-gaps-and-the-need-for-reform/> accessed 14 July, 2025.

Another legislation which is instrumental in the protection of victims of sexual assault, male and female inclusive, is the Child's Right Act (CRA), 2003.The Act defines a child as any person below the age of 18 years, [81] and strongly prohibits sexual intercourse with a child; the contravention of which will condemn the offender to a life imprisonment sentence.[82]

The Administration of Criminal Justice Act (ACJA), 2015, also plays a critical role in the investigation, prosecution, and adjudication of sexual offences by introducing several provisions that are particularly relevant to sexual assault cases, without restrictions on gender. For instance, Section 232 of the ACJA permits the conduct of private proceedings where the charge involves sexual offences, thereby protecting the identity and dignity of victims.[83] This is especially important for male victims, who often face intense shame, ridicule or disbelief when reporting such crimes. By guaranteeing privacy in court, the Act encourages reporting and reduces the secondary trauma of public exposure.

However, just like the VAPP Act, the CRA and ACJA are federal laws, and as such, their applicability is primarily limited to the Federal Capital Territory unless domesticated by individual states, and their provisions cannot be invoked in states that are yet to adopt them.

Considering the above, it can be unequivocally asserted that there is an absence of effective laws to address male sexual violence in Nigeria which presents significant socio-legal challenges for male victims, echoing Touquet's argument that 'masculinist bias' prevents legal systems from including discourses that consider the sexual victimisation of men and boys.[84]

Despite being a signatory to numerous international treaties and conventions, including the ICCPR, UDHR, Rome Statute, and regional instruments like the ACHPR and

[81] CRA 2003, s 277
[82] CRA 2003, s 31
[83] ACJA 2015, s 232.
[84] ET Njoku and I Dery, 'Gendering Counter-Terrorism: Kunya and the Silencing of Male Victims of CRSV in Northeastern Nigeria' *African Studies Review* [2023] (66) (4)962.

ACRWC, Nigeria has not harmonised its domestic legal regime with its international obligations. The Rome Statute, domesticated in 2004, clearly defines sexual violence as a crime against humanity without reference to gender,[85] yet this principle has not been meaningfully operationalised within the domestic criminal justice framework. Nigeria's continued failure to revise its rape laws to reflect these standards is a clear indication of the gap between its treaty commitments and its domestic practices.

In addition, public and legal discourse in Nigeria often sidelines male victims. Pervasive myths such as, 'only women can be raped' reinforce legal inequalities, that not only deny justice but violate core legal principles, including the maxim, '*ubi jus ibi remedium*' (where there is a right, there is a remedy), as male victims are frequently denied legal remedies since there are no laws providing for them in the first place.[86] This contravenes both national legal principles and international standards, such as Article 26 of the ICCPR,[87] which guarantees equal protection of the law, and Article 8 of the UDHR, which ensures the right to an effective remedy.[88]

The African Commission on Human and Peoples' Rights, in *MIDH v Côte d'Ivoire*,[89] held that a state's failure to protect rights even when violated by private actors, constitutes a breach attributable to the state. Similarly, in *M. C. v Bulgaria*,[90] the European Court of Human Rights affirmed that states have a positive obligation to enact and enforce laws that sufficiently punish sexual crimes.

Relying on the above decisions, it is evident that the existing legislation in Nigeria is highly inadequate when it comes to the protection of male victims, and the state's inability to safeguard the rights of these victims have allowed violations against them to persist. Despite the array of laws that exist on paper, their effectiveness in protecting male victims remains critically undermined by outdated definitions, fragmented implementation, and systemic neglect.

[85] Rome Statute 1998, s7
[86] Njoku and Dery, (n 84) 960
[87] ICCPR 1966, art. 26
[88] UDHR 1948, art. 8
[89] Comm. No. 262/2002 (ACHPR 2008)
[90] App. No. 39272/98 (ECHR 2003)

5.0 Evaluating the Roles and Limitations of Institutional Bodies in Addressing Sexual Assault against Males

There are several institutional mechanisms in Nigeria, among which are the Nigeria Police Force, the Judiciary and Courts, the National Human Rights Commission, and several non-governmental organisations; all tasked with several responsibilities, including the protection of human rights and helping victims of sexual assault seek redress for the violation of their rights.

The Nigeria Police Force plays an important role in the sustenance of law and order, and in the security of lives and property.[91] In carrying out this central objective, the police bear primary responsibility for receiving complaints of sexual assault, preserving evidence, and initiating investigations. However, despite the seriousness of the act of sexual violence and its devastating consequences on victims, it is surprising that 50 to 90 percent of such incidents are unreported.[92]

While extensive studies have identified the influence of social perception and victims' self-blame as factors responsible for the underreporting of male sexual abuse, fewer studies have explored victims' interaction with police officers and possible impacts this could have on victims' reporting behaviour.[93]

The Police often demonstrate insensitivity to the plight of victims when they lodge complaints.[94] They subject them to ridiculous questions such as 'did you enjoy it?' or other unimaginable questions, while laughing and jesting as the victim recounts the harrowing experience, thereby trivialising this very sensitive matter.[95] Recent media accounts of the experiences of sexual assault victims and their families with the police,

[91] OS Agbefe, *et al*, 'The Impact and Challenges of the Nigeria Police Force in the Maintenance of Internal Security in Nigeria' *Journal of Research in Humanities and Social Science* [2023] (11)(2) 30.
[92] TG Obagboye, 'Low Reporting of Rape Cases in Nigeria: Challenges and Prospects' *African Journal of Law and Human Rights* [2019] (3)(2) 68.
[93] RA Aborisade, 'On the Darkness of Dark Figures of Sexual Crimes: Survivors' Rape Reporting Experiences with the Nigerian Police' *International Journal of Law, Crime and Justice* [2025] (73) <https://www.sciencedirect.com/science/article/abs/pii/S1756061623000022> accessed 14 July 2025.
[94] Obagboye, (n 92) 75
[95] ibid.

have also reported cases of exploitation, demand for a bribe, secondary victimisation, and prejudice on the part of law enforcement officers.[96]

These challenges are compounded by the existence of some legal rules and procedures including the Court Rules, which have become so complex that they tend to obstruct access to justice rather than grant access to justice, which is an integral part of the judiciary's duty in interpreting the law made by the legislature.[97]

An example of this complexity can be seen in the provision of Order 44(4) of the Rivers State High Court (Civil Procedure) Rules 2010.[98] This provision is also codified in the Court Rules of other states, and it provides that the Judge can at any time extend or adjourn the time for doing any act of for taking any proceedings, provided that the defaulting party pays a penalty. Now, parties have utilised this order to perpetuate delays and harshness to the system.[99] They make applications every now and then to gag the other party and then pay penalties that are usually nominal in nature.[100] Most victims, when faced with unnecessary protracted trials, in addition to the high costs of litigation, end up abandoning their rights just to stay out of Court and avoid reliving their trauma all over again.[101]

Another shortcoming of the judiciary in addressing cases of male sexual assault and ensuring justice for victims is the frequent dismissal of cases due to insufficient evidence, often stemming from the requirement of corroboration. Although the Supreme Court, in *Iko v. State*,[102] held that a conviction can be sustained in the absence of corroborative evidence, it cautioned that relying solely on uncorroborated testimony is unsafe. As a result, courts often hesitate to convict offenders in cases where the victim's account

[96] Aborisade, (n 93)
[97] M Izzi and ON Adiela, 'Judicial Approach to Gender-based Violence in Nigeria: An Evaluation' *International Journal of Civil Law and Legal Research* [2021] (1)(2) 34.
[98] RHC Rules 2010, order 44(4)
[99] Agbefe, (n 91)
[100] ibid
[101] ibid
[102] [2001] 14 NWLR (Pt. 732) 221

stands alone, contributing to a persistently low conviction rate and undermining efforts to hold perpetrators accountable.

It is also worth noting that many courts have considered male sexual assault an impossibility where the accused is a woman, relying largely upon stereotypical notions that such offence constitutes a man (the actor) penetrating a woman (the object).[103] This argument appears to assume that a male would have to achieve an erection before a female could sexually violate him.[104]

In *Willan v Willan*,[105] the wife who frequently demanded sexual intercourse from her husband would indulge in violence to coerce him when he did not wish to oblige. In denying the husband's appeal, the English Court of Appeal, in referencing the husband's erect penis, reasoned that the actual act of intercourse constituted the evidence of condonation. It further noted that it might be otherwise in the case of a wife, but in the case of a husband who has sexual intercourse, it can only be said of him that what he does, he does on purpose, and that sexual intercourse with his wife must be a voluntary act on his part.

Beyond the criminal justice system, the National Human Rights Commission (NHRC) holds quasi-judicial powers and a mandate to investigate human rights violations, determine compensation for victims, and recommend reforms to the appropriate authorities.[106] The NHRC has powers to institute actions in court in the interest of the public, and can also refer human rights violations requiring criminal prosecution to the Attorney General of the Federation or States as the case may be.[107]

However, cases involving these violations such as sexual assault, take a long time to resolve in court, and this can lead to extended suffering and injustice for victims, as well

[103] SF Fuchs, 'Male Sexual Assault: Issues of Arousal and Consent' *Cleveland State Law Review* [2004] (51)(1) 113
[104] ibid
[105] 2 All E. R. 463, 463 (Ca. 1960)
[106] NHRC Act 1995, s5
[107] AL Ibrahim, *et al*, 'Repositioning the NHRC for Advancing the Promotion, Protection, and Enforcement of Human Rights and the Attainment of Socio-Economic Development in Nigeria' *Journal of Political Discourse* [2023] (1)(4) 83.

as a sense of impunity for perpetrators.[108] Delayed justice undermines the credibility and effectiveness of the NHRC, and citizens may lose faith in the ability of the Commission to secure justice.[109] Also, many Nigerians are not aware of their rights and the role of the NHRC in addressing breaches of these rights as the activities of the Commission are largely urban-centred, with little effort to reach rural communities.[110] The Commission also faces resources constraints, including limited funding, staff shortages, and insufficient infrastructure, which hinders its ability to effectively carry out its mandate to protect and promote human rights in Nigeria.[111]

Finally, a vital structure in addressing sexual assault against men in Nigeria are Non-Governmental Organisations (NGOs), which have been highly instrumental in providing legal support services for victims, including structured counselling, in-depth case updates, in-person representation, and continuous guidance, ensuring survivors are well-prepared and supported in their pursuit of justice.[112] They also spread awareness and provide information about sexual violence to prevent it and support survivors, as well as providing emergency shelters, medical and psychosocial support to victims.[113]

NGOs, however, face several obstacles in the implementation of their objectives, especially in the face of delays in legal processes. This presents a barrier in addressing sexual violence cases, prolonging the trauma of survivors and resulting in frustration and despair. It has been reported that cases take months or even years to process, leaving survivors feeling demoralised and questioning the attainability of justice.[114] Limited funding, staff shortages, and logistical constraints have also been identified as challenges that NGOs face in providing support to survivors.[115]

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[108] ibid
[109] ibid
[110] ibid
[111] ibid
[112] SR Bolanle, The Role of NGOs and Government Agencies in Addressing Sexual Violence Against Women in Lagos State, Nigeria (A Research Paper Submitted to the International Institute of Social Studies, The Hague, The Netherlands, in Partial Fulfilment of the Award of Master of Arts Degree, 2024).
[113] Bolanle, (n 112)
[114] ibid
[115] ibid

In conclusion, while state institutions and NGOs in Nigeria play essential roles in responding to sexual assault, their effectiveness in addressing the unique experiences of male victims remains limited. Institutional insensitivity, legal and procedural hurdles, lack of awareness, and resource constraints, collectively hinder access to justice and support for male survivors.

6.0 Comparative Legal Approaches to Male Sexual Assault in Nigeria

Having examined the legal, social, and institutional challenges of male sexual assault within Nigeria, this section turns to explore how some notable jurisdictions, like South Africa, the United Kingdom, the United States of America, and Canada have addressed similar issues. By analysing the statutory frameworks and practical approaches of these jurisdictions, this section seeks to identify practices that could inform a more inclusive and effective legal response to male sexual assault in Nigeria.

6.1 Male Sexual Assault in South Africa

South Africa arguably has the most progressive and inclusive sexual offences framework in Africa. Its pivotal legislation is the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, which provides in Section 5, that a person is guilty of the offence of sexual assault in the event of unlawfully and intentionally sexually violating a complainant without his or her consent.[116] This provision marked a decisive break from traditional legal definitions that excluded the male gender from protection. The law also introduced a range of offences, including compelled rape, sexual grooming, and sexually assaulting a corpse.[117]

More importantly, these legal reforms in South Africa pertaining to male abuse are not just theoretical or dormant, as they have received consistent judicial backing by the courts, which have relentlessly affirmed the rights of male victims, reinforcing the idea that all victims of sexual violence deserve equal protection and redress. For example, in

[116] Act No. 32 of 2007, s 5.
[117] Act No. 32 of 2007, ss 4, 6, 7, 14, 18 & 24.

the case of *S v Ncube*,[118] a high court in South Africa convicted the defendant of repeated rape and sexual exploitation of a young boy, further demonstrating the judiciary's willingness to give full effect to the provisions of the law in protecting male victims.

Unlike in Nigeria where legal recognition of male sexual assault remains contested and enforcement is sporadic at best, South Africa's approach reflects a system where legislative intent aligns with judicial action, proving that protecting male victims is not merely aspirational, but achievable when the law is treated as more than a formality.

6.2 Male Sexual Assault in the United Kingdom

In the UK, a man could only commit sexual crimes against a woman and could not be a victim himself until the Criminal Justice and Public Order Act of 1994, which through the broadening of its definition of rape to include men,[119] made possible the first conviction in England for the attempted rape of a man by another man in *R v Richards*.[120]

The principal legislation governing sexual offences in the United Kingdom is the Sexual Offences Act, 2003. This Act recognises a number of offences, including rape, assault by penetration, sexual assault, and causing a person to engage in sexual activity without consent.[121] However, under this Act, the offence of rape can only be committed by a man.[122] While other less serious offences such as assault by penetration and sexual assault are gender-neutral and may be committed by individuals of any sex, they generally carry lesser maximum sentences in comparison to rape.

In *R v Tanya Lord*,[123] however, the court confronted this disparity. Judge Patrick Lynch, in sentencing the female defendant to two years imprisonment for engaging in a non-

[118] [2023] ZAGP JHC 1036
[119] A Javaid, 'Male Rape in Law and the Courtroom' *European Journal of Current Legal Issues* [2014] (20)(2) <https://www.researchgate.net/publication/273574378> accessed 14 July, 2025.
[120] [1996] 2 Cr. App. R (S)16 7
[121] Sexual Offences Act 2003, ss 1, 2, 3 & 4.
[122] Sexual Offences Act 2003, s 1
[123][Unreported] <https://www.itv.com/news/utv/2023-03-10/woman-jailed-for-sex-attack-on-sleeping-man> accessed 14 July, 2025.

consensual sexual intercourse with a man who was asleep, remarked that 'the fact that a male is the victim does not make it any less serious than the rape of a female victim'.

Despite the judge's acknowledgment of the seriousness of the offence, the sentence imposed could be viewed as disproportionately low, especially considering the gravity of the act to rape, which stems from its gendered definition of rape. Nigeria, by contrast, offers a more inclusive legal definition under the VAPP Act, but lacks the UK's strong procedural enforcement, which includes anonymity in the media, the use of special measures in court, and victim support services. This contrast highlights a recurring theme: legal progress is only as effective as its application.

6.3 Male Sexual Assault in the United States of America

The USA presents a diverse legal system due to its federal structure, with sexual assault laws varying across states. Under Section 2241, Title 18 of the United States Code, federal law defines aggravated sexual abuse as: 'Engaging in a sexual act with another person by using force, or by threatening or placing that other person in fear'.[124]

In the American case of *Oncale v Sundowner Offshore Services, Inc.*,[125] the Supreme Court ruled that the law does not discriminate based on the sex of the harasser or the victim in a sexual harassment suit. In 2013, the FBI's Uniform Crime Reporting (UCR) program, also redefined rape to include male victims.

The attitude of the U.S. government in addressing the complex issue of male sexual violence is highly commendable. The country has enacted multiple gender-neutral laws and policies at both federal and state levels, including the Prison Rape Elimination Act (PREA), to ensure protection and justice for all survivors, with no sex restrictions. Today, all 50 states have gender-neutral sexual assault laws. In contrast, Nigeria continues to face significant gaps because several states are yet to adopt the VAPP ACT, arguably the country's only comprehensive, gender-inclusive legislation on sexual violence, and even in states where it has been adopted, enforcement remains weak or non-existent.

[124] 18 U. S. Code, s 2241.
[125] 523 U. S. 75 (1998)

6.4 Male Sexual Assault in Canada

Canada offers one of the most advanced and gender-inclusive legal approaches to sexual violence. Like most jurisdictions, the state recognised solely female victims and male perpetrators in the past. However, in 1983, Bill C-127 came into force and repealed the crimes of rape, attempted rape, sexual intercourse with the feeble-minded and indecent assault, replacing them with three levels of sexual assault; all of which apply regardless of the gender involved.[126] The law also criminalises spousal sexual assault and recognises the validity of post-traumatic behaviours that may delay reporting.[127]

Throughout the past three decades, Canada has witnessed dramatic changes to how the criminal justice system responds to sexual assault, through legislative reform, judicial interpretation, policy, programs and training for both criminal justice professionals, as well as professionals in health, social work and education.[128] It is now recognised that males, both as children and as adults, can be victims and survivors of sexual abuse and sexual assault.[129] The Canadian government goes as far as offering extensive victim support infrastructure, including shelters, trauma counselling, and sexual assault nurse examiner (SANE) programs.

In the Canadian case of *R v Chase*,[130] the court held that sexual assault within the meaning of Section 246 (now Section 271) of the Criminal Code of Canada, is an assault which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated. This is evidently different from what is attainable in Nigerian courts, where the term, 'sexual assault' is not generally used, leading to the narrow use of the term, 'rape' which does not cover all sexual offences, and which most courts have defined as the forceful penetration of a man's penis into a woman's vagina, thereby excluding male victims from protection.

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[126] S McDonald and A Tijerino, 'Male Survivors of Sexual Abuse and Assault: Their Experiences' *Research and Statistics Division, Department of Justice Canada* [2013] <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_8/rr13_8.pdf> accessed 14 July, 2025.
[127] ibid
[128] ibid
[129] ibid
[130] [1987] 2 SCR 293.

7.0 Conclusion and Recommendations

This study has highlighted the reality of male sexual assault in Nigeria; a subject long buried under silence, cultural myths, and legal neglect. The existing legal instruments, particularly the Criminal and Penal Codes, retain provisions that exclude male victims from full protection of the law and are greatly unresponsive to their unique needs and experiences. Even where newer laws like the VAPP Act attempt to be inclusive, their limited applicability and narrow definitions still leave many victims outside the protective reach of the law.

Beyond legislation, the lack of domestication of fundamental laws such as the ACJA, CRA, and VAPP Act in many states, alongside the non-domestication of major international treaties, further weakens the legal foundation needed to guarantee justice and protection. Institutions that should offer support, such as the police, judiciary, and human rights bodies, are often constrained by bias, inadequate training, and poor coordination, compounding the harm already suffered by victims.

Amid these gaps, there is hope. NGOs, although under-resourced, have stepped into the space abandoned by formal institutions, offering assistance, advocacy, and visibility to male victims. In addition, the National Human Rights Commission has made commendable effort in promoting and protecting the rights of all victims of abuse, including males, despite facing limitations in enforcement powers and operational capacity. Lessons from comparative international jurisdictions have also been helpful in showing that change is possible and realisable when inclusive laws, institutional reform, and public education align toward fairness and equality.

In conclusion, this work calls for a reimagining of the Nigerian legal and institutional system. One where recognition is not restricted by sex. One where every victim is heard, protected, and empowered to seek redress without fear or shame. Until then, male sexual assault will persist, not just as a legal omission, but as a hindrance to justice and a human rights failure that we can no longer afford to ignore. Thus, the findings of this study has a

great implication on the policy makers and the relevant stakeholders in Nigeria. To this end, recommendations are made below:

i. Amendment of the provisions on sexual offences in the Criminal and Penal Codes to ensure equal protection for all victims, regardless of gender.
ii. Mandating states to domesticate the VAPP Act, CRA, and ACJA, and all other progressive laws including international treaties, which are widely encompassing in their protection.
iii. Establishment of special courts dedicated to handling sexual assault cases in camera to protect male victims from stigma, ridicule, mistreatment, and retaliation.
iv. Provision of adequate funding to human rights institutions like the NHRC to safeguard the fundamental rights of male victims.
v. Granting statutory authority to NGOs and enabling collaboration between them and the government to facilitate better protection for male victims.
vi. Ensuring diligent investigation of sexual violence and mandatory training for all officials involved in handling cases of sexual assault.
vii. Promotion of widespread public enlightenment to raise awareness about the reality of male sexual abuse and its effects on victims.

X-RAYING THE RIGHTS OF AN UNBORN CHILD UNDER THE ENGLISH COMMON LAW: THE NIGERIAN EXPERIENCE

By

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Abstract

Major focus in the global discourse of rights have been on human rights. This presupposes the rights of persons who have been born alive. Little attention is paid to the rights of the unborn child under the common law jurisprudence. Hence, this paper is poised into making an enquiry into the rights of an unborn child under the English common law. In doing so, the study adopts the doctrinal method of legal research. The paper finds that there appears no consensus among scholars on when human life begins, while some opine that it is at birth, quickening is said to mark the beginning of life by some; the pro-life advocates opine that conception is the beginning of human life. The paper finds further that the underlying principle as regards the unborn child in Common law jurisdictions is the 'born alive rule' with an exception found in the American experience of the rule. The paper finds also that Nigerian constitutional provisions on the protection of human life vis-à-vis appropriate sanctions for violation are by extension applicable to an unborn child. The paper concludes that such rights can be overridden in the interest of the mother. The paper recommends legal jurisprudence expansion to harmonize various issues relating to the rights of an unborn child under the law.

Keywords: Unborn Child, Rights, Child, Common Law, Fetus, Abortion

1.0 Inroduction

The foundation of the modern legal system of Great Britain and much of its commonwealth, the United States and Canada were laid in England in the Middle Ages. This body of 'common law'- the sources of, among many other things, the concept of trial by jury- has its origin in the twelfth century reigns of Henry II and Richard Lionheart. Refined and expounded upon by English legal scholars over centuries, English common law has influenced the judicial system of most western societies. [1]

This study seeks to enquire as to what extent the rights of an unborn child is protected under the common law. By this, the study sets out to examining the legal personality and status of an unborn child with a view to ascertain its rights in that circumstance. This is because, much focus is laid on human rights pertaining to an already born person. This paper sets a new dimension to examine the rights of an unborn child so that breaches of such rights could be realized and adjusted.

The focus of this chapter is on analysis of the legal personality of an unborn child under common law vis-à-vis the answer to the question of when life begins and the legal personality of the fetus, Abortion and the rights of an unborn child to life and the rights of an unborn child under the Nigerian law.

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[1] FG Scott, 'Biothics and the New Embryology: Spring Board for Debate' available at: http://books.google.com.ng/bppks/Biotheics_and_the_new_embryology.html?id=jg23QzWT6m4C&redir_esc=y accessed 25 July 2025

2.0 Legal Personality of an Unborn Child under Common Law

In determining whether the unborn child is accorded any legal personality under common law thereby making him recipient of certain rights, two things must be considered because they form the foundation of the legal personality of the fetus:[2]

i. When human life begins.
ii. The legal status of the unborn child.

2.1 Beginning of Human Life in Common Law

The question of when life begins has been thought about and asked throughout history. It has been expounded and argued upon countless of times by lawyers, doctors, philosophers and theologians.[3]

Science has not provided a conclusive answer to the question of when human life begins, and opinions among scientists are not totally consistent. According to some scholars, the process of a non-human being becoming a human is gradual and does not occur at a certain point.[4]

The beginning of human existence has been identified by several scientists as occurring at different phases of development, which are listed below:[5]

i. Fertilization (the acquisition of novel geonome)
ii. The time of or surrounding birth (the acquisition of independent breathing and viability outside the mother's body)
iii. Quickening (which is the most popular position in Common Law)

[2] LH Ramos, *et al.* 'The Unborn Child and its Personality Rights' available at: https://ijaers.com/uploads/issue_files/4IJAERS-11202271-TheUnborn.pdf accessed 4 June 2025
[3] A Kurjak, 'The Fact and doubts about beginning of human life and personality' available at: https://pmc.ncbi.nlm.nih.gov/articles/PMC7245522/ accessed 3 July 2025
[4] ibid
[5] FG Scott, 'Biothics and the New Embryology: Spring Board for Debate' available at: http://books.google.com.ng/bppks/Biotheics_and_the_new_embryology.html?id=jg23QzWT6m4C&redir_esc=y accessed 25 July 2025

2.1.1 View 1: Life Begins at Fertilization

According to this "genetic" view of human existence, a new person is created during fertilization, or conception, when the genes of the two parents unite to create a new genome with distinct characteristics. This is a position that some scientists hold and can be upheld with or without religious beliefs.[6]

In actuality, the organism created by fertilization is a human embryo with the potential to mature into an adult. The question of whether or not these facts are enough to give him personality is one that is shaped less by science and more by philosophy, theology, and opinion. According to some biologists, the early embryo is not even an individual until it undergoes gastrulation.[7]

2.1.2 View 2: Life Begins at or Near Birth

This perspective holds that when a fetus is capable of supporting itself outside the womb, it ought to be regarded as human. The respiratory system imposed the natural limit of such viability; a fetus could not survive outside the womb until its lungs were properly grown, which happens at around 28weeks.[8]

Some people believe that human life begins when a person has completely separated from their mother and developed a functioning circulatory, alimentary, neurological, and respiratory system. This traditional "birthday" is frequently marked by the baby's head emerging or the cutting of the umbilical cord.[9] The advantage of such moments is that they are public, well defined and obvious, that is the crowning of the head, the cutting of the umbilical cord, the first breath or first cry.[10]

2.1.3 View 3: Common Law Position

It is crucial to note that the English Common Law determines that human life begins at quickening, which is the moment when the fetus is felt moving within the uterus. At around 120 days (4 months) of gestation, quickening takes place. However, human life is

[6] ibid
[7] ibid
[8] ibid
[9] Kurjak, (n 3)
[10] ibid

considered to begin at viability outside the mother's womb, according to the 1973 Roe v. Wade ruling, which cited precedence for abortion in the United State.[11]

2.1.4 The Islamic Law Position

Although the focus of this work is in Common Law, since we will be talking about Nigeria and Nigeria being a country with tripartite legal system comprising of Common law, Islamic and Customary law. The answer to the question of when life begins in Islam has been inferred by jurist based on the Quranic and hadith provisions that the soul enters the body of the fetus at 120 days after gestation. Therefore, after 120 days, it is no longer a lifeless object, but rather a living being.[12]

Thus, in the absence of a clear consensus on when life begins, there are people who feel that birth is the only indisputable moment at which a fetus becomes a human.[13]

3.0 Legal Status of the Unborn Child

In general, maternal autonomy may always take precedence over fetal autonomy if the unborn child is given little or no legal personality. However, the way is open to balancing fetal and maternal autonomy, where the fetus is given substantive legal personality which could lead to giving one priority over the other.[14]

The "born alive" rule circumscribes the fundamental stance about the legal status of the unborn child under common law jurisdiction. This rule states that, excluding a statute, a person cannot be held accountable for harm done to a fetus while it is still in the womb until it is born alive.[15]

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[11] Scott, (n 5)
[12] Qur'an Chapter 23 verses 12-14, Qur'an Chapter 22 verse 5; the Quran does not explicitly state the exact time the soul enters the fetus, but Islamic scholars interpret verses of the Quran and Hadiths to mean the soul is breathed into the fetus after 120 days (4 months).
[13] ibid
[14] C Gerard, 'Pregnant Woman and Unborn Child: Legal Adversaries' available at https://researchrepository.ucd.ie/server/api/core/bitstreams/8723c8e1-509b-47d6-a90a-d9d24a806278/content accessed on 25 July 2025
[15] ibid

Charge of murder or manslaughter is very sacrosanct. This is because, it shows to the whole world a heinous crime against a life which is sacrosanct which no one can recreate. However, the termination of the life of a foetus seems technical. It is difficult to classify it as either murder or manslaughter. Thus, it important to note that killing an unborn child while still in its mother's womb may therefore be a statutory offence tagged abortion which the law frowns at. The position will however be different if the termination of the soul occurs after child is born alive. The person who is responsible for the termination is guilty of murder or manslaughter depending on the circumstances.[16]

The foregoing brought to the fore the operation of born alive rule. It is important to note that narrative has changed in United State of America regarding the rule. This is because circumstances of the earlier operation of the born alive rule no longer exist in the USA. The rule has been abrogated both in the civil and criminal laws. The rule is, however, still extant in the English law. Scholars of medical law have consistently asserted that born alive rule is very much unassailable under the English law.[17]

There seems to be problem of conceptualization leading to conflicting decisions in English law of tort cases. The born alive rule has been used to contend that the consequential implication is that unborn child lacks legal personality. In the case of *Walker v. Great Northern Railway Co. of Ireland*,[18] claim for damages was made against a transport company for injury inflicted on the plaintiff. At the time of the accident, the plaintiff was *en ventre sa mere.* O'Brien J declined to award damages to the plaintiff on the ground that, at the time of the accident, the plaintiff lacked legal personality, i.e., he had no actual existence not being human being. The court held that the plaintiff was then pars *viscerum matris.* The court held further that the plaintiff has not referred to any authority or principle of law to show that a legal duty has ever been held or arise towards

[16] Halsbury's Laws of England (4th ed. Reissue, 1990) 11 (1)
[17] K Ian and G Andrew, 'Principle of Medical Law' available at: http://ukcatalogue.oup.com/product/9780199544400.do accessed 3 July 2025
[18] (1891) 28 L.R (Ir) 69.

that which is not in existence. Such fictious existence is not capable of implicating a negligent act a breach of duty against the defendant.[19]

However, after forty years had lapsed, the court, in *Montreal Tramways v. Leveille*[20] departed from the principle laid down in *Walker's* case. The judges in the latter case thought it proper to depart from the principle of *Walker* with view to awarding damages to the plaintiff in the similar case. Cannon J in awarding the damages held that the plaintiffs right to *compensation* came into existence only when she was born with the bodily disabilities from which she suffered; it was only after birth that she suffered the injury and it was then that her rights were encroached upon, and she commenced to have rights. The germane issue is not to actually focus on the fetus' legal personality but rather to concentrate and recognize the fact that the fetus and the child are biologically continuous.

4.0 Born Alive Rule in English Law

In the Sims case (1601) charges of trespass and assault was brought against Sims who was alleged of beating a woman.[21] The case report says, "if a man beats a woman who is great with child, and after the child is born living, but have signs and bruises in his body, received by the said battery, and after died thereof, I say that this is murder." Four elements must be present for this to be a case of murder:

i. The woman must have been pregnant.
ii. The child must have been born alive and died subsequently.
iii. The assailant must have battered the woman and
iv. The child's death must have been caused by the assailant's battery.

The significance of the child been born alive is noted to be what appears to be evidential reason, the difference is where the child is born dead, it is not murder because it is not

[19] ibid
[20] (1993) 4 D.L.R. 339.
[21] LW Levy, Sim's Case: The Fugitive Slave Law in Boston available at https://heinonline.org/HOL/LandingPage?handle=hein.journals/malghis7&div=9&id=&page= accessed on 15 July 2025

constant whether the child was living at the time of the battery or not, or if the battery was the cause of the death, but when it is born living, and the wound appear in his body, and then die, the batterer shall be arraigned for murder because now it may be proved whether the wound was the cause of death or not.[22]

In R v. Shepherd[23] the appellant was charged under Section 4 of The Offences Against the Person Act 1861 for soliciting a pregnant woman to kill her child. The court held that for the purposes of the section, the person whose murder was solicited or encouraged do not have to be in existence at the time of the incitement: it was sufficient if it were in existence at the time when the act of murder is to be committed. The court held that the child having been born alive, the incitement to murder it was an incitement to murder a person within the meaning of the section notwithstanding that at the date of the incitement it was incapable of being a subject of murder.

The court in Earl of Bedford's case held that the child though posthumous, should take under the will, Chief Justice Eyre remarking that all infant *in ventre matris,* who by the course and order of nature was then living, came clearly within the description of children living at the time of his death. It must be noted that although the child was considered, for the purposes of inheritance, as if it were already born, nonetheless, it had to be born alive before there could be any transfer of property to it.[24]

Similarly, in the case of *Wallis v. Hodson*[25] Lord Hardwicke LC held that the plaintiff was *en ventre sa mere* at the time of her brother's death, and consequently a person in *rerum natura*, that by the rules of common law and civil law she was to all intent and purposes a child as much as if born in the father's lifetime. Given that the status of being a person in *rerum natura* is generally denied to the unborn child, it is quite remarkable that Lord Hardwicke asserts it here. It could be argued, however, that the context of Lord

[22] ibid
[23] Court of Criminal Appeal (CCA) 31 March 1919, (1919) 2K.B. 125
[24] *The English Reports*, LXXVII King's Bench Division VI, containing Coke, parts 5 to 13. 7 Co. Rep. 7a-9b. Coke's Reports extend from 1572-1616 and are to be found in Vols. 76 and 77 of *The English Reports*. The reference "Mich. 28 and 29 Elizabeth" establish these cases as occurring in the years 1586-1587.
[25] The English Reports XXVL, 473; 2ATK.117

Hardwicke's statement is such that the attribution of personhood to the child in *utero* is impliedly restricted to cases of inheritance and not cases of criminal or tort law.

In the English case of *Attorney-General's Reference (No. 3 of 1994),* the idea that the fetus was but part of the mother which persisted in English law was rejected, referring to Human Fertilization and Embryology Act 1990; "an embryo is in reality separate organism from the mother from the moment of its conception…the fetus cannot be regarded has an integral part of the mother but a separate entity.[26]

In summary, under both English Civil and Criminal law, the unborn child had, has only a shadowy half existence not been quite nothing, and yet not being quite something either unless or until it was born alive when personhood will be attributed to him. This is contrary to his position under the law of inheritance where he is treated in such a way as if he was already in existence although property rights transfers to him only when he is born alive.

5.0 American Experience

Despite abortion protections under Roe's case (before its overruling) a lot of States in the USA have long treated the fetus as a separate legal entity in criminal and tort contexts and this still remains intact even post the decision of the Supreme court in Dobbs Vs Jackson Women's Health Organization[27]. In the instant case, the Court held that the Constitution does not confer a right to abortion and regulatory power now rests on individual State's legislatures to make laws on abortion in their jurisdictions[28]. The reality in the USA now is that abortion laws now vary from State to State. While States like Alabama, Kentucky, Oklahoma, Tennessee and some other republican States have a total ban on abortion, some States still allow abortion with strict gestational limits.[29]

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[26] (1998) A.C 245 at 267.
[27] (2022) 597 U.S
[28] This is a clear departure from the decision in Roe V. Wade which was the law in the United States of America for a long time. In this case, the constitutional right to abortion under the 14th Amendment's right to privacy was established.
[29] The following are States where abortion is allowed but with strict gestational limit of 6-15 weeks; Florida, Nebraska, Arizona, South Carolina, Ohio and Wyoming; Guttmacher Institute, 2025 State Abortion Policy Landscape https://www.guttmacher.org/2023/06/state-abortion-policy-landscape-one-year-post-roe accessed 4 of August 2025

Despite the now absent federal right to abortion, the US criminal law has long recognized fetal rights especially in third party feticide. That is, the person will be criminally liable where he harms or kills a fetus during a crime against the pregnant woman.[30]

In most states of the USA, the assailant of a pregnant woman can, in addition to charges of assault on the woman, be convicted of another offence which is feticide or some variety of homicide, if the woman's unborn child should die. It may seem that the laws defining such crimes would be anachronistic and even unconstitutional after the decision of the court in Roe v. Wade,[31] but there is a vital difference between these feticide law and abortion law founded upon decision in Roe's case. There is a distinction in the USA law between 2nd party and 3rd party feticide. A 2nd party feticide or consensual abortion is where the cause of the feticide is the pregnant woman or her agent while a 3rd party feticide is one carried out by an outsider who is neither the mother nor any other person with the right to do so. Feticide law permits 2nd party feticide (abortion) but not 3rd party feticide.

The following are some important judicial authorities recognizing fetal rights:

The court in Bonbreast v. Kotz[32] allowed recovery for prenatal injury to a viable fetus, rejecting the argument that the fetus was not a legal person until birth. In addition, the supreme Court upheld a criminal conviction for killing a fetus during criminal assault[33]. The Massachusetts Supreme Court was the first to expressly depart from the 'born alive rule' holding that a viable fetus could be the subject of homicide.[34]

It is clear from the above that under the American law legal personality is accorded to the unborn child while in utero and the requirement of the born alive rule has been dispensed with. Thus, the right of the fetus is protected from any form of 3rd party interference.

[30] Wesh News, 'Feticide Laws vs Abortion Post-Dobbs' available at: www.wesh.com/article/abortion-laws-in-every-state/44301410 accessed 2 August 2025
[31] 410 U.S 113
[32] 65 F. Supp. 138 (D.D.C 1946)
[33] State v. Horne, 462 S.E.2d 739 (S.C 1995)
[34] Commonwealth v. Cass, 467 N.E.2d 1324 (Mass. 1984)

6.0 Abortion and the Right of an Unborn Child to Life

The term abortion has been defined in several ways, according to Bakare[35] "*abortion is the termination of pregnancy before fetal viability. It has also been defined as a spontaneous action in which the fetus is expelled due to accidental trauma, natural or environmental cause. It may also be induced by deliberate human effort. According to him, this is calculated forced ejection of the fetus from the uterus.*"[36]

The word abortion was defined by the World Health Organization as "*the termination of an already established pregnancy (in other words a method that acts after implantation). The abortion may be induced (voluntarily performed) or spontaneous.*"[37]

6.1 Legal Position of Abortion under Common Law

The governing law for abortion under Common Law is contained in the "Offences Against the Person Act 1961", Section 58 of the Act reads:

"*Every woman, being with child who, with the intent to procure her own miscarriage, shall unlawfully administer to herself any instrument or any noxious thing; or shall unlawfully use any instrument or other means whatsoever, with the intent to procure the miscarriage of any woman, whether she be or not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing; or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of an offence; and being convicted thereof shall be liable… to imprisonment for life."*

Another Act was enacted few years later governing the offence to destroy a child capable of being born alive.[38] The Act is known as the Infant Life (Preservation) Act. Although

[35] NA Bakare 'Teenage pregnancies, causes, medical implications and prevention' *LASU Law Journal* (2006) 4, 30.
[36] O Ihediwa, 'Post-abortion psychological sequel' (A paper presented at the 32nd Annual National Conference of Counseling Association of Nigeria, Ilorin 2008)
[37] World Health Organization, 'The prevention and management of unsafe abortion' (Report of a technical working group, WHO/MSM192.5, 1992)
[38] Infant Life (Preservation) Act 1929

the provisions of this Act run contrary to the provisions of the Abortion Act[39], it was not amended by the Abortion Act.

The Supreme Court of the United States decided in the case of *Roe v. Wade*[40] that the American constitution gave a woman a right to privacy which encompassed her decision whether to terminate her pregnancy. However, the court also declared that the right is not absolute and that the law could regulate the conditions for abortion between the end of the first trimester (or three months) of the pregnancy and the stage of viability, and moreover once viability has been reached that the law could prohibit abortions altogether, except those necessary to preserve the life or health of the mother[41]. It is important to state that abortion in the USA is now a matter of State legislations, and each State can now make laws to govern abortion within its jurisdiction as opposed to what was held in the instant case, where abortion was seen as a constitutional right hinged on a woman's right to privacy.

6.2 Legal Conditions for Carrying out Abortion.

The main conditions and grounds for which the procurement of abortion is authorized as found in legal texts and documents are:[42]

1. Risk to the woman's life: "To save the mother's life" is one of the primary justifications for abortion legalization. This could be stated explicitly or implicitly, for instance, based on "necessity." The majority of penal codes have general rules regarding necessity, which permit actions that would normally be deemed unlawful to be taken without consequence when they are required to protect a good. The circumstances in each county will determine if this defense is successful.[43]
2. Risk to her mental health: Although there are many different ways to define mental health, the Attorney General of the United States of America's 1999 definition, which

[39] Abortion Act 1967
[40] Roe v. Wade 410 U.S. 113 (1973)
[41] http://www.care.org.uk/student/abortion/accessed 25 July 2025
[42] V Marcel, *et al*, 'Access to Safe Abortion: A tool for accessing legal and other obstacles' available at: http://www.ippf.org/system/files/access_to_safe_abortion.pdf accessed 15 July 2025
[43] ibid

states that "mental health is a state of successful performance of mental function, resulting in productive activities, fulfilling relationship with other people, and the ability to adapt to change and cope with adversity," is a useful definition that would be adopted. Personal wellbeing, relationships with family and others, and participation in a community or society all depend on mental health.[44]

Risk to a woman's mental health can overlap with other motives, for example in cases of rape or severe strain caused by psychological or socio-economic circumstances. In the case of *R v. Bourne*[45] it was shown that there is no difference between saving her life and preserving her mental health. In this case, a doctor was charged with using an instrument with the intent to procure abortion for a fourteen-year-old girl, a rape victim. His defense was that the operation was not unlawful because if the operation had not been performed, she would have suffered a complete mental collapse. MC Nagthen was of the view that not only is there a right, but it is a duty to perform the operation.

3. Pregnancy after rape, incest and other criminal offences- Abortion in cases where a woman is pregnant as a result of a crime, such as rape, incest, or another similar offense: A criminal offence is offence understood as rape and incest and can include statutory rape. In addition, sexual relation with a woman living with mental disabilities or mental illness or sexual relation obtained under threat and unnamed conditions summarized with the wording "when pregnancy result from an unlawful act" constitute ground for the procurement abortion.[46]
4. Fetal impairment (risk to the fetus)- A common legal justification for an abortion is the possibility of fetal impairment. Some countries specify this type and level of impairment necessary to justify this ground. Some countries do not specifically list fetal impairment but include it in "preserving physical health".[47]

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[44] US Department of Health and Human Services (1999) *Mental Health: A Report of the Surgeon General–Executive Summary*, Rockville, MD: US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health.
[45] (1939) 1 KB 687
[46] Marcel, *et al*, (n 42)
[47] ibid

5. Socio-economic grounds- This is one of the most ambiguous terms in abortion legislation. It is sometimes differentiated from "available on request". This can consider circumstances such as a woman's resources, age, marital status or the number of existing children.[48]
6. Available on request- this is the most liberal condition; time limit is however stricter here. Various requisites can limit the liberality of the condition such as imposed delays, parental or spousal notification or permission, administrative steps, mandatory counseling, specific category of clinical settings etc. abortion on request is sometimes based on the notion of "distress."[49]

7.0 Fetal Rights in Property Law

The fetus under the Roman Empire was first recognized as having inheritance rights in property law. So long as the fetus was conceived before and born alive after the death of the testator (typically, but not always, the father), rights in inheritance were on a par with those born during his lifetime.[50] The fetus was not a personality in law but became one as soon as it was born. The 'right' of the fetus to inherit was not predicated on a fetal right to personhood but rather as a way of giving effect to the wishes of the testator.[51]

The British Common Law adhered to the Roman tradition; a child born alive within forty weeks after the death of their father had the same inheritance rights as any siblings born prior, based on the principle that supports a testator's wishes. To ensure that property

[48] IB Syed, *Abortion* (Islamic Research Foundation International inc.) available at: https://www.irfi.org/articles/articles_101_150/abortion.htm accessed 3 June 2025.
[49] ibid
[50] JR Schroedel, *Is the Fetus a Person?: A Comparison of Policies Across the Fifty States* (Cornell University press, 2000) 31-33
[51] JR Schroedel, 'Is the Fetus a Person?: A Comparison of Policies Across the Fifty States', available at https://books.google.com/books?hl=en&lr=&id=pnJzmzlOF24C&oi=fnd&pg=PR11&dq=The+%E2%80%9Cright%E2%80%9D+of+the+fetus+to+inherit+was+based+not+on+its+personhood+status+but+as+a+means+of+fulfilling+the+testator%E2%80%99s+wishes&ots=TnFYsGvaad&sig=wBIoBO2X1YsmE5dXdi_E3mUnAFY accessed on 15 July 2025

remains within a specific bloodline, fetuses were granted the "right" to inherit, but only if they were born alive within ten lunar months.[52]

The Common Law practice with regards to fetal inheritance rights has also been adapted by American courts. For example, in *Marsellis v. Thalimer,* the born alive rule was used to deny inheritance rights to a stillborn child. Also, in 1959 the New York Court of Appeal in *re Peabody* stated: "The common law rule of equality…does not justify the conclusion that the fetus is a 'person' before its birth. On the contrary… a child *en ventre sa mere* is not regarded a person until it sees the light of the day.[53]

In Nigeria, the unborn child has the right to share the property of the father when the child is conceived before the demise of the father. Likewise, in the case of the demise of the mother, the child is considered in the distribution of the estate where the child survives the mother.[54]

8.0 Rights of an Unborn Child under the Nigerian Law

The constitution of the Federal Republic of Nigeria which is the grundnorm is life sensitive, the right to life of the people is important.[55] Although the right to life does not expressly passes to an unborn child, the unborn child nevertheless, enjoy this right and some other rights subject to fulfillment of some conditions.[56] The Child's Rights Act (2003), which governs children's rights in Nigeria, guarantees an unborn child's rights, including protection from harm or injury and the right to be taken into account when determining the mother's or father's estate in the event that they pass away intestate and the child was conceived while the father was still alive. In the case of the mother, the

[52] Z Amin, *et al*, 'Right of Fetus (Janīn) In Islam And Western Law A Comparative and Analytical Study', available at https://journalppw.com/index.php/jpsp/article/download/10842/6995/12729 accessed on 10 August 2025
[53] ibid
[54] S. 17 (2)(3) Child's Right Act, No 26 of 2003, Laws of the Federation of Nigeria
[55] S. 36 (6) 1999 Constitution of Federal Republic of Nigeria (as altered)
[56] MO Izunwa, 'Right to Life and Abortion debate in Nigeria: a case for the Legislation of the Principle of Double-effect' 12-122, available at https://www.ajol.info/index.php/naujilj/article/view/82392/0 accessed on 11 August 2025

child survives the mother.[57] However, it is clear from the above that the enjoyment of these rights is subject to the condition that the fetus is born alive.[58]

Nigeria is a pro-life country, it is therefore not surprising that the relevant statutes relating to abortion in Nigeria are strict against any person including the woman herself, who commits or attempt to commit abortion. The provisions against abortion are generally found in the Criminal Code Act[59] which is applicable in the Southern Nigeria, and the Penal Code Act[60] which is applicable in the Northern Nigeria.

The Criminal Code Act criminalizes abortion in nearly all cases. It classifies the act of procuring a miscarriage, whether or not the woman is pregnant, as a felony. Thus, any person who unlawfully administers poison, uses force, or employs any method to induce miscarriage faces imprisonment for up to fourteen years.[61]

The law also punishes woman who attempt to terminate their own pregnancies. A woman who administers any harmful substance to herself, uses physical force or allows others to perform such act with the intent to cause a miscarriage, commits a felony and is liable to seven years imprisonment.[62] In addition, any individual who provides or procures items intended for illegal abortion, knowing their intended use, faces a penalty of three years imprisonment.[63]

However, the act allows a narrow exception. A medical practitioner who performs a surgical operation in good faith and with reasonable care to preserve the life of the mother, or for the benefit of the patient, is not criminally liable.[64] Beyond this exception, any person who causes a woman to miscarry without genuine medical reason to save her life risks imprisonment for up to fourteen years.

[57] ibid
[58] This is by virtue of Nigeria being a Common Law country and the prevailing law is the "born alive" rule.
[59] Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap 77.
[60] Penal Code Act, Laws of northern Nigeria cap 89 1963.
[61] S. 228, Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap 77.
[62] S. 229, Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap 77.
[63] S. 230, Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap 77.
[64] S. 297, Criminal Code Act, Laws of the Federation of Nigeria, 1990, cap 77.

The Penal Code's provisions are identical to those of the Criminal Code, with the exception that obtaining an abortion carries a fourteen-year sentence, regardless of whether the woman or a third party is charged. Furthermore, the Act's provision does not permit anyone to attempt an abortion because the language makes it clear that "whoever voluntarily causes a woman with child to miscarry" is prohibited.…"[65]

In addition, based on the joint reading of Section 232 of the Penal Code and Section 297 of Criminal Code, it can be deduced that therapeutic abortion if caused in good faith for the purpose of saving the life of the pregnant woman is allowed. The courts following the decision in R v. Bourne[66] have variously held that a lawful abortion is one procured for the purpose saving the life of the mother and since then, the whole Nigeria in practice has allowed therapeutic abortion in order to save the life or physical or mental health of the mother.[67]

9.0 Conclusion and Recommendation

The paper finds that there appears no consensus among scholars on when human life begins, while some opine that it is at birth, quickening is said to mark the beginning of life by some while the pro-life advocates state conception as the beginning of human life.

The underlying principle as regards the unborn child in Common Law jurisdictions is the 'born alive rule', this means that unless and until the fetus is given birth to alive, no legal personality will be accorded to him. There are however some exceptions to this general rule as it in the American experience of the rule. The recognition of fetal rights does not however go against laws relating to abortion, provided legal conditions for abortion has been satisfied failure of which such a person will be guilty of an offence and criminally liable. The right of the unborn child is however not limited to right to life alone but also extends to his right of inheritance provided he was conceived during the lifetime of the deceased and was given birth to alive.

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[65] S. 232, Penal Code Act, Laws of Northern Nigeria cap 89 1963.
[66] R v. Bourne 1939 1KB 689
[67] PC Okorie, *et al*, Abortion Laws in Nigeria: A Case for Reform, available at https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1215&context=annlsurvey accessed on 10 August 2025

Nigerian being a pro-life country, its constitution provides for the protection of human life and appropriate sanctions have been provided for its violation, this right extend to the unborn child. This right can however be taken away in the overriding interest of the mother. The right of the unborn child under the Nigerian is not limited to right to life but extends to his right of inheritance. Consequently, there is need to clearly expand legal jurisprudence so as to clarify various issues emanating from the rights of an unborn child under the law.