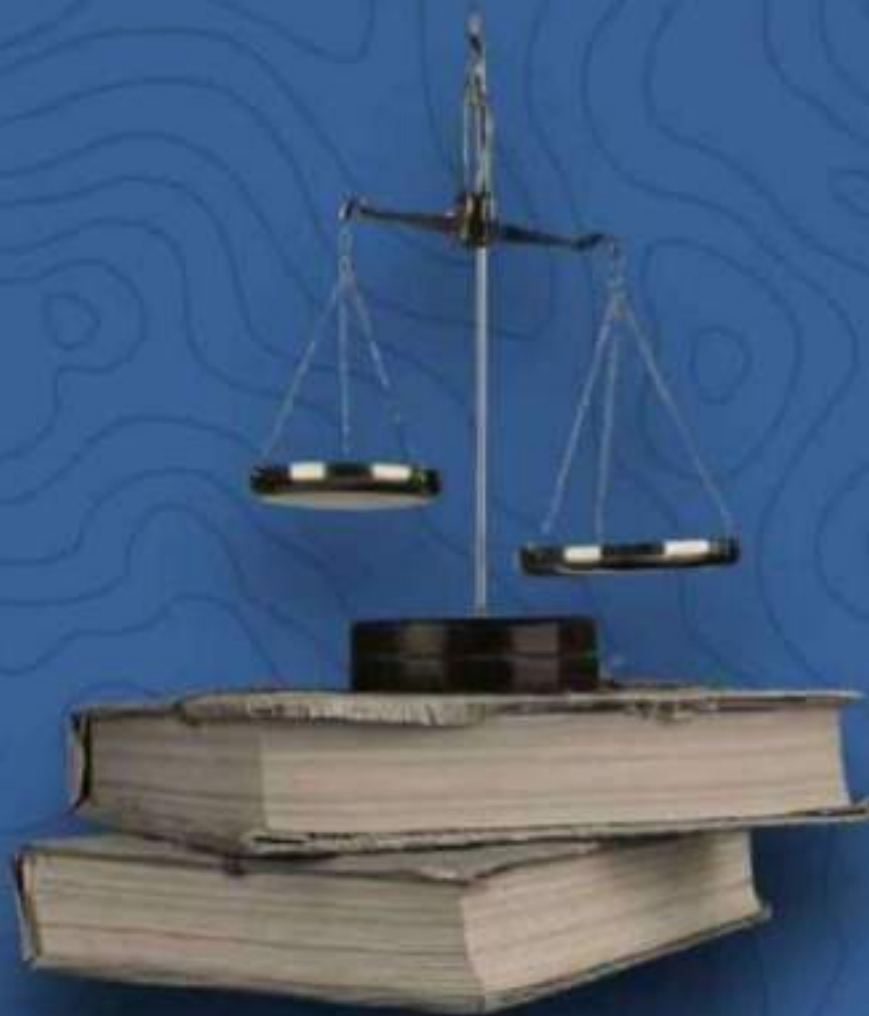


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Editorial

It is a great pleasure to present to the research community, policy makers and the world at large the first issue of the third volume of our online bi-annual Journal, LexScriptio. This issue reveals the legal trajectories which will appeal to the readers as it contains writings on topical legal issues such legal appraisal of the decline of students movement and the impact on governance in Nigeria, achieving equity in access to reproductive health care, ADR, algorithmic governance and Constitutional right in Nigeria, protection of lives and properties at Sea, governance deficiencies enabling corporate silence on environmental issues in Nigeria, and the analysis of NRS Act. Each article was blind peer-reviewed, plagiarism tested and included for publication only after thorough compliance with the reviewers' comments.

The Journal also contains pieces on self-determination in Nigeria, municipal regulation of espionage in Nigeria, digital foot print and criminal liability, effectiveness of the new taxation reform structure in reducing tax evasion and increasing compliance in Nigeria, legal regime on crowd funding in Nigeria, clemency and victims' rights in Nigeria, vulnerability and challenges faced by immigrant minors in Nigeria, expropriation of rights in Nigeria's oil and gas sector, food law as a tool for tackling malnutrition and food insecurity in the Nigerian, digital and technical evidence in electoral dispute resolution, assessing the environmental impact of modern warfare under international law, national security and human rights protection in Nigeria, non-implementation of court order in Nigeria and the erosion of inmate fundamental right and universal jurisdiction approach to terrorism. This are sure great read for our enthusiasts as they represent and address current narratives in the domestic and international community for a better future.

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

We hope you enjoy reading this issue of LexScriptio and look forward to publishing your articles, book reviews and case notes in our subsequent issues. Intending contributors should read about the journal for submission guidelines on the journal website; <https://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 December 2026.

Dr. Khafayat Yetunde Olatinwo
Chief Editor
June 2026

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**A LEGAL APPRAISAL OF THE DECLINE OF THE STUDENTS'
MOVEMENT AND ITS IMPACT ON GOVERNANCE IN NIGERIA**

John Fidelis Inaku, Ph.D. *

Abstract

Students' unionism in Nigeria represents one of the most enduring and transformative social movements in the country's modern political history. From its colonial origins in the 1930s, through the emergence of the National Union of Nigerian Students (NUNS) in 1956, to the radical resistance epitomized by the 1978 "Ali Must Go" crisis, and the eventual creation of the National Association of Nigerian Students (NANS) in 1980, students were the bastion of justice, democracy, and social reform until its unfortunate decline. This paper adopted the doctrinal method and used the historical and analytical approaches in providing a historical examination of students' unionism in Nigeria, interrogated its decline and the impact on good governance on the larger society. It was found that the enactment of the Students' Union Activities (Control and Regulation) Decree No. 47 of 1989 represented the fossil era of Military regimes toward the students' movement in Nigeria. Rights were abused and the civil space for the cultivation of vibrant student unionism was constricted. This paper argued that the introduction of civil government in 1999 has been unable to clear the hangover from the Military regimes. The larger impact of this anomaly on the society includes loss of democratic nursery, weakened resistance to impunity and elite capture. This paper recommended statutory guarantees for freedom of association in higher institutions, judicial activism in protecting student rights, legislative reforms to prevent arbitrary proscription of unions and encouraging civic education and non-violent unionism.

Keywords: Student Movement, Governance, Legal Appraisal, Democratic Participation, Nigeria.

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1. Introduction

Student movements have historically played a critical role in shaping socio-political consciousness, democratic governance, and public accountability across the world.¹ In Nigeria, student activism has been a formidable force in national development. The students body acted as a vocal pressure group against authoritarianism, maladministration, and anti-people policies. Through advocacy, intellectual engagement, and strategic alliances with civil society, student movements significantly influenced policy direction, defended civil liberties, and promoted democratic values. The students' movement has an established history as a cornerstone of participatory governance and constitutional democracy in Nigeria.

However, in recent decades, the vibrancy, organization, and influence of student movement in Nigeria have waned. Once-renowned student unions and activist networks have become largely muted, fragmented, violence-prone and disconnected from broader governance needs. This decline progresses with the worsening socio-economic conditions, recurrent education sector crises, and never-abating governance challenges. The apparent recede of students from civic space raises critical legal and constitutional questions, particularly in a democratic society where freedom of expression, association, and participation are constitutional guarantees.²

The eroding footprints of students' movement from the checklist of nation builders is not merely a sociological or political concern; it has profound legal implications for governance, accountability, and the rule of law. The parlous legal framework governing this ecosystem has endangered its existence and functionality. The shrinking civic space for student activism raises the concern of compatibility with constitutional guarantees and Nigeria's international human rights obligations. The broader implication of the weakening of students' movement in the higher institutions in Nigeria is the elimination of democratic nursery and state capture by the elites, leading to weak and diminishing mechanism for democratic oversight and civic education.³

¹ J. S. Omotola, "Student Unionism, Democracy, and Governance in Nigeria's Fourth Republic." *African Journal of Social Sciences* (2007) (5) (1) 23–41.

² F. Adewumi, "The National Association of Nigerian Students (NANS) and the Struggle for Democracy." *Review of African Political Economy*, No.37 (1986) 64-80.

³ A. Adigun, "Students' Unionism and Democratic Struggles in Nigeria." *Journal of African Politics* 7 (2012): 45–62.

The central problem addressed in this article is the correlation between student activism and good governance vis-à-vis the legal frameworks that undergird and direct their practice. The study seeks to interrogate the parameters for the coexistence of vibrant and ideological base students' movement and public order within educational institutions.

The research questions guiding this study include: What is the historical foundation of the students' movement in Nigeria? Are the extant legal frameworks adequate to protect student activism, or do they unduly restrict it? What factors have contributed to the decline of the students' movement in Nigeria? How does this decline affect governance, democratic accountability, and the rule of law? What reforms are necessary to revitalize lawful student participation in governance?

The objectives of this study are to examine the historical foundations of student activism in Nigeria, interrogates the legal frameworks that govern the students' movement, analyse the causes of its decline from a legal perspective, assess the impact of this decline on governance, and propose legal and institutional reforms aimed at strengthening student participation in democratic processes. The paper adopts a doctrinal research methodology, relying on the Constitution, statutes, judicial decisions, scholarly literature, and relevant policy documents.

The scope of this article is limited to student movements within Nigeria, with particular emphasis on their interaction with governance structures at the national level. The significance of this study lies in its contribution to legal scholarship on civic participation and the reinvigoration of students' activism as a cornerstone of good governance in Nigeria.

2. Conceptual and Theoretical Framework

2.1. Conceptual Clarifications

2.1.1. Students' Movement

Student Union refers to the umbrella association of students in a higher institution of learning. It creates a forum for effective interaction among students. It is the government of the students with basically three arms of government namely; the executive, the legislature and the judiciary.⁴ Students' movement on the other hand refers to the organized, collective actions and struggles of students aimed at promoting, defending or transforming

⁴ Zuokemefa Enebraye Peter and Sese Tuperekiye Ebimobowei, "Leadership and Student Unionism, Challenges and Solutions in the Nigerian Tertiary Education System (Colleges of Education, Polytechnics and Universities)" *European Scientific Journal* (2015) (11), (25).

educational, social, political and economic conditions within educational institutions and the wider society. It is therefore a shared consciousness that involves mobilisation, protests, advocacy, campaigns or dialogue aimed at bringing about socio-political or institutional change. It is a reflection of generational challenges and values.⁵ For the purposes of this paper, Students' Movement shall be used interchangeably with Students' Unionism.

2.1.2. Governance

Governance, refers to the processes, structure, rules and norms through which collective decisions are made, authority is exercised, and accountability is ensured within a society, organization, or system. Modern understanding of governance postulates that authority in contemporary society is dispersed among various actors such as governmental institutions, private sector entities and civil society organizations.⁶ Effective societal steering requires coordination among these diverse stakeholders rather than top-down government control alone. The governance framework recognizes that solving complex social problems demands resources and expertise beyond what any single sector can provide.⁷ The core characteristics of governance include accountability, participation, transparency and rule of law.⁸

2.2.Theoretical Frameworks:

This article adopts the Social Contract and Participatory Democracy Theories as the frameworks upon which to construct the thesis therein. These theories capture the essence and provide the necessary parameters to examine the relevance of students' unionism to governance and conversely, the negative impact of its decline.

2.2.1. Social Contract Theory

The theory of social contract, in political philosophy, is an actual or hypothetical compact, or agreement, between the ruled and their rulers, defining the rights and duties of each. In primeval times, individuals were born into an anarchic state of nature, which was happy or unhappy according to the particular version of the theory. They then, by exercising

⁵ International Encyclopaedia of the Social & Behavioural Sciences (Second Edition), 2015

⁶ World Bank, "Governance and Development" (Washington DC: International Bank for Reconstruction and Development/World Bank, 1992) 14 < <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/604951468739447676>> accessed 20 May, 2026

⁷ Banotes, "Unpacking the Conceptual Framework of Governance in the 21st Century" Governance – Issues and Challenges (2023)< <https://banotes.org/governance-issues-challenges/conceptual-framework-governance-21st-century/>> accessed 27December, 2025

⁸ibid.

natural reason, formed a society (and a government) by means of a social contract. The theory was expounded by the trio of Hobbes⁹, Locke¹⁰, Rousseau¹¹.

The most appropriate application of this theory is in constitutionalism. The doctrine of constitutionalism is that a government's authority is determined by a body of laws or constitution. Although constitutionalism, also regarded as limited government, is the antidote to arbitrary government. The theory identifies arbitrariness as interference with individual rights and seeks to establish protections for them via the separation of powers and a judicially protected constitution.¹²

2.2.2. Participatory Democracy Theory

Participatory democracy is a model of democracy that encourages active involvement by citizens in the governance and decision-making processes. This theory is traced to the ideas of thinkers like Jean-Jacques Rousseau¹³ and John Stuart Mill¹⁴. It holds the belief that power ultimately resides with the people and that citizens should have a direct say in the decisions that affect their lives.

The theory captures deliberation as an integral part of open and informed discussions among citizens to reach consensus on important issues. It fosters inclusive and collaborative decision-making process, rather than exclusion and elitism. Holding public officials and government institutions accountable to the people and ensuring that their actions reflect the will and interests of the citizens is a core principle of the theory. Historically, the students' movement view Nigeria as a social contract that must be governed by participatory democracy.

3. Historical Overview of Students' Movement in Nigeria

The earliest recorded form of the students' movement in Nigerian can be traced to the activities of Nigerians and other West African students in the United Kingdom.¹⁵ They were united under the umbrella of the West African Students' Union (WASU). WASU was

⁹ Thomas Hobbes, *Leviathan* (Hackett Publishing Company, Indianapolis 1994) 89.

¹⁰ John Locke, *Two Treatises of Government* (Peter Laslett, Cambridge University Press, Cambridge 1988) 271.

¹¹ Jean-Jacques Rousseau, *The Social Contract* 9GDH Cole tr, Everyman, London 1978) 15.

¹² John Rawls, *Political Liberalism* (Columbia University Press, New York 1993) 220-227.

¹³ Rousseau, (n 11) 36-38.

¹⁴ John Stuart Mill, *Considerations on Representative Government* (Everyman edn, London 1910) 233-235.

¹⁵ Zuokemefa Enebraye Peter (n. 4).

founded in London in 1934 by Ladipo Solanke. The nationalist consciousness of future Nigerian leaders was shaped by the vibrancy of WASU. Students thus became both ideological partners of nationalists and indispensable voices of agitation for the independence of Nigeria.¹⁶

3.1. The National Union of Nigerian Students (NUNS)

The consolidation of student unionism into a movement within Nigeria occurred with the emergence of the NUNS in 1956.¹⁷ The finest hour of students' unionism in Nigeria was in 1960, just before the country's independence. The students' movement led by Dapo Falase and Abidoye Babalola of the University of Ibadan challenged the appropriateness of the Anglo-Defence Pact. The clandestinely signed pact would have exposed the country to attack by the Soviet Union and other countries in the then Eastern bloc in case of war.¹⁸ The reach of the NUNS traversed beyond the promotion of student welfare to Pan-African solidarity. NUNS was the uncompromised ideological voice against apartheid in South Africa and a shoulder for other liberation movements across Africa. The movement reemerged strong after the Nigerian Civil War and helped to erase the fracture of the war. By the mid-1970s, NUNS, under its president, Segun Okeowo, had become a quintessential gadfly of governance and aligning with labour movement.¹⁹

3.2. The 1978 "Ali Must Go" Crisis

The 1978 "Ali Must Go" Crisis was one of the most iconic episodes in the history of students' movement in Nigeria. The Obasanjo-led military government increased university

¹⁶ *ibid.*

¹⁷ Alabi Festus Oluwole & Ige, Akindele M. "Gains and Pains in Students Unionism in Tertiary Institutions of Learning in Nigeria: Way Forward" *International Journal of Innovative Research in Education, Technology & Social Strategies* (2021) (8) (1)

¹⁸ Ephraim Olabode Olusegun Lucas, "The Decline of Students' Unionism" *The Nation* (Lagos, 19 May 2010) < The decline of students' unionism - The Nation Newspaper > accessed 08 January, 2026.

¹⁹ Bankole Abe and Theophilus Adedokun, "NANS: The Student Body has Come a Long Way, But has it Maintained its Status?" *International Centre for Investigative Reporting* (Abuja, 19 April 2023) < <https://www.icirnigeria.org/nans-the-student-body-has-come-a-long-way-but-has-it-maintained-its-status/> > accessed 20 May, 2026.

tuition and tuition-related charges. The students condemned the hikes and viewed the policy as a betrayal of Nigeria's social contract, thereby, demanding a reversal.²⁰

The government binoculars of viewing students' movement as a subversive group truncated any engagement on a civil plane or tact in resolving the issues, rather brutal force was used to quell the "Ali Must Go" nationwide demonstrations. The protest, which began in April 1978 in University of Lagos, quickly engulfed several universities across the country. Dozens of students were killed, universities were shot down, NUNS was proscribed and the hike were not reversed.²¹ The template of killing armless students which began in the killing of kunle Adepeju on 1st February, 1971 was religiously followed and the number of those killed increased in 1978.²² The gradual but forceful emasculation of the students' movement had become an unspoken state policy.

3.3. Emergence of NANS

Consequent upon the ban, for nearly a decade, the movement operated underground. The students regrouped in 1980 at the University of Benin, to form the National Association of Nigerian Students (NANS). The NANS was modelled on the ideological bent of the NUNS. From inception, NANS positioned itself as a mass-based, radical, and anti-imperialist organisation. It declared its commitment to defending the rights of Nigerian students and lacing the struggles with broader democratic and social justice challenges.²³ It was in partnership with iconic mass-based groups like the Nigeria Labour Congress and Academic Staff Union of Universities to preserve the socio-economic space of Nigeria from infestation from bodies like the IMF and neo-colonialists.²⁴

3.4. Structural Adjustment Programme (SAP) Protests

SAP was introduced under Babangida's administration in 1986. It was a programme of currency devaluation, subsidy removal, trade liberalisation, privatisation, public sector retrenchment and wage freeze.²⁵ The effects were immediate, as suffering of Nigerians

²⁰ A. Yusuf, et al, "The 21st Century Unilorin Student Unionism" <https://www.researchgate.net/publication/370683582_THE_21_ST_CENTURY_UNILORIN_STUDENT_UNIONISM> accessed 27 December 2025.

²¹ Ephraim Olabode Olusegun Lucas (n 18).

²² *ibid.*

²³ Alabi Festus Oluwale and Akindele M. Ige (n 17).

²⁴ Bankole Abe and Theophilus Adedokun (n 19).

²⁵ A. Adigun (n 3).

increased geometrically. The NANS mobilised in conjunction with other partners and a nationwide protest erupted. As usual, security forces were given the orders to respond with lethal forces. Again, dozens of students and civilians were brutally mowed down. The template was rehearsed, universities were shut down, NANS was banned, and many student leaders were arrested, detained without trial, or expelled. The campuses were militarized.²⁶ What followed was the draconian Students' Union Proscription Decree No. 47, 1989. The era of indiscriminate proscription of students' unions, arrest and detention of student leaders without trial, had emerged. In spite of this the NANS emerged and played pivotal roles in the pro-democracy struggle.²⁷

3.5. The June 12 Struggle

The annulment of the June 12, 1993 elections that were regarded as the freest and fairest in Nigeria was another challenge before the movement. The NANS mobilised students and aligned with civil society groups and pro-democracy activists. There were demonstrations, boycotts, and mass rallies in major cities for the restoration of June 12 and an end to military dictatorship.²⁸ The movement endured intensified repression, universities were militarised, student leaders were arrested, tortured, or forced into exile. The NANS was outlawed several times,²⁹ but the movement continued in resistance and stood as the guardian of democracy until the return to civil rule in 1999.

3.6. Students' Unionism in the Democratic Era (1999–Present)

The return to democracy ought to have brought new opportunities for the recalibration of the NANS. It seems, though painfully, that what the brutality and barbarity of the military regimes could not do to the movement, the subtlety of the Nigerian brand of democracy seems to have achieved it. The NANS seems to have been infiltrated by partisan politics and sheer brigandage. Union leaders are often co-opted by state actors, losing the independence and ideological bent of the movement. The monetisation and fractionalisation of NANS under the overlord of politicians have undermined the movement. The pursuit of personal interest, cultism and imposition of school management “boys” as student leaders have clipped the wings of the movement. Thus, while the

²⁶ *ibid.*

²⁷ F. Adewumi (n 2).

²⁸ Ephraim Olabode Olusegun Lucas (n 18)

²⁹ Bankole Abe and Theophilus Adedokun (n 19)

students and the larger society suffer from misgovernance, the students mutter some uncoordinated words of *aluta*, as the movement lies prostrate on the ashes of the past revolutionary fire of ideological strength and organizational unity.

4. The Legal Framework Governing Students Unionism in Nigeria

4.1. Constitutional Provisions

The Constitution of the Federal Republic of Nigeria³⁰ provides as follows:

Every person shall be entitled to assemble freely and associate with other person, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest...

This section guarantees the fundamental right to freedom of association. The broad spectrum of this right is highlighted by the phrase “or any other association”. Definitely, the students’ movement and like associations find their constitutional right of existence under the phrase. The full benefits of Section 40 of the Constitution are enjoyed when in community relationship with other rights as provided in the Constitution and other extant laws. Section 39 of the Constitution³¹ guarantees the right to freedom of expression, which the associations require as tool to communicate their ideas. Section 38 of the Constitution³² protects the right to freedom of thought, conscience, and religion. Together, these sections create a democratic space where citizens can organize, participate, and advocate.

4.2. Statutory and Regulatory Framework

4.2.1. African Charter on Human and Peoples’ Rights

The African Charter on Human and Peoples Right has been domesticated by Nigeria, so it is an Act of the National Assembly.³³ Some of the provisions of the Act align with Section 40 of the Constitution.³⁴ Article 10 provides that: “Every individual shall have the right to free association provided that he abides by the law...”³⁵ Article 11 guarantees that “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in the interest of national

³⁰ Constitution of the Federal Republic of Nigeria, 1999 (CFRN), Section 40.

³¹ CFRN.

³² *ibid.*

³³ African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act Cap A9, LFN 2004 (ACHPR).

³⁴ CFRN.

³⁵ ACHPR.

security, the safety, health, ethics and rights and freedoms of others.”³⁶ Thus, Section 40 of the Constitution³⁷ and Articles 10–11 of the Act³⁸ are in alignment. They protect the rights to association and assembly, which of course, includes student unions and other organizations.

4.2.2. Students’ Union Activities (Control and Regulation) Decree No. 47 of 1989

The law, an SAP military era dictatorship decree³⁹ remains in our statute book as the only specific statute that regulates students’ unionism in Nigeria. The tone of the law, *ab initio* is of course, combative, restricted and couched to justify the subversive label on the movement. How the decree found its way and remain the only specific statute regulating this critical segment of the society in a democracy is a sad demonstration of legislative insensitivity. Its constitutional alignment and the lawfulness of the law itself in democratic setting is questionable.

Section 1(1) of the decree provides thus: “As from the commencement of this Act, student participation in all union activities shall be voluntary, and confined to individual campuses of universities or institutions of higher learning or any other similar institutions.” The voluntariness of the students’ movement is *res ipsa* as there is no record in history of any forceful recruitment into the folds of the movement. Therefore, the purported legislation on the voluntary participation in student activities is superfluous. The real intention of the law by confining unionism to individual campuses is to kill the movement. The constitutional latitude of Section 40 does not confine any assembly to a restricted location, therefore, the provision of the decree, purporting to do so is in violent confrontation with the Constitution. The confinement provision is therefore null and void.

The unconstitutionality of the decree continues in Section 2(2) of the decree. It provides thus: The Governing Council, Vice-Chancellor or any authority or person in charge of or in control of the university or institution of higher learning may, after conducting investigations with respect thereto, proscribe any such society. No individual or institution, except the court, can arrogate to itself the powers to derogate from the rights enshrined in the Constitution. The powers purported to be conferred by the decree is *ultra vires* and a usurpation of the powers of the judiciary. Whatever is stated as justification in section 2(1) of the decree goes to no issue.

³⁶ *ibid.*

³⁷ CFRN.

³⁸ ACHPR.

³⁹ now cited as Cap. S24, Laws of the Federation of Nigeria 2004.

The layers of absurdity of wielding ultra vires power rises up to the Minister or his delegate, whose opinion is a conclusive warrant to breach the right of assembly of the students.⁴⁰ The façade of this decree is heightened by the failure to define what constitute “public interest and public safety”. These requirements for the breach of this right are wholly determined by the whims and caprices of either the authorities in the schools or the opinion of the minister. This hangover still regulates students’ union existence on campuses today.

It is the position of this paper that the Students’ Union Activities (Control and Regulation) Decree is an affront to the Constitution.⁴¹ It offends the freedoms guaranteed in the Constitution⁴² and other extant laws⁴³. This is because:

- i. It does not meet the democratic thresholds of justification under section 40 and other relevant sections of the 1999 Constitution;
- ii. The National Assembly does not have the legislative vires to enact a law that offends the Constitution; therefore, the same cannot rightly be deemed a law enacted by the National Assembly; and
- iii. The enforcement of the law will contradict the Constitution, stifle the rights of the students and initiate disorder.

4.3. Judicial Attitude to the Students’ Movement

The Nigerian judiciary has acted a vanguard in advancing the rule of law, equity, and justice in actions involving students. The courts in several occasions have intervened to save the academic destinies of many students that would have been destroyed by mindless expulsion and unconstitutional reactions to students’ protests. Though many are still lost today because of lack of resources or the needed resilience to challenge their unjust expulsion in court. In the case of *Garba v. University of Maiduguri*.⁴⁴ Garba and his comrades had led a protest and were expelled for challenging the system. The Supreme Court quashed the expulsion and declared it unconstitutional as it gravely offends the

⁴⁰ Students’ Union Activities (Control and Regulation) Cap. S24, Laws of the Federation of Nigeria 2004, section 3.

⁴¹ CFRN 1999 (Amended).

⁴² Ss 40, 39, and 38 CFRN 1999 (Amended).

⁴³ Articles 10 and 11 ACHPRA.

⁴⁴ (1986) 1 NWLR (Pt. 18) 550 (SC).

principle of fair hearing. The Court further condemned the action of the University as both the accuser and the judge.

In another judicial intervention, Yinka Odumakin and seven others were expelled from the University of Ife (now Obafemi Awolowo University) for leading a peaceful protest. The Oyo State High Court set aside the expulsion and ordered their reinstatement, citing the University's failure to grant the students fair hearing.⁴⁵

Evidence abounds of the position of the judiciary against the highhandedness of the authorities and lack of tolerance for the opinions of the students on campuses.⁴⁶ Though doubt abound of what would be the position of the present Nigerian judiciary, considering the alleged rot⁴⁷ that has bedevilled that institution now.

The legal battles of the students have revealed the consistent pattern of arbitral wielding of power by the authorities to clamp down on the voices of students. These legal challenges reflect a broader struggle over the balance between institutions' authority and student rights in Nigeria. They raise constitutional and democratic questions about civic space, guaranteed freedoms vis-à-vis the training of students in the higher institutions, and institutional accountability in higher education.

5. Causes of the Decline in Students Movement Vibrancy in Nigeria

Beginning with the excess deployment of power and use of life ammunitions against students on 1st of February 1976, the spiral down in brutality against students by authorities has continued. The use of fire arms by the law enforcement agencies to quell student demonstrations is the first dart against the students' movement in Nigeria.⁴⁸

Following the death of Adepeju, the Military Government of Gowon set up the Justice B.O. Kazeem Commission of Enquiry. The whitepaper of the Commission found that it was the failure of the police to heed the advice that the use of fire arms was prohibited on campus that led to the sudden death of the Student's Union leader. Subsequent Commissions,⁴⁹ were

⁴⁵ Yinka Odumakin v. University of Ife (Unreported, Oyo State High Court, 1988).

⁴⁶ University of Ilorin v Oluwadare (2006) NGSC 35; University of Ilorin v. Adesina (2014) 10 NWLR (Pt 1414) 159; Oluwaseun Ogundeyi v. University of Lagos (2017); Federal University of Technology, Minna v. Olutayo (2018) Legalpedia (CA) 11991.

⁴⁷ Femi Falana, "The Rot in The Judiciary" *Premium Times* (Lagos, 27 May, 2013) <
<https://www.premiumtimesng.com/opinion/136274-by-femi-falana.html?tztc=1>> accessed 20 May, 2026

⁴⁸ A. Yusuf, et al (19).

⁴⁹ Mohammed Commission of Inquiry, Abisoye Commission and Justice Akambi Panel. See Eunice Omoregie, "Student Unrest in Nigerian Universities: Looking Back and Forward" (2005) *Journal of Social Sciences* 10(1), 17-22

set up as more strings of unrest unfolded. The Government resorted to pick and choose on the white papers depending on the one that suit them. The failure of Government to implement the white papers of Commissions of Enquiries such as headed by Kazeem, Abisoye and Akanbi were regrettable episodes that flushed the students' movement down the drain of decline and constitutes an obstacle to the growth of active unionism in Nigerian campuses. The Commissions frowned at the use of firearms on campuses and advocated reduced role and less involvement of authorities in the activities of the Student Unions.⁵⁰

The invocation of draconian law such as the decree⁵¹ and obnoxious policies by the authorities in the guise of instilling discipline in the students have resulted in a form of violence-prone-resistance within the student body and decline of intellectual and ideological base resistance. The suppression of the right of students is rife in Nigeria today. 52 students of Ambrose Ali University, Ekpoma in Edo State were arrested on the 10th January, 2026. The arrest followed a peaceful protest against insecurity in Ekpoma, which later turned violent because it was hijacked by hoodlums. The students were arraigned before a Benin High Court on Monday, 12 January, 2026 on the charges of malicious damage and armed robbery. Many of the students said they were sleeping in their hostels when they were arrested about 3am. They have been remanded at Ubiaja Correctional Centre, while the case was adjourned until 26th February, 2026.⁵²

The infiltration of the movement with *egunje* or "settlement syndrome"⁵³ by authorities and politicians is a devastating weapon that has corrupted the young ideological minds, divided the ranks of the students' body and decimated the movement. What nation wilfully indoctrinate its youth, its future, in the dishonourable acts of corruption? How can we so mindlessly sacrifice our tomorrow on avaricious altar of our today?

The lack of mentorship, resulting in a chasm between the past and present students' leaders has created room for charlatans and *gbemites* to stride the civil space like colossus. This in

⁵⁰ T. O, Adeyemi, Causes, Consequences and Control of Students' Crises in Public and Private Universities in Nigeria. "(2009) *Educational Research and Review*, 4 (4), 156-163.

⁵¹ Students' Union Activities (Control and Regulation) Decree No. 47 of 1989.

⁵² Osagie Otabor, "AAU Students, Others arraigned Over Protest" (The Nation, Abuja, January 13, 2026) < AAU students, others arraigned over protest - The Nation Newspaper> accessed 13 January, 2026.

⁵³ Editorial, "NANS, the Fight for Student Rights Must Begin Again" *Indy Press, University of Ibadan* (Ibadan, 22 October, 2025) < <https://indypressui.org/2025/10/22/nans-the-fight-for-student-rights-must-begin-again/>> accessed 20 May, 2026.

turn has led to poor communication skills among some student union leaders, contributing to low vibrancy and arid advocacy.⁵⁴

The hydra-headed challenges of cultism are active threat to the movement. Cultism is a blight on the glorious history of the students' movement in Nigeria. Yet, it emerged as a form of resistance to the climate of oppression and intimidation foisted on the students. Cultists have brought untold hardship on the student populace.⁵⁵

Politician recruit and arm students for their dirty jobs and campaigns, while the school managements exercise indiscriminate power of proscription of unions, imposed lackeys as students' leaders in opaque, violent-prone and reason-challenged electoral processes. The unspoken government principle of divide-and-rule set the students against themselves, just to frustrate cohesion and united measures against impunity.⁵⁶

6. The Consequences of the Emasculation of Student Unionism in Nigeria

The deliberate derailment of the students' movement has robbed the nation of its future. A future robbed in perfidy cannot reach out in patriotism. Students' unionism is a nursery for political leadership and civic consciousness. The movement has historically served as a crucible for democratic values, political consciousness, and civic responsibility in Nigeria. The student movement was once a formidable force, producing national leaders, holding governments accountable, and often shaping public discourse. However, in recent decades, this once-vibrant space has suffered a significant decline, and the consequences reverberate far beyond the campuses. It is particularly troubling because the products of the campuses are the manpower feeder of our nation's institutions.⁵⁷ The next time you question the moral gaps or incompetencies of our institutions, kindly pause to examine the replenishes products. Some of the consequences of debasing the nursery are:

6.1. Loss of a Democratic Nursery

Students' unions traditionally serve as early platforms for democratic participation, leadership grooming, and policy engagement. When students no longer participate in free,

⁵⁴ Joel Augustus-Daddie and Isah Adamu, "Mentorship, Good Governance and Development in Nigerian Organizations: A Comparative Analysis" *NIU Journal of Social Sciences* (2023) 9(4): 43- 49

⁵⁵ Olusegun Mayegun "Cultism, Campus Violence and Students' Leadership Developmental Processes" an invited paper for the students' Leadership Training Programme organised by the Committee for the Defence of Human Rights at Lagos on 31st May, 1996.

⁵⁶ Samson Obaloluwa Ojo and Adebayo Ola Afolaranmi, "From Protests to Progress: Unlocking the Potential of the Nigerian Youth for Political Reform" *British Journal of Multidisciplinary and Advanced Studies* 5(4):100-115

⁵⁷ Aluede, O, et al, (2005) "Student Unrest in Nigeria Universities: Looking Back and Forward" (2005) *Journal of Social Sciences* 10 (1), 17-22.

fair, and autonomous unions, the democratic nursery withers, the opportunity to learn how governance structures operate is lost, the students grow politically apathetic, disillusioned or prone to manipulating the system, and the internalization of autocracy becomes a norm, having been governed without voice or choice. The fair share of the society is having a citizenry less inclined to demand transparency, accountability, or justice from political leaders, breeding passive compliance rather than active citizenship. As a result, institutions outside campuses become less responsive, more autocratic, and less scrutinized.⁵⁸

6.2. Muted Voices of Reason

As an ideologically and principled based movement, the students' movement in Nigeria was the gadfly of social justice and accountability. It strode regally as the voice of hope from anti-military campaigns to pro-democracy advocacy and anti-austerity march. The suppression and disfigurement of this critical segment of our society today removes a powerful counterbalance to executive and institutional overreach. The muting of these voices of reason and resistance emboldens undemocratic practices not only on campuses but also in government. University administrators often model their disciplinary and governance systems on wider political authority, enforcing bans, suspensions, and unjust policies without recourse to law. At graduation, these young minds have been poisoned by the chalice of crookedness as a way of survival in our society. The wider implication of the gagging of this ecosystem is the cultivation of the culture of impunity that echoes into the larger society, where power is exercised arbitrarily, and dissent is punished, not debated.⁵⁹

6.3. Policy Blotch and Elite Capture

The decimation of vibrant student unionism creates the needed vacuum for higher institutions' management, and by extension, political elites, to dominate policy formation without checks. Students are not consulted on decisions that affect them directly.⁶⁰ This mirrors the elite capture seen in national governance where policies serve vested interests rather than the public good. The absence of meaningful student feedback gaps degrades the legitimacy and weakens implementation of institutional policies. The policy direction raises generations of students steeped in this skewed system and accepting non-consultative governance as normal, weakening public engagement in national policymaking.⁶¹

⁵⁸ *ibid.*

⁵⁹ Bankole Abe and Theophilus Adedokun (n 19).

⁶⁰ *Ibid.*

⁶¹ Alabi Festus Oluwole & Ige, Akindele M (n 17).

6.4. Normalization of Repression

Higher institutions are now spaces where surveillance, censorship, imposition of unpopular leaders on students and suppression are normalized under the guise of "maintaining order." When students are punished for speaking out, they learn to self-censor. This mirrors national trends where journalists, civil society actors, and citizens face similar pushback. The use of "disciplinary committees" to mask vested interest mimics national tools of repression. Unfortunately, students transition into society with reduced expectations of liberty and heightened fear of dissent, further eroding participatory democracy.⁶² Of course, the campus is a miniature of the state. When a higher institution becomes undemocratic or at best a caricature of democracy, the students learn by observation to normalize these values. The long-term effect is systemic, manifesting in a society governed not by law or reason, but by repression, opacity, and electoral frauds.

7. Recommendations

The Students' Union Activities (Control and Regulation) Decree should be immediately repealed and a constitutionally-aligned legal framework setting the parameters of students' movement be enacted to regain loss grounds in students' unionism.

Administrators of institutions of higher learning in Nigeria must be reoriented to relate with students and the movement as the democratic nursery and leadership pool for our nation.

The process of recruitment into positions of leadership in the students' unions should be transparent and fair without interference from the school management. The students should be allowed to elect their leaders in a free and transparent elections.⁶³

The students' movement should be insulated from the corrupting influence of politicians. The students should be reoriented to reject "government candidates" in their elections to students' unions leadership positions.

Past student leaders who led in the glory days of the movement should make deliberate return to the campuses to nurture and mentor the younger ones on the principles of unionism.

8. Conclusion

The history of students' unionism in Nigeria reflects the trajectory of the Nigerian nation itself; rising from colonial resistance, through post-independence crises, military dictatorship, and democratic transition. While the movement today faces significant

⁶² F. Adewumi (n.2).

⁶³ *ibid.*

challenges of decline, repression, and corruption, its past underscores the critical role of youth in shaping society. The decline of student unionism in Nigeria is not an isolated institutional failure; it is a key symptom and contributor to the broader democratic and good governance decay in the nation. The death of the union is, in effect, the death of justice in miniature. If we are to revive governance and accountability in Nigeria, then the campus, the seedbed of civic culture, must be among the first places where reform takes root. For Nigerian democracy to deepen, student unionism must reclaim its ideological foundations, rebuild unity, and resist co-option. Only then can it continue to play its historical role as the conscience of the nation.

**ACHIEVING EQUITY IN ACCESS TO REPRODUCTIVE HEALTHCARE:
LESSONS FROM COVID-19 CORPORATE SOCIAL RESPONSIBILITY
INITIATIVES**

Oluwadamilola A. Adejumo, Ph.D. *

Abstract

Nigeria currently has very poor maternal health outcomes arising from inequitable provision of maternal health services. About 1 in 25 women are at a lifetime risk of dying from pregnancy related complications in Nigeria. Deaths occurred mostly from preventable causes which could be averted if women have access to maternal healthcare services (AMHC). Maternal Healthcare needs are peculiar to women and thus, this paper asserts that maternal health care issues need be addressed from a gendered and equity view point. This study adopts a doctrinal method relying on primary and secondary sources to justify AMHC. The study relies on the principles of equity of access in provision of health care services to highlight the need for enhanced AMHC. The study finds that AMHC has been fragmented and has not contributed significantly to reducing deaths arising from maternal causes in Nigeria. The study also finds that the concerted efforts made by corporate organizations to combat the COVID-19 pandemic yielded positive results and contributed significantly to reducing the negative impacts of the pandemic. The study evaluates the response of the Nigerian government and other stakeholders to ensure access to needed health care by COVID patients. The study concludes that the major lesson from the corporate social responsibility (CSR) Initiatives during COVID was the unified front put forward by corporate organizations to achieve a common goal of reducing the effects of the pandemic. The same approach has the potentials to save women from preventable deaths arising from maternal causes. The study recommends improved AMHC in Nigeria through concerted and unified CSR measures.

Keywords: Corporate Social Responsibility, Equity of Access, Maternal Health, Maternal Mortality, CSR Initiatives

1. Introduction

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The Corona Virus Disease (COVID 19) broke out late 2019 when the virus was first discovered in Wuhan, China. The virus spread across 216 countries leading to the declaration of the COVID-19 as a global pandemic by the World Health Organization (WHO) in March 2020.¹ The first case of COVID-19 was reported in Nigeria in February 2020. Between February and June, 2020 a total of 12, 486 cases have been confirmed with 354 recorded deaths.¹ The Nigerian government's swift response to the pandemic has been quite commendable as well as the response from corporate entities which floated corporate social responsibility (CSR) based programs to address the pandemic and alleviate the hardships occasioned by the pandemic.

The fact that some of the health issues which has not received the much-needed attention from government over the years have much higher morbidity and mortality rates invokes some level of curiosity leaving one to wonder why the government has not given the needed attention to address other health emergencies with the same swift response, vigour and commitment. Access to reproductive health care (ARHC) for instance remains a huge challenge for women in Nigeria.²

Available data reveals that the MMR in Nigeria stands at 993 per 100,000 live births.³ Nigeria currently has very poor maternal health outcomes. In 2023, about 75,000 maternal deaths occurred in Nigeria, one of the highest across the globe.⁴ About 1 in 25 women are at a lifetime risk of dying from pregnancy related complications in Nigeria.⁵ These deaths are mostly from preventable causes which could have been averted if women have access to maternal healthcare services (AMHC). Tasneem *et al*⁶ reported eclampsia, pre-eclampsia and haemorrhage as the leading causes of maternal mortality in Nigeria. They noted that the above conditions are preventable if pregnant women have regular antenatal check-ups for early detection and if women have access to skilled birth attendants to assist delivery. The number of maternal deaths arising from poor access to maternal healthcare

1. D Cucinotta and M Vanelli, "WHO Declares COVID-19 a Pandemic *Acta Biomed.* (2020) 91(1) 157-160. doi: 10.23750/abm.v91i1.9397. PMID: 32191675; PMCID: PMC7569573.

² AE Ogedegbe, O Adeagbo, BM Yankam, O Badru, MA Gadanya and LE Bain, 'Two decades of women's sexual and reproductive health and rights in Nigeria: Successes, challenges, and opportunities' *African journal of reproductive health* (2025) 29(1) 25-37.

³ Trends in maternal mortality estimates 2000 to 2023: estimates by WHO, UNICEF, UNFPA, World Bank Group and UNDESA/Population Division. Geneva: WHO; 2025.

⁴ *ibid*

⁵ *ibid*

⁶ S Tasneem, A Nnaji and MA Ozdal, 'Causes of maternal mortality in Nigeria; a systematic review' *International Journal of Health Management and Tourism* (2019) 4(3) 200-210.

services calls for concern and there is need for a holistic approach to resolving this crucial issue.

Whilst not attempting to downplay the severity of the COVID-19 pandemic, the focus of this paper is to make a case for increased commitment by government and stakeholders to address issues of equity in ARHC in Nigeria in the context of reproductive rights of women. Over the years, numerous excuses have been given by government for the failure of government to effectively guarantee ARHC for women including inadequate funds.⁷ Majority of the related literature⁸ on this subject area have not explored tackling the menace of maternal mortality from the perspective of the concerted efforts by the government and corporate organizations. The objectives of this study therefore are to discuss the concept of access in the context of reproductive health care; to justify ARHC for women relying on the principles of equity and vulnerability; to evaluate the response of the Nigerian government and other stakeholders' response to the COVID-19 pandemic and efforts to ensure access of COVID patients to needed health care; and to highlight the practicability of achieving improved ARHC for women in Nigeria through CSR measures.

2. Access to Reproductive Health Care

The importance of healthcare can be traced to Aristotle's concept of *eudaemonia* meaning flourishing.⁹ In the context of reproductive health, it means provision of all that is fundamentally necessary to a good life that aids reproduction. As such, reproductive health depends upon the extent to which poor and vulnerable groups can realize their rights to economic and social resources.¹⁰ Menzel and Light stressing the importance of access in the healthcare context posits that access to medical services is necessary to individual

⁷ MO Folayan, O Arije, A Enemo, A Sunday, A Muhammad *et al*, Factors associated with poor access to HIV and sexual and reproductive health services in Nigeria for women and girls living with HIV during the COVID-19 pandemic *African Journal of AIDS Research* (2022) 21(2) 171-182.

⁸ Ogedegbe *et al* (n.2); Tasneem *et al* (n.6); AM Adesina and A. Adegboye, 'Maternal mortality in Nigeria: trend, triggers and implications for sustainable development' *American Journal of Life Sciences* (2020) 8(5) 135-143; EK Ekwuazi, CO Chigbu and NC Ngene, 'Reducing maternal mortality in low-and middle-income countries' *Case Reports in Women's Health* (2023) 39, e00542.

⁹ AJ Culyer, 'Equity- Some Theory and its Policy Implications' *Journal of Medical Ethics* (2001) 27(4) 275-283.

¹⁰ NL Price and K Hawkins, 'A Conceptual Framework for the Social Analysis of Reproductive Health' *Journal of Health, Population and Nutrition* (2007) 25(1) 24-36.

freedom, opportunities and self-responsibility just as access to the services of fire or police departments.¹¹

The definition of what constitutes access is however fraught with many controversies. As far back as 1982, Daniels was of the view that access is a complicated notion which comprises of and is to be determined by various factors.¹² In the context of health care services, the fact that health care itself is non-homogeneous further compounds the problem of defining access. Ramsey describes the complexities in health care and difficulty in ascertaining priorities as one that is “incorrigible to moral reasoning”¹³ while Thomasma describes the healthcare system as a complex political, public policy and ethical issue.¹⁴ The US Institute of Medicine defined access as the “timely use of personal health services to achieve the best possible outcome.”¹⁵ On their part, Oliver and Mossialos defined access to healthcare as the ability to secure and have needed information on a specified set of health services at a specified level of quality, subject to a specified maximum level of personal inconvenience and cost.¹⁶

The fact that access is a multi-dimensional concept¹⁷ makes it difficult for scholars to reach a full consensus on its dimensions.¹⁸ The factors that come into play in health care delivery will include process factors, factors of utilization as well as measures of satisfaction. The fact that health is affected by so many determinants also further complicates the discussion on access. Nevertheless, the fact is that poor ARHC is one of the primary causes of the high morbidity and mortality of women cannot be denied.

11. P Menzel and DW Light, ‘A Conservative Case for Universal Access to Health Care’ *The Hastings Center Report*. (2006) 36(4) 36-45.

12. N Daniels, ‘Equity of Access to Health Care: Some Conceptual and Ethical Issues’ *The Milbank Memorial Fund Quarterly Health and Society* (1982) 60(1) 51-81.

13. P Ramsey, *The Patient as Person: Explorations in Medical Ethics* (New Haven: Yale University Press, 1970), 240.

14. DC Thomasma, ‘Access to Health Care for the Elderly’ *Business & Professional Ethics Journal* (1993) 12(2) 3-17.

15. ML Millman, *Access to Health Care in America* (Washington, DC: Institute of Medicine, National Academy Press, 1993), 18.

16. A Oliver and E Mossialos, ‘Equity of Access to Health Care: Outlining Foundations for Action’ *Journal of Epidemiology and Community Health* (2004) 58(8) 655-658.

17. Y Choi, MS Fabic and J Adetunji, ‘Measuring Access to Family Planning: Conceptual Frameworks and DHS Data’ *Studies in Family Planning* (2016) 47(2) 145-161.

18. J Mensah, ‘The Global Financial Crisis and Access to Health Care in Africa’ *Africa Today* (2014) 60(3) 35-54.

The Committee on Economic, Social and Cultural Rights (CESR) identified availability, accessibility, affordability and qualitative as the principles of access.¹⁹ This is similar to the view of access as summarized by Penchansky and Thomas. To them, access must include the Five As to wit: availability of services, commodities, personnel and resources to meet the user's needs; accessibility of the geographic location of facilities in relation to the user; accommodation of user's preferences by providers including hours and appointment schedules and walk-in services; affordability of provider's fee by users; and accountability of the provider in the context of user satisfaction.²⁰

Ibiwoye and Adeleke emphasized the fact that cost among other factors remains the weightiest factor that impedes quality access to care in Nigeria.²¹ This is not surprising in a country like Nigeria which ranks 157th in the Human Development Index (HDI) for 2018.²² The HDI report reveals that 53.5% of the Nigerian population live below income poverty line of \$1.90 USD per day.²³ Hence, the level of poverty in the country is unlikely to encourage out-of-pocket spending of limited funds on seeking needed health care.

Based on the foregoing, ARHC must therefore be such that encompasses availability, affordability, acceptability of needed healthcare services to the user's satisfaction without any hindrance or barrier.

3. Equity of Access in Provision of Healthcare Services

Equity as is known to law is based on principles developed by the courts of chancery to address unfairness and injustice. In the same token, the issue of equity in health care is one that is still evolving. One of the trending focuses of the World Health Organization is to address health inequity which is a major concern in both developed and developing countries.²⁴ Part of the measures to address the health inequity and ensure the closing of the

19. CESR General Comment No. 14. The Right to Highest Attainable Standard of Health (11/08/00) E/C.12/200/4. 22nd Session 25th April-12th May 2000.

20. R Penchansky and JW Thomas, 'The Concept of Access: Definition and Relationship to Consumer Satisfaction' *Medical Care* (1981) 19(2) 127-140.

21. A Ibiwoye and IA Adeleke, 'Does National Health Insurance Promote Access to Quality Health Care? Evidence from Nigeria' *The Geneva Papers on Risk and Insurance Issues and Practice* (2008) 33(2) 219-233.

22. United Nations Development Programme, 'Human Development Reports' available at <http://hdr.undp.org/en/countries/profiles/NGA> accessed 2/05/2025.

23. Ibid.

24. AJ Browne, CM Varcoe, ST Wong, VL Smye, J Lavoie *et al*, 'Closing the Health Equity Gap: Evidence-based strategies for Primary Health Care Organizations' *International Journal for Equity in Health* (2012) 11(1) 59.

equity gap in health care delivery is the principle of Universal Health Coverage (UHC) under the United Nations Sustainable Development Goal No.3.²⁵

According to Braveman and Gruskin, equity in health connotes striving to eliminate disparities in health between more and less-advantaged social groups occupying different positions in the social hierarchy.²⁶ This study adopts the definition of equity by Daniels as roughly equivalent to distributive fair or just.²⁷ This ensures a distributive justice in health care delivery. Berer in support of this view submits that need must be an important factor to be considered in distribution of healthcare services.

The need for equity of access in reproductive health care delivery is justifiable by the fact that more than 99 per cent of maternal deaths take place in certain developing countries.²⁸

Thus, equity of access in our context will simply mean that which aids fair and just distribution of healthcare services based on need. In the same vein, Muraleedharan puts forward the view that the society has the duty to provide a “just allocation of different types of health services, taking into account the competing claims of different types of health needs.” The necessity for stronger emphasis and commitment to a needs-based access was also emphasized by La Foucade and Scott.²⁹ Fried in discussing equity in health care specifically mentioned addressing issues like maternal and child health and ensuring access to health services that will make life tolerable for pregnant mothers and children as part of the decent minimum.³⁰

Although healthcare provision may be considered an individual responsibility, Gibbard believes that the responsibility for healthcare provision can most effectively, reliably, and economically be discharged by government.³¹ This view presupposes that it is the responsibility of government to guarantee access. This view emphasizing government’s responsibility appears to be the basis for the decision in *Alyne da Silva Pimentel V Brazil*³² where the government was accountable for the death of poor Afro-Brazilian woman who

25. United Nations, ‘Sustainable Development Goals Knowledge Platform available at <https://sustainabledevelopmentn.org/> accessed 2/05/2025.

26. PA Braveman and S Gruskin, ‘Defining Equity in Health’ *J Epidemiol Community Health* (2003) 57 254.

27. Daniels, (n. 12) 60.

28. M Berer, ‘Access to Reproductive Health: A Question of Distributive Justice’ *Reproductive Health Matters* (1999) 7(14) 10.

29. AD La Foucade and EB Scott, ‘A Review of the Literature on Manifestations of Inequitable Access to Health Care: Lessons for the Caribbean’ *Social and Economic Studies* (2006) 55(4) 107-132.

30. C Fried, ‘Equality and Rights in Medical Care’ *Hastings Center Report* (1976) 6 29.

31. A Gibbard, ‘The Prospective Pareto Principle and Equity of Access to Health Care’ *The Milbank Memorial Fund Quarterly. Health and Society* (1982) 60(3) 399-428.

32. Communication No.17/2008. Full text of the judgement. Available at http://www2.ohchr.org/english/law/docs/CEDAW-C-49-D-17-2008_en.pdf accessed 12/04/25.

died after multiple medical facilities failed to provide her with emergency obstetric care. The case which was brought before the Committee on Elimination of All Forms of Discrimination Against Women (CEDAW) in 2008 found that the failure to provide quality maternal health care constitutes a form of discrimination against women especially since only women require such services.

Closing the equity gap in ARHC is one of the most efficient ways to address health care needs of disadvantaged and vulnerable persons and in this context, maternal health needs of women.³³

3.1 Equity versus Equality in Health Care

A likely question that requires answer in advocating for equity of access in healthcare is: Why equity, why not equality in ARHC? To stretch this question further, equity in access may in fact increase inequality in health as a category of persons will appear to be receiving more attention in terms of meeting their healthcare needs than others.

Asada in attempting to address the above questions holds the view that achieving health equality is an unachievable goal.³⁴ This is because health equality is weak and some major determinants of health are beyond control and thus, health equity is more attractive and can be more achievable.

While critiquing and emphasizing the impossibility of approaching access from the perspectives of equality in health care, Gutmann and Muraleedharan also opines that the principle of equal access fails to guarantee equal results. Although access will inevitably be unequal, it is not necessarily unfair.³⁵ This is especially because needs are usually unevenly distributed. The impracticability of an even distribution of health needs was also established by Harris et al.³⁶

Gutmann argued that discriminations in health care can therefore be permitted based upon type or degree of health need of populations.³⁷ This is even more so since it is unlikely at the end of the day to have an equally healthy population. The same position has been

33. Browne et al, (n.24) 69.

34. Y Asada, 'Assessment of the Health of Americans: The Average Health-related Quality of Life and its Inequality Across Individuals and Groups' *Popul Health Metr* (2005) 3-7.

35. HT Engelhardt, 'Health Care Allocations: Responses to the Unjust, the Unfortunate, and the Undesirable' in EE Shelp, ed. *Justice and Health Care* (Dordrecht: D. Reidel, 1981).

36. B Harris, J Goudge, JE Ataguba, D McIntyre, N Nxumalo *et al*, 'Inequities in Access to Health Care in South Africa' *Journal of Public Health Policy* (2011) 32(1)102-123.

37. A Gutmann, 'For and against Equal Access to Health Care' *The Milbank Memorial Fund Quarterly. Health and Society* (1981) 59(4) 542-560.

argued by Fried,³⁸ Gutmann³⁹ and Muraleedharan.⁴⁰ Their studies are in agreement that insisting on a right to equal access in health care is an anomaly in so far as other inequalities (in wealth, income etcetera) exists in the society.⁴¹ Equal access will also not augur well for fairness especially in the context of those who indulge in voluntary health risks. Jacobs posits that an egalitarian perspective can never be used to justify a universal access to healthcare and favours a justice theory which adopts a right-based approach in justifying access to health care.⁴²

From a seemingly extreme point of view, Norheim and Asada argue that health equality serves the purpose of levelling down health care services.⁴³ This means that those who currently have more access may be deprived of their access to ensure that they are on the same page with others. According to the authors, health equality if interpreted strictly may result in a situation whereby those who currently see may have to be made blind in order to assist the blind.⁴⁴ This view though a bit exaggerated, supposes that an attempt to use equality to create a balance in health care delivery may be detrimental to overall aggregate health concerns.

Based on the above, there is some huge consensus on the fact that equity in the context of health care is a normative concept which is subjective as opposed to equality which is empirical.⁴⁵

There is thus need for healthcare policies which focus on not just horizontal equity which will aim at just improving overall access to health care by considering collective concerns but rather one that will balance both aggregate as well as distributive concerns based on respective needs⁴⁶ and evidencing a reflection on purpose and effect of such policy.⁴⁷

38. Fried, (n.30) 30.

39. Gutmann, (n.37) 550.

40. VR Muraleedharan, 'When Is Access to Health Care Equal? Some Public Policy Issues' *Economic and Political Weekly* (1993) 28(25) 1291-1296.

41. Fried, (n.23) 31.

42. L Jacobs, 'Can an Egalitarian Justify Universal Access to Health Care?' *Social Theory and Practice* (1996) 22(3) 315-348.

43. OF Norheim and Y Asada, 'The Ideal of Equal Health Revisited: Definitions and Measures of Inequity in Health should be Better Integrated with Theories of Distributive Justice' *International Journal for equity in health* (2009) 8(1) 40.

44. Ibid.

45. W Chang, 'The Meaning and Goals of Equity in Health' *Journal of Epidemiology & Community Health* (2002) 56488-491.

46. Norheim and Asada, (n.43) 43

47. J Anderson, P Roday, S Reimer-Kirkham, AJ Browne, KB Khan and MJ Lynam, 'Inequities in Health and Health Care Viewed through the Ethical Lens of Critical Social Justice- Contextual Knowledge for the Global Priorities Ahead' *Advances in Nursing Science* (2009) 32(4) 282-294.

In sum, a health care service that is just, equitable and fair should be one which tailor's care in such a way that contexts of patient's needs are considered and effective plans are put in place and policies implemented to meet such needs. Such policy must necessarily be one that addresses inequalities and disparities in health as evidenced by the data and experiences indicative of poor life expectancy, quality of life, avoidable morbidities and mortalities.

3.2 Need for Equity of Access in Reproductive Healthcare in Nigeria

It is well established in the preceding section that for an argument for ARHC to be hinged on equity, the justification of the 'need' must be apparent.⁴⁸ In Nigeria's response to the COVID-19 pandemic, equity evidently came into play as the government's priority was the reduction of the then rapidly growing spread of the coronavirus. The apparent need in the case of the COVID-19 pandemic was to curtail the spread of the highly contagious coronavirus and thus, reduce mortality rates. In the case of reproductive health care services for women, the drive for improved access to service is well apparent in the available statistics on maternal morbidity and mortality across the world and specifically, in Nigeria.

As noted earlier, Nigeria is the largest contributor to maternal mortality in the world with a woman's chance of dying from pregnancy and child birth complications being 1 in 25.⁴⁹ A total of 75, 000 deaths arising from maternal health issues were recorded in Nigeria in 2023 alone.⁵⁰ These deaths could have been averted if essential interventions could reach women on time and if the coverage and quality of healthcare services in Nigeria is improved significantly.

The issue of access to reproductive healthcare by women in Nigeria remains one that calls for genuine concern. The incessant violation and non-implementation of the reproductive rights is a major problem which has been and is still facing Nigeria. Although there have been numerous policy deliberations on this fundamental challenge, very little legal and institutional action has been taken by the government and major stakeholders in addressing this problem by taking practical and effective means to guarantee the right to ARHC and maternal health care services. The persistence of the problem is not farfetched from the

48. Culyer, (n.9) 278-279.

49. Trends in Maternal Mortality, (n.3).

50. Ibid.

unwillingness of the government to take legislative and other institutional measures to implement and facilitate the realisation of internationally recognized and guaranteed reproductive rights of women.

Whilst not downplaying the severity of the COVID-19 pandemic, the number of deaths recorded so far from the waves of the pandemic cannot be compared to number of maternal deaths arising from inability of women to ARHC.

4. Legal Framework for Access to Reproductive Healthcare

The right to health has been recognized under international law as far back as 1948 in the United Nations Universal Declaration of Human Rights. Subsequently, the right has been reiterated in other international and regional human rights treaties. A very crucial aspect of the right to health which has gained notable recognition in recent times particularly in the international community and which aims to step down the tide of discrimination in provision of health services, is women's reproductive health rights. This right to health was well expounded by the United Nations CESR to necessarily include freedoms, entitlements and specifically, sexual and reproductive freedom to control one's body.⁵¹ Thus, the right to health covers sexual and reproductive rights.

Reproductive health is as a state of complete physical, mental, social well-being in all matters relating to one's reproductive system, functions and processes.⁵² Reproductive health "implies that people can have a satisfying and safe sex life and that they have the capacity to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice... and the right of access to appropriate health care services that will enable women to go safely through pregnancy and child birth and provide couples with the best chance of having a healthy infant."⁵³

Although the 1979 Convention on Elimination of all Forms of Discrimination against Women makes provisions for rights which have a bearing on women's reproductive

51. CESCR General Comment (n. 19).

52. NI Aniekwu, 'A Legal Perspective on Reproductive Health and Gender-specific Human Rights in Nigeria' *Journal of Medicine and Biomedical Research* (2004) 3(1) 21-29.

53. UN, International Conference on Population and Development (ICPD) Programme of Action (POA) 1994, para 72 available at http://www.unfpa.org/webdav/site/global/shared/documents/publications/2004/icpd_eng.pdf accessed 14/04/25; Beijing Declaration (1995), para. 94.

capabilities and access to facilities,⁵⁴ it was not until the year 1994 at the United Nations International Conference on Population and Development (ICPD) that the Programme of Action (POA) specifically pronounced reproductive rights of women as human rights.⁵⁵ Based on the above definition of reproductive health, we understand that one of the key indicators of reproductive health is the right of ARHC services to enable women safely go through pregnancy and childbirth.

In Nigeria, the reproductive health rights are not expressly guaranteed. However, the right can be inferred under the right to health guarantee under the laws. Sadly, the Nigerian Constitution does not recognise the right to health as one of the fundamental human rights contained under chapter four of the Constitution. Rather, chapter two simply recognises the provision of adequate medical and health facilities for all persons as a fundamental objective of the government which cannot be enforced against the government.⁵⁶ Notwithstanding the lapse in the Constitutional human rights provisions, the country has domesticated the 1981 African Charter on Human and Peoples Rights (ACHPR) and the regional treaty has thus become part of our laws. Article 16 of the ACHPR guarantees the right to health. Although, the 2003 Women's Protocol contains more detailed provisions on reproductive rights of women, the Protocol is yet to be domesticated in Nigeria pursuant to the provision of section 12(1) of the Constitution.

The 2014 National Health Act also recognises the right of citizens to access health care services. Section 1 of the Act establishes a National Health System which shall provide for persons living in Nigeria the best possible health services within the limits of available resources; set out the rights and obligations of health care services users; and protect, promote and fulfil the rights of the people of Nigeria to have access to health care services.⁵⁷

Going by the interpretation of the right to health by the Committee on Economic Social and Cultural Rights (CESR), the right to health provisions adequately cover the guarantee of reproductive health rights of women including the right of access to healthcare services to enable women safely go through pregnancy and childbirth.

54. Articles 10-14

55. Principles 4 and 12; Also 1995 Beijing Declaration, Article 14 available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> accessed on 14/04/25.

56. Section 17 (3) (d)

57. National Health Act, Section 1 (c), (d) and (e).

The argument may also be put forward based on the principles of interrelatedness and indivisibility of rights, that the right to life of women gets threatened when their lives are put at risk due to inability to access healthcare services needed during pregnancy and child-birth. This view was put forward by Duru relying on what he termed an indirect approach to justiciability of Chapter two of the Constitution. He posits that the enforceability of Chapter II may also be dependent upon fundamental rights guaranteed in Chapter IV in some circumstances⁵⁸. This approach though not tested in the context of right to health has been adopted by the court in the case of *Adewole v. Alhaji Jakande*⁵⁹ to give effect to the educational objective under Chapter II. The court held that the freedom of expression guaranteed under Chapter IV encompasses the right to establish schools in a bid to eradicate illiteracy. It is safe to we submit that a person whose life is at risk by reason of complications of pregnancy and who is unable to access needed reproductive health care cannot be said to be enjoying a right to life.

5. Efforts at Enhancing ARHC Services in Nigeria

Fragmented efforts have been made over the years to initiate programs to address poor ARHC in Nigeria. The National Primary Health Care Development Agency (NPHCDA) in 2009 introduced the Midwives Service Scheme (MSS) as a collaborative effort between the three tiers of government in Nigeria with the aim of addressing the unacceptably high maternal and child morbidity and mortality in the country.⁶⁰ The Community Health Influencers, Promoters and Services (CHIPS) Programme kicked off in 2018 and is to be implemented in across the 36 States and the Federal Capital Territory with the aim of reducing barriers to access by taking services closer particularly to pregnant women, women of childbearing age, new-born and children.

About 100, 000 CHIPS agents are expected to be trained to provide services which includes demand generation for PHC services, behaviour change communication, referral and community engagement; maternal new-born and reproductive sexual health among others.⁶¹

58. O Duru, 'The Justiciability of the Fundamental Objectives and Directive Principles of State Policy under Nigerian Law' *Available at SSRN 2140361* (2012).

59. (1981) 1 NCLR 262.

60. NPHCDA. "Nigeria Midwives Services Scheme" available at <https://www.who.int/workforcealliance/forum/2011/hrhawardscs26/en/> accessed 25/02/22

61. Ibid.

The Subsidy and Reinvestment Programme (SURE-P) was another national effort introduced by government with the aim of ensuring that the savings from the partial removal or reduction of subsidy is utilised for the benefit of Nigerians.⁶² This is similar to efforts put in place by the previous administration of Sani Abacha which set up the defunct Petroleum Trust Fund (PTF) with the aim of investing saved funds in specific projects⁶³ and the Olusegun Obasanjo administration which came up with the National Economic Empowerment and Development Strategy (NEEDS).⁶⁴

The SURE-P Maternal and Child Health (MCH) program was to enhance ARHC from the SURE-P savings. The SURE-P MCH Programme was established under the social safety net programmes. According to the World Bank, the SURE-P MCH was aimed at saving lives of mothers and their babies by improving access to reliable health services and increasing the demand for maternal and child health services.⁶⁵ Amakom and Nsofor *et al* noted that in addition to improving access, the reduction of maternal morbidity and mortality and attainment of Millennium Development Goals (MDG) Nos. 4 and 5 was part of the aim of the SURE-P MCH.⁶⁶ The two main components of the programme was to improve both use of services and supply of services to pregnant women.⁶⁷

According to Onugha, SURE-P augmented the Midwives Service Scheme (MSS) which was established in 2009 and driven by the NPHCDA to improve access to reproductive health care services for pregnant women. Amakom corroborating Onugha agreed that SURE-P MCH planned to scale up the MSS by expanding it to more PHCs across the

62. OC Nwosu and E Ugwuera, 'Analysis of Subsidy and Reinvestment Programme (SURE-P) and Youth Empowerment in Nigeria 2012-2014' *IOSR Journal of Humanities and Social Science* (2014) 19(12) 25-32.

63. MA Gado and A Sanusi, 'An Assessment of the Prospects and Challenges of Subsidy Re-Investment and Empowerment Program (SURE-P) of Former President Goodluck Jonathan on Nigerians' *Global Journal of Applied Management and Social Sciences* (2018) 14 166-178.

64. SO Uhumwuangho and EO Akintoye, 'An Appraisal of the State Fund and Empowerment Programme in Nigeria' *AFRREV IJAH: An International Journal of Arts and Humanities* (2016) 5(3) 150-160.

65. World Bank, 'Nigeria Subsidy Reinvestment and Empowerment Programme (SURE-P): Maternal and Child Health Initiative' <<https://www.worldbank.org/en/programs/sief-trust-fund/brief/nigeria-subsidy-reinvestment-and-empowerment-programme-sure-p>> accessed 28 May 2024.

66. U Amakom, 'Subsidy Reinvestment and Empowerment Programme (SURE-P) Intervention in Nigeria: An Insight and Analysis' *Afriheritage Policy Discussion Paper* (2013) 2 1-73 <<https://www.africaportal.org/publications/subsidy-reinvestment-and-empowerment-programme-sure-p-intervention-nigeria-insight-and-analysis/>> accessed 27/05/23.

67. Ibid; IM Nsofor, AN Ezeokoli, KO Akabike, I Anya and C Ihekweazu, 'An Evaluation of the Maternal and Child Health Project of the Subsidy Reinvestment and Empowerment Programme (SURE-P MCH) March–May 2015' <<http://epiafric.com/wp-content/uploads/2019/05/An-Evaluation-of-the-Maternal-and-Child-Health-Project-of-the-Subsidy-Reinvestment-and-mpowerment-Programme-SURE-P-MCH.pdf>> accessed 1 January 2024.

country and specifically to areas where they are most needed.⁶⁸ The MSS was initially funded largely from the debt relief granted to Nigeria by the Paris Club but upon inception of SURE-P, more funds were committed to the Scheme under the SURE-P Programme.⁶⁹ The SURE-P MCH which addresses both demand and supply issues in access was initially launched in 500 public PHC facilities and their catchment areas across the 36 States and the Federal Capital Territory (FCT) in 2012 but was later scaled up to cover 1,000 PHC Centres in 2013.⁷⁰ Chukwuma and Bossert reported that between 9 and 16 facilities were selected to receive the intervention from each of the 36 states. The selection criteria include location in a rural area; a catchment population of more than 10000 residents; provision of maternal and child health services; availability of minimum equipment and basic infrastructure; and opening hours of 24hours daily.⁷¹ The SURE-P Maternal Health Program has however not been sustained.

Another national program worthy of note is the National State Health Investment Project (NSHIP)

which is a RBF program being funded by the World Bank via an International Development Association credit of 150 million USD to Nigeria.⁷² NSHIP is however being implemented by the National Primary Healthcare Development Agency (NPHCDA) in only few states to improve the access of women to better quality health services and in response to accelerating the rate of meeting the SDGs, particularly, Goal No. 3 and thus, targets maternal, child and other primary health care services.⁷³ The NPHCDA provide technical assistance to the state primary health care development agencies (SPHCDA) who contracts selected primary and secondary healthcare facilities to deliver a pre-defined package of

68. Amakom, (n.66) 51.

69. EO Onugha, 'Scaling up Nigeria's Midwives Service Scheme and Reducing Inequality Gaps in Maternal Mortality' *Open Journal of Obstetrics and Gynecology* (2017) 7(8) 880.

70. World Bank, 'The SURE-P Maternal and Child Health Project in Nigeria' <<http://pubdocs.worldbank.org/en/284981453222884744/Policy-brief-Nigeria-SURE-P-MCH-IE.pdf>> accessed 28 October 2024.

71. A Chukwuma and TJ Bossert, 'The Impact of Health Service Delivery on Political Support: Evidence from the Nigerian Subsidy Re-investment and Empowerment Programme' (2018) <https://www.researchgate.net/profile/Adanna_Chukwuma2/publication/325477752_The_Impact_of_Health_Service_Delivery_on_Political_Support_Evidence_from_the_Nigerian_Subsidy_Re-investment_and_Empowerment_Programme/links/5b10514a0f7e9b4981006bec/The-Impact-of-Health-Service-Delivery-on-Political-Support-Evidence-from-the-Nigerian-Subsidy-Re-investment-and-Empowerment-Programme.pdf> accessed 1 December 2024.

72. Ibid.

73. Y Ogundej, 'Can Performance Based Financing Improve Quality of Healthcare in Nigeria?' (2016) <<https://afhea.org/docs/presentationpdfs/Yewande%20Ogundej%20Can%20RBF%20improve%20quality%20and%20access%20to%20care%20in%20Nigeria%20-%20Copy.pdf>> accessed 12 November 2024.

mother and child health services toward improving quality of care and enhancing equity in health.⁷⁴ Fee waivers and vouchers be incorporated into the NSHIP programme consistent with the Basic Healthcare Provision Scheme to provide maternal health services at no charge to all by 2021.⁷⁵

It is noteworthy that minimal and individual efforts have also been made by corporate organizations targeting reduction of maternal mortality in Nigeria. The Mobile Telephone Networks (MTN) Foundation's Mother and Child Health (MCH) Initiative⁷⁶ is one that the government can leverage on to partner with the service providers and map out larger strategies for improving access to maternal health care services. The MTN MCH contributes to keeping mothers and children under five alive through medical Outreaches; awareness and Advocacy; upgrade of existing facilities; and Maternal, nutrition and Health Support programmes. The objective is to drastically reduce the prevalence of deaths of women and children by providing access to quality health care for less privileged women and children in the society. Launched in 2017, the first phase of the project was expected to cover Ogun, Oyo, Abia, Cross River, Kaduna and Niger States. The MTN Audrey Care subscription plan includes a pregnancy insurance, which provides cover for a free ultrasound scan and insures against premature delivery, among a host of other benefits. The Audrey care service also gives access to free Audrey Packs which includes a selection of maternal and new-born healthcare products, such as diapers, baby cream, baby soap, disinfectants, etcetera, from reputable brands.⁷⁷

Access Bank's W Initiative which seeks to provide maternal health support for women is also worthy of mention.⁷⁸

What is clear is that efforts have been fragmented across states and as such, it has not translated to significant reduction in the high maternal mortality ratio in Nigeria. The above makes apparent the need for holistic and novel approaches which will aid coordinated and concerted efforts towards the enhancement of ARHC in Nigeria.

74. World Bank, 'Nigeria: Project Information' <<https://www.rbfhealth.org/rbfhealth/country/nigeria>> accessed 12 November 2025.

75. Federal Ministry of Health, NHIS, NPHCDA, 'Guidelines for the Administration, Disbursement, Monitoring and Fund Management of the Basic Healthcare Provision Fund' (2016).

76. MTN Foundation, 'Mother and Child Health', <<https://foundation.mtnonline.com/causes/mother-and-child-health/>> accessed 12/11/19 ; MTN AudreyCare, <https://mtnbusiness.com.ng/mtnaudreycare> accessed 12 November 2024.

77. Ibid

78. W Initiative, available at <https://www.accessbankplc.com/sustainable-banking/our-community-investment/the-w-initiative> accessed 07/05/2026.

6. Exposition to Corporate Social Responsibility (CSR) Approaches in Response to the COVID-19 Pandemic

Prior to the coronavirus outbreak, the Canadian government in partnership with the Lagos State government under the Global Partnership Programme funded the establishment of a biosecurity laboratory after the Ebola outbreak in Nigeria. Chevron also donated a Molecular Biology Laboratory to the Lagos University Teaching Hospital.⁷⁹ This shows that gaining support for tackling health emergencies when well projected and coordinated has always held some promise.

After the discovery of the index case of COVID-19 in Nigeria, the government was swift to constitute a Presidential Task Force (PTF) on COVID-19 in March 2020 to coordinate and oversee Nigeria's multi-sectoral inter-governmental efforts to contain the spread and mitigate the impact of the COVID-19 pandemic in Nigeria.⁸⁰ The PTF mandate include coordination of national and state-level activities to curtail the spread of the virus. The PTF in discharge of its mandate has coordinated treatment centres; sensitization and awareness campaigns; establishment of diagnostic laboratories; and recommended interventions, funding and technical support for states in combating the spread of COVID-19. The PTF works in conjunction with the National Centre for Disease Control (NCDC).

The Central Bank of Nigeria (CBN) also opened a CBN COVID-19 Relief Fund account.⁸¹ The CBN called on corporate organizations to make donations to the Fund which is intended to be used to fight the corona virus. As at 17th April, 2020, a total sum of N25,893,699,791.00 had been raised from individuals and corporate organizations with up to two billion Naira received from a single individual to the Fund.⁸² These contributions were made at a time when less than five hundred cases had been recorded in Nigeria with 17 deaths.⁸³ Contributions were made by various companies totalling about 107⁸⁴ under the auspices of the Private Sector Coalition against COVID-19 (CA-COVID). Apart from cash

79. G Salau, COVID-19 Corporate Donations: Bazaar or absence of strategic CSR. <https://guardian.ng/features/covid-19-corporate-donations-bazaar-or-absence-of-strategic-csr-2/> accessed 20/04/26

80. <https://statehouse.gov.ng/covid19/objectives/> accessed 20/04/26

81. Central Bank of Nigeria. <https://www.cbn.gov.ng/Out/2020/CCD/covid%20contributions.pdf> accessed 2/07/20.

82. Channels Television. <https://www.channelstv.com/2020/04/18/donations-to-nigerias-covid-19-relief-fund-top-n25bn/> accessed 20/04/26

83. *ibid*

84. EA Benson, Updated: List of all companies and billionaires that have contributed to COVID-19 relief fund <https://nairametrics.com/2020/04/18/list-of-all-companies-and-billionaires-that-have-contributed-to-covid-19-relief-fund/> accessed 20/04/26

donations, donations of medical supplies, food relief materials and medical equipment were also made by companies as part of their corporate social responsibility efforts. Furnished isolation centres were donated in Lagos and Onne Port. Most of these donations were done without much pressure or goading.⁸⁵

On 14th April, 2020, the European Union announced a EUR 50m contribution to Nigeria to assist with implementation of a national coordinated response to the COVID-19 pandemic.⁸⁶ On 17th April, 2020, the United States through its United States Agency for International Development and the Department of State also announced a total funding of \$21.4m made to Nigeria to prevent and mitigate the spread and effect of COVID-19.⁸⁷ By 23rd April, 2020, the federal government was reported to have released \$2.7 million to support the NCDC and promised an additional \$18 million to tackle the coronavirus disease in Nigeria.⁸⁸

7. Lessons from the COVID-19 CSR Initiatives

The major lesson from the CSR Initiatives during COVID was the unified front put forward by corporate organizations to achieve a common goal of reducing the effects of the pandemic. Whilst equity of access was evident in the response of government to the COVID-19 pandemic in Nigeria, same cannot be said of government's response both legal and non-legal, to the issue of right of ARHC for women. The government's response in constituting the PTF on COVID-19, release of funds, coordination of donations by the CBN among others shows that the government clearly appreciates the need for swift and concerted efforts in tackling the spread of the virus. This cannot be said for the government's response to maternal deaths over the years.

Also, the formation of the Private Sector Coalition against COVID-19 reflects the power of concerted rather than isolated piecemeal individual efforts in addressing societal challenges. The coming together of about 107 corporate organizations under this coalition

85. Salau, (n. 79).

86. European Union. EU Boosts Nigeria's COVID-19 Response with N21 Billion Contribution. https://eeas.europa.eu/delegations/nigeria/77571/eu-boosts-nigeria%E2%80%99s-covid-19-response-n21-billion-contribution_en accessed 20/04/26

87. United States Embassy and Consulate in Nigeria. U,S Assistance to fight COVID0-19 in Nigeria reaches \$21.4m <https://ng.usembassy.gov/u-s-assistance-to-fight-covid-19-in-nigeria-reaches-21-4-million/> accessed 20/04/26

88. Chatham House. Nigeria's Political Leaders Need to Win Trust to Tackle COVID-19. https://www.chathamhouse.org/expert/comment/nigeria-s-political-leaders-need-win-trust-tackle-covid-19?gclid=CjwKCAjwxev3BRBBEiwAiB_PWF7iRScrv0DuVyqsbM4ExvZhg8gvwOZ998y3q4o8M8Wvh53KZuhiIBoCu-UQAvD_BwE accessed 20/04/26

to pull funds and achieve a common goal, within a short period of time is equally commendable. While organizations like MTN and Access Bank and a few others are making individual efforts to improve AMHC, it is believed that collective efforts to form a coalition against maternal mortality, similar to the CA-COVID will go a long way to achieve holistic and significant results in improving AMHC and reducing maternal mortality in Nigeria.

8. Conclusion and Recommendations

The study discussed the concept of access in the context of reproductive health care and established the existence of a right to ARHC under existing international human rights frameworks. The study justified ARHC for women relying on the principles of equity and vulnerability. It however found that efforts aimed at improving AMHC in Nigeria has been fragmented and has not contributed significantly to reducing deaths arising from maternal causes in Nigeria.

The study further evaluated the response of the Nigerian government and other stakeholders to ensure access to needed health care by COVID-19 patients during the pandemic. It found that the concerted efforts made by corporate organizations to combat the COVID-19 pandemic yielded positive results and contributed significantly to reducing the negative impacts of the pandemic.

In the context of enforcing socio-economic rights, the issue of economic realities of states has always been a limiting factor, the COVID-19 pandemic has however shown that this appears not to be a cogent limiting factor once the need and urgency involved is well-appreciated. The decline in the fortunes of most countries and organizations during the pandemic did not in any way deter the government and organizations from going all out to take needed measures to curtail the spread of the virus.

Progressive realisation of the right to health in the ARHC context lends credence to the need for government to rethink their strategies for combating maternal deaths and re-evaluate the severity of the situation regarding maternal mortality, appreciate the need for sincere and practical interventions and take realistic steps to combat the challenge leveraging on concerted CSR efforts and initiatives as was done in the fight against COVID-19. With strong political will and unified corporate sector buy-in and support to

form a coalition against maternal mortality, the increasing tide can be stemmed and lives of women prevented from avoidable deaths

ADR DYNAMICS ILLUMINATING THE ELECTRICITY MARKET; POTENTIAL FOR RESHAPING ECONOMIC TRAJECTORY IN NIGERIA.

Ondale Akor *

Abstract

Nigeria has one of the largest electricity markets in Africa, but paradoxically characterised by endemic energy poverty and underdevelopment. Perplexed by this paradox, the study examines the impact of an effective dispute mechanism on the electricity market and potential for changing the economic trajectory in Nigeria. The qualitative method of research is adopted, with reliance on primary and secondary data. National legislative frameworks on electricity governance and dispute mechanism are examined, including the Electricity Act (EA) 2023. Findings in the study demonstrate existing nexus between functional electricity markets and economic growth across jurisdictions in the world. The study finds that EA is the regulatory framework on electricity governance, with an established market, which is predominantly shaped by a flexible multi-tier Alternative Dispute Resolution (ADR) system that promotes cost reflective, speedy and expert driven Electricity Dispute Resolution Landscape (EDRL).the study also finds that ADR is significantly illuminating the Nigerian EDRL, and promoting a cohesive market climate underpinned by robust electricity investment; serving as catalyst for engendering energy security, mitigating poverty and promoting sustainable development in Nigeria. Leveraging ADR dynamics, the study recommends for the establishment of an independent court connected ADR system, as part of the broader measures towards entrenching a resilient dispute resolution architecture, in maximising market potential within the electricity industry, and concomitantly reshaping the economic narratives in Nigeria.

Keyword: Dispute Resolution; Electricity Market; Economic Trajectory; National Development

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1.0. Introduction.

The Nigerian electricity market is arguably, the largest in Africa¹ with tremendous opportunities for trade and investments, which can significantly navigate the nation towards the path of socio economic development. The estimated potential of the market at its peak is projected at approximately 28.05 GW in capacity, and a market value worth over USD 503 million by 2030². The market is susceptible to rapid expansion defined by projected rising demand and investment, with annual market prospects for off-grid technologies estimated at about 9.2 billion³.

The envisioned economic imperatives, realisable under a functional electricity market are the underlying objectives that influenced the reforms as superintended by the Nigerian Electricity Act in 2023⁴. Aimed at unlocking the electricity potential in Nigeria, which have been largely underexploited, these reforms led to the restructuring of the Nigerian electricity governance architecture, by providing a comprehensive legal and institutional framework that has deepened market liberalisation and entrenched a competitive electricity economy in Nigeria. A major milestone recorded under the restructured electricity market is the entrenchment of key reforms in the dispute management landscape, with significant preference for the application of Alternative Dispute Resolution (ADR).

The focal shift in the dispute settlement policy within the electricity market is influenced by observed constraints beleaguering the conventional dispute resolution system. Among these constraints are prolonged delays and endemic corruption attributed to the justice delivery system in Nigeria. Characterised by cost effective, speedy and expert driven dispute resolution dynamics, ADR is consistently gaining global traction as the preferred dispute resolution mechanism, whose influence in the management of disputes is not lost out within the Nigerian electricity market. The dexterity for dealing with novel disputes emerging in a technology driven investment clime, and the availability of multiple choices for potential disputants, influenced majorly by predetermined outcomes, are key drivers

¹ Oyewunmi, Tade, and Ivie Ehanmo. "Emerging trends in resource-rich sub-Saharan Africa and a spotlight on the Nigerian transitional energy market." *Tul. J. Int'l & Comp. L.* 29 (2021): 1.

² Chika Izuora, Nigerian Power Market Report in the Nigerian Leadership Newspaper; <https://leadership.ng/nigerias->; Accessed on 25th December, 2025

³ Ibid

⁴ https://www3.weforum.org/docs/WEF_Electricity_plus_2023.pdf; Accessed on 25th December, 2025

influencing the increasing preference for ADR. With specific reference to Nigeria, and in the context of promoting market efficiencies, ADR has prospects for engendering private-sector oriented investments under a functional and competitive electricity economy that is sought to be insulated from negative market externalities.

With prospects for optimally harnessing energy potential, the broader objectives of the electricity market is the realisation of energy security, aimed at promoting the standard of living and changing the economic trajectory in Nigeria. Energy security is pivotal to the economic transformation of the Nigerian state and changing the poverty narrative in the country. The quest for energy security, therefore, has influenced the enunciation of avalanche of laws and policies that have largely been unsuccessful in addressing the problem. The study argues that realising the long- term aspiration for energy security is possible through a private sector driven investment architecture under the framework of market liberalism that is predicated on a just efficient and resilient dispute mechanism. The ADR dynamics have potential for meeting these criteria and shaping the dispute management landscape within the electricity market.

Contextualising the established nexus between functional markets and economic development of nations, the objective of the study is to examine the regulatory and institutional frameworks on ADR, its scope of application and impact on the Nigerian electricity dispute management landscape. Concomitantly, expanding the scope of this nexus in relative terms, the study further examines the broader macro-economic impact of an efficient dispute mechanism on the electricity industry, with prospects for reshaping the energy narratives and changing the economic trajectory in the Nigerian state.

The study is structured into five sections. Section two is an overview of the regulatory frameworks for ADR in Nigeria. This overview encompasses the examination of sector specific and non-sectorial, investment and dispute regulatory frameworks for ADR relevant to the Nigerian electricity market. Section three of the study examines the various ADR mechanisms and their practical application in resolving electricity disputes in Nigeria, while the fourth section gives an insight on ADR dynamics and future of electricity dispute management landscape, with a corresponding impact on the electricity market and national economic development in Nigeria. The fifth section of the study forms the conclusions and necessary recommendations.

2.0. Regulatory and Institutional Frameworks for ADR in the Nigerian Electricity Market.

2.1. Sector Specific Frameworks for ADR within the Nigerian Electricity Market.

2.1.1. Constitution of the Federal Republic of Nigeria.

The Constitution of the Federal Republic of Nigeria 1999, hereinafter referred to as the constitution provides the legal basis for all commercial and economic undertakings within the Nigerian state. The Nigerian president is empowered by the constitution to administer the national economy directly or through his ministers in specific ministries and agencies⁵. The legislative functions of the state are reposed on the National Assembly to manage the economy alongside the president through legislative oversight⁶, and a manner that policies are enunciated for effective governance of the economy. Operating under the aegis of market liberalism as the national economic policy, the government is responsible for promoting a functional economic architecture that promotes robust investment within the framework of social justice and equitable participation, in promoting economic growth and prosperity of her teeming citizens⁷. Undoubtedly, given that efficiency in dispute resolution is a key driver for economic investment, growth and prosperity, the constitution therefore, has provisions for the judicial⁸ powers of the state in the determination of disputes in Nigeria.

These powers extend to the application of ADR⁹ mechanisms like arbitration, mediation and conciliation in the promotion of international dispute settlement. Electricity investments are by their nature and scope of operations deemed to be transnational in nature, as such disputes emanating from the sector are international in perspective. This perception has influenced the choice of arbitration and other ADR mechanisms as preferred means of dispute resolution by parties, as often reflected in the respective electricity contracts. These ADR mechanisms possess international flavour, and are presumed to operate beyond the prejudices that may influence national courts, thereby justifying their application in resolving electricity disputes which are

⁵ Section 5(1) CFRN 1999

⁶ Sections 80-88 CFRN 1999

⁷ Section 16(1) (d)

⁸ Section 6 of the CFRN (1999) as amended

⁹ Section 19 of the Constitution

predominantly transnational. The recognition of ADR as a dispute management and resolution mechanism by the constitution has far reaching consequences in the dispute management landscape related to high profile investments, including electricity investments in Nigeria. The increasing traction ADR has gained is reflected in various national legislative frameworks within, and appurtenant to the electricity industry, as well as other non-sectorial regulatory regimes that are relevant to, and applicable in the Nigerian electricity dispute management framework.

Trends in the Nigerian dispute management landscape indicate a strong commitment by the Nigerian government towards entrenching a resilient ADR dispute mechanism in the Nigerian energy sector. The establishment of the Alternative dispute resolution Centres by the Nigerian Upstream Petroleum Regulatory Authority¹⁰ and the newly launched Arbitration and Alternative Dispute Resolution Policy (2024-2028)¹¹ by the Nigerian government, gives credence to the increasing traction and momentum gained by ADR¹² in the Nigerian dispute resolution process. This aligns with the international frameworks on ADR to which Nigeria is signatory to, and which have been domesticated and form part of the regime on dispute mechanism in the electricity market. These conventions include The United Nations Convention on the Recognition and Enforcement of Awards (New York Convention) 1958, United Nations Commission on International Trade (UNCITRAL) Model Law 2006, and the International Centre for the settlement of Investment Disputes (ISCID) Rules. Therefore, while these international conventions constitute part of the ADR regime applicable in Nigeria, the study shall however be focusing on the national frameworks on ADR and their applications in the Nigerian electricity market.

2.1.2. Nigerian Electricity Act 2023

The Electricity Act 2023, hereinafter referred to as (“the Act”) is the major regulatory framework in the Nigerian electricity industry. The Act is preceded by the Electric Power Sector Reforms Act (EPSRA) 2005 which liberalised the electricity industry with a framework for ADR as a dispute management mechanism in Nigeria. The EPSRA was the

¹⁰Akinola, Omoniyi Bukola. "THE LANDSCAPE OF ALTERNATIVE DISPUTE RESOLUTION PRACTICE AND PROGRESSION IN NIGERIA." *AWKA CAPITAL BAR JOURNAL* 4, no. 1 (2025).

¹¹ *ibid*

¹²

The Policy is multifold: it seeks to establish Nigeria as a preferred venue for arbitration and other ADR mechanisms while ensuring compliance with Nigeria’s international treaty obligations.

foundational regime for the modern Nigerian electricity market that also established the Nigerian Electricity Regulatory Commission (NERC). Section 71(2) of the Act stipulated that disputes arising within the market were to be referred to arbitration or determined by the Commission. The legislation also made it mandatory for licensee entities in the generating, transmitting and distribution segment of the electricity value chain to use ADR methods, including direct negotiation and arbitration as preferred dispute resolution mechanisms within the electricity market. Pursuant to the market rules established under the EPSRA 2005, there were provisions for appointment of a Dispute Resolution Counsellor (DRC), and mandated to administer the dispute resolution process between market participants.

The EPSRA 2005 was repealed by the Act in 2023. The Act is also predicated on market liberalism as the underlying policy for electricity governance and investment, under a comprehensive legal and institutional framework governing the electricity market¹³ in Nigeria. By changing the governance landscape hitherto under federal government dominance, and allowing states to establish, regulate and invest in the electricity market¹⁴, the Act can be said to have introduced revolutionary changes in the governance architecture of the Nigerian electricity market. Notably, the Act provides for dispute management mechanism with vast provisions for the application of ADR as the most preferred dispute mechanism under the emerging electricity market in Nigeria. By deliberate policy shift on dispute management influenced by reforms, ADR is dominant in the dispute management landscape, serving as the basis for resolving disputes by relevant administrative and regulatory institutions in the electricity industry.

The National Electricity Regulatory Commission has been retained under the Act and conferred with vast regulatory powers to oversee the electricity market in Nigeria. Besides its exercise of administrative functions, the commission exercises quasi-judicial powers under the law, in conducting its proceedings¹⁵, with authority to make regulatory guidelines for the conduct of such proceedings.¹⁶ When seized of a matter in its quasi-judicial position, the commission may make interim orders pending the final disposition of the

¹³ Section 1 of the Act

¹⁴ Section 2

¹⁵ Section 46(1) of the Electricity Act

¹⁶ Section 46(2) of the Electricity Act

matter before it¹⁷. The commission is also entitled to hear all matters as provided by law.¹⁸ However, in doing so, the law places an obligation on it to, as much as practicably reasonable, notify all interested persons on the questions in issue, and give them opportunities to make representations¹⁹. In the exercise of its administrative or quasi-judicial and regulatory functions, the commission is mandated under the law to explore the application of ADR mechanisms spanning arbitration, mediation, conciliation, negotiated settlements or use of expert determination.

The Nigerian Electricity Management Services Agency (NEMSA) is established²⁰ to carry out major regulatory functions within the Nigerian electricity industry. NEMSA has a dispute settlement process that also places emphasis on the application of ADR. The procedure is that in the event of any dispute within the internal organisation of NEMSA, or against any external person or establishment, NEMSA, shall first apply ADR mechanisms such as mediation, negotiation or conciliation before resorting to court²¹. Potential investors and disputants are mandatorily expected under the Act to, as a matter of necessity, explore ADR mechanisms as a first option, before resorting to litigation.

2.1.3. The Customer Protection Regulations 2023 (CPR2023)

The Customer Protection Regulations 2023 (CPR2023) is a subsidiary regulation of the Electricity Act 2023. The CPR2023 deals with issues touching on consumer's protection in the Nigeria electricity supply industry, with a mandatory responsibility reposed on distribution companies to establish consumers' protection units within their operational areas and ensure efficient complaint resolution. The CPR 2023 obligates distribution companies within the electricity supply chain to resolve complaints within 15 days of receipt, with exceptions for certain peculiar cases when it becomes impossible by reason of circumstances of the case, or by some cogent reasons that makes it impossible to do so. However, dissatisfied consumers who are still aggrieved with the decision of the service providers can take their complaints to the closest forum Office belonging to the commission (also referred to as the NERC) for redress within 30 days from the date the initial resolution was made by the service providers. In the event consumers are unsatisfied

¹⁷ Section 47(5) of the Electricity Act

¹⁸ Section 48(1) of the Electricity Act

¹⁹ Section 48(2) of the Electricity Act

²⁰ Section 172 of the Electricity Act

²¹ Section 184(5) of the Electricity Act

with the resolution reached at the commission's Forum Office, the right of appeal lies with the national body of the commission as the apex regulatory body overseeing Nigeria's electricity supply industry.

These appeals are governed by the Nigerian Electricity Regulatory Commission ("NERC Business Rules" 2006.). They follow a formal and legalistic process similar to a conventional court hearing. The procedure for initiating an appeal commences when a consumer files a petition that is supported with an affidavit detailing the facts underlying the appeal. Upon receipt of the process, the service provider, being the respondent, has the option to respond with a reply or objection within twenty-one days after receiving the petition. If the respondent introduces new facts, the NERC or commission may permit the consumer to file a rejoinder within twenty-one days.

As the apex regulatory body, the commission conducts a meticulous hearing of the petition, encompassing evidence-taking through examination-in-chief, cross-examination and re-examination of witnesses. It also involves a thorough consideration of legal arguments presented by both parties, and a rigorous evaluation of presented facts. Following this rigorous process, the commission issues a binding decision that carries legal weight. In cases where consumers remain dissatisfied over the decision made by the commission, they can further appeal the decision or apply for a rehearing of the petition within sixty days of the original decision. Upon hearing the appeal or rehearing the petition, depending on the circumstances, the NERC or commission may either reconsider, vary or review its decision.

In given situations where a consumer remains dissatisfied with the decision delivered by the commission, such a party retains the option of seeking redress in a court of competent jurisdiction. This safeguard empowers consumers to fully exercise their constitutionally guaranteed rights through the judicial system that involves a meticulous review of case facts and presented evidence, guided by established legal principles serving as precedents, and ultimately culminating in a binding judgment with the full weight of law.

Although considered a last resort, the right of recourse to court underscores the paramount role of the rule of law in resolving electricity consumers' disputes. Additionally, for consumers who prefer alternatives to litigation, there are other dispute resolution forums available, such as negotiation, mediation, conciliation, or arbitration, providing flexibility in addressing disputes when the circumstances warrant. Exploring the ADR options before

initiating a lawsuit by an aggrieved consumer or party seems to be the established norm, going by the provisions of the EA and CPR 2023. Acting otherwise, may lead to the suit as initiated by the aggrieved party or consumer not entertained by the court on grounds of jurisdiction, same not having complied with the required statutory pre-action requirements.

In *Comag Steel and Construction Company Limited v. Enugu Electricity Distribution Company Plc*²², the Court of Appeal held that by virtue of the express provisions of section 3(5) and (9) of the NERC Customer Complaints Handling Standards Procedures, an aggrieved customer must first exhaust the internal mechanism before approaching the Court. It is submitted that the ratio behind this decision is to emphasize the imperatives of exhausting local remedies, including exploring ADR options, before initiating any action with regards to electricity disputes. This does not amount to ousting the jurisdiction of the court; it is rather intended to make the court a last resort in the event all other mechanisms have been exhausted.

2.2. Non- Sectorial Frameworks for ADR Relevant to the Nigerian Electricity Market

There are non-sector specific investment and dispute regulatory frameworks which have bearing with the Nigerian electricity market. These frameworks contain regulatory provisions on the management of investment disputes in Nigeria through the application of ADR mechanisms. Electricity disputes form the scope of these anticipated disputes, thus making these legislations part of the non-sector specific but relevant regulatory frameworks with provisions on ADR that are applicable in the settlement of disputes within the electricity market. Among these are the Nigerian Investment Promotion Act 2004 and Nigerian Arbitration and Mediation Act 2023.

2.2.1. The Nigerian Investment Promotion Act 2023

The Nigerian Investment Promotion Act²³ is the key legislation governing all forms of investment portfolios, including foreign investments in the Nigerian electricity market. The Act contains provisions on the resolution of investment disputes, spanning amicable resolution of disputes through dialogue or negotiations, as well as through arbitration

²² (C.A.) E.L.R. 3. 2021

²³ Cap 117 LFN 2004

between foreign investors and the federal government of Nigeria, or any agency or tier of government in Nigeria²⁴.

2.2.1. The Nigerian Arbitration and Conciliation Act (ACA) 2004

The Nigerian Arbitration and Conciliation Act (ACA) 2004²⁵ has at all material times before 2023, been the legislation regulating arbitration practice in Nigeria. The ACA 2004 has been repealed by the Arbitration and Mediation Act (AMA) 2023.²⁶ Being the extant legislation regulating arbitration practice in Nigeria, the AMA 2023, provides for a unified legal framework that promotes fair and efficient settlement of commercial disputes through arbitration and mediation.

It makes applicable the New York Convention in the enforcement of any award made in Nigeria, or any contracting state arising out of International commercial arbitration. The objective of this legislation is to *inter alia*, promote fair resolution of disputes by an impartial tribunal devoid of delay and costs²⁷. These legislative frameworks provide for a dynamic ADR architecture, with a wide latitude of flexible choices available for disputants, which can be explored based on their preferences and prevailing circumstances.

3.0. ADR Mechanisms in the Nigerian Electricity Dispute Management Landscape.

3.1. Arbitration.

Arbitration is the resolution of disputes in a semi-judicial manner²⁸, with an outcome that is binding on the parties²⁹. Arbitration is predominantly one of the pronounced ADR mechanisms and has been applied severally in resolving contractual regulatory or investment related electricity disputes dispute without reference to a formal court procedure. The Nigerian regime on electricity arbitration is robust, encompassing regulatory frameworks on dispute management like the Arbitration and Mediation Act 2023, and other investment related frameworks like the Nigerian Investment Promotion Act 2004. Sector specific legislations like the Electricity Act 2023 also have provisions on

²⁴Section 26 of the Act.

²⁵Enacted by a military decree in March 1988.

²⁶Cap A18 Laws of the Federation of Nigeria 2004.

²⁷Section 1(1) of the Act.

²⁸Thomas J et al, Admiralty and Maritime Law: Cases and Materials (2nd Edition, West Publishing Co 1994)

1.

²⁹The Encyclopedia of Forms and Precedents: Arbitration and Alternative Dispute Resolution, Auctioneers, Estate Agent and Valuers, Bailment (2nd edition, Butterworths LexisNexis 1995) Vol 3(1), para 2(11).

arbitration that have promoted the entrenchment of an effective dispute management landscape in the Nigerian electricity market.

In the legal proceedings involving *Process & Industrial Developments Limited (P&ID) and the Federal Republic of Nigeria*³⁰, P&ID signed a 20-year Gas Supply and Processing Agreement (GSPA) with Nigeria's Ministry of Petroleum Resources in 2010. The terms of contract provided for among other things, the supply of wet gas supplied by Nigeria into lean gas, and return it for power generation, with P&ID profiting from byproducts. However, Nigeria failed to supply the agreed gas, an outcome that made P&ID to initiate arbitration proceedings against Nigeria in 2012 for breach of contract. The tribunal subsequently found Nigeria in repudiatory breach and, in 2017, awarded P&ID \$6.6 billion in lost profits (which sums amounted to over \$11 billion with interest by 2023). Although an English High Court judgment later found that P&ID committed fraud by presenting false evidence and making corrupt payments, thereby undermining the awards; the case shows how arbitration is a preferred dispute resolution mechanism in such a high profile case against the federal government of Nigeria, and depicting how fraud and corruption can vitiate international arbitration.

In *the Enron & Nigeria case*³¹, the Nigerian government signed a Power Purchase Agreement (PPA) with ENPH (a subsidiary of Enron) for a power plant, but later reneged on the agreement. ENPH initiated arbitration with the International Chamber of Commerce (ICC) and got an arbitral award against the Nigerian government. Meanwhile the Enron was involved in scandalous allegations of involvement in massive accounting fraud and inflating earnings and hiding debt, leading to Enron's collapse in 2001. The Nigerian government, in apparent attempt to put up a defense to the award against her, tried to block enforcement of the award in the U.S, arguing that it violated U.S. public policy against rewarding fraud, by citing Enron's fraudulent conduct. It was found that Nigeria breached the PPA, partly due to a "change of mind," and awarded damages, finding Enron's alleged misrepresentations (which Nigeria attempted to use as a defense) were irrelevant to the execution of the contract entered.

³⁰ [2023] EWHC 2638 (Comm).

³¹ *Enron Nigeria Power Holding, Ltd. v. Federal Republic of Nigeria*, 1 (D.C. Cir. 2016).

3.2. Mediation.

The Mediation mechanism involves a neutral third party referred as mediator, who is vested with the responsibility of assisting disputing parties reach a mutually acceptable outcome that is voluntary, non-binding and confidential. This ADR mechanism has also been recognized by various regulatory and investment related legislative frameworks like the Electricity Act 2023 and the Arbitration and Mediation Act of Nigeria 2023. The Nigerian Electricity Regulatory Commission (NERC) framework, which mandates ADR for market participants and consumers explores the application of mediation as one of the preferred ADR mechanisms. This has underpinning for promoting speedy cost-effective dispute solutions through a Dispute Resolution Counsellor (DRC) and Dispute Resolution Panel (DRP).

Dispute Resolution Counsellors (DRCs) appointed by NERC administer the dispute resolution provisions, which include leveraging mediation as one of the preferred ADR mechanisms. A panel of 10 members appointed by NERC that serves as the main ADR platform for disputes between licensees and market participants, handling mediation and other methods. The procedure is that Parties are encouraged to first attempt direct negotiations. In the event negotiation fails, concerned parties can file formal complaints or petitions with NERC. When this happens, the complaint is referred to the DRP by NERC's DRC for resolution where mediation is a key process explored. The DRP members facilitate mediation, aiming for mutually agreeable solutions, offering flexibility and confidentiality. Notably, mediation is often a mandatory part of electricity licensing conditions, obligating companies to explore it as one of the dispute settlement mechanisms.

3.3. Negotiated Settlements.

This mechanism involves parties engaging in dialogue with a view to resolving any pending disagreements. Negotiation is one of the ADR mechanisms accorded recognition in the electricity dispute management landscape in Nigeria, and increasingly gaining traction due to certain attributes like efficiency and cost-effectiveness compared to litigation. Within the framework of dispute settlement, several specific conflicts, primarily at the community and consumer levels, have been successfully resolved through negotiation as facilitated by the NERC, through intervention in local disputes between Electricity Distribution Companies and communities regarding prolonged power outages,

controversial billing system, illegal disconnections and vandalism of electricity infrastructure.

In the case involving the Enuguabo village in Ufuma, Anambra State and Afikpo in Ebonyi States respectively³², negotiation were used in resolving what would have exacerbated into complicated disputes. These cases were resolved through exhaustive deliberations that culminated in the signing of a Memorandum of Understanding between the involved parties. This approach addressed the contending issues and enabled the parties adopt an amicable avenue in charting a pathway for sustainable peace. Similarly, the Customer Complaints Units (CCUs) within the distribution companies to NERC's Customer Forum have been able to substantially resolve disputes bothering on individual consumer complaints by leveraging negotiation as a cost effective, time sensitive and relationship sustaining dispute mechanism in Nigeria. The use of negotiation as a mandatory first point of engagement for resolving disputes extends to being one of the licensing conditions for all operators, indicating how it has become a sustainable means of dispute resolution in the industry.

3.4. Conciliation

Conciliation, involving the assistance of a third- party neutral who helps parties in reaching some form of consensus, remains one of the ADR mechanisms for resolving electricity disputes globally and in Nigeria. This mechanism is often mandated by national laws and regulatory bodies. While the outcomes of proceedings related to conciliation are confidential, the process of conciliation is well-established in various jurisdictions. For instance, the Uganda's Electricity Disputes Tribunal (EDT)³³ dispute settlement process mandates a scheduling conference to sort out points of agreement and explore the possibility of mediation or conciliation before proceeding to a full hearing. Interestingly, a lot of disputes are resolved at this stage. Similarly, the Energy Charter Treaty (ECT), at the

³² <https://nerc.gov.ng/media/nerc-intervenes-to-resolve-electricity-complaints-between-discos-and-communities/>; Accessed on the 27th of December, 2025.

³³ **Temiloluwa O'Peters**, NERC resolves conflict between Discos, communities, Nigerian Punch Newspaper of March 26, 2022; <https://punchng.com/nerc-resolves-conflict-between-discos-communities/>; accessed on January 14, 2026.

The Uganda's Electricity Disputes Tribunal (EDT) is established under the Electricity Act, Chapter 145 of the laws of Uganda. This Act regulates the generation, transmission, sale, export, and distribution of electrical energy in Uganda.

international plane, provides a framework for the optional conciliation of international energy disputes, where a conciliator can provide an interim decision on issues like tariffs and transit conditions when parties fail to agree within a specific timeframe.³⁴

This mechanism is explicitly recognized within the framework of the Electricity Act of Nigeria and can potentially be used in resolving wide latitude of electricity disputes like those emerging from consumer complaints over issues like unjustified billing, alleged meter tampering, or unlawful disconnections. Moreover, Land and Compensation disputes touching on land acquisition for infrastructure projects like power lines and substations, including compensation for crops, trees, or property damage, are often settled through conciliation before or during tribunal proceedings.

Moreover, disagreements over contractual and commercial Issues between energy companies, such as those concerning Power Purchase Agreements (PPAs), grid integration, or transmission tariffs, are often referred to conciliation as a primary alternative dispute resolution (ADR) mechanism to maintain business relationships. Application of conciliation extends to regulatory compliance issues related to permits, licenses and compliance with quality- of- service standards which are often resolved through facilitated dialogue and conciliation. The dynamics of conciliation lies in its speed, confidentiality, and cost-effectiveness compared to litigation, making it a preferred method for parties seeking an amicable solution to electricity disputes.

3.5. Expert Determination

Expert determination has successfully resolved various electricity disputes, particularly those of technical, financial, or valuation-based nature. These cases often involve specific contractual clauses where parties agree to be bound by an independent expert's findings, which are typically faster and more confidential than litigation or arbitration. The scope of expert determination covers disagreements touching the valuation of assets or the calculation of prices in long-term supply contracts, metering and billing errors, consumer-level disputes regarding incorrect charges or faulty meters are often resolved through expert analysis.

³⁴ Articles 7(7) and 26 of the Energy Charter 1988

In determining the ideal ADR mechanisms well-suited for deciding if a product or service meets industry specifications, or given many commercial energy contracts requiring specific technical issues or opinions can be best reserved for expert determination. The use of expert determination is recognized and accorded legal affirmation under the Nigerian Electricity Act 2023. The Act provides for given circumstances where the commission is allowed, while hearing a matter which entails the consideration of any professional or technical question, to consult or engage the services of any person(s) who may so advise it accordingly³⁵.

4.0. ADR Led Electricity Dispute Management Landscape and Economic Development in Nigeria.

The illumination of the dispute settlement landscape by the ADR dynamics has increasingly shaped the global business climate, including the global energy investment architecture. The increasing preference for ADR is reflected in the scope of its application of ADR spanning multifarious aspects of dispute resolution in the electricity industry, including but not limited to regulatory, investment related and contractual disputes; traversing the generation, transmission and distribution segments of the electricity value chain in Nigeria. It is being explored by regulatory authorities in the management of disputes involving investors as well as resolving internal disputes in the various administrative and regulatory agencies in Nigeria.

For instance, the Nigerian National Electricity Regulatory Commission (NERC) leverages on ADR mechanisms in the resolution of disputes involving investors. The premium accorded to this dispute resolution method is shown in the emphasis placed on the application of ADR with regards to complaints from consumers, such that the regulatory commission is mandated by law to provide detailed guidelines on ADR which must be necessarily followed as a first option in resolving disputes within the electricity industry. This method has proved over time to prevent the escalation of disputes that would otherwise be flooding the courts which are already overstretched. ADR also plays a vital role in the dispute management processes of administrative agencies like NEMSA³⁶. The advantages of ADR include cost effective, speedy and expert driven solution in the

³⁵ Section 49 of the Electricity Act

³⁶ Footnote 14.

resolution of either contractual, regulatory or administrative disputes within the electricity sector.

ADR provides a multitier dispute mechanism that can be leveraged to resolve disputes, by taking considering the dynamics of the situation and predetermined outcomes required by potential disputes, based on the peculiarities of each isolated dispute. This creates variety of choices for disputants to explore and navigate the complexities of corporate, contractual and regulatory disputes that may potentially undermine trade and investment in the electricity sector. While commercial energy contracts requiring specific technical issues or opinions can be reserved for expert determination, broader legal disputes are reserved for other ADR mechanisms like arbitration, mediation, conciliation or negotiated settlement. The choice of a particular mechanism to be explored are guided by the discretion of by concerned parties and tailored to suit their individual or corporate expectations.

The dynamics of ADR also plays out in the resolution of electricity disputes when different mechanisms may be applicable in resolving a particular dispute. There are situations where in a given set of facts culminating into a dispute, different ADR mechanisms can be applied. There are also situations when the ADR mechanisms are complementary to each other, providing parties with opportunities for adopting one as precursor, or condition precedent for the utilisation of the other, in resolving electricity disputes in Nigeria. Instances suffice where there are provisions for the compulsory application of dialogued settlement or mediation before resorting to arbitration. There are other situations where more than one ADR mechanism is explored in resolving a particular dispute. This presents the graphic picture of an integrated, multi-tier and complementary dispute resolution landscape, which is compatible with the trends and spirit of international dispute management and control.

This foregoing underscores why ADR seems to exert dominance in the Nigerian electricity dispute landscape. The National Policy on Arbitration and ADR 2024³⁷ has further elevated ADR practice in Nigeria in manner that is relevant to the electricity market by providing for small claims arbitration designed for disputes under five million Naira disputes. This framework is designed for little disputes involving metering and billing. Decisions from these proceedings are expected to be reached within 60 days. Additionally, the policy also

³⁷ Footnote 13

encourages the inclusion of Multi-Tiered Dispute Resolution Clauses in investment and licensing Contracts spanning negotiation, mediation and arbitration as first options before resorting to litigation, with specified timelines for the determination of ADR options.

Furthermore, the policy provides for mandatory judicial support for ADR, by among other things, upholding the arbitrability of electricity contracts. The ADR dominated electricity dispute resolution landscape has far reaching implications for the Nigerian electricity market. Fundamentally, it has capacity for attracting Investment in the market. This is not unconnected

with the fact that a Clear, predictable and enforceable dispute resolution process is coterminous with robust investment by boosting investor's confidence. The confidence in the electricity market largely shapes market stability and could be leveraged by potential financiers, including those financing new power generation facilities, transmission lines, and renewable energy projects in promoting sustainable investments. This confidence is predicated on assurances that potential disputes would be addressed with dispatch, commercial agreements will be upheld, and corporate rights of entities in the market clime are accorded the fullest legal protections. Given the high capital intensive, technically sensitive and long duration of energy transactions, the imperatives for a functional dispute resolution in protecting these energy assets and investments cannot be overemphasised.

An electricity market governed by regulations and dispute resolution efficiency has prospects for promoting fair, just and equitable treatment for all stakeholders. This has underpinning for facilitating competitiveness and effective market participation that would de-emphasis monopoly. The absence of any entity exercising market dominance under a competitive market economy allows for proper allocation of resources, leading to economies of scale in an innovative and investment driven clime that encourages harnessing the abundant renewable energy potential in Nigeria.³⁸ This includes diversifying the energy mix to resources, especially through off-grid solutions in underserved rural areas, which can boost local economies and promote sustainable development.

In essence, a well-functioning dispute mechanism shaped by ADR has propensity for ensuring contract stability, promoting regulatory certainty and improving operational efficiency in the Nigerian electricity market. This is the ideal market that can enhance optimum exploitation of the abundant electricity sources in Nigeria, promote energy

³⁸ Foot note 4

diversification with focus on the renewables and entrenching energy sovereignty and security within the most populated black nation in the world.

Entrenching energy security under a functional electricity market has a corresponding impact on national economic growth and development. This is owing to the fact that energy poverty has the bane of development in Nigeria. Therefore, a functional electricity market that promotes energy security can potentially impact on vital aspects of the national economy like the manufacturing and transformative industrialisation, where stable and reliable electricity would lower the cost of production for many small and medium enterprises in Nigeria. This trend will eventually increase productivity, revive ailing industries and contribute significantly to the national GDP in Nigeria.

5.0. Conclusions and Recommendations

Nigeria has a robust energy profile spanning the conventional and renewable sectors but regrettably caught by the paradoxical web of ‘resource curse’, characterised by endemic energy poverty and underdevelopment amid abundance resources domiciled in the country. This paradox has elicited the attention of scholars and policy makers, with various postulations on how to resolve this impasse. The Nigerian electricity market has tremendous opportunities for trade and investments, which can significantly navigate the nation towards the path of socio- economic development. The Electricity Act 2023 has an ambitious objective of entrenching a legal and institutional framework that would promote robust electricity investment and possibly change the energy and economic trajectory in Nigeria. Realising these imperatives, however, demands a functional electricity market economy that is predicated on an efficient dispute mechanism.

There seems to be consensus that functional markets largely influence national development across all jurisdictions in the world. Given the established nexus between an efficient dispute mechanism and functional market with implications for economic development, the study has examined the various regulatory and institutional frameworks on dispute mechanism within the restructured electricity market in Nigeria. The Nigerian electricity governance architecture provides for a dispute mechanism with significant preference for ADR. The shift in dispute settlement policy within the electricity market is influenced by observed constraints beleaguering the conventional dispute resolution system. Characterised by cost effective, speedy and expert driven dispute resolution

dynamics, ADR is consistently gaining global traction as the preferred dispute resolution mechanism. This is complemented by its dexterity for dealing with novel disputes and availability of multiple choices for potential disputants.

ADR provides a multitier dispute mechanism that can be leveraged by disputants to explore and navigate the complexities of corporate, contractual and regulatory disputes that could otherwise, potentially undermine trade and investments within the Nigerian electricity industry. While commercial energy contracts requiring specific technical issues or opinions can be reserved for expert determination, broader legal disputes are reserved for other ADR mechanisms like arbitration, mediation, conciliation or negotiated settlement. The choice of mechanisms to be explored are guided by the discretion of concerned parties.

The ADR dominated electricity dispute resolution landscape has far reaching implications for the Nigerian electricity market. Fundamentally, it has capacity for attracting Investment in the market under a competitive and innovative economy that is private driven; capable of engendering efficient allocation of resources and leading to economies of scale. The efficient allocation of resources can promote the optimum exploitation of the vast energy potential domiciled in Nigeria. In essence, a well-functioning dispute mechanism shaped by ADR has illuminated significantly and will continue to radiate the Nigerian electricity dispute management landscape, and acting as purveyor, in ensuring contract stability, promoting regulatory certainty and improving operational efficiency in the Nigerian electricity market. This is the ideal market that can enhance optimum exploitation of the abundant electricity sources in Nigeria, promote energy diversification with focus on the renewables, in entrenching energy sovereignty and security within the most populated black nation in the world.

The Nigerian electricity markets is the largest in Africa with potential for redefining the nation's economic trajectory. Therefore, Leveraging ADR dynamics, what is required is the establishment of an independent national electricity court regime with exclusive jurisdiction over electricity related disputes. The proposed specialised electricity court is expected to incorporate ADR dynamics as her dispute resolution mechanism under a well detailed and defined court connected ADR system, with practice guidelines to that effect. This would be part of the broader measures towards entrenching a resilient dispute

resolution architecture, in maximising market potential within the electricity industry and reshaping the economic narratives in Nigeria.

**ALGORITHMIC GOVERNANCE AND CONSTITUTIONAL RIGHTS IN
NIGERIA: RECONCILING ARTIFICIAL INTELLIGENCE WITH RELIGIOUS
FREEDOM AND DEMOCRATIC ACCOUNTABILITY**

Adewole Ishola Adewoyin *

Abstract

The increasing deployment of artificial intelligence in governance and commercial decision-making processes presents significant constitutional challenges, particularly within pluralistic societies such as Nigeria. This article examines the implications of algorithmic governance for fundamental rights under the Constitution of the Federal Republic of Nigeria 1999 (as amended), with specific focus on the rights to privacy, freedom of religion, and protection from discrimination. The study argues that existing regulatory frameworks, including the Nigeria Data Protection Act 2023, are insufficient to address the broader constitutional risks posed by automated decision-making systems. It introduces the concept of algorithmic orthodoxy to explain how seemingly neutral computational models may embed normative assumptions that conflict with Nigeria's socio-religious realities. To address this gap, the article proposes a novel regulatory framework-Value-Based Algorithmic Impact Assessment (VBAIA), which integrates constitutional values, socio-cultural context, and accountability mechanisms into the design and deployment of artificial intelligence systems. Drawing on Nigerian constitutional jurisprudence and comparative international approaches, the article demonstrates the need for a context-sensitive model of algorithmic governance. The article concludes that effective regulation of artificial intelligence in Nigeria requires not only legislative reform but also active judicial oversight and a deliberate effort to align technological innovation with the normative foundations of the constitutional order.

Keywords: Algorithmic Governance; Artificial Intelligence; Constitutional Rights; Religious Freedom; Nigeria; Data Protection

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1. Introduction

The rapid expansion of artificial intelligence has fundamentally altered the architecture of governance across the world.¹ Increasingly, both public institutions and private organisations rely on algorithmic systems to guide decisions relating to credit allocation, employment screening, security surveillance, and public service delivery.² This phenomenon—commonly described as algorithmic governance—represents a shift from traditional forms of administrative decision-making toward technologically mediated processes that rely on data-driven predictive models.³ While such systems promise efficiency, speed, and administrative rationality, they also raise profound legal and constitutional questions regarding accountability, transparency, and the protection of fundamental rights.

Within the Nigerian context, the gradual integration of artificial intelligence into governance structures presents both opportunities and challenges. Digital lending platforms, biometric identity systems, and data-driven administrative mechanisms are increasingly shaping the interaction between citizens and institutions. For example, the expansion of the National Identity Number system administered by the National Identity Management Commission has created one of the largest biometric identity infrastructures in Africa. Similarly, automated verification systems used by financial institutions increasingly rely on digital identity datasets to authenticate customers and evaluate financial risk.

Despite these developments, the normative implications of algorithmic governance remain underexplored within Nigerian legal scholarship. Artificial intelligence systems are capable of influencing decisions that directly affect citizens' access to credit, employment opportunities, social services, and even law enforcement outcomes. When such decisions are made through automated processes that lack transparency, individuals may be unable to understand, challenge, or correct potentially harmful outcomes.

¹ Nick Bostrom and Eliezer Yudkowsky, 'The Ethics of Artificial Intelligence' in Keith Frankish and William Ramsey (eds), *The Cambridge Handbook of Artificial Intelligence* (Cambridge University Press 2014) 316, 320-322.

² Mireille Hilderbrant, *Law for Computer Scientists and Other Folk* (Oxford University Press 2020) 45-47.

³ Karen Yeung, 'Algorithmic Regulation: A Critical Interrogation' (2018) 12(4) *Regulation & Governance* 505, 507-509.

Nigeria's socio-legal landscape further complicates this technological transformation. As one of the most religiously diverse societies in Africa, Nigeria operates within a constitutional framework that must continually balance secular governance with deeply embedded religious and cultural practices. Financial behaviour, social responsibility, and communal cooperation are frequently influenced by religious obligations. These practices may not easily fit the behavioural assumptions embedded within algorithmic systems developed in different cultural environments.

Contemporary scholarship increasingly recognises that algorithmic systems are not merely technical instruments but governance mechanisms that structure power relations within modern societies.⁴ Scholars in the field of digital governance have argued that algorithmic systems possess the capacity to shape social behaviour, allocate opportunities, and influence access to public goods in ways that were previously associated with traditional administrative institutions. For example, Karen Yeung conceptualises algorithmic regulation as a form of governance in which behavioural outcomes are steered through automated decision-making systems rather than conventional legal commands.⁵ Similarly, Frank Pasquale warns against the rise of opaque "black box" systems that obscure the reasoning behind algorithmic outcomes and thereby undermine democratic accountability.⁶

African scholarship has also begun to interrogate the governance implications of digital technologies within the continent. Nanjala Nyabola argues that digital infrastructures in Africa have expanded more rapidly than the regulatory frameworks required to safeguard citizens' rights.⁷ In a similar vein, the African Union has emphasised the need for context-sensitive data governance frameworks capable of balancing technological innovation with the protection of fundamental rights.⁸

This article therefore examines the intersection between algorithmic governance and constitutional rights in Nigeria. It argues that while artificial intelligence may enhance

⁴ Lawrence Lessig, *Code and Other Laws of Cyberspace* (Basic Books 1999) 6-9; Shoshana Zuboff, *The Age of Surveillance Capitalism* (Profile Books 2019) 8-15; Frank Pasquale, *The Black Box Society: The Secret Algorithms that Control Money and Information* (Harvard University Press 2015) 3-5.

⁵ Ibid 510-512.

⁶ Fran Pasquale, *The Black Box Society: The Secret Algorithms that Control Money and Information* (Harvard University Press 2015) 3-5.

⁷ Nanjala Nyabola, *Digital Democracy, Analogue Politics* (Zed Books 2018) 78-82.

⁸ African Union, *Data Policy Framework* (African Union Commission 2022) 12-15.

administrative efficiency and economic innovation, its deployment must be carefully regulated to ensure compatibility with the constitutional principles of equality, human dignity, and religious freedom.

2. Conceptual Framework

Algorithmic governance operates through interconnected stages involving data collection, computational processing, and decision output. Each stage presents potential implications for the protection of constitutional rights. The increasing reliance on data-driven systems in decision-making processes has transformed the nature of governance by embedding predictive analytics into administrative and commercial structures.⁹

First, algorithmic systems rely heavily on large datasets that are used to train machine-learning models. Where such datasets reflect historical inequalities or incomplete social representations, the resulting models may reproduce discriminatory patterns.¹⁰ This phenomenon is particularly concerning in jurisdictions such as Nigeria, where socio-economic disparities and cultural diversity may not be adequately represented within global datasets used to train artificial intelligence systems.

Second, algorithmic decision-making frequently operates through complex computational models that are difficult to interpret even by their developers. This phenomenon, commonly referred to as algorithmic opacity, creates serious accountability challenges.¹¹ When individuals are unable to understand the reasoning behind algorithmic outcomes, the ability to challenge administrative or commercial decisions becomes significantly constrained. This undermines core principles of procedural fairness and due process that are fundamental to constitutional governance.

Third, automated systems may gradually replace human discretion in decision-making processes. While automation may improve efficiency and consistency, it may also reduce the capacity of institutions to consider contextual, cultural, or humanitarian factors. In the Nigerian context, where social and economic relations are often shaped by informal institutions and communal practices, the displacement of human judgment may lead to outcomes that fail to reflect local realities.

⁹ Cathy O'Neill, *Weapons of Math Destruction* (Crown Publishing 2016) 21-25

¹⁰ Solon Barocas and Andrew D Selbst, 'Big Data's Disparate Impact' (2016) 104 *California Law Review*

¹¹ Jenna Burrell, 'How Machine Thinks: Understanding Opacity in Machine Learning Algorithms' (2016) 3(1) *Big Data & Society* 1, 3-5.

Furthermore, the interaction between algorithmic systems and constitutional rights may be understood through the concept of normative embedding, whereby the values and assumptions of system designers become encoded within computational models. These embedded norms may influence how individuals are classified, evaluated, and treated by automated systems. Where such norms are inconsistent with constitutional principles, the resulting decisions may produce outcomes that conflict with legally protected rights.

The implications of this interaction are particularly significant in relation to rights such as privacy, equality, and freedom from discrimination. Algorithmic systems often require extensive data collection, thereby raising concerns regarding informational privacy. At the same time, predictive models may generate differential outcomes across population groups, potentially resulting in indirect discrimination. These risks underscore the importance of developing regulatory frameworks capable of ensuring that algorithmic systems operate in a manner consistent with constitutional safeguards.

In light of these challenges, it becomes necessary to conceptualise algorithmic governance not merely as a technological phenomenon but as a legal and constitutional issue requiring structured regulatory intervention. Without such intervention, the increasing reliance on automated decision-making systems may gradually erode the normative foundations of the Nigerian constitutional order.

3. The Constitutional and Legal Landscape: NDPA 2023 and the Nigerian Constitution

Nigeria has taken important steps toward regulating digital technologies through the enactment of the Nigeria Data Protection Act 2023.¹² The Act establishes principles governing the collection, processing, and storage of personal data, including transparency, fairness, accountability, and purpose limitation. These principles represent a significant advancement in Nigeria's data governance framework and align with emerging global standards on data protection.

However, the regulatory scope of the Act primarily focuses on data protection rather than algorithmic governance. While the legislation provides safeguards for personal data and outlines the rights of data subjects, it does not comprehensively regulate automated

¹² Nigeria Data Protection Act 2023

decision-making systems or mandate systematic algorithmic impact assessments. As a result, important constitutional questions relating to the use of artificial intelligence remain insufficiently addressed within the existing legal framework.

The constitutional implications of algorithmic governance must therefore be examined within the broader framework of fundamental rights contained in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).¹³ Several constitutional provisions are particularly relevant in this regard. Section 37 guarantees the right to privacy, which may be implicated where algorithmic systems rely on extensive data collection and surveillance mechanisms. Section 38 protects freedom of thought, conscience, and religion, thereby safeguarding individuals' ability to practise their religious beliefs without undue interference. Section 42 further prohibits discrimination on the basis of religion, ethnicity, or other protected characteristics.

Judicial interpretation has consistently reinforced the importance of these rights within the Nigerian constitutional order. In *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,¹⁴ the Supreme Court emphasised the centrality of personal autonomy and religious freedom, holding that individuals are entitled to make decisions consistent with their beliefs without undue interference from authorities. This decision underscores the constitutional protection afforded to religious practices and personal convictions, which may be indirectly affected by algorithmic decision-making systems.

Similarly, the Court of Appeal in *Uzoukwu v Ezeonu II*¹⁵ affirmed that fundamental rights occupy a superior position within the hierarchy of Nigerian law and must be given a broad and purposive interpretation. This judicial approach suggests that any governance mechanism—whether human or algorithmic—that affects fundamental rights must be subject to strict constitutional scrutiny.

Further reinforcement of this principle can be found in *Director of State Security Service v Agbakoba*,¹⁶ where the Supreme Court reiterated that constitutional rights are essential to democratic governance and must be protected against arbitrary interference. Likewise, in

¹³ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 37, 38, 42.

¹⁴ *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 7 NWLR (Pt 711) 206, 240-242.

¹⁵ *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt 200) 708, 761.

¹⁶ *Director of State Security Services v Agbakoba* (1999) 3 NWLR (Pt 595) 314, 350-352.

Fawehinmi v Abacha,¹⁷ the Court held that constitutional rights remain enforceable even in circumstances where executive actions attempt to curtail them. These authorities collectively establish that the Nigerian judiciary adopts a robust and rights-oriented approach to constitutional interpretation.

Despite these strong constitutional safeguards, the application of these principles to algorithmic decision-making remains underdeveloped. The absence of explicit statutory provisions regulating artificial intelligence creates a regulatory gap in which automated systems may operate without adequate oversight. This gap is particularly significant in contexts where algorithmic decisions may produce indirect discriminatory effects or interfere with constitutionally protected freedoms.

In this regard, the interaction between the Nigeria Data Protection Act 2023 and the Constitution reveals a critical limitation within Nigeria's current legal framework. While the Act addresses issues of data privacy and protection, it does not sufficiently engage with the broader constitutional implications of algorithmic governance. This disconnect highlights the need for a more comprehensive regulatory approach capable of integrating data protection principles with constitutional safeguards.

4. Socio-Religious Dissonance and the Risk of Algorithmic Orthodoxy

Nigeria's socio-legal environment is characterised by deep religious diversity and strong communal structures that influence economic and social behaviour. Religious obligations frequently shape financial decisions, patterns of consumption, and systems of mutual support.¹⁸ In many communities, these practices are not merely personal choices but constitute integral aspects of social identity and moral responsibility.

When algorithmic systems trained on datasets derived from different socio-economic environments are deployed within such a context, there is a risk that they may misinterpret behaviour that deviates from the assumptions embedded within their training data. This phenomenon may be described as algorithmic orthodoxy; whereby automated systems implicitly enforce normative behavioural standards that do not reflect the cultural and religious realities of the society in which they operate.

¹⁷ *Fawehinmi v Abacha* (2000) 6 NWLR (Pt 660) 228, 289-292.

¹⁸ Abdulmumini A Oba, 'Religious Freedom under the Nigerian Constitution' (2002) 1 *Journal of African Law* 25, 30-33.

This challenge is particularly evident in Nigeria's rapidly expanding financial technology sector. Digital lending platforms increasingly rely on machine-learning algorithms to assess creditworthiness and make lending decisions. Companies such as Carbon and FairMoney utilise automated systems that analyse user data, including transaction histories, spending patterns, and digital behaviour, in order to generate credit scores and determine loan eligibility.

While these systems have significantly improved financial inclusion by providing access to credit for individuals who might otherwise be excluded from traditional banking systems, they also introduce new risks of indirect discrimination. Algorithmic models trained on datasets that reflect predominantly Western financial behaviours may interpret certain culturally embedded practices as indicators of financial instability.

For instance, regular financial contributions associated with religious obligations—such as Christian tithing or Islamic zakat—may appear as recurrent outflows within financial data.¹⁹ Similarly, participation in informal savings schemes, cooperative societies, or community-based lending arrangements may not align with formal financial indicators typically used in algorithmic credit assessment models. Where such behaviours are not properly contextualised, algorithmic systems may classify individuals as high-risk borrowers, thereby limiting their access to financial services.

The implications of such outcomes extend beyond economic disadvantage. Where algorithmic systems systematically produce adverse outcomes for individuals whose behaviour reflects religious practices, such systems may indirectly interfere with constitutionally protected rights. In particular, the constitutional guarantee of freedom of religion under section 38 of the Constitution may be implicated where individuals are effectively penalised for engaging in religiously motivated financial practices. Similarly, section 42,²⁰ which prohibits discrimination on the basis of religion, may be engaged where algorithmic decision-making produces disproportionate adverse effects on particular religious groups.

Although algorithmic systems may not explicitly classify individuals based on religion, the indirect effects of their operation may produce outcomes that are functionally equivalent to

¹⁹ Cathy O'Neil (n 8) 45-48

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 38, 42.

discriminatory treatment. This raises important questions regarding the adequacy of existing legal frameworks in addressing forms of discrimination that arise through technologically mediated processes rather than intentional human action.

Furthermore, the opacity of algorithmic systems compounds this problem. Individuals affected by adverse decisions may be unable to identify the underlying reasons for such outcomes or to demonstrate that discrimination has occurred. This lack of transparency undermines the ability of affected persons to seek legal redress and challenges the effectiveness of constitutional protections in the digital age.

In this context, the concept of algorithmic orthodoxy provides a useful analytical lens for understanding how automated systems may inadvertently impose normative assumptions that conflict with local socio-religious realities. Without appropriate safeguards, the increasing reliance on algorithmic governance may result in the gradual erosion of constitutional values through seemingly neutral technological processes.

These challenges underscore the need for a regulatory framework that goes beyond traditional data protection principles to address the broader socio-legal implications of algorithmic decision-making. It is this gap that the proposed Value-Based Algorithmic Impact Assessment (VBAIA) framework seeks to address.

5. The Value-Based Algorithmic Impact Assessment (VBAIA) Framework

In light of the constitutional and socio-cultural challenges identified above, this article proposes a novel regulatory framework described as Value-Based Algorithmic Impact Assessment (VBAIA). The VBAIA model is designed to ensure that algorithmic systems deployed within Nigeria operate in a manner consistent with constitutional guarantees, socio-cultural realities, and democratic accountability.

Algorithmic impact assessments are not entirely new within global regulatory discourse. Several jurisdictions have introduced frameworks aimed at evaluating the risks associated with automated decision-making systems prior to their deployment. However, these models often focus primarily on technical risk, efficiency, and data protection considerations, without sufficiently integrating constitutional and socio-cultural dimensions.

The VBAIA framework addresses this limitation by incorporating normative constitutional values into the assessment process. It is grounded in the premise that algorithmic systems

are not neutral tools but normative instruments that shape social outcomes and must therefore be subjected to constitutional scrutiny.

The framework consists of six interrelated components.

First, Identification of Constitutional Values. At this stage, developers and regulators must identify the specific constitutional rights that may be affected by the deployment of an algorithmic system. These may include rights to privacy, equality, human dignity, and freedom of religion. By foregrounding constitutional considerations at the outset, this stage ensures that fundamental rights are treated as central rather than incidental to technological governance.

Second, Socio-Cultural Context Analysis. This component requires an evaluation of whether the assumptions embedded within an algorithmic system align with the social, cultural, and religious practices of the target population. In a pluralistic society such as Nigeria, this step is particularly important in preventing the imposition of external normative standards that may conflict with local realities.

Third, Bias and Discrimination Testing. Algorithmic systems must be subjected to rigorous testing to determine whether their outputs produce disproportionate adverse effects on particular groups. Such testing should go beyond technical accuracy and include an assessment of indirect discrimination, particularly in relation to constitutionally protected characteristics such as religion.

Fourth, Transparency and Explainability Mechanisms. Institutions deploying algorithmic systems must ensure that affected individuals are able to understand the basis of automated decisions. This includes providing meaningful explanations and ensuring that decision-making processes are not entirely opaque. The absence of explainability undermines accountability and limits the ability of individuals to challenge adverse outcomes.

Fifth, Human Oversight and Review. While automation may enhance efficiency, critical decisions affecting individual rights should remain subject to human review. This ensures that contextual factors, moral considerations, and equitable principles can be taken into account in ways that purely automated systems may not accommodate.

Sixth, Continuous Monitoring and Accountability. Algorithmic systems must be subject to ongoing evaluation to ensure that they continue to operate in a manner consistent with

constitutional standards. This includes periodic audits, regulatory oversight, and mechanisms for addressing grievances arising from algorithmic decisions.

The VBAIA framework is informed by, but distinct from, existing international regulatory approaches. The European Union Artificial Intelligence Act adopts a risk-based model that categorises artificial intelligence systems according to their potential impact on fundamental rights and imposes regulatory obligations on high-risk applications.²¹ Similarly, Canada's Algorithmic Impact Assessment requires public institutions to assess the potential social and legal implications of automated decision systems prior to deployment.²²

While these frameworks provide valuable guidance, they do not fully account for the socio-religious complexities characteristic of the Nigerian context. The VBAIA model therefore extends these approaches by explicitly integrating religious pluralism, cultural diversity, and constitutional norms into the governance of algorithmic systems.

By embedding constitutional values into the lifecycle of algorithmic development and deployment, VBAIA offers a context-sensitive regulatory approach capable of reconciling technological innovation with the normative foundations of the Nigerian legal order. It provides a practical mechanism through which policymakers, regulators, and institutions can ensure that artificial intelligence systems operate not only efficiently but also justly.

6. Judicial Oversight of Algorithmic Decision-Making

The increasing reliance on algorithmic systems in governance raises critical questions regarding the role of the judiciary in safeguarding constitutional rights. Courts have traditionally functioned as the primary guardians of fundamental rights, ensuring that legislative and executive actions remain consistent with constitutional norms. As algorithmic decision-making becomes more embedded in administrative and commercial processes, judicial oversight assumes heightened importance in preventing the erosion of constitutionally protected liberties.

One of the principal challenges associated with algorithmic governance is the difficulty individuals may encounter when attempting to challenge automated decisions. Many

²¹ European Union Artificial Intelligence Act, arts 6-9.

²² Treasury Board of Canada Secretariat, *Directive on Automated Decision-Making* (Government of Canada 2019) 6-9.

artificial intelligence systems operate through complex computational models that lack transparency and are difficult to interpret.²³ This opacity may hinder affected individuals from understanding the basis of decisions that significantly impact their rights or interests, thereby undermining access to justice and effective remedies.

Nigerian constitutional jurisprudence provides a strong foundation for judicial intervention in such contexts. The courts have consistently adopted a liberal and purposive approach in interpreting fundamental rights provisions. In *Director of State Security Service v Agbakoba*,²⁴ the Supreme Court emphasised that constitutional rights must be interpreted broadly in order to protect citizens against arbitrary state action. Similarly, in *Fawehinmi v Abacha*,²⁵ the Court reaffirmed that constitutional protections remain enforceable even where governmental actions appear to restrict or undermine such rights.

These decisions suggest that Nigerian courts possess both the authority and the institutional responsibility to scrutinise the legality of algorithmic decision systems where such systems affect constitutionally protected interests. For example, where automated credit scoring systems systematically disadvantage individuals based on patterns associated with religious practices or socio-economic behaviour, affected persons may invoke the constitutional guarantee against discrimination under section 42 of the Constitution.²⁶

Judicial oversight may also play a crucial role in ensuring procedural fairness in automated decision-making. Administrative law principles require that decisions affecting rights must be taken through fair procedures and must not be arbitrary, unreasonable, or ultra vires. Where decision-making authority is effectively delegated to algorithmic systems, courts may need to adapt these principles to ensure that automated processes remain subject to standards of fairness, transparency, and accountability.

In practical terms, this may require courts to insist on a degree of algorithmic explainability. Institutions deploying automated systems may be required to provide intelligible explanations of how decisions are reached, particularly where such decisions

²³ Jenna Burrell, 'How Machine Thinks: Understanding Opacity in Machine Learning Algorithms' (2016) 3(1) *Big Data & Society* 1, 3-5.

²⁴ *Director of State Security Services v Agbakoba* (1999) 3 NWLR (Pt 595) 314, 350-352.

²⁵ *Fawehinmi v Abacha* (2000) 6 NWLR (Pt 660) 228, 289-292.

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 42.

have significant legal or economic consequences. Without such explanations, the ability of individuals to challenge adverse decisions would be severely compromised.

Comparative developments in other jurisdictions demonstrate an emerging judicial willingness to engage with these issues. Courts have increasingly recognised that automated decision-making systems must not operate beyond the reach of legal accountability. This trend reflects a broader understanding that technological innovation must remain subordinate to fundamental legal principles.

In the Nigerian context, judicial oversight of algorithmic governance could take several forms. First, courts may require regulatory bodies and institutions to demonstrate that adequate impact assessments have been conducted prior to the deployment of high-risk algorithmic systems. Second, courts may scrutinise whether such systems have been tested for discriminatory outcomes that disproportionately affect constitutionally protected groups. Third, courts may insist on the availability of effective remedies for individuals adversely affected by automated decisions.

The proposed Value-Based Algorithmic Impact Assessment (VBAIA) framework may serve as an important tool in this regard. By providing a structured method for evaluating the constitutional and socio-cultural implications of algorithmic systems, VBAIA can assist courts in determining whether such systems comply with constitutional standards. Where institutions have failed to conduct adequate assessments, courts may be justified in subjecting algorithmic decisions to heightened scrutiny.

Ultimately, the effectiveness of Nigeria's emerging framework for artificial intelligence governance will depend not only on legislative and regulatory developments but also on the willingness of the judiciary to extend established constitutional principles to the domain of algorithmic decision-making. Through proactive judicial engagement, courts can ensure that the evolution of technological governance remains firmly anchored within the rule of law.

7. Conclusion and Policy Recommendations

The emergence of algorithmic governance represents a transformative development in contemporary legal and administrative systems. While artificial intelligence offers significant opportunities for enhancing efficiency, accuracy, and access to services, it also introduces complex challenges that directly implicate constitutional rights and democratic accountability. In the Nigerian context, these challenges are further intensified by the country's socio-religious diversity and the central role that cultural practices play in shaping economic and social behaviour.

This article has demonstrated that the deployment of algorithmic systems within Nigeria cannot be treated as a purely technical or administrative matter. Rather, it must be understood as a constitutional issue requiring careful legal scrutiny. The analysis has shown that existing regulatory frameworks, particularly the Nigeria Data Protection Act 2023, provide important safeguards in relation to data privacy but do not adequately address the broader implications of automated decision-making systems.

By examining the interaction between algorithmic systems and constitutional rights—particularly the rights to privacy, freedom of religion, and protection from discrimination—this article has highlighted the risk that seemingly neutral technological processes may produce outcomes that are inconsistent with constitutional guarantees. The concept of algorithmic orthodoxy has been introduced to explain how automated systems may inadvertently impose normative assumptions that fail to reflect Nigeria's socio-cultural and religious realities.

The central contribution of this article is the development of the Value-Based Algorithmic Impact Assessment (VBAIA) framework. This model provides a structured and context-sensitive approach to regulating artificial intelligence systems by integrating constitutional values, socio-cultural considerations, and principles of accountability into the lifecycle of algorithmic development and deployment. Unlike existing regulatory approaches, VBAIA explicitly recognises the importance of aligning technological innovation with the normative foundations of the Nigerian constitutional order.

In addition, the article has emphasised the critical role of the judiciary in ensuring that algorithmic governance remains subject to constitutional oversight. Nigerian courts, drawing on established principles of fundamental rights enforcement and administrative law, are well-positioned to extend constitutional protections to the domain of automated

decision-making. Through proactive judicial engagement, the courts can ensure that technological advancements do not undermine the rule of law.

Policy Recommendations

In light of the foregoing analysis, the following recommendations are proposed:

First, there is a need for comprehensive legislation on artificial intelligence governance in Nigeria. Such legislation should go beyond data protection to address issues relating to automated decision-making, algorithmic accountability, and impact assessment.

Second, regulatory authorities should adopt the Value-Based Algorithmic Impact Assessment (VBAIA) framework as a mandatory requirement for high-risk algorithmic systems. This would ensure that constitutional and socio-cultural considerations are integrated into the design and deployment of artificial intelligence technologies.

Third, institutions deploying algorithmic systems should be required to implement transparency and explainability mechanisms. Individuals affected by automated decisions must have access to meaningful explanations that enable them to understand and, where necessary, challenge such decisions.

Fourth, there is a need to strengthen judicial capacity in the area of digital governance and artificial intelligence. This may involve specialised training for judges and legal practitioners to enable them to effectively engage with the technical and legal complexities of algorithmic systems.

Fifth, policymakers and regulators should prioritise the development of locally grounded datasets and models that reflect Nigeria's socio-economic and cultural realities. This would reduce the risk of algorithmic bias arising from the use of foreign or non-representative data.

Finally, there is a need for multi-stakeholder engagement involving government agencies, private sector actors, civil society organisations, and academic institutions in the development of artificial intelligence governance frameworks. Such collaboration would promote inclusivity, legitimacy, and public trust in emerging technologies.

Final Closing Statement

In conclusion, the future of algorithmic governance in Nigeria will depend on the ability of legal institutions to adapt to the challenges posed by artificial intelligence while preserving the core values of the Constitution. By adopting a value-based and context-sensitive approach to regulation, Nigeria can harness the benefits of technological innovation while ensuring that fundamental rights, religious freedom, and democratic accountability remain firmly protected.

Ultimately, the legitimacy of algorithmic governance in Nigeria will depend on its fidelity to constitutional values rather than mere technological efficiency. A failure to embed such values risks the emergence of a technologically sophisticated but normatively deficient governance order, incompatible with the ideals of justice, pluralism, and democratic accountability.

AN APPRAISAL OF THE IMPLEMENTATION OF THE INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF LIVES AND PROPERTY AT SEA

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Abstract

International maritime law has developed an extensive legal framework aimed at safeguarding human life and property at sea through safety regulation, maritime security measures, and cooperative enforcement mechanisms. Despite the existence of comprehensive conventions governing maritime navigation and security, incidents involving ship casualties, piracy, and loss of maritime property continue to occur across global maritime domains. Thus, this study appraises the implementation of international legal frameworks designed to protect lives and property at sea. Using doctrinal legal methodology, the study evaluates the effectiveness of State compliance with obligations under major maritime conventions and examines institutional and operational challenges affecting implementation. The study found that the principal challenge confronting maritime safety governance lies not in normative inadequacy but in uneven enforcement, weak institutional capacity, and fragmented regulatory coordination. The study finally recommends enhanced compliance monitoring, strengthened port State control, regional cooperation, and capacity-building initiatives as essential strategies for improving the effectiveness of international maritime safety regimes.

Keywords: Maritime safety, implementation of international maritime law, protection of life at sea, maritime security, State responsibility.

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1. Introduction

The maritime sector remains indispensable to global trade, international transportation, and economic integration, with a substantial proportion of world commerce conducted through sea routes. Consequently, the protection of lives and property at sea has transcended domestic regulatory concerns and has become a significant subject of international legal regulation.¹ Over the years, the international community, principally through the International Maritime Organization, has developed an extensive body of conventions, protocols, and safety standards aimed at ensuring maritime safety and security. Instruments such as the International Convention for the Safety of Life at Sea (SOLAS), the International Ship and Port Facility Security (ISPS) Code, and related maritime regulations impose obligations on States to safeguard seafarers, vessels, cargo, and marine infrastructure from navigational accidents, piracy, terrorism, and other maritime threats. Despite these elaborate legal frameworks, incidents of maritime disasters, insecurity, and loss of property at sea continue to occur with alarming frequency across different maritime jurisdictions.

The persistence of maritime casualties and security breaches reveals a fundamental research problem concerning the gap between the existence of international legal norms and their practical implementation by States. While international maritime law has progressively evolved to address emerging risks associated with shipping, technological advancement, transnational crime, and environmental hazards, enforcement and compliance mechanisms remain uneven and, in many cases, inadequate. Several States, particularly developing maritime nations, continue to face challenges relating to weak institutional capacity, insufficient maritime surveillance, poor implementation of treaty obligations, and lack of effective inter-agency cooperation. This situation raises serious concerns regarding the effectiveness of the existing international legal regime in guaranteeing adequate protection of lives and property at sea. The study therefore seeks to critically appraise the extent to which international legal frameworks governing maritime safety and security are effectively implemented and whether State parties sufficiently discharge their obligations under international law.

¹ E Babatunde and M Abdulsalam, 'Towards Maintaining Peacefulness of the Sea: Legal Regime Governing Maritime Safety and Security in Nigeria' 12 *Beigin Law Review* (2021) 529-559

Existing scholarly works have extensively examined maritime safety conventions, piracy suppression, marine environmental protection, and the general development of international maritime law.² However, much of the literature concentrates predominantly on the normative content of maritime conventions without undertaking a comprehensive assessment of the practical challenges associated with implementation and enforcement. In addition, several studies focus narrowly on specific aspects such as piracy, marine pollution, or port security, with limited attention devoted to the broader relationship between maritime safety obligations and the actual protection of lives and property at sea. Furthermore, inadequate scholarly attention has been given to the implementation deficiencies experienced by developing maritime States and the implications of emerging maritime threats on the effectiveness of existing legal frameworks. This research therefore fills an important gap by undertaking a holistic appraisal of the implementation of international maritime legal frameworks and evaluating the extent to which such frameworks effectively achieve their protective objectives.

Against this backdrop, the study seeks to answer the following research question: To what extent have international legal frameworks governing maritime safety and security been effectively implemented to ensure the protection of lives and property at sea? In addressing this question, the research adopts the doctrinal method of legal research, relying primarily on international conventions, treaties, judicial decisions, textbooks, journal articles, official reports, and other relevant secondary sources for analysis and evaluation.

2. Conceptual Basis of Protection of Lives and Property at Sea

Protection of lives and property at sea encompasses legal measures designed to prevent maritime accidents, ensure vessel safety, and respond effectively to emergencies. The

² R Churchill and A Lowe, *The Law of the Sea* (Manchester University Press Manchester, United Kingdom 1999) 75, D Freestone, R Barnes and D Ong, *The Law of the Sea: Progress and Prospects* (Oxford University Press, Oxford, United Kingdom, 2006) 34, J Coppens, 'The Position of Flags of Convenience in International Law' *Revue Belge de Droit International* 45(1), (2012) 466–489, J Harrison, *Making the Law of the Sea: A Study in the Development of International Law*. (Cambridge University Press United Kingdom 2011) 126, A V Lowe and S Talmon, *The Legal Order of the Oceans: Basic Documents on the Law of the Sea*. Hart (Edits Publishing UK 2009) 239, S Ghosh, 'Flag State Responsibilities: Historical Evolution and Contemporary Issues.' *Journal of Maritime Law and Commerce*, 41(1), (2010) 91–119

concept integrates three interconnected dimensions: Perceiving maritime safety effort towards prevention of accidents through technical regulation.³ More so, maritime security connotes ensuring protection against unlawful acts such as piracy and terrorism.⁴ And importantly humanitarian obligations refer to rescue and assistance to persons in distress.⁵

International law recognizes preservation of life at sea as a universal humanitarian duty derived from customary maritime practice and codified in treaty law. The obligation applies irrespective of nationality, status, or location of persons requiring assistance.

3. Legal Framework for the Protection of Lives and Property at Sea

Maritime law has long recognized the importance of protecting lives and property at sea, reflecting the inherent risks associated with maritime activities and the duty of states and maritime actors to ensure the safety and welfare of individuals and property on board ships.⁶ This part explores key elements of the legal framework established to safeguard lives and property on the sea, including relevant provisions of international conventions and treaties.

3.1 United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS often referred to as the "constitution for the oceans," constitutes a comprehensive legal framework governing the rights and responsibilities of states in maritime affairs. Several provisions of UNCLOS are relevant to the protection of lives and property on the sea as follows:

3.1.1 Duty of States to Cooperate in the Rescue of Persons and Property: Article 98(2) of UNCLOS⁷ provides that every coastal State shall promote the establishment, operation and maintenance of adequate and effective search and rescue services and shall, where circumstances so require, cooperate with neighbouring States for this purpose through regional arrangements. The article imposes a duty on states to cooperate in the rescue of persons in distress and properties at sea. It emphasizes the principle of maritime solidarity and requires states to render assistance to any person and properties found at sea in danger

³ D Freestone, R Barnes and D Ong, *The Law of the Sea: Progress and Prospects* (Oxford University Press, Oxford, United Kingdom, 2006) 56

⁴ R Churchill and A Lowe, *The Law of the Sea* (Manchester University Press Manchester, United Kingdom 1999) 83

⁵ *ibid* 86

⁶ J Kraska, *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics*. (Oxford University Press USA 2011) 291

⁷ (1982) 1833 UNTS 3

of being lost. This obligation extends to masters of ships, who are required to provide assistance to persons in distress without endangering their own safety or the safety of their ships.⁸ The duty to render assistance under Article 98(2) requires states to ensure that appropriate measures are taken to assist any person found at sea in danger of being lost. This obligation extends to all ships, regardless of their nationality or flag, and applies to situations where persons are in distress due to shipwreck, collision, or other maritime accidents.

Moreover, Article 98(2) specifies that the assistance provided should be rendered without prejudice to the rights and obligations of states under international law, including the provisions of UNCLOS itself. This means that states and masters of ships must act in accordance with the principles of international law while providing assistance, taking into account factors such as safety, security, and the protection of the marine environment.⁹

3.1.2 Duty to Cooperate in the Repression of Piracy

Article 100 of the UNCLOS¹⁰ provides that all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state. The article creates a universal jurisdiction requiring States to take joint action against piracy activities, share information, conduct naval patrols, arrest and prosecute pirates, protect ships, cargo, and persons at sea. This provision creates a comprehensive safety and security framework aim at safeguarding lives and property at sea through international cooperation.¹¹

On the other hand, Article 106 of UNCLOS¹² provides that ships without nationality or ships used for piracy are *hostis humani generis* (an enemy of mankind). Such ships are liable to seizure and dealt with by any State on the high sea. This is the cornerstone of universal jurisdiction against piracy.¹³

3.1.3 Duty of the Flag State: Article 94 of UNCLOS requires every State to effectively exercise its jurisdiction and control over ships flying its flag in administrative, technical, and social matters. The Article addresses the duty of states to take measures for the safety

⁸ *ibid*

⁹ R Churchill and A Lowe, (n 6) 43

¹⁰ United Nations Convention on the Law of the Sea (UNCLOS) (1982) 1833 UNTS 3

¹¹ R Churchill and A Lowe (n 6) 56

¹² United Nations Convention on the Law of the Sea (UNCLOS) (1982) 1833 UNTS 3

¹³ J A Roach and R W Smith, *Excessive Maritime Claims* (3rd Ed Brill Nijhoff 2012) 332

of navigation and the prevention of accidents at sea.¹⁴ This provision underscores the importance of adopting effective regulatory and enforcement measures to mitigate risks to maritime safety and to protect vessels and other properties from harm. It encompasses various aspects of maritime safety, including ship construction and equipment standards, navigation rules, and the prevention of collisions, groundings and investigation of casualties.¹⁵ This provision emphasizes the importance of ensuring the safety of maritime traffic to protect vessels and maritime properties from harm. Key aspects of Article 94 include establishment of navigational rules, avoidance of collision, maintenance of safe shipping lanes, and promotion of safe navigation practices.¹⁶

3.1.4 Duty of the Coastal State: Article 211(4-6) of UNCLOS¹⁷ pertains to the preventing, reducing, and controlling pollution of the marine environment by vessels. It establishes obligations for states to enact and enforce laws and regulations to prevent, reduce, and control pollution from ships, including discharges of oil, chemicals, sewage, and other harmful substances. By addressing the threat of pollution, Article 211 contributes to the protection of marine ecosystems and the preservation of maritime properties. By regulating ship pollution, prevention of harmful practices, international corporation, liability and compensation, and environmental protection¹⁸

3.2 International Convention for the Safety of Life at Sea (SOLAS) 1974

The International Convention for the Safety of Life at Sea (SOLAS)¹⁹ stands as one of the most significant treaties governing maritime safety standards. Enacted in response to the tragic loss of life resulting from maritime disasters, particularly the sinking of the RMS Titanic in 1912, for the safety of life at sea. SOLAS establishes comprehensive regulations aimed at enhancing the safety of ships and seafarers.²⁰ It addresses various aspects of ship design, construction, equipment, and operation to mitigate the risks associated with maritime activities. It mandates the implementation of specific safety measures, including

¹⁴ (n 6) Article 94

¹⁵ *ibid* Article 94 (3, 4 & &)

¹⁶ J Coppens, 'The Position of Flags of Convenience in International Law' *Revue Belge de Droit International* 45(1), (2012) 466–489

¹⁷ n 6

¹⁸ S Ghosh, 'Flag State Responsibilities: Historical Evolution and Contemporary Issues.' *Journal of Maritime Law and Commerce*, 41(1), (2010) 91–119

¹⁹ 1184 UNTS 2 (Entered into force on 25th May 1980)

²⁰ A V Lowe and S Talmon, *The Legal Order of the Oceans: Basic Documents on the Law of the Sea*. Hart (Edits Publishing UK 2009) 239

the provision of life-saving appliances (Chapter III), fire detection and extinguishing systems (Chapter II), navigation equipment (Chapter V), and emergency procedures.²¹

Furthermore, SOLAS requires ships to undergo regular inspections and surveys to ensure compliance with safety standards and to obtain certificates attesting to their seaworthiness. These certificates serve as evidence of a ship's compliance with SOLAS requirements and are essential for obtaining authorization to operate in international waters.²² Additionally, SOLAS encourages international cooperation and coordination in matters relating to maritime safety. It establishes mechanisms for sharing information, conducting joint exercises and drills (Chapter IX), and providing assistance to ships in distress. By fostering collaboration among states and maritime organizations, SOLAS seeks to enhance the effectiveness of safety measures and improve the response to maritime emergencies.²³

One notable example of SOLAS's adaptability is the incorporation of requirements related to the Global Maritime Distress and Safety System (GMDSS). The GMDSS revolutionized maritime communication and distress alerting by introducing automated systems and satellite technology to ensure rapid and effective response to emergencies at sea (CHAPTER IV). SOLAS amendments mandating the implementation of GMDSS equipment on ships reflect the convention's commitment to leveraging advancements in technology to improve safety standards.²⁴

Moreover, SOLAS continues to play a crucial role in addressing contemporary challenges such as maritime terrorism. It was amended in 2002 to include maritime terrorism and security in response to 9/11 terrorist attacks against United States of America. It establishes international maritime security rules meant to be applied to ship engaged in international voyages and port facilities (Chapter XI-2), it makes the International Ship and Port Facility Security (ISPS) Code mandatory. The objective is to detect and prevent unlawful act such as terrorism, sabotage, use of ships as weapons and transport of terrorists or dangerous materials. It was further amended in 2010 and introduced passenger ship safety through improved life-saving appliances, enhanced fire protection systems and safer design standards for passenger vessels. Also it was amended in 2014 with focus on passenger ship

²¹ J Harrison, *Making the Law of the Sea: A Study in the Development of International Law*. (Cambridge University Press United Kingdom 2011) 126

²² *ibid* 127

²³ International Maritime Organization, 'Maritime Safety,' <

<https://www.imo.org/en/OurWork/Safety/Pages/Default.aspx> > Accessed on 20th February 2026 @11:22am

²⁴ *ibid*

evacuation and safety. It established mandatory damage stability requirements and improved evacuation procedures for passenger ships. Furthermore, it was amended in 2016 with focus on container safety, the key development was the introduction of Verified Gross Mass (VGM) requirement for containers before loading on ships. Its purpose is to prevent accidents caused by incorrect container weight declarations. Another amendment was made in 2020 with focus on modern navigation and safety technology. It established updates to Global Maritime Distress and Safety System (GMDSS) which is a new safety rules for autonomous and digital navigation systems.²⁵

It was further still amended in 2021 to take care of cyber threat, it therefore, incorporate digital risk governance, chapter IX makes the International Safety Management (ISM) Code mandatory through IMO Resolution MSC.428(98) providing that ship owners must include cyber risk management within Safety Management System (SMS)²⁶ and it was also amended in 2023 and adopted by IMO; it was amendments to Chapters II-1, II-2, V and XIV. These amendments were adopted in 2023 and scheduled to enter into force in 2026.

Latest SOLAS amendments was in 2024 Amendments (MSC.550(108)), adopted by the IMO Maritime Safety Committee in May 2024 and entered into force on 1st January 2026, was on environmental sustainability and ecosystem protection [safety of navigation (Chapter V); ISM Code (Environmental Protection Policy) Chapter IX; Carriage of Dangerous Goods (Chapter VII); Polar Code (Environmental Sustainability in Polar Waters) (Chapter XIV)]. It also changes some provisions, it is key changes include mandatory reporting of containers lost at sea, stronger fire safety rules for cargo and ro-ro passenger ships new fire detection systems in cargo ship control stations, regulations ensuring fuel supplied to ships does not endanger safety and ban on PFOS (Perfluorooctane Sulfonate) firefighting foam because of environmental risks.²⁷

These recent amendments to SOLAS have introduced measures to enhance ship security, including the adoption of the International Ship and Port Facility Security (ISPS) Code, which sets out comprehensive security requirements for ships and port facilities to prevent security threats and ensure the safe and secure movement of goods and people.

²⁵ Edwin Egede, 'The Nigerian Territorial Waters Legislation and the 1982 Law of the Sea Convention' *The Journal of Maritime and Coastal Law* Vol 19, No 2 (2024) 315

²⁶ Mandatory compliance became effective on 1st January 2021.

²⁷ Arif Ahmed, 'International Law of the Sea: An Overlook and Case Study' 8 *Beijing Law Review* (2017) 21-40

Furthermore, SOLAS amendments have incorporated provisions to address environmental concerns, such as the prevention of marine pollution from ships. Regulations governing the discharge of pollutants, the management of ship-generated waste, and the use of environmentally friendly technologies contribute to the protection of the marine environment and the promotion of sustainable maritime practices.²⁸

3.3 The Geneva Convention on the High Sea 1958

The Geneva Convention on the High Seas of 1958 complements UNCLOS and SOLAS by addressing additional aspects of maritime law, including the protection of lives and properties on the high seas. This convention serves as a foundational instrument for regulating activities beyond national jurisdiction and promoting cooperation among states in the governance of the high seas as follows:

3.3.1 Duties of Master of Ships

Article 13 of the Geneva Convention on the High Seas²⁹ underscores the duty of masters of ships to render assistance to any person found at sea in danger of being lost. This provision reflects the longstanding maritime tradition of rendering aid to those in distress and reinforces the principle of solidarity among seafarers. It reflects the fundamental understanding that the sea is a vast and often unforgiving environment where individuals and vessels are exposed to numerous hazards and dangers. In such circumstances, the obligation to provide assistance to those in distress is not merely a legal requirement but a moral imperative deeply ingrained in maritime culture.³⁰

By emphasizing the duty of masters of ships to intervene without hesitation when encountering persons in distress at sea, the provision seeks to ensure that no individual is left behind or abandoned in perilous circumstances.³¹ It underscores the importance of collective action and shared responsibility in addressing common challenges and promoting safety and security at sea.

²⁸ International Maritime Organization, 'MARPOL' <

<https://www.imo.org/en/OurWork/Environment/PollutionPrevention/Pages/MARPOL.aspx> > Accessed on 15th January 2026 @10.34am

²⁹ April 29, 1958, 13 U.S.T. 2312

³⁰ M H Nordquist, J N Moore and T H Heidar, *Legal Order in the World's Oceans: UN Convention on the Law of the Sea*. (Edds Brill Nijhoff. 2012) 272

³¹ *ibid* 275

3.3.2 Prohibition of Seizure of Ships and Arrest

Article 12 of the convention³² prohibits the seizure of ships and the arrest of persons on board ships engaged in international navigation, except in specific circumstances defined by international law such as illegal fishing, smuggling, custom violation, pollution offences and security branches. The convention provides, if the pursuit must be carried out, it must begin while the foreign ship or one of its boats is within internal waters, the territorial sea, or the contiguous zone of the pursuing state and it may only begin after a visual or auditory signal has been given at a distance enabling it to be seen or heard. This provision aims to safeguard the freedom of navigation and prevent undue interference with lawful maritime activities. It underscores the principle of non-interference in the affairs of ships operating on the high seas and emphasizes the importance of respecting the rights and freedoms of seafarers.

Article 12 reflects the international community's recognition of the need to maintain stability and security in the maritime domain. By prohibiting arbitrary seizures and arrests, the provision contributes to the preservation of peace and order on the high seas, fostering an environment conducive to maritime trade, navigation, and cooperation.

3.3.3 Duty of the Flag State to Render Assistance to Persons in Distress at Sea

Article 10 of the Convention³³ obliges states to ensure that persons on board ships flying their flag receive humane treatment and respect for their fundamental rights. This provision reflects the principle of flag state jurisdiction, whereby states are responsible for regulating the conduct of ships flying their flag and ensuring that they comply with applicable international standards and norms. It underscores the importance of upholding human rights and ensuring the well-being of seafarers, regardless of their nationality or status. Article 10 recognizes the unique vulnerabilities of individuals at sea and the need for robust legal protections to safeguard their dignity and rights. It encompasses various aspects of human rights, including the right to life, liberty, and security of person, as well as the prohibition of torture, cruel, inhuman, or degrading treatment or punishment.³⁴ Moreover, Article 14 underscores the role of states as guarantors of human rights at sea, emphasizing their duty to enforce and uphold international standards and to hold accountable those who violate the rights of persons on board ships flying their flag. By promoting adherence to

³² n 26

³³ *ibid*

³⁴ (n 5) 120

human rights principles, the provision contributes to the creation of a safe, fair, and inclusive maritime environment.

4. Implementation Mechanisms for The Protection of Lives and Property at Sea

The effective enforcement of laws and regulations is crucial for ensuring the protection of lives and properties on the sea. Various mechanisms exist to enforce maritime laws and uphold safety and security standards in the maritime domain.³⁵

4.1 Flag State Implementation: Flag States bear primary responsibility for enforcing maritime safety standards. They must ensure vessel inspection, certification, and compliance with international conventions. However, ineffective regulatory oversight has allowed some vessels to operate under “flags of convenience,” weakening enforcement.³⁶

4.2 Port State Control: Port State control has emerged as a critical enforcement mechanism. States may inspect foreign ships entering their ports and detain vessels that fail to comply with international safety requirements.³⁷ This system compensates for failures of flag State supervision and enhances overall compliance.

4.3 Coastal State Responsibilities: Coastal States must maintain navigational safety systems, maritime surveillance, and search and rescue infrastructure within their maritime zones.³⁸ Effective implementation requires coordination among naval authorities, maritime agencies, and regional partners.

4.4 Use of Military: Article 21 of the Geneva Convention on the High Seas³⁹ provides a legal basis for states to utilize military forces in enforcing maritime law and suppressing unlawful acts on the high seas. This article acknowledges the unique challenges posed by maritime crimes such as piracy, terrorism, and illicit trafficking, which often require robust and coordinated responses from state authorities.⁴⁰ It authorizes states to employ military assets, including naval vessels, aircraft, and special operations forces, to deter, intercept, and neutralize threats to maritime security and navigation. The use of military forces in

³⁵ *ibid*

³⁶ R Churchill and A Lowe, *The Law of the Sea* (3rd Ed Manchester University Press 1999) 257

³⁷ Erik J Molenaar, ‘Port State Jurisdiction’ 38 *Ocean Development & International Law* (2007) 225

³⁸ (n 33) 263

³⁹ (1958) 13 U.S.T. 2312

⁴⁰ D Fleck, *The Handbook of the Law of Visiting Forces*. (Oxford University Press United Kingdom 2013) 237

maritime enforcement serves multiple purposes such as deterrence, interdiction,⁴¹ response to emergencies, international cooperation.⁴²

While the use of military forces in maritime enforcement is essential for combating transnational maritime crimes, it must be conducted in accordance with international law, including principles of proportionality, necessity, and respect for human rights.

4.5 The Civilian Ship and Non-Military Vessels: Article 12 of the Geneva Convention on the High Seas⁴³ emphasizes the crucial role of civilian ships and non-military vessels in ensuring maritime safety and providing assistance to individuals in distress at sea. This provision underscores the humanitarian obligation of masters of ships, irrespective of their vessel's nature or purpose, to render aid to those in need on the high seas. It reflects the longstanding maritime tradition of solidarity and mutual assistance among seafarers, rooted in the recognition of the inherent risks and challenges of maritime travel. The duty to render assistance outlined in Article 12 encompasses various situations, including search and rescue operations, emergency situations, and humanitarian assistance.⁴⁴

Article 12 recognizes the fundamental principle that the safety of life at sea is paramount and that all vessels, regardless of their nature or function, have a responsibility to contribute to maritime safety and rescue operations. By upholding this duty, masters of ships demonstrate their commitment to the preservation of life and the protection of human rights in the maritime domain.⁴⁵

4.3 The National Courts of the Country in Custody of Suspects: In cases where maritime crimes occur or suspects are apprehended at sea, the national courts of the country in custody of suspects play a pivotal role in ensuring accountability and justice. These courts have jurisdiction to investigate, prosecute, and adjudicate cases involving maritime offenses, including piracy, maritime terrorism, illegal fishing, and other unlawful activities. They serve as forums for legal proceedings, where evidence is presented, witnesses are

⁴¹ C Fournet, *International Crimes and the Ad Hoc Tribunals* (Cambridge University Press UK 2009) 87

⁴² S J Hansen, 'Piracy in the Greater Gulf of Aden: Myths, Misconceptions and Remedies' (NIBR Report, Norwegian Institute for Urban and Regional Research 2009) 91

⁴³ n 26

⁴⁴ IMO *International Convention on Maritime Search and Rescue (SAR)*, 1979 and International Maritime Organization p. 221

⁴⁵ *ibid*

heard, and judgments are rendered in accordance with national laws and international legal standards.⁴⁶

The involvement of national courts in the prosecution of maritime crimes serves several purposes. Firstly, they uphold the rule of law by holding perpetrators of maritime crimes accountable for their actions. National courts ensure that individuals who engage in illegal activities at sea are subject to legal proceedings and face appropriate penalties under domestic and international law. Secondly, they provide suspects with the opportunity to defend themselves and receive fair trials in accordance with due process rights and procedural safeguards. Defendants are entitled to legal representation, presumption of innocence, and other fundamental rights enshrined in national constitutions and international human rights instruments.⁴⁷

Moreover, national courts address the rights and interests of victims of maritime crimes by providing avenues for redress, compensation, and restitution. Victims may participate in legal proceedings as witnesses or parties to the case, seeking justice and accountability for the harm they have suffered. Additionally, national courts collaborate with other states and international organizations to combat maritime crimes effectively.⁴⁸ They exchange information, evidence, and legal assistance, facilitate extradition and mutual legal assistance, and coordinate joint investigations and prosecutions to enhance the effectiveness of law enforcement efforts.⁴⁹

5. The Challenges of the Protection of Lives and Properties on the Sea

Protecting lives and properties on the sea presents a myriad of challenges that require diligent attention and effective strategies to overcome.⁵⁰ These challenges span from navigational hazards to resource constraints, each posing distinct obstacles to maritime safety and security. Understanding and addressing these challenges is essential for

⁴⁶ (n 3) 163

⁴⁷ *ibid*

⁴⁸ CLiss, 'Armed Robbery and Piracy in Southeast Asia: Organizing Safety and Mutual Security in the Malacca Straits.' *Asian Survey*, 47(3), (2007) 511–532

⁴⁹ *ibid*

⁵⁰ E J Molenaar, 'Port State Jurisdiction: Toward Comprehensive, Mandatory and Global Coverage.' *Ocean Development & International Law*, 38(1–2), (2007) 225–257

enhancing the resilience of maritime operations and ensuring the well-being of individuals and assets at sea.⁵¹

5.1 Lack of Updated Charts of Some Regions

A significant challenge in maritime navigation is the lack of updated navigational charts for certain regions. Outdated or inaccurate charts can pose serious risks to vessels, increasing the likelihood of accidents, groundings, and collisions. Mapping and charting remote or less-frequented areas of the sea remain a logistical and technological challenge, leaving navigators with limited information to safely navigate through these waters.⁵²

Without access to reliable and up-to-date charts, mariners face heightened risks of navigational errors, collisions, and groundings, particularly in unfamiliar or poorly surveyed waters.⁵³ Furthermore, the challenges associated with mapping and charting remote or less-frequented areas of the sea are compounded by logistical constraints and technological limitations.⁵⁴ Moreover, the rapid pace of environmental change, including sea level rise, coastal erosion, and the melting of polar ice caps, further complicates efforts to maintain accurate navigational charts. These dynamic environmental processes can alter coastlines, shift underwater features, and create new navigational hazards, necessitating regular updates to maritime charts to reflect these changes accurately.⁵⁵

5.2 Lack of Adequate and Sufficient Aid to Navigation

Adequate aid to navigation, including lighthouses, buoys, and navigational beacons are essential for safe maritime navigation. However, many regions still lack sufficient aids to navigation, particularly in developing countries or remote areas with limited infrastructure. The absence of these navigational aids increases the risk of maritime accidents and

⁵¹ M Q Mejia, 'Evolution of the Port State Control System and its Impact on Maritime Safety and Environmental Protection.' *WMU Journal of Maritime Affairs*, 4(1), (2005) 1–30

⁵² D L Torrens, 'Protection of the Marine Environment in International Law: Toward an Effective Regime of the Law of the Sea.' *Queen's LJ*, 19, *Queen's University, Kingston, Ontario, Canada* (1993) 613.

⁵³ *ibid*

⁵⁴ V J Tassin, *Regulation and Protection of Water in International Law: Terrestrial and Marine Perspectives*. (Edward Elgar Publishing, Cheltenham, United Kingdom 2017) 105-142

⁵⁵ *ibid*.

hampers search and rescue efforts during emergencies⁵⁶ particularly in regions where maritime traffic is high or where navigational hazards are prevalent.⁵⁷

Moreover, the absence of sufficient aids to navigation can hamper search and rescue operations during maritime emergencies. Navigational aids such as lighthouses, buoys, and beacons not only help mariners to navigate safely but also serve as reference points for search and rescue teams responding to distress calls or incidents at sea. Without these aids, search and rescue efforts may be delayed or compromised, reducing the effectiveness of response operations and increasing the risk to the lives of mariners and passengers in distress.⁵⁸

5.3 Resource Constraints

Resource constraints, including financial limitations and inadequate maritime infrastructure, pose significant challenges to maritime safety and security. Many countries struggle to allocate sufficient resources for maritime surveillance, law enforcement, and search and rescue operations. Limited budgets hinder the deployment of maritime patrols, acquisition of advanced technologies, and training of personnel, weakening the overall capacity to protect lives and properties at sea.⁵⁹ Resource constraints present significant challenges to maritime safety and security, particularly in regions with limited financial resources and maritime infrastructure. The effective protection of lives and properties on the sea requires substantial investments in maritime surveillance, law enforcement, search and rescue capabilities, and navigational infrastructure.⁶⁰

However, many countries struggle to allocate sufficient resources to these critical areas, compromising their ability to address maritime threats and respond effectively to maritime emergencies. Financial limitations often restrict the deployment of maritime patrols, acquisition of advanced technologies, and training of personnel, limiting the capacity of maritime authorities to monitor and enforce maritime regulations effectively. Inadequate

⁵⁶ N Harvey, 'Protecting Private Properties from the Sea: Australian Policies and Practice' *Marine Policy*, 107, (2019) 566

⁵⁷ V J Proulx, *Transnational Terrorism and State Accountability: A New Theory of Prevention*. (Hart Publishing, 2012) 162

⁵⁸ *ibid*

⁵⁹ D M Bush, O H Pilkey and W J Neal, *Living by the Rules of the Sea*, (Duke University Press Durham, North Carolina USA 1996) 216

⁶⁰ C Schreuer, 'The Responsibility of States for the Acts of International Organizations' *American Journal of International Law*, 95(3), (2001) 628–631

funding for maritime surveillance systems, such as radar networks, coastal monitoring stations, and satellite surveillance, can leave vast maritime areas under-monitored and vulnerable to illicit activities, including piracy, smuggling, and illegal fishing.⁶¹

Additionally, resource constraints may hinder investments in navigational infrastructure, such as aids to navigation, hydrographic surveys, and charting activities, leading to outdated or incomplete navigational charts and increased navigational hazards. Limited budgets for search and rescue operations can impede the timely response to maritime emergencies, prolonging the duration of distress situations and increasing the risk to the lives of mariners and passengers in distress.⁶² Moreover, resource constraints can impact the capacity of maritime authorities to address emerging maritime threats and challenges, such as marine pollution, maritime terrorism, and cyber threats. Without adequate resources for training, equipment, and intelligence gathering, maritime agencies may struggle to adapt to evolving threats and implement effective countermeasures to protect maritime assets and infrastructure.⁶³

5.4 Poor Security Cooperation among Some National Militaries

Effective maritime security requires cooperation and coordination among national militaries, coast guards, and law enforcement agencies. However, in some regions, poor security cooperation among neighboring countries undermines efforts to combat maritime threats such as piracy, smuggling, and illegal fishing. Disputes over maritime boundaries, jurisdictional issues, and lack of trust among nations can impede joint patrols, intelligence sharing, and collaborative enforcement actions, leaving maritime areas vulnerable to criminal activities.⁶⁴ One of the significant challenges in ensuring maritime safety and security is the lack of effective security cooperation among some national militaries. While international law provides a framework for cooperation in addressing maritime threats and challenges, including piracy, terrorism, and illegal activities at sea, poor coordination and

⁶¹ *ibid*

⁶² D J Rasmussen, M K Buchanan, *et al*, 'A Flood Damage Allowance Framework for Coastal Protection with Deep Uncertainty in Sea Level Rise.' (American Geophysical Union (AGU) Washington, D.C., USA. 2020) 23

⁶³ A Singh, 'Legal Measures against Maritime Piracy: A Case Study of Indian Ocean Region.' *International Journal of Law and Management*, 62(2), (2020) 154–172

⁶⁴ D D A Laffoley, *Et at*, *The Protection and Management of the Sargasso Sea*. (Sargasso Sea Alliance 2011) 342

communication among military forces can undermine efforts to combat maritime threats effectively.⁶⁵

The lack of effective security cooperation among some national militaries not only undermines maritime safety and security within their respective jurisdictions but also has broader implications for regional stability and security. In regions where maritime boundaries are disputed or where maritime security threats transcend national borders, such as the Gulf of Guinea or the South China Sea, poor security cooperation among neighboring countries can exacerbate tensions and increase the risk of maritime conflicts.⁶⁶

6. Preferred Solutions

6.1 Addressing the challenge of outdated navigational charts requires collaborative efforts among governments, international organizations, and the maritime industry. Investing in advanced surveying technologies, such as multibeam sonar and satellite imagery, can facilitate more efficient and accurate hydrographic surveys, enabling the timely production of updated charts for critical maritime routes and navigational areas. Additionally, enhancing international cooperation and information-sharing mechanisms can help improve the availability and accessibility of navigational data, ensuring that mariners have access to reliable information to navigate safely and effectively in all maritime environments.⁶⁷

6.2 Establishing and maintaining aids to navigation requires ongoing investment in infrastructure, equipment, and personnel, which may be challenging for countries with limited maritime resources or pressing socio-economic needs. As a result, many navigational channels, harbors, and coastal areas remain underserved by essential navigational aids, leaving mariners vulnerable to navigational hazards and maritime accidents.⁶⁸

Addressing the challenge of inadequate aids to navigation requires concerted efforts at the national, regional, and international levels.⁶⁹ Governments and maritime authorities must

⁶⁵ *ibid*

⁶⁶ (n 47) 618

⁶⁷ (n 51) 165

⁶⁸ J Xia, *et al.*, 'Opportunities and Challenges of the Sponge City Construction Related to Urban Water Issues in China' *Science China Earth Sciences*, 60, (2017) 652-658

⁶⁹ C Z Raymond, 'Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?' *Naval War College Review*, 62(3), (2009) 31-42

prioritize investment in navigational infrastructure, allocate sufficient funding for the establishment and maintenance of aids to navigation, and enhance collaboration with international organizations and industry stakeholders to improve navigational safety standards and practices.

6.3 Addressing the challenge of resource constraints requires a multi-pronged approach that involves prioritizing maritime safety and security in national budgets, enhancing international cooperation and assistance, and leveraging innovative solutions and technologies. Governments and maritime authorities must allocate sufficient funding for maritime safety and security initiatives, including the development of comprehensive maritime strategies, capacity-building programs, and infrastructure investments.⁷⁰

Additionally, international organizations and donor agencies can provide technical assistance, training programs, and financial support to help countries strengthen their maritime capabilities and address maritime security challenges. Collaborative initiatives, such as joint patrols, information-sharing agreements, and regional cooperation mechanisms, can enhance maritime domain awareness and improve the effectiveness of maritime law enforcement efforts.⁷¹ Furthermore, the private sector can play a crucial role in supplementing government efforts by investing in maritime security technologies, providing training and expertise, and participating in public-private partnerships to enhance maritime safety and security.

6.4 Addressing the challenge of poor security cooperation among some national militaries requires a comprehensive approach that involves diplomatic engagement, capacity building, and confidence-building measures. Governments and military leaders must prioritize maritime security cooperation as a key component of national security strategies and allocate sufficient resources for joint training exercises, information sharing, and collaborative patrols.⁷² Additionally, regional and international organizations can play a crucial role in facilitating dialogue, promoting confidence-building measures, and providing technical assistance to enhance the capacity of national militaries to cooperate effectively on maritime security issues. By fostering a culture of cooperation and mutual

⁷⁰ *ibid*

⁷¹ (n 53) 219

⁷² (n 58) 345

trust among neighboring countries, stakeholders can strengthen regional maritime security frameworks and mitigate the risks posed by maritime threats and challenges.⁷³

Addressing these challenges requires concerted efforts at the national, regional, and international levels. Enhanced investment in maritime infrastructure, capacity-building initiatives, and strengthened cooperation among stakeholders are essential for overcoming the obstacles to the protection of lives and properties on the sea.

7. Conclusion

The protection of lives and property on the sea is a complex and multifaceted challenge that requires concerted efforts from the international community. While significant progress has been made in establishing a robust legal framework for maritime safety and security, and its implementation, persistent challenges and emerging threats necessitate continuous adaptation and innovation. Based on the above preceding discussion, the following findings are made by the research:

The research revealed the intricate and multifaceted nature of the legal framework governing maritime safety and security. The multitude of international conventions, treaties, and customary principles creates a complex landscape that can be challenging to navigate for stakeholders involved in maritime affairs.

Despite the existence of comprehensive legal instruments, persistent challenges such as the lack of updated navigational charts, inadequate aids to navigation, resource constraints, and poor security cooperation continue to pose significant obstacles to maritime safety and security. These challenges underscore the need for ongoing efforts to address gaps and vulnerabilities in the legal framework.

Effective maritime safety and security require collaboration and cooperation among governments, international organizations, and industry stakeholders. The research highlighted the importance of enhancing information-sharing mechanisms, promoting joint initiatives, and fostering partnerships to address maritime threats and challenges comprehensively.

In today's dynamic maritime environment, adaptation and innovation are essential for addressing emerging threats and challenges. The research emphasized the need for

⁷³ *ibid* 346

continuous adaptation of legal frameworks, implementation of new technologies, and development of best practices to enhance maritime safety and security in a rapidly evolving landscape.

Finally, the following recommendations are made:

That governments and international organizations should prioritize investment in navigational infrastructure, including the development and maintenance of updated navigational charts, aids to navigation, and maritime surveillance systems. Adequate funding is essential to address gaps in navigational safety and enhance maritime domain awareness.

That stakeholder should strengthen international cooperation and information-sharing mechanisms to improve maritime domain awareness and enhance the effectiveness of maritime law enforcement efforts. Promoting joint initiatives, sharing best practices, and fostering partnerships can help address common challenges and vulnerabilities.

That capacity-building assistance and technical support should be provided to developing countries and remote maritime regions to strengthen their maritime capabilities and address maritime security challenges. Training programs, knowledge-sharing initiatives, and technology transfer can help enhance the capacity of maritime authorities to respond to emerging threats. That effort should be made to promote the ratification and implementation of international conventions and treaties related to maritime safety and security. Encouraging adherence to established standards and regulations can promote consistency and coherence in maritime governance and enhance compliance with international Law

ANALYSIS OF GOVERNANCE DEFICIENCIES ENABLING CORPORATE SILENCE ON ENVIRONMENTAL ISSUES IN NIGERIA

Onyeka Christiana Aduma, PhD *

Abstract

Corporate activities in Nigeria inflict serious environmental damage, not because environmental regulation is entirely absent, the reality is that many corporations have chosen not to report their environmental risks and impacts. This study examines the governance deficiencies that enable corporate silence on environmental issues in Nigeria. Adopting a doctrinal research methodology, it analyses relevant provisions of Nigerian corporate and environmental laws, as well as sector-specific regulatory frameworks, to identify and critically assess the legal deficiencies that enable such corporate silence. The findings of the study reveal that environmental non-disclosure is often sustained by a combination of the absence of mandatory environmental disclosure laws, inadequate shareholder activism, limited stakeholder engagement, and the effect of the political and economic interests on the corporate silence. The study finds further that the laws in Nigeria that obligate disclosure are disjointed and ineffective, thereby allowing corporations to comply with the law in a technical sense, while being environmentally obscurantist. The study concludes that situation leaves shareholders, regulators, and affected communities without the information needed to demand accountability or prevent environmental harm. The study therefore recommends that the law should place upon directors the positive duty to identify, evaluate, and report on the environmental impacts and risks as part of their decision-making responsibilities, just as they are required to do with respect to financial outcomes.

Keywords: Governance Deficiencies, Corporate Silence, Environmental Issues, Nigeria

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1. Introduction

The corporate world has shown and continues to demonstrate the daunting level of environmental damage that is typically accompanied by a most disturbing level of transparency. The persistent oil spills in the Niger Delta and the industrial pollution in the major urban areas, such as Lagos, expose the grievous environmental and human impacts of the actions of these corporations.¹ Yet, many corporations responsible for these harms provide little proactive information, accept limited responsibility, and rarely engage in open disclosure of their environmental practices.² This lack of information should not be interpreted as corporate negligence, as the phenomenon originates from the more serious and deep-seated deficiencies in the structure of corporate governance in Nigeria, which fails to demand, motivate, or, more importantly, provide the needed support to enable corporations to be environmentally responsible.

The traditional view in corporate governance assumes that corporations must balance the pursuit of profit maximisation with accountability to shareholders and broader expectations of responsible corporate conduct.³ In the case of Nigeria, the corporate governance model continues to be legislated with a clear and consistent domination of the interest of the shareholders, with little regard to environmental considerations. It has been noted by scholars that, in the Nigerian legal system, the dominant view of the purpose of a corporation is profit maximisation, and as a result, corporate environmental responsibility has been relegated to the periphery of corporate governance.⁴

Perhaps, the Companies and Allied Matters Act 2020 is the primary legislation in Nigeria that governs the functioning of corporations. Although there is a desire to bring about legislative reforms, the Act has very few references regarding environmental responsibility and the obligations of corporations to disclose any information pertaining to the

¹ S Mulade, E V Clark and F A Ikenga, 'Oil Spillage in the Niger Delta: Government and Oil Companies Remediation Activities' (2025) 6(5) *International Journal of Research Publication and Reviews*, 7436.

² Fox News Channel, 'Amnesty International uses new evidence to accuse Shell Nigeria of false reports on oil spills', <<https://www.foxnews.com/world/amnesty-international-uses-new-evidence-to-accuse-shell-nigeria-of-false-reports-on-oil-spills>> accessed 1 June 2026.

³ M C Jensen, M. C. (2001). Value Maximisation, Stakeholder Theory, and the Corporate Objective Function (2001) 7(3), 297 *European Financial Management*, <<https://doi.org/10.1111/1468-036X.00158>> accessed 2 June 2026

⁴ H Adamu, 'An Analysis of Nigerian Company Law on Environmental Sustainability' <https://www.researchgate.net/publication/388492307_AN_ANALYSIS_OF_NIGERIAN_COMPANY_LAW_ON_ENVIRONMENTAL_SUSTAINABILITY> accessed 17 January 2026

environment. This is consistent with the findings of recent scholarly research.⁵ For instance, Sa'id illustrates how listed corporations in Nigeria have corporate governance structures that depict a weak relationship with the quality of environmental disclosures and that most corporations still likely report the impacts of their activities on the environment in a meaningless manner.⁶ Zwingina similarly observes that corporate governance in many corporations is framed within the context of environmental sustainability, and weak enforcement allows the corporations to ignore their environmental responsibilities.⁷

Adi also illustrates the challenges of inadequate enforcement when he states that despite the existence of the National Environmental Standards and Regulations Enforcement Agency, the environmental governance of Nigeria's manufacturing sector is plagued by poor enforcement and a multitude of irreconcilable laws.⁸ All of these perspectives, taken together, show that the corporate governance systems have no clearly defined means of addressing environmental issues. The result is that corporations do not have to report the negative impacts of their operations on the environment, as long as they comply with the corporate statutes. This leaves an important gap in the literature concerning the relationship between corporate governance deficiencies and the persistence of environmental problems in Nigeria. This study aims to expose the governance gaps in Nigerian corporate laws that have permitted corporate silence on environmental issues, with the ultimate objective of identifying measures for strengthening environmental accountability within the Nigerian corporate governance system.

2. Understanding Corporate Silence in the Context of Environmental Governance

⁵ Such as M A Sa'id, 'The Association Between Corporate Governance and Environmental Disclosure Quality: Evidence from Nigerian Listed Companies' (2024) Robert Gordon University PhD Thesis) <<https://doi.org/10.48526/rgu-wt-2801169>> accessed 17 January; C T Zwingina, 'Empirical Evaluation of Corporate Governance Practices on Sustainable Business Practices in Nigeria' *International Journal of Social Sciences and Management Review* [2024] 10(4), 236 <<https://iiardjournals.org/get/IJSSMR/VOL.%2010%20NO.%204%202024/EMPIRICAL%20EVALUATION%2020236-249.pdf>> accessed 17 January 2026.

⁶ M A Sa'id, 'The Association Between Corporate Governance and Environmental Disclosure Quality: Evidence from Nigerian Listed Companies' (2024) Robert Gordon University PhD Thesis) <<https://doi.org/10.48526/rgu-wt-2801169>> accessed 17 January

⁷ C T Zwingina, 'Empirical Evaluation of Corporate Governance Practices on Sustainable Business Practices in Nigeria' *International Journal of Social Sciences and Management Review* [2024] 10(4), 236 <<https://iiardjournals.org/get/IJSSMR/VOL.%2010%20NO.%204%202024/EMPIRICAL%20EVALUATION%2020236-249.pdf>> accessed 17 January 2026

⁸ S E Adi, 'Evaluating the Effectiveness of Corporate Governance Mechanisms in Enhancing Environmental Disclosure in the Nigerian Manufacturing Sector' (2024) 9(5) *International Journal of Novel Research and Development*, 250.

In environmental governance, corporate silence is more than a corporate failure to acknowledge negative publicity or allegations related to the environment. Corporate silence indicates an even more profound absence of systemic transparency, accountability, and remedial action that is deeply entrenched in the corporate governance and decision-making silos. The silence of a corporation is not expressed by election of inaction. Rather, this corporate silence manifests through unapologetic indifference such as undisclosed or weak environmental assessments, the use of legal jargon to downplay or obscure the environmental damages, incomplete or selective reporting, reporting that is misaligned with, or a deviation from voluntary reporting standards, and the absence of remedial action. In academia, this conduct is linked to a phenomenon called under-reporting or greenhushing, where companies deliberately limit the communication of their environmental impacts in anticipation of avoiding scrutiny, the ire of the public, or the action of the regulator.⁹

Fundamentally, corporate silence indicates the failure of governance where the environmental damage is ignored and treated as an issue of little concern, rather than an issue of significant consequence to the business and a direct responsibility of the boards. While corporate governance mechanisms such as board independence, audit functions, and the establishment of sustainability or environmental committees can influence environmental disclosure, overall reporting levels remain low, uneven, and largely non-committal.¹⁰ Researchers have found that more boards have a governance structure that is more beneficial; however, this does not translate to better reporting and can be more detrimental to reporting. Consequently, corporations tend to lean on vague boilerplate reporting to cover their tracks, instead of providing information that is useful, such as reports on spills and emissions and how they have remediated the situation.¹¹

This pattern is closely connected to Nigeria's corporate legal framework, particularly the Companies and Allied Matters Act 2020, which continues to encourage sustainability on a

⁹ J Hilton, 'An Integrated Analysis of Greenhush' *Innovation and Green Development* [2025] 4(2) <<https://www.sciencedirect.com/science/article/pii/S2949753125000190?via%3Dihub>> accessed 18 January 2026

¹⁰ C P Bamenda, 'Corporate Governance Mechanism and Environmental Disclosure in Nigeria: Moderating Effect of Audit Firm Choice' (2024) 9(2) *Int J Innov Res Account Sustain*, 14–26 <<https://ijiras.org/article/ART1715522710>> accessed 18 January 2026

¹¹ Sa'id (n 5).

voluntary basis and prioritises shareholder financial interests.¹² The absence of clear, enforceable environmental duties for directors means that governance systems do not compel corporations to communicate openly about environmental risks or impacts. Sector-specific studies, especially within the manufacturing industry, further show that appointment of sustainability officers or the establishment of environmental committees improved transparency. However, these mechanisms are not sufficiently widespread or mandatory to ensure consistent transparency across sectors.¹³

In the end, corporate silence is the default and most rational response. If there is uncertainty in governance expectations, weak enforcement, and environmental data is viewed as a public relations (PR) tool rather than a cornerstone of corporate governance and reporting, there is minimal pressure for corporations to communicate, disclose, or act. Thus, grasping the nuances of such silence is crucial, as it reveals a combination of limitations in the governance of corporations and a profound impediment to environmental accountability and sustainable development in the corporate landscape of Nigeria.

3. Corporate Environmental Responsibilities in Nigerian Legislation

The corporate environmental responsibilities in Nigeria are derived not from a single, cohesive legal framework, but from an assortment of developing and disparate layers of constitutional law, general company law, sector-specific regulations, and environmental law. Although these thin layers provide some legal structure for corporate actors, they consist of little to no legally enforceable environmental responsibilities.

3.1 Constitutional Foundations and Environmental Rights

The 1999 Constitution of the Federal Republic of Nigeria lays a standard for the protection of the environment, but does not specify any direct environmental responsibilities for corporations. Section 20 of the Constitution¹⁴ places the obligation to protect and improve the environment, as well as to protect the air, water, land, forests, and wildlife of Nigeria, upon the State. This is a provision in the Directive Principles of State Policy, which makes

¹² Adamu (n 4).

¹³ O N Oladipo and others, 'Corporate environmental disclosure and sustainability governance practices among listed manufacturing firms in Nigeria' (2023) 146(4) *J Econ Res & Bus Admin*, 100. <<https://doi.org/10.26577/be.2023.v146.i4.09> accessed 13 January 2026> accessed 18 January 2026.

¹⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended).

it non-justiciable.¹⁵ Regardless, Nigerian courts have progressively used Section 20, especially in conjunction with the constitutionally protected rights to life and human dignity,¹⁶ to promote the right to a quality and safe environment.

Such an approach was especially exemplified in *Gbemre v Shell Petroleum Development Company of Nigeria Ltd and Ors*,¹⁷ wherein the Federal High Court found that gas flaring and the environmental degradation it causes constitutes an infringement of the applicants' right to life and dignity. The courts' linkage of environmental injury to rudimentary human rights has, in a way, made it possible to have environmental rights in the Constitution. This nuanced approach means that the public and private sector, especially the multinational corporations, are bound to be environmentally responsible. The positive legal principle in this instance obliges impacted communities to front legal action against the State in cases of non-regulation as well as in cases where corporations act in an environmentally irresponsible manner.

3.2 Companies and Allied Matters Act 2020

Nigeria's principal statute on corporate governance is the Companies and Allied Matters Act 2020,¹⁸ which repeals the 1990 Act. While the CAMA 2020 contains some modernising reforms, it includes only minimal provisions on the environment and corporate environmental responsibilities or corporate environmental disclosures.

Perhaps, the most relevant is section 305(3), which states that in promoting the success of the company, directors should consider the potential impact of the company's activities on the environment of the community where the company operates. While this statutory provision is the first of its kind acknowledging that environmental factors should be included in corporate decision-making, the central obligation is more symbolic than substantial. Consideration of the environment is but one of many corporate factors which directors are obliged to consider.

¹⁵ See CFRN 1999, s 6(6) (c); *Attorney General of Ondo State v Attorney General of the Federation* [2002] 9 NWLR (Pt772) 222

¹⁶ CFRN 1999, ss 33 & 34

¹⁷ [2005] AHRLR 151; *Mobil Producing (Nig) Unlimited v Ajanaku & Anor* [2021] LPELR-52566 where the Court of Appeal stated that a person's right to life under Section 33 of the Constitution could not be fully realised in the absence of access to a clean and hospitable environment, safe water, air, land, forests, and wildlife.

¹⁸ Hereinafter referred to as CAMA 2020.

Thus, CAMA 2020 treats environmental responsibility as a subset of the general fiduciary duties of directors, which are primarily owed to the corporation. As such, it does not recognize any direct obligation to affected communities or to the environment itself. Consequently, it does not expressly impose duties to prevent environmental harm, remedy damage, or disclose environmental risks and impacts.¹⁹

This method illustrates a corporate governance model focused on shareholders, where the corporation's financial performance is the most important factor. For example, directors can legally choose not to address major issues relating to the environment where the disclosure of such issues could cause anxiety for investors or reduce profits in the short term, since directors' duties are focused on the economic success of the corporation. As a result, CAMA 2020 fails to significantly address the detrimental effects of corporate neglect regarding environmental issues.

3.3 Nigerian Code of Corporate Governance 2018

The 2018 Code of Corporate Governance in Nigeria holds corporate boards responsible for the first time in Nigeria for the direct integration of relevant environmental and social issues into the governance system of the corporation. It provides that a corporate governance report, which is a part of a corporation's annual report, must address the corporation's governance system, policies, and practices, and the management of the environmental and social issues.²⁰ As such, the Code holds boards responsible for environmental management, which positively directs them to embrace comprehensive and deliberate efforts to manage those risks rather than to comply with the laws.

The Code also requires the boards to establish policies and practices that address social issues, ethics, safety, working conditions, health, and environment, and incorporate anti-corruption practices.²¹ These provisions seek to encourage corporations to consider the full

¹⁹ Onyeka C. Aduma, 'Examining Directors' Legal Duties in Relation to Climate Risk: A Nigerian Corporate Law Perspective' (2025) 2(1) *Nnamdi Azikiwe University Journal of Human Rights Law (UNIZIK-JHRL)*, 61

²⁰ NCCG) 2018, Principle 28.1; see also George Etomi & Partners, 'Analysis of the Nigerian Code of Corporate Governance (NCCG) 2018', <<https://www.lexology.com/library/detail.aspx?g=4ab3a942-a53c-4f2a-90d4-151e3c4a8eec>> accessed 20 January 2026

²¹ Ibid, Principle 26

impact of their societal and environmental footprint, and fosters accountability and transparency.

The Code generally adopts a “comply or explain” approach. While it provides corporate-specific latitude, it just as easily allows companies to escape substantive environmental governance by offering a bare minimum explanation for their non-compliance, or to disregard the sustainability provisions entirely. In theory, a company could justify non-compliance in all areas of environmental governance.²² In practice, this flexible approach of the Code tends to diminish meaningful accountability, as companies choose to do the bare minimum and face little to no repercussions for not adopting meaningful social and environmental governance.

The Code governs all public companies and, all private companies that are holding companies of public entities or of other entities that are regulated, concessioned or privatised, and in the case of regulated private companies, those who submit their returns to authorities other than the Federal Inland Revenue Service and the Corporate Affairs Commission.²³ Despite the wide range of persons to whom the Code applies, the absence of effective enforcement and significant sanctions means that the Code, while it aspires to more, provides more than a plainly stated expectation, which limits the potential for the advancement of meaningful environmental governance.

3.4 Environmental Impact Assessment Act 1992

The Environmental Impact Assessment Act 1992²⁴ is the most significant piece of legislation that directly governs corporate environmental responsibility in Nigeria. It provides that an environmental impact assessment is necessary for consideration before any public or private sector undertaking that is likely to have significant environmental consequences and is thus legally justified. Under section 2(1) of the Act, no such undertaking or authorization of such projects is permissible unless the environmental consequences have been assessed at an early stage.

²² Templars, ‘Nigerian Code of Corporate Governance 2018 Highlights’ <<https://www.templars-law.com/app/uploads/2019/02/Highlights-of-the-Nigerian-Code-of-Corporate-Governance-2018.pdf>> accessed 18 January 2026.

²³ The Climate Governance Initiative, ‘Corporate Governance Codes in Nigeria’, <<https://hub.chapterzeroalliance.org/resource/corporate-governance-codes-navigator/corporate-governance-codes-in-nigeria>> accessed 19 January 2026

²⁴ Environmental Impact Assessment Act, Cap E12 LFN 2004

It is the Act that provides the methodology for the systematic assessment of environmental consequences prior to project implementation, which incorporates the views of experts, as well as the public.²⁵ Its Schedule identifies numerous forms of agricultural, forestry, mining, petroleum, industrial, infrastructural, transport, waste disposal, and water resources, etc., activities that necessitate an impact assessment. In principle, this is intended to address the potential damage to the environment associated with all significant corporate and industrial activities.

Although the EIA is broad, it remains largely procedural and anticipatory. Once approval is granted, the corporation has no additional responsibilities to track, report, or monitor any environmental impacts associated with the project. This creates a gap between the EIA report that details potential impacts to the environment from a project, and the reality of that project as it likely leads to unmitigated pollution, and environmental degradation.

Thus, the lack of ongoing disclosure and accountability systems permit corporate environmental damage to remain largely unexamined by the public, sustaining a trend of silence long after a project has been approved.

3.5 National Environmental Standards and Regulations Enforcement Agency Act 2007

The National Environmental Standards and Regulations Enforcement Agency Act 2007 established National Environmental Standards and Regulations Enforcement Agency²⁶ as Nigeria's primary environmental enforcement agency. The Act entrusts the Agency with the enforcement of the environmental protection and improvement standards, regulations, policies, and guidelines.²⁷ Within this institutional framework, the Act emphasizes the primary obligation of the Environmental and Social Governance (ESG) Compliance of Corporate Actors.

The heart of the NESREA Act relative to Corporate Environmental Responsibility (CER) is in Section 7, which articulates that Corporate Actors are to be subjected to and comply with the Environmental Standards and Regulations, as set and/or determined by the Agency, including, but not limited to, emission, effluent, and pollution control across various Industries. This is the provision that, in the interest of the environment, compliance is

²⁵ Ibid, s 7

²⁶ Hereinafter referred to as 'NESREA'

²⁷ NESREA Act 2007, ss 1 &2.

obligated by law and, therefore, Corporate Social Responsibility (CSR) is no longer a voluntary initiative, thereby exposing the 'laggards' to the heat of the law.

In addition to legal safety compliance, the Act further encourages technocratic and safety-oriented environmental management, as potentially hazardous facilities are required to undertake Environmental Impact Assessments (EIAs) and Environmental Audits.²⁸ By doing this, the Act demonstrates that in the Environmental Risk Management (ERM) methodology, environmental impact protection should be integrated at the design (pre-operational) and operational phases of the Corporate Actors' socio-economic activities.

The Act's Section 27 outlines offences and penalties related to corporate actors. This section makes it unlawful to discharge waste in a manner that adversely impacts the land, air, or water, and penalties are stipulated for such unlawful discharges, including a fine and additional penalties for continuing discharges. As such, the Act's provisions make it necessary for a corporation to consider the legality and the financial burden of non-compliance when assessing the operational costs of a business.

The enforcement framework is further strengthened through inspection powers. NESREA officials are empowered by Section 30 to enter and assess sites. Section 31 criminalises the obstruction of any officer of the Agency in the lawful performance of their duties and prescribes penalties for such conduct. These provisions seek to discourage the evasion of regulatory oversight by the regulatory enforcement. With the Act, and upon the Attorney General's consent, corporate environmental offences can be both civilly and criminally prosecuted.²⁹

The NESREA Act 2007 is therefore a radical departure in the law. It places a clear set of obligations on corporations, in relation to the environment, that are concerned with impact assessments, audits, and the control and management of hazardous wastes. However, without enforcement and a responsive exercise of the Agency's regulatory authority, the NESREA provisions will continue to exist on paper.

²⁸ Ibid, ss 7(a) (k) & 8(k).

²⁹ NESREA Act 2007, s 32(3).

3.6 Petroleum Industry Act 2021

The Petroleum Industry Act requires legally incorporated corporations engaged in petroleum operations to fulfil environmental obligations aimed at mitigating the extensive environmental and social impacts associated with this industry. For projects within this sector that are proposed, and require environmental impact assessments, the corporations must prepare and submit environmental management plans to the relevant governing body for approval.³⁰ Such plans should show the ability of the corporations to prevent, manage, and restore damage to the environment as a consequence of these operations.³¹ The Act aims to achieve this balance through ensuring compliance, where approval for the construction and operation of development or production facilities is contingent upon the incorporation of a comprehensive and credible environmental management framework.

Along with the regulations that apply only to specific sectors, other responsibilities for climate governance are included in the Climate Change Act 2021. This Act adds responsibility for the environment to industries that have not historically been responsible for pollution, placing responsibilities on private businesses with 50 or more employees.³² These businesses must implement internal processes that support Nigeria's objectives for reducing carbon emissions.³³ This Act also requires the organization to have a designated Climate Change Officer whose responsibilities include managing climate activities and submitting annual compliance reports to the applicable regulator.³⁴ These obligations attract penalties for non-compliance, thereby reinforcing climate accountability within the business community.³⁵ Collectively, these laws reflect an emerging, though still evolving, effort to integrate environmental and climate considerations into corporate operations in Nigeria. However, the regulatory frameworks remain not fully integrated, and corporate environmental responsibility under Nigerian law is implemented inconsistently and sometimes appears to be a mere formality. This inconsistency creates an ongoing opportunity for corporate silence on environmental issues. The deep governance gaps, both structural, legal, and institutional, allow corporations to avoid real environmental accountability, as reflected in the current regulatory landscape.

³⁰ PIA s 102(1)(b)

³¹ Ibid, s 102(2)(b)

³² Including companies registered under the CAMA. CCA s 35

³³ CCA s 24(1)(a)

³⁴ Ibid, s 24(1)(b)

³⁵ Ibid, s 24(2).

4. Governance Deficiencies Permitting Corporate Silence on Environmental Issues in Nigeria

The corporate silence regarding environmental issues in Nigeria is conditioned by considerable governance deficiencies in the country's legal, regulatory, and institutional frameworks. These deficiencies include the absence of obligatory environmental disclosures, mitigated shareholder activism and stakeholder involvement, weak enforcement mechanism, the disaggregated nature of regulatory frameworks, and the political and economic interests of silence at the corporate level. These issues collectively sustain a climate in which corporations operate without substantive environmental disclosure, taking a greater interest in economic or political issues than chronicling their social or environmental impacts. Such a condition makes it clear why governance deficiencies explain the continuance of corporate silence and the significant challenges it poses to sustainable corporate behaviour in Nigeria.

4.1 Absence of Compulsory Environmental Reporting

A considerable absence of legal obligations exists regarding comprehensive environmental reporting undertakings by corporations in Nigeria. Research reveals that environmental disclosures in Nigerian corporate reports are optional rather than mandated by law, and companies typically choose what and how much to disclose based on internal or stakeholder pressures rather than statutory obligation.³⁶ As a result, many companies disclose limited or selective information on environmental matters, leaving gaps in transparency and accountability in corporate reporting.³⁷

Comparative to the environmental reporting gap in Nigerian law relative to the reporting requirements in the European Union's Corporate Sustainability Reporting Directive (CSRD), the European Union's CSRD requires large corporations to include a Multi-dimensional perspective of the environment reporting gap in their annual reporting requirements.³⁸ As a result of the above, it could be said that Nigeria's environmental reporting legislative gap is also relative to the positive European Union CSRD. Despite

³⁶ O Tunde-Ayinuol, 'The Implementation of Mandatory ESG Disclosures for Nigerian Companies: Challenges and Opportunities', <<https://recordoflaw.in/the-implementation-of-mandatory-esg-disclosures-for-nigerian-companies-challenges-and-opportunities/>> accessed 18 January 2026

³⁷ Ibid

³⁸ SAP, 'Everything Businesses Need to Know about the EU CSRD' <<https://www.sap.com/africa/resources/csr-guide>> accessed 18 January 2026

Nigerian corporate law recognizing environmental considerations,³⁹ which requires directors to self-regulate the environment, the law is silent on reporting, oversight, and compliance of the stated self-regulation.

Consequently, stakeholders have few options for monitoring compliance, which means that businesses can legally fulfill their obligations and still avoid providing useful details on their environmental performance and the management of related risks.

Research on companies in Nigeria corroborates that companies' environmental reporting is tentative, inconsistent, and primarily qualitative, as companies tend to offer simplistic descriptions without organized, comparable, and detailed descriptions.⁴⁰ Due to the qualitative nature of voluntary reporting, companies are free to severely limit, or even completely avoid reporting, the negative environmental consequences of their activities, and the information they do report is overwhelmingly focused on positive activities. In the absence of mandatory reporting criteria and the presence of legally actionable standards, companies will continue to have the option of remaining silent about their environmental impacts, because they have that option about reporting.

4.2 Weak Shareholder Activism and Limited Stakeholder Engagement

Shareholder activism has the potential to impact how a company manages the environment and the transparency of its environmental disclosures, but investor activism is virtually non-existent in Nigeria. Perhaps, corporate governance structures that could facilitate accountability are not sufficiently developed. Under the CAMA 2020, Section 346, shareholders can engage in derivative actions, giving them the right to sue directors for wrongful conduct. In theory, this could be used for environmental inaction as a breach of duty under Section 305. However, the author has argued that because of the complexity and high costs of derivative actions, it is likely that most shareholders, and especially minority shareholders, would not be able to pursue such actions.⁴¹ Investors who are interested in short-term capital returns may not be motivated to pursue environmental actions. In

³⁹ For e.g. section 305(3) of CAMA 2020.

⁴⁰ O M Eneh, A A Adebunmi, F A Oti and C Jesuwunmi, 'Nigeria Listed Companies Attributes and Environmental Information Disclosures', (2022) 4(6) *Int. J. Manag. Account.*, 117; T O Nwaokolo, 'Corporate Environmental Disclosure and Firm Performance of Listed Manufacturing Firm in Nigeria' <<https://teras.ng/api/asset/document/0b8a7435-c0b4-4447-a204-bd7556ed9d47>> accessed 19 January 2026

⁴¹ Onyeka C Aduma, 'Revisiting the Statutory Scheme for Derivative Actions under the Nigerian Company Law' (2019) 1(1) *International Journal of Comparative Law and Legal Philosophy* (IJOCLLEP), 163

addition, potential active ownership advocates for environmental accountability among institutional investors are also short-term focused and offer little to no management pressure to improve environmental management.⁴² The absence of a robust environmental, social, and governance (ESG) investment framework also weakens the influence of shareholders on corporate environmental transparency.

Like the external stakeholders like civil society, local communities, and environmental focused advocacy groups also have rather limited avenues, structurally and legally, to impact boardroom decisions. Because of the absence of formal corporate governance mechanisms, communities that are affected by the negative impact of pollution, including those from the Niger Delta, have no choice but to litigate and/or become activists. Although it is true that the case of *Centre for Oil Pollution Watch (COPW) v NNPC*,⁴³ which extended the doctrine of locus standi, that is, civil society organisations have the right to legal standing to sue in the interest of the public, especially with regard to the negative impact of pollution on the environment,⁴⁴ it is also true that the mere existence of legal avenues does not assure that the actions of the board will change. As a result, the inadequacy of the engagement with shareholders and stakeholders, in general, reduces the impetus on management to consider the environment and therefore, provides an opportunity for the company to dismiss and/or trivialize the environmental risks that are associated with the company's corporate governance processes.

4.3 Weak Enforcement Mechanisms

In Nigeria, even with the existence of environmental laws, the enforcement mechanisms are often weak or poorly integrated with the corporate governance responsibilities. The Environmental Impact Assessment Act and the NESREA Act provide some regulatory and monitoring powers, but enforcement is inconsistent and the penalties typically low,

⁴² F Ashiru, E Adegbite and F Nakpodia, 'Nigerian professional investors' sense-making of the impact of shareholder activism on corporate accountability' (2023) 42(4) *Journal of Accounting and Public Policy*, <<https://www.sciencedirect.com/science/article/pii/S0278425423000637>> accessed 19 January 2026.

⁴³ [2019] 5 NWLR (PT. 1666) 518

⁴⁴ See Mondaq, 'Environmental Litigation in Nigeria: Trends, Challenges, And Judicial Activism' <<https://www.mondaq.com/nigeria/environmental-law/1664660/environmental-litigation-in-nigeria-trends-challenges-and-judicial-activism>> accessed 19 January 2026.

oftentimes viewed as just operational costs by large corporations.⁴⁵ This low-level enforcement diminishes the deterrent effect that environmental laws are meant to create, and allows corporations to remain silent about violations with minimal consequence to be violations without being challenged.

There are few legal precedents that provide justifiable grounds for case law. In the landmark case of *Gbemre v Shell Petroleum Development Company of Nigeria Ltd and Ors*,⁴⁶ it was established that gas flaring was in violation of the constitutional right to life and dignity. However, it has been noted by legal scholars that environmental law in Nigeria faces unjust procedural mechanisms, prolonged litigation, the need to prove the case with substantial technical considerations and costs. All these factors create a legal environment in which the *Gbemre* case is a singular result, not an expected outcome.⁴⁷ The case of the *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*⁴⁸ also noted the "polluter pays" principle on its own but shed light on the struggle involved in the enforcement of legally binding corporate citizenship responsibilities in connection to the state. The case demonstrated that Nigeria has the potential of progressive change in its court decisions, and that, in many cases, litigation has been an ineffective mechanism for bringing about change, which, in the end, allows many corporations to determine that there is more cost associated with being environmentally transparent and remediating the damage than there is with remaining silent on environmental issues.

While cases like *Gbemre v SPDC*⁴⁹ and *Centre for Oil Pollution Watch (COPW) v NNPC*⁵⁰ represent an emerging trend of developing stronger judicial considerations of environmental rights, there are numerous cases in earlier Nigerian judicial history that are more restrictive and technical in their approach. Nigerian case law history has pointed out that courts look for direct personal injury and direct environmental harm, and therefore an absence of a causative action by the defendant, therefore would mean there is no case.⁵¹

⁴⁵ A Onyeama and S K Bariyira, 'Legal Issues and Challenges in Effective Enforcement and Implementation of Laws Addressing Environmental Pollution in Nigeria' (2023) 11(1) *AELN Journal of Environment & Natural Resources Law*, 143

⁴⁶ [2005] AHRLR 151

⁴⁷ Mondaq (n 44)

⁴⁸ [2019] 5 NWLR (Pt 1666) 518.

⁴⁹ *Gbemre v SPDC* (n 46)

⁵⁰ *Centre for Oil Pollution Watch (COPW) v NNPC* (n 43)

⁵¹ See *Shell Petroleum Development Company of Nigeria Ltd v Farah* [1995] 3 NWLR (Pt. 382) 148; *SPDC v Tiebo VII & Ors* (2005) 9 NWLR (Pt. 931) 439; *Seismograph Service (Nig.) Ltd v Ogbeni* (1976) 4 SC 85.

Such reasoning has made it virtually impossible for public interest litigators and entire communities to seek judicial reprieve. Environmental harm is generally diffuse and collective and is not easily attributed. The requirements that claimants prove causative action with detailed scientific or technical evidence shifts the goal post on the attainment of environmental justice for claimants with limited means and thereby reducing the claimant's access to justice.

4.4 Regulatory Fragmentation and the Corporate Environmental Law Divide

A gap in governance in Nigeria that has enabled corporate environmental silence is the fragmentation of environmental law that weakly integrates with corporate law. Corporate governance and environmental law operate in parallel streams and do not integrate. Corporate law has a primary focus on profit, the duties of directors, and the interests of shareholders, while the environmental law focus has been largely externalised to a separate set of regulatory agencies. Such separation allows businesses to formally comply with corporate governance guidelines, while considering damage to the environment as a peripheral issue, as opposed to a core concern of governance.

In practice, this fragmentation of responsibility creates enforcement gaps, as corporate environmental behaviour lacks a single regulator with full responsibility. Corporations take advantage of this systemic separation by "box-ticking" and compliance with environmental permits while ignoring the wider environmental impacts of their actions in corporate disclosures and decision-making.

An example of this divide is the *Shell Petroleum Development Company v Isaiah case*⁵². Claims of environmental harm were addressed through tort law without merging the corporate governance role with the protection of the environment. Directors were not personally liable, and the corporate governance framework remained intact, despite significant harm to the environment. This kind of legal separation protects corporate actors from facing the consequences of their decisions, and it sustains the silence.

Jurisdictional ambiguity multiplies the problem. NESREA, the Federal Ministry of Environment, state environmental protection agencies, and sectoral regulators like the Nigerian Upstream Petroleum Regulatory Commission, claim to have some form of

⁵² [2001] 1 NWLR (Pt 723) 168.

regulatory jurisdiction. The overlapping of regulatory mandates and the lack of coordination result in gaps in the enforcement of regulations which corporate actors strategically utilize to escape holistic environmental responsibility.

4.5 Political and Economic Interests

The influence of political and economic interests is crucial in defining the corporate response to environmental degradation in Nigeria, and in this regard, the influence is evident in corporate silence. In Nigeria's political economy, the primary exploitation of the state's natural resources, especially oil and gas, has for decades been of core concern to both the state and the political elites. In such systems, political actors tend to emphasize oil and gas economic exploitation over the protection of the environment, thus creating situations where environmental regulatory compliance is unenforced, or selectively enforced. Consequently, economically and politically powerful stakeholders, such as state organs and powerful businessmen, are unlikely to advocate for tight economic regulations that may adversely impact economic activities, the collection of taxes, or political patronage.

The integration of reliance on extractive industries within economic frameworks and political frameworks tends to diminish the strength of enforcement regulation. For instance, the environmental enforcement agencies may not have the political will, or funding, to offset the impact of litigation against them by large corporations in industries that are highly lucrative for the government. This absence of political will diminishes the effect that environmental legislation may have in deterring corporations from not speaking about the environmental risks and impacts of their activities. The most recent studies on the enforcement of environmental legislation in Nigeria, for instance, revealed a most powerful "non-legal" dimension to the challenges of enforcement, in which the dominant factor was the absence of political commitment to environmental protection, coupled with a low degree of popular involvement in the regulatory process.⁵³

Economic values are also determinants of behaviour for a corporation and affect decision-making. In economic sector such as oil and gas, or even manufacturing, the dominant driver is profitability and the competitiveness of the market. In instances where

⁵³ Z O Edo, L Etemike and V E Clark, 'Exploring Barriers to Environmental Law Enforcement and Compliance in Nigeria Niger Delta Region', (2022) 12(1) *Journal of Danubian Studies and Research*, 237

environmental reporting is lax, or where it is voluntarily reported, corporations may choose to conceal details of adverse environmental impacts in a bid to safeguard their competitive economic advantage and deter the market from taking environmental reporting seriously, or to avoid the enforcement of regulatory reporting standards. This is a classic example of "climate silence". In this instance, the corporation will deliberately report minimal details about its environmental activities or practices that would ultimately have an adverse effect on the environment to eliminate the risks of regulatory reporting or to avoid the costs of regulation.

To sustain economic activities and political partnerships, government officials may choose not to enforce environmental regulations, while businesses may choose to under disclose environmental impacts to sustain profitability and keep investors confident. This collusion erodes environmental accountability and sustains the disparity between legal requirements and corporate behaviour in Nigeria's environmental governance system.

Corporate silence on environmental issues is, therefore, strengthened in situations where political interests place a premium on economic gains and where economic influence dictates the regulation and enforcement balance. This interaction is a clear demonstration of how dominant political and economic factors work against transparency and real accountability in environmental governance of corporations.

5. Consequences of Corporate Environmental Silence

The consequences of silence from corporations on environmental issues such as providing little or no significant disclosure of their environmental risks, impacts, or measures on mitigation are serious and damaging to communities, ecosystems, and even investors and sustainable development.

Community injuries and ecological impact are direct consequences of environmental harm. For example, in Nigeria, and particularly in the Niger Delta region, industrial activities lead to the repeated destruction of the environment, including the loss of mangrove forests, oil spills, water pollution, and loss of biodiversity. The Niger Delta mangrove ecosystem is particularly sensitive and has suffered from increased oil spills and deforestation. The increased oil extraction activities in the region lead to the degradation of the quality of soil

and water and place the livelihoods of local communities who depend on fishing and farming at risk.⁵⁴

Nigerian communities are largely unaware of the impact of corporate activities on the environment because environmental reporting is largely voluntary and poorly regulated. There are studies that show that the level of education has no impact of the perception of the reporting, and that it is the experience and concern about the reporting that should be the basis for the perception, which in this case would be poor reporting and in turn poor disclosure which would lead to distrust and frustration of the communities.⁵⁵

Corporate silence affects economic consequences and impedes sustainable development. Corporations that manage their risks and resources efficiently can gain in profitability, operational efficiency and competitive advantage. A lack of environmental reporting generates information asymmetry between the corporations and the stakeholders which leads to economic stagnation and apathy among investors.⁵⁶

The lack of adequate reporting creates a gap in information between the corporation and its investors. This lack of transparency reduces the confidence that investors and the market have in the corporation. Research from Nigeria and other countries shows that when corporation openly publish their ESG reports, investors tend to trust them more, and the corporation's value improve.⁵⁷ Studies conducted outside Nigeria also show that a corporation's environmental reporting can affect how investors assess its value and the risk of losing money.⁵⁸ If a corporation's reporting is incomplete, selective or unclear, investors may see it as risky and lose trust in it. As a result, they may decide to sell their shares

⁵⁴ E L Jonathan and others, 'Impact of Oil Spills on Mangrove Ecosystem Degradation in the Niger Delta using Remote Sensing and Machine Learning' <<https://systems.enpress-publisher.com/index.php/JGC/article/view/11707>> accessed 19 January 2026.

⁵⁵ O Afrogha and others, 'Community Stakeholder Structural Perception of Firms' Environmental Disclosure level in Nigeria', (2022) 12(2) *The Journal of Accounting and Management* <<https://dj.univ-danubius.ro/index.php/JAM/article/view/1623>> accessed 19 January 2026

⁵⁶ D Okoba, G J Chukwu and A A Jackson, 'Environmental Sustainability Performance Disclosure and Its Impact on Profitability in Listed Consumer Goods Manufacturing Firms in Nigeria' (2025) 4(2) *Journal of Green Economy and Low-Carbon Development*, 63.

⁵⁷ Ibid

⁵⁸ A E Anaeye and others, 'Value Relevance of Sustainability Reporting Practices of Quoted Companies in Nigeria', <<https://ideas.repec.org/a/bcp/journal/v9y2025issue-14p1492-1507.html>> accessed 20 January 2026

instead of buying more. Investors who focus on sustainability may even remove the corporation's shares from their investment portfolios altogether.⁵⁹

Silence of corporations also impacts sustainability. When corporations decide not to report their environmental performance, it limits the ability of policymakers, regulators, and civil society groups to measure progress, share best practices, or advocate for stronger environmental regulations. Without mandatory, well-structured environmental reporting frameworks, environmental information often becomes inconsistent and focused mainly on positive narratives, thereby slowing industry-wide progress toward environmental goals.⁶⁰

In sum, poor environmental reporting and weak compliance with environmental laws harm communities, reduce the confidence of investors and stakeholders, and limits opportunities for sustainable development.

6. Conclusion and Recommendations

The gaps in Nigerian corporate law systematically engender corporate silence on the environment and the resulting impacts on affected communities, the environment, and sustainable development are disastrous. These gaps stem from the combination of no mandatory environmental disclosure, weak shareholder and stakeholder scrutiny, ineffective regulatory enforcement and sanctions, and a plethora of regulations. Such gaps in governance enable corporations to comply with the letter of the law, while avoiding any meaningful advocacy and accountability. Legal and institutional reforms are necessary to address corporate environmental silence in Nigeria, and to ensure that environmental accountability is firmly embedded in corporate governance systems.

First, environmental reporting should no longer be optional. Corporations should be required by law to disclose clear and complete information about their environmental impact, risks, and compliance status.

Second, shareholder participation and stakeholder engagement need to be improved. Shareholders should be encouraged and empowered to raise environmental concerns at

⁵⁹ What Are the Implications of Inadequate ESG Reporting?' <<https://sustainability-directory.com/question/what-are-the-implications-of-inadequate-esg-reporting/>> accessed 20 January 2026

⁶⁰ A T Alabi, O S Issa and M K Usman, 'Corporate Environmental Reporting: Do Firms Operating in Environmentally Sensitive Sectors Disclose Enough?'(2024) 8(2) *Sustinere Journal of Environment and Sustainability*, 138.

general meetings and demand greater transparency from the management. At the same time, communities, employees, and civil society groups should have meaningful opportunities to access environmental information and make their voices heard where corporate activities affect them.

Third, enforcement mechanism must be strengthened. Environmental and corporate laws should be backed by real consequences for non-compliance. Regulatory agencies need adequate funding independence and technical capacity to investigate violations and apply sanctions consistently. Without credible enforcement, even well-drafted laws will remain ineffective.

Fourth, the problem of regulatory fragmentation should be addressed through better coordination among relevant agencies. Clear lines of responsibilities and information-sharing mechanisms should be established to prevent overlaps, gaps, and conflicting directive.

Finally, the divide between corporate law and environmental law must be bridged. Environmental responsibility should be recognised as part of mainstream corporate governance rather than treated as a separate regulatory issue. Integrating environmental obligations into corporate decision-making structures will help ensure that sustainability becomes part of how corporations are managed, not merely how they are regulated.

**ANALYSIS OF THE IMPACT OF NIGERIA REVENUE SERVICE
ESTABLISHMENT ACT 2025 WITH LESSONS FROM SIMILAR
JURISDICTIONS**

Dr. Afolabi Ayobola Bamidele *

Abstract

The Nigeria Revenue Service Establishment Act 2025 marks one of the most ambitious attempts at restructuring Nigeria's tax administration since the return to democratic rule. By dissolving the Federal Inland Revenue Service and establishing the Nigeria Revenue Service (NRS), the reform seeks to enhance efficiency, transparency, and taxpayer confidence in the country's fiscal system. This article adopts doctrinal method of legal research to examine the legal and institutional innovations introduced by the Act, particularly the creation of the Tax Ombudsman, the reorganisation of enforcement powers, and the integration of digital compliance mechanisms. While these measures promise a more effective collection framework and improved taxpayer protection, they also raise important constitutional, administrative, and practical questions. The paper argues that without clear safeguards, the expanded powers of the NRS may result in overreach, potentially undermining taxpayer rights and the principle of fair hearing. Comparative insights are drawn from South Africa, Kenya, and Ghana to highlight best practices and cautionary lessons. The article concludes by recommending targeted legal and institutional reforms to ensure that the new tax regime balances Nigeria's urgent revenue needs with the imperatives of fairness, accountability, and sustainable economic governance.

Keywords: Nigeria Revenue Service, tax reform, tax administration, taxpayer rights

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1. Introduction

Taxation remains the lifeblood of every modern state, providing the financial resources necessary to sustain governance, deliver public services, and foster economic development. In Nigeria, however, the persistent challenge of inadequate revenue mobilisation has long undermined the ability of government to meet its fiscal obligations. Despite being Africa's largest economy and a resource-rich state, Nigeria has historically recorded one of the lowest tax-to-GDP ratios in the world, hovering around six to eight percent in recent years.¹ This figure pales in comparison with regional peers such as South Africa, Kenya, and Ghana, where more effective tax systems have yielded stronger fiscal performance.² The chronic shortfall has compelled Nigerian governments to rely heavily on volatile oil revenues, external borrowing, and deficit financing, with adverse consequences for economic stability and intergenerational equity.³

Against this background, successive administrations have undertaken tax reforms aimed at strengthening revenue collection and improving compliance. The Federal Inland Revenue Service (FIRS), established under the Federal Inland Revenue Service (Establishment) Act 2007,⁴ was for nearly two decades the principal agency responsible for federal tax administration. While the FIRS introduced some improvements such as the deployment of digital platforms, expansion of the tax net, and modest gains in enforcement⁵ its operations were marred by systemic inefficiencies, bureaucratic inertia, and frequent allegations of corruption.⁶ Equally troubling was the low level of public confidence in the fairness and transparency of the system. Many taxpayers perceived tax enforcement as arbitrary and burdensome, while disputes were often prolonged, costly, and perceived as biased.⁷

It was within this context that President Bola Ahmed Tinubu signed into law a suite of four major tax reform bills in June 2025.⁸ Chief among these is the Nigeria Revenue Service Establishment Act 2025, which dissolved the FIRS and replaced it with a new agency, the

¹ African Tax Administration Forum (ATAF), *African Tax Outlook 2023* (Pretoria: ATAF, 2023) 42.

² Organisation for Economic Co-operation and Development (OECD), *Revenue Statistics in Africa 2022* (Paris: OECD Publishing, 2022) 15.

³ N Okonjo-Iweala, *Fighting Corruption is Dangerous: The Story Behind the Headlines* (Cambridge, MA: MIT Press, 2018) 79.

⁴ Federal Inland Revenue Service (Establishment) Act, Cap F36, Laws of the Federation of Nigeria (LFN) 2007.

⁵ Federal Inland Revenue Service, *2020 Annual Report* (Abuja: FIRS, 2021) 13.

⁶ A B Ataguba, 'Tax Administration in Nigeria: Challenges and Prospects' (2020) 11(2) *Nigerian Journal of Taxation* 56.

⁷ O F Ojo, 'Taxpayers' Perception of the Fairness of the Nigerian Tax System' (2019) 15(1) *IfE Juridical Review* 103.

⁸ See B Tinubu, 'Remarks at the Signing of the Tax Reform Bills 2025' (State House, Abuja, 26 June 2025).

Nigeria Revenue Service (NRS). The Act represents a fundamental restructuring of the institutional architecture of tax administration in Nigeria. Beyond a mere change of nomenclature, the reform seeks to professionalise revenue collection, strengthen oversight mechanisms, and embed taxpayer protection within the framework of enforcement. For instance, the establishment of a Tax Ombudsman signals a deliberate effort to create an independent body through which taxpayer grievances can be ventilated and resolved fairly.⁹

The Nigeria Revenue Service Establishment Act 2025 also grants expanded powers to the new agency, including stronger investigative authority, improved coordination with state revenue services, and greater reliance on technology-driven compliance systems.¹⁰ The intention is to address leakages, combat aggressive tax evasion, and ensure that Nigeria keeps pace with international best practices, particularly within the framework of the Organisation for Economic Co-operation and Development (OECD) global tax initiatives.¹¹ Nevertheless, the reform raises critical constitutional and administrative questions. Chiefly among these are whether the concentration of such extensive powers in a single revenue agency could lead to overreach, how the rights of taxpayers will be safeguarded against potential abuse, and whether institutional bottlenecks might frustrate the lofty objectives of the reform.

Despite the far-reaching nature of the Nigeria Revenue Service Establishment Act 2025, there is still limited scholarly examination of its implications for both tax administration and taxpayer rights in Nigeria. Much of the existing discourse on tax reform in Nigeria has focused primarily on revenue generation and fiscal policy, with insufficient attention paid to the constitutional, administrative, and human rights implications of the expanded powers granted to the new revenue authority. This article fills that gap by critically examining the institutional innovations introduced under the Act, particularly the establishment of the Tax Ombudsman, the restructuring of enforcement powers, and the integration of digital compliance systems. The study is also significant for its comparative perspective, drawing lessons from South Africa, Kenya, and Ghana in order to evaluate the opportunities and risks associated with Nigeria's new tax framework. By analysing the tension between efficient revenue mobilisation and the protection of taxpayer rights, the article contributes

⁹ Nigeria Revenue Service Establishment Act 2025, s 14.

¹⁰ *ibid* ss 6–10

¹¹ Organisation for Economic Co-operation and Development (OECD)/G20, *Inclusive Framework on Base Erosion and Profit Shifting: Global Minimum Tax Rules* (Paris: OECD Publishing, 2021).

to ongoing debates on fiscal governance, accountability, and sustainable tax administration in Nigeria.

This article therefore examines the Nigeria Revenue Service Establishment Act 2025 with a view to analysing its implications for tax administration and taxpayer rights in Nigeria. It situates the reform within the broader trajectory of Nigeria's fiscal challenges, identifying the innovations introduced and evaluating their potential impact. The discussion draws comparative insights from other African jurisdictions such as South Africa, Kenya, and Ghana, where revenue authorities have undergone similar transformations. In doing so, the paper highlights both the opportunities and risks that accompany the reform.

2. Overview of the 2025 Tax Reform Acts

In June 2025, the Nigerian government enacted four major tax reform laws under a broader fiscal consolidation agenda.¹² These reforms followed extensive stakeholder consultations and sustained calls for a simpler, more transparent, and efficient tax system.¹³ The laws were introduced to address long-standing concerns about the complexity of Nigeria's tax regime, including multiple taxation and fragmented administration across federal, state, and local levels.¹⁴ The reforms aim to modernise and harmonise the tax framework, improve revenue generation, and align Nigeria's fiscal system with contemporary domestic and international economic obligations.¹⁵

Collectively, the reforms are directed towards increasing Nigeria's tax-to-GDP ratio, which historically hovered between 6–10 per cent, far below the African continental average of about 18 per cent.¹⁶ By strengthening the legal foundation for efficient tax administration, the laws aim to widen the tax base, reduce revenue leakages, and encourage voluntary compliance. A notable objective is the harmonisation of the country's fragmented tax regime in order to reduce the notorious multiplicity of taxes that has often discouraged

¹² *President signs four tax reform bills into law* (26 June 2025) available at <https://telegraph.ng/news/2025/06/26/tinubu-signs-four-tax-reforms-bills-into-law/> (accessed 16 May 2026).

¹³ *FG finalises new tax reform laws after consultations* available at <https://www.informationng.com/2025/06/tinubu-finally-signs-four-new-tax-reform-bills-into-law.html> (accessed 16 May 2026).

¹⁴ *Ibid.*

¹⁵ PricewaterhouseCoopers (PwC), *Nigeria Tax Reform Acts 2025: Overview and Implications* available at <https://www.pwc.com/ng/en/publications/the-nigerian-tax-reform-acts.html> (accessed 16 May 2026).

¹⁶ International Monetary Fund, *Nigeria: Selected Issues Paper* (IMF Country Report No 23/120, 2023) 14.

investment and stifled small and medium-scale enterprises.¹⁷ The reforms also reflect an aspiration to embed fairness and accountability in tax policy by ensuring that revenue mobilisation does not disproportionately disadvantage vulnerable taxpayers.

In addition, the Acts were carefully designed to align Nigeria's domestic taxation framework with global best practices, especially in the context of international tax cooperation, digital economy taxation, and compliance with the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS).¹⁸ In particular, the reforms mirror global developments on digital services taxation, cross-border reporting obligations, and the need for coherent rules to prevent aggressive tax avoidance by multinational enterprises. Taken together, these enactments constitute the most comprehensive reorganisation of the Nigerian tax landscape in recent history, offering both opportunities for revenue expansion and challenges of enforcement that will test the resilience of Nigeria's fiscal institutions.

2.1 The Nigeria Revenue Service Establishment Act 2025

The most transformative reform, the Nigeria Revenue Service Establishment Act 2025, repealed the Federal Inland Revenue Service (Establishment) Act 2007 and dissolved the Federal Inland Revenue Service, creating the Nigeria Revenue Service as the central federal tax authority. Beyond restructuring, it promotes efficiency, accountability, and fairness through merit-based recruitment, technical expertise, and continuous training, echoing reforms of the South African Revenue Service and the Kenya Revenue Authority as global models.¹⁹ By insulating tax administration from political interference and focusing on expertise, the NRS is expected to improve efficiency and public trust.

Second, the Act confers enhanced enforcement powers on the NRS, granting it authority to investigate, audit, and prosecute tax-related offences with reduced bureaucratic bottlenecks.²⁰ This represents a significant departure from the FIRS framework, which

¹⁷ O Oyeyemi, 'Multiplicity of Taxes in Nigeria and Its Implications for Investment and Economic Growth' (2021) 45 *Journal of African Law* 67.

¹⁸ Organisation for Economic Co-operation and Development (OECD), *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note* (OECD 2019) <https://www.oecd.org/tax/beps/policy-note-beps-inclusive-framework.pdf> accessed 25 September 2025.

¹⁹ C Alleyne and C Andrews, *Tax Administration Reform in Africa: Comparative Perspectives* (Routledge 2022) 88.

²⁰ O Adekanmbi, 'Institutional Reforms and Professionalisation in Tax Administration: Lessons for Nigeria' (2024) 12 *Nigerian Journal of Fiscal Studies* 55.

often struggled with inter-agency overlap and procedural delays.²¹ These expanded powers, however, raise constitutional questions about the balance of prosecutorial authority between the NRS and the Attorney-General of the Federation, as well as concerns about possible abuse of discretion in enforcement.

A third innovation is the introduction of a Tax Ombudsman. This is a novel mechanism in Nigerian tax law, designed to provide an independent forum for addressing taxpayer grievances. Its purpose is to enhance fairness, reduce arbitrariness, and protect taxpayer rights an area historically neglected in Nigeria's fiscal system.²² If effectively implemented, the Ombudsman could institutionalise alternative dispute resolution in tax administration and reduce litigation burdens on both taxpayers and government.

Finally, the Act mandates digital compliance systems, including compulsory e-filing, e-invoicing, and the use of integrated databases. These provisions seek to combat tax evasion, curb illicit financial flows, and expand the tax base through technology-driven monitoring.²³ While these reforms are laudable, they pose significant challenges for small and medium-sized enterprises (SMEs) that may lack the technological capacity to comply.

The Act thus lays the foundation for a more robust institutional framework for tax collection. Yet, its breadth of powers and centralisation of authority raise constitutional and administrative concerns, which will be examined in subsequent sections.

2.2 The Personal Income Tax (Amendment) Act 2025

The Personal Income Tax (Amendment) Act 2025 introduced progressive changes to Nigeria's tax regime. It exempts individuals earning ₦800,000 or less annually to protect low-income earners, while increasing rates for top earners to promote vertical equity. The Act also revised or removed the Consolidated Relief Allowance to simplify assessments. Though aimed at efficiency, critics argue the changes may increase the tax burden on middle-income earners.²⁴ This creates a tension between simplicity and fairness that will require careful monitoring in the implementation phase.

²¹ F Abiola, 'Tax Enforcement and Constitutional Limits in Nigeria' (2022) 9 *Nigerian Law and Policy Review* 122.

²² L Ukaegbu, 'Protecting Taxpayer Rights through Alternative Dispute Resolution' (2023) 17 *African Journal of Law and Society* 203.

²³ PwC Nigeria, *Tax Digitisation in Africa: Opportunities and Challenges* (PwC 2024) <https://www.pwc.com/ng/en/publications/tax-digitisation.html> accessed 25 September 2025.

²⁴ S Adebayo, 'The Equity Challenge in Nigeria's Personal Income Tax Regime' (2024) 11 *Journal of African Taxation* 34.

2.3 The Development Levy Act 2025

The Development Levy Act consolidates several existing levies including the Education Tax, Information Technology Tax, and contributions to specialised agencies such as the National Agency for Science and Engineering Infrastructure (NASENI) into a single 4 per cent levy on profits. The purpose of this consolidation is to reduce the notorious problem of multiple taxation, which has historically discouraged investment and complicated compliance for businesses operating in Nigeria.²⁵

By streamlining the system, the Act promises greater administrative efficiency and improved compliance rates. However, it also raises important concerns about the overall revenue flows to sector-specific agencies. For instance, the Tertiary Education Trust Fund (TETFund), which relied heavily on the Education Tax, may face funding shortages that could adversely affect the education sector.²⁶ Similarly, innovation-driven agencies may experience reduced financial autonomy.²⁷ The central question is whether the benefits of consolidation will outweigh the risks of underfunding critical developmental sectors.

2.4 The Value Added Tax (Amendment) Act 2025

The reform of the Value Added Tax (VAT) regime represents another critical dimension of the 2025 tax reforms. A major innovation is the expansion of input recovery by allowing credits for services and capital expenditure, which previously could not be offset. This change aligns Nigeria's VAT regime more closely with international standards and reduces cascading effects on production costs.²⁸ The Act also introduced mandatory e-invoicing, aimed at ensuring accurate reporting and curbing under-declaration of sales.²⁹ Additionally, it expanded the list of zero-rated goods to include essential food items and medical supplies, a measure intended to reduce the regressive impact of VAT on vulnerable

²⁵ Oyeyemi, (n 17).

²⁶ A Ogunode, 'Funding Higher Education in Nigeria: The Role of TETFund' (2022) 14 *Journal of Education Finance and Policy* 122.

²⁷ M Olaniyan, 'Innovation Financing and the Challenges of Fiscal Consolidation in Nigeria' (2023) 11 *Nigerian Journal of Development Studies* 89.

²⁸ Organisation for Economic Co-operation and Development (OECD), *Consumption Tax Trends 2022: VAT/GST and Excise Rates, Trends and Policy Issues* (OECD Publishing 2022) 34.

²⁹ Federal Republic of Nigeria, *Value Added Tax (Amendment) Act 2025* (Lagos: Government Printer, 2025) s 12.

populations.³⁰ These reforms are expected to simplify compliance, enhance revenue mobilisation, and improve equity. Nevertheless, concerns remain about compliance costs, particularly for SMEs that may struggle with the financial and technological demands of e-invoicing.³¹ As such, the VAT reform reflects the broader tension between administrative efficiency and inclusivity in tax policy.

2.5 Synthesis of the 2025 Reform Acts

Taken together, the four reform Acts mark a decisive shift in Nigeria's fiscal policy. While the Personal Income Tax, Development Levy, and VAT reforms introduce important modifications to the substantive rules of taxation, the Nigeria Revenue Service Establishment Act 2025 stands out as the most far-reaching. Its creation of a new institutional framework fundamentally reshapes the relationship between taxpayers and the federal tax authority.³² More broadly, the reforms reflect Nigeria's effort to achieve fiscal sustainability, reduce overdependence on oil, and align its domestic tax system with global best practices.³³ The consolidation of these measures is consistent with long-standing recommendations by both domestic experts and international development institutions that have argued that Nigeria's low tax-to-GDP ratio, weak institutional framework, and excessive reliance on extractive revenues undermine fiscal resilience and inclusivity.³⁴

3. The Nigeria Revenue Service Establishment Act 2025

The Nigeria Revenue Service Establishment Act 2025 is the centrepiece of Nigeria's fiscal reforms. It repealed Federal Inland Revenue Service Act 2007, dissolved the Federal Inland Revenue Service, and created Nigeria Revenue Service as tax authority. The Act seeks to professionalise administration, strengthen enforcement, and embed accountability and taxpayer protection.³⁵ This approach aligns with comparative international practice, where jurisdictions such as South Africa, Ghana, and Kenya have restructured their tax administrations into semi-autonomous, professionally managed institutions to insulate them

³⁰ World Bank, *Nigeria Public Finance Review: Fiscal Adjustment for Better and Sustained Results* (2023) 76.

³¹ O Akanbi, 'The Impact of E-Invoicing and Digitalisation on SMEs in Nigeria's VAT Regime' (2024) 18 *Nigerian Tax Journal* 55.

³² Federal Republic of Nigeria, *Nigeria Revenue Service (Establishment) Act 2025* (Lagos: Government Printer, 2025) s 1.

³³ Organisation for Economic Co-operation and Development (OECD), *Revenue Statistics in Africa 2022* (OECD Publishing 2022) 45.

³⁴ World Bank, (n 30): *Fiscal Adjustment for Better and Sustained Results* (2023) 12–14

³⁵ A Sanni, *Taxation and Fiscal Governance in Nigeria* (Princeton Publishing 2023) 87.

from political interference and enhance efficiency.³⁶ In particular, the Nigerian reform seeks to address long-standing criticisms that the FIRS was overly centralised, vulnerable to inefficiency, and limited in its capacity to enforce compliance across a diverse and complex economy.³⁷ The NRS Act thus represents both an institutional and normative recalibration of Nigeria's tax system, aimed at consolidating state authority while safeguarding taxpayer rights.³⁸

3.1 Institutional Structure

The Act establishes the NRS as a corporate body with perpetual succession, capable of suing and being sued in its own name.³⁹ It is governed by a Governing Board comprising a Chairman, the Executive Chairman, representatives of key ministries, and individuals with expertise in taxation, law, and finance.⁴⁰ This composition reflects a deliberate departure from the more politically dominated structure of the former FIRS, emphasising professional competence, institutional independence, and stakeholder representation.⁴¹

The Executive Chairman, appointed by the President subject to Senate confirmation, serves as the chief executive and accounting officer of the Service.⁴² Although the presidential appointment introduces some level of executive influence, the Act seeks to ensure operational autonomy by delineating the Executive Chairman's powers and mandating adherence to internal governance procedures. The Board is empowered to provide oversight, approve strategic plans, and ensure compliance with both national fiscal objectives and international best practices in tax administration.⁴³

3.2 Powers and Functions

The NRS is vested with broad powers to assess, collect, and account for all federal taxes, levies, and duties, and to administer the relevant tax laws.⁴⁴ Its statutory functions include:

³⁶ Organisation for Economic Co-operation and Development (OECD), *Tax Administration 2022: Comparative Information on OECD and Other Advanced and Emerging Economies* (OECD Publishing 2022) 55–57.

³⁷ World Bank, (n 30) 98.

³⁸ O Akanbi, 'Institutional Reform and Taxpayer Rights in Nigeria: Lessons from Comparative Jurisdictions' (2024) 19 *Nigerian Tax Journal* 42.

³⁹ NRS Act 2025, s 3.

⁴⁰ *Ibid*, s 6.

⁴¹ J Tilley, 'Tax Ombudsman Models in Comparative Perspective' (2021) 45(2) *Journal of African Law* 215.

⁴² NRS Act 2025, s 7.

⁴³ Organisation for Economic Co-operation and Development (OECD), *Tax Administration 2023: Comparative Information on OECD and Other Jurisdictions* (Paris: OECD Publishing, 2023) 45.

⁴⁴ NRS Act 2025, s 4.

- a. Tax assessment and collection: Ensuring compliance with federal tax laws, issuing assessments, and recovering arrears through administrative and legal channels.⁴⁵
- b. Investigation and enforcement: Conducting audits, investigating tax offences, and prosecuting offenders with powers comparable to law enforcement agencies.⁴⁶
- c. Policy advisory role: Advising the government on tax reform initiatives, contributing to fiscal policy development, and facilitating intergovernmental coordination to harmonise federal and state tax administration.⁴⁷
- d. Digital compliance and data management: Maintaining centralised taxpayer databases and using digital tools for monitoring and reporting.⁴⁸

However, the exercise of such extensive administrative and enforcement powers must be understood within the framework of constitutional safeguards, particularly the right to fair hearing guaranteed under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Supreme Court has consistently held that administrative bodies exercising quasi-judicial functions must act judicially and fairly, and any decision affecting rights must comply with due process requirements.⁴⁹ In *Garba v University of Maiduguri*, the Court emphasised that administrative actions that determine civil rights and obligations must conform strictly to the principles of natural justice.⁵⁰ Accordingly, while the NRS is empowered to enforce tax compliance, such powers are not absolute and must be exercised in a manner consistent with constitutional guarantees and judicial precedents.

3.3 Innovations in Taxpayer Protection

A hallmark of the Act is the creation of the Office of the Tax Ombudsman, mandated to receive and investigate complaints regarding NRS operations, particularly in cases of alleged abuse of power or administrative inefficiency.⁵¹ This institutional mechanism is intended to address longstanding taxpayer grievances regarding arbitrariness, unfair treatment, and lack of redress under the FIRS regime.

The establishment of the Tax Ombudsman also reflects emerging principles of administrative accountability in comparative tax governance. In jurisdictions such as South Africa, the Office of the Tax Ombud has been interpreted as a critical safeguard against

⁴⁵ Ibid, s 8.

⁴⁶ Ibid, s 10.

⁴⁷ Ibid, s 12.

⁴⁸ Ibid, s 18

⁴⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

⁵⁰ *Garba v University of Maiduguri* (1986) 1 NWLR (Pt 18) 550 (SC).

⁵¹ Ibid, s 20.

administrative excesses, particularly in ensuring procedural fairness and accessible complaint mechanisms for taxpayers.⁵² This reinforces the position that modern tax administration must balance revenue mobilisation with enforceable taxpayer rights.

In addition, the Act strengthens the role of the Tax Appeal Tribunal (TAT), streamlining dispute resolution procedures to reduce delays and promote access to justice. The incorporation of virtual hearings and clear procedural timelines draws inspiration from comparative experiences in South Africa and Kenya, where specialised dispute mechanisms have improved taxpayer confidence and reduced litigation costs.⁵³

3.4 Digitalisation and Compliance Systems

A central innovation of the Nigeria Revenue Service Establishment Act 2025 is its emphasis on digitalisation in tax administration. The Act mandates the mandatory integration of digital technologies across all facets of federal tax compliance, including e-filing, e-invoicing, and the establishment of centralised taxpayer databases. This provision reflects a deliberate attempt to modernise Nigeria's fiscal governance and to reduce reliance on manual, paper-based processes that have historically been prone to inefficiency, corruption, and under-reporting. By embedding digital infrastructure into the legal framework, the Act seeks to institutionalise transparency and minimise opportunities for discretionary abuse by tax officials.⁵⁴

Nigeria's pivot to digitalisation aligns with global trends in revenue administration. The South African Revenue Service (SARS) has long been recognised for its pioneering eFiling platform, which significantly enhanced taxpayer convenience and compliance levels.⁵⁵ Similarly, Kenya's iTax system, launched in 2014, integrated electronic filing, payment, and taxpayer registration into a unified platform that improved efficiency and revenue mobilisation.⁵⁶ By adopting similar systems, Nigeria aims to reduce compliance costs for taxpayers, close long-standing compliance gaps, broaden the tax base, and generate more reliable revenue forecasts.

⁵² South African Tax Administration Act 2011 (South Africa), s 16–20 (establishing Office of Tax Ombud).

⁵³ A Oyelade, 'Digital Justice in Nigerian Tax Adjudication: Prospects and Pitfalls' (2024) 16(1) *LASU Journal of Law* 89.

⁵⁴ C Alleyne and C Andrews, (n 19).

⁵⁵ South African Revenue Service, *SARS eFiling* (SARS 2023) <https://www.sars.gov.za/efiling/> accessed 25 September 2025.

⁵⁶ Kenya Revenue Authority, *iTax: Enhancing Service Delivery* (KRA 2021) <https://www.kra.go.ke/itax> accessed 25 September 2025.

However, the move towards digitalisation is not without significant challenges. The effective deployment of digital systems requires a robust cybersecurity framework to prevent data breaches, hacking, and illicit manipulation of sensitive taxpayer information.⁵⁷

In addition, Nigeria's persistent infrastructural deficits particularly the unreliability of internet connectivity and frequent power supply disruptions could undermine the functionality of e-filing and e-invoicing systems. This risk is especially acute for small and medium-sized enterprises (SMEs) and taxpayers in rural communities, who may lack both the technological capacity, and the digital literacy required to comply with the new regime.

Moreover, comparative lessons from Kenya suggest that the mere introduction of technology is insufficient to guarantee compliance. Although Kenya's iTax platform improved efficiency, studies have shown that taxpayers continued to struggle with system navigation, poor support services, and limited awareness of their obligations.⁵⁸ This experience underscores the importance of complementing technological reforms with taxpayer education, technical support, and outreach initiatives. Without such complementary measures, digitalisation risks becoming an exclusionary mechanism that disproportionately burdens vulnerable taxpayers rather than a tool for equitable compliance.

Accordingly, while the Act's embrace of digitalisation represents a commendable step towards modernising Nigeria's tax administration, its success will depend on the government's ability to invest in supporting infrastructure, develop comprehensive cybersecurity policies, and implement sustained taxpayer education campaigns. If properly executed, digitalisation could significantly transform Nigeria's revenue system into one that is efficient, transparent, and globally competitive.

3.5 Comparative and Practical Observations

Comparative experience demonstrates both opportunities and risks in the new framework. South Africa's South African Revenue Service (SARS) Ombudsman model underscores the importance of independence, adequate resourcing, and procedural clarity.⁵⁹ Kenya's iTax

⁵⁷ PwC Nigeria, (n 23).

⁵⁸ M Mutua, 'Evaluating the Effectiveness of Kenya's iTax System in Enhancing Tax Compliance' (2020) 8 *African Journal of Tax Studies* 56.

⁵⁹ M Maples, 'Independence and Effectiveness of the South African Tax Ombud' (2021) 29(4) *African Journal of International and Comparative Law* 402.

experience illustrates that digital platforms expand access but may inadvertently exclude vulnerable taxpayers without targeted education and support.⁶⁰

The concentration of investigative and enforcement powers in the Nigeria Revenue Service (NRS) raises the possibility of institutional overreach if not accompanied by effective checks and balances. Similarly, the Tax Ombudsman's independence may be limited if administratively tied to the NRS, highlighting the need for statutory clarity and oversight mechanisms. Digitalisation, though promising, faces practical hurdles such as infrastructural deficits, cybersecurity risks, and limited digital literacy among small taxpayers.⁶¹

The NRS Act 2025 is a paradigm shift in Nigerian tax administration. Its success will hinge on deliberate implementation, capacity building, and the political will to insulate the NRS from undue influence, ensuring that the twin goals of revenue generation and taxpayer protection are met.

4. Implications for Tax Administration

The establishment of the Nigeria Revenue Service (NRS) under the 2025 Act carries far-reaching implications for the efficiency, transparency, and overall governance of tax administration in Nigeria. Beyond its structural innovations, the Act represents a paradigm shift in the country's fiscal architecture, signalling the transition from a fragmented, manual, and often opaque revenue framework to a modernised, accountable, and technologically enabled system of tax mobilisation.

First, the reform is expected to enhance administrative efficiency by reducing duplication of functions and streamlining processes. The repeal of the Federal Inland Revenue Service (Establishment) Act 2007 and the dissolution of the Federal Inland Revenue Service (FIRS) eliminated the institutional inertia that had long plagued tax administration. By creating a more professionalised and autonomous revenue body, the NRS is positioned to replicate successes observed in other jurisdictions where similar reforms produced measurable gains in compliance and revenue yield.⁶²

⁶⁰ E Ataro, 'Digitalisation and Tax Compliance in Kenya: Lessons for Africa' (2020) 12(2) *African Tax Administration Review* 76.

⁶¹ O Aguda, 'The Perils of Institutional Overhaul in Nigerian Public Administration' (2023) 9(3) *Nigerian Journal of Administrative Law* 64.

⁶² C Alleyne and C Andrews, (n 19).

Second, the Act strengthens transparency and accountability mechanisms in tax governance. The establishment of a Tax Ombudsman, coupled with mandatory digital compliance systems, reflects a deliberate effort to embed taxpayer rights within the administrative framework. These innovations suggest a move away from revenue-centric enforcement towards a more balanced model that recognises the reciprocal obligations of the state and taxpayers.⁶³ If effectively implemented, these provisions could reduce incidences of arbitrariness, increase trust in tax institutions, and improve Nigeria's ranking in international ease of doing business indicators.

Third, the Act has implications for Nigeria's broader fiscal governance and its integration into global tax norms. By aligning administrative practices with international standards such as those of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), Nigeria positions itself to address challenges of digital economy taxation and multinational profit shifting.⁶⁴ This could significantly enhance Nigeria's capacity to safeguard its tax base in an increasingly globalised economy.

However, these positive implications must be balanced against potential challenges. Centralising enforcement powers in the NRS raises constitutional and institutional concerns, particularly regarding the separation of powers in relation to prosecutorial authority.⁶⁵ In addition, the digitalisation of tax administration, while commendable, risks excluding vulnerable taxpayers lacking access to reliable infrastructure or digital literacy. Without adequate safeguards, the reform could inadvertently widen existing inequalities in compliance burdens.

Overall, the establishment of the NRS represents not only an institutional reform but also a transformative reconfiguration of the relationship between the Nigerian state and its taxpayers. Its success will ultimately depend on political will, institutional capacity, and the government's ability to address structural constraints such as corruption, weak infrastructure, and resistance to change.

4.1 Efficiency in Tax Collection and Monitoring

One of the primary objectives of the NRS Act is to improve efficiency in tax collection. The consolidation of federal tax powers within a single, professionalised body reduces duplication, streamlines processes, and enhances coordination between departments

⁶³ L Ukaegbu, (n 22).

⁶⁴ Organisation for Economic Co-operation and Development (OECD), (n 18).

⁶⁵ F Abiola, 'Tax Enforcement and Constitutional Limits in Nigeria' (2022) 9 *Nigerian Law and Policy Review* 122.

responsible for assessment, collection, and enforcement.⁶⁶ By adopting risk-based audits, data analytics, and predictive compliance monitoring, the NRS can more accurately identify non-compliant taxpayers and recover arrears without resorting to blanket enforcement measures.⁶⁷

Moreover, the integration of taxpayer databases enables better tracking of taxpayers across multiple sectors, allowing for real-time monitoring of payments and enhanced revenue forecasting.⁶⁸ The efficiency gains are not only administrative but also economic, as timely collection of taxes contributes to improved fiscal planning and resource allocation at both federal and state levels. Comparative experience from Kenya and South Africa demonstrates that efficiency improvements are closely linked to institutional autonomy and the adoption of technology in daily operations.⁶⁹

4.2 Transparency and Accountability

The NRS Act embeds transparency and accountability as central pillars of tax administration. By requiring public reporting of revenue collection, budget allocation, and audit outcomes, the Act seeks to build taxpayer confidence and reduce perceptions of corruption that have historically undermined compliance.⁷⁰

The creation of the Tax Ombudsman further enhances accountability by providing an independent mechanism for addressing administrative grievances. This dual system internal oversight through the Governing Board and external redress via the Ombudsman establishes a checks-and-balances framework designed to prevent abuse of power while ensuring that the Service remains responsive to taxpayers' concerns.⁷¹

4.3 Relationship with States and Internal Revenue Services

The NRS Act recognises the need for cooperative federalism in tax administration. Historically, conflicts between the FIRS and State Internal Revenue Services (SIRS) have hindered revenue mobilisation and led to overlapping assessments, litigation, and administrative delays.⁷²

⁶⁶ NRS Act 2025, s 4.

⁶⁷ Organisation for Economic Co-operation and Development (OECD), (n 43).

⁶⁸ Ibid.

⁶⁹ E Ataro, (n 60).

⁷⁰ NRS Act 2025, s 20; J Tilley, (n 41).

⁷¹ Ibid.

⁷² A Adebayo, *Tax Reform and Governance in Nigeria* (Lagos: Malthouse Press, 2024) 119.

The NRS is empowered to facilitate coordination with state revenue authorities, harmonise tax policies, and create frameworks for revenue sharing where applicable. By promoting intergovernmental cooperation, the Act seeks to reduce disputes, minimise double taxation, and enhance compliance among multi-jurisdictional taxpayers.⁷³ Effective implementation of this provision will require clear guidelines, frequent stakeholder consultations, and a mechanism for resolving conflicts in a timely and transparent manner.

4.4 Digitalisation and E-Filing

A critical innovation of the NRS is the integration of digital technology into tax administration. E-filing, e-invoicing, and centralised databases are not mere technical upgrades; they represent a strategic move to reduce human discretion, minimise errors, and curb corruption.⁷⁴ Digital platforms also facilitate automatic computation of tax liabilities, prompt issuance of notices, and secure electronic payment, thereby reducing opportunities for evasion and administrative bottlenecks.⁷⁵

The Nigerian approach mirrors the iTax system in Kenya and eFiling in South Africa, where digital platforms have significantly improved compliance rates and reduced operational costs.⁷⁶ However, the success of digitalisation hinges on adequate infrastructure, cybersecurity measures, and taxpayer education campaigns to ensure inclusivity, particularly for SMEs and taxpayers in rural areas.⁷⁷ The Act's emphasis on technological adoption underscores a recognition that modern tax administration must combine efficiency, transparency, and accessibility to achieve its revenue and governance objectives.

5. Implications for Taxpayer Rights

The Nigeria Revenue Service Establishment Act 2025 (NRS Act) not only reorganises the administrative architecture of federal taxation but also places significant emphasis on safeguarding taxpayer rights. This reflects an understanding that effective revenue mobilisation must be balanced with fairness, due process, and protection against administrative abuse. The Nigerian courts have also reinforced the requirement that tax administration must comply with constitutional and procedural safeguards. In *Federal*

⁷³ NRS Act 2025, s 12.

⁷⁴ NRS Act 2025, s 18.

⁷⁵ A Oyelade, (n 53).

⁷⁶ South African Revenue Service, (n 55); Kenya Revenue Authority, (n 56).

⁷⁷ J Odhiambo, 'Cybersecurity and Taxpayer Protection in Kenya's Digital Economy' (2022) 8(1) *East African Law Journal* 55.

Inland Revenue Service v Mobil Oil Nigeria Plc, the Court of Appeal held that tax authorities must act strictly within the limits of their enabling statute and cannot impose liabilities outside statutory authority.⁷⁸ Similarly, in administrative law jurisprudence, courts have consistently invalidated ultra vires actions of public authorities where procedural fairness is absent.

5.1 Access to Fair Hearing: Tax Appeal Tribunal Reforms

A central innovation under the NRS Act is the reform of the Tax Appeal Tribunal (TAT). Historically, delays, cumbersome procedures, and limited access hindered taxpayers' ability to contest assessments or administrative decisions by the FIRS.⁷⁹ The NRS Act addresses these concerns by streamlining procedural rules, introducing mandatory timelines for hearings, and allowing virtual participation, which mitigates geographic and logistical barriers.⁸⁰

The reform aligns with the principle of natural justice, ensuring that taxpayers are granted a fair opportunity to present their case before an independent tribunal. Comparative experience shows that South Africa's and Kenya's tax adjudication reforms, which emphasise specialised, efficient, and technology-enabled tribunals, have enhanced taxpayer confidence and reduced litigation costs.⁸¹ In Nigeria, the effective implementation of TAT reforms can reduce the backlog of disputes, ensure prompt resolution, and reinforce the legitimacy of the NRS as a fair and professional institution.

5.2 Protection against Arbitrary Assessments

The NRS Act explicitly recognises the right of taxpayers to protection from arbitrary or excessive assessments. By codifying taxpayer rights and establishing the Office of the Tax Ombudsman, the Act provides mechanisms for oversight and redress in cases of abuse or administrative overreach.⁸²

Arbitrary assessments were a recurring grievance under the FIRS, often arising from inconsistent application of tax laws, inadequate documentation, or discretionary powers exercised without sufficient checks.⁸³ The Act limits such risks by mandating standardised procedures, evidence-based assessments, and internal review processes before finalising

⁷⁸ *Federal Inland Revenue Service v Mobil Oil Nigeria Plc* (2019) LPELR-47558(CA).

⁷⁹ A Adebayo, (n 72).

⁸⁰ NRS Act 2025, s 28.

⁸¹ M Maples, (n 59); Kenya Revenue Authority, (n 56).

⁸² NRS Act 2025, ss 20–22.

⁸³ J Tilley, (n 41).

liabilities. Additionally, statutory provisions require transparency in notice issuance, ensuring that taxpayers understand the basis of their assessments and have the opportunity to seek clarification or challenge errors.⁸⁴

5.3 Balancing Revenue Drive with Taxpayer Protection

While the NRS is tasked with maximising revenue collection, the Act underscores the need to balance fiscal objectives with the protection of taxpayer rights.⁸⁵ Aggressive enforcement without safeguards can erode public trust, increase non-compliance, and trigger litigation, ultimately undermining the revenue base.

The Act therefore establishes a framework in which revenue collection and taxpayer protection are mutually reinforcing rather than mutually exclusive. For instance, digitalisation of records and e-filing reduces opportunities for corruption and arbitrary intervention while simultaneously improving service delivery for taxpayers.⁸⁶ Similarly, clear procedural rules, Ombudsman oversight, and judicial recourse ensure that taxpayers are treated fairly, which encourages voluntary compliance a cornerstone of sustainable tax administration.⁸⁷

5.4 Practical Implications and Challenges

Despite these advances, challenges remain. The independence of the Tax Ombudsman is partly constrained by administrative attachment to the NRS, raising questions about impartiality.⁸⁸ Additionally, while digitalisation facilitates transparency, limited digital literacy and infrastructural deficits among small businesses and rural taxpayers may inadvertently restrict access to rights protections.⁸⁹ Effective taxpayer education, continuous training of NRS personnel, and adequate funding are therefore critical to realising the full potential of the reforms.

6. Comparative Lessons

Comparative study is essential in evaluating Nigeria's new revenue administration framework. Several African jurisdictions have undertaken ambitious tax reforms in recent

⁸⁴ NRS Act 2025, s 22.

⁸⁵ Ibid, ss 2, 4.

⁸⁶ A Oyelade, (n 53).

⁸⁷ OECD, (n 43).

⁸⁸ NRS Act 2025, s 20.

⁸⁹ J Odhiambo, (n 77).

years, and their experiences provide useful insights into both the potential and pitfalls of Nigeria's trajectory.

6.1 South Africa: SARS and the Office of the Tax Ombud

The South African Revenue Service (SARS), established in 1997, is widely regarded as a benchmark for tax administration on the continent. SARS enjoys a high degree of institutional autonomy, with a dedicated Commissioner and clearly defined accountability mechanisms. Of particular relevance to Nigeria is the creation of the Office of the Tax Ombud in 2014, an independent body mandated to investigate service, procedural, and administrative complaints lodged by taxpayers.⁹⁰

Nigeria's NRS Act 2025 mirrors this model through its provision for a Tax Ombudsman. However, South Africa's experience demonstrates that such an institution must be not only legally independent but also practically insulated from executive interference. In the early years, resource constraints limited the Ombud's effectiveness, but subsequent budgetary and statutory strengthening improved its credibility. Nigeria must learn from this gradual evolution and avoid underfunding its Ombudsman office, as under-resourcing could render it symbolic rather than effective.

6.2 Kenya: iTax and Digital Transformation

Kenya's tax reform is best exemplified by the Kenya Revenue Authority's (KRA) adoption of the iTax platform, an integrated digital system that enables taxpayers to register, file, and pay taxes online.⁹¹ The introduction of iTax in 2013 significantly reduced compliance costs, improved transparency, and expanded the tax net by integrating informal sector taxpayers through mobile money systems such as M-Pesa.

Nigeria's NRS Act promotes digitalisation through a Directorate of Digital Taxation. Kenya's experience shows that digital platforms need strong cybersecurity and comprehensive taxpayer education to avoid excluding SMEs and rural taxpayers. For Nigeria, the challenge is ensuring technology-driven efficiency while maintaining inclusivity and preventing digitalisation from widening compliance gaps.

⁹⁰ M Maples, (n 59).

⁹¹ Kenya Revenue Authority, (n 56).

6.3 Ghana: Consolidation and Institutional Integration

Ghana presents a different model through the Ghana Revenue Authority (GRA), established in 2009 by merging three separate agencies. The Internal Revenue Service, the Value Added Tax Service, and the Customs, Excise and Preventive Service. The consolidation aimed to reduce duplication, improve efficiency, and create a unified point of contact for taxpayers.⁹²

While Ghana's GRA streamlined administration, it centralized power with limited oversight. The Nigerian NRS Act integrates multiple functions, but efficiency must be balanced with transparency. Strong accountability through parliamentary oversight and independent audits is essential to prevent abuse and ensure effective operation.

S/N	Feature	South Africa (SARS)	Kenya (KRA)	Ghana (GRA)	Implications for Nigeria
1.	Operational Autonomy	High; independent Tax Ombud	Moderate; Ministerial oversight	Moderate; centralized	NRS should have functional independence with accountability
2	Digitalisation	eFiling, risk-based auditing	iTax, mobile money integration	Limited; gradual online adoption	NRS should ensure robust, secure digital infrastructure
3	Taxpayer Protection	Independent Ombud; clear complaint mechanisms	Online guidance; outreach programs	Ombud & Tribunal with statutory timelines	NRS Ombud and TAT reforms must be effective and independent
4	Capacity Building	Professional training; international exposure	Staff training & SME outreach	Staff development; audit capacity	Invest in human capacity, certifications, and secondments
5	Compliance Monitoring	Real-time audits; automated risk scoring	Automated alerts; compliance scoring	Manual + digital integration	Adopt risk-based assessment, leverage data analytics

6.5 Synthesis of Comparative Lessons

Taken together, these insights show Nigeria's reforms are promising but depend on effective implementation. From South Africa, Nigeria must resource and protect the Tax Ombudsman;

⁹² Revenue Administration Act 2009 (Ghana), ss 15–22; J Tilley, (n 41).

from Kenya, prioritise digital access and inclusion; and from Ghana, balance centralisation with accountability. Ultimately, beyond institutional design, political will, adequate funding, risk-based audits, cybersecurity, capacity building, and independent oversight will determine the NRS's credibility and effectiveness.⁹³

7. Challenges and Criticisms

While the Nigeria Revenue Service Establishment Act 2025 (NRS Act) marks a major reform in federal tax administration, its ambitious goals face challenges and potential criticisms. Acknowledging these limitations is essential to understanding implementation realities and institutional constraints that may hinder achieving the reform's objectives.

7.1 Institutional Bottlenecks

The consolidation of federal tax powers within the NRS, while intended to enhance efficiency, may inadvertently create institutional bottlenecks. Centralising assessment, collection, enforcement, and dispute resolution in a single body can increase administrative workload and pressure on the Service's resources.⁹⁴ Without adequate staffing, clearly defined workflows, and interdepartmental coordination, decision-making may be slowed, leading to delays in assessments, audits, and taxpayer responses.⁹⁵

Effective coordination among multiple directorates from Digital Taxation to Policy Advisory is essential, as poor inter-directorate integration can undermine efficiency and transparency, reflecting challenges seen in other jurisdictions during rapid institutional reforms.⁹⁶

7.2 Risk of Political Interference

Despite the statutory emphasis on operational independence, the NRS remains susceptible to political influence, primarily through the presidential appointment of the Executive Chairman and the composition of the Governing Board.⁹⁷ Historical experience under the

⁹³ A Oyelade, (n 53).

⁹⁴ A Adebayo, (n 72).

⁹⁵ OECD, (n 43).

⁹⁶ C Croome and R Olivier, *Tax Administration* (Cape Town: Juta, 2015) 47.

⁹⁷ NRS Act 2025, ss 3, 6.

FIRS demonstrates that political pressures can compromise enforcement priorities, skew audit selections, and erode taxpayer confidence.⁹⁸

Resource allocation and revenue prioritisation may reflect political motives, highlighting the need for parliamentary oversight, transparent reporting, and civil society engagement to ensure the NRS remains neutral, professional, and accountable.⁹⁹

7.3 Capacity Constraints

Effective implementation of the NRS Act depends heavily on the human, technical, and financial capacity of the Service. Training tax officials in modern compliance techniques, digital auditing, and taxpayer engagement is critical to realising the efficiency and transparency goals of the Act.¹⁰⁰

Capacity constraints also extend to digital infrastructure. While e-filing, e-invoicing, and centralised databases are mandated, the lack of nationwide broadband access, cybersecurity vulnerabilities, and limited digital literacy among taxpayers may hinder adoption and reduce the effectiveness of technological solutions.¹⁰¹ Additionally, insufficient funding for investigative units, dispute resolution mechanisms, and taxpayer education programs could constrain the Service's ability to operate effectively.¹⁰²

7.4 Constitutional Questions

The NRS Act raises potential constitutional questions, particularly in areas of federal-state tax relations. While the Act empowers the NRS to coordinate with State Internal Revenue Services (SIRS), ambiguities remain regarding the precise limits of federal authority, jurisdictional overlaps, and the settlement of intergovernmental disputes.¹⁰³

Furthermore, the Act's consolidation of powers may attract judicial scrutiny concerning the separation of powers, procedural fairness, and the protection of fundamental rights. For instance, the extensive investigative and enforcement powers conferred on the NRS must be exercised in a manner consistent with constitutional safeguards against arbitrary state action.¹⁰⁴ Ultimately, the legitimacy of the Nigeria Revenue Service Establishment Act

⁹⁸ Ibid; O Aguda, (n 61).

⁹⁹ A Oyelade, (n 53).

¹⁰⁰ NRS Act 2025, s 18.

¹⁰¹ J Odhiambo, (n 77).

¹⁰² OECD (n 43) 53.

¹⁰³ Constitution of the Federal Republic of Nigeria 1999 (as altered), ss 4, 162; NRS Act 2025, s 12.

¹⁰⁴ A Tilley, 'Constitutional Limits on Tax Enforcement in Africa' (2020) 14(2) *Journal of African Law* 201.

2025 depends not only on its institutional design but also on its conformity with constitutional principles of accountability, fairness, and legality. As administrative law jurisprudence makes clear, efficiency in governance cannot override the requirement of legality and due process.¹⁰⁵

8. Conclusion and Recommendations

The Nigeria Revenue Service Establishment Act 2025 marks a major shift in Nigeria's tax administration. By repealing the 2007 Act and creating a professional, digitally enabled, and rights-conscious NRS, it aims to resolve persistent inefficiencies, opacity, and taxpayer grievances.¹⁰⁶

This article identifies key findings. First, the Act strengthens federal tax administration by enhancing professional competence, operational autonomy, and intergovernmental coordination. Second, establishing the Tax Ombudsman and reforming the Tax Appeal Tribunal institutionalise fairness, accountability, and taxpayer protection, aligning Nigeria with global best practices in rights-based tax governance.¹⁰⁷ Third, the Act's emphasis on digitalization through e-filing, e-invoicing, and centralised databases aims to reduce discretion, enhance efficiency, and expand the tax base. However, the analysis also highlights potential challenges, including institutional bottlenecks, political interference, capacity limitations, and constitutional ambiguities.¹⁰⁸ Addressing these challenges demands deliberate implementation, sustained capacity building, legal clarity, and strong oversight. Lessons from South Africa, Kenya, and other African jurisdictions show that effective tax administration thrives when efficiency, transparency, and taxpayer rights reinforce rather than compete with one another.¹⁰⁹

The NRS Act's success depends on balanced implementation that strengthens revenue mobilisation while protecting taxpayer rights. Beyond legislation, policymakers must ensure legal clarity, build institutional capacity, safeguard operational independence, and promote taxpayer education to secure lasting improvements in Nigeria's fiscal governance.¹¹⁰ By doing so, Nigeria can establish a credible, accountable, and effective tax

¹⁰⁵ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL) (principle of legality in administrative action).

¹⁰⁶ NRS Act 2025, ss 2–4; A Adebayo, (n 69).

¹⁰⁷ *Ibid*, ss 20–28; J Tilley, (n 41).

¹⁰⁸ NRS Act 2025, ss 12, 18, 20; O Aguda, (n 61).

¹⁰⁹ E Ataro, (n 60); South African Revenue Service, (n 55).

¹¹⁰ NRS Act 2025, ss 2–4, 20; OECD, (n 64).

system that strengthens the social contract between the state and citizens, while promoting economic development and sustaining public trust.

Thus, this article recommends the following:

Legal Reforms for Clarity

Despite the NRS Act's ambitious scope, certain provisions remain ambiguous or overlapping, particularly regarding the delineation of powers between the NRS and State Internal Revenue Services (SIRS).¹¹¹ To minimise conflicts and litigation, the government should enact supplementary laws or amendments clarifying federal and state authority, tax assessment criteria, and dispute resolution procedures. Codifying rules for the Tax Appeal Tribunal and Tax Ombudsman will strengthen due process and inform taxpayers of their rights. Experiences from South Africa and Kenya show that clear statutory mandates reduce discretion, limit abuse, and boost taxpayer confidence.¹¹²

Capacity Building for Tax Officials

Effective implementation of the NRS Act requires ongoing human capacity development. Tax officials need training in modern compliance, digital administration, forensic auditing, and dispute resolution. Professional development, certifications, and international secondments can strengthen technical skills and ethics. Capacity building should also target management and leadership, equipping senior officials in strategic planning, intergovernmental coordination, and stakeholder engagement. A well-trained workforce is crucial to translating reform into improved efficiency and taxpayer satisfaction.¹¹³

Ensuring Independence of the NRS

Operational independence is critical for credibility and effectiveness. While the NRS Act provides a degree of autonomy, the presidential appointment of the Executive Chairman and administrative oversight of the Tax Ombudsman may compromise impartiality.

To safeguard independence, it is recommended that:

¹¹¹ Constitution of the Federal Republic of Nigeria 1999 (as altered), ss 4, 162; NRS Act 2025, ss 12, 28.

¹¹² M Maples, (n 59); Kenya Revenue Authority, (n 56).

¹¹³ OECD, (n 43).

- a. The NRS Governing Board's composition be reviewed to include non-partisan experts and representatives of civil society.
- b. Budgetary allocations for the NRS and the Ombudsman be made directly by Parliament, reducing reliance on executive discretion.
- c. Oversight mechanisms, such as mandatory annual reports and external audits, be institutionalised to ensure accountability without eroding autonomy.¹¹⁴

Strengthening Taxpayer Education

The success of the NRS Act is closely linked to taxpayer awareness and voluntary compliance. Digitalisation, while efficient, may exclude taxpayers lacking digital literacy or access to infrastructure.

It is therefore essential to implement a comprehensive taxpayer education program that:

- a. Explains taxpayer rights and obligations in clear, accessible language.
- b. Provides guidance on e-filing, e-invoicing, and dispute resolution mechanisms.
- c. Targets SMEs, rural communities, and vulnerable groups through outreach campaigns, workshops, and partnerships with professional associations.¹¹⁵

Experience from Kenya's iTax and South Africa's SARS demonstrates that taxpayer education enhances voluntary compliance, reduces disputes, and strengthens public trust in the tax system.¹¹⁶

¹¹⁴ J Tilley, (n 41).

¹¹⁵ E Ataro, (n 60).

¹¹⁶ South African Revenue Service, (n 55).

APPRAISAL OF THE LEGAL ISSUES IN THE APPLICATION OF THE PRINCIPLE OF SELF-DETERMINATION IN NIGERIA

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Abstract

The recent resurgence of secessionist and autonomy-seeking movements such as the Biafra and Yoruba Nation agitations in Nigeria has raised hydra-headed challenges in several areas – political, economic and social, and continues to threaten national unity and security. As a nation with fragmented politics, religious diversity and multi-ethnic composition, this resurgence has only heightened. Hence, this study explores the evolving discuss on the legal issues surrounding the application of the principle of self-determination under international law with the Nigerian legal and political landscape. The study adopts a doctrinal method of legal research, analysing primary and secondary sources of law and data such as statutes, journal articles, surveys, case laws. This study finds, inter alia, that although Nigeria is party to major international human rights instruments that recognise the right to self-determination, its domestic framework lacks sufficient provisions and mechanisms to truly actualise such claims. Furthermore, there are inadequacies in judicial interpretations and lack of political will in addressing the root causes in the application of this right. The study concludes that the current legal framework in Nigeria is inefficacious to manage self-determination claims, in a peaceful and just manner. Thus, it recommends amongst others, strategic constitutional and legislative reforms and an inclusive governance system that creates an atmosphere of peace and acceptance as a pathway to attaining national unity.

Keywords: Autonomy, National Unity, People, Secession, Self-determination

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1.0 Introduction

Agitations and the struggles for self-determination have been a recurring phenomenon globally¹, shaping political landscapes. At its core, self-determination reflects the desire of peoples to govern their existence and pursue collective well-being without external interference. While the principle may manifest through independence, autonomy, federalism, or self-rule,² it is fundamentally rooted in the historical and cultural identity of a people.³ Needless to say, the recent sentence of IPOB separatist leader Nnamdi Kanu for terrorism, treason amongst others following a decade-long legal battle by Justice James Omotosho influenced a fortiori, this paper on the legal issues on the application of self-determination in Nigeria.⁴

Nigeria is a multi-ethnic federal state with over 250 ethnic groups and thus, recent movements, including the resurgence of Biafra and Yoruba nation separatist calls.⁵ This has highlighted persistent ethnic, economic, and political divisions, posing challenges to national unity and stability.⁶ These agitations reflect broader demands for equitable resource distribution, representation, and autonomy within the federation. This study does not seek to endorse or validate these claims. Rather, it aims to explore Nigeria's legal framework on self-determination and critically examine the legal issues arising from its application amidst current agitations.

¹ Eboh Patrick Chinedu, 'The Right to Self-determination; The Constitutional Issues in Nigeria: The Case of Indigenous People of Biafra' *UNIZIK LAW JOURNAL* (2017) (13)

² Freddy Mnyongani, 'Between a Rock and a Hard Place: The Right to Self-Determination versus Uti Possidetis in Africa' (2008) (41) (3) *The Comparative and International Law Journal of Southern Africa* pp. 463-479 at 473.

³ 'Human Rights Violation Marginalisation Justifying calls for South East Self-determination' *Vanguard* (Lagos, October 2024) <<https://www.vanguardngr.com/2024/10/human-rights-violation-marginalization-justifying-calls-for-south-east-self-determination/>> accessed 6 December 2024

⁴ Mansur Abubakar, 'Nigerian Separatist leader sentenced to life for terrorism' *BBC* (Abuja, November 2025) <<https://www.bbc.com/news/articles/cj3z38e6v45o>> accessed 22 January 2026

⁵ Anthony Aladekomo, 'Nigerian Separatist Movements, Growing Secession Agitations and the Stand of International Human Rights Law', *Social Science Research Network* (2021) <<https://ssrn.com/abstract=3869141>> accessed 19 December 2024.

⁶ Igboke Shedrack, 'Agitations for Regime Change and Political Restructuring: Implications on National Integration and Development in Nigeria' *UJAH* (2020) (21) (3) <<https://dx.doi.org/10.4314/ujah.v2li3.1>> accessed 21 October 2024

Despite Nigeria's commitment to international instruments such as the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights, its domestic law lacks clear mechanisms to address self-determination claims, creating ambiguities and tension with constitutional provisions and principles of territorial integrity. Furthermore, the judiciary's role in interpreting these issues remains contested, complicating legal clarity and effective resolution. By assessing these legal challenges, this research seeks to provide a foundation for addressing self-determination claims in Nigeria, aiming to tackle the issue at its root rather than merely responding to its manifestations.

2.0 Self-determination: Meaning and Types

Self-determination under international law is a right granted to peoples or groups to determine their political, economic, social, and cultural rights, exercised in various ways within a state entity with the option of secession in more exceptional cases of egregious rights violations.⁷ Given this internationally recognised concept of law, Article 1 of the ICCPR and the ICESCR express that "All peoples have the right of self-determination. By that right, they freely determine their political status and pursue economic, social, and cultural development." This speaks to the idea that self-determination is both collective and progressive and denotes a legal right of a people to decide their destiny in an international order.⁸

Hence, self-determination can be categorised into two forms – internal and external self-determination. Internal self-determination refers to the actual freedom of a people to pursue their social, economic, political, and cultural rights and development, free from any external control and the right to conduct public affairs at any level within an existing state. In the words of Antonio Cassese, it is a right to authentic self-government, that is, the right of a people to freely choose their own political and economic regime.⁹ This aspect is a

⁷ Sunday Lugard, Matthias Zachariah, Tobias Ngufwan, 'Self Determination as a Right of the Marginalised in Nigeria: A Mirage or Reality' *Journal of International Human Rights Law* (2015) (1) (1) 127-158

⁸ Montserrat Guibernau, 'Self-determination in the Twenty-First Century: Self-determination – A Double-edged Principle' *Ethnopolitics* (2015) (14) (5) <<https://doi.org/10.1080/17449057.2015.1051814>>accessed 21 October 2024.

⁹ Antonio Cassese, Political Self-determination Old Concepts and New Developments in Cassese (Ed) pp. 137-165.

natural right and does not necessarily affect territorial integrity, as it connotes self-government and autonomy within a state.

External self-determination on the other hand, External self-determination as the right of a people to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation domination, and exploitation.¹⁰ This form of self-determination is usually invoked in extreme cases and under defined circumstances and considered as remedial on the condition that the subject concerned is a people that constitute a territorially concentrated and marginalised or numerical minority group in a state from which they want to secede, the existence of a bond territorially between the people to wish to migrate to or they want to take along with them is vitally important and, they need to have a solid claim to a territory they intend to separate from the parent state.

3.0 Legal Framework in the Application of Self-determination in Nigeria

3.1 United Nations Charter 1945

The United Nations Charter is the first international instrument with binding legal force to proclaim the principle of self-determination of peoples. The inclusion of this principle in the Charter was proposed by the Soviet Union¹¹, and the Charter was signed on 26 June 1945 at the San Francisco Conference, entering into force on 24 October 1945¹². Comprising nineteen chapters and 111 articles, the Charter establishes the legal framework governing relations among UN member states. It emerged following the failure of the League of Nations, which, despite its 1919 mandate to preserve international peace, was unable to prevent the outbreak of the Second World War.¹³

¹⁰ Amanda Cats-Baril, 'Self-determination' International Institute for Democracy and Electoral Assistance. UN Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. 21 1996.

¹¹ Karan Gulati, 'Self Determination in International Law' *International Journal for Legal Developments & Allied Issues* (2019) (1) (2) pp. 180-187

¹² United Nations, United Nations Charter <<https://www.un.org/en/about-us/un-charter>> accessed 13 March 2025

¹³ Temitope Peter Ola, 'United Nations' Provisions for Pacific Settlement of International Disputes' *AUDRI* (2021) (14) (2) pp. 84-95 <<https://dj.univ-danubius.ro/index.php/AUDRI/article/view/1343/2038>> accessed 13 March 2025

Prior to 1945, although self-determination claims had begun to surface—most notably in the *Åland Islands Case*¹⁴ the Covenant of the League of Nations made no reference to the principle. As such, self-determination lacked formal recognition at the international institutional level. The UN Charter therefore represents the foundational legal basis for the subsequent development of international norms on self-determination. As a constituent treaty, its provisions are binding on all member states, and by virtue of Article 103, the Charter prevails over all other treaty obligations, functioning as a constitutional framework for the international legal order.

The principle of self-determination is expressly reflected in two key provisions of the Charter: Articles 1(2) and 55. Article 1(2), located in Chapter I, identifies self-determination as one of the core purposes of the United Nations, linking it to the development of friendly relations among nations and the maintenance of international peace. In this sense, self-determination is framed primarily as a political principle aimed at fostering peaceful international relations rather than as an enforceable legal right.¹⁵ At the same time, the Charter strongly affirms state sovereignty and territorial integrity. Article 2(4) prohibits the threat or use of force against the political independence or territorial integrity of states, thereby limiting the ability of self-determination movements to pursue unilateral secession through force. The principle of non-intervention in domestic affairs further constrains external involvement in internal self-determination claims, creating an inherent tension between aspirations for secession and the preservation of existing state boundaries.¹⁶

Article 55, situated in Chapter IX, represents the second ambit of self-determination and focuses on its economic, social, and human rights dimensions. It mandates the promotion of higher standards of living, solutions to global socio-economic challenges, and universal respect for human rights, all based on equal rights and self-determination of peoples. While the Charter lacks a detailed enforcement mechanism or a precise definition of “peoples,” it underscores the centrality of peace in addressing self-determination claims, many of which

¹⁴ Oliver Diggelmann, ‘The Åland Case and the Sociological Approach to International Law’, *The European Journal of International Law* (2007) (18) (1) pp. 135-143 <<http://www.ejil.org/pdfs/18/1/213.pdf>> accessed 13 March 2025

¹⁵ United Nations, Interactive Handbook of the Working Methods of the Security Council <<https://main.un.org/securitycouncil/en/content/interactive-handbook>> accessed 7 March 2025

¹⁶ Article 2(7) UN Charter 1945

arise in conflict contexts. Chapter VI of the Charter provides mechanisms for the peaceful settlement of disputes¹⁷, including diplomatic methods such as negotiation, mediation, and conciliation, as well as judicial means like arbitration and adjudication. The General Assembly, Security Council, International Court of Justice, and Secretariat play key roles in this process, alongside regional arrangements consistent with UN principles.¹⁸

As a signatory to the UN Charter, Nigeria is bound by its provisions, including those relating to self-determination. However, scholars such as H. Wilson observe that the Charter does not explicitly recognise self-determination as a legal right, nor does it clarify the identity of the “peoples” entitled to invoke it.¹⁹ Consequently, the Charter articulates self-determination primarily as a guiding political principle rather than a clearly defined, justiciable right under international law.

3.2 United Nations Declaration on Granting Independence to Colonial Countries and Peoples 1960

The Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by UN General Assembly Resolution 1514 (XV) on 14 December 1960, marked a decisive turning point in the recognition of self-determination as a legal right. Adopted overwhelmingly with no votes against, the Declaration affirmed the right of all peoples to freedom from colonial domination and elevated self-determination from a political principle to a normative legal entitlement in the context of decolonisation.

Resolution 1514 (XV) generated a series of subsequent General Assembly instruments that reinforced its legal and ideological foundations. These include²⁰ Resolution 1515 (XV) on permanent sovereignty over natural resources, Resolution 1803 (XVII) on states’ control over their wealth, and later economic instruments such as the Declaration on the Establishment of a New International Economic Order and the Charter of Economic Rights

¹⁷ Article 2(3) UN Charter 1945

¹⁸ Gukiina Patrick Musoke, ‘Pacific Settlement of Disputes under International Law’, *ResearchGate* (2024) <https://www.researchgate.net/publication/379669539_PACIFIC_SETTLEMENT_OF_DISPUTES_IN_INTERNATIONAL_LAW> accessed 13 March 2025

¹⁹ Heather A. Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford University Press, 1988) 59

²⁰ Edward McWhinney, ‘Declaration on The Granting of Independence to Colonial Countries and Peoples’ United Nations Audiovisual Library of International Law (2008) Pg.3 <<https://legal.un.org/avl/pdf/ha/dicc/dicce.pdf>> accessed 13 March 2025.

and Duties of States. Together, these instruments established a clear legal linkage between self-determination, decolonisation, and economic sovereignty, expanding the concept to include economic self-determination.²¹

The Declaration builds upon the principles of the UN Charter to reaffirm faith in fundamental human rights and emphasising the necessity of creating conditions for peaceful and friendly relations based on equal rights and self-determination.²² It reflects the historical realities of colonial oppression and recognises that the continued denial of independence to dependent peoples posed a threat to international peace, hindered global economic cooperation, and obstructed social and cultural development. Importantly, the Declaration unequivocally proclaims that all peoples have the right to self-determination, enabling them to freely determine their political status and pursue their economic, social, and cultural development. It further stipulates that a lack of political, economic, or educational preparedness cannot justify delaying or denying this right.²³ The Declaration also condemns all forms of armed or repressive action against dependent peoples and calls for their cessation to allow the free exercise of independence while respecting the territorial integrity of emerging states.²⁴

3.3 The Covenants (International Covenant on Civil and Political Rights 1966 and International Covenant on Economic, Social, and Cultural Rights 1966)

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted on 16 December 1966 by UN General Assembly Resolution 2200A (XXI) and entered into force in 1976. Together with the Universal Declaration of Human Rights, they constitute the International Bill of Human Rights, supplementing the UN Charter and transforming its principles into binding human rights obligations.²⁵ Both Covenants elevate self-

²¹Preamble UN Declaration on Granting Independence to Colonial Countries and Peoples 1960

²² *ibid*, Declaration 1 UN Declaration on Granting Independence to Colonial Countries and Peoples 1960

²³ Declaration 3 UN Declaration on Granting Independence to Colonial Countries and Peoples 1960

²⁴ Declaration 4, UN Declaration on Granting Independence to Colonial Countries and Peoples 1960

²⁵ United Nations Human Right Office of the High Commissioner, Background to the International Covenant on Civil and Political Rights and Optional Protocols

<<https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols#:~:text=The%20ICCPR%20aims%20to%20ensure,Right%20to%20life>> accessed 12 March 2025

determination into a legally enforceable human right through their identical Article 1. Article 1(1) affirms that all peoples have the right to self-determination, enabling them to freely determine their political status and pursue their economic, social, and cultural development. This provision extends self-determination beyond political independence to encompass control over governance systems, economic management, cultural identity, and social development.²⁶

Article 1(2) further entrenches economic self-determination by recognising the right of peoples to freely dispose of their natural wealth and resources and by prohibiting deprivation of their means of subsistence. While this right must be exercised in conformity with international economic obligations, it reflects the position of post-colonial states that political independence is meaningless without economic sovereignty, a concern famously articulated by Léopold Sédar Senghor during the Covenant negotiations.²⁷

Article 1(3) imposes a positive obligation on State Parties to respect and promote the realisation of self-determination in accordance with the UN Charter, including in relation to non-self-governing and trust territories. This provision underscores that self-determination is not a discretionary concession by states but a binding international obligation. Nonetheless, the Covenants remain subject to the UN Charter, as reinforced by Article 46 of the ICCPR.

3.4 African Charter on Human and Peoples' Rights (ACHPR) 1981

The African Charter on Human and Peoples' Rights, adopted in 1981 and in force since 1986, represents a regional articulation of self-determination grounded in Africa's historical experience of colonialism. Nigeria ratified the Charter in 1983, and it was initially administered under the Organisation of African Unity, now the African Union.²⁸ The Charter establishes a binding obligation on State Parties to recognise and implement the rights it guarantees. It affirms the equality of all peoples and prohibits domination by one people over another.²⁹ Crucially, it recognises the right to existence and proclaims self-

²⁶ Article 47 ICCPR 1966 Official documents of the General Assembly, Plenary Meetings, 1961, Vol. II, p. 540

²⁷ Official documents of the General Assembly, Plenary Meetings, 1961, Vol. II, p. 540

²⁸ African Union, <<https://au.int/en/treaties/african-charter-human-and-peoples-rights>> accessed 13 March 2025

²⁹ Article 19 ACHPR 1981

determination as an inalienable and unquestionable right, enabling peoples to determine their political status and pursue economic and social development in accordance with their chosen policies.³⁰

Reflecting Africa's decolonisation context, the Charter expressly affirms the right of colonised or oppressed peoples to free themselves from domination by means recognised under international law.³¹ It also places a duty on State Parties to support oppressed peoples in their struggle for political, economic, and cultural liberation, while anchoring such efforts within lawful and internationally recognised mechanisms.³²

The ACHPR also protects economic self-determination. Hence, Article 21 guarantees the right of peoples to freely dispose of their wealth and natural resources and provides for restitution and compensation where deprivation occurs³³, subject to principles of international cooperation and international law. Articles 22 and 23 further link self-determination to the right to development, peace, and security, assigning states the responsibility to ensure these conditions.³⁴ In Nigeria, the African Charter has been domesticated through the African Charter (Ratification and Enforcement) Act 1983 and enjoys full legal force. This position was affirmed by the Supreme Court in *General Sani Abacha v. Gani Fawehinmi*³⁵, which held that ratified treaties form part of Nigeria's corpus juris and are enforceable by Nigerian courts.

3.5 The Constitution of the Federal Republic of Nigeria 1999

The Constitution of every territory is the organic law governing the rights, duties, obligations, privileges and principles guiding the administration of that territory.³⁶ The Constitution of the Federal Republic of Nigeria 1999 is preceded by various pre-

³⁰ Article 20(1) (2) ACHPR 1981

³¹ Shannonbrooke Murphy, 'Unique in International Human Rights Law: Article 20(2) and the right to resist in the African Charter on Human and Peoples' Rights' *African Human Rights Law Journal* (2011) (11) (2) <<https://www.ahrjlj.up.ac.za/murphy-s>> accessed 19 March 2025

³² Article 20(3) All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

³³ Article 21(2) (3) ACHPR 1981

³⁴ Article 22(2) 1981

³⁵ (S.C. 45/1997)

³⁶ Elliot Bulmer, 'What is a Constitution? Principles and Concepts' (International Institute for Democracy and Electoral Assistance, 2017) <<https://www.idea.int/sites/default/files/publications/what-is-a-constitution-primer.pdf>> accessed 14 March 2025

independence constitutions, such as the 1960 independence constitution, the 1963 Republican Constitution, the 1979 Constitution, the 1983 Constitution, and finally, the 1999 Constitution.³⁷ In Nigeria, the fundamental document that establishes the people's rights, obligations, and privileges is the 1999 Constitution, which must always be respected.³⁸ In the case of *Attorney General of Federation v Abubakar*,³⁹ the apex court posited, amongst other things, that the 1999 Constitution remains the foundation of the Nigerian democracy where the rule of law is upheld. Most importantly, the Constitution is the grundnorm and from it, all other laws of the land subsist. Hence, Section 1(1)⁴⁰ provides that the Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

However, from the foregoing, the phrase from the Preamble, '...to live in unity and harmony as one indivisible and indissoluble sovereign nation...' is a direct and clear pointer that self-determination, at least by way of secession, is contrary to the spirit of the Constitution because secession is known to alter and divide the country, thus challenging the indivisibility and indissolubility status of the country. In addition, it is suggestive that any struggle that tends to occasion the breakaway of any part of the country challenges the territorial integrity of the country and is unconstitutional.⁴¹ It describes the nation Nigeria in Section 2(1) as one indivisible and indissoluble sovereign State, reinforcing the opening statement of the Preamble.⁴²

³⁷MY Zakari, 'The History of the Constitutional Developments in Nigeria' Nasarawa State University Repository <<https://keffi.nsuk.edu.ng/server/api/core/bitstreams/7680af4f-c49d-4a55-9c71-c0b9dceac1fb/content>> accessed 14 March 2025

³⁸ Ogugua Ikpeze, 'Constitutionalism and Development in Nigeria: The 1999 Constitution and Role of Lawyers' *Nnamdi Azikiwe Journal of International Law and Jurisprudence* (2010) (1) pp. 228 <<https://www.ajol.info/index.php/nauijl/article/view/138210>> accessed 14 March 2025

³⁹ (2007) ALL FWLR (Pt. 37) 1264

⁴⁰ CFRN 1999

⁴¹ CE Okeke, 'Implementation of Self-Determination in Africa through Secession: An Appraisal of the Legal Hurdles' *African Journal of Criminal Law and Jurisprudence* (2021) (6) 175

⁴² Section 2(2) Constitution of the Federal Republic of Nigeria, 1999 (as amended)

3.6 Criminal Code Act LFN⁴³ 2004

The Criminal Code Act seeks to safeguard Nigeria's sovereignty by criminalising acts threatening the State's political stability. Hence, the inclusion of offences of treason and treasonable felonies reinforces the State's authority to suppress insurrection, rebellion, or secessionist activities that endanger national security. However, these provisions can undermine legitimate self-determination claims if peaceful advocacy or political agitation is construed as criminal conduct.

Section 37 of the Act criminalises attempts to unlawfully overthrow the President or a State Governor. Specifically, it defines treason as the act of levying war against the State, conspiring to depose the President or Governor or engaging in acts intended to compel the government through violence, which is punishable by death and committed by a citizen. In addition, a treasonable felony is marked by any attempt or conspiracy by a person or persons to depose the President or a Governor, to levy war against Nigeria to compel the President to change his measures or to intimidate legislative authority and efforts, inciting rebellion or promoting civil unrest.⁴⁴ Furthermore, the Act criminalises acts that promote conflict between Nigeria's ethnic or regional groups, imposing harsh penalties for individuals or groups who incite violence or attempt to create discord between communities.⁴⁵ The Criminal Code Act's provisions on treason and treasonable felonies reflect Nigeria's commitment to safeguarding national security. However, their broad scope and severe penalties create potential misuse, particularly against peaceful self-determination groups.

3.7 The Terrorism (Prevention and Prohibition) Act 2022

The Terrorism (Prevention and Prohibition) Act 2022 was enacted to provide a comprehensive framework for preventing, prohibiting, and punishing terrorist activities in Nigeria.⁴⁶ Therefore, it facilitates the implementation of Nigeria's obligations under international counterterrorism conventions, reinforcing its commitment to global security cooperation. Section 2(3) of the Act describes acts of terrorism that is deliberately done

⁴³ Laws of Federation

⁴⁴ Section 41 Criminal Code Act LFN 2004

⁴⁵ Section 42 Criminal Code Act LFN 2004

⁴⁶ Explanatory Memorandum Terrorism (Prevention and Prohibition) Act, 2022

with malice, aforethought which may seriously harm or damage a country or an international organisation and can reasonably be regarded as having been intended to unduly compel a government to act or refrain from acting, intimidate a population or destabilise the social, political, or economic structure of the country, otherwise influence such government or international organisation by intimidation or coercion.

This broad language presents a risk of classifying organised self-determination efforts and claims as terrorism, especially where groups employ aggressive advocacy or civil disobedience. Furthermore, the Act empowers the President, upon the recommendation of the Attorney General or the National Security Adviser, to declare any group a proscribed organisation if it is believed to promote acts of terrorism.⁴⁷ Thus, groups advocating self-determination that employ confrontational strategies may risk proscription, regardless of whether they pose an actual threat to public safety. Also, the Act criminalises both direct and indirect support for terrorist organisations, including moral assistance, financial aid, and public endorsement. However, the absence of clear safeguards to distinguish between violent extremism and peaceful political advocacy amplifies concerns about human rights abuses and suppression of lawful agitation. The Act is also silent on the mode of prosecution.⁴⁸

4.0 Legal issues and Challenges in the application of the principle of self-determination in Nigeria

The right to self-determination remains a cardinal principle of international law, yet its application in Nigeria portrays significant legal, political, and social complexities.⁴⁹ While international instruments recognise self-determination as a fundamental right, its enforcement in Nigeria faces unique challenges and peculiarities.⁵⁰ Hence, this section

⁴⁷ Section 3(1)(c) Terrorism Prevention and Prohibition Act 2022

⁴⁸ Nasiru Tijani, 'The Effective Prosecution of the Crime of Terrorism and Terrorism Related Offences in Nigeria: Challenges and Prospects' *Beijing Law Review* (2023) (14) pp.300-323 <<http://www.scrip.org/journal/paperinformation?paperid=123865>> accessed 24 March 2025

⁴⁹ Paul Nwala, 'An Appraisal of the Right of Indigenous People on Self-Determination within the Context of International Law: A Study of Nigeria' *Escae Journal of Management and Security Studies* (2021) (1) (2)

⁵⁰ Mike Omilusi, Isaac Oladeji, Ade-Johnson Shade, 'Freedom of Expression as Threat to National Security: Self-Determination, Radio Biafra and the Political Space in Nigeria' *Journal of Science, Humanities and Arts* (2020) (7) (1)

examines the core challenges inhibiting the practical application of the principles of self-determination in Nigeria under three key sub-themes.

4.1 Constitutional Ambiguity and Legal Gaps

The Nigerian domestic framework presents significant ambiguity in deciphering the application of the principles of self-determination. The grundnorm legal order – The 1999 Constitution of the Federal Republic of Nigeria in its Section 2(1) firmly asserts Nigeria as one indivisible and indissoluble sovereign state, thus restricting any attempts at secession or external self-determination. This constitutional rigidity has stood as a significant obstacle to groups seeking to assert their right to self-determination protected under international law, as no clear domestic framework explicitly provides or denies the right to self-determination, creating confusion as to then Practical application of this right.⁵¹

Although Nigeria is a party and signatory to international frameworks such as the United Nations Charter, the ICCPR, ICESCR, etc and key regulatory bodies like the United Nations, African Union, that provide and advocate for the legal right to self-determination of all peoples, Nigeria has yet to ratify and domesticate them creating legal gaps and fuelling agitations. Generally, treaties cannot ordinarily confer enforceable rights and obligations on individual citizens, except positive actions have been taken by the state Parties to domesticate such laws.⁵² Thus, these ratified treaties have had limited influence in domestic courts due to the absence of enabling legislation. In this wise, only the ACHPR has been ratified and domesticated in compliance with the provisions of section 12 of the 1999 CFRN.

However, even with its domestication as the ACHPR (Ratification and Enforcement) Act Cap. A9, LFN 2004, conflicts have arisen as to its legality in view of the extent provisions of the Constitution. For instance, in *Risqat Badmus & 3 Ors v Federal Republic of Nigeria*⁵³, the applicant has, on behalf of the Yoruba people, sought to enforce their right to self-determination under Article 20 of the African Charter. They alleged the inadequacy of the 1999 Constitution to administer the territory of the Yoruba people. Thus, they prayed

⁵¹ Odinakachukwu Okeke, 'The Indivisibility and Indissolubility of Nigeria Vis-À-Vis the Right of Self-Determination' *IJOCLLEP* (2020) (2) (2)

⁵² M O Alabi, 'UN Reforms: Withdrawal of Membership as an Option?' *African Journal of International Affairs and Development* (2008) (13) (1&2) 66-93

⁵³ CW/CCJ/APP/08/22 (Unreported)

the court to rule over the self-determination of the Yoruba people and persuade the respondent to organise a referendum for its exit. The court held that the applicant failed to prove that they can act as bearers of the right to self-determination as it is a collective right rather than an individual one. By the court's decision, the ACHPR cannot be interpreted as superior to the 1999 Constitution by section 1(3).

More prominent under this issue are debates surrounding the legitimacy of the grundnorm since its emergence in 1999. The Constitution has been ascribed as an illegitimate byproduct of the military on the Nigerian polity as a final parting gift before complete transition into civilian governance.⁵⁴ Out of 120 million Nigerians, just 450 people, mostly politicians, were purportedly involved in the 1999 Constitution's creation, contributing written comments to the Constitution Debate Committee (CDC).⁵⁵ With military additions to the text that the Committee had previously submitted, the 1999 Constitution was enacted. It portrays the realisation that the Constitution was not passed to demonstrate the free will of the people which it governs but the dictates of a select few.⁵⁶ And so, the Preamble phrase 'We the People.....' is deemed as grossly inappropriate in representing the general interests of the people of Nigeria.

Consequently, Nigeria's legal framework lacks a structured constitutional mechanism that balances self-determination rights with territorial integrity, creating tension between its international obligations and domestic legal realities. Ultimately, these constitutional ambiguities and legal lacunas leave self-determination groups voiceless with limited legal recourse, often forcing them to resort to political agitation or confrontational tactics. The absence of a clear legal pathway to assert self-determination continues to fuel discontent, contributing to instability and strained relations between the government and aggrieved ethnic groups compared to the situation in the United Kingdom, where the conduct of referendum in Scotland was an outcome of the Edinburg Agreement.⁵⁷

⁵⁴ Oluwaseye Ikubanni, Mojeed Alabi, 'A Critique of the Constitutionality and Constitutionalisation of the Right to Self-determination under the Nigerian Constitution' *UCC Law Journal* (2024) (4) (1) pp.117-157

⁵⁵ FT Abioye, 'Constitution Making, Legitimacy and Rule of Law: A Comparative Analysis' *The Comparative and International Law Journal of Southern African* (2011) 4491, 59-79, 72

⁵⁶ TI Ogowewo 'Why the Judicial Annulment of the Constitution of 1999 is Imperative for the Survival of Nigeria's Democracy' *Journal of African Law* (2000) (44) (2) 135

⁵⁷ Iain Halliday, 'The Road to the Referendum on Scottish Independence: The Role of Law and Politics' (2014) *Aberdeen Student Law Review* (5) (26).

Furthermore, international law has yet to propose a definition of the term, which has brought about numerous meanings propounded by varying scholars. Over time, this has created judicial confusion and passivity in interpretations and has expanded legal gaps. Furthermore, the law makes provision for treason and terrorism under the Criminal Code and the Terrorism (Prevention and Prohibition) Act 2022, but in the absence of clear safeguards to distinguish between violent extremism, peaceful advocacy and self-determination, concerns are amplified about human rights abuses and suppression of lawful agitation. The Independent People of Biafra emerged in 2012, and for the first time since foremost agitations for self-determination began in the 1960s, the group was declared a terrorist organisation in 2017.⁵⁸ This compelled the group to join the Unrepresented Nations and Peoples Organisation as a form of shield to express its interests and claims internationally.⁵⁹

4.2 Federalism Structure and Governance Imbalance

Federalism, according to Kenneth C. Wheare, is a constitutional system that divides governmental powers between levels of government in a manner that ensures autonomy and coordination within their respective spheres.⁶⁰ In Nigeria, federalism arose from plural colonial administrative structures introduced by the British, but the expectations of unity, autonomy, and development that informed its adoption have largely not been realised.⁶¹ Although Nigeria operates a three-tier federal structure comprising the federal, state, and local governments, the system is heavily centralised. The dominance of the federal government undermines the autonomy of states and local governments, contrary to the core principles of true federalism such as non-subordination, interdependence, democracy, and

⁵⁸ <https://nigsac.gov.ng/IndSancDetails?id=27> accessed 26 March 2025.

⁵⁹ Chidi Nwkopara, 'UN has admitted Biafra as 46th member of UNPO – Uwazurike' *Vanguard* (Lagos, May 2020) <<http://www.vanguardngr.com/2020/05/un-has-admitted-biafra-as-46th-member-of-unpo-uwazurike/>> accessed 26 March 2025.

⁶⁰ Aderonke Majekodunmi, 'Federalism in Nigeria: The Past, Current Peril and Future Hopes' *Journal of Policy and Development Studies* (2015) (9) (2) <http://www.arabianjbmr.com/JPDS_index.php> accessed 23 March 2025

⁶¹ Vitus Achu Amadi, 'Nigerian Federalism and Agitations for Self-Determination' *International Journal of Social Sciences and Conflict Management* (2022) (7) (3) pp. 57-93 <<http://www.casirmediapublishing.com/>> accessed 23 March 2025.

constitutionalism.⁶² This distorted structure has fostered dependency, corruption, marginalisation, and inefficiency, rather than development. As a result, Nigeria's federal system has contributed to persistent governance failures and agitations for self-determination. Despite the 176 local government reforms⁶³ and recent judicial affirmations of local government financial autonomy, subnational governments remain fiscally dependent, with states often resisting implementation, thereby weakening grassroots governance and sustainability.⁶⁴

In addition, over the years, there has been a significant imbalance in power distribution and underrepresentation in governance. For this cause, the Federal Character Principle was incorporated into the 1999 Constitution to address these concerns.⁶⁵ It provides that the composition of the government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria, in accordance with the need to promote national unity and command national loyalty. Nevertheless, this provision of law and this principle are not reflected in governance, spurring agitations from affected quarters. Since the 1999, 2003, 2007, 2011, 2015, 2019, and 2023 elections, the Nigeria electoral and political landscape though has progressed significantly, yet it has fallen below some certain standards, with issues such as insecurity, corruption, political interference and Nigerian elites' manipulations impeding Nigeria's Federalism.⁶⁶ For instance, one significant consideration during the concluded 2023 presidential elections was the fact that the South-East had never gotten a feel of the presidential helm of affairs, putting two major aspirants – President Bola Ahmed Tinubu and Peter Obi against each other.⁶⁷ On this wise, tribalism, ethnicity, and religion have had

⁶² MF Othman, N Osman, IS Mohammed, 'Nigerian Federalism: An Overview of its Imperatives and Impediments' *Journal of International Studies* (2021) (17) pp. 183-209 <<https://e-journal.uum.edu.my/index.php/jis/article/view/12286/3382>> accessed 23 March 2025

⁶³ Abdul-Aziz Sani Zango, Isah Shehu Mohammed, 'An Assessment of Challenges to Local Governments and their Autonomy in Nigeria' *Kashere Journal of Politics and International Relations* (2025) (3) (1)

⁶⁴ Unwana James, 'The Supreme Court Grants Local Government Autonomy: Where to Go from Here' *SSRN* 28 August 2025 <https://papers.ssrn.com/sol3/paper.cfm?abstract_id=5397205> accessed 22 January 2026

⁶⁵ Section 14(3) of the 1999 CFRN

⁶⁶ Awofeso Olu, Obah-Akpowoghaha, Nelson Goldpin, 'The Challenge of Federalism and its Implications for The Nigerian State' *International Journal of Politics and Good Governance* (2017) (8) (8.3)

⁶⁷ Abdurashheed Muhammad, 'Under the Shadow of the Siamese Twin: Ethnicity, Religion, and Nigeria's 2023 Presidential Election' *Hasanuddin Journal of Strategic and International Studies* (2023) (2) (1) pp. 21-31 <<https://journal.unhas.ac.id/index.php/hjsis/>> accessed 26 March 2025

a significant impact on how the federal government functions, benefitting one faction as opposed to the other which does not reflect true federalism. The Tinubu-led administration has continuously been criticised for negating the federal character principle over its ministerial appointees.⁶⁸ In the Buhari-led administration 2015- 2023, similar concerns was raised as to the lopsided political appointment, unequal representation, nepotism and corruption, all undermining national integration.⁶⁹

The reality is that even the actualisation of the Federal character principle as an oversight for dominance is impeded by the non-justiciability clause in section 6(6)(c).⁷⁰ In addition, the continual insecurity concerns within the federation necessitates a loss of public confidence and trust in the central government in ensuring the security and welfare of the citizens.⁷¹ From the Boko-Haram terrorist group which has led to the loss of millions of lives and properties with the past years to the farmer-herders conflict between the South and the North, it shows. To combat the herder's conflict, the South-West governors had under the aegis of the South-West Governor's Forum established the Western Nigeria Security Network known as 'Amotekun' on January 9, 2020 to function as the region's indigenous security in a bid to address growing concerns and assuage the people confidence that they are cared and looked after by the people they elected into office despite resistance of the federal government.⁷²

In March 2021, Sunday Igboho and his secessionist group made a declaration for an independent Yoruba Nation in Ibadan, Oyo State, driven by the need to liberate the Yoruba people from Fulani domination and enslavement, debauched national leadership and

⁶⁸ Michael Ovat, 'Appoint two more ministers from South-East, APC youth' *Nigerian Tribune* (Lagos, 25 September, 2025) <<https://tribuneonlineng.com/appoint-two-more-ministers-from-south-east-apc-youths-urge-tinubu/>> accessed 25 March 2025

⁶⁹ Celestine Udeh, Obinna Augustine, Ogu Chris-Sanctus, 'The Lopsided Appointments of Buhari's Administration; Federal Character Principle and National Integration in Nigeria' *International Journal of Innovative Legal & Political Studies* (2023) (11) (2) pp. 59-72 <https://www.researchgate.net/publication/371965773_The_Lopsided_Appointments_of_Buhari's_Administration_Federal_Character_Principle_and_National_Integration_in_Nigeria> accessed 24 March 2024.

⁷⁰ Ogugua Ikpeze, 'Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development' *IISTE* (2015) (5) (18) <<https://www.iiste.org/Journals/index.php/DCS/article/view/25478/26416>> accessed 24 March 2025

⁷¹ Section 14(2) of the 1999 CFRN

⁷² Editorial, 'Upgrade Amotekun, save South-West again' *The Punch* (Ogun, 14 January, 2025) <<http://punchng.com/upgrade-amotekun-save-south-west-again/>> accessed 24 March 2025

insecurity, among others.⁷³ Ultimately, these imbalances have portrayed the nation in a unitarist light instead of a federal one, further amplifying separatist calls and weakening the will for national unity.⁷⁴ Over and over again, clamours for restructuring and autonomy to attain true federalism have remained loud.⁷⁵ The imbalance in Nigeria's federal structure has, in turn, deepened ethnic divisions as marginalised groups grow disillusioned with the system; ethnic nationalism has become a prominent tool for mobilising separatist movements.

4.3 Ethnic Division and Separatist Call for Independence

Before colonialism, all the ethnic groups that comprise present-day Nigeria were autonomous entities that enjoyed free control of their political will, social and cultural will and economic resources without interference from other existing groups. Thus, these pluralistic societies had different overlapping religious and ethnic divisions. Thus, the 1914 amalgamation of the Northern and Southern protectorates without consent unified the territories under one umbrella called Nigeria, altering the initial peaceful autonomous arrangement.⁷⁶ As a forced marriage and breach of initial conditions, it is unsurprising that separatist agitations have existed even before formal independence in 1960. As Awolowo observed, Nigeria is not a nation but a mere geographical expression, and it would be a mistake to designate ethnic groups as tribes, as each of them is a nation by itself.⁷⁷

The Richards Constitution of 1951 fundamentally instituted the nation into Eastern, Western and Northern regions. Separatist agitation is not new, as seen in these current times, as each of these regions has, at one time or the other, wanted to separate. The motion

⁷³ John Nwachukwu, 'Sunday Igboho declares independence, says Yoruba land no longer part of Nigeria' *Daily Post*, (Lagos, March 18, 2021) <<https://dailypost.ng/2021/03/18/sunday-igboho-declares-independence-says-yoruba-land-no-longer-part-of-nigeria-video/>> accessed 26 March 2025

⁷⁴ Boris Happy Odalolu, "Federalism and The Renewed Clamour for Restructuring in Nigeria" in Godwin Onu & Chukwuma Okoli (eds) *Federalism and Separatist Agitations in Nigeria* Cambridge Scholars Publishing, United Kingdom, 2024

⁷⁵ Moses Adagbabiri, Ugo Chuks Okolie, 'Federalism and Political Restructuring in Nigeria: The Panacea for Mutual Coexistence and Management of Nation's Resources' *The Journal of International Social Research* (2018) (11) (59) pp. 304-319

⁷⁶ Chukwu, Hamuel Oti and Okoji, Ugochukwu Anokwuru (2024) *The Amalgamation of 1914 and the Lingering Challenge of Nation-Building in Nigeria*. NIGERIAN JOURNAL OF AFRICAN STUDIES (NJAS), 6 (1). pp. 1-6. ISSN 2734-3146

⁷⁷ Obafemi Awolowo, *Path to Nigerian Freedom* (Faber and Faber: London, 1947), 47-48

was moved in the House of Representatives in 1953 by Anthony Enahoro, calling for self-government in 1956. The Northern region also threatened secession. The claim that finally broke the camel's back was the Eastern government in 1967 through Biafra. Before independence, even political parties in the early years were a faction of ethnic division due to the fear of dominance.⁷⁸ For instance, in the 1960 elections, the NCNC was highly Eastern, represented by Nnamdi Azikwe; the NPC was highly Northern, represented by Ahmadu Bello and Tafawa Balewa, who became the first Indigenous Prime Minister; and finally, the AG (Egbe Omo Oduduwa) was highly Western and Mid-Western, represented by Obafemi Awolowo.⁷⁹

Undoubtedly, it can safely be said that the fear of dominance remains a continuous struggle leading to ethnic nationalism, segregating a people who ought to be driven by national unity. Realistically, no individual ever wants to feel as though they will be dominated by the other and, in retaliation, will fight back to ensure he dominates instead. These inequalities have caused mistrust among ethnic groups, affecting the governance of the central government, which sits at the helm of authority. To this end, the Movement for the Actualisation of the Sovereign State of Biafra (MASSOB) was established in 1999 to fight for the actualisation of the emancipation of Ndigbo and the reestablishment of the Republic of Biafra (ROB).⁸⁰ The Movement for the Emancipation of the Niger Delta (MEND) began in 2006 as an offshoot of the Niger Delta Volunteer Force. It was established to redress the problems in the Niger Delta region, as well as to bring the deplorable living conditions of the people in the region to the attention of the federal government and so many other ethnic nationalism groups like the IPOB, the O'odua People's Nation (OPC), Yoruba Nation, Egbesu Boys of Africa (EBA), the Niger Delta Volunteer Force (NDPVF), the Movement

⁷⁸ Samuel Uwaifo, 'Ethnicity and Development of Political Parties in Nigeria' *Journal of Poverty, Investment and Development* (2016) (28) <<https://core.ac.uk/download/pdf/234695678.pdf>> accessed 27 March 2025

⁷⁹ Peter Kertyo, Thaddeus Ityonzughul, 'Religion and Politics in Nigeria: Analysis of the 2023 Presidential Election' *Nigeria Journal of African Studies* (2024) (6) (2) <https://www.researchgate.net/publication/387788413_Religion_and_Politics_in_Nigeria_Analysis_of_the_2023_Presidential_Election> accessed 26 March 2025.

⁸⁰ Agence France Presse (AFP). 2 December 2000. "Several Dead in Raid on southeast Nigerian Town." (NEXIS)

for the Emancipation of Niger Delta (MEND), the Arewa Peoples' Congress (APC), Biafra Zionist Movement (BZM), the Niger Delta Avengers (NDA) etc.⁸¹

Arguably, the 2014 National conference tagged CONFAB was held under the leadership of Former President Goodluck Jonathan to address socio-economic and political challenges besetting the country, such as resource control, fiscal federalism, devolution of power, creation of states, forms of government, revenue allocation, ethnic nationalities and minority question, and resolution of the herders and farmers crises.⁸² It also offered some recommendations on how Nigeria can be restructured to achieve more tremendous success as a nation. However, these recommendations have, for the past 10 years, remained unfulfilled. These ethnic agitations and nationalism are not just political issues but often overlap with economic grievances.

In another perspective, the National Youth Service Corp scheme was initiated to ensure national integration, reconstruct, reconcile and rebuild the country from the ashes of ethnicity followed by the events of the civil war. However, this sense of service has in recent years been marred by indignation and kidnapping. According to reports from the Foundation for Investigative Journalism⁸³, kidnappers have made at least 46.1 million from the abduction of Corp members alone in 2023-2025 and at least 83 Corp members kidnapped across the country.

5.0 Impact and Effect Arising from Challenges Raised

For clarity, the impact and consequences will be viewed from two critical areas, which are the economic perspective and the judiciary's inertia.

The economic impact of these prolonged agitations has significantly disrupted economic activities and increased insecurity, particularly in regions like the Southeast. For instance, the IPOB sit-at-home orders, enforced every Monday in the five states of Eastern Nigeria since Nnamdi Kanu's detention in 2021, have paralysed commerce, leading to financial

⁸¹ <https://www.ecoi.net/de/dokument/1256720.html> accessed 26 March 2025.

⁸² Clifford Ndujihe. Henry Umoru, 'How 2014 Confab delegates want Nigeria restructured' *Vanguard* (Lagos, May 13, 2017) <<https://www.vanguardngr.com/2017/05/2014-confab-delegates-want-nigeria-restructured/>> accessed 27 March 2025

⁸³ Opeyemi Lawal, 'Kidnappers Make ₦46.1m From Abducting NYSC Members in 2 Years' (*Foundation of Investigative Journalism*, 2 March 2025) <<https://fij.ng/article/kidnappers-make-n46-1m-from-abducting-nysc-members-in-2-years/>> accessed 22 April 2025

losses for businesses and daily wage earners.⁸⁴ For Governor Charles Soludo of Anambra state, the state's loss estimates are 19.6 billion, and for former Governor of Ebonyi, Dave Umahi, the figure is about 10 billion due to the sit-at-home.⁸⁵ Similarly, the instability in the Niger Delta has impacted oil production, weakening Nigeria's economic stability. In addition, continued agitations and violent crackdowns have caused social fragmentation and fostered distrust among ethnic groups. Marginalised communities increasingly view the government as biased, worsening feelings of exclusion, and this has weakened the drive towards national identity, promoting ethnic loyalty over collective unity.

Undoubtedly, the judiciary's reluctance and inertia to provide clear legal interpretations on self-determination has left unresolved tensions festering. For instance, in the unreported case of *Chief Sunday Adeyemo v Attorney General of the Federation & 2 Ors*⁸⁶, the trial court granted the reliefs of the applicant, which included his right to self-determination. However, on appeal in the case of *Attorney General of Federation & 2 Ors. V. Chief Sunday Adeyemo*⁸⁷, the court ruled that the right to self-determination is against the spirit of the Constitution of Nigeria. The subsequent appeals reversed these gains, reinforcing ambiguity.

6.0 Conclusion

The concept of self-determination remains contentious in Nigeria due to the absence of explicit legal provisions and the reluctance of the judiciary to define its legal scope. While international law recognises the right to self-determination, its domestic application remains constrained by Nigeria's constitutional structure. Current international and national legal frameworks are not efficacious to the Nigerian polity and have, over time, not sponsored the people's feeling of belongingness and choice. The tensions between

⁸⁴ Obilor Mary, Osita-Njoku Agnes, Awogu Olisa, 'Socio-Economic Implications of IPOB Sit-at-home in South-East, Nigeria' *Multidisciplinary Research and Development Journal Int'l* (2024) (5) (1) <https://www.researchgate.net/publication/381194179_SOCIO-ECONOMIC_IMPLICATIONS_OF_IPOB_SIT-AT-HOME_SOUTH_EAST_NIGERIA> accessed 26 March 2025

⁸⁵ Felix Asogwa, Malachy Ochie, 'Assessment of the Impact of IPOB'S Sit-at-home order on the Economy of South-East Region in Nigeria, 2021-2023' *South East Political Science Review* (2023) (8) (1) <<https://journals.npsa-se.org.ng/index.php/SEPSR/article/view/31/30>> accessed 26 March 2025

⁸⁶ Suit number M/345/2021 87

⁸⁷ Suit number CA/IB/373/2021 (Unreported)

recognising self-determination and preserving territorial integrity have given rise to significant legal issues and challenges in Nigeria. Indeed, these issues disallow the full manifestation of the principles of self-determination as they ought to be for the people. The more these issues brew, the deeper it drives a wedge into national unity. Hence, unless Nigeria undertakes significant legal and policy reforms, self-determination agitations may persist, potentially threatening its national unity and stability. Thus, a balance must be struck between maintaining territorial integrity and addressing legitimate claims of marginalised groups in the federation.

7.0 Recommendations

In proffering solutions to these prevailing issues baffling Nigeria's landscape in exercising the right of self-determination, the study recommends targeted legal and constitutional reforms. The Nigerian Constitution should recognise internal self-determination rights within a clearly defined framework to avoid fuelling ethnic divisions. Although section 42 of the 1999 Constitution offers a broad application in advocating against discrimination against persons in terms of ethnic group, targeted laws concerning ethnicity and resource control must be enacted and implemented. In addition, the umbrella structure of these reforms must create Nigeria into a more decentralised system of governance, not just on paper but in practical application and promote ethnic tolerance.

Secondly, the paper recommends the creation of an ecosystem in the country that champions a sustainable conflict resolution system across all boards. Rather than force, which largely impeded the fundamental human rights of the populace, the government should take intentional steps to engage separatist groups in structured dialogue. The Nigerian government should adopt an inclusive governance structure such that where a part of the polity is aggrieved, they can freely express their concerns without fear of violence and incursion and be heard. In addition, more than ever before, opposition political associations should be given liberty to walk in its role of checks and balances as a moral compass to the governing political party.

Finally, dialogue must remain ongoing and frequent and not be sought as an afterthought, piled up until final sparks disrupt like the 2014 CONFAB. Although this event presented a positive attempt at dialogue, it was delayed, and there was no consensus, leading to the non-implementation of all agreements reached. Thus, structured models that promote

longevity, such as mediation and arbitration, bearing semblance to what is operative in Chapter VII of the United Nations Charter is of vital implementation. Above all, the Nigerian government must consistently uphold its international human rights obligations in compliance with relevant treaties to which it is a party and signatory.

BEYOND INTERNATIONAL LAW: REASSESSING THE MUNICIPAL REGULATION OF ESPIONAGE IN NIGERIA

Mohammed Amali * & Halom Andemi **

Abstract

Espionage is commonly analysed within the framework of international law and the law of armed conflict where it is often treated as an inevitable but legally indeterminate aspect of inter-state relations. This focus has tended to obscure the fact that espionage, particularly in peacetime, is predominantly regulated and experienced at the domestic level. This article moves beyond the international law paradigm to examine espionage as a municipal and constitutional issue within the Nigerian legal system. It argues that while international law maintains a position of strategic silence on espionage, Nigeria's response to espionage-related activities is shaped by domestic criminal legislation, constitutional norms, and the operational practices of security and intelligence institutions. Drawing on comparative insights from the United Kingdom and Canada, the article highlights how statutory clarity, intent thresholds, and public-interest safeguards can protect national security without undermining constitutional rights. It finds, with normative proposals for recognising espionage within Nigerian law while safeguarding fundamental freedoms and public accountability. The article contends that a clearer municipal and constitutional articulation of espionage is necessary to align intelligence practices with the rule of law and to prevent the erosion of constitutional safeguards under the guise of national security.

Keywords: Constitutional Rights, Espionage, International Law, National Security, Whistleblowing, Secrecy Laws.

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1. Introduction

Espionage is traditionally understood as an activity conducted between sovereign states, involving the clandestine collection of information that benefits one state to the detriment of another. International law situates espionage within issues of sovereignty, non-intervention, and diplomatic relations. This inter-state framing is inadequate in understanding how espionage operates in Nigeria, where the offence is neither formally defined, nor codified. Consequently, the legal landscape governing espionage in Nigeria is fragmented, doctrinally underdeveloped, and prone to constitutional tension. Scholarly engagement with espionage-related offences in Nigeria is also notably thin, creating a gap in understanding how such conduct is prosecuted, controlled, and constrained under municipal law. This notwithstanding, Nigeria's legal framework for protecting state secrets reflects a longstanding emphasis on national security.

Rooted in colonial-era values that seemingly prioritise secrecy over transparency and accountability, conduct commonly associated with espionage is criminalised under various statutes in Nigeria.¹

Against this background, this article examines how Nigeria's espionage-related offences intersect with fundamental rights. Using a doctrinal and comparative methodology, the article positions espionage not merely as a matter of secrecy but as a constitutional and legal governance challenge. The article proposes reforms that align national security objectives with transparency, whistle-blower protections, and democratic governance in Nigeria.

The article is divided into six parts. Immediately after this introduction, Part 2 is the conceptual and theoretical framework. Parts 3, 4, and 5 deal with the legal and institutional architecture governing espionage in Nigeria, the ethical dilemmas of the subject, and a comparative study of two jurisdictions. Part 6 synthesises the recommendations and conclusion of the paper.

¹ The Official Secrets Act, 1962 (Act No. 29), the Criminal Code Act, Cap 77 Laws of the Federation of Nigeria 1990, the Penal Code, 1960 (Act No. 25), and the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 (Act No. 17).

2. Conceptual Analysis And Theoretical Underpinnings

2.1 Conceptual Analysis

2.1.1 Espionage

Espionage is the conscious, deceitful collection of information, ordered by a government or organization hostile to or suspicious of those the information concerns, accomplished by persons unauthorized by the target to do the collecting.² A lot of classic literature treats espionage as a wartime phenomenon, with discussions revolving around spies, and secret agents, persons who possess a romantic mystique of international intrigue, but whose activities at times, debases human trust.³ Conversely, literature concerning espionage and international law outside the laws of war is much less developed. In fact, traditional international law is remarkably oblivious to the peacetime practice of espionage.⁴ While espionage is often associated with war, its practice extends into times of peace.

In peacetime, States engage in intelligence-gathering for various purposes. Espionage in this context is less about immediate military objectives, but more about anticipating threats, monitoring foreign policy developments, and safeguarding strategic interests. This broadens the conventional understanding of espionage, highlighting that it is not merely a wartime tool but a constant feature of statecraft. Unlike wartime where espionage may be partially legitimised under the laws of war, peacetime intelligence activities often operate in a grey area of domestic and international law, raising questions about sovereignty, privacy, and human rights. These challenges compel states to balance the imperative of national security against the need to respect legal boundaries and civil liberties, demonstrating that peacetime espionage is not merely a technical or operational issue, but a complex legal and ethical dilemma requiring careful regulation and oversight.

In Nigeria, peacetime espionage is complicated by the absence of comprehensive and specific legislation. This lacuna raises practical and ethical concerns that, without clear

² Geoffrey B. Demarest, 'Espionage in International Law' *Denver Journal of International Law & Policy* [1996] (24) (2) 321-348 <<https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1657&context=djilp>> accessed 16 February 2026.

³ Henry Wager Halleck, *Halleck's International Law or Rules Regulating the Inter-course of States in Peace and War* (H.H. Bancroft 1861).

⁴ Quincy Wright and Others, 'Forward' in Roland J. Stanger and Richard A. Falk *Essay on Espionage and International Law* (Ohio State University Press 1962) <<https://ia801709.us.archive.org/16/items/essaysonespionag00stanrich/essaysonespionag00stanrich.pdf>> accessed 16 February 2026.

statutory guidance, intelligence activities may infringe constitutional rights. Nigeria faces the dual challenge of ensuring national security through peacetime intelligence operations while simultaneously adopting a legal framework that upholds civil liberties and provides accountability for espionage conducted outside the context of war.

2.1.2 International Law and Espionage

International law has long occupied an uneasy position in relation to espionage because it is a sensitive issue that is normally measured against situational ethics or political convenience, rather than the yardstick of international law.⁵ While intelligence gathering is universally practised by States, international law neither comprehensively regulates nor expressly prohibits espionage as a general category of conduct, particularly in peacetime. As a result, the legal status of espionage is mired in uncertainty and ambiguity. This doctrinal silence is not merely accidental, but a reflection of the conceptual foundations, structural limits, and normative priorities of international law as a decentralised legal system grounded in State sovereignty and consent.

International law is principally designed to regulate overt inter-state relations. Espionage, by contrast, is inherently clandestine, operating outside formal channels of international engagement. Its regulation would require States to subject their most sensitive national security activities to external legal scrutiny, an outcome fundamentally at odds with the sovereignty-preserving logic that underpins international law. Consequently, international law has historically treated espionage as a political and strategic reality rather than as a justiciable legal wrong.

Demarest views espionage as “an unfriendly act,” that does not violate international law.⁶ He also considers that intelligence gatherers should not be considered as spies if collecting within the scope of their express identities.”⁷ His concern is to ensure that people are not so labelled with a broad brush.⁸ Manuel Garcia-Mora however, believes that “peacetime espionage is a violation of international law.”⁹ Quincy Wright similarly believes that

⁵ Juan Pablo Hernandez, ‘The Legality of Espionage under International Law’, *The Treaty Examiner* [2020] (1) 31-38 <https://treatyexaminer.com/wp-content/uploads/2020/04/Hernandez_Espionage-2.pdf> accessed 16 February 2026.

⁶ (n 2).

⁷ *ibid.*

⁸ *ibid.*

⁹ Manuel R. Garcia-Mora, ‘Treason, Sedition and Espionage as Political Offenses Under the Law of Extradition’ *University of Pittsburgh Law Review* [1964] (26) (65).

peacetime espionage violates a duty that States have under international law “to respect the territorial integrity and political independence of other States.”¹⁰

Another school of thought believes that espionage is neither legal nor illegal. To this end, Daniel Silver and Frederick Hitz reason that “there is something almost oxymoronic about addressing the legality of espionage under international law.”¹¹ Silver and Hirtz are realistic about the fact that countries, for reasons of self-defence and for their own interests, are going to commit espionage in other countries. According to them, that may explain why no treaties or conventions specifically prohibit espionage. Christopher Baker places his view of espionage in the third in-between category. He argues that “international law neither endorses nor prohibits espionage, but rather preserves the practice as a tool by which to facilitate international cooperation.”¹² Baker demonstrates that shared intelligence can be very useful in monitoring and enforcing agreements on arms control.¹³ Without espionage, Baker claims, “countries could be required simply to accept the information provided by other treaty partners as accurate.”¹⁴

Where espionage appears within international legal discourse, it does in a context-specific manner. International Humanitarian Law, for example, recognises espionage in armed conflict and distinguishes spies from lawful combatants, denying them prisoner-of-war status if captured.¹⁵ This treatment does not amount to a prohibition of espionage, instead, it regulates its consequences within a narrow wartime framework. This selective engagement reveals a deeper conceptual posture in that international law accommodates espionage through managed ambiguity. States tolerate intelligence activities by other States while simultaneously condemning them rhetorically when exposed. Legal responses typically take non-judicial forms of diplomatic protests, expulsion of intelligence officers, or reciprocal countermeasures, rather than adjudication before international courts or

¹⁰ (n 2) 338 (citing Quincy Wright, *Espionage and the Doctrine of Non-Intervention in Internal Affairs*, in *Essays on Espionage and International Law* 12).

¹¹ Daniel B. Silver, *Intelligence and Counterintelligence* in John Norton Moore & Robert F. Turner (eds), *National Security Law* (updated and revised by Frederick P. Hitz & J.E. Shreve Ariail Carolina Academic Press 2005).

¹² Christopher D. Baker, ‘Tolerance of International Espionage: A Functional Approach’ *American University International Law Review* [2003] (19) (5) 1091-1111 <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1176&context=auilr> accessed 16 February 2026.

¹³ *ibid.*

¹⁴ *ibid* 1105.

¹⁵ (n 2).

tribunals. Such responses underscore the extent to which espionage is treated as a matter of political discretion rather than legal obligation.

The conceptual explanation for this posture lies in international law's reliance on sovereign equality and non-intervention because a general prohibition of espionage would require States to define and limit intelligence activities that they regard as indispensable to national security. International law's silence thus functions as a sovereignty-preserving mechanism. In this sense, the absence of regulation is itself a form of regulation that prioritises inter-state stability over normative coherence. However, this approach produces a significant normative deficit.

By declining to regulate espionage comprehensively, international law leaves unresolved questions concerning legality, accountability, and the protection of individual rights. This deficit has become increasingly pronounced in the contemporary era, characterised by sophisticated surveillance technologies, cyber-espionage, and transnational intelligence cooperation. In federal constitutional systems such as Nigeria's, intelligence and security operations intersect directly with constitutional provisions. Sections of the Nigerian Constitution guaranteeing privacy,¹⁶ personal liberty,¹⁷ and freedom of expression¹⁸ are inevitably implicated by surveillance and intelligence-gathering practices. Unlike international law which largely refrains from interrogating these internal dynamics, constitutional law demands justification, proportionality, and legal authority for state action. The conceptual inadequacy of international law in this regard necessitates a methodological shift. Rather than treating international law as the primary regulatory framework for espionage, it is more accurately understood as a background normative order that delineates the outer boundaries of state conduct while leaving core regulatory questions to domestic legal systems. International law's silence does not negate legality; instead, it relocates the locus of regulation from the international to the municipal sphere.

For Nigeria, reliance on international law alone provides little guidance on how espionage should be regulated within its constitutional order. The absence of clear international prohibitions does not resolve questions of domestic legality, nor does it address concerns about abuse of power, executive overreach, or erosion of civil liberties. These concerns fall

¹⁶ Section 37 of the Constitution of the Federal Republic of Nigeria 1999.

¹⁷ Section 35 of the Constitution of the Federal Republic of Nigeria 1999.

¹⁸ Section 39 of the Constitution of the Federal Republic of Nigeria 1999.

squarely within the domain of municipal and constitutional law where legitimacy is measured not by consent between states, but by conformity with constitutional norms. Accordingly, international law's principal conceptual contribution to the analysis of espionage lies in its limitations. Its silence, deference to sovereignty, and reluctance to adjudicate intelligence practices underscore the necessity of domestic regulation.

Far from rendering municipal analysis secondary, international law implicitly mandates it by declining to occupy the field. In this sense, a study of espionage in Nigeria must move beyond international law, not because international law is irrelevant, but because it is conceptually incomplete and ill-suited as the primary framework for assessing the legality of intelligence activities that operate within domestic constitutional spaces. A municipal and constitutional analysis therefore emerges not as an alternative approach, but as a necessary one. In essence, International law, properly understood, frames the problem, while constitutional law resolves it.

2.1.3 Whistleblowing

Whistleblowing involves the revelation of wrongdoing that is ordinarily concealed by institutional structures. Jubb defines it as a "deliberate non-obligatory act of disclosure" that is made by a person who has or had privileged access to data or information of an organisation.¹⁹ Conceptually, whistle-blowing is rooted in the democratic governance theory, which emphasises openness, checks on power, and institutional responsibility. Where formal oversight mechanisms fail, whistle-blowers may serve as informal regulators by exposing concealed misconduct.

A central conceptual pillar of whistle-blowing is public interest disclosure because the act is justified not by personal gain, but by the need to protect society from harm or injustice. This distinguishes whistle-blowing from leaks motivated by malice or political sabotage. From an ethical standpoint, whistle-blowing occupies a complex space between loyalty and moral responsibility. On one hand, employees owe duties of confidentiality and institutional loyalty, and on the other hand, they owe broader duties to the public and the law. Ethical theories justify whistle-blowing where the harm being exposed is serious,

¹⁹ Peter B. Jubb, 'Whistleblowing: A Restrictive Definition and Interpretation' *Journal of Business Ethics* [1999] (21) 77-94.

internal reporting mechanisms have failed, or disclosure is proportionate and necessary.²⁰ Accordingly, whistle-blowing is conceptualised as a moral response to institutional wrongdoing, rather than betrayal.

Another conceptual aspect is the vulnerability of whistle-blowers within power systems. They frequently face retaliation, dismissal, harassment, or criminal prosecution. This reality underpins the rationale for whistle-blower protection regimes.²¹ Without protection, the conceptual promise of whistle-blowing as an accountability tool becomes illusory. While whistleblowing conflicts with traditional notions of secrecy and loyalty, it represents a modern governance response to systemic abuse of power.²² It is neither mere disloyalty nor unauthorised leaking of information. Its legitimacy flows from its alignment with public interest, ethical responsibility, and the promotion of transparent governance.

In Nigeria, a whistle-blowing Policy was introduced by the Federal Government in 2016 as an anti-corruption mechanism aimed at encouraging individuals to voluntarily disclose information relating to financial misconduct, fraud, bribery, diversion of public funds, and other corrupt practices in public and private institutions. The policy, coordinated primarily through the Federal Ministry of Finance, provides channels through which whistleblowers may confidentially report unlawful activities and, in some cases, receive financial rewards where the information leads to successful recovery of stolen assets. Although the policy has contributed to significant recoveries of public funds and strengthened transparency initiatives, it remains largely administrative in nature because it is not yet backed by a comprehensive legislative framework guaranteeing robust protection for whistleblowers against retaliation, victimisation, or dismissal. Consequently, concerns persist regarding confidentiality, institutional enforcement, and the need for a comprehensive whistleblower protection law in Nigeria.

²⁰ Kiran N, 'Whistle Blowing: Definition, Justification and Precautions' <<https://www.yourarticlelibrary.com/business/ethics/whistle-blowing-definition-justification-and-precautions/99631>> accessed 16 February 2026.

²¹ UNODC, *Whistleblowing Systems and Protections; The Need for Effective Whistle-blowing Systems* (University Module Series: Anti-Corruption, Module 6: Detecting and Investigating Corruption) <<https://www.unodc.org/e4j/zh/anti-corruption/module-6/key-issues/whistle-blowing-systems-and-protections.html>> accessed 16 February 2026.

²² Daniele Santoro and Manohar Kumar, *Speaking Truth to Power: A Theory of Whistleblowing* (Springer International Publishing 2018).

2.1.4 National Security

National security is traditionally understood as the protection of a State's sovereignty, territorial integrity, and political independence from external threats.²³ Over time, this meaning has undergone significant expansion, reflecting the complexity of modern societies. Contemporary conceptualisation no longer confines national security to military concerns alone, but to a broader spectrum of political, economic, social, and human dimensions essential to the stability and survival of the nation.²⁴ In its modern sense, therefore, national security extends to the protection of political institutions from subversion, the safeguarding of economic systems from destabilisation, and the maintenance of public order against internal unrest, terrorism, and organised crime.²⁵ This broader approach recognises that threats to national security increasingly arise from non-military sources, including cybercrime, corruption, poverty, environmental degradation, and public health crises. Consequently, national security is now conceived as a multidimensional construct concerned with preserving the overall functioning and resilience of the state and society.

Alongside this expansion, a significant conceptual shift from a purely state-centric understanding of security to a more human-centred perspective has emerged. The traditional state-centric approach prioritises the survival of the State and the protection of its territorial boundaries and governing institutions. Security, in this sense, is achieved when the state is insulated from external aggression and internal insurrection. By contrast, the human security framework emphasises the safety and welfare of individuals, arguing that a state cannot be truly secure where its population is exposed to chronic violence, deprivation, or systemic injustice.²⁶ National security also occupies a central position within legal and constitutional frameworks, because it serves as a fundamental justification for the exercise of exceptional state powers. Most legal systems recognise national security

²³ Barry Buzan, *People, States and Fear: The National Security Problem in International Relations* (2nd edn, Lynne Rienner Publishers 1991).

²⁴ Richard H. Ullman, 'Redefining Security' *International Security* [1983] (8) (1) 129-153 <<https://doi.org/10.2307/2538489>> accessed 16 February 2026.

²⁵ Barry Buzan, Ole Wæver, and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998).

²⁶ Tani Marilena Adams, *How Chronic Violence Affects Development, Social Relations, and the Practice of Citizenship: A Systemic Framework for Action* (Wilson Center Publication 2017) <<https://www.wilsoncenter.org/program/latin-american-program>> accessed 16 February 2026.

as a legitimate ground upon which rights may be limited, particularly where such limitations are necessary to prevent serious threats to public order or state survival.

Conceptually, national security functions as both a protective principle and a regulatory tool within the legal order, but one of the most enduring challenges associated with it is the balance between collective safety and individual liberty. Measures adopted in the name of security frequently involve limitations on constitutional rights. While such restrictions may be justified in times of genuine threat, their prolonged or disproportionate application can erode democratic values and the rule of law. Consequently, contemporary legal theory emphasises the principles of necessity and proportionality as essential safeguards against the misuse of security powers.²⁷

Beyond its protective function, national security also operates as a powerful instrument of governance. It shapes legislative priorities, informs public policy, influences resource allocation, and frames political discourse. Governments often mobilise national security narratives to justify institutional reforms, expand the authority of security agencies, and garner public support for controversial measures. In this respect, national security is not merely a neutral concept concerned with protection, but also a political construct capable of redefining state power and citizen-state relations. A nuanced understanding recognises it as a dynamic, context-driven construct that must be carefully balanced with democratic principles and the rule of law to ensure that the pursuit of security does not itself become a source of insecurity.

2.2 Theoretical Analysis

2.2.1 Realism

Realism in international relations asserts that states exist in an anarchic environment and prioritise survival, security, and power.²⁸ Realism is a straightforward approach to international relations, stating that all nations are working to increase their own power. The theory further states that a nation's foremost interest should be self-preservation, and that

²⁷ Robert Alexy, *A Theory of Constitutional Rights* (Oxford University Press 2009).

²⁸ Kenneth N. Waltz, *Theory of International Politics* (Addison-Wesley Publishing Company 1978) <https://dl1.cuni.cz/pluginfile.php/486328/mod_resource/content/0/Kenneth%20N.%20Waltz%20Theory%20of%20International%20Politics%20Addison-Wesley%20series%20in%20political%20science%20%20%20%201979.pdf> accessed 17 February 2026.

continually gaining power should always be a social, economic, and political imperative.²⁹ The theory of realism has the advantage of providing a clear rationale for state secrecy and surveillance measures, and explains the prioritisation of national security over individual liberties in enforcement decisions. It has however often been criticized for its narrow focus on the state, rather than the individual, neglecting the rights and protections of citizens.³⁰ It can also justify overly broad or opaque regulation, increasing the risk of constitutional infringement.³¹

2.2.2 Legal Positivism

Legal positivism conceives law as a system of rules created and enforced by recognised human authorities, independent of moral considerations. Positivism maintains a conceptual separation between law as it is, and law as it ought to be, insisting that the validity of legal norms depends on their sources rather than their ethical content.³² John Austin emphasised law as commands backed by sanctions,³³ while H.L.A. Hart refined the theory by introducing the idea of primary and secondary rules, particularly the “rule of recognition” through which a society identifies valid law.³⁴ Conceptually, legal positivism prioritises certainty, predictability, and institutional authority as the foundations of legal order.

Beyond its descriptive account of how law operates, legal positivism also reflects a commitment to legal neutrality and objectivity. By excluding moral judgment from the determination of legal validity, it seeks to prevent subjective values from undermining the stability of legal systems. This approach allows courts and officials to apply law consistently, even where its outcomes may appear unjust, leaving moral reform to political processes rather than judicial discretion. Critics argue that such strict separation risks legitimising oppressive or immoral laws, particularly under authoritarian regimes.³⁵ Fuller critiques legal positivism by arguing that law cannot be understood purely as a system of

²⁹Norwich University, ‘Key Theories of International Relations’ <<https://online.norwich.edu/online/about/resource-library/key-theories-international-relations>> accessed 17 February 2026.

³⁰ Robert Keohane, *Neorealism and Its Critics* (Columbia University Press 1986).

³¹ Mark Neocleous, *Critique of Security* (Edinburgh University Press 2008).

³² Harold Kincaid, ‘Positivism in the Social Sciences’ *Routledge Encyclopedia of Philosophy* [1998] <<https://www.rep.routledge.com/articles/thematic/positivism-in-the-social-sciences/v-1/sections/influence-on-the-philosophy-and-practice-of-the-social-sciences>> accessed 17 February 2026.

³³ John Austin, *The Province of Jurisprudence Determined* (Cambridge University Press 1832) <<https://www.koeblergerhard.de/Fontes/AustinJohnTheprovinceofjurisprucedetermined1832.pdf>> accessed 17 February 2026.

³⁴ H.L.A. Hart, *The Concept of Law* (Oxford University Press 1961).

³⁵ Lon L. Fuller, *The Morality of Law* (Yale University Press 1965).

rules separate from morality.³⁶ He emphasizes the concept of the “inner morality of law”, including principles like generality, publicity, and non-contradiction, which are necessary for a legal system to function effectively. Fuller’s critique highlights that positivism fails to account for the moral and procedural dimensions necessary for law to achieve justice and legitimacy.³⁷

Nonetheless, positivism remains influential in modern legal systems, especially in constitutional and administrative practice where adherence to enacted rules and institutional procedures is central. Conceptually, it presents law as a social fact rooted in authority and structure, rather than a moral enterprise grounded in universal principles. The absence of a formal espionage offence in Nigeria illustrates the challenges of positivist principles because Nigerian authorities rely on related laws which functionally regulate espionage but lack clarity and specificity.

2.2.3 Natural Law Theory

Natural law theory posits that certain rights are inherent and must constrain state power, and that laws that infringe these rights are illegitimate, regardless of formal codification. This is often captured in the famous maxim *lex iniusta non est lex* (an unjust law is not law). Aquinas argues that law is rooted in reason and moral order, reflecting the eternal law of God, that human laws are valid only if they align with this moral order, and that natural law provides a universal standard of justice that transcends positive or man-made law.³⁸ Aquinas’ articulation remains central to the natural law tradition, influencing later philosophers and jurists who argue that law cannot be separated from morality.³⁹

This theory advances a moral and rights-based critique of overbroad espionage regulation, but it has the disadvantage of being less precise in prescribing the form and scope of statutory regulation. It may also conflict with the state’s need to act swiftly to protect sensitive information. Regarding Nigeria, it provides a normative lens to assess whether the

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ Thomas Aquinas, *Summa Theologica* (Benziger Bros 1945) <https://www.documentacatholicaomnia.eu/03d/1225-1274,_Thomas_Aquinas,_Summa_Theologiae_%5B1%5D,_EN.pdf> accessed 17 February 2026.

³⁹ John Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011) <<https://etica.uazuay.edu.ec/sites/etica.uazuay.edu.ec/files/public/Natural%20Law%20and%20Natural%20Rights%20%28Clarendon%20Law%29%20%28%20PDFDrive%20%29.pdf>> accessed 17 February 2026.

functional regulation of espionage respects constitutional guarantees such as freedom of expression and right to fair hearing.

2.2.4 Public-Interest Theory

This theory recognises that disclosure of information can serve societal good rather than personal or foreign gain.⁴⁰ It helps differentiate between espionage intended to benefit a foreign power, and legitimate civic disclosures, such as investigative journalism or whistleblowing.⁴¹ This distinction is crucial in Nigeria, where broad secrecy laws risk criminalising public-interest conduct. Contextually however, it is difficult to operationalize in distinguishing harmful espionage from legitimate disclosure, and this can be challenging. It may also conflict with national security imperatives in practice.

2.2.5 Comparative Functionalism

Functionalism in comparative law suggests that laws evolve to serve societal needs, and that different jurisdictions may adopt different approaches to meet similar objectives. Proponents of the theory argue that social institutions and behaviours across cultures should be understood by the functions they perform in societies.⁴² Within the context of this work, the theory provides a lens for learning from jurisdictions where espionage laws clearly define offences, impose intent thresholds, and include judicial oversight. Functionalism justifies adopting reforms that are tailored to Nigerian peculiarities. It offers practical reform guidance based on tested models, and demonstrates how legal clarity and oversight can coexist with national security. However, a limitation is that overreliance on foreign models may also undermine indigenous legal development.

2.2.6 Synthesis of the Theories

The five theories collectively provide a comprehensive analytical toolkit for understanding espionage in Nigeria. Realism and legal positivism explain why the state enforces espionage-like conduct and the challenges of non-codification. Natural law, public-interest,

⁴⁰ George J. Stigler, 'The Theory of Economic Regulation' *The Bell Journal of Economic and Management Science* [1971] (2) (1) 3-21 <<https://doi.org/10.2307/3003160>> accessed 17 February 2026.

⁴¹ Richard A. Posner, 'Theories of Economic Regulation' *The Bell Journal of Economics and Management Science* [1974] (5) (2) 335-358 <<https://www.jstor.org/stable/3003113>> accessed 17 February 2026.

⁴² Walter Goldschmidt, *Comparative Functionalism: An Essay in Anthropological Theory* (University of California Press 1966).

and balancing theories justify constitutional safeguards and rights-sensitive reforms, while comparative functionalism supports drawing lessons from other jurisdictions to strengthen Nigeria's legal framework. Collectively, they form the theoretical foundation for the article's subsequent analysis of municipal regulation, constitutional tensions, and normative proposals.

3. The Legal and Institutional Architecture Regulating Espionage in Nigeria

3.1 Existing Legal Order

3.1.1 The Official Secrets Act (OSA), 1962

The Official Secrets Act is modelled on British secrecy law and aims at safeguarding state security by criminalizing unauthorized disclosure, transmission, or retention of classified government information. Its overarching purpose is to protect official information and sensitive matters that, if disclosed without authority, could prejudice Nigeria's security, defence and public safety.

In protecting classified information, Section 1 of the Act makes it an offence for a person to transmit classified matter to someone not authorised, or to obtain, reproduce or retain classified material without proper authority. The Act defines classified matter as information officially designated by government security classification systems that should not be disclosed publicly due to its sensitivity.⁴³ The Act also imposes a duty upon public officers by expressly requiring them to safeguard classified information that comes into their possession by virtue of their office, with failure to do so constituting an offence.⁴⁴ The Act makes provision for the protection of defence establishments by designating certain locations and materials related to defence and national security as protected places, and prohibiting any unauthorized entry or inspection by persons for purposes prejudicial to security.⁴⁵ It contains offences relating to unauthorized disclosure of information, interference with officers guarding such information, harbouring spies, and related acts.⁴⁶

The Official Secrets Act has been challenged by later transparency-oriented legislation, specifically, the Freedom of Information (FOI) Act 2011, which establishes a right of access to public records and provides mechanisms and procedures for public information

⁴³ Section 9.

⁴⁴ Section 1 (2).

⁴⁵ Section 2.

⁴⁶ Section 1 (1) (a).

requests. From a Nigerian perspective, Government officials and communication managers are often reminded of their obligations under the Official Secrets Act and warned that leaks of official secrets can amount to felony under the law. The wording of the Act focuses solely on the status of the information rather than the public-interest or ethical motives behind disclosure. Consequently, whistle-blowers or ethical insiders who expose wrongdoing may be prosecuted as spies, illustrating the Act's failure to distinguish between malfeasance and malicious intent.

By way of summary, the language of the Act is broadly drawn and encompasses not only unauthorized disclosure but also conduct that could facilitate espionage or intelligence leaks.

3.1.2 Criminal Code and Penal Code Provisions

Complementing the OSA, are provisions in the Criminal Code, and the Penal Code, which criminalise acts prejudicial to state security, including communication with foreign powers. The Criminal Code Act contains provisions that complement the Official Secrets Act in relation to secrecy and espionage-related offences. Under Section 97 for instance, it is a misdemeanor for a public servant to publish or communicate facts or documents which he learned by virtue of his office and which he is duty-bound to keep secret, and abstract or copy official documents without authority. This provision mirrors part of the protective intent of the Official Secrets Act, but it specifically targets public servants and their duty obligations. It reinforces criminal liability for unauthorized disclosures even outside the formal classification system under the Official Secrets Act. While the Criminal Code does not expressly use the term "espionage," it criminalizes other state security threats that overlap with espionage-type conduct, for example treason,⁴⁷ instigating invasion,⁴⁸ and concealing acts against state security.⁴⁹

On its part, the Penal Code does not have the exact provisions on official secrets like section 97 of the Criminal Code. Its broader offences relating to state security such as

⁴⁷ Section 37.

⁴⁸ Section 38.

⁴⁹ Section 40.

treason,⁵⁰ inciting mutiny, aiding enemy states, or harming state security, form part of the legal framework that addresses severe breaches of state security⁵¹.

3.1.3 Cybercrimes (Prohibition, Prevention, etc.) Act, 2015⁵²

The Act addresses the modern technological context of espionage. Sections 24 and 25 criminalise unauthorised access to, interception of, or disclosure of electronic communications and data. A major drawback is that the Act lacks differentiation between disclosures made in good faith and malicious cyber-espionage, increasing legal exposure for ethical actors.

3.1.4 The Terrorism (Prevention and Prohibition) Act, 2022⁵³

This Act significantly expands the legal architecture for addressing terrorism in Nigeria, and in doing so, incorporates conduct traditionally associated with espionage, particularly through its criminalization of intelligence-related facilitation and covert assistance. An act of terrorism includes any act deliberately done with the intent to intimidate or coerce the government, destabilize the constitutional or political structures of Nigeria, or seriously harm public safety or national security.⁵⁴ This definition is broad and extends beyond physical violence to include acts that undermine state authority through strategic or informational means.

More specifically, section 15 criminalizes the provision of material support, training, expert advice, or services to terrorist groups or terrorist purposes. This provision captures espionage-type conduct, such as supplying sensitive governmental or security information, acting as an informant for hostile actors, or transmitting intelligence that enhances the operational capacity of terrorist organizations. Furthermore, the Act expressly targets concealment,⁵⁵ non-disclosure, and covert communication, which are central characteristics of espionage. The Act also imposes a duty on individuals to disclose information relating to terrorist acts, criminalizing intentional silence or withholding of intelligence.⁵⁶ These provisions mirror the logic of espionage offences, where secrecy and concealment are the primary mechanisms of wrongdoing.

⁵⁰ Section 410.

⁵¹ Section 413.

⁵² Act No. 17, 2015.

⁵³ Act No. 15 of 2022.

⁵⁴ Section 2.

⁵⁵ Section 16.

⁵⁶ Section 16.

In addition, the Act empowers law enforcement and intelligence agencies, subject to judicial authorization, to intercept communications, monitor electronic correspondence, and obtain intelligence necessary to prevent terrorist acts.⁵⁷ These surveillance and interception powers are inherently counter-intelligence tools designed to detect covert networks, secret communications, and unauthorized information flows. Thus, the Terrorism (Prevention and Prohibition) Act 2022 functions not only as a counterterrorism statute but also as a counter-espionage framework, recognizing that terrorism is sustained by clandestine intelligence activities and providing legal mechanisms to criminalize and disrupt such covert informational threats to national security.

3.2 Institutional and Enforcement Dimensions

3.2.1 Core Intelligence and Security Agencies

1. Department of State Services

This is Nigeria's primary domestic intelligence and counter-espionage agency, and operates under the Presidency. The department is responsible for counter-intelligence operations, surveillance of foreign intelligence activities, protection of classified state information, and monitoring internal threats.

2. National Intelligence Agency

This Agency handles external intelligence gathering, by focusing on foreign espionage threats, diplomatic intelligence, and international counter-intelligence coordination. It manages intelligence outside Nigeria's borders.

3. Defence Intelligence Agency

This is the military intelligence arm of Nigeria. It handles defense-related intelligence, protection of military secrets, and counter-espionage within armed forces

4. Office of the National Security Adviser

Coordinates all national security and intelligence agencies, and advises the President on espionage risks and national security strategy. The office also ensures inter-agency cooperation.

⁵⁷ Section 68.

3.2.2 Enforcement Dimensions

Nigeria's espionage framework is enforced primarily by the aforementioned agencies. Prosecutorial discretion is broad, and oversight mechanisms are weak. The concentration of authority, coupled with minimal judicial checks, has led to an environment where executive discretion largely defines what constitutes espionage, leaving little room for public-interest disclosure. There exists also, the problem of secrecy and lack of transparency because many espionage cases are not publicly disclosed. Political sensitivity is also another challenge, because espionage accusations may intersect with political rivalry. The growth of cyber-espionage similarly constitutes a problem, thereby increasing threats from digital actors and foreign state hackers.

There are also structural weaknesses and gaps such as overbreadth, when the focus is on unauthorized disclosure, rather than intent or harm, thereby risking criminalising ethical whistleblowing. There is also the problem with judicial uncertainty, with courts yet to develop a structured approach for balancing national security with constitutional freedoms in espionage cases. The obsolescence of the extant laws and policies also means that the colonial era language is prevalent in the laws, and fails to account for modern intelligence and digital realities.

It suffices therefore, to state that Nigeria's statutory regime is broad, punitive, and insufficiently nuanced to distinguish ethical disclosures from malicious acts. This combination of outdated colonial-era statutes, digital-era offences, and concentrated enforcement authority creates a legal environment in which whistleblowers and ethical insiders are exposed to significant criminal liability.

3.3 Constitutional Rights Implicated by Espionage-Related Laws in Nigeria

3.3.1 Freedom of Expression

Section 39 guarantees every Nigerian the right to freedom of expression, including the right to receive and impart information. This provision forms the constitutional basis for whistleblowing, investigative journalism, and public-interest disclosures. However, secrecy laws frequently curtail these rights because by any unauthorized communication of classified information, regardless of ethical or public-interest intent, can be prosecuted as espionage. This limits the practical application of Section 39.

3.3.2 Right to Fair Hearing

Section 36 guarantees procedural fairness in criminal proceedings, including the right to a fair trial, the right to challenge evidence, and the right to legal representation. Espionage-related prosecutions often involve classified evidence, ex-parte hearings, and restricted disclosure of intelligence reports, which may compromise the ability of accused persons to defend themselves. Whistle-blowers, in particular, face trials in which proving ethical intent or public-interest motivation is nearly impossible.

3.3.3 Right to Privacy

Section 37 protects the privacy of communications, correspondence, and personal data. Extant laws such as the Cybercrimes Act 2015 allows for surveillance, interception, and monitoring of electronic communications. While intended to secure sensitive information, these measures can conflict with constitutional privacy rights.

3.3.4 Derogation for National Security

Section 45 of the Constitution of the Federal Republic of Nigeria, 1999, as altered, permits the restriction of certain fundamental rights where such restriction is “reasonably justifiable in a democratic society” in the interests of defence, public safety, public order, public morality, public health, or for the purpose of protecting the rights and freedoms of others. Consequently, while Chapter IV of the Constitution guarantees a litany of rights, section 45 authorizes legislation that limits those rights where national security is at stake.

It must be noted however, that Section 45 does not grant unlimited power to the state. The restriction must be “reasonably justifiable in a democratic society,” which introduces a proportionality requirement. As such, any limitation on civil liberties in the name of combating espionage, or related matters must be necessary, proportionate, and consistent with democratic values.

3.4 Judicial Treatment of Espionage in Nigeria

The Nigerian judiciary has historically approached espionage-related cases with caution and deference to the executive, reflecting the sensitive nature of national security. This deference has significant implications for whistle-blowers and ethical insiders operating in government and security institutions. Courts therefore retain the authority to review whether security-based restrictions are excessive or merely a pretext for suppressing lawful expression or dissent. Decisions tend to focus narrowly on whether the accused

unauthorisedly possessed, communicated, or published classified information, rather than evaluating the intent, motive, or public-interest value of the disclosure.

In *Okedara v. Attorney General*⁵⁸, the court upheld sections of the Cybercrimes Act, 2015 relating to the unauthorised access and dissemination of digital information, affirming the state's discretion to determine security threats. Here, the court did not consider whether the accused acted in good faith or for public benefit. Similarly, in *SERAP v. Minister of Information*⁵⁹, the court allowed a public-interest disclosure concerning government contracts with social media platforms, demonstrating that judicial recognition of public interest is possible, although limited and context-specific. In *Dokubo-Asari v. FRN*⁶⁰, the issue was whether prima facie evidence of threat to national security can justify refusal of bail and thereby limit the accused's constitutional right to personal liberty. The Supreme Court upheld the refusal of bail, agreeing with lower courts that evidence before the court showed a threat to national security stemming from treasonable felony and related conduct. The court reasoned that when national security is genuinely threatened, the personal liberty of an accused might be subordinated in determining bail, reflecting a judicial stance that national security concerns can override individual rights in exceptional circumstances. Although not directly related to espionage, the significance of this case to Nigerian jurisprudence is that where national security is genuinely threatened, or likely to be threatened, individual constitutional rights may be restricted in favour of the greater national interest.

4. Ethical Dilemmas

4.1 Ethical Obligations of Public Officers

Public officers and security personnel carry heightened ethical obligations in relation to espionage because they are custodians of classified information and national security assets. Whistle-blowers act from ethical considerations, seeking to expose malfeasances. However, under Nigerian espionage-related statutes, even well-intentioned disclosures may constitute criminal offences. This creates a tension between legal compliance and ethical duty, forcing insiders to choose between remaining silent and potentially enabling wrongdoing, or risking prosecution by reporting misconduct.

⁵⁸ (2019) LPELR-47298(CA) @ 4-6 paras. F.

⁵⁹ ECW/CCJ/JUD/08/21 (Unreported).

⁶⁰ (2007) 12 NWLR (Pt. 1048) 320; LPELR-958(SC).

At the same time, ethical responsibility in the context of espionage is not absolute obedience to secrecy, it must be balanced with constitutional values such as accountability and the public interest. Public officers face moral tension where secrecy obligations intersect with corruption, abuse of power, or unlawful state conduct. In such situations, ethical conduct requires adherence to lawful reporting channels rather than unauthorized disclosure, thereby preserving national security.

4.2 Democratic Accountability and Public Interest

Whistleblowing is a cornerstone of democratic governance, ensuring accountability, transparency, and public confidence in institutions. In Nigeria, the conflation of whistleblowing with espionage has a chilling effect. Investigative journalism for instance, is undermined when sources fear legal repercussions. Civil society oversight of security institutions is weakened also due to restricted access to information. The consequence is that public confidence in the integrity of government and intelligence agencies diminishes. By criminalising ethical disclosure, the law inadvertently protects misconduct and erodes democratic norms.

4.3 National Security

The protection of national security often justifies extraordinary state powers, including surveillance, detention, and intelligence gathering. Agencies such as the Department of State Services are mandated to detect threats that may undermine the sovereignty and stability of the Nigerian state. In a context marked by terrorism and internal security challenges such as Nigeria's, robust intelligence powers are frequently defended as indispensable tools of prevention. Ethical reasoning grounded in utilitarian principles may support temporary restrictions on certain freedoms to safeguard the greater public good.

Nevertheless, civil liberties are constitutionally guaranteed and form the backbone of democratic order. Expansive surveillance or prolonged detention without transparent judicial safeguards risks normalizing exceptional measures. The ethical dilemma arises when the imperative to secure the state encroaches disproportionately upon individual rights. Democratic accountability requires that national security measures be necessary, proportionate, and subject to meaningful review to prevent the erosion of fundamental freedoms under the guise of security.

4.4 Political Neutrality and Executive Influence

Intelligence agencies are expected to maintain political neutrality to preserve institutional legitimacy. Security institutions are constitutionally mandated to serve the state rather than partisan interests, but ethical professionalism demands impartial threat assessment and equal application of the law regardless of political affiliation. However, intelligence agencies operate under executive control, creating potential for political influence. In certain contexts, there is the risk that security institutions may be perceived as instruments of executive advantage. Such perceptions erode democratic trust and weaken institutional credibility. The ethical challenge is ensuring operational independence within a framework of executive oversight, thereby preventing the conflation of national security objectives with partisan political goals.

4.5 Digital Surveillance and Privacy Ethics

The rise of cyber-espionage and digital intelligence has transformed security practices in Nigeria, particularly under the framework of the Cybercrimes (Prohibition, Prevention, etc.) Act. Digital surveillance tools enable interception of communications, metadata analysis, and monitoring of online activities. From a security perspective, such tools are essential for identifying emerging threats in an increasingly networked environment.

Nevertheless, digital surveillance poses profound ethical concerns regarding privacy, data protection, and consent. Bulk data collection and opaque technological processes risk intruding into citizens' personal lives beyond what is necessary for security objectives. The absence of transparent safeguards or independent audits may intensify these concerns. Ethical governance in the digital age, therefore, demands clear legal standards, proportionality in data collection, and strong oversight mechanisms to prevent surveillance from undermining democratic freedoms.

5. Cross-Jurisdictional Analysis

5.1 The United Kingdom (UK)

1. Legal Clarity

The United Kingdom has recently undertaken significant reform of its espionage regime through the National Security Act 2023,⁶¹ updating and supplementing the earlier Official

⁶¹ c. 32 <<https://www.legislation.gov.uk/ukpga/2023/32/contents>> accessed 17 February 2026.

Secrets Act 1989.⁶² The 2023 Act introduces new foreign interference offenses, modernizes espionage definitions, and strengthens responses to hostile state activity, including cyber operations. The reform process was characterized by parliamentary debate and committee scrutiny, reflecting the UK's legislative responsiveness to evolving threats. The statutory language attempts to define offenses with greater precision than earlier secrecy laws, reducing interpretive ambiguity. This modernization signals an adaptive legal culture that recalibrates national security law in response to technological and geopolitical change. Equally important to note is that the Public Interest Disclosure Act 1998⁶³ shields employees from retaliation when reporting wrongdoing in good faith, including within sensitive sectors.

2. Oversight

The UK intelligence community includes the MI5, MI6, and GCHQ. Oversight is exercised by the Intelligence and Security Committee of Parliament, alongside judicial commissioners responsible for authorizing and reviewing surveillance warrants. This layered oversight system reflects embedded accountability, where secrecy is balanced with institutional review mechanisms capable of accessing classified material. The UK framework demonstrates formalized checks that integrate executive intelligence operations within parliamentary and judicial supervision.

3. Enforcement and Judicial Transparency

Espionage prosecutions in the UK occur within the ordinary court system, albeit with protective procedures for classified evidence. Judicial reasoning is typically published, with redactions where necessary. This contributes to the development of jurisprudence clarifying proportionality, intent, and evidentiary standards. The central feature of the UK model is that national security adjudication remains judicially anchored rather than exclusively executive-driven. Courts serve as visible arbiters of the legality of espionage-related prosecutions.

⁶² c. 6 <<https://www.legislation.gov.uk/ukpga/1989/6/contents>> accessed 17 February 2026.

⁶³ c.23 <<https://www.legislation.gov.uk/ukpga/1998/23>> accessed 17 February 2026.

5.2 Canada

1. Statutory Framework

Canada regulates espionage primarily under the Foreign Interpretation and Security of Information Act⁶⁴ and related provisions of the Criminal Code.⁶⁵ These statutes criminalize communication of safeguarded information, foreign interference, and activities benefiting hostile actors. A defining feature of Canada's approach is the pervasive influence of the Canadian Charter of Rights and Freedoms.⁶⁶ Espionage laws must comply with constitutional guarantees, including protections for due process, expression, and privacy.⁶⁷ Courts therefore play an active role in interpreting the scope of national security powers and testing them against proportionality standards.

2. Oversight

Canada's intelligence agencies include Canadian Security Intelligence Service, and the Communications Security Establishment. Canada has constructed one of the most comprehensive intelligence oversight systems among liberal democracies.⁶⁸ Parliamentary committees with security clearance review classified operations, while independent review bodies examine legality and compliance. This multi-tiered oversight structure institutionalizes democratic scrutiny without exposing operational details to the public domain.

The Canadian system reflects a strong culture of civilian supremacy and the embeddedness of the rule-of-law, where intelligence agencies operate under routine review rather than episodic political intervention.

3. Enforcement and Jurisprudence

Canadian espionage cases are prosecuted through ordinary courts, with published decisions contributing to doctrinal development. Protective evidentiary mechanisms exist, but courts remain central to adjudication. The jurisprudential record strengthens legal predictability and enhances public confidence in the fairness of proceedings. Canada's approach

⁶⁴ RSC 1985, c. 0-5 <<https://laws-lois.justice.gc.ca/eng/acts/o-5/page-1.html>> accessed 17 February 2026.

⁶⁵ RSC 1985, c. C-46 <<https://laws-lois.justice.gc.ca/eng/acts/c-46/>> accessed 17 February 2026.

⁶⁶ Part 1, Constitution Act 1982, Schedule B, c.11 <<https://www.legislation.gov.uk/ukpga/1982/11/schedule/B>> accessed 17 February 2026.

⁶⁷ *ibid.*

⁶⁸ Leah West, 'Watchful Eyes: National Security Review and Oversight in Canada' *Carleton University-Norman Paterson School of International Affairs* [2019] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3449183 accessed 17 February 2026.

demonstrates that secrecy and transparency can coexist when mediated through independent judicial institutions.

6. Recommendations, and Conclusion

6.1 Recommendations

Nigeria's espionage framework, as examined in the preceding parts, highlights a persistent tension between national security and constitutional leverage. Comparative jurisdictions, however, provide instructive models for reform, demonstrating that it is possible to protect state secrets while protecting public-interest disclosure.

Based on Nigerian realities and comparative insights, this article recommends the incorporation of public interest defences. This would require amending the extant relevant laws, especially the Official Secrets Act, to protect disclosures made in good faith and for ethical or public-interest purposes. This means that Nigerian laws must recognize espionage conceptually, and define espionage narrowly. Intent thresholds must also be established where liability would only attach where the individual intends to harm the state or benefit a foreign power.

The article also recommends that a comprehensive whistle-blower protection legislation is enacted to extend statutory protection to whistle-blowers across all sectors, including national security and intelligence, guaranteeing immunity from prosecution, confidentiality, and protection from retaliation. This must recognize whistle-blowing as a protected civic act while carefully regulating its scope to prevent abuse, because a legitimate national security regime must protect the state without undermining the constitutional order it seeks to preserve.

Based on the lessons gleaned from the UK and Canada, there is also the need to establish independent oversight bodies by the creation of institutions capable of securely receiving, assessing, and investigating disclosures without interference from the executive. From a liberal-democratic governance perspective, the UK and Canada embody "institutionalized constraint models," where intelligence agencies are powerful but structurally embedded within accountability networks. Nigeria reflects a "security-centralized model," shaped by post-colonial state formation and historical executive dominance. The fundamental difference is not whether espionage is criminalized, because all three states do so, (even if not explicitly stated, as the case with Nigeria) but how intelligence authority is bounded. In

the UK and Canada, oversight is normalized and structurally entrenched. In Nigeria however, oversight mechanisms exist formally but lack equivalent institutional depth and transparency.

From the perspective of the judiciary, the paper recommends that balancing guidelines must also be developed where courts can apply proportionality tests that weigh the need to protect national security against individual rights and public interest. Gleaning from the experience in the UK and Canada, court decisions regarding espionage-related offences must be made public, and this would contribute to doctrinal development on the subject of espionage in Nigeria.

It is also recommended that security agencies implement sustained capacity-building programs to clarify and effectively address the evolving and often ambiguous nature of espionage. In the contemporary security environment, espionage is no longer confined to traditional state-to-state intelligence gathering, but now encompasses cyber intrusions, economic espionage, technological theft, and insider threats, etc. These developments blur the line between lawful intelligence activities, and criminal hostile conduct. Such capacity-building initiatives shall promote lawful disclosure responsibilities and promote ethical conduct alongside confidentiality.

6.2 Conclusion

Nigeria's current espionage framework has a chilling effect on transparency, discourages reporting of misconduct, and undermines public confidence in state institutions. By adopting statutory reforms, institutional safeguards, and judicial frameworks inspired by comparative jurisdictions, Nigeria can reconcile national security with constitutional rights and ethical governance. A rights-based, reform-oriented espionage regime would protect state secrets while encouraging ethical disclosure, strengthening democratic accountability, and reinforcing the rule of law.

COMPARATIVE ANALYSIS OF INTERNATIONAL ARBITRATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN CROSS-BORDER COMMERCIAL DISPUTES

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Abstract

Cross-border commercial disputes have increased with globalization, presenting challenges including conflicting legal systems, jurisdictional uncertainty, high litigation costs, and lengthy court proceedings. Traditional court litigation is often slow and inefficient for resolving international disputes. As a result, international arbitration and other Alternative Dispute Resolution (ADR) mechanisms have assumed a central role in international commercial practice. They offer flexible, faster, neutrality, and more cost-effective methods of resolving disputes outside national courts. While adopting doctrinal method of legal research, this paper provides a comparative examination of international arbitration alongside other ADR processes in cross-border commercial disputes. It analyses their legal foundations, procedural structures, and normative objectives, with particular attention to party autonomy, enforceability, confidentiality, finality, and institutional support. Beyond their advantages, the study critically evaluates persistent challenges affecting these mechanisms, including high costs, procedural delays, enforcement limitations, restricted review of arbitral awards, jurisdictional conflicts, and tensions between confidentiality and transparency. The paper further explores contemporary developments shaping the field, including reform debates surrounding Investor-State Dispute Settlement (ISDS), the integration of technology and online dispute resolution (ODR), and the growing emphasis on diversity and inclusion in arbitral appointments. Through structured comparison, the paper argues that while international arbitration remains central to cross-border dispute resolution, its effectiveness depends on addressing structural limitations and adapting to evolving global expectations. Effective dispute resolution in international commerce therefore requires not the dominance of a single mechanism, but a coherent and context-sensitive integration of arbitration and other ADR processes within the modern architecture of global commercial law. The paper concludes by recommending measures to enhance the efficiency, accessibility, and fairness of dispute resolution mechanisms in an increasingly interconnected global economy.

Keywords: International Arbitration, Alternative Disputes Resolution, International Commercial Disputes, Online Dispute Resolution.

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1.0: Introduction

Disputes are an unavoidable part of human interaction. Whether in commerce, trade, investment, property, or personal relationships, disagreements arise whenever parties pursue competing interests.¹ Because conflict is inevitable, every legal system must provide effective mechanisms for resolving disputes in a manner that supports social order, economic stability, and continued cooperation.² Dispute resolution is therefore not merely a procedural matter; it is central to the functioning of any organized society.³

With the rapid growth of international trade and cross-border investment, disputes have become more complex. Transactions now frequently involve parties from different jurisdictions, operating under different legal systems and regulatory frameworks.⁴ Traditional court litigation, although authoritative and enforceable within domestic systems, often proves slow, expensive, and procedurally rigid in the international context. Jurisdictional challenges, difficulties in enforcing foreign judgments, and prolonged proceedings⁵ can undermine commercial relationships and discourage international business cooperation.

Consequently, these limitations have contributed to the increasing reliance on Alternative Dispute Resolution (ADR). ADR refers to a range of processes that enable parties to resolve disputes outside national courts. Common methods include negotiation, mediation, conciliation, and arbitration.⁶ These mechanisms generally offer greater flexibility, procedural autonomy, confidentiality, and efficiency. In many cases, they also allow parties

¹ B Ore-Adebiyi, 'A Comparative Critical Appraisal of Alternative Dispute Resolution (ADR) as a Strategy for Effective Dispute Resolution in Nigeria and Select Jurisdictions' <https://www.academia.edu/28032198/a_comparative_critical_appraisal_of_alternative_dispute_resolution_ad_r_as_a_strategy_for_effective_dispute_resolution_in_nigeria_and_select_jurisdictions_u_k_and_u_s_> accessed on 25 February, 2025.

² L A Ayinle and Others, 'A Appraisal of the Nexus and Disparities between Arbitration and Alternative Dispute Resolution (ADR)' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, [2017] (8) (1) 183.

³ Global Law Experts, 'The Rise of Alternative Resolution Mechanisms in Nigeria' (2017) <<https://globallawexperts.com/the-rise-of-alternative-resolution-mechanisms-in-nigeria/>> accessed on 25 February, 2026.

⁴ J A Faris, *An Analysis of the Theory and Principles of Alternative Dispute Resolution* (University of South Africa, South Africa 1995) 13.

⁵ Ore-Adebiyi (n 1).

⁶ I Banerjee, 'An Introduction to Alternative Dispute Resolution' [2020] <<https://blog.ipleaders.in/an-introduction-to-alternative-dispute-resolution>> accessed on 25 February, 2026.

to preserve ongoing business relationships by reducing the adversarial nature of formal litigation.⁷

Among ADR mechanisms, international arbitration has emerged as the leading method for resolving cross-border commercial disputes.⁸ It allows parties to submit their dispute to a neutral tribunal whose decision is binding and widely enforceable. Its appeal lies in party autonomy, neutrality, confidentiality, and the relative ease with which arbitral awards can be recognized and enforced across jurisdictions.⁹ At the same time, other ADR processes such as mediation and negotiation continue to play an important role, particularly where parties prioritize cost control, speed, and the preservation of commercial relationships.¹⁰

However, the increasing reliance on arbitration and ADR does not eliminate structural concerns. Despite their advantages, these mechanisms face significant challenges that can undermine their effectiveness. These include high costs, procedural delays, enforcement difficulties, limited grounds for review, jurisdictional conflicts, and tensions between confidentiality and transparency.¹¹ At the same time, the landscape of international dispute resolution is undergoing transformation. Reform efforts in investor–state dispute settlement (ISDS) questions the legitimacy and structure of existing arbitration models.¹² Technological innovation, including online dispute resolution and artificial intelligence-assisted procedures, is reshaping how disputes are administered and decided.¹³

Against this backdrop, this paper offers a comparative examination of international arbitration and other ADR mechanisms in cross-border commercial disputes. It analyses their legal foundations, procedural frameworks, and normative objectives, with particular attention to enforceability, neutrality, confidentiality, finality, and institutional support. The

⁷ P H Pandya and R Dave, ‘Investigating the Jurisprudential Aspects of ADR’ *Journal of Pharmaceutical Negative Results*, [2023] (14) (1) 1306.

⁸ A Horacio and G Naón, ‘The Settlement of Investment Disputes between States and Private Parties: An Overview from the Perspective of the ICC’ *Articles in Law Reviews and Other Academic Journals*, [2000] 60-62.

⁹ *ibid.*

¹⁰ K Shonk, ‘International Arbitration: What It is and How it Works’ (2024) < <https://www.pon.harvard.edu/daily/international-negotiation-daily/internationalarbitration-what-it-is-and-how-it-works> > accessed on 25 February, 2026.

¹¹ Kellam and Others, ‘Maintaining and Enhancing the Integrity of ADR Processes: From Principles to Practice through People’ (2011) < https://ink.library.smu.edu.sg/sol_research/3373 > accessed on 25 February, 2026.

¹² *ibid.*

¹³ *ibid.*

study critically evaluates their challenges, highlights contemporary developments, and compares arbitration with non-binding ADR processes to clarify their relative strengths and limitations. By doing so, the paper seeks to clarify how and why parties strategically select dispute resolution methods and to assess the evolving role of ADR in promoting efficient and sustainable dispute resolution in the global economy.

2.0: Overview of International Arbitration

International arbitration is a private adjudicatory process grounded in party consent and typically established through a contractual arbitration agreement.¹⁴ As a binding method of resolving disputes, it allows parties to submit their disagreements to an independent tribunal rather than a national court.¹⁵ This process may be institutional, where it is administered by recognized bodies such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA), or it may be *ad hoc*, where parties conduct the proceedings independently under agreed rules like those provided by United Nation Commission on International Trade Law (UNCITRAL) Arbitration Rules.¹⁶

The term ‘international’ distinguishes arbitrations that transcend national boundaries from those that are purely domestic.¹⁷ Although every arbitration is legally anchored to a specific jurisdiction known as the seat of arbitration; the parties in international arbitration often have no substantive connection to that seat.¹⁸ It is deliberately selected for neutrality and a supportive legal framework.¹⁹ This differs from domestic arbitration, which typically involves parties and disputes closely linked to a single jurisdiction.²⁰ International

¹⁴ Maritime Arbitration, ‘An Introduction’ < <https://www.lexisnexis.co.uk/legal/guidance/maritime-arbitration-an-introduction> > accessed on 25 February, 2026.

¹⁵ K Al-Zarraa, ‘Recognition and Enforcement of Foreign Arbitral Awards: Case Study on the State of Qatar’ *Dispute Resolution Journal*, [2015] (70) (3) 61.

¹⁶ Kellam and Others (n 11).

¹⁷ F Honig, ‘Transnational Law: Storrs Lectures on Jurisprudence’ *International Affairs*, [1958] 34 (1) 78-79 < <https://doi.org/10.2307/2605888> > accessed on 25 February, 2026.

¹⁸ *ibid.*

¹⁹ M M Meza-Salas, ‘Importance of the Law Applicable to the Arbitration Agreement in International Commercial Arbitration’ < <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1077&context=ab> > accessed on 25 February, 2026.

²⁰ *ibid.*

arbitration also tends to involve corporations, states, or state entities, and frequently concerns high-value commercial or investment disputes.²¹

International commercial arbitration is widely used to resolve cross-border business disputes. Most international contracts contain arbitration clauses to ensure that disputes are handled through a neutral and enforceable process.²² The legal framework is strongly influenced by the UNCITRAL Model Law and national implementing legislation.²³ Leading institutions include the International Centre for Dispute Resolution (ICDR), the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), and the World Intellectual Property Organization (WIPO) Arbitration and Mediation Centre for intellectual property disputes.²⁴

State-to-state arbitration, often referred to as inter-state arbitration, addresses disputes between sovereign states, typically involving issues of public international law such as territorial boundaries or treaty interpretation.²⁵ The Permanent Court of Arbitration (PCA) frequently administers such cases under UNCITRAL or specially agreed procedures.²⁶ Enforcement of inter-state awards can be more complex than commercial awards, particularly where political considerations arise.²⁷

While investor–state arbitration represents another distinct category. It enables foreign investors to bring claims directly against host states under bilateral or multilateral investment treaties.²⁸ The establishment of the International Centre for Settlement of Investment Dispute (ICSID) Convention in 1965 provided a dedicated forum for these disputes, though its jurisdiction depends on explicit state consent. Initially underutilized,

²¹ N Blackaby and Others, *An Overview of International Arbitration in Constantine Partasides* (Oxford University Press 2009) 81.

²² J Lew and Others, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 3.

²³ S Brekoulakis, 'Arbitrability: Persisting Misconceptions and New Areas of Concern' in L Mistelis and S L Brekoulakis (eds), *Arbitrability: International & Comparative Perspectives* (Kluwer law international, 2009) 25.

²⁴ Markus Petsche, *The Growing Autonomy of International Commercial Arbitration* (Sellier European Law Publisher 2005) 10.

²⁵ S Asaf, 'Framework of Analysis: The Arbitration of Interstate Territorial Disputes', *The International Arbitration of Territorial Disputes* (Oxford, 2024) < <https://doi.org/10.1093/oso/9780198870203.003.0003> > accessed on 25 February, 2026.

²⁶ *ibid*

²⁷ C L Lim, 'Inter-State Arbitration and the Pursuit of Peace', in *the Cambridge Companion to International Arbitration* (Cambridge University Press, Cambridge 2021) 310.

²⁸ Wanli Ma and M Faure, 'Is Investment Arbitration an Effective Alternative to Court Litigation? Towards a Smart Mix of Litigation and Arbitration in Resolving Investment Disputes' *Brook. Journal Int'l Law*, (2022) (4) (1) 48. < <https://brooklynworks.brooklaw.edu/bjil/vol48/iss1/1> > accessed 25 February, 2026.

ICSID arbitration gained prominence with the proliferation of Bilateral Investment Treaties (BITs).²⁹ By 2021, investors had initiated over 1,100 cases against 124 governments, with some awards reaching hundreds of millions of dollars.³⁰ This mechanism reflects a significant development in international dispute resolution, balancing investor protection with state regulatory authority.

The arbitration process generally begins with an arbitration agreement.³¹ Arbitrators are then appointed, either by the parties or through institutional mechanisms. Preliminary procedures follow, including the exchange of written submissions and the organization of hearings.³² During the hearing stage, parties present arguments, evidence, and witness testimony. The tribunal subsequently issues a final and binding award. Enforcement of arbitral awards is primarily governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which facilitates recognition and enforcement across many jurisdictions.³³

Moreover, international arbitration offers several advantages. It provides neutrality, procedural flexibility, confidentiality, and a high degree of enforceability.³⁴ Arbitrators are often selected for their technical or industry expertise, making arbitration suitable for complex commercial disputes.³⁵ However, arbitration is not without limitations. It can be expensive, particularly in high-value disputes, and proceedings may become lengthy.³⁶ In addition, review of arbitral awards is limited, meaning that errors of law or fact are rarely subject to appeal.³⁷

²⁹ C F Rozas, and Others, *Principios Generales del Arbitraje* (Tirant lo Blanch, 2018) 25.

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*, 27.

³³ A Henderson, 'Lex Arbitri, Procedure Law and the Seat of Arbitration: Unravelling the Laws of the Arbitration Process' (2014) (26) *SAC LJ*, 12. <
<https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/e-Archive/ctl/eFirstSALPDFJournalView/mid/513/ArticleId/335/Citation/JournalsOnlinePDF>>
 accessed on 25 February, 2026.

³⁴ Latham and Watkins, 'Guide to International Arbitration' <
<https://www.lw.com/admin/Upload/Documents/Guide-to-International-Arbitration-May-2014.pdf>>
 accessed on 25 February, 2026.

³⁵ *ibid.*

³⁶ C E-Umegbolu., 'The Workings of International Commercial Arbitration (ICA)' *E Journal of Law*, (2021) (1) (7) 89

³⁷ A Idigbe *Arbitration Practice in Nigeria* (Distinct Universal Limited, Lagos 2010) 3.

3.0: Overview of Alternative Dispute Resolution (ADR) Mechanisms

Alternative Dispute Resolution (ADR) Mechanisms refers to a range of processes used to resolve disputes outside traditional court litigation.³⁸ These mechanisms are designed to provide parties with more flexible, efficient, and often less adversarial methods of settling conflicts.³⁹ While ADR is commonly described as an alternative to litigation, it may also function alongside court proceedings, either to narrow issues or to encourage settlement at different stages of a dispute.⁴⁰

At its core, ADR is a structured process in which disputing parties attempt to resolve their differences voluntarily, sometimes with the assistance of a neutral third party.⁴¹ The neutral such as a mediator or conciliator does not usually impose a binding decision (except in arbitration), but instead facilitates dialogue, promotes understanding, and assists the parties in reaching a mutually acceptable outcome. In some instances, ADR may occur without third-party involvement, as in negotiation, where parties communicate directly to settle their dispute.⁴²

ADR processes are generally valued for their speed, lower cost, confidentiality, and flexibility when compared with litigation.⁴³ They are frequently used in commercial, labor, family, and contractual disputes particularly where parties seek to preserve ongoing relationships. In many commercial agreements, parties are contractually bound to attempt a specified ADR process before initiating formal litigation or arbitration. Such clauses reflect the growing preference for consensual settlement mechanisms in both domestic and international practice.⁴⁴

³⁸ Ore-Adebiyi (n 1) 15.

³⁹ Adebayo and Ahmad, 'An Appraisal of the Nexus and Disparities between Arbitration and Alternative Dispute Resolution (ADR)' *NAUJILJ*, (2017) (8) (1) 184.

⁴⁰ J. D Pretorius, 'The Concept of Alternative Dispute Resolution (ADR)' (2019) <https://www.linkedin.com/pulse/concept-alternative-dispute-resolution-adr-jd-pretorius/?trk=articles_directory> accessed on 25 February, 2026.

⁴¹ F Sander and S Goldberg, 'Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure' *Negotiation Journal* (2020) (10) 50.

⁴² *ibid.*

⁴³ R Delgado and Others, 'Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution' *Wisconsin Law Review*, (2017) (85) 1359.

⁴⁴ M. E Katsh and J Rifkin, 'Online Dispute Resolution: Resolving Conflicts in Cyberspace' (2001) <<http://ci.nii.ac.jp/ncid/BA53132965>> accessed on 25 February, 2026.

The various ADR mechanisms differ in structure, level of formality, and legal effect. A key distinction lies between binding and non-binding processes.⁴⁵ Arbitration results in a binding decision enforceable by law, whereas mediation, conciliation, and negotiation typically produce outcomes that become binding only if the parties formalize their agreement.⁴⁶ ADR mechanisms also differ in the degree of third-party control. In mediation, the neutral facilitates discussion without deciding the outcome; in conciliation, the neutral may propose solutions; in arbitration, the tribunal renders a binding award.⁴⁷

Similarly, in recent years, ADR has expanded beyond simple two-party disputes to address complex, multi-party and policy-related conflicts. Hybrid processes such as med-arb (a combination of mediation and arbitration) and consensus-building models—have emerged to manage disputes involving technical, commercial, or regulatory issues.⁴⁸ These developments reflect the adaptability of ADR to evolving commercial and social realities.

By and large, the suitability of a particular ADR mechanism depends on the nature of the dispute, the relationship between the parties, the need for confidentiality or enforceability, and the broader legal context. ADR does not replace courts entirely; rather, it complements formal adjudication by offering alternative pathways to efficient and practical dispute resolution.⁴⁹

The various types of ADR mechanisms available to parties are explored below:

1. Negotiation

Negotiation is a voluntary problem-solving process where two or more parties discuss their differences to reach a mutually acceptable agreement.⁵⁰ It involves interaction aimed at resolving conflicts based on common interests, despite existing divisions.⁵¹ Essentially,

⁴⁵ N Akhtar and Others, 'Alternative Dispute Resolution' (2023) 5(2) *Global Legal Studies Review*, 37.

⁴⁶ *ibid.*

⁴⁷ Delgado and Others (n 43) 1360.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ M H Bazerman and M A Neale, *Negotiating Rationally* (Free Press, New York 1992) 3.

⁵¹ V J D Pienaar and H I J Spoelstra, *Negotiation* (Cape Town, Juta and Co Ltd, 1991) 3.

negotiation seeks to adjust differences through compromise, balancing legal, economic, psychological, and social interests to establish a more desirable relationship.⁵²

A vital and recurrent element of this mechanism is that it is a continuous process characterized by distinct phases, leading either to agreement or failure to settle. Its duration, whether brief or prolonged, is immaterial compared to its essential continuity.⁵³ While not identical to legal proceedings, negotiation follows structured phases: preparation, opening, bargaining, and closing or agreement phase.⁵⁴ While generally consensual, it is not always voluntary, as it may be mandated or influenced by external pressures. Litigation can also prompt negotiation, but parties retain the right to withdraw at any time.⁵⁵

Another the distinguishing features of negotiation are that it is based solely upon the bilateral interaction of the disputants. This indicates that the process is dyadic in the sense that a neutral third party is not involved. The disputants themselves fill the role of advocate and decision maker: the disputants determine the rules that will govern the form of the proceedings, identify and argue the facts in issue, control the process and determine its outcome.⁵⁶ However, the bilateral nature of the process does not mean that only two disputants are involved.⁵⁷

Also, characteristic of negotiation lies in its purpose of attempting to resolve a dispute relating to interests or rights. The very purpose of negotiation in this instance is to create future rights or interests.⁵⁸ In the same vein, another element of negotiation is to reconcile interests or to settle a dispute by joint decision making.⁵⁹ The notion of joint decision making is generally alien to common notions about negotiation. This attitude may be attributed to the adversarial culture instilled by the process of litigation.⁶⁰

⁵² *ibid.*

⁵³ P H Gulliver, *Dispute and Negotiations: A Cross-Cultural Perspective* (Academic Press, London 1979) 180-186.

⁵⁴ A T Bello, 'Negotiation as a Tool for Dispute Resolution and Conflict Management in a Changing World' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3010144> accessed on 26 February, 2026.

⁵⁵ S M Leeson and B M Johnston, *Ending It Dispute Resolution in America* (Cincinnati, Anderson Publishing Co. 1988), 104.

⁵⁶ H Astor and C M Chinkin, *Dispute Resolution in Australia* (Sydney, Butterworths, London 1992), 80.

⁵⁷ D G Gifford, *Legal Negotiation* (West Publishing Co, St Paul Minn, London 1989), 175-179.

⁵⁸ M A Eisenberg, 'Private Ordering through Negotiation: Dispute Settlement and Rule Making' *Havard Law Review*, (1976) 665-668.

⁵⁹ J H Hartje, 'Lawyer's Skills in Negotiations: Justice in Unseen hands' *Journal of Dispute Resolution*, (1984) (119) 138-139.

⁶⁰ M C Menkel, 'For and Against Settlement: Uses and Abuses of the Mandatory Settlement Conference' *University of California in Los Angeles Law Review*, (1985/1986) (485) 755.

Furthermore, considering these features emerge the importance and benefits of negotiation as a mechanism of alternative dispute resolution. Negotiation is valuable in ADR as it preserves relationships, fosters trust, and promotes collaboration. Unlike litigation, it avoids a win-lose outcome, allowing for mutually beneficial solutions.⁶¹ It is also a cost-effective alternative, saving time, resources, and emotional strain compared to legal proceedings.⁶²

Nevertheless, negotiation can be problematic when power imbalances favour one party, leading to unfair outcomes. The lack of a neutral mediator may result in failed agreements, wasted resources, or exploitation, especially if one party is unaware of their rights.⁶³ Additionally, if a party withdraws from negotiations after initiation, it can render the time and resources invested in the negotiation futile.⁶⁴

2. Mediation

The term mediation broadly refers to any instance in which a third party helps others reach an agreement.⁶⁵ Mediation is a process in which a third party (usually neutral and unbiased) facilitates a negotiated consensual agreement among parties, without rendering a formal decision.⁶⁶ In other words, it is an ADR method in which third party natural assists conflicting parties in order to reach a mutually dreamed agreement. Whether an agreement results or not, and whatever the content of that agreement, if any, the parties themselves determine rather than accepting something imposed by a third party.⁶⁷

An element of mediation as ADR mechanism lies in its voluntary process in which a trained neutral third party facilitates a binding settlement between disputing parties.⁶⁸ The parties control the resolution and may exit the process at any time, as can the mediator for ethical reasons. While the agreement is voluntarily reached, it is ultimately validated and

⁶¹ G Kaushik, 'Negotiation as A Mode of ADR' (2023) <<https://blog.ipleaders.in/negotiation-as-a-mode-of-adr/>> accessed on 26 February, 2026.

⁶² *ibid.*

⁶³ K Jensen, 'Creativity is More Important Than Knowledge in Negotiations' (2017) <<https://www.forbes.com/sites/keldjensen/2017/05/30/creativity-is-more-important-than-knowledge-in-negotiations/>> accessed on 26 February, 2026.

⁶⁴ Menkel (n 60) 755.

⁶⁵ *ibid.*

⁶⁶ L M Ponte, *Alternative Dispute Resolution in Business* (West Educational Publishing Company, Canada 1991) 90.

⁶⁷ *ibid.*

⁶⁸ *ibid.*, 92.

ratified by the courts.⁶⁹ From past to present scholars and researchers have developed distinctive forms of mediation to describe and compare approaches of mediation. These includes facilitative, evaluative and transformative mediation⁷⁰ Facilitative mediation implies the instance where the mediator manages the process by which the parties negotiate their case.⁷¹ This approach is based on three principles: parties are best suited to determine their own outcomes, neutrality fosters trust, and the mediator's focus enhances intervention effectiveness.⁷²

On the other hand, evaluative mediations focus primarily on the parties' alternatives to settlement, with the mediator—often a legal expert—providing insights without making judgments.⁷³ While both facilitative and evaluative mediation aim to resolve disputes, transformative mediation focuses on improving the parties' interactions and personal growth rather than just settling the conflict.⁷⁴

More so, mediation is particularly beneficial when parties have ongoing relationships, as it fosters mutual agreement without winners or losers. It allows parties to tailor the process to their needs, including location, timeframe, and participants.⁷⁵ Mediation is also faster than adjudicative methods since mediators manage negotiations rather than prepare legal arguments.⁷⁶ Additionally, it offers flexible settlement options beyond litigation, including structured payment plans. Importantly, mediation does not preclude parties from pursuing arbitration or litigation if a settlement is not reached.⁷⁷ However, mediation faces challenges such as its non-binding nature, power imbalances, unpredictability, and reliance

⁶⁹ Y Shamir, 'Alternative Dispute Resolution Approaches and Their Application' (2002) <[https://www.researchgate.net/publication/251855496_Alternative_Dispute_Resolution_Approaches_and_Their_Application#:~:text=Shamir%20\(2011\)%20posits%20that%2C,arbitration%20and%20adjudication.%20..](https://www.researchgate.net/publication/251855496_Alternative_Dispute_Resolution_Approaches_and_Their_Application#:~:text=Shamir%20(2011)%20posits%20that%2C,arbitration%20and%20adjudication.%20..)> Accessed on 28th March 2025.

⁷⁰ Ponte (n 66) 93.

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ N. S Şimşek and K Bölten 'Mediation as a Charming Dispute Resolution Mechanism' <<https://www.gsg hukuk.com/en/publications-bulletins/articles/mediation-as-a-charming-dispute-resolution-mechanism-gsg.pdf>> accessed 26 February, 2026. .

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ M F Radford, 'Advantages and Disadvantages of Mediation in Probate, Trust, and Guardianship Matters' (2000) 34 *ABA REAL PROP. PROB. & TR. Journal*, 242.

on party cooperation. Additionally, its confidentiality may hinder accountability in certain cases.⁷⁸

3. Conciliation

Conciliation is a voluntary dispute resolution process where a neutral third party, known as the conciliator, assists disputing parties in reaching a mutually acceptable settlement.⁷⁹ It is an informal and flexible mechanism aimed at fostering dialogue and understanding between conflicting parties.⁸⁰ Unlike litigation, which imposes binding decisions, conciliation focuses on guiding parties towards a consensual resolution by clarifying issues, identifying interests, and suggesting possible solutions.⁸¹

A crucial characteristic of conciliation is its structured yet adaptable process, comprising various phases that facilitate resolution.⁸² It typically begins with an introductory phase where the conciliator sets the ground rules, followed by information gathering, issue identification, exploration of settlement options, and, if successful, an agreement phase.⁸³ The conciliator plays an active role in steering discussions and proposing solutions, but the final decision remains with the disputing parties. While primarily voluntary, conciliation may be mandated in some legal and institutional frameworks, such as labour disputes or commercial disagreements.⁸⁴

Another distinguishing feature of conciliation is the involvement of a neutral third party who does not impose a decision but facilitates dialogue.⁸⁵ The conciliator assists by fostering open communication, reducing tensions, and ensuring fairness, making the process particularly useful where power imbalances exist, or parties struggle to communicate effectively. Furthermore, conciliation aims not only to resolve disputes but

⁷⁸ Sikubwabo, 'The perceptions and challenges of a holistic aspect of mediation for effective conflict resolution' (2024) < <https://worldmediation.org/journal/> > accessed 26 February, 2026

⁷⁹ M Bauckmann, 'What is Conciliation?' < <https://www.dispute-resolution-hamburg.com/information/conciliation> > accessed 26 February, 2026.

⁸⁰ *ibid*

⁸¹ R A Hunter and Others, *Law and Practice of International Commercial Arbitration* (4th edn, Sweet and Maxwell, London 2004) 24.

⁸² L C Rei, 'Conciliation as A Mechanism for the Resolution of International Economic and Business Disputes' *Fordham International Law Journal* (1990) (14) (3) 3.

⁸³ Bilder, 'International Third Party Dispute Settlement' *DEN. UJ. INT'L L. & POL'Y*, (1989) (17) 481.

⁸⁴ D Spencer, *Essential Dispute Resolution*, (Cavendish Publishers, Sydney, Australia 2002) 23.

⁸⁵ *ibid*,

also to preserve relationships and foster long-term cooperation. Its primary purpose is to reconcile interests by encouraging parties to collaboratively craft solutions.⁸⁶

Given these characteristics, conciliation offers several benefits as an alternative dispute resolution (ADR) mechanism.⁸⁷ It provides a confidential, cost-effective, and less adversarial means of resolving disputes compared to litigation. By preserving relationships, it is particularly valuable in commercial, family, and workplace conflicts where ongoing interaction is essential. Additionally, conciliation reduces court congestion by offering a faster and more amicable settlement method.⁸⁸

Despite its advantages, conciliation also presents challenges. The non-binding nature of the conciliator's suggestions means that parties may reject proposed settlements, prolonging disputes.⁸⁹ Furthermore, if one party lacks good faith or abuses the process to delay resolution, conciliation may become ineffective. Power imbalances may also impact fairness, as a weaker party might feel pressured into accepting an unfavourable outcome.⁹⁰ Nonetheless, with a skilled conciliator and a cooperative approach, conciliation remains a powerful tool for resolving disputes amicably and efficiently.

4. Expert Determination

Expert determination is a procedure in which a dispute or a difference between the parties is submitted, by agreement of the parties, to one or more experts who make a determination on the matter referred to it.⁹¹ It is a contractual form of dispute resolution, so parties to a contract agree that certain disputes that may arise in connection with their contract will be referred to an expert.⁹² This agreement must be in a written form; the expert who conducts

⁸⁶ *ibid*, 24.

⁸⁷ I Dore, 'Arbitration And Conciliation Under The Uncitral Rules: A Textual Analysis' (1986) 7-8

⁸⁸ *ibid*

⁸⁹ N G Partner, 'Adjudication and ADR: an Overview' <https://www.fenwickelliott.com/sites/default/files/nick_gould_-_adjudication_and_adr_-_an_overview_matrices_paper.indd_.pdf 7 > accessed 26 February, 2026.

⁹⁰ *ibid*.

⁹¹ WIPO, 'Expert Determination' <<https://www.wipo.int/amc/en/expert-determination/what-is-exp.html>> accessed 26 February, 2026.

⁹² L Arshus, 'A Consideration of Expert Determination on Energy and Resources Projects' (2015) <www.ashurst.com> accessed on 26 February, 2026.

the process is independent and most of the times chosen by the parties or he/she can be nominated from a professional institute.⁹³

Expert determination is a mechanism used in a few commercial agreements. For example, it may be used in share purchase agreements to resolve disputes in relation to completion accounts.⁹⁴ Also, expert determination is said to be best suited for disputes concerning valuation or defined technical issues, where the relevant facts are not significantly contested and can be ascertained from documentary evidence.⁹⁵

In addition, parties usually, choose to refer the dispute to an expert due to a very specific reason that is the reason why such expert determination clauses could require the expert to have specific technical or industrial experience in this particular subject matter of the dispute.⁹⁶ Unlike litigation or arbitration, the expert is allowed to apply its personal expertise to the determination.⁹⁷

Moreover, the expert determination process offers flexibility, enabling parties to autonomously select a third party to adjudicate their dispute.⁹⁸ It allows parties to autonomously select an expert for adjudication.⁹⁹ However, the process lacks certain procedural formalities, may involve high expert fees, and faces enforcement challenges if parties fail to comply.¹⁰⁰

5. Hybrid ADR Mechanisms

Hybrid dispute resolution processes bring together the elements of both mediation and arbitration. The nature of the hybrid process can be both flexible and varied. Common examples are a mediation followed by arbitration ('med-arb') or an arbitration followed by mediation ('arb-med')

⁹³ R M Young, 'Expert Determination' (2001) <www.findlaw.com> accessed 26 February, 2026.

⁹⁴ *ibid.*

⁹⁵ Birketts, 'Expert Determination' (2022) <<https://www.birketts.co.uk/legal-update/expert-determination/>> accessed 26 February, 2026.

⁹⁶ R King, 'Dispute Resolution in the Energy Sector a Practitioner's Handbook' (2012) *Globe Law and Business*, 102.

⁹⁷ *ibid.*

⁹⁸ T Uher, *Fundamentals of Building Contract Management* (University of NSW Press, Canada 2008), 23.

⁹⁹ A Saeb and Others, 'A Mechanism for Dispute Resolution in the Iranian Construction Industry' *Journal of Construction in Developing Countries*, (2021) (26) (1) 205-226.

¹⁰⁰ *ibid.*, 206.

a. Med-Arb (Mediation-Arbitration)

Med-Arb combines mediation and arbitration, offering both collaboration and finality in dispute resolution.¹⁰¹ The process begins with mediation, where a neutral facilitator helps parties reach a voluntary settlement. If unresolved issues remain, arbitration follows, where a final decision is imposed. This hybrid approach ensures efficiency, cost savings, and enforceability.¹⁰² However, concerns arise over fairness, as private caucusing in mediation may bias the arbitration phase.¹⁰³ Critics argue that the fusion of these distinct processes risks ethical conflicts, potential coercion, and strategic manipulation by parties. Despite its benefits, Med-Arb remains a debated ADR mechanism.¹⁰⁴

b. Arb-Med (Arbitration-Mediation)

Arb-Med is the reverse of Med-Arb, starting with arbitration before proceeding to mediation. It is a hybrid dispute resolution process that combines the benefits of arbitration and mediation, including speed, procedural flexibility, confidentiality, and choice of decision maker, ease of access to the tribunal, continuity, finality, and enforceability of the outcome. If the mediation is successful, the agreement between the parties governs the resolution of the dispute and the arbitral award is never unsealed.¹⁰⁵ The primary objective of Arb-Med is the informed good faith negotiation and settlement of the dispute by the parties, with the initial assistance and efficiency of the Arbitral Tribunal's information gathering powers, in the context of a formal arbitration process that will immediately resume if the mediation that follows is not successful.¹⁰⁶

3.0: Comparison of International Arbitration with Other ADR Mechanisms

Alternative Dispute Resolution (ADR) encompasses various mechanisms for resolving disputes outside traditional court litigation. While international arbitration remains a

¹⁰¹ K M Blankley, 'Keeping a Secret from Yourself? Confidentiality when the same Neutral serves both as Mediator and as Arbitrator in the same case' *Baylor Law Review*, (63) (2)145.

¹⁰² O Akpata, 'The Place of Med-Arb in the Resolution of Commercial Disputes' <<https://www.patrelipartners.com/wp-content/uploads/2016/03/place-of-med-arb.pdf>> accessed 26 February, 2026.

¹⁰³ T J Stipanowich, 'Arbitration, Mediation, and Mixed Modes: Seeking Workable Solutions and Common Ground on MedArb, Arb-Med, and Settlement Oriented Activities Arbitrators' *Harvard Negotiation Law Review* (2017) 26 265-6.

¹⁰⁴ *ibid.*

¹⁰⁵ New Zealand International Arbitration Centre, 'Arbitration-Mediation' <<https://nzaiac.com/arb-med/>> accessed 26 February, 2026.

¹⁰⁶ *ibid.*

dominant ADR method, it differs significantly from other mechanisms such as mediation, conciliation, and negotiation in terms of procedure, enforceability, and finality. Each method offers distinct advantages and drawbacks, influencing the choice of dispute resolution based on the nature of the conflict, the relationship between parties, and the desired outcome:

3.1: International Arbitration vs. Mediation

International arbitration and mediation both provide alternatives to court litigation, but they differ fundamentally in their nature and outcome. International arbitration is a formal and binding process in which an arbitral tribunal renders a final and enforceable decision, akin to a court judgment. In contrast, mediation is a non-binding process where a neutral mediator facilitates discussions between the disputing parties, helping them reach a mutually agreed settlement. Mediation relies on the willingness of the parties to compromise, making it a more collaborative approach. However, unless the mediated agreement is formalized into a contract or recognized under legal frameworks such as the Singapore Convention on Mediation, it lacks enforceability. International arbitration, by contrast, provides a definitive resolution, which is particularly crucial for complex commercial and cross-border disputes requiring certainty and finality.

3.2: International Arbitration vs. Negotiation

Negotiation is the most informal ADR method, wherein parties engage directly to resolve their disputes without third-party intervention. It provides maximum flexibility but lacks the structure, neutrality, and enforceability of international arbitration. Unlike international arbitration, where an independent third party decides the outcome based on legal arguments and evidence, negotiation depends entirely on the bargaining power and willingness of the parties. While negotiation is often the first step in dispute resolution, it may fail when parties have significant power imbalances or when complex legal and factual disputes require third-party adjudication. In such cases, international arbitration serves as a more structured and enforceable alternative.

3.3: International Arbitration and Conciliation

International arbitration and conciliation are both alternative dispute resolution mechanisms, but they differ significantly in structure and outcome. International arbitration

is a formal, binding process where an arbitral tribunal renders a final and enforceable decision. In contrast, conciliation is a non-binding process where a neutral conciliator facilitates discussions and helps parties reach a voluntary settlement. The conciliator facilitates dialogue and suggests solutions, but parties retain control over the outcome. Arbitration ensures legal certainty under treaties like the New York Convention, making it ideal for complex disputes requiring finality. Conciliation, on the other hand, promotes cooperation and relationship preservation. The choice between them depends on the dispute's nature, enforceability needs, and parties' willingness to settle voluntarily.

4.4: International Arbitration vs. Hybrid ADR Mechanisms (Med-Arb and Arb-Med)

Hybrid ADR mechanisms such as Med-Arb and Arb-Med combine elements of mediation and arbitration to optimize efficiency and flexibility. Med-Arb starts with mediation, and if unresolved issues remain, arbitration follows to provide a binding resolution. Arb-Med, on the other hand, begins with arbitration, but the arbitral award is kept confidential while mediation is attempted. If mediation succeeds, the award remains unenforced; if mediation fails, the arbitrator's decision is made final. International arbitration differs from these hybrids as it maintains a clear separation between negotiation and adjudication, ensuring that the decision-making process is not influenced by prior settlement discussions. Hybrid mechanisms are particularly useful when parties seek amicable solutions but also require a fall-back mechanism to prevent prolonged disputes.

Above all, while all ADR mechanisms aim to provide efficient and cost-effective dispute resolution, international arbitration stands out for its binding nature, procedural structure, and international enforceability under treaties such as the New York Convention. However, international arbitration may be more expensive and time-consuming than mediation or conciliation. The choice between international arbitration and other ADR methods depends on multiple factors, including the complexity of the dispute, the relationship between the parties, and the necessity of a legally binding outcome. Ultimately, selecting the most appropriate ADR mechanism requires a careful balance between efficiency, cost, enforceability, and party autonomy.

4.0: Challenges in International Arbitration and ADR Mechanisms

Despite the advantages of international arbitration and other ADR mechanisms, several challenges hinder their effectiveness. These challenges stem from legal, procedural, and practical concerns that impact the efficiency and fairness of dispute resolution¹⁰⁷:

- a. **High Costs and Expenses:** One of the major challenges in international arbitration is the high cost associated with the process. Arbitration fees, administrative costs, legal representation, and expert witnesses can make arbitration expensive, sometimes exceeding the costs of litigation.¹⁰⁸ Similarly, mediation and conciliation, though generally cheaper, may still incur substantial expenses, especially when conducted across multiple jurisdictions.
- b. **Procedural Delays:** Although arbitration is often preferred for its speed and efficiency, it can still suffer from delays due to complex procedural rules, voluminous evidence, and scheduling conflicts between arbitrators and parties.¹⁰⁹ In comparison, mediation and conciliation typically offer quicker resolution, but their voluntary nature means disputes may drag on if parties do not reach an agreement.
- c. **Enforceability Issues:** While arbitration awards are widely enforceable under the New York Convention, enforcement can still be challenging if the losing party resists compliance or if the award conflicts with local public policy. Mediation and conciliation settlements, unless formally recognized in a contract, lack automatic enforceability, making it difficult to ensure compliance in cross-border disputes.¹¹⁰
- d. **Lack of Appeal and Review Mechanisms:** Unlike court judgments, arbitral awards are final and binding with limited grounds for appeal or annulment. This finality, while beneficial for certainty, can be problematic if errors occur in the decision-

¹⁰⁷ M Patoari and Others, 'Legal and Administrative Challenges of Alternative Dispute Resolution (ADR)' *Beijing Law Review*, (2020) (11) 415.

¹⁰⁸ Ng'etich, Raphael, 'The Current Trend of Costs in Arbitration: Implications on Access to Justice and the Attractiveness of Arbitration' *Alternative Dispute Resolution*, (2017) (5) (2) 111-12. < <https://ssrn.com/abstract=3644333> > accessed 27 February, 2026.

¹⁰⁹ Broderick, 'Combatting Delays in Arbitration: Expediting the Process' (2023) < <https://broderickbozimo.com/combating-delays-in-arbitration-expediting-the-process/> > accessed 27 February, 2026

¹¹⁰ O Marsden and R Zard, 'Challenging and Enforcing Arbitration Awards: United Kingdom - England & Wales

Freshfields' (2024) < <https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/united-kingdom> > accessed 27 February, 2026

making process.¹¹¹ In contrast, mediation and conciliation allow parties to retain control over the outcome, but their non-binding nature may lead to unresolved disputes.

- e. **Jurisdictional and Legal Conflicts:** International arbitration often involves parties from different legal systems, leading to conflicts in governing laws, seat of arbitration, and applicable procedures. Some jurisdictions impose restrictions on arbitration for certain disputes, while others may have inconsistent enforcement standards. Similarly, mediation and conciliation may face cultural and legal barriers, making consensus difficult.¹¹²
- f. **Confidentiality vs. Transparency:** Confidentiality is a key feature of arbitration and mediation, protecting sensitive business information. However, this secrecy can lead to concerns about lack of transparency, especially in investor-state disputes, where public interest is involved.¹¹³ In contrast, litigation provides a transparent and accountable process but at the cost of privacy.

5.0: Contemporary Issues and Developments in ADR

Alternative Dispute Resolution (ADR) continues to evolve in response to global economic, technological, and legal changes. As international commerce expands and disputes become more complex, several key developments have shaped the landscape of ADR.¹¹⁴ These include the rise of Investor-State Dispute Settlement (ISDS), the integration of technology into dispute resolution, and the push for greater diversity and inclusion in ADR processes:

5.1: The Rise of Investor-State Dispute Settlement (ISDS)

Investor-State Dispute Settlement (ISDS) has emerged as a crucial mechanism for resolving disputes between foreign investors and host states.¹¹⁵ While ISDS provides legal protection for investors, ensuring fair treatment and safeguarding against expropriation, it

¹¹¹ C Russell, 'Arbitral Awards – How Final Are They?' (2023) < <https://www.charlesrussellspeechlys.com/en/insights/expert-insights/dispute-resolution/2023/arbitral-awards-how-final-are-they/> > accessed 27 February, 2026.

¹¹² B E Umukoro, 'The Choice Of Foreign Law In International Commercial Arbitration: Issues And Problems' *The Gravitas Review Of Business & Property Law*, (2016) (7) 3.

¹¹³ R Schidt., 'Confidentiality v, Transparency in international Arbitration- A Budapest Conference Recap' (2023) < <https://arbitrationblog.kluwerarbitration.com/2023/07/06/confidentiality-v-transparency-in-international-arbitration-a-budapest-conference-recap/> > accessed 27 February, 2026

¹¹⁴ S Khan., 'Contemporary Issues in Alternative Dispute Resolution' *Ile Journal of Alternative Dispute Resolution Law Review*, (2023) (1) (1) 1.

¹¹⁵ S C Cesar, 'Investor-State Dispute Settlement: An Analysis of the Reform Proposals on Its Institutional Structure' (2017) < SSRN: <https://ssrn.com/abstract=2984581> > accessed 27 February, 2026

has faced significant criticism and calls for reform.¹¹⁶ ISDS has been criticized for its lack of transparency, the high costs associated with arbitration proceedings, and concerns over arbitrator impartiality. Critics argue that ISDS disproportionately favours multinational corporations over sovereign states, limiting governments' ability to regulate in the public interest.¹¹⁷ Additionally, inconsistent arbitral decisions and the lack of an appellate mechanism have fuelled debates on the fairness and legitimacy of ISDS.¹¹⁸ In response to the concerns surrounding ISDS, several stakeholders have proposed the establishment of a multilateral investment court.¹¹⁹ The European Union has championed the idea of a standing investment court with permanent judges and an appellate mechanism to ensure consistency in investment dispute rulings. Such a court would address issues of arbitrator bias and provide a more structured framework for investor-state disputes, enhancing legal certainty and fairness.¹²⁰

5.2: Technology and ADR

Technology has significantly transformed the field of ADR, streamlined dispute resolution processes and improved efficiency.¹²¹ Innovations such as Online Dispute Resolution (ODR) and artificial intelligence (AI) have enhanced access to justice and are expected to play an even greater role in the future.¹²² ODR involves the use of digital platforms to resolve disputes without the need for physical meetings. It has become particularly relevant

¹¹⁶ *ibid*

¹¹⁷ G K Kohler and M Potestà, 'Can the Mauritius Convention Serve as a Model for the Reform of Investor-State Arbitration in Connection with the Introduction of a Permanent Investment Tribunal or an Appeal Mechanism?' < http://www.uncitral.org/pdf/english/commissionsessions/unc/unc-49/CIDS_Research_Paper_-_Can_the_Mauritius_Convention_serve_as_a_model.pdf 8 > accessed 27 February, 2026

¹¹⁸ UNCTAD, 'Transforming the IIA Regime: Exiting the Unnecessary, Damaging Investor-State Dispute Settlement System' <http://unctad-worldinvestmentforum.org/wp-content/uploads/2015/05/Public-CitizenDraft.pdf> 15 > accessed 27 February, 2026.

¹¹⁹ Council of Australian Law Deans, 'Statement on the Nature of Legal Research' (2005) < <http://www.cald.asn.au/docs/cald%20statement%20on%20the%20nature%20of%20legal%20research%20-%202005> > accessed 27 February, 2026.

¹²⁰ European Commission, 'Investor-to-State Dispute Settlement (ISDS): Some Facts and Figures' < http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153046.pdf 3 > accessed 27 February, 2026.

¹²¹ United Nations, 'What Does "Sustaining Peace" Mean? General Assembly and Security Council Resolutions A/RES/70/262 and S/RES/2282' (2016) <https://unsdg.un.org/sites/default/files/Guidance-on-SustainingPeace.170117.final_.pdf > accessed 27 February, 2026.

¹²² S Salter, 'Online Dispute Resolution and Justice System Integration: British Columbia Civil Resolution Tribunal' *Windsor Yearbook of Access to Justice/Recueil annuel de Windsor d'accès à la justice* (2017) (34) (1), 115. < <https://doi.org/10.22329/wyaj.v34i1.5008> > accessed 27 February, 2026.

in e-commerce, consumer protection cases, and cross-border disputes.¹²³ The COVID-19 pandemic accelerated the adoption of ODR, highlighting its cost-effectiveness, speed, and accessibility. Many arbitral institutions now offer virtual hearings, electronic submissions, and AI-assisted case management tools to facilitate dispute resolution.¹²⁴ AI is being integrated into ADR through predictive analytics, automated legal research, and AI-powered decision-making models. AI can assist arbitrators and mediators by analysing vast amounts of case law, identifying precedents, and even suggesting settlement options based on historical data.¹²⁵ While AI enhances efficiency, concerns remain about the ethical implications of machine-driven dispute resolution, particularly regarding accountability and fairness in decision-making.¹²⁶

6.3: Diversity and Inclusion in ADR

The call for greater diversity and inclusion in ADR has gained momentum as stakeholders recognize the need for a more representative and impartial dispute resolution system.¹²⁷ Traditionally, arbitration panels and mediation appointments have been dominated by arbitrators from Western jurisdictions, raising concerns about bias and a lack of diverse perspectives.

There is a growing demand for increased representation of arbitrators and mediators from different cultural, professional, and legal backgrounds.¹²⁸ Institutions such as the ICC, LCIA, and ICSID have implemented policies to promote diversity by encouraging the appointment of arbitrators from underrepresented regions. Diverse decision-makers can bring fresh perspectives and enhance the legitimacy of ADR proceedings. Gender disparity remains a significant issue in ADR, with women historically underrepresented in arbitration panels. Initiatives such as the Equal Representation in Arbitration Pledge aim to increase

¹²³ N Ebner, and E E Greenberg, 'Strengthening Online Dispute Resolution Justice' *WASH. U. J. L. & POL'Y* 065 (2020) 63. < https://openscholarship.wustl.edu/law_journal_law_policy/vol63/iss1/9 > accessed 27 February, 2026.

¹²⁴ *ibid*

¹²⁵ A M Ahalt, 'What You Should Know about Online Dispute Resolution' (2016) <https://www.virtualcourthouse.com/index.cfm/feature/1_7/what-you-should-know-aboutonline-dispute-resolution.cfm> accessed 27 February, 2026.

¹²⁶ M Begum, and Others, 'Alternative Dispute Resolution in the Contemporary World' *Global International Relations Review*, (2022) (5) (3) 12. < <https://www.girrjournal.com/papers/jqoWMhWAJo.pdf> 12> accessed 27 February, 2026

¹²⁷ *ibid*.

¹²⁸ *ibid*.

the number of female arbitrators.¹²⁹ Similarly, geographic imbalances in ADR appointments disadvantage arbitrators from developing countries. Efforts to broaden arbitrator selection and training programs can help address these disparities and create a more equitable ADR landscape.¹³⁰

To this end, the future of ADR is being shaped by technological advancements, legal reforms, and a growing emphasis on efficiency and inclusivity. As ADR continues to evolve, stakeholders must embrace technological innovations, address systemic biases, and implement reforms that enhance the legitimacy and effectiveness of dispute resolution processes. By doing so, ADR will remain a cornerstone of international dispute resolution, adapting to meet the demands of an increasingly interconnected world.

6.0: Conclusion and Recommendations

The expanding nature of cross-border commerce demands a dispute resolution system that combines flexibility with legal certainty. This study has examined the structure, operational challenges, and evolving trends within international arbitration and alternative dispute resolution mechanisms. It finds that these mechanisms are no longer mere alternatives to domestic litigation but have developed into an independent framework essential to global commercial stability. The legitimacy of international arbitration rests on the balance between party autonomy and state-backed enforceability. Although parties rely on contractual consent to avoid the procedural limitations of domestic courts, the effectiveness of arbitral awards still depends heavily on national courts and international instruments such as the United Nations Commission on International Trade Law Model Law and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Arbitration therefore operates within a cooperative relationship with domestic legal systems rather than in complete independence from them.

The study further reveals a clear distinction between the binding nature of arbitration and the consensual structure of negotiation, mediation, and conciliation. While arbitration often

¹²⁹ International Chamber of Commerce (ICC), 'ICC Acts to Encourage Diversity in Selection of Arbitrators' {2020} <<https://iccwbo.org/news-publications/news/icc-acts-to-encourage-diversity-in-selection-of-arbitrators/>> accessed 27 February, 2026.

¹³⁰ A Marrett and Others, 'Diversity in institutional arbitration: what does the data say and what next?' (2024) <<https://www.dlapiper.com/en/insights/publications/arbitration-matters/2024/diversity-in-institutional-arbitration-what-does-the-data-say-and-what-next>> accessed 27 February, 2026.

mirrors litigation through adversarial procedures, rising costs, and delays, mediation and conciliation focus more on preserving commercial relationships and achieving mutually beneficial outcomes. However, the absence of a universally enforceable execution framework remains a major limitation of non-binding ADR processes. The study also finds that hybrid mechanisms such as Med-Arb and Arb-Med attempt to combine consensual settlement with adjudicatory finality. Despite their practical advantages, these mechanisms raise concerns about due process and impartiality, particularly where confidential information disclosed during mediation may affect the neutrality of the arbitrator in subsequent proceedings.

The study additionally finds that international dispute resolution is undergoing significant transformation through technological advancement and increasing criticism of institutional legitimacy. The rise of Online Dispute Resolution and Artificial Intelligence has improved efficiency and access to justice, but it has also introduced concerns relating to algorithmic bias, transparency, data protection, and the preservation of fairness in decision-making. At the same time, growing criticism of Investor-State Dispute Settlement reflects the tension between protecting foreign investment and preserving the regulatory authority of sovereign states.

These findings carry important implications for states, commercial actors, and arbitral institutions. Domestic legal systems must continue to reform arbitration laws in line with contemporary transnational standards to reduce unnecessary judicial interference and ensure predictable enforcement procedures. Corporate actors should move beyond routine arbitration clauses by adopting multi-tiered dispute resolution provisions that encourage negotiation or mediation before formal arbitration. Arbitral institutions must also address concerns relating to diversity, representation, and transparency by broadening the participation of professionals from developing jurisdictions and underrepresented groups. In addition, clear ethical guidelines are necessary to regulate the growing use of AI-assisted processes in dispute resolution.

Although this study provides a broad comparative analysis of international arbitration and ADR, the field continues to evolve rapidly. Future research should therefore examine the feasibility of the proposed Multilateral Investment Court and assess whether a permanent

appellate structure can balance consistency in international investment law with state sovereignty. Further inquiry is also needed into the legal and ethical implications of predictive AI and automated decision-making within Online Dispute Resolution, particularly regarding due process and algorithmic bias. Finally, there is a need for uniform codes of conduct governing neutrals operating within Med-Arb and Arb-Med frameworks in order to strengthen procedural integrity and protect fairness in hybrid dispute resolution processes.

To address the operational vulnerabilities identified across international arbitration and alternative dispute resolution mechanisms, the following measures are proposed:

- i. Fixed-fee structures for smaller claims and expedited arbitration procedures should be adopted to address the challenge of high arbitration costs.
- ii. Strict case management techniques, including firm deadlines for different arbitration stages, should be introduced to minimize delays in arbitration proceedings, while technological solutions such as virtual hearings and electronic document submissions should be leveraged.
- iii. Governments should strengthen domestic legal frameworks to ensure seamless enforcement of arbitral awards in compliance with international arbitration standards, while also recognizing mediation and conciliation agreements.
- iv. Investor-state arbitrations should incorporate limited transparency measures to balance confidentiality with fairness, and arbitrators should be subject to strict ethical guidelines, including mandatory disclosure of conflicts of interest, to enhance trust in the arbitration process.
- v. Greater efforts should be made to promote awareness and capacity-building in arbitration and ADR by integrating arbitration training into legal education, conducting awareness campaigns, and incentivizing businesses to adopt alternative dispute resolution mechanisms.

DIGITAL FOOTPRINTS AND CRIMINAL LIABILITY: LEGAL AND CRIMINOLOGICAL PERSPECTIVES.

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Abstract

This paper examines how social media both facilitates criminal behaviour and transforms criminal investigation, with attention to legal and criminological implications for Nigeria and comparative international frameworks. It argues that platforms such as Facebook, Instagram, X, and TikTok create opportunities for offences including fraud, identity theft, cyberstalking, hate speech, grooming, organized-crime coordination, and misinformation by increasing accessibility, anonymity, transnational reach, rapid dissemination, and weakened guardianship, effects explained through social learning, routine-activity, strain, and online disinhibition theories. Simultaneously, social media furnishes investigators with valuable intelligence, geolocation data, multimedia evidence, and undercover access to networks, but the effective use of these resources is constrained by evidentiary authenticity rules, privacy and data-protection concerns, jurisdictional limits, and uneven institutional capacity within Nigeria's police, EFCC, NITDA, and related agencies. After surveying domestic statutes (notably the Cybercrime Act 2015, Evidence Act 2011, Communications Act 2003, ACJA, and the Terrorism Act 2022) and relevant international instruments, the paper recommends stronger data-protection enforcement, clear admissibility standards for digital evidence, judicial oversight of surveillance, enhanced investigator training and forensic capacity, and improved international cooperation to balance public safety with constitutional rights. These reforms aim to align investigative practice with legal safeguards while mitigating social media's criminogenic effects.

Keywords: Digital, foot prints, Criminal liability Investigation, Legal, Criminological Perspective.

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1.00 Introduction

The rapid integration of social media into daily life has fundamentally changed the concept of crime, influencing both the commission of crime and subsequently its investigation by the law enforcement agents. Though the platforms were designed for social interaction and connection, they have become a double edged sword, creating new avenues for criminal behavior while simultaneously providing law enforcement with unprecedented resources. Platforms such as Facebook, Instagram, Twitter (X), and TikTok have created new digital environments where individual interact, share information, and form virtual communities. While these platforms offer numerous social and economic benefits, they have also created opportunities for criminal behaviour and have reshaped methods of criminal investigation. The intersection between social media, criminal activity, and law enforcement presents complex legal and criminology challenges that require critical examination. Social media has been increasingly linked to various forms of criminal behavior.¹ The anonymity and accessibility provided by these platforms allow offenders to operate with reduced risk of immediate detection, facilitating the expansion of criminal networks and illegal activities across borders². Furthermore, social learning theory suggests that online environments may reinforce deviant behaviour by enabling individuals to observe, imitate, and normalize criminal conduct within digital communities.³

At the same time, social media has become an essential investigative tool for law enforcement agencies. Authorities increasingly rely on digital evidence obtained from social networking sites to identify suspects, monitor criminal activities, and gather intelligence.⁴ However, the use of social media as an investigative tool raises significant concerns regarding privacy rights, data protection, surveillance, and admissibility of digital evidence in court proceedings.⁵

From a legal perspective, the paper analyzes the challenges posed by digital evidence, jurisdictional issues, and the tension between privacy rights and the imperative for effective law

¹ A. Adeoye, "Social Media and the Transformation of Criminal Behaviour in Nigeria," *Nigerian Journal of Criminology* (2022) 15 JNL-CRIM 45–62.

² Wall, D.S. (2015). *Cybercrime: The Transformation of Crime in the Information Age*. Polity Press.

³ Akers, R.L., & Jennings, W.G. (2016). *Social Learning Theory*. Routledge.

⁴ United Nations Office on Drugs and Crime (UNODC). (2013). *Comprehensive Study on Cybercrime*.

⁵ Taylor, M., Fritsch, E., Liederbach, J., & Holt, T. (2019). *Digital Crime and Digital Terrorism*. Pearson.

enforcement.⁶ Scholars have documented the explosion of internet-mediated offences, the lack of adequate technical capacity among investigators, and the weak regulatory framework for handling cybercrime and digital evidence.⁷ Yet there remains limited systematic analysis of how social-media evidence is actually treated in Nigerian criminal proceedings, and how existing legal rules interact with investigative practice on the ground.⁸

This paper, therefore, examines the dual role of social media as both a facilitator of criminal behaviour and a key investigative tool, with a focus on the legal and criminological challenges this creates for the Nigerian criminal-justice system. It analyses how social media influences offending patterns, how law-enforcement agencies use digital evidence from these platforms, and how extant legal frameworks struggle to balance public safety, privacy, and due-process rights.⁹ By situating the Nigerian experience within broader global debates, the study aims to clarify gaps in doctrine and practice and to suggest concrete improvements to law, policy, and investigative technique in the digital age.¹⁰

2.00 Legal Framework

The increasing use of social media has significantly influenced criminal behaviour and criminal investigations. As a result, several legal frameworks have been established to regulate online activities, criminalize cyber-related offences, and guide law enforcement agencies in investigating crimes committed through digital platforms. In Nigeria, these frameworks consist of constitutional provisions, statutory laws, and institutional regulations that govern the use of digital technologies and social media.

⁶ Europol. (2022). *Internet Organised Crime Threat Assessment (IOCTA)*.

⁷ O. Onyishi, "Challenges of Cybercrime Prosecution in Nigeria," *Nigerian Journal of Legal Practice* (2021) 12 NJLP 78–94.

⁸ P. I. O. Nwogu, "Digital Evidence and the Nigerian Criminal Justice System," *Nigerian Journal of Law and Technology* (2023) 5 NJLT 33–50.

⁹ G. A. Adebayo, "Privacy, Surveillance and Social Media in Nigeria," *Journal of Law, Information and Technology* (2022) 14 J-LIT 201–218.

¹⁰ S. O. Afolabi, "Reforming the Legal Framework for Cybercrime in Nigeria," *Nigerian Journal of Public Law* (2024) 17 NJPL 1–22.

The rapid growth of social media has significantly transformed communication, commerce, and professional practices in Nigeria. However, this development has also increased the prevalence of cybercrimes such as identity theft, cyberstalking, online fraud, defamation, and other forms of digital misconduct. Consequently, Nigeria has developed a legal framework to regulate online activities and address cybercrime facilitated through social media platforms.

2.1 The Cybercrime (Prohibition, Prevention, etc.) Act¹¹: This is the primary legislation governing cyber activities in Nigeria. It is a key Nigerian statute enacted to provide a unified legal, regulatory, and institutional framework for the prohibition, prevention, detection, investigation, and prosecution of cybercrimes in Nigeria. It was signed into law in 2015 in response to the rising tide of cyber-enabled offences, particularly financial fraud, identity theft, online scams, and other digital crimes for which there was previously no comprehensive statutory regime. The Act also seeks to protect critical national information infrastructure, promote cyber security, and safeguard intellectual property and privacy rights in the digital environment. The Act empowers law enforcement agencies to investigate and prosecute cyber offences committed through digital platforms, including social media networks. It also establishes penalties for offenders and provides mechanisms for cooperation with international agencies in tackling cross-border cybercrime. Additionally, the Act mandates cooperation between service providers, financial institutions, and government agencies to assist in the detection and prevention of cybercrime.¹²

2.2 Evidence Act¹³ : In addition to the Cybercrimes Act, other relevant laws include the **Evidence Act** which provides the general framework for the admissibility, relevance, and evaluation of evidence in Nigerian courts, including emerging forms of digital and electronic evidence. It recognizes the admissibility of electronic evidence in court. It replaced the outdated Evidence Act, Cap. E14, Laws of the Federation of Nigeria, and came into force on 3 June 2011. It was enacted to modernise evidentiary rules, harmonise them across civil and criminal proceedings, and align Nigerian practice with international standards. A key innovation of the Act is its express recognition and treatment of electronic evidence, such as emails, text messages, and digital

¹¹ The Cybercrime (Prohibition, Prevention, etc.) Act, 2015, (No. 17 of 2015) Laws of the Federation of Nigeria (LFN), Cap. C25, 2004 (reprint 2015), as amended.

¹² Cybercrimes (Prohibition, Prevention, etc.) Act 2015, s 24.

¹³ The Evidence Act 2011,(No 18 of 2011)

records, subject to rules on authenticity and reliability¹⁴. Social media communications such as messages, posts, images, and videos may serve as evidence during criminal investigations and prosecutions. The Act establishes the conditions under which **computer-generated evidence** may be admitted in court. This provision requires the party presenting the evidence to demonstrate that the computer used to produce the information was operating properly and that the data was generated in the course of regular use. This legal provision has become particularly relevant in criminal investigations involving social media activities such as fraud, threats, and conspiracy conducted through digital platforms.¹⁵

2.3 The Nigerian Communications Act¹⁶: is the primary statute governing the Nigerian communications sector; it was signed into law by President Olusegun Obasanjo on 8 July 2003 after passage by both Houses of the National Assembly. The Act applies to the provision and use of all communications services and networks operating wholly or partly in Nigeria and establishes the Nigerian Communications Commission (NCC) as an independent regulatory authority. Its objectives include promoting the implementation of national communications policy, ensuring fair competition, protecting consumer and service-provider interests, managing national resources such as spectrum and electronic addresses, and safeguarding national security and safety in the use of communications infrastructure. It establishes the legal and regulatory framework for telecommunications and communications services in Nigeria, including the mandate of the Nigerian Communications Commission (NCC). It also regulates telecommunications service providers and ensures compliance with national communication policies. Together, these laws form a comprehensive legal framework aimed at addressing cybercrime and regulating online activities within Nigeria's digital environment.

¹⁴ Section 84 of the Evidence Act 2011

¹⁵ Evidence Act 2011, s 84.

¹⁶ The Nigerian Communications Act 2003 Laws of the Federation of Nigeria (LFN), 2004

2.4 The Constitution of the Federal Republic of Nigeria 1999¹⁷: The Constitution provides the foundational legal framework regulating the right to freedom of expression in Nigeria. It guarantees the right to freedom of expression and the freedom to receive and impart information through any medium, including social media platforms.¹⁸ However, this right is not absolute. It may be restricted in the interest of public safety, national security, and the prevention of crime. These constitutional provisions create a balance between protecting citizens' fundamental rights online and enabling the government to regulate harmful online behavior such as cyber bullying, hate speech, and incitement to violence.¹⁹

2.5 Administration of Criminal Justice Act (ACJA)²⁰: It is a federal law enacted to reform and modernise Nigeria's criminal-justice system by promoting efficient case management, timely dispensation of justice, and respect for the rights of suspects, defendants, and victims. It applies to offences established by an Act of the National Assembly and to criminal proceedings in the Federal Capital Territory and other federal courts, and many of its provisions have been adopted or adapted by several states through Administration of Criminal Justice Laws (ACJLs). The Act introduces key safeguards such as time-bound remand procedures, stronger protections against unlawful detention, mandatory disclosure rules, better regulation of plea bargaining, and clearer protocols for witness-protection, evidence-handling, and digital-evidence use in the process. It provides the overarching framework for criminal procedure in the Federal Capital Territory and other federal courts in Nigeria, from arrest to trial, sentencing, and appeals. It also provides procedural safeguards governing criminal investigations and prosecutions in Nigeria. Sections 1, 15, 17, and 37 emphasize due process, proper documentation of arrests and seized property, and the recording of statements, including electronic recordings. These provisions support the lawful acquisition and handling of digital evidence during investigations involving social media.

¹⁷ The Constitution of the Federal Republic of Nigeria 1999 as amended

¹⁸ Section 39 1999 Const FRN

¹⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 37.

²⁰ The Administration of Criminal Justice Act 2015

2.5 Criminal Code Act and Penal Code

The Criminal Code Act²¹ and Penal Code²² contain several provisions that can apply to crimes committed through social media platforms. These include offences such as defamation, conspiracy, fraud, impersonation, and incitement to violence. Although these laws were enacted before the emergence of social media, their provisions have been adapted to address offences committed through digital communication channels.

2.6 Nigerian Communications Act 2003

The Nigerian Communications Act regulates telecommunications services and establishes the Nigerian Communications Commission (NCC). The Act provides regulatory oversight over internet service providers and telecommunications operators, which are essential for monitoring and controlling online communications. The Act also allows regulatory authorities to collaborate with security agencies during criminal investigations involving digital communication networks.

2.7 Terrorism (Prevention and Prohibition) Act 2022

Social media platforms are sometimes used to promote extremist ideologies, recruit members, and coordinate criminal activities. The **Terrorism (Prevention and Prohibition) Act 2022** criminalizes the use of communication platforms, including social media, for acts related to terrorism. The Act authorizes security agencies to monitor communications suspected to be linked with terrorist activities and prosecute individuals who disseminate terrorist propaganda online.²³

2.8 International Legal Framework

Since social media crimes often cross national boundaries, international cooperation is necessary. Various international instruments such as the Council of Europe Convention on Cybercrime and other global cybersecurity initiatives provide guidelines for combating transnational cyber offences. These frameworks encourage cooperation between countries in areas such as extradition, information sharing, and digital evidence collection. Handling of social media-related crime and digital evidence is shaped by a constellation of treaties, guidelines, and technical standards aimed

²¹ Sections 373, 375, 516, 419 and 484 Criminal code

²² Sections 391, 392, 322, 96 and 114 Penal Code.

²³ Terrorism (Prevention and Prohibition) Act 2022, ss 13–18.

at promoting cooperation, harmonising evidentiary practices, and protecting human rights.²⁴ Key instruments include the United Nations Convention against Transnational Organized Crime (UNTOC, 2000) and the United Nations Convention against Corruption (UNCAC, 2003), which encourage States to cooperate in obtaining and sharing evidence in cross-border investigations, including electronic data generated on social-media platforms. The Council of Europe's Budapest Convention on Cybercrime (2001) further provides a widely adopted regional framework on substantive cybercrime offences and procedures for rapid mutual-legal assistance in the production of digital evidence, influencing many national laws on cybercrime and digital-evidence handling. International bodies such as the United Nations Office on Drugs and Crime (UNODC) have developed practical tools such as the handbook on electronic evidence and the Global Initiative on Handling Electronic Evidence, which guide States on how to obtain and use electronic evidence across borders while respecting privacy and fair-trial standards. UNESCO and other organisations have issued guidelines for prosecutors on collecting digital evidence in ways compatible with international standards on freedom of expression and privacy, thereby setting benchmarks for how social-media data may be used in criminal investigations and at trial. Together, these international instruments and guidelines form a normative framework against which Nigeria's own laws such as the Cybercrime (Prohibition, Prevention, etc.) Act 2015 and the Evidence Act 2011 can be assessed in the context of social media-driven criminal behaviour and investigation.²⁵

2.9 Institutional Framework for Cybercrime Investigation

Apart from statutory laws, several institutions play important roles in investigating social media-related crimes. These include: The Nigeria Police Force (NPF), Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC), National Information Technology Development Agency (NITDA).²⁶ These agencies collaborate to detect, investigate, and prosecute crimes facilitated through digital platforms. The effectiveness of these institutions is

²⁴ United Nations, *Convention against Transnational Organized Crime, 2000*, General Assembly Resolution 55/25, UN Doc. A/RES/55/25.

²⁵ United Nations, *Convention against Corruption, 2003*, General Assembly Resolution 58/4, UN Doc. A/RES/58/4.

²⁶ Daudu S.O. and Idehen S.O., 'Legal and Institutional Framework for Combating Cybercrimes in Nigeria' (2024) 1(1) *LexScriptio: A Journal of Jurisprudence and Public Law* 251.

essential because cybercrime investigation involves digital forensics, intelligence gathering, and lawful interception of communication data.

The Nigerian Communications Commission (NCC) is responsible for overseeing the telecommunications sector and facilitating cooperation between service providers and law-enforcement agencies in the production of digital evidence, while the Economic and Financial Crimes Commission (EFCC) and the National Cybercrime Centre (NCCC) handle the investigation and prosecution of complex cyber-offences and financial-crime-linked cyber-activities. The police and other security-service units also participate in cybercrime investigations, often through specialised cyber-crime squads or digital-forensics units, though their capacity and coordination remain uneven.

At the international level, the institutional response to cybercrime is coordinated through multilateral bodies such as the United Nations Office on Drugs and Crime (UNODC), Interpol, and the Council of Europe, which encourage States to establish or strengthen national cyber-crime units, forensic-investigation teams, and joint-task-force arrangements. These organisations emphasise the importance of inter-agency collaboration, public-private partnerships with internet and telecommunications providers, and standardised training frameworks for cyber-crime investigators to ensure that digital evidence is collected and preserved in a manner consistent with rule-of-law and human-rights standards. Nigeria's institutional architecture reflects this global model but still faces challenges in harmonising mandates, allocating adequate technical and financial resources, and building sustainable investigative capacity across agencies.

3.00 Social Media as a Facilitator of Criminal Behaviour

The emergence and widespread use of social media platforms have significantly influenced patterns of criminal behaviour in modern society. Social media has transformed communication by enabling individuals to interact, share information, and create virtual communities without geographical limitations. While these platforms offer social, educational, and economic benefits, they have also created opportunities for criminal activities to develop and expand. The accessibility, anonymity, and rapid communication features of social media have contributed to the evolution of criminal strategies and have made criminal behaviour more complex and

difficult to regulate.²⁷ This often results in severe psychological harm to victims, including depression, anxiety, and in extreme cases, self-harm or suicide.²⁸

Social media has also facilitated financial crimes such as fraud and identity theft. Criminals frequently use social networking platforms to create fake profiles, impersonate legitimate organizations, or conduct phishing schemes to obtain personal and financial information from unsuspecting users. The large amount of personal data shared on social media platforms makes individuals vulnerable to exploitation. Criminals may use stolen identities to commit further offences, including financial fraud, online scams, and unauthorized transactions.²⁹

Another major concern is the use of social media to promote hate speech, extremist ideologies, and radicalization. Online platforms provide a space where extremist groups can disseminate propaganda, recruit new members, and coordinate criminal activities. The global reach of social media allows these groups to influence individuals across different countries and cultural backgrounds. Research indicates that exposure to extremist content online may contribute to the normalization of violent beliefs and encourage individuals to participate in criminal or terrorist activities.³⁰

Organized criminal groups increasingly rely on social media to facilitate illegal operations such as human trafficking, drug trafficking, and illegal arms trading. Social media provides criminals with a convenient and cost-effective method of advertising illegal services, communicating with clients, and coordinating criminal networks. The ability to operate across multiple jurisdictions makes it difficult for law enforcement agencies to detect and prevent these activities. The use of encrypted messaging and anonymous online transactions further complicates criminal investigations.³¹

²⁷ Wall, D.S. (2015). *Cybercrime: The Transformation of Crime in the Information Age*. Polity Press.

²⁸ Hinduja, S., & Patchin, J.W. (2018). *Cyberbullying: Identification, Prevention and Response*. Cyberbullying Research Center.

²⁹ Yar, M., & Steinmetz, K. (2019). *Cybercrime and Society*. Sage Publications.

³⁰ Europol. (2022). Internet Organised Crime Threat Assessment (IOCTA).

³¹ United Nations Office on Drugs and Crime. (2013). *Comprehensive Study on Cybercrime*.

Several characteristics of social media contribute to its role in facilitating criminal behaviour. Anonymity is one of the most significant factors, as it allows individuals to hide their real identities through fake accounts or pseudonyms. This reduces accountability and increases the likelihood of engaging in illegal activities. Additionally, the accessibility and global connectivity of social media platforms enable offenders to target victims from different geographical locations. This transnational nature of social media crime presents challenges for law enforcement agencies due to differences in legal systems and regulatory frameworks across countries.³²

Criminological theories provide valuable explanations for how social media influences criminal behaviour. Social learning theory suggests that individuals learn behaviour through observation and interaction with others. Social media exposes users to deviant behaviour, which may encourage imitation and reinforcement of criminal activities within online communities. Individuals who frequently engage with online groups that support illegal behaviour may develop attitudes that justify or normalize criminal conduct.³³

This psychological effect increases the likelihood of cyberbullying, harassment, and other forms of online deviance.³⁴ Similarly, routine activity theory explains how social media creates virtual environments where motivated offenders encounter suitable targets in the absence of effective guardianship, thereby increasing the risk of criminal activity.³⁵

3.1 Types of Crimes Associated with Social Media

Understanding the types of crimes associated with social media is critical for criminologists, legal practitioners, and law enforcement agencies seeking to develop effective prevention and intervention strategies. Recognizing the types of crimes associated with social media is essential for developing effective policies, investigative strategies, and preventive interventions.

³² Holt, T.J. (2017). *Crime Online: Correlates, Causes and Context*. Carolina Academic Press.

³³ Akers, R.L., & Jennings, W.G. (2016). *Social Learning Theory*. Routledge.

³⁴ Suler, J. (2004). The Online Disinhibition Effect. *CyberPsychology & Behavior*, 7(3), 321–326.

³⁵ Cohen, L.E., & Felson, M. (1979). Social Change and Crime Rate Trends. *American Sociological Review*, 44(4), 588–608.

3.1.1 Cyberbullying and Online Harassment

One of the most prevalent types of crime associated with social media is cyberbullying. This involves the use of digital platforms to threaten, intimidate, or humiliate individuals. Victims may experience emotional distress, depression, and anxiety as a result of persistent online abuse. Social media amplifies the reach of cyberbullying, allowing harmful messages or media to spread rapidly to large audiences.³⁶ Online harassment can occur in personal contexts, workplaces, or school environments, and often involves the repeated targeting of victims by individuals or groups.³⁷

3.1.2 Identity Theft and Fraud

Social media has facilitated the rise of identity theft and online fraud. Criminals exploit personal information shared on platforms to impersonate individuals or organizations. Techniques such as phishing, fake profiles, and social engineering are commonly used to gain access to financial accounts, confidential data, or sensitive personal information.³⁸ Identity theft on social media can lead to significant financial loss, reputational damage, and long-term legal complications for victims.³⁹

3.1.3 Hate Speech and Extremist Activities

The proliferation of hate speech and extremist content is another major concern linked to social media. Platforms can be used to propagate racist, sexist, or otherwise discriminatory ideologies, sometimes escalating to incitement of violence.⁴⁰ Extremist groups also utilize social media to recruit members, disseminate propaganda, and coordinate criminal activities. These crimes often

³⁶ Hinduja, S., & Patchin, J.W. (2018). *Cyberbullying: Identification, Prevention and Response*. Cyberbullying Research Center.

³⁷ Livingstone, S., & Haddon, L. (2018). *Children, Risk and Safety on the Internet*. Policy Press.

³⁸ Yar, M., & Steinmetz, K. (2019). *Cybercrime and Society*. Sage Publications.

³⁹ Wall, D.S. (2015). *Cybercrime: The Transformation of Crime in the Information Age*. Polity Press.

⁴⁰ Europol. (2022). *Internet Organised Crime Threat Assessment (IOCTA)*.

have a transnational dimension, posing significant challenges for law enforcement agencies due to jurisdictional and cultural differences.⁴¹

3.1.4 Cyberstalking

involves the repeated use of social media or other digital platforms to harass or threaten an individual. Offenders may monitor victims' online activity, send threatening messages, or post private information without consent.⁴² Social media's accessibility and real-time updates increase the potential for cyberstalking, as offenders can track victims' movements, relationships, and online behaviour. This form of crime can escalate into physical stalking or violence if unchecked.⁴³

3.1.5 Sexual Exploitation and Online Grooming

Social media has been used to facilitate sexual exploitation, including child grooming and the distribution of sexually explicit material. Offenders often engage with minors through private messaging, online games, or social networking sites to build trust and manipulate them for sexual purposes.⁴⁴ The anonymity and privacy features of social media make detection and prevention difficult, while the permanence of digital content increases the potential harm to victims.⁴⁵

3.1.6 Financial Crimes and Scams

Financial crimes such as online scams, investment fraud, and cryptocurrency fraud have been increasingly associated with social media platforms. Criminals create fake business accounts, fraudulent advertisements, or misleading promotions to deceive users and solicit money or

⁴¹ United Nations Office on Drugs and Crime. (2013). *Comprehensive Study on Cybercrime*.

⁴² Holt, T.J. (2017). *Crime Online: Correlates, Causes and Context*. Carolina Academic Press.

⁴³ Brenner, S. (2010). *Cybercrime: Criminal Threats from Cyberspace*. Praeger.

⁴⁴ Wolak, J., Finkelhor, D., & Mitchell, K.J. (2012). Child Pornography Possessors: Trends in Offender and Case Characteristics. *Sexual Abuse*, 24(4), 313–332.

⁴⁵ Casey, E. (2011). *Digital Evidence and Computer Crime*. Academic Press.

sensitive information.⁴⁶ Social media's rapid dissemination of information and viral content increases the reach and effectiveness of these scams, often affecting large numbers of unsuspecting users.⁴⁷

3.1.7 Organized Crime and Coordination of Illegal Activities

Organized criminal groups utilize social media to coordinate illegal activities, including drug trafficking, human trafficking, and illegal arms sales.⁴⁸ These platforms allow criminals to communicate quickly, advertise services, and recruit new members across different countries. The transnational nature of social media crime complicates law enforcement investigations due to varying legal frameworks and the anonymity of online interactions.⁴⁹

3.1.8 Misinformation, Fake News, and Cyberterrorism

Social media also plays a role in the spread of misinformation, fake news, and cyberterrorist activities. Criminals can exploit platforms to manipulate public opinion, create panic, or incite violence. These activities may indirectly facilitate criminal behaviour, such as riots, scams, or politically motivated attacks, by influencing large groups of people through coordinated digital campaigns.⁵⁰

4.00 Features of Social media that Enable Crime

Social media platforms, while designed primarily for communication, information sharing, and social interaction, possess inherent features that can inadvertently facilitate criminal behaviour. The technological and structural characteristics of these platforms create opportunities for offenders to engage in illegal activities, often with minimal risk of detection or immediate

⁴⁶ Holt, T.J., & Bossler, A.M. (2016). *Cybercrime in Progress: Theory and Prevention of Technology-Enabled Offenses*. Routledge.

⁴⁷ Goldsmith, A., & Brewer, R. (2015). *Digital Policing*. Routledge

⁴⁸ Taylor, M., Fritsch, E., Liederbach, J., & Holt, T. (2019). *Digital Crime and Digital Terrorism*. Pearson.

⁴⁹ Brenner, S. (2010). *Cybercrime: Criminal Threats from Cyberspace*. Praeger.

⁵⁰ Yar, M. (2013). *Cybercrime and Society*. Sage Publications.

consequence. Understanding these features is essential for developing effective preventive and investigative strategies.

4.1 Anonymity and Pseudonymity

One of the most significant enablers of online crime is the ability of users to remain anonymous or use pseudonyms.⁵¹ Social media platforms allow individuals to create accounts without providing verifiable personal information, making it easier for offenders to conceal their identities. Research indicates that online anonymity is strongly linked to increased aggressive and deviant behaviours because users feel less accountable for their actions.⁵²

4.2 Accessibility and Convenience

Social media platforms are highly accessible, allowing users to connect from any location at any time.⁵³ The convenience of social media also allows for rapid dissemination of criminal content.⁵⁴

4.3 Global Reach and Transnational Interaction

Social media enables users to communicate across geographic boundaries instantly. While this global connectivity offers numerous benefits,⁵⁵ The global reach of social media complicates law enforcement responses due to jurisdictional challenges and differences in international legal frameworks.⁵⁶

4.4 Rapid Information Dissemination

Platforms such as X (formerly Twitter), TikTok, and Facebook allow for the instant sharing of text, images, videos, and links. This rapid information flow can be exploited by criminals to

⁵¹ Suler, J. (2004). The Online Disinhibition Effect. *CyberPsychology & Behavior*, 7(3), 321–326.

⁵² Akers, R.L., & Jennings, W.G. (2016). *Social Learning Theory*. Routledge.

⁵³ Wall, D.S. (2015). *Cybercrime: The Transformation of Crime in the Information Age*. Polity Press.

⁵⁴ Holt, T.J. (2017). *Crime Online: Correlates, Causes and Context*. Carolina Academic Press.

⁵⁵ United Nations Office on Drugs and Crime. (2013). *Comprehensive Study on Cybercrime*.

⁵⁶ Brenner, S. (2010). *Cybercrime: Criminal Threats from Cyberspace*. Praeger.

spread illegal content, misinformation, or instructions for committing crimes.⁵⁷ The speed and viral nature of social media content can amplify the effects of criminal acts, such as the rapid propagation of hate speech, extremist material, or coordinated fraud schemes.⁵⁸

4.5 Lack of Effective Guardianship

Routine activity theory suggests that crime is more likely to occur when capable guardians are absent. On social media, oversight mechanisms are often inadequate to monitor all interactions in real time. While platforms implement content moderation and reporting tools, the sheer volume of posts and messages makes it impossible to prevent all criminal activity. This lack of effective supervision provides offenders with opportunities to exploit vulnerable users, conduct scams, or engage in harassment without immediate intervention.⁵⁹

4.6 Permanence and Traceability of Content

Content posted on social media can remain accessible for long periods, sometimes indefinitely. While this permanence can serve as a tool for investigators, it also allows offenders to create a persistent digital footprint that can facilitate repeated victimization. Criminals may use historical posts, shared media, or profile information to plan targeted attacks, harass victims over time, or manipulate online interactions.⁶⁰

4.7 Peer Influence and Community Norms

Social media platforms enable the formation of online communities and peer networks. While these communities can be positive, they can also normalize deviant behaviour and create environments where criminal conduct is encouraged or rewarded. For example, groups promoting cybercrime techniques, illegal financial schemes, or extremist ideologies can

⁵⁷ Yar, M., & Steinmetz, K. (2019). *Cybercrime and Society*. Sage Publications.

⁵⁸ Europol. (2022). *Internet Organised Crime Threat Assessment (IOCTA)*.

⁵⁹ Cohen, L.E., & Felson, M. (1979). Social Change and Crime Rate Trends. *American Sociological Review*, 44(4), 588–608.

⁶⁰ Casey, E. (2011). *Digital Evidence and Computer Crime*. Academic Press.

influence members to participate in illegal activities, reinforcing deviant norms through online interactions.⁶¹

4.8 Integration with Third-Party Applications

Many social media platforms integrate with third-party apps, games, and services, which may access personal information and communication networks. These integrations can inadvertently provide criminals with additional vectors for exploiting user data or conducting fraud. Offenders can use vulnerabilities in connected apps to harvest data, send malicious links, or gain unauthorized access to accounts.⁶²

5.00 Criminological Explanations of Social Media Crime

Understanding the impact of social media on criminal behaviour requires the application of established criminological theories, which offer insights into why individuals engage in online criminal activities and how digital environments influence deviant conduct. Social media not only facilitates opportunities for crime but also shapes behavioural patterns through social interaction, observation, and environmental factors.

5.1 Social Learning Theory posits that criminal behaviour is learned through observation, imitation, and reinforcement within social contexts.⁶³ On social media, individuals are exposed to deviant behaviours and repeatedly observe peers engaging in illegal or unethical activities without immediate consequences, they may be encouraged to adopt similar behaviours. Social media communities can therefore act as virtual “learning environments” where deviant norms are reinforced.⁶⁴

5.2 The Online Disinhibition Effect, proposed by Suler, provides a psychological perspective on why individuals behave differently online than offline. The perceived anonymity, invisibility,

⁶¹ Akers, R.L., & Jennings, W.G. (2016). *Social Learning Theory*. Routledge.

⁶² Holt, T.J., & Bossler, A.M. (2016). *Cybercrime in Progress: Theory and Prevention of Technology-Enabled Offenses*. Routledge.

⁶³ Akers, R.L., & Jennings, W.G. (2016). *Social Learning Theory*. Routledge.

⁶⁴ Wall, D.S. (2015). *Cybercrime: The Transformation of Crime in the Information Age*. Polity Press.

and lack of immediate accountability on social media platforms reduce inhibitions, making users more likely to engage in aggressive, antisocial, or criminal conduct.⁶⁵ This theory helps explain the prevalence of cyberbullying, online harassment, and hate speech, where individuals act in ways they would not in face-to-face interactions.⁶⁶

5.3 Routine Activity Theory offers another lens for understanding social media-facilitated crime. The theory suggests that crime occurs when a motivated offender encounters a suitable target in the absence of capable guardianship. Social media platforms, by creating constant and widespread digital interaction, provide motivated offenders with easy access to potential victims while offering limited oversight or monitoring. For example, oversharing personal information on social media can make individuals more vulnerable to identity theft, fraud, or online stalking.⁶⁷

5.4 Strain Theory provides insights into how social media may exacerbate criminal behaviour by creating pressures and frustrations that lead individuals to deviate. Social comparison on social networking sites can generate feelings of inadequacy, envy, or exclusion, which may motivate some individuals to engage in deviant behaviour as a coping mechanism, including hacking, cyber fraud, or online harassment.⁶⁸

5.5 Control Theory highlights the role of social bonds in preventing crime. Social media can weaken traditional social controls by encouraging interactions within deviant or criminally inclined online communities. When individuals are more strongly influenced by digital peer groups than by family, school, or community norms, the likelihood of engaging in criminal activity increases.⁶⁹

⁶⁵ Suler, J. (2004). The Online Disinhibition Effect. *CyberPsychology & Behavior*, 7(3), 321–326.

⁶⁶ Holt, T.J. (2017). *Crime Online: Correlates, Causes and Context*. Carolina Academic Press.

⁶⁷ Cohen, L.E., & Felson, M. (1979). Social Change and Crime Rate Trends. *American Sociological Review*, 44(4), 588–608.

⁶⁸ Merton, R.K. (1938). Social Structure and Anomie. *American Sociological Review*, 3(5), 672–682.

⁶⁹ Hirschi, T. (1969). *Causes of Delinquency*. University of California Press.

Incorporating these criminological perspectives provides a multi dimensional understanding of social media related crime. It emphasizes that criminal behaviour in digital contexts is influenced not only by technological affordances but also by social, psychological, and environmental factors.⁷⁰

6.00 Social Media as a Tool in Criminal Investigations

One of the most significant uses of social media in criminal investigations is intelligence gathering. Law enforcement agencies monitor social media platforms to identify suspects, track criminal networks, and detect potential criminal activities before they occur. Criminals frequently use social media to communicate, share information, and coordinate illegal activities, often leaving digital footprints that investigators can analyse. Publicly shared posts, images, videos, and comments often provide valuable insights into criminal behaviour, relationships between suspects, and potential evidence linking individuals to criminal acts.⁷¹

Social media has also enhanced surveillance and undercover investigation techniques. Investigators may create undercover profiles or monitor existing online communities to gain access to criminal networks. This approach is particularly useful in investigating organized crime, gang-related activities, and terrorism. Social media surveillance allows law enforcement agencies to monitor communication patterns and identify individuals involved in illegal activities without immediate physical interaction. Such investigative methods have proven effective in preventing criminal acts and dismantling criminal organizations.⁷²

Another important role of social media in criminal investigations is the collection of digital evidence. Social media platforms contain a wide range of information, including private messages, multimedia content, geolocation data, and online transaction records. Investigators use digital forensic techniques to collect, preserve, and analyse this information to support criminal cases. Digital evidence obtained from social media has been used in cases involving fraud,

⁷⁰ Yar, M., & Steinmetz, K. (2019). *Cybercrime and Society*. Sage Publications.

⁷¹ Goldsmith, A., & Brewer, R. (2015). *Digital Policing*. Routledge.

⁷² Taylor, M., Fritsch, E., Liederbach, J., & Holt, T. (2019). *Digital Crime and Digital Terrorism*. Pearson.

cybercrime, assault, and even homicide. For example, photographs or videos posted by suspects may provide evidence of their presence at crime scenes or involvement in illegal activities.⁷³

Geolocation data available through social media platforms has become a valuable investigative tool. Many social media users share location-based information when posting content, which can help investigators track suspects' movements and establish timelines for criminal activities. Metadata embedded in social media posts, such as timestamps and device information, can further strengthen the reliability of digital evidence. These technological advancements have improved the efficiency and accuracy of criminal investigations.⁷⁴

7.00 Legal and Ethical Challenges to the effect of social media on criminal behavior and investigation

The increasing rate of cybercrimes facilitated through social media platforms has created enforcement challenges for Nigerian authorities. Nwocha, Iteshi, and Awada note that while the legal framework exists, enforcement agencies often face difficulties such as jurisdictional issues, digital evidence management, and technological limitations.⁷⁵

Social media has increasingly become a tool for both legitimate legal practice and criminal activities. According to Omoleke, social media platforms are now widely used by legal practitioners for communication, legal awareness campaigns, and professional networking, although the unregulated use of these platforms raises concerns about professional ethics and confidentiality.⁷⁶

7.1 Privacy and Data Protection Issues The increasing reliance on social media in criminal behaviour and criminal investigations has created significant legal and ethical challenges for modern criminal justice systems. While social media platforms provide valuable tools for communication, information sharing, and law enforcement investigations, its use raises concerns

⁷³ Casey, E. (2011). *Digital Evidence and Computer Crime*. Academic Press.

⁷⁴ Holt, T.J. (2017). *Crime Online: Correlates, Causes and Context*. Carolina Academic Press.

⁷⁵ Nwocha M.E., Iteshi C.V. and Awada P.M., 'Social Media Facilitated Cybercrimes in Nigeria and the Challenges of Legal Enforcement' (2024) 5(3) *Law and Social Justice Review*.

⁷⁶ Omoleke O., 'The Role of Social Media in Legal Practice in Nigeria' (2025) *ABUAD Law Journal*.

regarding privacy rights, data protection, freedom of expression, and the ethical limits of surveillance.⁷⁷

7.2 Conflict With Constitutional and Human Rights Protections that safeguard individuals from unlawful surveillance and intrusion into private life. Balancing the need for public safety with the protection of individual privacy remains a major concern for legal systems worldwide.⁷⁸

7.3 Courts require digital evidence to meet strict standards of authenticity, reliability, and relevance before it can be accepted. Establishing ownership and authorship of social media content is often challenging due to the anonymity and potential manipulation of online information. The presence of fake accounts, altered digital content, and technological vulnerabilities may undermine the credibility of social media evidence and complicate judicial processes.⁷⁹

7.4 Challenges of Jurisdictional limitations further complicate the regulation of social media-related crime. Social media platforms operate globally, allowing criminal activities to occur across national borders. Differences in legal systems, data protection laws, and enforcement procedures make it difficult for law enforcement agencies to investigate and prosecute transnational cybercrime effectively.⁸⁰

7.5 Ethical principles require that social media monitoring be conducted in a transparent, proportionate, and accountable manner to prevent abuse of power and protect democratic values.⁸¹

7.6 Balancing Public Safety and Individual Rights Privacy concerns are among the most significant issues associated with social media surveillance. Monitoring online activities may conflict with individuals' rights to privacy and freedom of expression.⁸²

⁷⁷ Wall, D.S. (2015). *Cybercrime: The Transformation of Crime in the Information Age*. Polity Press.

⁷⁸ Solove, D.J. (2021). *Understanding Privacy*. Harvard University Press.

⁷⁹ Mason, S. (2017). *Electronic Evidence*. Institute of Advanced Legal Studies.

⁸⁰ Brenner, S. (2010). *Cybercrime: Criminal Threats from Cyberspace*. Praeger

⁸¹ Richards, N.M. (2015). *The Dangers of Surveillance*. Harvard University Press.

⁸² Solove, D.J. (2021). *Understanding Privacy*. Harvard University Press.

7.7 Need for Policy and Investigative Improvements investigators must maintain a proper chain of custody to ensure that digital evidence is not altered or tampered with during the investigation process.⁸³

7.8 Enhancing Investigative Techniques The effectiveness of social media as an investigative tool depends largely on technological advancements and the training of law enforcement personnel. Investigators must possess specialized skills in digital forensics, data analysis, and cybercrime detection to effectively utilise social media evidence.⁸⁴

8.00 Recommendations

Umejiaku and Uzoka highlight that social media related cybercrimes in Nigeria range from impersonation and online fraud to harassment and cyberbullying. They emphasize the need for effective legal remedies, stronger institutional capacity, and public awareness to ensure that victims can obtain adequate protection and justice under the law.⁸⁵ In light of the numerous legal, ethical, and investigative challenges associated with the use of social media in criminal behaviour and investigations, several measures should be adopted to strengthen the regulatory and investigative framework.

8.1 Strengthening Data Protection and Privacy Regulations

To address data protection concerns arising from social media surveillance, the Nigerian government should strengthen existing data protection laws and ensure strict compliance with privacy standards. The implementation of robust data protection policies will help regulate how law enforcement agencies collect, store, and utilize personal information obtained from social media platforms.

In addition, regulatory authorities such as the National Information Technology Development Agency (NITDA) should ensure effective enforcement of the Nigeria Data Protection Act to safeguard citizens against misuse of their personal data during criminal investigations.

⁸³ Mason, S. (2017). *Electronic Evidence*. Institute of Advanced Legal Studies.

⁸⁴ INTERPOL. (2021). *Global Cybercrime Strategy*

⁸⁵ Umejiaku N.O. and Uzoka N.C., 'An Overview of Social Media Related Cybercrimes and its Legal Remedy' (2021) 2(2) *Law and Social Justice Review*.

8.2 Ensuring Compliance with Constitutional and Human Rights Standards

Law enforcement agencies must ensure that the use of social media monitoring tools does not violate constitutional rights, particularly the right to privacy and freedom of expression guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Investigative authorities should obtain proper judicial authorization before conducting digital surveillance or accessing private social media communications. This will ensure that investigations are conducted within the limits of the law and in compliance with internationally recognized human rights principles.

8.3 Establishing Clear Standards for Admissibility of Digital Evidence

Courts and law enforcement agencies should develop clear guidelines governing the collection, authentication, and admissibility of social media evidence. Digital forensic experts should be engaged to verify the authenticity of social media content presented in court. Furthermore, the judiciary should adopt standardized procedures for verifying authorship and ownership of social media accounts in order to minimize the risks associated with fake accounts and manipulated digital content.

8.4 Enhancing International Cooperation to Address Jurisdictional Challenges

Social media crimes often transcend national borders, Nigeria should strengthen international cooperation mechanisms to combat transnational cybercrime effectively. This may include entering into bilateral and multilateral agreements with other countries for information sharing, mutual legal assistance, and extradition of cybercrime offenders. Such cooperation will enable law enforcement agencies to obtain digital evidence stored on foreign servers and prosecute offenders operating across multiple jurisdictions.

8.5 Promoting Ethical Guidelines for Social Media Surveillance

Government agencies responsible for criminal investigations should adopt clear ethical guidelines governing the monitoring of social media activities. These guidelines should emphasize transparency, accountability, and proportionality in surveillance practices. Independent oversight bodies should also be established to monitor the activities of law enforcement agencies and ensure that social media surveillance powers are not abused.

8.6 Balancing Public Safety with Individual Rights

Legal frameworks regulating social media investigations should strike an appropriate balance between ensuring public safety and protecting individual rights. While it is important for authorities to monitor online activities that threaten national security or public order, such monitoring must not lead to unnecessary intrusion into citizens' private lives. Judicial oversight and legislative safeguards should therefore be strengthened to prevent excessive surveillance.

8.7 Improving Policies on Digital Evidence Management

Law enforcement agencies must implement proper procedures for handling digital evidence obtained from social media platforms. Investigators should maintain a clear chain of custody to ensure that evidence is preserved in its original form and is not altered during the investigation process. Developing standardized protocols for digital evidence management will improve the credibility of social media evidence in criminal proceedings.

8.8 Enhancing Investigative Capacity and Technological Expertise

The effectiveness of social media investigations largely depends on the technical capacity of law enforcement personnel. Therefore, specialized training programs should be organized for investigators in areas such as digital forensics, cyber intelligence, data analysis, and cybercrime investigation techniques. Government agencies should also invest in modern forensic technologies and digital investigation tools to enhance the ability of law enforcement agencies to detect and investigate crimes committed through social media platforms.

9.00 Conclusion

Social media has significantly influenced criminal behaviour and criminal investigation methods in modern society. While these platforms provide opportunities for criminal activities, they also serve as valuable investigative tools for law enforcement agencies. Legal and criminological perspectives highlight the need for updated regulatory measures, improved investigative techniques, and increased public awareness. Addressing the challenges posed by social media requires collaboration between governments, law enforcement agencies, social media companies, and the public to ensure effective crime prevention and protection of individual rights. Implementing the above recommendations will go a long way to curb the vices associated with the use of social media.

**EVALUATING THE EFFECTIVENESS OF THE NEW TAXATION REFORM
STRUCTURE IN REDUCING TAX EVASION AND INCREASING COMPLIANCE
IN NIGERIA**

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Abstract

The historical limitation to the revenue ability of Nigeria has been tax evasion and inadequate voluntary tax compliance, which has resulted in poor fiscal sustainability and the provision of public goods by the state. Due to the ongoing deficit of revenues and the dynamism of the economic environment, the administration of President Bola Ahmed Tinubu has introduced a new tax system that is supposed to increase the tax base, tighten compliance, improve efficiency by digitizing, and increase compliance with taxes. This paper critically reviews the success of these new tax reforms in alleviating tax evasion and improving compliance in Nigeria. As part of the fiscal policy framework of the Tinubu administration, the paper will look at the legal, institutional and administrative aspects of the new taxation structure and how it has been designed and implemented in accordance with general tenets of good tax governance. The article questions the scope of reforms of deep-seated structural imbalances like informality, inability to enforce laws, mistrust in taxpayers, and coordination between the federal and state tax systems through doctrinal and policy analysis. This paper contends that, though the new taxation reform structure regime constitutes a wanted change in that the new regime constitutes a transition to a more modern and compliance-oriented tax administration, the long-term success of the new regime is dependent on institutional capacity, transparency and the legitimacy of the people. This article contributes significantly to modern tax scholarship in Nigeria by providing a context-sensitive assessment of ongoing reforms. It highlights the critical factors necessary to achieve sustainable improvements in tax compliance under the current administration.

Keywords: Nigeria; Taxation Reform; Tax Evasion; Tax Compliance; Fiscal Policy; Revenue Mobilization.

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1. Introduction

Taxation has become a pillar of fiscal policy and national development as it allows governments to mobilize the resources needed for public services, infrastructure and other socio-economic programmes. Taxation in Nigeria has been a secondary yet vital contributor to financing the state in the past, where revenue contribution by crude oil has been the biggest contributor to government receipts. Nevertheless, the tax-to-GDP ratio of Nigeria has remained significantly lower than the global and regional rates, and it is indicative of fundamental revenue collection and management issues. However, recent statistics show that the tax collection of the nation has been considered as one of the lowest in the world, in reference to its ability to finance sustainable development and fiscal security.¹

Tax evasion refers to the intentional under-reporting of earnings or evasion of tax burdens, which denies the government vital revenue.² Revenue losses arise when there is low compliance, where the taxpayers neglect to meet the requirements of reporting or payment. Structural weaknesses, including overlapping jurisdictions of tax collection, a divided tax collection system, legal loopholes, limited enforcing capacity and an overall low tax morale have precipitated these phenomena.³ These issues have been aggravated by the thin tax base and extensive informal sector in Nigeria, and thus proper tax administration has been an old policy agenda.

The current administration, which assumed office in 2023, came up with a radical plan to reform the taxation administration system in Nigeria. The government realized the importance of effective taxation as a means of bridging revenue losses and minimizing reliance on fluctuating oil revenues and created a Presidential Committee on Fiscal Policy and Tax Reforms to reform the taxation structure and eliminate structural inefficiencies.⁴ The result of this effort was the

¹ Shakede Sanni Philip, Cyril Obomeile and Musa Abdulai Aliakhue, 'Tax Evasion and Its Implications on the Nigeria Economy' (2024) 3(1) *Glorious Vision University Journal of Management and Social Sciences* 12 accessed 14 October 2025.

² J Alm, 'Measuring, Explaining, and Controlling Tax Evasion: Lessons from Theory, Experiments, and Field Studies' (2012) Tulane Economics Working Paper Series No 1213, 12.

³ Public Finance Database, 'How Digital Tax Reforms Can Transform Nigeria's Revenue Challenges into Fiscal Successes' (2025) *Public Finance Review* <https://www.publicfinancedatabase.org/reports/digital-tax-reforms-nigeria> accessed 11 November 2025.

⁴ State House Nigeria, 'President Tinubu Sets up Committee on Tax Reforms' (State House Release, 7 July 2023) <https://statehouse.gov.ng/news/president-tinubu-sets-up-committee-on-tax-reforms/> accessed 5 December 2025.

enactment and signing of a series of tax legislations, such as the Nigeria Tax Act (NTA) and other fiscal regulations aimed at modernizing tax administration and operations, simplifying the tax collection system, and digitizing the system to broaden the tax base.⁵ The reforms also aim at streamlining the tax regime by addressing overlapping taxes, rationalizing rates and developing incentives for voluntary compliance.

The review of the new tax structure is necessary in order to evaluate the effectiveness of the new tax regime in curbing evasion and enhancing compliance. The initial fiscal indicators, e.g., improvement in revenue collections and administrative restructuring efforts, indicated progress towards these objectives. However, the size and magnitude of the Nigerian tax issues need stern evaluation to know what has transformed, what has been set back, and how the reforms have been carried out in response to the underlying behavioural and institutional limitations. In addition, since most of the requirements will only be fully implemented in 2026, the assessment offers useful information to policymakers, stakeholders and the taxpayers.

In line with this, the research is informed by some critical research questions and objectives:

- i. To determine the structural factors of the new tax regime meant to decrease evasion and increase compliance.
- ii. Ascertain the degree to which these reforms have impacted taxpayer behaviour and revenue levels.
- iii. To explore the current issues which still impede effective taxation despite the reforms.

These goals can result in such critical questions as: How has the new taxation structure changed compliance incentives? How do we measure the effects in terms of tax revenue and reporting accuracy? How restrictive have administrative innovations been on evasion?

This study will cover the nature of federal taxes in Nigeria, which include the personal income tax (for certain categories of taxable persons), corporate tax and value added tax. It will also consider the significant changes in the frameworks and administration that affect the ways taxes are levied and received. Although the tax dynamics at the state level are also acknowledged, the

⁵ National Assembly of Nigeria, 'Nigeria Tax Act and Related Legislation' (2025) 12(2) *National Assembly Legislative Digest* 45 <https://nass.gov.ng/documents/legislative-digest-2025> accessed 18 December 2025.

focus of attention is on the national framework and the reforms of the current administration. The importance of the research is in the fact that it is expected to inform further academic discussion of the effectiveness of tax policies, as well as practical policy improvement, providing evidence-based recommendations that will help to support the Nigerian fiscal architecture and enhance the outcomes of the public finances.

2. Conceptual and Theoretical Framework

2.1. Concept of Taxation and Tax Compliance

In its simplest form, taxation is the mandatory financial duty which is levied on individuals and organisations by the state to finance government spending on goods and services which serve the general populace.⁶ Taxation is a fundamental fiscal instrument of government because it helps governments fund infrastructure, social services and economic stability. The design of a tax system is usually based on the balance between equity, efficiency and administrative practicability. Ultimately, the goal of the tax system is to maximize revenue and minimize economic distortions.⁷ Tax compliance can be used to refer to the level at which taxpayers comply with their legal duties to properly declare income and remit the due tax within the stipulated time.⁸ Compliance also means acting in accordance with the letter and spirit of the tax laws, requiring the total reporting of income, proper record keeping and timely remittance.⁹ Tax evasion, on the other hand, is the unlawful action of spreading, distorting, or withholding information to pay less tax, including underreporting income, creating deductions, or not filing

⁶ Joseph E Stiglitz and Jay K Rosengard, *Economics of the Public Sector* (4th ed., WW Norton & Company 2015) 55; Revenue Statistics. Organization for Economic Co-operation and Development. (2021). OECD Publishing.

⁷ LA Franzoni, 'Tax Evasion and Tax Compliance' in *Encyclopedia of Law & Economics* (University of Bologna 1999) <https://reference.findlaw.com/lawandeconomics/literature-reviews/6020-tax-evasion-and-tax-compliance.html> accessed 12 October 2025.

⁸ Michael Allingham and Agnar Sandmo, 'Income Tax Evasion: A Theoretical Analysis' (1972) 1(3-4) *Journal of Public Economics* 323; Alm, James, 1996. 'What Is an "Optimal Tax System"? National Tax Journal, National Tax Association; National Tax Journal, vol. 49(1), pages 117-133, March.

⁹ Joshua Commey, 'Conceptualizing Tax Evasion and Tax Compliance Strategies' (2023) 10(8) *International Journal of Research and Scientific Innovation* 169 <https://rsisinternational.org/journals/ijrsi/articles/conceptualizing-tax-evasion-and-tax-compliance-strategies/> accessed 4 November 2025.

returns at all.¹⁰ Tax evasion compromises the ability of the state to raise revenue, enhances fiscal deficits, and overworks the honest taxpayers.

In Nigeria, tax evasion often takes the form of under-reporting of business revenue, exaggerated business expenses, failure to register a business and misuse of tax code loopholes.¹¹ These practices have resulted in a low tax-to-GDP ratio and increased tax gaps across sectors. Tax evasion in Nigeria is such a complex phenomenon that it involves economic, administrative, and infrastructure issues, poor implementation, and corrupt or ineffective services to taxpayers. Inadequate knowledge of taxpayers and low institutional integrity have also been identified as the forces of non-compliance, especially in the informal sector.¹²

2.2. Theoretical Perspectives

In a bid to examine the behaviour patterns of tax compliance and the effects of tax reforms, scholars such as Michael G. Allingham, Agnar Sandmo, James Alm, Betty R Jackson, Adam Smith and John Stuart Mill have come up with many theories. There are three influential theories, and these are the Deterrence Theory, the Fiscal Exchange Theory, and the Ability-to-Pay/Benefits Theories.

According to Deterrence Theory,¹³ taxpayers are rational individuals who consider the perceived gains of tax evasion against the risk of being caught and the resultant punishment. The theory, which built upon Gary Becker's economic model of crime to establish that tax compliance behavior is heavily dictated by enforcement, audit probabilities, and penalty rates using classical economic models of crime, was formalized by Allingham and Sandmo in the context of tax compliance studies, and posits that compliance should be greater when enforcement mechanisms, which include audits, fines and legal actions, are credible and consistently

¹⁰ S Olike, 'Taxation and Human Rights: Towards a Sustainable Realisation of Minimum Core Obligations in Nigeria' (2024) 24(1) *African Human Rights Law Journal* 33 <https://scielo.org.za/pdf/ahrlj/v24n1/03.pdf> accessed 18 November 2025

¹¹ Robert Dibie and Raphael Dibie, 'Analysis of the Determinants of Tax Policy Compliance in Nigeria' (2020) 10(2) *Journal of Public Administration and Governance* 34 <https://www.macrothink.org/journal/index.php/jpag/article/view/16934> accessed 15 December 2025.

¹² Public Finance Database, 'How Digital Tax Reforms Can Transform Nigeria's Revenue Challenges into Fiscal Successes' (2025) *Public Finance Review* accessed 11 November 2025.

¹³ Michael G Allingham and Agnar Sandmo, 'Income Tax Evasion: A Theoretical Analysis' (1972) 1(3-4) *Journal of Public Economics* 323.

enforced.¹⁴ Within the Nigerian context, enforcement difficulties, insufficient institutional capacity and deterrence mechanisms have not aided in deterring evasion. However, the concept of deterrence continues to dominate as one of the primary prisms by which policymakers judge the formulation of punitive measures and audit policies.¹⁵

Taxpayers and the government have a reciprocal relationship in the Fiscal Exchange Theory.¹⁶ According to this view, voluntary compliance is more probable where taxpayers find that the state has provided a fair and tangible exchange between the taxes paid and the services or goods offered to the taxpayers.¹⁷ This theory states that taxpayers will be happier to pay their taxes when they believe that the government is spending the money on infrastructure, healthcare, education and security as a legitimate reward for their investments. In Nigeria, the exchange is undermined by low levels of public trust and perceptions of inefficient service delivery on the part of the government, which in turn undermines voluntary compliance.

The Ability-to-pay and Benefit Theories¹⁸ deal with the issue of equity and welfare in taxation. The principle of ability-to-pay holds that taxpayers must contribute to the general revenue according to their economic capabilities. This encourages the idea of vertical equity, in which higher-income individuals contribute a higher percentage of the tax load.¹⁹ The benefit principle, on the other hand, proposes that the load to be paid in taxes should match benefits derived from government services, similar to the user-pays mode of financing in government. These theories

¹⁴ Christopher Oche, 'Deterrence and Tax Morale: Examining the Implications of Tax Enforcement on Compliance in Nigeria' (2024) 7(2) *GPH Journal of Social Science and Humanities* 45 accessed 18 October 2025.

¹⁵ Shakede Sanni Philip, Cyril Obomeile and Musa Abdulai Aliakhue, n 1.

¹⁶ James Alm, Betty R Jackson and Michael McKee, 'Fiscal Exchange, Collective Decision Institutions, and Tax Compliance' (1993) 22(3) *Journal of Economic Behaviour & Organization* 285 https://econpapers.repec.org/article/eeejeborg/v_3a22_3ay_3a1993_3ai_3a3_3ap_3a285-303.htm accessed 14 November 2025.

¹⁷ Emmanuel Vance, 'Fiscal Exchange Theory: An Overview of Taxpayer Perceptions of Public Goods and Voluntary Compliance Incentives' (2025) 9(10) *International Journal of Research and Innovation in Social Science* 6218 accessed 22 November 2025.

¹⁸ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Edwin Cannan edn, Modern Library 1937) 777.

¹⁹ Richard A Musgrave and Peggy B Musgrave, *Public Finance in Theory and Practice* (5th edn, McGraw-Hill 1989) 221.

emphasize normative reasoning on equity in tax design to help policymakers adjust the tax levels and forms to reduce evasion and enhance adherence.²⁰

These theories provide a thorough base on which the effects of the tax system reform, in particular, taxpayer behaviour, can be analyzed. The control of the risk is affected by deterrence mechanisms, the perception of the fiscal exchange is valued in terms of voluntary compliance, and the equity-based principles are used to design the rates and incentives. These views are important in determining whether the new taxation system can improve compliance and reduce tax evasion in Nigeria.

3. The Nigerian Tax System Prior to the Tinubu-Led Administration

Prior to the implementation of the tax reforms of the Tinubu-led administration, the taxation system in Nigeria was defined by a complicated system of federal, state, and local taxation, duplicate taxes, and several implementation and enforcement issues. At the federal level, the Federal Inland Revenue Service (FIRS),²¹ an independent body, was the main tax collection agency, which assessed, collected, and accounted for federal taxes such as Companies Income Tax (CIT), Personal Income Tax (PIT) in non-state territories, Value Added Tax (VAT), withholding tax (WHT), and other statutory federal taxation.¹⁵ Added to that was a fiscal convulsion of states and local government taxes and levies, with states retaining independent revenue bodies.²²

To supplement federal tax revenues, the State Internal Revenue Services (SIRS) of the individual states were granted powers to tax personal income (on the residents of areas they served), business premises taxes, and other tax revenues on the state level.²³ The state internal revenue services were established to reinforce national revenue generation and control.²⁴ These agencies

²⁰ Richard A Musgrave, 'Ability-to-Pay Principle in Taxation' (1987) 1(1) *Journal of Economic Perspectives* 113. Accessed 3 December 2025

²¹ The FIRS was formed in 1943 and became fully autonomous under the FIRS (Establishment) Act.

²² Federal Inland Revenue Service (Establishment) Act 2007, Cap F36, Laws of the Federation of Nigeria 2010

²³ Federal Inland Revenue Service, 'Navigating Nigeria's Fiscal Challenges Through Tax Reform: Background on FIRS Performance and Revenue Trends' (FIRS Progress Report 2025) <https://www.firs.gov.ng/reports/fiscal-challenges-2025> accessed 14 October 2025

²⁴ Kwara State Internal Revenue Service, 'Overview of KWIRS Structure and Its Strategic Role in State Taxation' (KWIRS Institutional Profile 2025) <https://kw-irs.com/about-us> accessed 15 October 2025

were charged to expand the income base of the state governments and to lessen the excessive dependence on federal funding. However, this has resulted in the fragmented administration of taxes, inconsistency in the application of tax policies, and an overlap of fiscal mandates.

Another characteristic of the former tax system is a chain of major vulnerabilities that strangled optimum performance. To begin with, the system was marred by multiple taxation and complexity as taxpayers were being hit with numerous taxes, levies, and charges by the federal, state and local government. This multiplicity brought about confusion and prohibitive compliance costs, which deterred voluntary compliance, especially among small and medium enterprises (SMEs) and incited avoidance or underground operations.²⁵ Second, the small tax base also created a major constraint on revenues. Since the large informal economy contributed an estimated high percentage of the GDP and operated largely outside the formal tax nets, most economic players were not taxed or were under-taxed, reducing the successful mobilization of fiscal resources.²⁶

Third, the endemic corruption and poor enforcement systems undermined the reputation of the tax authorities. Long-standing inefficiencies in FIRS and SIRs, along with poor technological infrastructure, impeded the effective monitoring, detection, and chastisement of non-compliant taxpayers. These administrative weaknesses, combined with the cases of collusion between the officials and the taxpayers, encouraged evasion and weakened the credibility of the tax authorities.²⁷ Furthermore, lack of education and awareness among taxpayers implied that a significant number of citizens did not have any clear knowledge of their responsibilities and thus underreported and violated the tax policies.

These behavioural and structural factors over time formed historical patterns of non-compliance and tax evasion. Despite the government's periodic application of reforms, including the Voluntary Assets and Income Declaration Scheme (VAIDS) and e-taxation programs, which were

²⁵ Rivers State Internal Revenue Service, 'Overview of RIRS Mandate and Subnational Revenue Collection' (RIRS Corporate Policy Document 2025) <https://rirs.ng/overview> accessed 15 October 2025.

²⁶ Chinedu Opara, 'The Difficulties Nigeria Faces in Collecting Taxes: Evaluating Multiple Taxation Complexity and Enforcement Barriers' (2024) 8(2) *Nigerian Journal of Fiscal Studies* 114.

²⁷ Aminu Abubakar, 'Analysis of Nigeria's Tax Mobilization Challenges: The Informal Economy Impact and Narrow Revenue Base' (2024) 11(3) *Journal of Tax Administration and Development* 89.

targeted to enhance compliance, there were small gains in comparison with the magnitude of the issues. The ratio of tax to GDP was still low.²⁸ The informal businesses were mostly not registered for taxation, and big companies were also known to take advantage of the law to cut expenses. All these tendencies emphasized the fact that the former fiscal system was not able to transform economic activity into sustainable revenues, and it required a complete reform.

4. The New Taxation Structure

Policy reformation and legislative amendments.

Nigeria has embarked on a complete transformation of its tax regime in order to improve revenue collection and compliance and in order to bring its fiscal regime more in line with international standards. At the heart of this structural change is the Nigeria Tax Act (NTA) 2025, which was signed into law as one of a range of legislative tools to harmonize, modernize, and rationalize the tax landscape in the country.²⁹ The NTA reformed previous tax legislations, such as the Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Value Added Tax (VAT) Act, Capital Gains Tax (CGT) Act, Petroleum Profits Tax (PPT) Act and Stamp Duties Act, to a single regime that is aimed at ending fragmentation and ambiguity in tax administration.

The reform of the key elements of the taxes, including Value Added Tax (VAT), Company Income Tax (CIT), Personal Income Tax (PIT), and the taxation of the digital economy, is one of the most innovative elements of the new framework. While the VAT remained at 7.5 per cent, the NTA increased a number of taxable supplies but exempted certain commodities and essential goods and services such as food, healthcare, education, agricultural inputs, and exports, and thus balanced revenue objectives and social equity issues.³⁰ Under the regime, the PIT of individuals who earn ₦800,000 or less yearly income are wholly exempted, while the tax brackets have now increased up to 25 per cent among higher earners, enhancing equity and rendering the tax

²⁸ Olumide K Ajayi, 'Building a Sustainable Tax System in Nigeria: Corruption and Enforcement Inefficiencies in Tax Administration' (2024) 5(1) *Covenant University Journal of Law and Administration* 45.

²⁹ Shakede Sanni Philip, Cyril Obomeile and Musa Abdulai Aliakhue, n 1 and 11.

³⁰ Ernst & Young Global, 'Nigeria Tax Act 2025: Key Highlights and Implications' (EY Global Tax News Report, 15 January 2025) <https://globaltaxnews.ey.com/news/2025-5016> accessed 20 October 2025.

progression regime in Nigeria in line with international standards.³¹ Corporately, medium and large firms are subject to a reduced tax rate of 25 per cent, down from the previous structure, in conjunction with a Development Levy of 4 per cent on assessable income, which brings a number of the previously overlapping taxes (including the Tertiary Education Tax and NASENI tax) into a single payment, easing administrative compliance.³²

The key innovation in the NTA is the introduction of the Minimum Effective Tax Rate (ETR) of 15 per cent for multinational groups that surpass the specific turnover standards, which corresponds to the international taxation principles, including Pillar 2 of the OECD on global minimum taxation. This is aimed at preventing the shift of profits and base erosion by the transnational companies doing business in Nigeria, and hence expanding the Nigerian corporate tax base and putting the situation in the corporate tax landscape on a par with fairness.³³ In addition, the capital gains tax has been reorganized to align corporate and individual interests, and capital gains in corporations are now subject to tax rates that are equal to CIT and the disposal of digital and virtual assets is expressly included in the tax bracket.³⁴ All these reforms point to the direction of the modernization of the Nigerian tax code and the minimization of redundancies, improvement of predictability, and adherence to global best practices in domestic taxation.

Interest in the innovations and the administrative and technological divisions is combined in a single section (4.2). In addition to the substantive policy and legislative changes, administrative change and technological modernization have been touted as the essential elements of the new taxation system. One of these is the digitalization of tax administration, which seeks to streamline operations, increase transparency and limit chances of corruption or evasion. The new

³¹ Baker Tilly Nigeria, 'Nigeria's 2025 Tax Reform Acts Explained: Key Features of VAT, Personal and Corporate Tax Reforms' (Baker Tilly Tax Alert, February 2025) <https://bakertilly.ng/tax-reform-acts-2025> accessed 22 October 2025.

³² Mondaq Legal Analysis, 'The Nigeria Tax Reform Act 2025 and Its Effect on Businesses: VAT Treatment, Development Levy, and New Tax Brackets' (Mondaq Business Briefing, 12 March 2025) <https://www.mondaq.com/nigeria/tax-reform-act-2025> accessed 25 October 2025.

³³ Nigeria's Tax Reforms Set Lowest VAT Rate Among African Peers' *BusinessDay NG* (Lagos, 18 March 2025) <https://businessday.ng/news/nigeria-tax-reforms-lowest-vat> accessed 25 October 2025

³⁴ PwC Nigeria, 'The Nigerian Tax Reform Acts: A Technical Review of Development Levy and Minimum Effective Tax Rate Provisions' (PwC Tax Watch, April 2025) <https://www.pwc.com/ng/tax-reform-acts-review> accessed 1 November 2025.

regime has also brought about a system of mandatory electronic invoicing (e-invoicing) and a real-time VAT reporting system, which means that a business has to issue and send tax-compliant invoices through electronic systems endorsed by the tax authorities. The mechanism of fiscalization improves real-time monitoring of transactions, VAT collection and reduces incidents of under-reporting and tax fraud.

Another important administrative innovation is the reinforcement of the use of the Taxpayer Identification Number (TIN) system. The new tax regime has sought to ensure that data is shared across jurisdictions by encouraging the use of a single national database of individuals and corporate taxpayers, including linking it to business registries and the national identity system, which will reduce duplication, enhance data quality and enhance tracking compliance across jurisdictions.³⁵ This is complemented by an increased cooperation between agencies, including the Corporate Affairs Commission (CAC), the Nigerian Customs Service (NCS) and the National Identity Management Commission (NIMC), all of which facilitate automated data exchange and decrease irregularities that have historically helped with evasion.

Improved technologies have also assisted in the wider implementation of enforcement regulations. As an example, automation tools and data analytics are increasingly being used to identify patterns of non-compliance, initiate audits, and verify the filings submitted by taxpayers. These inventions and capacity-building trainings indicate a mindset of being more proactive with tax administration as opposed to a traditional reactive method of enforcement. The new taxation system aims to minimize human error and judgment in the collection of taxes, and to create a more predictable and efficient system for both the taxpayers and the administrators through the utilization of technology and data integration.³⁶

The legislative reformation and administrative innovations signify a radical change in the former taxation systems, which place the taxation system in Nigeria on its way to becoming more

³⁵ Federal Ministry of Finance, 'Nigeria Tax Reform Acts: PDF Overview of E-Invoicing, Electronic Reporting, and VAT System Modernization' (Official Gazette Summary, May 2025) <https://finance.gov.ng/tax-reform-acts-pdf> accessed 1 November 2025.

³⁶ Nigeria's Business Competitiveness and the New Tax Regime' *AllAfrica* (Lagos, 22 May 2025) <https://allafrica.com/stories/202505220114> accessed 4 November 2025; 'Tinubu's Fiscal Reforms: TIN Expansion and Inter-Agency Collaboration for Taxpayer Identification Modernization' *Vanguard* (Lagos, 5 June 2025) <https://vanguardngr.com/tinubus-fiscal-reforms-tin-expansion> accessed 4 November 2025.

efficient, equitable, and stable. The effects on the reduction of evasion and enhancement of compliance are key to the overall assessment of the effectiveness of the new taxation structure as these measures become fully effective.

5. New Taxation Structure on Tax Evasion

With the adoption of the new taxation system in Nigeria, the tax administration system is witnessing new trends in tax evasion, the intensity of tax enforcement, and the behaviour of taxpayers. Though it is too early to have full comprehensive outcome data because the reforms are still relatively new, the first indications are that both structural reforms and administrative innovations are affecting the natural manifestation and response to tax evasion in the sectors.

Among the most remarkable changes that have been witnessed after the reform is the contribution that digitalization and real-time reporting are making to preventing evasion. The transition to electronic invoicing and fiscal reporting systems for large taxpayers, and gradually to medium and smaller enterprises, has created real-time visibility of the data on sales and transactions, reducing the possibility of intentional under-reporting that used to dominate large parts of the formal economy.³⁷ Live reporting of VAT, bank verification of Taxpayer Identification Numbers (TINs) and automatic cross-checking tools have begun to close the compliance gap between reported tax amounts and third-party financial information, especially in sectors where electronic tax infrastructure has reached its full development.³⁸ These electronic interventions represent a great change towards manual reporting systems that were prone to manipulation, missing data, and administrative procrastination.

To strengthen enforcement mechanisms and penalties, the new regime has come up with punitive measures that aim at discouraging evasion. The sanctions include fines for failure to register for payment of taxes or incorrect or incomplete filing, failure to maintain accurate records, and recurrent infractions.³⁹ Tax avoidance also attracts a fine or, in serious cases, a jail term. These

³⁷ National Assembly of Nigeria, 'Legislative Digest Summarizing Reforms, Real-Time E-Invoicing, and Tax Database Integration' (2025) 12(3) *National Assembly Legislative Digest* 14.

³⁸ Charles Ibe, 'Analysis of Tax Reform Impact on Revenue and Compliance: Noting Digital System Adoption Effects' (2025) 9(2) *International Journal of Economics and Financial Management* 76.

³⁹ Tunde Bakare and Chidi Nwosu, 'Nigeria's 2025 Tax Reforms: Implications for Businesses and Individuals regarding Fines and Imprisonment Penalty Provisions' (2025) 6(1) *Nigerian Law Intellectual Quarterly* 54.

measures are intended to enhance the deterrent effect - a major element in decreasing intentional evasion - where non-compliance becomes numerically and qualitatively expensive to the lawbreaker.

The reforms also target the informal sector, which traditionally lies outside the formal tax net and is a major concern in tax evasion. Through presumptive taxes and increased digital registration, authorities aim to bring historically informal economic participants into compliance frameworks, even where traditional accounting records are missing.⁴⁰ Nonetheless, the informal economy still poses challenges; in particular, small traders and rural operators have limited access to digital tools, so compliance may take longer to materialize and will require reliance on complementary taxpayer education and staged enforcement policies.

The other notable category is high-net-worth individuals (HNWIs) and corporate taxpayers. Before the reform, there was an indication of very low compliance rates among the richest taxpayers in Nigeria, and some reports indicated that as many as 99 percent of wealthiest taxpayers in this country were evading their tax bill, thus creating a relatively huge discrepancy in the revenue.⁴¹ Although the full publication of post-reform compliance data related to this cohort has not yet been made public, the increased scope of taxation of digital assets and the global minimum effective tax requirements under the new legislation are indicators that these hitherto hard-to-reach sources of revenue are going to be better captured under the new legislation.

Emerging data from tax audits, legal prosecutions, and financial leaks indicate a decisive shift toward more aggressive regulatory enforcement. This trend is best illustrated by recent high-profile litigation in the cryptocurrency industry aimed at recovering substantial back taxes and compliance penalties. Scholarly literature on digital transformation supports this approach,

⁴⁰ PwC Nigeria, 'A Strategic Analysis of Nigeria's 2025 Tax Reform Penalties and Statutory Enforcement Mechanisms' (PwC Regulatory Alert, June 2025) <https://www.pwc.com/ng/tax-penalties-enforcement> accessed 11 November 2025.

⁴¹ Oxfam Nigeria and Tax Justice Network Africa, 'Taxing the Gods: Estimating Pre-Reform Compliance Disparities Among High-Net-Worth Individuals in Nigeria' (Joint Sectoral Report, July 2025) <https://nigeria.oxfam.org/reports/tax-justice-hnwi> accessed 11 November 2025.

demonstrating a strong correlation between advanced electronic tax administration and enhanced capabilities in both evasion detection and overall compliance.⁴²

However, these effects are not equal. The level of compliance differs greatly depending on the region, industry, and the level of digital capabilities of taxpayers and tax officials. The lack of fully integrated systems in small businesses may cause transitional barriers that can slow down their compliance rates, but bigger firms with digital infrastructure can act faster to meet the reporting requirements.⁴³ It is also observed by external observers that the audit capacity and the enforcement infrastructure should be expanded to make the most of the legislative and technological tools provided, especially in the long-term reduction of evasion, which should be maintained not just in terms of first-time compliance benefits.

Overall, the newly implemented tax system has begun altering evasion trends through a combination of digital enforcement technologies, expanded administrative coverage, and heightened penalties. Although a comprehensive assessment of the system's capacity to detect, deter, and remediate evasion remains premature, preliminary indicators suggest that Nigeria is successfully building institutional capacity to combat non-compliance, particularly among formal-sector participants and highly visible economic stakeholders. However, persistent challenges within the informal sector, coupled with resource constraints in enforcement, underscore the critical need for continuous refinement and expansion of existing compliance mechanisms.

6. Impact of the New Regime on Tax Compliance

The introduction of the new taxation structure aims to not only reduce evasion but also increase revenue through voluntary compliance, expansion of the tax base and taxpayer education on the perception of fairness and trust. Although detailed empirical data on the full effect of the reform process is still developing, there are early signs of improvement and adaptability to the new regime.

⁴² Federal Government Steps Up Legal Action Against Cryptocurrency Entities Amid Ongoing Tax Disputes' *The Guardian Nigeria* (Lagos, 14 August 2025) <https://guardian.ng/news/legal-action-cryptocurrency-tax> accessed 15 November 2025.

⁴³ Post-Reform Reality: Evaluating Enforcement Challenges and Institutional Audit Capacity Gap' *The Guardian Nigeria* (Lagos, 28 August 2025) <https://guardian.ng/business/post-reform-reality-audit-capacity> accessed 15 November 2025.

Central to the current fiscal reforms is the enhancement of voluntary tax compliance, thereby mitigating the reliance on costly enforcement mechanisms. Pre-reform compliance in Nigeria was chronically depressed by low tax morale, institutional distrust, and a tax system perceived as inequitable, which systematically disincentivized formalization.⁴⁴ The Nigeria Tax Act (NTA), alongside concurrent legislative amendments, seeks to dismantle these barriers by harmonizing taxes under a singular regime and optimizing reporting workflows. Empirically, interventions such as simplified tax returns for small businesses and minimized compliance overheads for low-income demographics serve as key mechanisms to encourage formal economic participation.⁴⁵

Analysts believe that with the kind of expansions being targeted by the reforms, the Nigerian tax-to-GDP ratio could potentially increase substantially in a nation that has long been at historically low levels.⁴⁶ Fiscal authority estimates and private sector projections indicate that at total implementation, the tax-GDP ratio would attain better levels, enhance revenue collection and assimilate a larger number of economic participants into the formal tax net.⁴⁷

Taxpayer education and awareness programmes have been given a lot of attention in the reforms. Good compliance requires not just obedience to the law, but knowledge of the rights and responsibilities of taxpayers. The reforms include the introduction of the Taxpayer Bill of Rights and the Office of Tax Ombudsman, which ensures access to clear information, a fair hearing process, as well as better procedural guidelines that can convince and instill trust in taxpayers.⁴⁸

The attitude towards fairness, transparency, and trust in the government is a central factor which influences compliance behaviour. Even the best-prepared tax codes may fail when it is not trusted by taxpayers. The issues of corruption, inconsistency in enforcing the laws, and the lack

⁴⁴ Digital Integration and Its Broader Implications for Broadening Micro-SME Compliance' *Punch Nigeria* (Lagos, 5 September 2025) <https://punchng.com/digital-integration-tax-compliance> accessed 18 November 2025.

⁴⁵ Tax Reforms: New Law Ushers in Clarity, Broader Base, and Enforced Compliance' *THISDAYLIVE* (Lagos, 19 September 2025) <https://thisdaylive.com/index.php/tax-reforms-new-law-clarity> accessed 18 November 2025.

⁴⁶ Public Finance Database, 'Administrative Bottlenecks and Historical Low Tax Morale Constraining Voluntary Compliance' (Nigeria Strategy Report 2025) <https://www.publicfinance.ngf.org.ng/reports/administrative-challenges> accessed 22 November 2025.

⁴⁷ Nigeria's New Tax Reforms Signed by Tinubu: Streamlining Filing Frameworks for Projected Revenue Growth' *The Gazette Nigeria* (Abuja, 3 October 2025) <https://gazetteng.com/tinubu-signs-new-tax-reforms> accessed 22 November 2025.

⁴⁸ National Assembly of Nigeria, 'Codified Taxpayer Rights, the Establishment of the Tax Ombudsman, and Institutional Dispute Resolution Enhancements' (2025) 12(4) *National Assembly Legislative Digest* 30.

of reciprocity between the payment of taxes and perceived returns from the government have been long-standing issues in Nigeria. The civil society organisations have highlighted that as long as these issues of governance are not addressed, the reforms will only create resistance and undermine voluntary compliance in the long run.⁴⁹ In fact, there is still skepticism about expansion measures and enforcement powers, and stakeholders have been warned that transparency and accountability should be prioritized in addition to legal requirements to maintain compliance gains.

Additionally, analysts observe that perceived fairness—particularly equity in the levying and administration of taxes—significantly influences taxpayer willingness to comply.⁵⁰ For instance, while progressive tax brackets and tax exemptions for low-income earners are designed to promote equity, their ability to drive actual compliance depends heavily on consistent application and the visibility of public benefits. Experts warn that when taxpayers fail to see tangible returns on their contributions, compliance incentives diminish. This erosion of trust is particularly pronounced among small businesses and informal sector operators attempting to transition into the formal tax system.⁵¹

Despite such difficulties, the initial results indicate a positive, though irregular, change in the compliance patterns. Coherent filing systems, streamlined processes and better statutory schedules decrease the friction in the compliance procedures, easing the burdened taxpayers to fulfil their obligations and the authorities to control the performance systematically. Nevertheless, it is probably only through continuous endeavours in the area of technology adoption, support through taxpayer services, transparency initiatives, and trust-building efforts that the social contract between the state and its citizens and the realization of sustained improvements in voluntary compliance will be achieved.

⁴⁹ Nigeria: EiE – Tax Reforms Must Be Anchored on Trust, Transparency’ *AllAfrica* (Lagos, 14 October 2024) <https://allafrica.com/stories/202410140415.html> accessed 18 November 2025.

⁵⁰ Brad Nathan, Ricardo Perez-Truglia and Alejandro Zentner, ‘Paying Your Fair Share: Perceived Fairness and Tax Compliance’ (2024) *SSRN Electronic Journal* <https://www.nber.org/papers/w32588> accessed 3 December 2025

⁵¹ Nigeria’s New Tax Laws Test Its Structural Revenue Strategy Amid Severe Informal Sector Trust Deficits’ *Punch Nigeria* (Lagos, 29 October 2025) <https://punchng.com/new-tax-laws-test-revenue-strategy> accessed 25 November 2025.

7. Data Analysis and Empirical Evidence

To determine the level of success of the new taxation system introduced by the Tinubu administration, it is necessary to scrutinize the changes in revenue performance, the ratio of taxes to GDP, and the case-specific trends that indicate changes in compliance behaviour and financial results.

Total tax revenue collection is one of the most reported fiscal performance indicators. The Federal Government of Nigeria also announced a significant 43 per cent growth in tax collections, with tax collections going up to N14.27 trillion in H1 2025 in comparison to N9.98 trillion in H1 2024.⁵² The non-oil revenue, which is part of the focus of the diversification strategies, is up by 44.2 percent, which means that the push to diversify the tax base and enhance compliance is giving some tangible results.⁵³ These numbers are an indication of structural improvements in enforcement and modernization of the tax administration.

Although these are gains, the tax-to-GDP ratio of Nigeria is relatively low when compared to previous years, though gradual gains can be traced. In 2023, OECD Revenue Statistics in Africa put the tax-to-GDP ratio of Nigeria at 8.2 per cent, showing a small decrease compared to its 2022 ratio of 8.3 percent and a lot less than the average tax-to-GDP ratio of South Africa at 16.1 percent. In 2023, the tax-to-GDP ratio of Nigeria was 8.2 per cent, compared to its 2022 ratio of 8.3 percent and it means that even though collections have increased in nominal terms, the revenue has not so far grown as quickly as compared to the national output- a process that can be explained by some structural and behavioral barriers in the field of tax compliance and the economy as a whole.⁵⁴ It is also worth noting that the ratio of taxes that the country pays to the GDP has been on the decline, compared to that of other countries like South Africa and Morocco,

⁵² 'FG's Half-Year Tax Revenues Jump 43% to N14.27 Trillion Reflecting H1 2025 Performance Baseline' *THISDAYLIVE* (Lagos, 12 July 2025) <https://thisdaylive.com/index.php/fgs-half-year-tax-revenues-jump> accessed 25 November 2025

⁵³ 43% Spike in Tax Revenue Spurs Hope for Fiscal Recovery: Assessing the Structural Composition Between Oil and Non-Oil Sources' *The Guardian Nigeria* (Lagos, 15 July 2025) <https://guardian.ng/business/revenue-spike-fiscal-recovery> accessed 28 November 2025.

⁵⁴ ECD/AUC/ATAF, *Revenue Statistics in Africa 2024* (OECD Publishing 2024) https://www.oecd.org/en/publications/revenue-statistics-in-africa-2024_28e3b1c6-en.html accessed 11 November 2025.

which have ratios above 25 per cent, reflecting how deep the fiscal loopholes are that need to be filled in the long run through the reforms.⁵⁵

Another lens that can be used to assess the lag between reform enactment and full fiscal effect is comparative, according to international institutions. An illustration is that tax policy changes, such as enhancing VAT systems and minimum corporate taxes, as projected by the International Monetary Fund (IMF), would bring an extra 4.2 per cent of GDP in revenue over time, but this would not be achieved in the same accounting period and would only come with time as the administrative systems become stronger and the degree of compliance increases.⁵⁶ These estimates help highlight the fact that initial revenue numbers should be taken with a grain of salt since reforms do not affect the overall economic state and have lagging behavioural adjustments.

A recent article that evaluated the effects of tax reforms on the Nigerian revenue system discovered that there is a substantial positive correlation between reform actions and revenue collection results, indicating that structural adjustments, such as digitalization, expanded tax definitions, and increases in enforcement, play a role in increasing efficiency in revenue collection.⁵⁷ Although the research only explains that a certain amount of variance in the revenues is to be explained by certain reforms (the intricacy of the Nigerian fiscal ecosystem), it confirms the positive directional effect of a modernized tax policy on the collection results.

Empirical patterns are also elaborated by sector-specific data as well as case studies that are sub-national. To illustrate, in the case of internally generated revenue (IGR) data of 2023, states such as Lagos were far behind compared to other countries, with over 33 per cent of the national IGR attributed to it, whereas other major economies such as the Federal Capital Territory (FCT) and Rivers State had much smaller shares. Such trends underscore the asymmetrical allocation of tax filing and tax collection across the states - a trend that is being addressed by the reform efforts to harmonize reporting and increase the digitalization.

⁵⁵ Organization for Economic Co-operation and Development, 'Revenue Statistics in Africa 2025: Nigeria Country Note' (OECD Publishing 2025) <https://www.oecd.org/countries/nigeria/revenue-statistics-africa-nigeria.pdf> accessed 28 November 2025.

⁵⁶ IMF Endorses New Tax Law, Flags Potential Structural Delay in Long-Term Revenue Impact' *Africa Tax Review* (Nairobi, November 2025) <https://africataxreview.org/imf-endorses-nigeria-tax-laws> accessed 1 December 2025.

⁵⁷ Kingsley Ighodaro, 'An Assessment of the Impact of Tax Reforms on Nigeria's Revenue Performance' (2026) 11(1) *Account and Financial Management Journal* 22.

However, despite the revenue indicators showing that the performance is improving, the problem of quantifying compliance and evasion still exists. The constraints of data, lags in reporting and changing aspects of the tax administration make disaggregating the particular impact of policy changes and general economic trends challenging. An example is the effect of simultaneous macroeconomic changes, e.g. GDP rebasing that averted the reported national output by nearly 30 per cent, which can affect tax-to-GDP ratios without depending on compliance behaviour, and therefore makes longitudinal analysis difficult.⁵⁸ Also, variation in data collection criteria and coverage in agencies may blur the actual size of informal sector taxation, which is one of the key areas where compliance measurement is at a crossroads.

The other problem is the difference between the increase in the nominal revenue and the outcome of behavioural compliance. Higher concentrations may indicate better enforcement or a short-term factor in the economy, but not long-term voluntary compliance, and it may be necessary to be cautious when interpreting the trends over a long period. Such complexity is especially relevant in areas with a strong influence of informal operations or those with an immature digital infrastructure to facilitate tax reporting.⁵⁹

To conclude, there is currently empirical evidence that the new tax regime under the Tinubu regime is linked to a significant revenue increase and the direction towards greater compliance, but all effects on tax evasion and long-term compliance will be noted only with further monitoring and incorporation of more data in the future.⁶⁰ The combination of comparative tax-to-GDP analysis, sectoral revenue trends, and academic literature suggests some improvements, but also shows that there are still issues with measurements that need to be established to holistically estimate the effectiveness of the reforms.

8. Problems and Drawbacks of the New Taxation Structure

⁵⁸ International Monetary Fund, 'Simplifying Tax Procedures to Enhance Voluntary Compliance in Emerging Market Economies' (IMF Fiscal Affairs Department Technical Note, 2025) <https://www.imf.org/en/publications/technical-notes/simplifying-tax-procedures> accessed 2 January 2026.

⁵⁹ Erich Kirchler, Erik Hoelzl and Ingrid Wahl, 'Enforced versus Voluntary Tax Compliance: The "Slippery Slope" Framework' (2008) 29(2) *Journal of Economic Psychology* 210 <https://ideas.repec.org/a/eee/joepsy/v29y2008i2p210-225.html> accessed 14 November 2025.

⁶⁰ Uchenna Maryjane Anushiem, 'An Appraisal of the Legal Framework for Taxation of Companies' Income in Nigeria' (2025) 2(2) *COOU Journal of Commercial and Property Law* 23 <https://journals.ezenwaohaetorc.org/index.php/COOU-JCPL/article/view/3466> accessed 10 January 2026.

Although the reforms envisaged by the Tinubu administration are ambitious, the new taxation framework has some serious challenges and limitations, which could hinder its efficiency in decreasing tax evasion as well as enhancing compliance. These problems are caused by administrative, behavioural, economic and socio-political factors that interact with the specific fiscal and institutional environment in Nigeria. Some of these challenges are examined below.

8.1. Constraints in Administrative Capacity.

The main restriction of the new system of taxation is the ability of the tax administration agencies to make the reforms effective. Although the Nigeria Revenue Service (NRS) and the State Internal Revenue Services (SIRs) have digitized and integrated certain operations using data, human and technical resources remain a constraint.⁶¹ Competent individuals are needed to administer more complicated audits, support electronic platforms and oversee adherence in various industries, yet the lack of staffing and the lack of training equally hamper complete implementation. Further, the technological infrastructure differences between urban and rural areas may introduce implementation gaps, in which taxpayers in under-resourced areas remain on the outside of the formal infrastructure.⁶² Such capacity limitations can slow down enforcement, decrease audit coverage and inhibit detection and punishment of non-compliance.

8.2. Opposition among Taxpayers and Businesses.

Other major obstacles include resistance on the part of taxpayers and businesses, especially in industries that will keep on feeling the impact of new reporting regulations and greater standards of transparency. The widened digital reporting, TIN verification and minimum effective tax requirements are viewed as intruders by some high-net-worth individuals and corporate entities, which results in a pushback or efforts to circumvent the rules.⁶³ Compliance requirements,

⁶¹ World Bank, 'Federal-State Tax Coordination in Nigeria: Reducing Institutional Overlaps and Enhancing Subnational Revenue Mobilisation' (World Bank Policy Research Working Paper, 2025) <https://documents.worldbank.org/en/publication/federal-state-tax-coordination-nigeria> accessed 5 January 2026.

⁶² Tax Reforms Bill: Righting Wrongs of Unjust Distribution of Subnational Revenue?' *Tribune Online* (Ibadan, 14 December 2025) <https://tribuneonlineng.com/tax-reforms-bill-revenue-distribution> accessed 20 December 2025; PwC Nigeria, 'Challenges in Implementing Nigeria Tax Act 2025: Administrative Realities and Human Resource Limitations' (PwC White Paper, December 2025) 12 <https://www.pwc.com/ng/challenges-implementing-tax-act> accessed 20 December 2025.

⁶³ Jude C Onah, 'Digitalization of Tax Administration and the Challenges of Technical Capacity in Nigeria' (2025) 7(4) *International Journal of Public Sector Management* 142 <http://ijpsm.org.ng/index.php/ijpsm/article/view/304> accessed 22 December 2025.

especially among small and medium enterprises and in the informal sector, can be seen as burdensome, especially when coupled with other mandatory financial requirements and do creates reluctance or a slow pace of adapting to the new system.⁶⁴ This resistance of behaviour underscores the persistence of these issues surrounding matching perceptions and incentives of taxpayers to the aims of a policy, despite the presence of obvious legal frameworks.

8.3. The hegemony of the Informal Economy.

The informal economy has also continued to pose a significant bottleneck to tax reforms in Nigeria. Boundless economic activities take place in the informal sector, especially among retailers, small-time traders, rural businesses, and the participants of the gig economy. Currently, due to the fact that these actors may not have access to formal accounts or digital reporting platforms, it is difficult per se to enforce tax compliance.⁶⁵ Though presumptive taxes and digital registration programs seek to take informal operators into the tax bracket, not all of them are covered. Moreover, informal actors do not seem to be aware of the obligations or have low trust in authorities, and this situation once again restricts the effectiveness of compliance measures. The prevalence of informal economic operation has a direct impact on the scope as well as the scale of the tax base and restricts the collection of revenue, even with innovation in legislation and administration.

8.4. Political, Social, and Economic Forces that Influence Results.

Lastly, political, social and macroeconomic forces also determine the success of the new tax structure. Political interference or a sense of injustice in the enforcement process can destroy confidence in the system, whereas social factors like low civic participation, the cultural hostility to formal taxation or regional differences in service provision may destroy voluntary compliance.⁶⁶ Taxpayers are also influenced by economic factors such as inflation, currency

⁶⁴ World Bank, 'Subnational Revenue Mobilization in Nigeria: Addressing Regional Disparities in Infrastructure and Enforcement capacity' (World Bank Nigeria Development Update, 2025) <https://documents.worldbank.org/en/publication/subnational-revenue-nigeria> accessed 22 December 2025.

⁶⁵ Taxpayer Resistance to New Digital Reporting Formats and E-Invoicing Regimes in Nigeria' *BusinessDay Nigeria* (Lagos, 18 November 2025) <https://businessday.ng/exclusives/taxpayer-resistance-digital-reporting> accessed 26 December 2025.

⁶⁶ Chartered Institute of Taxation of Nigeria, 'SME Compliance Challenges, Operational Hardships, and Perceptions of Regulatory Burden' (CITN Tax Advisory Series, 2025) <https://citn.org.ng/publications/sme-compliance-challenges> accessed 26 December 2025.

volatility and changing business profitability, which pose a particular challenge to small businesses and informal operators in terms of their ability to pay.⁶⁷ All these interrelated, complicated factors make it clear that the effectiveness of tax reform is not only based on the law and the administration, but on the socio-economic environment in general.

To conclude, although the reforms proposed by the Tinubu administration are an important step towards the tax policy environment in Nigeria, they are limited by the administrative aspect, opposition of the taxpayer, pre-eminence of the informal sector, and the broader socio-political and economic influences. These limitations must be identified and tackled in order to maintain the reform benefits, tax base growth, and minimize evasion in the long-term perspective. The constant investment in capacity building, stakeholder participation and comprehensive policy formulation is of the essence in making the legal and technological innovations produce the desired results.

9. Policy Implications and Recommendations

The assessment of the new taxation system in Nigeria under the Tinubu government reflects the significant policy inferences and points of advancement. Although reforms have enhanced the legal and technological infrastructure in revenue collection, compliance, enforcement, and interaction with taxpayers continue to be a challenge. These challenges may be addressed through a multi-pronged approach that is based on institutional, behavioural and structural interventions.

9.1. Empowering Tax Administration and Enforcement.

One of the recommendations, which is that a critical revision should be carried out, is the strengthening of the administrative capacity of federal and state tax authorities. Human resources, training and expertise in technology have to be invested to be able to manage the audit, compliance and complex tax rules.⁶⁸ Human resources, training and expertise in technical expertise should also be invested so that the officers can manage and undertake audits, compliance, and interpret complex rules on tax. Moreover, the enforcement coverage, leakages,

⁶⁷ United Nations Economic Commission for Africa, 'Informal Sector Taxation in Nigeria: Practical Barriers and Strategic Opportunities' (UNECA Policy Brief, 2025) <https://www.uneca.org/publications/informal-sector-taxation-nigeria> accessed 28 December 2025

⁶⁸ Political and Social Factors Influencing Macro Tax Compliance Trends in Nigeria' *AllAfrica* (Lagos, 3 December 2025) <https://allafrica.com/stories/202512030412> accessed 28 December 2025.

and corruption possibilities can be minimized by seeking to expand digital infrastructure, such as e-filing, real-time reporting, and integrated databases, which can enhance coverage of these systems. Frequent performance audits and monitoring systems should be institutionalized to measure the level of enforcement and the need to improve.⁶⁹

9.2. Increasing the level of Trust and Accountability of the Taxpayers.

The focus of enhancing voluntary compliance is to establish trust between taxpayers and authorities. The lack of perceptions of unfairness and increased legitimacy can be achieved through policies that guarantee transparency in how tax revenues are used, communicate clearly the rights of taxpayers, and provide a dispute resolution mechanism that is accessible to them.⁷⁰ Introducing services that are easy to deal with through specific support centres, online education portals and regular feedback loops will promote compliance and enhance civic responsibility. Reporting effective prosecution of evasion cases and an evident delivery of publicly benefiting commodities that are paid by tax income will strengthen the mutual relationship that the Fiscal Exchange Theory is based on, and will result in more people joining the tax system.⁷¹

9.3. Streamlining of Taxation Laws and Processes.

Tax law is still too complex, and it continues to be a challenge to individuals and businesses. Streamlining tax laws and processes is then important. Among the recommendations are harmonization of overlapping taxes, simplification of filing and easier instructions on how SMEs and informal sector players should file their accounts.⁷² Advancing towards full digitization and the use of user-friendly filing systems can lower the compliance expenses and decrease the number of errors, making the process of compliance with tax requirements less heavy and more

⁶⁹ International Monetary Fund, 'Nigeria: Economic Shocks and Tax Capacity in the Reform Era' (IMF Country Report No 25/114, 2025) <https://www.imf.org/en/publications/cr/issues/nigeria-economic-shocks-tax-capacity> accessed 29 December 2025.

⁷⁰ PwC Nigeria, 'Enhancing Tax Administration Capacity and Systemic Governance in Nigeria Post-2025 Reforms' (PwC Thought Leadership Insights, December 2025) <https://www.pwc.com/ng/enhancing-tax-capacity-post-2025> accessed 29 December 2025

⁷¹ World Bank, 'Digitalization and Tax Compliance: Operational Lessons and Pathways for Nigeria' (World Bank Public Sector Brief, 2025) <https://documents.worldbank.org/en/publication/digitalisation-tax-compliance-nigeria> accessed 30 December 2025.

⁷² Chartered Institute of Taxation of Nigeria, 'Building Taxpayer Trust, Fiscal Morale, and Structural Transparency through Collaborative Reform Advocacy' (CITN Communiqué, 2025) <https://citn.org.ng/publications/building-taxpayer-trust> accessed 30 December 2025

efficient. Transparency in regulations and the uniformity in interpreting the regulations by the tax authorities will decrease the cases of ambiguity in the law that lead to evasion.

9.4. Enhancement of Interstate Federal and State Tax Coordination.

The presence of federal and state tax agencies, though required in the fiscal federalism in Nigeria, has in the past resulted in duplication, confusion and jurisdiction wrangles. To ensure the development of a coherent system in which the responsibilities, data sharing, and enforcement procedures are coordinated, it is necessary to strengthen the coordination of FIRS and State Internal Revenue Services (SIRS).⁷³ Multiple and conflicting obligations can be avoided by joint audits, interoperable data systems and harmonized tax policy guidelines, which reduce redundancies, improve compliance monitoring and enhance the taxpayer experience.

9.5. Summary and Prospectus.

Evaluations of the reforms by the Tinubu administration offer a good platform through which Nigeria's long-term issues over tax compliance and evasion can be addressed. Nonetheless, in order to make sustainable improvements, the authorities should pay attention to capacity building, the development of trust, simplification, and coordination with other agencies. In this way, Nigeria will be able to anticipate a more extensive, fairer tax base, a better level of voluntary compliance and a closer correspondence of the fiscal policy goals to economic growth. To ensure that policy interventions are always relevant and effective, future assessments must still be conducted based on comprehensive, sector-specific data and further observe how both formal and informal economic activities are changing to keep up with the changing dynamics of the reforms.

10. Conclusion

This research paper has also measured the success of the novel tax system under the Tinubu government in minimizing tax evasion and enhancing adherence in Nigeria. It can be seen that the analysis shows a complex imagery influenced by legislative change, administrative innovation, adoption of technology and behavioural process.

⁷³ 'Fiscal Exchange and Citizen Compliance: Empirical Evidence from Nigeria's Structural Overhauls' *AllAfrica* (Lagos, 27 December 2025) <https://allafrica.com/stories/202512270089> accessed 2 January 2026.

The main results suggest that all three stages of consolidating tax regulations with the adoption of the Nigeria Tax Act 2025, the implementation of electronic reporting solutions, and the enhancement of the enforcement system have already started yielding tangible outcomes in terms of revenue collection, and the initial information reveals that tax revenues grow, and the formalization of economic operations is becoming more widespread. The focus of the reform on digitalization, unified Taxpayer Identification Numbers (TINs), and reporting in real-time has increased transparency, better monitoring, or increased ability of the state to identify and remedy evasion. Moreover, the policies addressing high-net-worth individuals, the digital economy, and informal sectors in the past are evidence of the desire by the administration to expand the tax base and increase equity in the system.

Although these gains exist, the study shows that challenges still persist. The limited administrative capacity, disproportionate use of technology, opposition by some taxpayers and the persistence of the informal sector are some of the factors that restrain the potential of reform implementation. Compliance behaviour is also affected by social, political and economic factors, i.e. lack of trust, macroeconomic volatility, which explains the significance of complementary policy changes in addition to legal and technological innovations.

Altogether, the new taxation structure is still in its developmental stage; it has shown signs of progress in the areas of revenue mobilization and compliance but enduring success will be achieved through the institutional constraints, enhancing the inter-agency coordination, abridging the procedures, and developing the trustworthiness of taxpayers. Those reforms provide a timely opportunity to improve the fiscal sustainability of Nigeria, to decrease reliance upon the oil revenues, and to build a more robust and balanced tax system.

Future research areas may involve longitudinal studies of the trends in voluntary compliance, the long-term effect of digitalization on taxation in the informal sector, as well as comparative studies of the effectiveness of implementation on a state level. Research on the perception of taxpayers, behavioural reaction, and interaction of fiscal policy and economic growth will also contribute to evidence-based strategies to maintain the gains of reforms.

To sum up, tax reforms under Tinubu administration is a major move towards the modernization of the fiscal system in Nigeria. Though there are still difficulties, the groundwork has been laid towards a more effective, fair, and viable tax system that can be able to sustain long-term national development interests.

EXAMINATION OF THE LEGAL REGIME FOR THE OPERATION OF CROWDFUNDING IN NIGERIA

Umar Farouq Zubairu *

Abstract

Crowdfunding is a financing mechanism that permits an investor to gather resources from the public to finance a new business undertaking or project. Thus, crowdfunding facilitates raising of funds from the public thereby preventing frustration of business due to lack of fund. The legal regime that governs crowdfunding principally include the Companies and Allied Matters Act, Investment and Securities Act and SEC Rules on Crowdfunding. However, the problem identified by this paper was that, modern trend of internet fraud activities, unstable economy and prevalence of insecurity has diminished the interest of the public to investing their money into business start-ups. This is because of the danger of the sustainability of such start-ups in an environment susceptible to fraud, inflation and insecurity which consequently leads to a higher risk of business failure. Accordingly, the objective of this paper was to examine the legal framework governing the relationship between the fundraiser (issuer), operator (Crowdfunding intermediary) and the public who invest their money into crowdfunding in Nigeria; with a view to making reforms. The sources of information relied upon in this paper include relevant books, articles in journal publication, statutes, regulation and internet materials. Thus, this paper found (among others) that the Rules on Crowdfunding is in conflict with the Companies and Allied Matters Act, as well as the Investment and Securities Act which disallow private companies from sourcing finance from the public while the SEC Rules on Crowdfunding makes private companies eligible fundraisers. Accordingly, it was recommended (among others) that, the Companies and Allied Matters Act as well as Investment and Securities Act should be amended to incorporate crowdfunding in Nigeria so as to resolve the conflict originating from the SEC Rules on the subject matter.

Keywords: Crowdfunding, Fundraiser, Investor, Operator, Crowdfunding portal and Nigeria

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1.1 Introduction

Entrepreneurial activities in Nigeria have significantly increased in recent years due to unemployment, technological innovation and the expansion of the digital economy. No doubt, the greatest challenge of any business start-up across the globe is to access capital for expansion of operations. Consequently, where such opportunity is not forthcoming for the commencement of a business, it is either that such business remains on hold or becomes frustrated by lack of capital and therefore, may never see the light of the day. Sometimes, whilst in this frustration, the entrepreneur attempts to source funds from donations from family, friends, personal savings and bank credit facilities, failure of which may keep the business pending until such fund is gotten. Therefore, rather than suspend the commencement of such businesses until funds are gotten from those sources, start-ups can make use of the mechanism of crowdfunding by receiving capital from the public through selling of investment interest for the purposes of ease of fund raising and saving businesses from collapsing.

Therefore, Crowdfunding involves sourcing fund from the public for business purposes. At the same time, the need to protect the public interest is also very important. For this reason, the Security and Exchange Commission (SEC) provides guidelines for the regulation of the interest of both parties (that is, the entrepreneur who needs money and the public investing their money in the business).

However, the main problem identified in this paper is that, modern trend of internet fraud activities, unstable economy and prevalence of insecurity has diminished the interest of the public to investing their money into business start-ups. This is because of the danger of the sustainability of such start-ups in an environment susceptible to fraud, inflation and insecurity which consequently leads to a higher risk of business failure. Accordingly, the objective of this paper is to examine the legal framework governing the relationship between the fundraiser (issuer), operator (Crowdfunding intermediary) and the public who invest their money in crowdfunding in Nigeria; with a view to making reforms.

1.2 Meaning of Crowdfunding

The Security and Exchange Commission Rules on Crowdfunding¹ defines Crowdfunding to mean “the process of raising funds to finance a project or business from the public through online platform”². Crowdfunding involves the pooling of finances from a large number of individuals and entities to facilitate the operation of business start-ups. Thus, crowdfunding makes use of the easy access to vast networks of people through crowdfunding portal or websites to bring investors and entrepreneurs together³. It is important to note that there are four main types of crowdfunding and they include:

- a. **Reward-Based Crowdfunding:** This is a type of crowdfunding where people contribute funds to a business start-up in anticipation for returns in the form of gifts of the product or service which the fundraiser offer.
- b. **Donation-Based Crowdfunding:** This is a type of crowdfunding used mostly by non-profits organisations, community movements or social entrepreneurs where members of the community give funds to support such business whilst expecting nothing in return. It is also used to finance businesses in emergent situations, such as natural disasters.
- c. **Debt-Based Crowdfunding:** This is a type of crowdfunding similar to a bank loan where the entrepreneur agrees to repay the loan with interest over a specified period of time.
- d. **Equity or Investment-Based Crowdfunding:** this is a type of crowdfunding where investors put funds into start-ups in return for shares acquisition. The investors are entitled to profits based on their shares in the start-up⁴.

It is important to point out that, the regulation is only applicable to investment based crowdfunding⁵ which is defined as the process of raising funds from the public through an online portal in exchange for shares, debt securities or other investment instruments approved by the Commission. By implication, only debt-based and equity or

¹ The Security and Exchange Commission Rules, Rules and Regulation on Crowdfunding, (21 January, 2021) Ibid, Rule 1.

² Ibid, Rule 1.

³ Harlem, “Regulatory Framework for Crowdfunding in Nigeria” <
<https://www.harlemsolicitors.com/2021/03/07/the-regulatory-framework-for-crowdfunding-in-nigeria/>>
accessed on 7th February, 2026

⁴ < <https://www.qubit.capital/blog/types-of-crowdfunding-models> > accessed on 07 February, 2026

⁵ Rule 2, SEC Rules on Crowdfunding (n2)

investment-based crowdfunding are regulated. The Regulation is not applicable to donation-based, debt-based and reward-based crowdfunding. This is because the latter does not come within the meaning of investment securities which is the focus of the Securities and Exchange Commission.

1.3 Participants to Crowdfunding

Part 4 of the Security and Exchange Commission Rules on Crowdfunding⁶, identifies the participant to include, Fundraisers, Investors, Operators and their Portal, all of these are discussed below.

1.3.1 Fundraiser (Issuer)

This refers to the originator of the security or investment instrument which must be registered with the Intermediary⁷. In other words, a fund raiser is that business entity seeking to raise fund through a registered crowdfunding portal. It is the issuer of the investment instrument that is being offered to the public as a security⁸. However, a fund raiser must be a private company falling within the meaning of a Micro, Small, & Medium Enterprise as described by the Small & Medium Enterprises Development Agency of Nigeria (SMEDAN)⁹. Thus, the rules set out the criteria for eligibility of an enterprise. To qualify as fundraiser, the entity must be either be a:

- a. Micro, Small, or Medium Enterprises incorporated as a company in Nigeria with a minimum of two-years operating track record; or
- b. Micro, Small, or Medium Enterprises incorporated as a company in Nigeria with less than 2 years operating track record, which has a strong technical

⁶ Ibid

⁷ Ibid, Rule 1

⁸ Omoyajowo K. (2021) CROWDFUNDING REGULATORY FRAMEWORK IN NIGERIA: An Appraisal of the Highlights of SEC Crowdfunding Regulation. < <https://ssrn.com/abstract=4148797>. > accessed on 06 January, 2026, p.1.

⁹ 2021 – 2025 National Policy on Micro, Small and Medium Scale Enterprises in Nigeria < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.nafdac.gov.ng/wp-content/uploads/Publications/Laws/NATIONAL-POLICY-ON-MSMEs-x.pdf&ved=2ahUKEwj2_r-oceSAXUpUkEAHQSDA8sQFnoECCAQA&usq=AOvVaw0-sY8QVo6hmNxnCki2BUIj > accessed on 07 February, 2026

partner that possesses a minimum of 2 years operating track record or has a core investor¹⁰.

From the foregoing, it is clear that Public Companies¹¹, business names, partnerships or other form of business organisation not registered as a Private Company under Part B of the Companies and Allied Matters, Act¹² are not eligible Fundraisers or issuers of investment instruments in Crowdfunding transactions. Therefore, a fundraiser (registered Private Company) may offer or sell investment instruments without the need for prior registration of the investment instruments pursuant to the Investment and Securities Act, provided that the total sum or aggregate amount of investment instruments that can be offered and sold by the Fundraiser within a 12-month period shall comply with the following limits:

- a. The maximum amount which may be raised by a Medium enterprise shall not exceed N100 Million;
- b. The maximum amount which may be raised by a Small enterprise shall not exceed N70 Million;
- c. The maximum amount which may be raised by a Micro enterprise shall not exceed N50 Million¹³.

The limits set forth above shall not apply to Commodities Investment Platforms, or such other MSMEs as may be designated by the Commission from time to time. Retail investors may not invest more than 10% of their net annual income in a calendar year. Sophisticated, High Net worth and Qualified Institutional Investors are not subject to the limits set forth above. The SEC Rules and Regulation on Crowdfunding¹⁴ defines the expression Micro, Small and Medium Enterprises (MSMEs) to be as prescribed by the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) in relation to total asset annual turnover or number of employees. This classification has been prescribed by the SMEDAN via its publication in the 2021 – 2025 National Policy on Micro, Small and Medium Scale

¹⁰ Rule 3, (n2)

¹¹ Ibid, Rule 39 (b)

¹² 2020 (as amended by the Business Facilitation Act, 2023)

¹³ Rule 4 (n2).

¹⁴ Ibid, Rule 1;

Enterprises in Nigeria¹⁵. In relation to crowdfunding here, the classification into micro, small and medium enterprises can be graphically represented as follows.

SIZE OF ENTERPRISE	EMPLOYEES OF ENTERPRISE	ASSETS	MAXIMUM THRESHOLDS
Micro Enterprises	3 – 9	3 - 25 million naira	50 million naira
Small Enterprises	10 – 49	25+ but less than 100 million naira	70 million naira
Medium Enterprises	50 – 199	100+ but less than 1000 million naira	100 million naira

However, it must be noted, that not all incorporated entities even though they may be private companies are eligible to act as a fundraiser. The rules does not permit entities with complex structures; public listed companies and their subsidiaries; companies with no specific business plan or a blind pool; companies that propose to use the funds raised to provide loans or invest in other entities; and such other entity as may be specified by the Commission to act as fundraisers¹⁶.

1.3.2 Investor

This refers to an entity that seeks to make, is making, or has made an investment with the expectation of achieving returns. An investor has some rights under the proposed Rules such as 48 hours grace window to withdraw the investment after offer closes, right to withdraw his investment within 7 days of becoming aware of any material adverse change affecting the issuer and right to be refunded debited sums within 48 hours after cancellation or withdrawal¹⁷. However, an investor is not allowed to transfer their investment instrument for a period of one year after allotment. This is called the lock in period. This restrictions is subject to certain exceptions He is allowed to effect transfer where it is;

- a. to the fundraiser of the securities or investment instrument;
- b. to a qualified institutional investor/High Net-worth Individual(s);

¹⁵ 2021 – 2025 National Policy on Micro, Small and Medium Scale Enterprises in Nigeria (n9)

¹⁶ Rule 39 (n2).

¹⁷ Ibid, Rule 22

- c. part of an offer for sale registered with the Commission;
- d. to retail investors registered on the crowdfunding portal or to a family member of the investor or to a trust created for the benefit of the family member of the investor or in connection with the death or divorce of the investor or other similar circumstance¹⁸

1.3.3 The Operator (Crowdfunding Intermediary)

This is an entity organized and registered as a corporation by the Security and exchange commission to facilitate transactions involving the offer or sale of securities or investment instruments through a Crowdfunding Portal¹⁹. The operator owns, controls and manages the crowdfunding portal, website or platform through which the funds are pooled. As such, SEC places emphasis on obligations to the crowdfunding intermediary in discharging its obligations to the investor and the fundraiser.

For an entity to be eligible for registration as a crowdfunding intermediary, the entity must make an application to the Securities and Exchange Commission accompanied with prescribed document provided for by Rule 6 of the rules on Crowdfunding. Examples of some of this document includes the certificate of incorporation, memorandum and articles of association and amendments (if any) all certified by the Corporate Affairs Commission (CAC), prescribed CAC Form(s) showing Statement of Share Capital, Return of Allotment, and Particulars of Directors²⁰.

The applicants must further satisfy the commission that it will be able to operate an orderly, fair and transparent system in relation to the investment instruments that are offered through its electronic platform²¹; the board, chief executive, and any officer of the Crowdfunding Intermediary who is primarily responsible for the operations or financial management of the Crowdfunding Portal, are fit and proper persons who are not

¹⁸ Ibid, Rule 27.

¹⁹ Ibid, Rule 1,

²⁰ Ibid, Rule 6.

²¹ Ibid, Rule 7 (a) (i)

disqualified on any of the grounds listed in rule 7 such as conviction for an offence involving fraud or dishonesty or any offence in relation to capital market²².

Also the applicant must show that the Crowdfunding Intermediary will be able to manage any risk associated with its business and operation²³ and able to take appropriate action against any person in breach of any rules, policies, terms and other standards of the portal including directing the person in breach to take any necessary remedial measure²⁴; and will make satisfactory provisions for the protection of investors and public interest, ensure proper functioning of the market, promote fairness and transparency manage any conflict of interest that may arise²⁵ and finally show the Crowdfunding Intermediary has sufficient financial, human and other resources for the operation of the Crowdfunding Portal, as prescribed by the Commission from time to time²⁶.

Entities which previously operated as Operators before the coming of the rules were required to restructure their operations and comply with the rules by apply for registration not later than 90 days from the effective date of these rules²⁷. Thus, the commission issued a notice dated the 25th of May 2021, to all existing investment crowdfunding requiring compliance on or before 30th of June 2021. Anything after this date, every operator is presumed to be registered with the Security and Exchange Commission.

1.3.4 Crowdfunding Portal

This refers to the website, platform, portal, intermediary portal, application, or other similar module that facilitates interaction between Fundraisers and the investing public²⁸. It simply means the virtual space or place where the offer or sale of investment security is carried out.

Only entities registered to carry out business as an operator or crowdfunding intermediary are eligible to operate a Crowdfunding portal²⁹. The rule recognises and controls

²² Ibid. Rule 7 (a) (ii)

²³ Ibid. Rule 7 (a) (iii)

²⁴ Ibid. Rule 7 (a) (iv)

²⁵ Ibid. Rule 7 (a) (v)

²⁶ Ibid. Rule 7 (a) (vi)

²⁷ Ibid, Rule 43.

²⁸ Ibid, Rule 1

²⁹ Ibid, Rule 5 (a)

crowdfunding portals which are not domiciled or registered in Nigeria but target Nigerian investors. Therefore, It covers this by providing that an entity is be deemed as facilitating, operating, providing or maintaining a crowdfunding portal in Nigeria if³⁰:

- a. the crowdfunding portal is operated, provided or maintained in Nigeria;
- b. the crowdfunding portal is located outside Nigeria but targets Investors in Nigeria; or
- c. the component parts of the portal when taken together are physically located in Nigeria even if any of its component parts, in isolation, is located outside Nigeria;

A crowdfunding portal that is located outside Nigeria will be considered as actively targeting investors in Nigeria if the operator, or the operator's representative, promotes directly or indirectly the Crowdfunding Portal in Nigeria³¹. It must be noted that an entity is not deemed an operator of a crowdfunding portal simply because it is a technology service provider, whom merely provides the infrastructure, software or the system to an operator of a crowdfunding portal or the entity is an operator of a communication infrastructure that merely enables orders to be routed to an approved stock market or the entity simply acts as an operator of a financial portal that aggregates content and provides links to financial sites of service and information provider³²

1.4 Legal Framework on Crowdfunding in Nigeria

In Nigeria, the following legal regimes governs the operation of Crowdfunding:

1.4.1 The Investment and Securities Act (ISA) ³³

The Investment and Securities Act, 2025 established the Securities and Exchange Commission³⁴ providing for its headquarters at the Federal Capital Territory, Abuja with Zonal offices across Nigeria³⁵. The Act sets out the powers and functions of the Commission in the capital market in Nigeria³⁶. The Act empowers public companies,

³⁰ Ibid, Rule 5 (b)

³¹ Ibid, Rule 5 (c)

³² Ibid, Rule 5 (e)

³³ No. 2, 2025

³⁴ Ibid, Section 1

³⁵ Ibid, Section 2

³⁶ Ibid, Section 3

statutory companies and banks to receive deposits and savings from the public however private companies are expressly prohibited from partaking in advertising shares to the public. Section 95 (1) of the Investment and Security Act,³⁷ states that a person shall not make any invitation to the public to acquire or dispose of any securities or to deposit money with any corporate person for a fixed period or payable at call, whether bearing or not bearing interest unless the person or body corporate concerned is;

- a. a public company and the securities it seeks to offer to the public have been registered with the Commission;
- b. a statutory body or bank established by or under an Act of the National Assembly and is empowered to accept deposits and savings from the public or issue its own securities, as defined under this Act, promissory notes, bills of exchange and other instruments;
- c. an entity licensed by the Central Bank of Nigeria and empowered to accept deposits and savings from the public;
- d. a collective investment scheme;
- e. government body or an agency of a government body, supranational body or such other entity approved by the Commission to issue securities under this Act; or
- f. a free trade zone entity whose capital raising exercise has been approved by the Commission³⁸

The above provision is an absolute bar on companies that do not fall within the above category from issuance of investment instrument to the public. This therefore means that private companies are disallowed from offering their securities via shares or debentures to the members of the public by advertisement in newspaper, media. This position differs from SEC Rules on Crowdfunding that is applicable to only private companies in Nigeria as will be discussed below.

1.4.2 Companies and Allied Matters Act (CAMA)³⁹

The provisions of Companies and Allied Matters Act on non-issuance of securities by private companies to the public is similar to Section 95(1) of the ISA. Section 22(5) of

³⁷ Ibid.

³⁸ Ibid, Section 95(1),

³⁹ (2020) as amended by the Business Facilitation (Miscellaneous Provisions) Act, 2022.

Companies and Allied Matters Act provides that “a private company shall not, unless authorised by law, invite the public to:

- a. Subscribe to any share or debenture of the company; or
- b. deposit money for fixed periods or payable at call, whether or not bearing interest.”

From the foregoing provisions, it is clear that only public companies, statutory bodies and banks are permitted to receive deposits and savings from the public. It will be shown in subsequent pages that the SEC rules on Crowdfunding regulates private companies only, thereby barring public companies from participating in crowdfunding.

1.4.3 The Security and Exchange Commission’s (SEC) Rules on Crowdfunding⁴⁰

The Commission published Rules on Crowdfunding on the 21st of January 2021 pursuant to Section 13 of the repealed Investment and Securities Act (ISA) 2007. The Rules on Crowdfunding continues to operate by virtue of the repeal and savings provision in Sections 355 and 356 of the Investment and Securities Act (ISA)⁴¹, which had the effect of ensuring the continuous application of Rule and Regulation made under the ISA, 2007. The Rules apply to Investment-Based Crowdfunding.⁴² One notable feature of the Rules is that, unlike the ISA and CAMA, private companies are not barred from participating in Crowdfunding. It must be noted, that the Rules prohibit entities that have complex structures; public listed companies and their subsidiaries; companies with no specific business plan or a blind pool; companies that propose to use the funds raised to provide loans or invest in other entities; and such other entity as may be specified by the Commission to act as fundraisers⁴³. As earlier noted, the idea of Crowdfunding itself, connote offers to the public at large, and this mechanism seem to contravene the explicit provisions of the Companies and Allied Matters Act⁴⁴ and the Investment and Security

⁴⁰ 2021

⁴¹ 2025

⁴² Oruche, S.R., (2021), Nigeria: Crowdfunding for Small to Medium Scale businesses: (An Analysis under the Nigerian Law)’ (Mondaq, 7 December) at <<https://www.mondaq.com/nigeria/securities/1138928/crowdfunding-for-small-to-medium-scale-businesses-an-analysis-under-the-nigerian-law?> >Accessed 23 December, 2026.

⁴³ Ibid, Rule 39.

⁴⁴ Section 22(5), CAMA. 2020 (as amended)

Act.⁴⁵ In light of this contradiction, can the SEC rules be said to be valid? Nevertheless, the SEC been aware of these Acts went ahead and published the Rules and Regulation on Crowdfunding which is appears to be in conflict with the ISA and CAMA. Therefore, as the law stands in relation to the rules on Crowdfunding, only unlisted public companies can raise capital through crowdfunding.

To navigate the statutory restriction imposed on private companies, it is advisable that such companies enter into a simple investment contract between itself and investors. Investment contract contemplated in this paper are transactions whereby one or more parties agree to invest a specific amount of money, to a particular business or company (private company in this case) with the expectation of getting returns from the income or profit generated by the business or company. These contracts structure the Crowdfunding contribution as an agreement with projected returns rather than direct issuance of company shares, and thereby avoiding corporate governance breaches.

1.5 Obligations of the Fundraiser in Crowdfunding in Nigeria⁴⁶

A fundraiser in Crowdfunding has certain obligations under the SEC Rules on Crowdfunding. An Operator has the duty to restrict the access of the fundraiser on a breach of any of these duties and the operator must notify the Commission of such breach. The obligations of the fundraiser are discussed below:

1.5.1 Issuance of an Offering Document

A fundraiser shall issue an offering document⁴⁷. An offering document must be short, easy to read, standardized for comparability and digital friendly by utilising hypertext links⁴⁸ to give easy access to detailed information⁴⁹.

⁴⁵ Section 95(1), ISA, 2025

⁴⁶ Part 6, (n2)

⁴⁷ Ibid, Rule 30

⁴⁸ This is a text embedded with hyperlinks enabling a user to click on it and be directed to another page for detailed explanation. It akin to a reference to another page to read more on an item. < <https://www.geeksforgeeks.org/html/hyperlink-vs-hypertext/> > accessed on 7th February, 2026

⁴⁹ Rule 31, (n2).

1.5.2 Disclosure of Details of Fundraising

The offering document shall disclose warnings to investors, the name and address of the Fundraiser, directors and officers, holders of more than 5% of the Fundraiser's equities, description of the business of the Fundraiser, principal and peculiar risks facing the business of the Fundraiser, copies of resolutions of the board of the company, a narrative discussion of the financial condition of the Fundraiser, use of proceeds, target offering amount and the deadline to reach the target offering amount. It must also disclose the number and price of the securities or investment instruments being offered and the associated obligations, capital structure and ownership of the Fundraiser, risk factors, information about an investor's right to cancel his/her investment and exit options for investors which shall be in accordance with the provisions of these rules, the rules and regulations of the Commission, and applicable companies law⁵⁰.

1.5.3 Disclosure of Risk involved in the Business

The rules require a fundraiser to make a comprehensive risk disclosure associated with the investment in its offering documents. The risk must cover any difficulty that may be encountered in sale of securities, any restriction that may be placed on the ability of the investor to cancel his investment, the risk of investment performing below expectations, and failure of profitability of investments⁵¹.

1.5.4 Continuous Disclosure of Changes and Progress of Business

A fundraiser is mandated to continuously disclose and deliver to the investor as well as the operator any changes in its documents, its annual audited financial statement to an investor via its website. A fundraiser must also make available on its website, the Crowdfunding Portal and by email to each of its investors, a notice within 24 hours of in the event it discontinues, changes, or changes the control of its business⁵².

⁵⁰ Ibid, Rule 32.

⁵¹ Ibid, Rule 33.

⁵² Ibid, Rule 34.

1.5.5 Observing Prohibitions or Restrictions

A Fundraiser is prohibited from advertising investment instrument other than through a crowdfunding intermediary⁵³, therefore, a fundraiser is prohibited from paying commission, finders' fee, referral fees or similar payment to any person in connection with an offering other than to the Crowdfunding Intermediary. A Fundraiser is also prohibited from placing an offer concurrently on multiple crowdfunding portal and any investment instrument offer must be permissible and not contrary to the provision of the rules. Finally, a Fundraiser must not assist an investor in financing the purchase of investment instruments⁵⁴.

1.6 Obligations of the Operator in Crowdfunding in Nigeria

An operator of a Crowdfunding portal has the following obligations to an investor, failure of which he may be held liable⁵⁵:

1.6.1 Disclosure of Risks and Information

An operator must provide information necessary to explaining and understanding it's Crowdfunding portal. Such information required to be disclosed include details of the fundraiser's ownership, management and overall controls structure in place at the time of the offering, details of control measures that will guard against losses or certifications possessed by the underlying business, and other information as may be necessary to understanding the offer of a fundraiser⁵⁶. The operator must provide materials for proper investor's education on general risks warning, communication channels, complaints handling or dispute resolution and its procedures, the fees, charges and other expenses that it may impose on a Fundraiser or investor.

1.6.2 Due Diligence

An Operator must be diligent in carrying out investigations to verifying a prospective Fundraisers business. An operator must ensure that a Fundraiser's seeking to offer and sell investment instruments through the crowdfunding portal has complied with the

⁵³ Ibid, Rule 36

⁵⁴ Ibid, Rule 38

⁵⁵ Ibid, Part 3, Rule 11-20

⁵⁶ Ibid, Rule 11 (1); *ibid*, Rule 16

requirements Rules on Crowdfunding. the operator carries out its due diligence obligation by taking reasonable steps to conducting background checks on the Fundraiser to ensure that the board of directors, officers and controlling shareholder(s) of the Fundraiser are fit and proper and shall in particular, verify that the board, chief executive, and any officer of the Fundraiser who is primarily responsible for its operations or financial management have not been convicted, whether within or outside Nigeria, of an offence involving fraud or other dishonesty or any offence relating to capital market. The operator also ensures that a prospective fundraiser has not been blacklisted by a professional body which the fundraiser belongs⁵⁷.

1.6.3 Monitoring and Reporting

An operator must monitor the conduct of Fundraisers on its portal and take action against misconduct of the Fundraisers. The operator must ensure that the fundraising limits imposed on the Fundraiser are not breached and that the fundraiser complies with all reporting obligation required by the Rules such as making quarterly and annual returns, An operator must report to the SEC by filing monthly reports specifying the total number of Fundraisers on its crowdfunding portal, total number of investors who invested through the portal, number and types of securities or investment contracts issued and total amount raised on the portal during the reporting period. An operator is required to make a quarterly report of observed breaches or risk incidents and steps taken to address same, complaints received and steps taken to resolve same during the reporting period from investors⁵⁸.

1.6.4 Data Protection and Privacy

An Operator must establish appropriate safeguards for ensuring the integrity, security and confidentiality of information received from investors. This duty may be fulfilled by ensuring that the crowdfunding portal is insured from failure or closure and making available hard copiers of information and documents on the portal in a secured facility to avoid permanent loss of information that may arise due to website crash⁵⁹.

⁵⁷ Ibid, Rule 12

⁵⁸ Ibid, Rule 13

⁵⁹ Ibid, Rule 14

1.6.5 Operation of Trust Account

An Operator must appoint a custodian registered by the SEC to establish and maintain a separate trust account (in an interest yielding account) for each funding round on its portal for the benefit of the fundraiser. The custodian will then release the funds to the Fundraiser after three conditions are met. These conditions include, the targeted amount sought to be raised or the minimum threshold has been met; there is no material adverse change relating to the offer during the offer period; and all applicable requirements for the registration of securities have been met⁶⁰.

1.6.6 Attestation of a Fundraiser's Businesses

An operator must make attest or certify to the verification of the legitimacy of the Fundraiser's business. The attestation must verify that the operations of the Fundraiser's business are in agreement with the fundraiser's disclosed objectives and will continue to be so and in the event of any purposed changes, the investors will be promptly notified and given opportunity to withdraw from their investment before such change⁶¹.

1.6.7 Compliance

An Operator must ensure compliance with all rules all rules, regulations, code of conduct, and laws governing capital market operators in Nigeria Policies and procedures. As part of it compliance obligations, an Operator must permit the examination and inspection of all of its business and business operations that relate to crowdfunding activities, such as its premises, systems, portal, and records by representatives of the Commission⁶².

1.6.8 Record Keeping

An Operator must make and preserve adequate records of all information relating to investors, Fundraisers, communications that occur on or through its portal, notices, maintenance and internal change logs carried out on the portal, documents relating to the crowdfunding portal. These records are subject to examination at any time by the representatives of the Commission⁶³.

⁶⁰ Ibid, Rule 15

⁶¹ Ibid, Rule 11 (1) (g) and (h)

⁶² Ibid, Rule 17

⁶³ Ibid, Rule 18

1.6.9 Notifications to Investor

An operator is required to make continuous notification of events to an investor of a crowdfunding in Nigeria. The operator must make notifications to an investor of changes in fundraiser's business, investor education programmes. It also protecting an investor by notifying the Commission, to restrict access of a Fundraiser to its portal, if it has reason to believe that the Fundraiser or any of its officers has been convicted of fraud or otherwise raises reasonable suspicions of fraudulent activity and taking measures to reduce the risk of fraud on it portal,

A breach of any of the above obligations by an operator makes him liable to a fine of not less than N100, 000.00 (One Hundred Thousand Naira Only) and the sum of N5, 000.00 (Five Thousand Naira Only) for every day the violation continues and shall in addition be liable for any loss of investor funds arising due to the Crowdfunding Intermediary's failure to meets its obligations⁶⁴. It should be noted that the SEC rules in silent on financial liability of a fundraiser for damages wrongly caused to an investor. Thus, in such a case, the investor will have to seek financial remedies through other means.

1.7 Conclusion

Crowdfunding is a financing mechanism that permits an investor to gather resources from the public to finance a new business undertaking. Thus, crowdfunding facilitates raising of funds from the public thereby preventing frustration of business due to lack of fund. The legal regime governing crowdfunding principally include Companies and Allied Matters Act, Investment and Securities Act and Security and Exchange Commission Rules on Crowdfunding. Accordingly, participant of crowdfunding include, the fundraiser, operator, Crowdfunding portal and investor all of which are saddled with obligations to perform; and subjected to sanctions where breaches occur.

Nevertheless, in view of the issues discussed in this paper, it is found that the Rules on Crowdfunding is in conflict with the Companies and Allied Matters Act, as well as the Investment and Securities Act which disallow private companies from sourcing finance from the public while the SEC Rules on Crowdfunding makes private companies eligible fundraisers. Therefore, as the law stands in relation to the rules on crowdfunding, only

⁶⁴ Ibid, Rule 42

unlisted public companies can raise capital through crowdfunding. Accordingly, it is recommended that, the Companies and Allied Matters Act as well as Investment and Securities Act should be amended to incorporate crowdfunding in Nigeria so as to resolve the conflict originating from the SEC Rules on the subject matter.

In addition, it is also found that, the SEC Rules on Crowdfunding 2021, provides compensation to an investor against damages occasioned by an operator. It does not provide for compensation for losses occasioned by acts of fundraiser to an investor; consequently, the Commission cannot give a summary punishment to address the losses. Accordingly, it is recommended that the SEC Rules on Crowdfunding 2021 should be amended to provide compensation in situations of losses by a fundraiser to an investor so as to the Commission to provide immediate to an investor who suffers loss.

**EXECUTIVE CLEMENCY AND VICTIMS' RIGHTS IN NIGERIA:
REASSESSING THE BALANCE BETWEEN MERCY AND JUSTICE UNDER
SECTIONS 175 AND 212 OF THE CONSTITUTION**

Ruth Oluwatoyin Adewale^{*} & Isaac Okunlade Adejumo

Abstract

Prerogative of mercy represents one of the most ancient and enduring expressions of sovereign power. In Nigeria, it is constitutionally vested in the President and State Governors under Sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999. Intended as a humanitarian safeguard to temper the rigidity of law, this executive power allows for pardon, reprieve, remission, or commutation of sentence. Yet, its exercise has often generated moral and constitutional controversy. The Nigerian clemency process, largely opaque and discretionary, has consistently excluded victims of crime—those most directly affected by its outcomes. This paper interrogates the tension between executive clemency and victims' rights, focusing on whether Nigeria's constitutional and institutional framework adequately balances mercy with justice. Drawing on retributive, restorative, and utilitarian theories of justice, the paper argues that the prerogative of mercy, when exercised without transparency, fairness, or victim consultation, undermines public confidence and perpetuates secondary victimisation. Through doctrinal analysis and comparative insights from jurisdictions such as South Africa, India, and Canada, the study demonstrates that clemency can coexist with balancing of victims' rights when grounded in procedural fairness and restorative engagement. It concludes with reform proposals aimed at aligning Nigeria's clemency system with contemporary human rights and restorative justice standards.

Keywords: Victims' rights; Prerogative Of Mercy; Executive Clemency; Restorative Justice; Constitutional Law; Public Interest; S 175 & 212 Of Nigeria Constitution.

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1.0 Introduction

The prerogative of mercy stands at the crossroads of law, morality, and politics. Its purpose, historically and constitutionally, is to mitigate the harshness of legal sanctions where continued punishment offends justice, compassion, or public interest.⁶⁵ In Nigeria, this power is codified in Sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 granting the President and State Governors authority to pardon, commute, or remit sentences.⁶⁶

Despite its benevolent rationale, the exercise of clemency has provoked controversy, particularly where it appears to favour politically connected offenders or disregard the plight of victims.⁶⁷ Clemency decisions are often made without public disclosure or clear criteria, thereby raising fundamental questions about transparency, equality before the law, and the moral legitimacy of mercy.⁶⁸ The exclusion of victims—the primary stakeholders in the justice process—further compounds this dilemma, as their interests, emotions, and rights to closure remain unacknowledged in decisions that profoundly affect their sense of justice.

Under the Nigerian constitutional arrangement, the power of mercy is absolute and discretionary. The President and Governors are merely required to “consult” the Council of State or Advisory Committees on the Prerogative of Mercy, whose recommendations are non-binding.⁶⁹ In practice, this framework prioritises executive grace over participatory justice. The opacity surrounding clemency decisions has undermined public trust, particularly when pardons are perceived as rewards for political loyalty rather than expressions of compassion or fairness.⁷⁰

From a human rights perspective, this structure sits uneasily with Nigeria’s international obligations under instruments such as the African Charter on Human and Peoples’ Rights, the International Covenant on Civil and Political Rights (ICCPR), and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

⁶⁵ W Blackstone, *Commentaries on the Laws of England*, vol 4 (Clarendon Press 1769) 397.

⁶⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 175–212.

⁶⁷ E A Ekhatior, ‘Accountability in the Exercise of Executive Clemency in Nigeria’ (2021) *Nigerian Journal of Public Law* 45.

⁶⁸ CLEEN Foundation, *Victims’ Rights and Criminal Justice in Nigeria* (Lagos 2019) 54.

⁶⁹ Constitution (n 2) ss 175(2), 212(2).

⁷⁰ ‘Tinubu Grants Clemency to 82 Inmates and 17 Posthumous Pardons’ *Premium Times* (Abuja, 12 April 2025).

These instruments collectively recognise victims as central participants in justice processes and affirm their right to dignity, information, and participation.⁷¹ By contrast, Nigeria's clemency practice treats victims as silent spectators, thereby breaching both procedural justice and the evolving global norm of victim-sensitive governance.

This paper reassesses the constitutional and moral balance between mercy and justice in Nigeria, particularly as it pertains to victims' rights. It adopts a multidisciplinary approach—combining legal doctrinal analysis, comparative jurisprudence, and restorative justice theory—to explore how executive discretion can be reconciled with victims' dignity and public accountability. The paper proceeds from the premise that mercy, though essential to a humane justice system, must be constrained by fairness, transparency, and inclusivity.

Accordingly, the discussion unfolds across six parts. Following this introduction, Part Two conceptualises executive clemency and situates it within justice theory. Part Three analyses the constitutional framework governing clemency under Sections 175 and 212, identifying key doctrinal and institutional weaknesses. Part Four examines the exclusion of victims in Nigerian clemency practice and its implications for justice and human rights. Part Five draws comparative lessons from South Africa, India, and Canada, while Part Six proposes a reform model for a transparent and victim-inclusive clemency system. The paper concludes that unless Nigeria's mercy powers are recalibrated to recognise victims and uphold public confidence, clemency will remain an instrument of political expediency rather than justice.

2.0 Conceptual Foundations and Theoretical Perspectives on Clemency, Justice, and Victims' Rights

The concept of executive clemency is deeply rooted in the moral philosophy of justice and the political theory of sovereignty. Historically, the prerogative of mercy emerged as an attribute of sovereign authority, representing the monarch's divine right to temper the rigidity of law with compassion.⁷² Under English common law, this power functioned as a corrective mechanism, enabling the Crown to pardon offences or remit sentences where

⁷¹ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (A/RES/40/34, 1985); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

⁷² *Ibid* (n 1) p 397

strict justice would produce injustice.⁷³ Nigeria inherited this framework through colonial transposition, embedding it in successive constitutions, including the 1963, 1979, and 1999 Constitutions.⁷⁴

At its core, clemency embodies the moral idea that justice without mercy risks cruelty. Yet, unchecked mercy may equally erode the rule of law.⁷⁵ This duality—between compassion and order—has generated centuries of jurisprudential debate. Mercy is distinct from forgiveness or amnesty; while forgiveness involves moral absolution by the victim, clemency is a public act by the State to restore harmony within the legal system.⁷⁶

2.1 Retributive Justice and the Limits of Mercy

Retributive justice, derived from Kantian ethics and classical moral philosophy, views punishment as a moral necessity.⁷⁷ Kant posited that “the undeserved evil which anyone does to another is to be regarded as inflicted on himself.”⁷⁸ In this perspective, justice demands proportional punishment, not leniency. Mercy, if exercised arbitrarily, can distort the moral symmetry between crime and retribution, undermining deterrence and equality before the law.⁷⁹

Under a retributive lens, the prerogative of mercy raises constitutional concerns about fairness and accountability. If the State punishes in the name of the people, it must also pardon in accordance with the people’s sense of justice.⁸⁰ The exclusion of victims from clemency decisions thus violates the very principle that punishment—and forgiveness—derive their legitimacy from public morality.

Nonetheless, retributive justice does not preclude mercy. As Aquinas observed, “justice without mercy is cruelty, but mercy without justice is dissolution.”⁸¹ A system that allows no room for compassion risks dehumanising both offenders and the justice process itself.

⁷³ *Ex parte Phillip* (1843) 2 QB 248.

⁷⁴ Constitution of the Federal Republic of Nigeria 1963; Constitution of the Federal Republic of Nigeria 1979; Constitution of the Federal Republic of Nigeria 1999.

⁷⁵ M Nussbaum, *Political Emotions: Why Love Matters for Justice* (Harvard University Press 2013) 289.

⁷⁶ D Tutu, *No Future Without Forgiveness* (Rider 1999) 113.

⁷⁷ I Kant, *The Metaphysics of Morals* (1797, tr Mary Gregor, Cambridge University Press 1996) 104.

⁷⁸ *Ibid.*

⁷⁹ A von Hirsch, *Censure and Sanctions* (Clarendon Press 1993) 25.

⁸⁰ J Finnis, *Natural Law and Natural Rights* (Clarendon Press 1980) 277.

⁸¹ T Aquinas, *Summa Theologica* (1265–1274) II–II, Q 30, Art 4.

Hence, even within retributive theory, mercy must operate as an exception justified by fairness, remorse, or rehabilitation—not political expediency.

2.2 Utilitarian Justifications for Clemency

Utilitarian theory, developed by Jeremy Bentham and refined by John Stuart Mill, interprets clemency as an instrument of collective welfare.⁸² Bentham argued that punishment is only justified insofar as it prevents greater harm; if punishment ceases to serve a social purpose, mercy becomes rational.⁸³ Clemency thus serves the utilitarian function of reducing human suffering, facilitating reintegration, and promoting the greatest happiness of the greatest number.⁸⁴

In the Nigerian context, utilitarianism can justify clemency for humanitarian reasons—such as terminal illness, advanced age, or rehabilitation of long-term convicts.⁸⁵ However, when mercy serves political rather than social utility, it ceases to align with Benthamite reasoning.⁸⁶ The frequent pardon of politically exposed persons convicted of corruption, for instance, produces public outrage and weakens deterrence, undermining both justice and social utility.¹⁶

2.3 Restorative Justice and Victim Participation

Restorative justice represents a paradigm shift in modern legal thought, moving away from punishment toward healing and community reconciliation. It emphasises dialogue, restitution, and the moral reintegration of both victims and offenders.⁸⁷ According to Howard Zehr, the pioneer of restorative theory, “crime is not merely a violation of law but a violation of relationships.”⁸⁸

Restorative justice provides a critical framework for rethinking the prerogative of mercy in Nigeria. Rather than an elite privilege, clemency can function as a restorative tool when victims participate in the process and offenders demonstrate genuine remorse.⁸⁹ This aligns

⁸² J Bentham, *An Introduction to the Principles of Morals and Legislation* (1789) ch 1.

⁸³ Ibid 52

⁸⁴ JS Mill, *Utilitarianism* (Parker, Son & Bourn 1863) 47

⁸⁵ E A Ekhatior, ‘Accountability in the Exercise of Executive Clemency in Nigeria’ (2021) *Nigerian Journal of Public Law* 45, 53

⁸⁶ Ibid

⁸⁷ Ibid (n 3)

⁸⁸ H Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 22.

⁸⁹ Ibid 35.

with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), which mandates that victims should be treated with compassion and be allowed to present their views and concerns at appropriate stages of the justice process.⁹⁰

Nigeria's exclusion of victims from clemency proceedings therefore contradicts international best practice. In restorative terms, mercy must be relational—it must repair the harm done to victims while recognising the offender's humanity.⁹¹ The absence of victim participation perpetuates secondary victimisation, undermining the legitimacy of both mercy and justice.⁹²

2.4 The Moral Economy of Mercy

Beyond legal frameworks, mercy embodies what political theorists call a “moral economy”—a balancing of compassion, justice, and public interest.⁹³ Nussbaum argues that mercy, properly understood, is not irrational sentiment but an expression of moral intelligence that recognises human vulnerability.⁹⁴ A transparent and participatory clemency process thus becomes a test of a state's moral character. In this moral economy, victims' rights play a central role. Excluding victims from clemency proceedings delegitimises mercy as a public good and transforms it into an act of private grace.⁹⁵ A rights-based approach demands that clemency decisions consider the voices of those harmed, balancing forgiveness with accountability. This transformation from sovereign prerogative to participatory justice is the hallmark of modern constitutionalism.⁹⁶

3.0 The Constitutional and Legal Framework of Clemency under Sections 175 and 212 of the 1999 Constitution

The constitutional architecture of executive clemency in Nigeria establishes the legal foundation upon which mercy is exercised. Sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 confer this power respectively on the President and State Governors.⁹⁷ These provisions are virtually identical in wording and scope, reflecting the

⁹⁰ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (A/RES/40/34, 1985).

⁹¹ Zehr (n 24) 44.

⁹² Ibid 47.

⁹³ Nussbaum (n 11) 295.

⁹⁴ Ibid 310.

⁹⁵ CLEEN Foundation (n 4) 58.

⁹⁶ Rawls J, *A Theory of Justice* (Harvard University Press 1971) 364.

⁹⁷ CFRN 1999 ss 175–212.

federal nature of Nigeria's political system. Both sections authorise the executive to "grant any person concerned with or convicted of any offence created by an Act of the National Assembly [or State Law] a pardon, reprieve, respite, remission, or commutation of sentence."⁹⁸

3.1 Constitutional Basis and Executive Discretion

Section 175(1) vests the prerogative of mercy in the President and requires that it be exercised "after consultation with the Council of State."⁹⁹ Similarly, Section 212(1) empowers State Governors to act "on the advice of the Advisory Council on the Prerogative of Mercy."¹⁰⁰ However, neither provision defines what constitutes "consultation" or "advice," nor do they impose any procedural obligations on the executive. The advisory process is thus largely discretionary, allowing the President or Governors to accept or disregard recommendations without justification.¹⁰¹

This absence of procedural clarity has generated a constitutional vacuum that permits arbitrary exercises of mercy. While the intention may have been to preserve flexibility for humanitarian purposes, the result has been unchecked executive power.¹⁰² The courts have historically treated clemency as a political prerogative beyond judicial review, citing the separation of powers.¹⁰³ In *Lakanmi v Attorney-General (Western State)*, the Supreme Court held that the exercise of mercy was an act of state policy not ordinarily justiciable.¹⁰⁴

However, as the Nigerian democratic system matures, the unaccountable nature of this power increasingly conflicts with principles of constitutionalism, transparency, and fairness.¹⁰⁵ In a modern constitutional democracy, executive powers—no matter how benevolent—must be exercised within the parameters of legality, rationality, and proportionality.¹⁰⁶

⁹⁸ *ibid* s 175(1).

⁹⁹ *ibid* s 175(2).

¹⁰⁰ *ibid* s 212(2).

¹⁰¹ CLEEN Foundation, *Victims' Rights and Criminal Justice in Nigeria* (Lagos 2019) 55.

¹⁰² *Ibid* (n 21) p 48

¹⁰³ *Lakanmi v Attorney-General (Western State)* (1971) 1 UILR 201 (SC).

¹⁰⁴ *Ibid*

¹⁰⁵ J Finnis, *Natural Law and Natural Rights* (Clarendon Press 1980) 282.

¹⁰⁶ *Governor of Lagos State v Ojukwu* (1986) 1 NWLR (Pt 18) 621

3.2 The Role of Advisory Bodies

The Council of State and Advisory Councils on the Prerogative of Mercy are designed to provide institutional oversight.¹⁰⁷ Under Section 153(1)(b) of the Constitution, the Council of State comprises former Presidents, Chief Justices, and key national figures.¹⁰⁸ In theory, this collective wisdom should ensure informed, ethical, and impartial clemency recommendations. In practice, however, these bodies function with limited transparency, seldom publishing their criteria or minutes.¹⁰⁹

At the state level, Advisory Councils often exist only in name. In some states, Governors have exercised mercy without convening the council or following any formal process, contrary to constitutional spirit.¹¹⁰ This undermines both the legality and credibility of clemency decisions.

Moreover, there is no statutory requirement for the inclusion of victims, civil society, or human rights institutions in these councils.¹¹¹ The exclusion of such voices perpetuates an offender-centred approach, contrary to restorative justice and participatory governance principles as evident in the case of Mariam Sanda.¹¹²

3.3 Judicial Attitudes toward Clemency Powers

Judicial pronouncements on clemency in Nigeria reveal a deferential attitude to executive discretion. In *Duruaku v Nwoke*, the Supreme Court reaffirmed that the prerogative of mercy, being constitutionally conferred, is not subject to judicial review except in cases of procedural irregularity or bad faith.¹¹³ While this view aligns with the British constitutional tradition of non-justiciability of mercy, it neglects the contemporary global shift toward accountable governance.¹¹⁴

In contrast, other jurisdictions have embraced a limited judicial review of clemency. In *Epuru Sudhakar v Government of Andhra Pradesh*, the Indian Supreme Court held that mercy powers could be reviewed for arbitrariness, discrimination, or violation of

¹⁰⁷ Constitution (n 1) s 153(1)(b).

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid* (n 37) 56.

¹¹⁰ *Ibid* 57.

¹¹¹ *Ibid* 58.

¹¹² *Ibid* (n 24) 35.; wife of Sanda (the lady who killed her husband) in the recent clemency list

¹¹³ (2015) 3 NWLR (Pt 1445) 379 (SC).

¹¹⁴ *Ex parte Phillip* (1843) 2 QB 248.

fundamental rights.¹¹⁵ Similarly, the South African Constitutional Court in *Minister of Justice v Chonco* recognised that clemency, as a public power, must conform to the Constitution and the rule of law.¹¹⁶ These precedents illustrate that mercy and accountability are not mutually exclusive.

Nigeria's strict non-justiciability doctrine has allowed questionable exercises of clemency to escape scrutiny. A case in point is the 2013 presidential pardon granted to a former governor convicted of corruption, which sparked nationwide condemnation.¹¹⁷ Despite widespread criticism, no judicial review was available, leaving victims and citizens without recourse. This highlights the need to reconceptualise mercy as a public trust subject to the same standards of fairness and rationality as other executive functions.¹¹⁸

4.0 Statutory Innovations: The Administration of Criminal Justice Act (ACJA) 2015

Although the constitutional provisions are skeletal, the Administration of Criminal Justice Act 2015 (ACJA) introduces limited procedural innovations. Section 312 empowers trial courts to make recommendations for mercy at sentencing where mitigating circumstances exist.¹¹⁹ This provision bridges the judicial and executive domains by allowing courts to recognise humanitarian factors while leaving final discretion to the executive. However, it remains merely advisory and does not address victims' participation.¹²⁰ Furthermore, the ACJA does not impose any obligation on the executive to respond to such judicial recommendations or to consider victim perspectives.¹²¹ In effect, while the Act modernises criminal procedure, it does little to democratise clemency.

4.1 The Human Rights Dimension of Clemency

Clemency decisions inevitably implicate human rights considerations—particularly the rights of victims to dignity, participation, and justice. The African Charter on Human and Peoples' Rights (ratified and domesticated in Nigeria by the African Charter (Ratification and Enforcement) Act) guarantees the right to fair hearing and the right to be treated with

¹¹⁵ (2006) 8 SCC 161.

¹¹⁶ [2010] ZACC 28.

¹¹⁷ 'Jonathan's Controversial Pardon' *Vanguard*, (Lagos, 13 March 2013). p.17

¹¹⁸ Ekhaton (n 21) 52.

¹¹⁹ Administration of Criminal Justice Act 2015 (Nigeria), s 312

¹²⁰ Ibid.

¹²¹ Ibid.

respect for human dignity.¹²² Similarly, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power calls for state mechanisms that allow victims to express their views during justice processes.¹²³

By excluding victims, Nigeria's clemency framework violates these principles and contributes to what has been termed "secondary victimisation."¹²⁴ Victims not only suffer from the initial crime but also from a system that disregards their voices in decisions affecting offenders' punishment. This exclusion conflicts with Nigeria's obligations under international human rights law and undermines restorative justice goals.¹²⁵

4.2 Transparency and the Public Interest

The opacity of clemency decisions undermines the moral legitimacy of mercy. As Osunyikanmi observes, public outrage following high-profile pardons indicates that citizens perceive clemency as "a political favour rather than a moral correction."¹²⁶ Transparency is thus essential for maintaining trust in state institutions.

Comparatively, Canada's clemency process under the Corrections and Conditional Release Act 1992 provides for publication of clemency criteria and reasons for decisions, ensuring accountability.¹²⁷ South Africa's constitutional model requires that all executive powers, including pardon, comply with legality and transparency.¹²⁸ Nigeria's lack of reporting or publication requirements stands in stark contrast to these standards, perpetuating public suspicion and eroding confidence in justice.¹²⁹

4.3 Victims' Exclusion and the Justice Deficit in Nigeria's Clemency System

The prerogative of mercy in Nigeria has evolved within a framework that privileges state discretion and offender rehabilitation but neglects the rights and experiences of victims.¹³⁰ Victims of crime—those who endure physical, emotional, or economic harm—are almost

¹²² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, arts 5–7

¹²³ Ibid.

¹²⁴ CLEEN Foundation (n 4) 59.

¹²⁵ Zehr (n 11) 47.

¹²⁶ Osunyikanmi AO, 'Executive Clemency and Public Morality in Nigeria' (2024) *African Journal of Law and Society* 118, 121.

¹²⁷ Corrections and Conditional Release Act 1992 (Canada), ss 132–133.

¹²⁸ *Minister of Justice v Chonco* [2010] ZACC 28.

¹²⁹ Ekhatior (n 24) 54.

¹³⁰ Ibid (n 4) 55

entirely absent from the structures and processes governing executive clemency.¹³¹ The Constitution makes no reference to victims' participation, and neither the Council of State nor the Advisory Councils on the Prerogative of Mercy include mechanisms for consultation or representation.¹³²

This exclusion reflects the inherited colonial legal tradition in which crime was conceived as an offence against the sovereign, not against individual victims.¹³³ Consequently, criminal proceedings became state-centred and retributive, marginalising those who had suffered direct harm. The exercise of clemency—intended to humanise justice—has paradoxically extended this marginalisation, as victims are denied voice, recognition, or even notification when offenders are pardoned or sentences commuted.¹³⁴

4.4 The Human Rights Dimension of Victim Exclusion

The exclusion of victims from Nigeria's clemency process conflicts with international human rights norms. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) affirms that victims are entitled to access justice, restitution, and to express their views during proceedings.¹³⁵ Article 5 of the African Charter on Human and Peoples' Rights guarantees the right to dignity, while Article 7 ensures the right to a fair hearing and to participate in judicial processes.¹³⁶

By denying victims procedural participation, Nigeria breaches its obligations under these instruments and under the domesticated African Charter (Ratification and Enforcement) Act.¹³⁷ The African Commission on Human and Peoples' Rights has consistently affirmed that states must not only punish offenders but also recognise the suffering and participatory rights of victims.¹³⁸ In *Serac and Another v Nigeria*, the African Commission held that the Nigerian government violated the rights of the Ogoni people by failing to protect them from harm and by denying access to justice and remedy.¹³⁹ Though not a clemency case, the decision underscored the principle that state actions which disregard victims' dignity or

¹³¹ Ibid

¹³² Ibid (n 2) ss 175–212.

¹³³ Ibid (n 1) 398.

¹³⁴ Ibid (n 12) 113.

¹³⁵ Ibid

¹³⁶ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, arts 5–7

¹³⁷ African Charter (Ratification and Enforcement) Act, Cap A9 LFN 2004.

¹³⁸ *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006).

¹³⁹ (2001) AHRLR 60 (ACHPR 2001)

deny redress are inconsistent with human rights obligations. By extension, clemency granted without regard to victims' rights similarly undermines Nigeria's constitutional and treaty commitments.

4.5 Secondary Victimisation and the Psychological Consequences of Mercy

Secondary victimisation refers to the trauma victims suffer as a result of their treatment by the justice system.¹⁴⁰ When clemency is granted without notice, consultation, or explanation, victims experience renewed feelings of helplessness, anger, and alienation.¹⁴¹ The act of mercy, intended as compassion, becomes a reminder of their powerlessness within the legal order. Psychological studies and victimology literature suggest that recognition plays a critical role in recovery.¹⁴² When victims are publicly acknowledged and included in justice processes, they experience validation and closure.¹⁴³ Conversely, when offenders are pardoned in secret or celebrated politically, victims perceive the state as complicit in their suffering.¹⁴⁴ In Nigeria, these effects are compounded by a history of elite impunity. Clemency has often been extended to politically exposed persons convicted of corruption, reinforcing a sense that justice is selective.¹⁴⁵ For victims of public corruption—citizens deprived of development, security, or economic opportunity—such decisions deepen collective trauma and public cynicism.¹⁴⁶ The result is a justice system that not only fails to heal but actively reproduces injustice.

4.6 The Political Economy of Clemency and the Marginalisation of Public Interest

Clemency in Nigeria is not exercised in a political vacuum. It reflects broader dynamics of power, patronage, and political economy.¹⁴⁷ The prerogative of mercy, as currently practised, functions less as an instrument of restorative justice and more as a political tool. Successive governments have used it to reward loyalty, appease constituencies, or project an image of benevolence.¹⁴⁸

¹⁴⁰ Ibid (n 21) 44

¹⁴¹ Ibid

¹⁴² J Shapland and others, 'Restorative Justice in Practice' (2006) *British Journal of Criminology* 46(3) 291.

¹⁴³ ibid 297

¹⁴⁴ Ibid 298.

¹⁴⁵ Ibid (n 21) 53

¹⁴⁶ Osunyikanmi AO, 'Executive Clemency and Public Morality in Nigeria' (2024) *African Journal of Law and Society* 118, 122.

¹⁴⁷ Ibid 124.

¹⁴⁸ Ibid 126.

High-profile examples abound. In 2013, President Goodluck Jonathan granted a controversial pardon to a former state governor convicted of embezzlement, citing humanitarian reasons.¹⁴⁹ In 2025, President Bola Ahmed Tinubu extended clemency to over eighty inmates and granted posthumous pardons to national figures, including the late Major General Mamman Vatsa and nationalist Herbert Macaulay.¹⁵⁰ While some of these acts carried symbolic or reconciliatory value, others reignited public debate about fairness, equality before the law, and the invisibility of victims.¹⁵¹

From a public interest perspective, clemency must reconcile two competing moral imperatives: the need for compassion and the need for justice.¹⁵² Where political considerations dominate, the balance tilts towards impunity. The absence of procedural transparency—no published reasons, no clear criteria, no victim consultation—means the public cannot assess whether clemency serves justice or expediency.¹⁵³ As Osunyikanmi observes, the Nigerian experience demonstrates that “mercy divorced from justice degenerates into favouritism,” thereby eroding the rule of law.¹⁵⁴ A mercy system that disregards victims and the wider citizenry loses its moral legitimacy, even when constitutionally valid.

4.7 Comparative Insights on Victim Inclusion

Globally, several jurisdictions have integrated victims’ rights into post-conviction and clemency procedures. In Canada, the Corrections and Conditional Release Act 1992 allows victims to submit written or oral statements during parole and pardon considerations.¹⁵⁵ In South Africa, the Promotion of National Unity and Reconciliation Act 1995 established the Truth and Reconciliation Commission (TRC), which provided a forum for victims to confront offenders and participate in restorative processes.¹⁵⁶

¹⁴⁹ ‘Jonathan’s Controversial Pardon’ *Vanguard* (Lagos, 13 March 2013).

¹⁵⁰ ‘Tinubu Grants Clemency to 82 Inmates and 17 Posthumous Pardons’ *Premium Times* (Abuja, 12 April 2025).

¹⁵¹ *ibid*

¹⁵² J Rawls, *A Theory of Justice* (Harvard University Press 1971) 364.

¹⁵³ CLEEN Foundation (n 6) 59.

¹⁵⁴ Corrections and Conditional Release Act 1992 (Canada), ss 132–133.

¹⁵⁵ *Ibid*

¹⁵⁶ Promotion of National Unity and Reconciliation Act 1995 (South Africa), s 19

India's Supreme Court has similarly held that clemency must conform to constitutional values of fairness and non-arbitrariness.¹⁵⁷ In *Epuru Sudhakar v Government of Andhra Pradesh*, the Court emphasised that mercy powers cannot be exercised in a manner that disregards victims' interests or undermines public morality.¹⁵⁸ These comparative experiences reveal that mercy can be democratised without diminishing executive discretion.¹⁵⁹

Nigeria's constitutional silence on victims' participation contrasts sharply with these approaches.¹⁶⁰ Although the Advisory Councils on the Prerogative of Mercy could theoretically include victims' representatives or human rights institutions, there is no legal requirement or precedent for such inclusion.¹⁶¹ The consequence is a mercy system devoid of public oversight and disconnected from the lived experiences of those it purports to heal.

4.8 Restorative Justice as a Framework for Reform

Restorative justice provides a normative framework for integrating victims into the clemency process.¹⁶² It emphasises recognition, dialogue, and accountability—values consistent with constitutional democracy.¹⁶³ Rather than viewing mercy as an executive privilege, restorative justice reimagines it as a shared moral process between the offender, the victim, and the community.¹⁶⁴ If properly institutionalised, clemency in Nigeria could function as a restorative mechanism, facilitating reconciliation and rehabilitation while preserving victims' dignity.¹⁶⁵ This would require procedural innovations, such as victim notification, opportunities for written submissions, and public disclosure of reasons for clemency.¹⁶⁶ Such measures would not curtail executive discretion but would anchor mercy within the ethical framework of justice and human rights.¹⁶⁷

¹⁵⁷ *Kehar Singh v Union of India* (1989) 1 SCC 204 (SC)

¹⁵⁸ (2006) 8 SCC 161

¹⁵⁹ *Ibid.*

¹⁶⁰ CFRN (n 2)

¹⁶¹ *ibid* s 212(2)

¹⁶² Zehr (n 21) 35

¹⁶³ *Ibid* 40.

¹⁶⁴ *Ibid* (n 11) 310.

¹⁶⁵ *ibid*

¹⁶⁶ CLEEN Foundation (n 4) 60

¹⁶⁷ Ekhtator (n 11) 54.

Above all, the exclusion of victims from Nigeria's clemency system represents a justice deficit that undermines both constitutional morality and social cohesion.¹⁶⁸ A victim-sensitive approach to mercy—grounded in transparency, participation, and compassion—would transform the prerogative of mercy from a relic of sovereign power into an instrument of restorative democracy.¹⁶⁹

5.0 Comparative Lessons and Reform Proposals

The growing emphasis on victims' rights within criminal justice has transformed how societies view mercy, punishment, and accountability.¹⁷⁰ Whereas the traditional view located clemency within the exclusive prerogative of sovereigns, contemporary constitutional democracies treat it as a public trust, to be exercised in accordance with the rule of law, human rights, and the broader public interest.¹⁷¹ A comparative analysis of South Africa, India, and Canada provides valuable insights for Nigeria on how to balance mercy and justice through transparency, participation, and institutional safeguards.

5.1 South Africa: Constitutionalism and Accountability in Clemency

South Africa's clemency system operates under Section 84(2)(j) of the Constitution of the Republic of South Africa 1996, which vests in the President the power "to pardon or reprieve offenders and remit fines, penalties or forfeitures."¹⁷² Although the wording appears broad, the exercise of this power is subject to constitutional principles of legality, transparency, and fairness. In *Minister of Justice and Constitutional Development v Chonco*, the Constitutional Court held that the President's clemency powers, while discretionary, must conform to the constitutional requirement of rationality.¹⁷³ The Court reasoned that since the power of pardon affects legal rights, it cannot be exercised arbitrarily or capriciously.¹⁷⁴ This approach transforms clemency from a purely political act into one that is judicially reviewable when it violates constitutional norms.

South Africa's post-apartheid transition also demonstrates how clemency can serve restorative, rather than purely retributive, goals. The Promotion of National Unity and

¹⁶⁸ Zehr (n 21) 47

¹⁶⁹ Rawls (n 88) 370

¹⁷⁰ *ibid*

¹⁷¹ *Ibid* (n103) 52

¹⁷² Constitution of the Republic of South Africa 1996, s 84(2)(j).

¹⁷³ [2010] ZACC 28.

¹⁷⁴ *Ibid* 43.

Reconciliation Act 1995 established the Truth and Reconciliation Commission (TRC), which conditioned amnesty on full disclosure of politically motivated crimes and allowed victims to participate in hearings.¹⁷⁵ Victims could narrate their experiences, confront perpetrators, and seek symbolic closure.¹⁷⁶ Although not without criticism, the TRC model integrated forgiveness, truth, and justice within a participatory framework.¹⁷⁷ The lesson for Nigeria is that mercy must be grounded in accountability and victim recognition. The inclusion of victims and civil society representatives in clemency advisory councils would enhance legitimacy and foster reconciliation.¹⁷⁸

5.2 India: Judicial Oversight and the Rule of Law

India's constitutional framework for clemency, contained in Articles 72 and 161 of the Constitution of India 1950, mirrors Nigeria's Sections 175 and 212.¹⁷⁹ However, Indian jurisprudence has evolved toward a more accountable exercise of mercy. The Supreme Court has repeatedly held that while the President and Governors possess wide discretion, their decisions are subject to judicial review for arbitrariness, mala fides, or violation of constitutional rights.¹⁸⁰

In *Kehar Singh v Union of India*, the Court affirmed that the President's clemency power is not beyond judicial scrutiny and must be exercised on relevant considerations.¹⁸¹ Later, in *Epuru Sudhakar v Government of Andhra Pradesh*, the Court quashed a gubernatorial pardon granted for political reasons, holding that mercy cannot be a vehicle for partisan favouritism.¹⁸²

Indian law also emphasises transparency in the mercy process. Petitioners must submit written applications, and reasons for denial or approval must be recorded.¹⁸³ In some states, victim input is solicited during remission or commutation proceedings.¹⁸⁴ These procedural safeguards anchor clemency within the broader constitutional principles of equality, fairness, and justice. For Nigeria, adopting judicial review of mercy decisions would not

¹⁷⁵ Promotion of National Unity and Reconciliation Act 1995 (South Africa), s 19.

¹⁷⁶ D Tutu, *No Future Without Forgiveness* (Rider 1999) 112.

¹⁷⁷ *ibid* 119.

¹⁷⁸ CLEEN Foundation 60

¹⁷⁹ Constitution of India 1950, arts 72, 161.

¹⁸⁰ *Kehar Singh v Union of India* (1989) 1 SCC 204 (SC).

¹⁸¹ *Ibid* 29

¹⁸² (2006) 8 SCC 161 (SC).

¹⁸³ *ibid*

¹⁸⁴ A K Sengupta, 'Mercy Jurisprudence in India' (2018) *Indian Law Review* 4(2) 145

undermine executive authority but rather ensure accountability consistent with democratic governance.¹⁸⁵ It would also create an avenue for victims to challenge arbitrary pardons that disregard their suffering or the public interest.

5.3 Canada: Institutionalised Transparency and Victim Participation

Canada's model of clemency exemplifies procedural transparency and sensitivity to victims' rights. Under Sections 132–133 of the Corrections and Conditional Release Act 1992, the Parole Board of Canada administers the royal prerogative of mercy.¹⁸⁶ Applicants must demonstrate exceptional circumstances such as innocence, injustice, or humanitarian grounds.¹⁸⁷ The Canadian framework provides for written reasons, published guidelines, and opportunities for victims to submit impact statements.¹⁸⁸ Victims may attend parole or clemency hearings, receive notification of decisions, and access records concerning the offender's release.¹⁸⁹ This approach ensures that mercy operates within a participatory and rights-based framework.

Furthermore, clemency statistics and decisions are periodically reviewed by Parliament and civil society watchdogs.¹⁹⁰ Transparency thus functions as a safeguard against political abuse and strengthens public confidence in the justice system.¹⁹¹

Nigeria could adapt these mechanisms by mandating publication of clemency decisions and establishing an independent secretariat under the Presidential Advisory Committee on the Prerogative of Mercy.¹⁹² Including victims or their advocates in this structure would align with international human rights standards and Nigeria's constitutional commitment to dignity and justice.¹⁹³

5.4 Towards a Victim-Sensitive Clemency Inclined Framework in Nigeria

A reformed Nigerian clemency system should integrate three core principles: transparency, participation, and restorative justice.¹⁹⁴ Transparency demands the publication of clear

¹⁸⁵ Ibid.

¹⁸⁶ Corrections and Conditional Release Act 1992 (Canada), ss 132–133

¹⁸⁷ Ibid

¹⁸⁸ *ibid* s 133(2).

¹⁸⁹ Parole Board of Canada, *Annual Report 2022–23* (Ottawa 2023)

¹⁹⁰ Ibid 14

¹⁹¹ Ibid 17.

¹⁹² CFRN s 175(2).

¹⁹³ Ibid (n 73)

¹⁹⁴ H Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 35.

criteria for clemency, open hearings for high-profile cases, and disclosure of reasons for each decision.¹⁹⁵ Participation requires that victims be recognised as stakeholders entitled to be heard and notified.¹⁹⁶ Restorative justice ensures that clemency promotes healing, not political expediency.¹⁹⁷ In operational terms, these principles could be institutionalised through legislative reform of Sections 175 and 212 to include procedural obligations.¹⁹⁸ The Presidential Advisory Committee on the Prerogative of Mercy should be restructured to include representatives of the National Human Rights Commission, civil society, and victim associations.¹⁹⁹

In addition, digital publication of clemency statistics and decisions would enhance transparency, allowing citizens to assess whether mercy serves justice or impunity.²⁰⁰ The integration of restorative processes—such as mediated encounters or symbolic restitution—could also reconcile victims and offenders, consistent with constitutional values.²⁰¹ Ultimately, the objective is not to abolish mercy but to humanise it—to transform it from a unilateral act of sovereign grace into a participatory instrument of justice and reconciliation.²⁰²

6.0 Conclusion

The prerogative of mercy, though a vital instrument of compassion within Nigeria's constitutional framework, has increasingly revealed tensions between executive discretion, justice, and victims' rights.²⁰³ Sections 175 and 212 of the *1999 Constitution* grant wide latitude to the President and State Governors, but the absence of procedural safeguards, victim participation, and accountability mechanisms has reduced this power to a largely political instrument.²⁰⁴ In its current form, the exercise of mercy often overlooks the human

¹⁹⁵ *ibid* 42

¹⁹⁶ *Ibid* 47.

¹⁹⁷ *Ibid* (n 73) 314.

¹⁹⁸ *Constitution* (n 128) ss 175–212.

¹⁹⁹ CLEEN Foundation (n 4) 61.

²⁰⁰ Ekhaton (n 11) 53.

²⁰¹ Zehr (n 32) 50.

²⁰² Rawls (n 73) 370

²⁰³ *Ibid* (n 11) 45.

²⁰⁴ CFRN (n 2).

suffering of victims, undermines public confidence in justice, and erodes the moral legitimacy of governance.²⁰⁵

To reconcile and balance mercy with justice, Nigeria must reform its clemency framework to reflect transparency, participation, and restorative values.²⁰⁶ Integrating victims' voices—through notification, consultation, and written submissions which would restore dignity and balance to the process.²⁰⁷ Limited judicial review, publication of reasons, and parliamentary oversight, as seen in jurisdictions like South Africa, India, and Canada, would further ensure that clemency operates as a public trust rather than a tool of political convenience.²⁰⁸ Ultimately, mercy must not negate justice but complement it.²⁰⁹ When exercised transparently and inclusively, the prerogative of mercy can embody the highest ideals of humanity and constitutional democracy.²¹⁰ Reimagined through the lens of victims' rights and public accountability, it can transform from a relic of sovereign grace into an engine of restorative justice and social healing.²¹¹

²⁰⁵ Osunyikanmi AO, 'Executive Clemency and Public Morality in Nigeria' (2024) *African Journal of Law and Society* 118.

²⁰⁶ H Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 44.

²⁰⁷ CLEEN Foundation, *Victims' Rights and Criminal Justice in Nigeria* (Lagos 2019) 59.

²⁰⁸ *Minister of Justice v Chonco* [2010] ZACC 28; *Epuru Sudhakar v Government of Andhra Pradesh* (2006) 8 SCC 161.

²⁰⁹ J Rawls, *A Theory of Justice* (Harvard University Press 1971) 364.

²¹⁰ D Tutu, *No Future Without Forgiveness* (Rider 1999) 112.

²¹¹ Zehr (n 142) 49.

EXAMINING THE VULNERABILITIES AND CHALLENGES FACED BY IMMIGRANT MINORS IN NIGERIA AND SUGGESTING BEST PRACTICES

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Abstract

Immigrant minors in Nigeria face a complex web of vulnerabilities spanning social, economic, security, and psychological dimensions, yet comprehensive protection mechanisms remain critically inadequate. This paper examines the multifaceted challenges confronting immigrant children in Nigeria, including exploitation during irregular migration, gender-based violence, arbitrary detention, family separation, and systemic discrimination. Using doctrinal research methodology, the study reveals that despite Nigeria's ratification of international instruments such as the UN Convention on the Rights of the Child and the enactment of the Child Rights Act, implementation gaps persist due to weak political will, entrenched social norms, and institutional deficiencies. The paper further explores the psychological trauma, acculturation stress, and educational marginalization experienced by these minors, exacerbated by language barriers, cultural dislocation, and insecure legal status. Through an examination of grassroots initiatives and successful integration programs, the study identifies promising pathways involving community engagement, multilingual education, culturally responsive teaching, and integrated mental health and entrepreneurship support. The paper concludes with actionable recommendations for strengthening legal frameworks, enhancing institutional capacity, fostering cross-sectoral collaboration, and promoting inclusive policies that uphold the rights and dignity of immigrant minors. By addressing both immediate protection needs and long-term resilience building, Nigeria can fulfil its obligations under international law and ensure that immigrant children enjoy their fundamental rights to education, healthcare, safety, and social inclusion

Keywords: Immigrant minors, child migration, vulnerabilities, Challenges, Nigeria,

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1.0 Introduction

Immigrant minors in Nigeria are exposed to a complex array of vulnerabilities that span social, economic, and security dimensions.¹ Many of these children migrate due to poverty, instability, and conflict, often with limited education and employable skills, which increases their risk of exploitation, abuse, and poor health outcomes.² In conflict-affected regions such as northeast Nigeria, the Boko Haram insurgency has led to mass displacement, with children facing recruitment by armed groups, abductions, and severe violations of their rights.³ Within refugee and internally displaced persons (IDP) camps, overcrowding and insecurity heighten the risk of sexual exploitation, particularly for girls, who are also subject to harmful cultural practices like female genital mutilation despite legal prohibitions.⁴ Gender-based violence, including rape and domestic abuse, is widespread, and the intersection of gender, age, and social status further compounds these risks.⁵

Socioeconomic challenges such as unemployment, poverty, and lack of access to education and healthcare are pervasive, with many immigrant minors unable to attend school due to insecurity or inadequate resources.⁶ Family separation, loss of identity documents, and discrimination exacerbate their psychosocial distress and hinder integration.⁷ Despite the existence of child protection laws and agencies, implementation remains weak due to limited political will and entrenched social norms, leaving many children vulnerable to child labor, early marriage, and trafficking.⁸ Interventions that address the root causes of migration, strengthen social protection, and promote gender equality are urgently needed to safeguard the rights and well-being of immigrant minors in Nigeria.⁹

¹ RO Connor, TS Betancourt and NV Enelamah, 'Safeguarding the Lives of Children Affected by Boko Haram' *Health and Human Rights* (2021) 23(1) 181.

² S Kwankye *et al*, 'A review of the literature on sexual and reproductive health of African migrant and refugee children' *Reproductive Health* (2021) 18(1) 1.

³ H Onapajo, 'Children in Boko Haram Conflict: The Neglected Facet of a Decade of Terror in Nigeria' *African Security* (2020) 13(2) 148.

⁴ *ibid*.

⁵ L Kiss *et al*, 'Violence, abuse and exploitation among trafficked women and girls: a mixed-methods study in Nigeria and Uganda' *BMC Public Health* (2022) 22(1) 1.

⁶ *ibid*.

⁷ IO Ifeakandu, 'Child Trafficking and Rights Violations: Examination of Child Protection under International and Nigeria Legal Provisions' *Beijing Law Review* (2019) 10(3) 1.

⁸ N Umejiaku, 'Advocating for the Protection of Rights of Children and Women in Nigeria: An Appraisal' *Journal of Legal Studies* (2020) 26(40) 48.

⁹ LA Oti-Onyema, 'The Legal Regime for Refugee Child Protection in Nigeria' (2020)

Immigrant minors in Nigeria experience intersecting social, economic, legal and psychological vulnerabilities, yet existing scholarship largely treats Nigerian children's rights and migration as separate fields rather than focusing specifically on immigrant minors within Nigeria's borders.¹⁰ Studies on child protection in Nigeria highlight pervasive rights violations and weak implementation of child-rights laws, but do not systematically address the peculiar situation of immigrant minors.¹¹ Likewise, regional migration research in West Africa notes that youth migration is under studied, reinforcing the gap this study seeks to fill for immigrant minors in Nigeria.¹²

Despite Nigeria's ratification of the Convention on the Rights of the Child (CRC) and enactment of the Child Rights Act, enforcement remains weak, creating a discrepancy between formal guarantees and lived realities for children, including immigrant minors.¹³ Existing analyses of child-rights frameworks identify structural defects in legislation and institutions, but they rarely interrogate how these shortcomings specifically expose immigrant minors to heightened risks of exploitation, detention, family separation and social exclusion.¹⁴

This study is therefore significant because it brings together child rights law, migration governance and psychosocial concerns to examine the specific vulnerabilities and protection gaps affecting immigrant minors in Nigeria and to propose context appropriate best practices for their protection and integration.¹⁵ By focusing on immigrant minors rather than children in general, the research speaks directly to a population whose needs remain obscured within broader debates on child protection and migration in Nigeria and West Africa.¹⁶

¹⁰ IO Ifeakandu, (n.7).

¹¹ N Umejiaku, (n.8).

¹² T Klöpf *et al*, 'Researching migration in West Africa: A systematic and reflexive review'. *Comparative Migration Studies*, (2025) 13. <<https://doi.org/10.1186/s40878-025-00474-8>> accessed 15 May, 2026

¹³ D Giwa, 'A Critical Analysis of the Legal and Institutional Frameworks for the Protection of the Right of the Child in Nigeria'. *SSRN Electronic Journal*. (2023). <<https://doi.org/10.2139/ssrn.4581396>> accessed 15 May, 2026

¹⁴ LA Oti-Onyema, (n.9).

¹⁵ M Abdulraheem, 'Adopting a Holistic Approach: International Legal Perspectives on Safeguarding the Rights of Migrant Children in Africa'. *International Journal of Research and Innovation in Applied Science*. (2024). <<https://doi.org/10.51584/ijrias.2024.911008>> accessed 15 May, 2026

¹⁶ O Olakpe, 'Cross-border migrations in western Africa: narratives of migration and mobility'. *Journal of Ethnic and Migration Studies*, (2025). 51, 4744 - 4759. <<https://doi.org/10.1080/1369183x.2025.2544089>> accessed 15 May, 2026

Guided by this context, a central research question emerges: to what extent do Nigeria's existing legal and institutional frameworks, in practice, protect immigrant minors from the multidimensional vulnerabilities they face, and what best practices are required to align protection with the child's best interests?

2.0 Conceptual and Theoretical Framework

Conceptually, this study adopts a broad understanding of immigrant minors as children under 18 who are non-nationals residing in Nigeria, including refugees, asylum seekers, trafficked children and other migrants, whose experiences cut across legal status categories and expose them to overlapping forms of vulnerability.¹⁷ Vulnerability is understood here as a product of structural conditions such as poverty, discrimination, and weak institutions rather than an inherent characteristic of children, consistent with African and global scholarship on child migration.¹⁸

Theoretically, the study is anchored in the best interests of the child principle as articulated in the CRC and elaborated by the Committee on the Rights of the Child¹⁹ and subsequent scholarship.²⁰ In migration contexts, this principle requires that all decisions affecting children, including immigration control, prioritise their basic, developmental and autonomy interests over competing state interests.²¹ The framework also draws on holistic, rights-based approaches that integrate child-specific instruments (CRC, ACRWC) and migration-specific treaties (such as the ICRMW) to respond to migrant children's complex needs in Africa.²²

2.0 Vulnerabilities Faced by Immigrant Minors in Nigeria

Vulnerabilities faced by immigrant children in Nigeria cut across various dimensions of challenges ranging from social to security threats. One of the major threats faced by

¹⁷ LA Oti-Onyema, (n.9).

¹⁸ T Alanamu, 'Children on the Move in Africa: Past & Present Experiences of Migration.' *African Studies Review*, (2019). 62. <<https://doi.org/10.1017/asr.2019.4>> accessed 15 May, 2026

¹⁹ M Kalverboer *et al*, 'The Best Interests of the Child in Cases of Migration: Assessing and Determining the Best Interests of the Child in Migration Procedures'. *The International Journal of Children's Rights*, (2017). 25, 114-139. <<https://doi.org/10.1163/15718182-02501005>> accessed 15 May, 2026

²⁰ L Garayová, 'The Best Interests of the Child Principle'. *Central European Academy Law Review*. (2024). <<https://doi.org/10.62733/2024-1.9-28>> accessed 15 May, 2026

²¹ N Takács, 'The threefold concept of the best interests of the child in the immigration case law of the ECtHR'. *Hungarian Journal of Legal Studies*. (2022). <<https://doi.org/10.1556/2052.2021.00317>> accessed 15 May, 2026

²² M Abdulraheem, (n.15).

immigrant children is exploitation and abuse inflicted on them while migrating irregularly to countries of destination.²³ It is reported that at least 75% of child migrants from Sub-Saharan Africa have faced one form of exploitation or another before arriving at their destinations, most of whom die or go missing during crossing activities, especially while crossing the Mediterranean Sea.²⁴ Internally displaced immigrant children and refugees within Nigeria experience severe humanitarian situations, where more than 17,000 cases of displaced children have been recorded to result from conflicts, especially in the northeast region of Nigeria influenced by the activities of Boko Haram insurgents. Displaced children experience inadequate access to basic socio-economic rights such as education and health care. For example, many displaced children lack access to schools because of security concerns and inadequate learning resources and tutors to teach them. According to the National Human Rights Commission, more than 700 cases of denying these children access to education create grave development threats for them and for stability at the national level.²⁵

Gender violence (GBV) is widespread, and cases of rape, sexual abuse, domestic violence, and harassment have been documented against immigrant minors, especially girls and young females.²⁶ Gender itself becomes compounded by its intersectionality, coupled with social and cultural beliefs that constrain the movement of girls.²⁷ Arbitrary arrest, detention, deportation, loss of identity documents, and discrimination also add to the complications faced by immigrant children and present difficulties for their protection and psychosocial care.²⁸ Despite the formulation of the Nigeria Child Rights Act and the establishment of special agencies like family courts and a special police unit to deal with cases involving children, the effective implementation of these measures is lacking because of inadequate political will and social culture limitations. A significant number of immigrant children take advantage of these loopholes to engage in activities like child labour, marriage before

²³ The Migrant Project, 'The 5 risks irregular migrants from Nigeria face' (2019) <<https://themigrantproject.org>> accessed 18 November 2025.

²⁴ *ibid.*

²⁵ Everyday Nigeria, 'Over 17,000 children worst affected by displacement in Nigeria' (2025) <<https://everyday.ng>> accessed 18 November 2025.

²⁶ *ibid.*

²⁷ The Migrant Project (n.23).

²⁸ African Committee of Experts on the Rights and Welfare of the Child, 'Mapping Children on the Move within Africa' (2025). <<https://acerwc.africa>> accessed 18 November, 2025.

puberty, female genital mutilation, among others.²⁹ Initiatives by various actors' campaign for improvement in laws to protect immigrant children effectively.

For conflict-affected countries like Adamawa, Borno, and Yobe, children are highly vulnerable to recruitment and exploitation by armed groups such as terrorist groups, and initiatives to take ownership and become agents of change themselves through prevention, rehabilitation, and reintegration activities for displaced children and youths are remarkable progress achieved to respond to worst forms of exploitation of children.³⁰

3.0 Challenges Affecting Immigrant Minors

In spite of the numerous laws and institutional frameworks developed to guarantee the protection of rights of migrants in Nigeria, the protection itself is but a mirage because the rights of migrants are being violated with impunity because of some challenges militating against the effectiveness of these laws and institutional frameworks. These challenges will also be discussed below

3.1 Socioeconomic Challenges of Immigrant Minors

It is self-evident that one of the problems Nigeria is encountering is its large number of unemployed individuals who do not have access to employment opportunities. It is estimated by The National Bureau of Statistics that unemployment rate in Nigeria grew from 27.10 percent in the first quarter of 2020 to 33.30 percent in 2021 and is projected to reach 40.00 percent by 2023.³¹ It is astonishing to know that during the recruitment exercise conducted by the Nigeria Immigration Service (NIS) on 15th March 2014, "the rate at which unemployment is alarming" in Nigeria was apparent.

Additionally, illiteracy is one of the factors that hampers socio-economic development. According to the 2021 statistics reported by the Federal Government of Nigeria,³² illiteracy is prevalent among more than 76 million Nigerians while 38 percent of the estimated

²⁹ International Association of Women Judges, 'The Rights of a Child in Nigeria' (2023). <<https://iawj.org>> accessed 18 November 2025.

³⁰ UNODC, 'Protecting Children from Violence in Contexts of Insecurity' (2025). <<https://unodc.org>> accessed 18 November 2025.

³¹ The National Bureau of Statistics 'Nigeria Unemployment Rate. Trading Economics' (2021) <<https://tradingeconomics.com/nigeria/unemployment-rate>> accessed 18 November 2025.

³² K Yomi, 'Nigeria has become the poverty capital of the world'. (Quartz Africa, 2018) <<https://www.google.com.ng/amp/s/qz.com/africa/1313380/nigerias-has-the-highest-rate-of-extreme-poverty-globally/amp/>> accessed 18 November 2025.

population is not able to read and write. Education deprivation among Nigerians within northern Nigeria is largely influenced by poor learning environments and poor teaching facilities combined with poor classroom facilities and social and cultural settings among the population that hampers children especially girls to attend formal education schools.

a.Root Causes of Socio-Economic Problems

The world of work is undergoing fast changes because of innovations and disruptive technology, which have become prominent features for thriving at work. Skills like critical thinking, problem solving capabilities, leadership, teamwork, and management skills, needed for success in this 21st century, are hardly being trained for as part of our education curriculum being followed in our country. And this is why many of our youths have become incapable of matching up to the growing demands of the labour market. This was aptly quoted as Charles Soludo, former Governor of the CBN, said: “65% of our graduates are unemployable”.³³

This is closely followed by the preference for white-collar jobs. According to Anzaa, “many young Nigerians seem willing to wait indefinitely for a particular kind of job on which they have settled their minds rather than take something else.”³⁴ This kind of attitude makes many Nigerians lackadaisical regarding the kinds of entrepreneurship and training for vocations. But the white-collar jobs offered by Nigeria are few.

Additionally, social conflicts involving violence have been responsible for widespread poverty among Nigerians. This is because, for example, the rampaging Fulani Herdsmen menace at Northern Nigeria and various insecurity challenges faced by Nigeria have resulted in the breaking down of social chains or communities. This is because crisis affects economic development, triggers displacement, denies access to effective health care, among others, making refugees lose even their shelter. This means that many Nigerians have had their livelihood threatened because of the resultant endemic poverty among them.

³³ I Ekott, ‘Soludo grades Jonathan ‘F’ on economy; says his administration is the worst ever’. (Premium Times, 2015). <<https://www.premiumtimesng.com/news/headlines/175663-soludo-grades-jonathan-f-economy-says-administration-worst-ever.html>> accessed 18th November, 2025.

³⁴ Dawud ‘Socioeconomic Problems of Ethiopian Young Adults as Reflected in Three Selected Ethiopian Young Adult Novels in English’ *International Journal of Engineering Technologies and Management Research* (2020). Vol 7(10), 28 – 65.
<https://www.granthaalayahpublication.org/ijetmrojms/index.php/ijetmr/article/view/IJETMR20_A09_2179> accessed 18th November, 2025.

Additionally, according to Adedigba, the lack of opportunities for education in the country impacts negatively on the literacy rate among the large population.³⁵ For instance, just 30 percent of those seeking to gain admission into higher learning institutions were being admitted at the end of 2017 admissions.³⁶ High rates of drop-out and lack of learning materials are among the factors responsible for high illiteracy levels among Nigerians.

3.2 Psychological Challenges of Immigrant Minors

The experience of immigrating is complex and traumatic for children because they are very susceptible to many types of psychosocial difficulties because of their developmental status and because they have to rely on adults for all their care and support as children. The experience of immigrating is also expected to subject these children to many stressful events such as displacement, acculturation stress, or even violence and persecution in their native countries before immigrating to new destinations or countries away from home.³⁷

One of the major psychological difficulties faced by immigrant children is trauma, which may take place before or after immigration. While pre-immigration trauma may include experience of conflict, violence, or persecution, post-immigration difficulties may include separation from families, lack of status within countries of destination, or acculturation difficulties. It has been shown that unaccompanied children are highly prone to high levels of post-traumatic stress disorder (PTSD) symptoms even after moving to new countries.³⁸

One of the significant concerns among immigrant children is anxiety disorders, which is mainly because of poor experiences before migration combined with acculturation stress within foreign societies. This kind of anxiety may occur in various ways: generalized anxiety disorder, social anxiety disorder, or specific phobias. The unfamiliar surroundings of the new social setting combined with deportability or discrimination concerns tend to worsen this condition.³⁹ Symptoms of depression are also very common among immigrant

³⁵ A Adedigba, 'Only 30 UTME candidates will gain admission to universities NUC' (2017) <<https://www.premiumtimesng.com/news/more-news/247307-%E2%80%8Eonly-30-utme-candidates-will-gain-admission-universities-nuc.html>> accessed 18th November, 2025.

³⁶ *ibid.*

³⁷ American Psychological Association. 'Crossroads: The psychology of immigration in the new Century' *Report of the APA Presidential Task Force on Immigration*. (2012). <<https://www.apa.org/topics/immigration/immigration-report.pdf>> accessed 18th November, 2025.

³⁸ National Institutes of Health. 'Children's emotional and behavioral response following a parent's migration' (2023). <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10059444/>> accessed 18th November, 2025.

³⁹ American Psychological Association. 'Psychological Practice with Unaccompanied Immigrant Minors'

children. The breakdown of social support structures, cultural adaptation, disruptions to family structures, and lack of security for the future are major contributory factors to depression. Studies have consistently demonstrated a higher incidence of depression among immigrant children than among native children.⁴⁰

One of the significant stressors for immigrant children is acculturation stress. This is associated with the psychological strain of adjusting to a new culture. This involves adjusting to new social norms and learning new customs and new languages. This is because bicultural stress is associated with negative impacts on mental health outcomes for children.⁴¹

Additionally, being subjected to discrimination and xenophobic feelings further worsens the already emotional challenges faced by immigrant children. Feeling threatened or excluded because of discrimination at school or at the community level affects self-esteem and feelings of attachment to one's surroundings. Perceived discrimination strongly correlates to feelings of being anxious or depressed.⁴²

Another significant is social isolation because bringing up the children from immigrant families distances them from social foundations established earlier. Developing new social associations is also hampered by differences in languages or cultures and being perceived as foreigners.⁴³ Family separation, whether en-route to or at destination as a result of detention and deportation policies within host nations, affects the emotional well-being of children adversely. Lack of parental or responsible care-giving individuals is a substantial risk factor for consequent emotional disturbances and trauma.⁴⁴

Legal status is still an important factor for the psychological condition of immigrant children and teenagers too. Those whose status is unknown or undocumented have higher

(2023). <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2773113/>> accessed 18th November, 2025.

⁴⁰ BMJ Global Health. 'Immigrant child health in Canada: a scoping review.' (2025).

<<https://gh.bmj.com/content/3/4/e000954>> accessed 18th November, 2025.

⁴¹ National Institutes of Health, (n. 38).

⁴² Pepperdine University. 'The Implications of Trauma on Immigrant Children's Well-Being' (2019).

<<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=2150&context=etd>> accessed 18th November, 2025.

⁴³ BMJ Global Health, (n. 40).

⁴⁴ American Psychological Association, (n. 39).

risks of suffering chronic stressors such as deportability concerns or lack of access to basic social services and their futures being unpredictable too.⁴⁵

Children alone and unaccompanied are also very susceptible to emotional danger. Without any kind of adult supervision and support, they are at a seriously increased risk of being exploited and victimized, as well as suffering further trauma and potentially serious emotional or mental problems.⁴⁶

The prevailing international context, marked by growing migrant flows, toughening immigration laws, as well as rising anti-immigrant sentiment, also continues to present serious challenges for the psychological adjustment of immigrant children and adolescents. It is vital to continue significant research efforts into this context.⁴⁷

Overall, immigrant children struggle with numerous psychological difficulties that put them at risk for experiencing trauma, depression, anxiety, and acculturation stress. It is necessary to respond to these difficulties by employing a collaborative approach and addressing cultural competence in service delivery to improve policies for support and engage at the community level to facilitate accessibility to mental health care for this highly vulnerable population.

3.3 Cultural Challenges and Adaptation of Immigrant Minors

Cultural challenges remain integral to the adaptation experience for immigrant children as they adapt to new cultures within foreign societies. The transition for these children into new settings involves their exposure to various dilemmas associated with new cultures and settings. Cultural disruptions are thus stressors for children undergoing transition and may negatively influence their development as they create opportunities for growth and enrichment at the same time. It is apparent from various studies that cultural differences stand to cause adjustment difficulties for immigrant children to new countries because for most children, lack of knowledge of the new language is normally the initial stressor associated with new cultures.⁴⁸ Language barriers make it even more difficult for both academic and social integration to take place. Many children tend to lack effective

⁴⁵ BMJ Global Health, (n. 40).

⁴⁶ American Psychological Association, (n. 39).

⁴⁷ BMJ Global Health, (n. 40).

⁴⁸ F Nayir, 'The adaptation of newly arrived immigrant students' (2021).
<<https://files.eric.ed.gov/fulltext/EJ1292206.pdf>> accessed 18th November, 2025.

expression of their demands, ideas, and feelings because of limitations in speaking the language of the new country, causing them feelings of frustration and powerlessness. Language barriers have been shown to increase acculturation- related stress and also act as a device for exclusion by peers and school personnel.⁴⁹

In addition to learning new languages, adaptation to new social norms and customs requires strong psychological efforts. Cultural identity for immigrant children is thus to be reconstructed as they learn new behaviours and values and at the same time attempt to retain their association with their own culture.⁵⁰ This balancing act required by acculturation is very subtle and often confuses them and makes them identity-wise conflicted or conflicted in their identity formation as they struggle between keeping their roots intact while at the same time being full participants in the new culture.⁵¹

Family dynamics also have a very significant role to play in terms of acculturation for immigrant children and teenagers. The family acts as both a carrier of culture and also as a place of tensions because of differences between generations regarding acculturation. This is because parents tend to stick to their own norms and values because of children's preference for host culture values. Studies concerning Asian American immigrant families indicate that discrepancies between parents and children regarding acculturation influence parenting and adaptability among children.⁵²

Adjusting to new school systems is one of the biggest challenges faced by immigrant minors. The norms and school curriculum may differ significantly from those practiced back home, thus requiring extra efforts to cope. Schools may become arenas for integration or become venues for exclusion based on whether they adapt to diversity or not. Culturally responsive schools can facilitate adaptation for immigrant minors because failing to adapt to new environments makes academic performance worse.⁵³

Lack of socialization can also be seen as one challenge faced by these immigrant children and teenagers, especially if they do not have many friends to socialize with at their

⁴⁹ CO Toppelberg, 'Language, culture, and adaptation in immigrant children' (2010).
<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2935872/>> accessed 18th November, 2025.

⁵⁰ JW Berry, 'Acculturation theories and cultural adaptation' (2006, 2019).

⁵¹ E Acar, 'Bridging the cultural divide: Examining immigrant students' adaptation' (2023).
<<https://ajqr.org/index.php/ajqr/article/download/2239/1658>> accessed 18th November, 2025.

⁵² KY Huang *et al.* 'Cultural adaptation, parenting, and child mental health' (2017).
<<https://stacks.cdc.gov/view/cdc/46313>> accessed 18th November, 2025.

⁵³ *ibid.*

destination or new country. This may include lack of social interactions because of differences and prejudices between cultures, as well as misunderstanding social expectations associated with social relationships during initial socializations to begin new relationships and friendships.⁵⁴ Cultural adaptation is influenced by processes of prejudice and discrimination. Immigrant children and adolescents are often faced with stereotypes and xenophobic feelings which have resulted in low self-esteem and feelings of non-belonging. Cultural stressors influence adaptive outcomes to range from withdrawal to assimilation efforts while studies have shown significant negative impacts of discrimination on social and psychological adaptations.⁵⁵

Acculturative stress is also referred to as acculturation stress and refers to the associated stress of adjusting to or learning to cope with a new culture. Adjusting to new family and social settings may also come into play for immigrant children as they have to deal with new roles at home and social settings as they struggle to cope with their new identity as individuals from another culture.⁵⁶

Cultural adaptation is not simply a matter of loss but also potentially one of growth or new skills acquisition. Studies have found that immigrant children may gain adaptive assets like increased cultural knowledge, resilience, or flexibility. The theory of acculturation implies learning to move between cultures is associated with beneficial outcomes such as enhanced worldviews or social skills.⁵⁷

A significant link also exists between mental health and the process of acculturation or adaptation to culture. Psychological adjustment acts as a mediator between acculturation and health outcomes because skills for effective adaptation influence healthier adaptation to new surroundings. Another approach applied to acculturation is structural equation modelling to determine direct or indirect relationships between acculturation and outcomes associated with mental health.⁵⁸

⁵⁴ *ibid.*

⁵⁵ D Lérias *et al*, 'The role of acculturative stress on the mental health of immigrant youth' (2024). <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10617399/>> accessed 18th November, 2025.

⁵⁶ L Shi *et al*, 'Impact of acculturation and psychological adjustment on mental health'. (2019) <<https://bmjopen.bmj.com/content/9/4/e025468>> accessed 18th November, 2025.

⁵⁷ JW Berry, (n.50).

⁵⁸ L Shi *et al*, (n. 56).

3.4 Educational Challenges and Opportunities of Immigrant Minors

The immigrant children in Nigeria constitute a group at risk within the country's education system. The first challenge associated with immigrant children is their status in terms of documentation, which makes it nearly impossible for them to gain admission to public schools.⁵⁹ In addition to this, is the continuous change of residence associated with displacement because of conflicts, natural disasters, or economic difficulties. This hampers continuity for these children's learning objectives. Another challenge associated with these children is the emotional and psychological impact of uncertainty associated with their migrant experience.⁶⁰

Language is also one of the major challenges immigrant children may experience because while it can seem as though Nigeria's learning system is English-dominant, it is apparent that most immigrant children lack any level of English language proficiency to begin with or have very little to no knowledge of it at all because they may possess native tongues and languages native to their countries of origin.⁶¹ This deficiency does not only cause them to lack academic success but also tends to cause them feelings of loneliness because they find it harder to connect to their school peers because of their inability to freely converse.⁶²

Disadvantages economically are also constantly faced by these children. Many immigrant families exist below the poverty level, making it very difficult for them to pay for education- related things such as uniforms and books.⁶³ When private education becomes the last option for many immigrant children, it becomes unaffordable and makes it impossible for them to access at all. This is also experienced at schools for immigrant children since environments not conducive to learning and development are promoted

⁵⁹ K Abdusamatov, 'Challenges faced by migrant students in education' *Qubahan Journal*. (2024). <<https://journal.qubahan.com/index.php/qaj/article/view/1209>> accessed 18th November, 2025.

⁶⁰ S Adeyemi, 'Inclusive education for migrant and refugee children in Nigeria: Challenges and strategies' *Journal of Educational Development*, (2022). 42(3), 45-58. <<https://doi.org/10.1016/j.jed.2022.05.003>> accessed 18th November, 2025.

⁶¹ Foundation for Human Rights. 'Barriers to access to education for migrant children'. (2012) <<https://www.global-solutions-initiative.org/publication/barriers-to-access-to-education-for-migrant-children/>> accessed 18th November, 2025.

⁶² International Organization for Migration. 'Assessment of the needs of migrant children in Nigeria (2021). *IOM Nigeria*. <<https://nigeria.iom.int/sites/g/files/tmzbd11116/files/documents/Assessment%20of%20the%20Needs%20of%20Migrant%20Children%20in%20Nigeria.pdf>> accessed 18th November, 2025.

⁶³ Right to Education. (n.d.). 'Child migration and access to early childhood care and education'. <https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Child%20migrants%20and%20access%20> accessed 18th November, 2025.

because of lack of infrastructure ranging from overcrowded classes to poor sanitation facilities and unqualified tutors.⁶⁴

In addition to all these challenges associated with immigrant children, discrimination serves to worsen their plight. This may result from prejudice against immigrant children among local communities, leading to intimidatory behaviour against them or lack of support from school administrators for immigrant children to pursue education.⁶⁵ Discouraged by all these challenges from their past as immigrant children and additional obstacles derived from negative attitude settings among local communities, immigrant children lack the motive to pursue further education.⁶⁶

Inclusive development is not complete without early childhood education; however, immigrant children are most likely to become excluded from pre-primary education programs. This may result from documentation requirements, lack of money, or bias, causing children to begin life at a disadvantage and setting them on paths of deprivation and lack of opportunities from the very beginning. When children grow older, they find it very tough to overcome deficits associated with lack of foundational school education to allow for progress or integration into society.⁶⁷

Regions within Nigeria experiencing conflict present additional challenges. Schools are often damaged or become inaccessible to children, especially within the region of northeast Nigeria. The plight of immigrant children is further complicated in these schools as they may have already been exposed to violence and could remain out of school for even longer periods.⁶⁸

⁶⁴ JO Oviawe, 'Poverty and access to education in Nigeria: Implications for national development'. *African Educational Research Journal*, (2025) 8(2), 1-8. <<https://files.eric.ed.gov/fulltext/ED604266.pdf>> accessed 18th November, 2025.

⁶⁵ Nigeria Magazin. 'Nigeria's changing education landscape: Challenges and innovations'. *News article* (2025). <<https://nigeriamag.com/nigerias-changing-education-landscape-challenges-and-innovations/>> accessed 18th November, 2025.

⁶⁶ UNICEF. 'Education: Giving every child the right to education' *UNICEF Nigeria*. (2017). <<https://www.unicef.org/nigeria/education>> accessed 18th November, 2025.

⁶⁷ Inquirer Nigeria. '5 challenges facing Nigeria's education system and how to overcome them' (2025). *News report*. <<https://inquirer.ng/2025/01/08/5-challenges-facing-nigerias-education-system-and-how-to-overcome-them/>> accessed 18th November, 2025.

⁶⁸ Right to Education. (n.d). 'International Instruments: Migrant and Refugee Children'. <https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_International_Instruments_Migrant.pdf> accessed 18th November, 2025.

4.0 Best Practices from Successful Integration Programs

As clearly stated earlier, ensuring the rights of migrants in Nigeria have been faced with numerous difficulties. But these difficulties constitute a clarion call on all stakeholders mandated to or otherwise influence the field of migration to put all efforts to fix the crisis at hand relating to ensuring migrants' rights are constructed positively in Nigeria. In the midst of these challenges, the question as to the way-forward lingers on. To adequately protect the rights of migrants in Nigeria, the Nigerian government and its agencies should ensure strict adherence to migrants' rights as stipulated in various local laws and other conventions to which Nigeria is a signatory.

In complementing the already existing local laws on human rights and migration, Nigeria, through the legislature, should ratify more conventions and treaties that protect migrants and ensure their safe living and working conditions among other fundamental entitlements. An increasing number of children, adolescent and youths are migrating into Nigeria independently of their parents, while some migrate with the consent of their parents or guardians. Many of them are forced to migrate (trafficked individuals) while others move in search of employment opportunities. Reacting to the foregoing, the government should protect the rights of migrant children through enforcing the Child Rights Act, the corresponding state laws, other national laws and relevant international instruments, particularly the UN Convention on the Rights of the Child,⁶⁹ the UN Convention Against Transnational Organized Crime⁷⁰ and its two Protocols, the Palermo Trafficking Protocol⁷¹ and ILO Convention 182 on the Worst Forms of Child Labour.⁷²

Similarly, the Federal Ministry of Education and its state counterparts and relevant stakeholders should ensure that migrant children are guaranteed the same rights to education, health care and shelter as other children in Nigeria are entitled to. Also, the Ministry for Youth Affairs, other relevant agencies of government and non-state actors should ensure that the National Youth Policy and other relevant policies relating to children, adolescents and youths are properly linked and harnessed. Child trafficking represents a special challenge in Nigeria and specific steps have had to be taken to ensure

⁶⁹ Ratified on 19 April 1991.

⁷⁰ Ratified on 28 June 2001.

⁷¹ Ratified on 28 June 2001.

⁷² Ratified on 2 October 2002.

the protection of victims of trafficking, especially women and children. On that note, National Agency on the Prohibition of Trafficking in Person (NAPTIP) in collaboration with the relevant security agencies should identify the origins of human trafficking and migration within, out of and into Nigeria, and address the factors influencing them, and their consequences. The government should provide adequate protection and assistance to victims of trafficking through the establishment of functioning reception centres, as well as through return and reintegration assistance, such as resettlement grants and skills acquisition programs and employment counselling, and through enhancing the capacities of NAPTIP in running shelters, making them user-friendly and compliant with international standards.

Furthermore, while the bureaucratic nature of the Nigerian court system has continued to frustrate the attempt of migrants towards accessing justice, it becomes imperative that the government should designate special courts/tribunals for migrants, and train judicial officers for the same purpose. On the other hand, agencies regulating migration in Nigeria has suffered several institutional challenges such as lack of personnel, poor funding, unavailability of modern facilities, etc. The government should sufficiently fund these agencies especially NAPTIP to enable it provide victims of trafficking with various forms of remediation, and to apprehend and prosecute traffickers. Provision of modern e-border technologies will address irregular migration through electronic surveillance and monitored patrol of all border flanks in line with developments in the global community. Nigerian Immigration Service should be properly funded to enable it to improve its administrative effectiveness and to meet the emerging challenges of modern control.

The proliferation of roadblocks installed by the border control agents and other relevant security agencies on Nigeria borders, especially the Lagos-Seme border, should be dismantled with immediate effect in order to forestall further harassment, corruption, unnecessary taxation and extortion of money perpetrated by the security agents manning those roadblocks. Government should strengthen the capacity of border control officers through technical training, to meet the demand of mixed flows of persons across borders. The government should make sure that military personnel involved in sexually abusing female migrants within humanitarian camps before benefiting them with humanitarian aid should be put on trial by the military authority. Likewise, officials overseeing humanitarian

camps whose atrocities resemble those portrayed should be arrested and charged before court. This is also one sure way of keeping at bay others who may want to follow suit.

Moreover, the government should withstand the challenge of rising insecurity within the nation by restructuring its security chain within the nation by installing new service chiefs and setting apart substantial budgets within its budgetary cycle to adequately fortify its military to take its full wrath on any criminal element within its environs. The security of lives and property within the nation is one factor that opens doors for effective safeguarding of rights enjoyed by migrants within Nigeria.

4.1 Integration of Immigrant Minors into the society

Integration of immigrant children among Nigerians is a rather diverse and intricate procedure involving diverse aspects such as legislation and economy. Immigrant children and youths may come to Nigeria without clearly fitting into any particular status, thereby directly affecting their social establishment in terms of access to social facilities such as education and health care or services. Guidelines and policies conducive to social establishment and acceptance constitute significant foundations toward making immigrant children and youths integral social components instead of social strangers. According to Abdullah, successful integration is all about social establishment of identity and accessibility to social identifiers such as education, employment, habitation, and social services or health care indicative of effective social policies.⁷³ Initiatives initiated by social actors at the community level also have significant influence on the social integration procedure among others via promotion of social identifiers like culture among others to establish feelings of social belonging social identity among others.⁷⁴

Language acquisition is another central element of integration and acts as both signifier and implement of successful integration. Immigrant children are often expected to learn English the Language of Instruction and business in Nigeria or become proficient rather than just being familiar with their home languages. While being multinational is advantageous, this challenge presented by initial lack of English proficiency may take social and academic exclusion and underachievement forms for immigrant children. Multinational education

⁷³ *ibid.*

⁷⁴ R. Inegbedion, *Migration and Youth in Nigeria. UNESCO Chair* (Yasar University, 2022) <https://unescochair.yasar.edu.tr/wp-content/uploads/2022/02/Rachael_Feb2022.pdf> accessed 18th November, 2025.

initiatives off-set this challenge by equipping immigrant children to socialize and engage meaningfully within class and social circles too. Codjoe⁷⁵ and James⁷⁶ immigrant children are already struggling against numerous negative impacts associated with lack of meaningfully linked learning environments between immigrant and mainstream classes, but primary significant challenge comes from micro-aggressions and lack of association.

Cultural adaptation/identity negotiation is one of the most significant themes for immigrant children as they acclimatize to Nigerian culture. In most cases, these children experience conflicting values between their origin cultures and their new surroundings and are thus subject to processes outlined by acculturation theory, which include assimilation, integration, separation, and marginalization.⁷⁷ For most children, having links to their origin cultures while adhering to Nigerian social norms promotes adaptability to their new environments and supports emotional and social adjustment to their new life situations. Programs for immigrant children to celebrate their cultures through events, clubs, and religious organizations enhance their identity and self-esteem while also teaching acceptance among host population communities.⁷⁸

Involvement of parents is still one of the most essential components for successful inclusion of minors. Hisanja Ngarawa argues that successful school collaboration and continuous collaboration between parents and school administrators have been linked to better adjustment and achievement among children while avoiding social exclusion.⁷⁹ There is divergent involvement among Nigerian immigrant families both within and beyond Nigeria on how to integrate children into their new surroundings. Some of them use hybrid parenting strategies to integrate children by mixing strict parenting values from their ancestral culture and the rights- based disciplinary approach practiced among Nigerians.⁸⁰

⁷⁵ H Codjoe, 'Effective partnerships between parents and the school and parental involvement in children's education'. (Sanni-Anibire, H. 2022).
<<https://mspace.lib.umanitoba.ca/bitstreams/95cf5db1-5e00-411b-80a7-46acc146398d/download>> accessed 18th November, 2025.

⁷⁶ C James, *Psychosocial challenges of immigrant children and youth*. (In Sanni-Anibire, H, 2022).

⁷⁷ C Onwujuba, L Marks, & O Nesteruk, 'Reflections of Educated Nigerian Immigrants on their Integration. Family Science Association' (2015). <<https://www.familyscienceassociation.org/wp-content/uploads/2021/07/2015-20-2-Why-we-do-what-we-do-reflections-of-educated-niger.pdf>> accessed 18th November, 2025.

⁷⁸ C James, (n. 76).

⁷⁹ C Onwujuba, L Marks, & O Nesteruk, (n. 77).

⁸⁰ *ibid*.

Despite these efforts at integration, challenges still exist in this endeavour, especially among unaccompanied or irregular children. These children experience difficulties associated with their experience of migration, such as culture shock, displacement-related trauma, and lack of access to basic resources because of state procedural difficulties. Vulnerability to marginalization at school, enrolment in low-stream classes, and danger of school dropout or criminal justice system involvement have been shown to result from inadequate care for this group.⁸¹

Community-based integration initiatives have shown success at making these transition processes smoother by ensuring tolerance and interaction between cultures. Education against racism, cultural activities, and intervention strategies for psychosocial support improve feelings of security and facilitate the management of complex social environments. The role of nongovernmental agencies, faith-based organizations, and government support should not be underestimated because they influence effective integration pathways while filling any remaining gaps for policy enforcement.⁸²

4.2 Grassroot Movements and Community Engagement

Grassroot initiatives and engagement efforts have also been instrumental in addressing the concerns and integrating immigrant children in Nigeria. Local group efforts by leaders and religious or parent bodies form key components for drawing attention to the need for protection and integrating these children into society at large.⁸³ Grassroot efforts directly address local requirements and are also much more flexible than government efforts alone to reach out to such children through local solutions like safe learning environments, legal assistance, and emotional stability. The formation of Nigerian Child Protection Networks initiated by UNICEF is one such approach to engage and respond to committed individuals to take action against children who may have become at-risk because of displacement or immigrant status.⁸⁴ Grassroot approaches to ensuring immigrant minors' inclusivity may involve intercultural interactions and exchange programs centred on empowerment and arts or sports activities designed to promote group identity and social cohesion among

⁸¹ H Giroux, 'Youth in the Age of Consumer Capitalism'. (Sanni-Anibire, H. 2022).

⁸² C James, (n. 76).

⁸³ UNESCO Chair. 'Migration and Youth in Nigeria' (2022). <https://unescochair.yasar.edu.tr/wp-content/uploads/2022/02/Rachael_Feb2022.pdf> accessed 18th November, 2025.

⁸⁴ Child Rights Manual Nigeria. 'The Child Rights Manual Nigeria. (2013) <https://barhumanrights.org.uk/wp-content/uploads/2013/12/The-Child-Rights-Manual_Nigeria-29.10.13.pdf> accessed 18th November, 2025.

community members.⁸⁵ Engaging immigrant and local youths through football competitions, artistic exhibitions, and shared activities such as environmental protection campaigns may bring them closer and give them a sense of belonging beyond their ethnic or immigrant status. This exposure is vital for combating prejudices and making way for conflict resolution to facilitate communal peace- building and reconciliation efforts, especially where past conflicts associated with ethnic or xenophobic tensions run deep within any community's social fabric.⁸⁶ Capacity-building among women and youths to become change-agents for peace and ensuring they have skills for managing conflicts through dialogue may also promote communal social cohesion and empower immigrant minors within any social setting.

Another area of community mobilization is in humanitarian and social action campaigns conducted among vulnerable immigrant children where community governance is also practiced filling any gaps created by established systems. One such campaign is Majigi, which implemented community mobilization to improve adoptions of health and social welfare programs via conversation and key opinion leaders among the community.⁸⁷ This is particularly effective in areas where government messaging or capabilities are poor and trust between social actors and government is limited.

Recent examples of youth movements, such as #EndSARS protests, bring to fore the growing complexity of civic engagement efforts being witnessed in Nigeria today. The beyond-border initiatives harness digital campaigns, lobbying through supportive policies designed to highlight the power of combined efforts demonstrated by these initiatives to challenge established boundaries around civic protests and bring actual change to politics.⁸⁸ Young activists are employing technology to mobilize efforts and give voice to excluded segments like immigrant children for a sustainable future.

Grassroot organizations also strive to create access for immigrant families to social and economic capital so as to tap into ethnic networks for employment, shelter, and economic

⁸⁵ ARC Journals. 'Strategies Employed by Grassroots Organizations in Fostering Community Cohesion and Peace'. (2020) <<https://www.arcjournals.org/pdfs/ijhsse/v8-i4/20.pdf>> accessed 18th November, 2025.

⁸⁶ *ibid.*

⁸⁷ SG Nasiru, 'The impact of a grass roots mobilization campaign' (Majigi). (2012). <<https://pmc.ncbi.nlm.nih.gov/articles/PMC4001576/>> accessed 18th November, 2025.

⁸⁸ TheCable. 'How youth movements are redefining civic engagement in Africa'. (2025). <<https://www.thecable.ng/from-protests-to-policy-how-youth-movements-are-redefining-civic-engagement-in-africa/>> accessed 18th November, 2025.

assistance.⁸⁹ This way of capital transfer makes sure that children are linked to larger support systems because it enhances their opportunities for education and economic integration while also maintaining community bonds against isolation and exclusion.

With their special skills for innovation and quick response to situations, grass-root initiatives will always remain central to Nigeria's strategy for accommodating immigrant children. This is because grass-root initiatives leverage intercultural dialogue, participatory arts, conflict resolution skills, parental engagement, online campaigns, and humanitarian mobilization to create opportunities for social justice and civic inclusiveness.

5.0 Conclusion

The study finds that immigrant minors in Nigeria experience layered vulnerabilities that are social, economic, legal, psychological, cultural, and educational in nature, and that these are not isolated challenges but mutually reinforcing realities that shape their daily lives and future prospects. The study finds further that, despite Nigeria's ratification of key international instruments and the existence of the Child Rights Act, implementation gaps driven by weak political will, entrenched social norms, and institutional deficiencies mean that these legal guarantees rarely translate into lived protection for immigrant children. It is part of the findings in this study that irregular migration, conflict-induced displacement, and socioeconomic exclusion expose minors to exploitation, gender-based violence, arbitrary detention, and family separation, aggravating both their material deprivation and psychosocial distress.

Responding to the central research question how Nigeria can better protect and integrate immigrant minors the study finds that protection cannot be achieved through legal reforms alone but must be anchored in integrated responses that confront socioeconomic drivers, educational exclusion, psychological trauma, and cultural dislocation together. The study finds that best practices emerge where community-based initiatives, multilingual and culturally responsive schooling, and mental health and entrepreneurship support are combined, offering practical pathways for resilience and long-term inclusion. In doing so, the study answers its research question by showing that effective protection and integration

⁸⁹ Case Western Reserve University, 'Nigerian Immigrants Utilizing Ethnic Affiliation to Create and Transfer Social and Economic Capital'. (2021).
<<https://commons.case.edu/cgi/viewcontent.cgi?article=1318&context=studentworks>> accessed 18th November, 2025.

require not only stronger legal and institutional frameworks but also localized, participatory strategies that recognize immigrant minors as rights-holders and potential agents of change.

The implications of these findings are far-reaching. For government and policymakers, the study underscores that fragmented, security driven or charity-based approaches are insufficient; what is demanded is sustained investment in legal enforcement, institutional capacity, inclusive education, and child sensitive mental health and social protection systems that explicitly include immigrant minors. For frontline institutions such as schools, social services, and justice sector actors, the study shows that their practices language of instruction, disciplinary cultures, documentation demands, and responsiveness to trauma either reproduce exclusion or become gateways to belonging. For grassroots organizations, faith-based groups, and community leaders, the findings emphasize their indispensable role in building trust, mobilizing local resources, challenging discriminatory norms, and providing safe, culturally grounded spaces where immigrant minors can heal, learn, and participate. For international partners, the study signals that support to Nigeria must move beyond narrow border control or anti trafficking frames towards comprehensive child centered migration governance that strengthens national systems and community level innovation.

At a broader societal level, the study finds that how Nigeria treats immigrant minors is a litmus test for its commitment to human rights, social cohesion, and long-term stability. Their exclusion today deepens intergenerational poverty, fuels irregular migration and insecurity, and undermines national development; their protection and inclusion, by contrast, expand the country's human capital, cultural richness, and peacebuilding potential.

Finally, the study recognizes that important questions remain unanswered and thus points to future research directions. There is need for empirical work that captures the voices and lived experiences of immigrant minors themselves across different regions and legal statuses, to complement the doctrinal and literature-based approach adopted here. Further research is also needed on the effectiveness and scalability of specific integration models such as multilingual education, community based mental health and entrepreneurship programs, and local child protection networks in diverse Nigerian contexts. Longitudinal studies tracing immigrant minors' trajectories into adulthood would deepen understanding

of which combinations of legal, educational, psychosocial, and economic interventions most effectively transform early vulnerability into resilience. By illuminating these gaps, the study invites scholars, practitioners, and policymakers to continue building an evidence informed, child centered migration regime in which immigrant minors in Nigeria can not only survive but flourish.

6.0 Recommendations

Despite these overwhelming challenges, many opportunities and strategies exist to bring about change to immigrant minor such as:

Mental Health and Supportive Environments for Immigrant Youth: Immigrant children's psychological adjustment benefits significantly from culturally proficient schools that provide supportive learning environments to foster resilience and reduce feelings of estrangement. Positive peer relationships mitigate mental health risks like depression or anxiety linked to cultural rejection or bullying. Family stress related to immigration can affect children's mental health outcomes differently by age and gender, with faith and cultural roots serving as important coping mechanisms.

Barriers and Community-Based Interventions: Immigrant children face obstacles accessing mental health care due to language barriers, stigma, cost, and legal fears. Community-based interventions such as culturally sensitive counseling, mentorship programs, and after-school activities have shown promise in building resilience and alleviating trauma symptoms. Legal protections exist but enforcement gaps leave immigrant children vulnerable.

Cultural Adaptation Strategies: Successful adaptation involves mutual negotiation of cultural values between parents and children through flexible communication styles. Culturally responsive teaching that acknowledges diverse backgrounds fosters a sense of belonging and academic success among immigrant youth. Peer support plays a crucial role in social integration, while adaptation is recognized as a gradual process involving stress but eventual positive adjustment.

Entrepreneurship Training Integrated with Mental Health Support: Programs integrating culturally adapted mental health interventions within entrepreneurship training for displaced youth have been found acceptable and beneficial despite participation challenges

like transportation or childcare. Such integrated approaches may enhance both economic opportunities and psychological well-being for immigrant youth when tailored to their daily realities.

Multilingual Education and Cultural Integration: Multilingual education programs improve immigrant children's integration by recognizing and celebrating their linguistic diversity, which increases engagement, reduces dropout rates, and fosters a stronger sense of belonging at school. Incorporating multiple languages in instruction helps integrate migrant cultures into the educational environment, supporting social inclusion and academic success.

Technology Innovation in Education: Digital learning tools and mobile platforms expand access to education for immigrant children beyond traditional classrooms, helping overcome infrastructure limitations and supporting adaptive learning. Effective integration of technology enhances language acquisition, collaboration, and cultural adjustment, although disparities in access remain a challenge in some communities.

Investment in Educational Infrastructure: Sustainable improvements in education require significant investment in school facilities, teaching materials, and ongoing staff development. Public-private partnerships, international aid, and community-driven initiatives are crucial to closing resource gaps and expanding opportunities for immigrant children's education.

Community Initiatives for Social Inclusion: Community-based programs that promote cultural tolerance alongside schools create safe social spaces for immigrant children to cope with migration challenges. These initiatives reduce prejudice and increase participation by fostering supportive environments that facilitate social integration.

Coordinated Policy Approaches: A comprehensive strategy involving government action and civil society collaboration is essential to address legal complexities, resource constraints, and social perceptions affecting immigrant education. Coordinated reforms combined with social awareness campaigns can transform challenges into opportunities for broader social development.

EXPROPRIATION OF RIGHTS IN NIGERIA'S OIL AND GAS SECTOR: BALANCING STATE INTERESTS AND INVESTORS PROTECTIONS

Abdulwasi Musah^{*}

Abstract

To say that the oil and gas sector of the Nigerian economy is the toast of many foreign investors is to state the obvious. It is axiomatic that any investor would strive to satisfy himself that his investment is tailored towards profitability and all measures that could threaten the prosperity of such investment are considered before embarking on the business endeavor. Chiefs among dilemma that could come in the way of oil and gas investment are instability in pricing, political instability and regulatory dynamism which at its peak could climax into expropriation of foreign investments by the Nigerian government. Almost all the oil producing countries have had a taste in nationalisation of investments in the oil and gas sector which are almost immediately accompanied with crisis, conflict and bitter exchanges between the investors and the expropriating governments. Admittedly, there could be justifications for expropriation in some cases but experiences have shown that many governments of oil producing countries arbitrarily exercise their powers of expropriation to roguishly inherit the wealth, infrastructure and assets of investing foreigners in their oil sector and unfairly deny such investors the fruits of their labours. In as much as the principle of state sovereignty over their natural resources remains unassailable, this work, found that an exercise of a state's powers to expropriate needs to be done judicially and judiciously. Expropriation may only be resorted to in extreme situations bothering on national interests and even at that, the investors deserve justice, fairness and due process. And, this is the focus of this paper.

keywords: Expropriation, Nationalisation, Investors, Investments, Justice

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1. Introduction

Expropriation of rights in Oil and Gas sector is, fundamentally, the attempt and measures, by oil producing states, to expand the greatest national advantage from the exploitation of national resources found in their domains. This attempt is otherwise known as resources nationalism. Expropriation of rights in the oil sector is rooted in the connection between the Oil Producing States (OPSs) and the International Oil Companies (IOCs).¹ The concept is the fallout of the persistent manipulative strands of the IOCs on the resources of the OPSs which at many instances instigated activisms and agitations against the many shenanigans of the IOCs *vis-a-vis* the resources they exploit. Of course Nigeria had also gone through this experience and it is shown in this work how IOCs took advantage of the country nascent oil and gas sector and paid back the country in a resource-curse manner.

It is important to dwell on the history of oil exploration in Nigeria to fully understand the dimensions of this paper. Oil exploration in Nigeria is dated back to 1903.² However, drilling activities could not start until 1951. The year, 1956 marks a milestone in the history of the sector as oil was discovered in a commercial quantity, that year at Oloibiri, a community in Bayelsa State, Nigeria.³ The discovery was made by Shell-British Petroleum (BP). Shell was the sole concessionaire of the country's oil sector at that time. The commercial quantity discovery effectively brought Nigeria in the ranks of major oil producers in the world because by 1958, it produced 5,100 bpd. After 1960, exploration rights in onshore and offshore areas adjoining the Niger Delta were extended to other foreign companies.⁴

The 1958 first major production heralded the commencement of exportation of Nigeria oil to the global markets. After the Nigerian civil war in 1970, the world witnessed tremendous surge in the prices of oil, hence, the country made a lot of fortunes needed to finance its reformative agenda and the reconstruction of the country after the dilapidating effects of the Biafra war. Effectively, oil became the cornerstone and backbone of Nigeria economy, hence, the need for a regulatory regime and governance structure to manage oil exploration

¹ Femi Asu, "Nigeria: International Oil Companies face new challenges amid oil prices drop" (2024), <https://www.theafricareport.com/361302/nigeria-international-oil-companies-face-new-challenges-amid-oil-prices-drop/> accessed on 1/2/26

² https://en.wikipedia.org/wiki/Petroleum_industry_in_Nigeria accessed on 19/1/26

³ <https://historicalnigeria.com/oloibiri-1956-nigerias-first-commercial-oil-discovery-and-its-consequences/> accessed on 11/2/26

⁴ *ibid*

and production became inevitable. The first idea was to put the control and general administration of the oil sector under the Ministry of Mines and Power.

The oil industry continued to witness growth and its influence on the country economy continued to become evident. The government realized the need for more poignant need to affirm more control over the burgeoning industry and this informed the decision to join the Organization of Petroleum Exporting Countries (OPEC) in 1971,⁵ so as to position it for strategic engagements in global oil markets. The Nigerian National Oil Corporation (NNOC) was established in that same year.⁶

The Ministry of Petroleum Resources was created in 1975 by Nigerian government in view of the economic importance of the oil industry which they felt deserved a standalone from other energy resources and removing the sector from the Ministry of Mines and Power.⁷ The Ministry of Petroleum was charged with responsibilities to overseeing the activities of IOCs. The Ministry took over the control of the oil sector and by the 1970s and 1980s; the country witnessed very important rapid expansion and nationalization during that time.⁸ The government indigenization policies, encapsulated in the Nigerian Enterprises Promotion Decree of 1972 and 1977, sought to increase Nigerian participation in the oil industry. During this period, the Ministry of Petroleum worked closely with the NNOC, which merged with the Ministry Petroleum Inspectorate to form the NNPC in 1977.⁹

The Nigerian Content Development initiative¹⁰ began to take shape at the periods of booms in the oil sector. There was the perception that Nigerians be allowed to partake in the running, ownership and management of the oil sector. This continued until the 2000s when it actually came into fruition. Within the periods of oil boom and even beyond, there were agitations in the oil producing region of the Niger-Delta against issues of environmental impact of oil exploitation in the area. The Ministry of Petroleum was so preoccupied with these issues at this time. There was sharp decline in oil prices and resultant economic decline in the country in the 1990s, the Ministry of Petroleum remained instrumental in guiding Nigeria oil policy. The Ministry role in managing the downstream sector expanded,

⁵ <https://www.opec.org/member-countries.html> accessed on 11/11/26

⁶ Ministry of Petroleum Resources, *Our History, A Comprehensive Overview of the Ministry of Petroleum Resources, Nigeria*, <https://petroleumresources.gov.ng/our-history/> accessed on 11/10/25

⁷ <https://allafrica.com/stories/201103040661.html> accessed on 2/1/26

⁸ ibid

⁹ ibid

¹⁰ <https://ncdmb.gov.ng/> accessed on 19/1/26

with a focus on ensuring petroleum product availability through government owned refineries.¹¹

The passage of the Petroleum Industry Act (PIA)¹² in 2021 brought about transformation in the history of the country oil sector development. The PIA introduced sweeping reforms to Nigeria oil and gas industry. The PIA restructured key institutions in the oil sector, leading to the unbundling of the NNPC into a commercial entity, NNPC Limited, which would operate more independently from government interference. This reform created a new regulatory framework for the upstream, midstream, and downstream sectors. The role of the Ministry evolved to focus more on policy formulation and oversight, ensuring that regulatory bodies such as the Nigerian Upstream Petroleum Regulatory Commission (NUPRC)¹³ and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)¹⁴ effectively manage the industry. In recent years, the Ministry has also intensified efforts to promote Nigeria gas sector as a critical part of the country energy transition strategy. Initiatives such as the National Gas Expansion Programme (NGEP)¹⁵ and the Decade of Gas (2021-2030)¹⁶ have been launched to harness gas as Nigeria referred transition fuel in the global shift towards cleaner energy sources.

Nigerian oil and gas industry has undergone series of experience, from the traditional concession era to the modern regime of license and leases under the Petroleum Industry Act, 2021. Just like the stories of other petroleum producing countries, the experiences of colonialism and neocolonialism has intolerably necessitated situations of expropriation and nationalisation in the sector. Expropriation of foreign investments is a serious problem that calls for a balance between the sovereign rights of the state as guaranteed by the United Nation Resolutions and other legislation and the protection of investor interests. Legal frameworks in Nigeria such as the National Investments Promotion Council Act (NIPC), 1996,¹⁷ Investments and Securities Act (ISA),¹⁸ and Bilateral Investment Treaties (BITs),

¹¹ibid

¹² <https://pia.gov.ng/petroleum-industry-act/> accessed on 20/1/26

¹³ <https://www.nuprc.gov.ng/> accessed on 11/11/25

¹⁴ <https://www.nmdpra.gov.ng/> accessed on 11/9/25

¹⁵ Central Bank of Nigeria, "CBN UPDATES" (2020) ISSN No: 2695-2394 Vol. 2 No. 9 September 2020, [https://www.cbn.gov.ng/out/2021/ccd/cbn%20update%20\(september%202020\).pdf](https://www.cbn.gov.ng/out/2021/ccd/cbn%20update%20(september%202020).pdf). Accessed on 19/12/25

¹⁶ <https://decadeofgas.com.ng/about-decade-of-gas> accessed on 19/12/25

¹⁷ <https://investmentpolicy.unctad.org/investment-laws/laws/234/nigeria-nigerian-investment-promotion-commission-act> accessed on 10/10/25

¹⁸ https://sec.gov.ng/documents/1319/Investments_and_Securities_Act_2025_x9rSXtI.pdf accessed on 14/10/25

provide adequate safeguards and protections for foreign investors by making provisions for adequate compensation for them and legal redress in cases of expropriation. These protections allay possible fears being nursed by investors while contemplating investing in Nigeria and more importantly, when investors confidence is sustained the country witnesses economic growth and development.

2. Understanding Expropriation of Interests in Oil and Gas Sector

Expropriation of interests in the oil and gas industry occurs when authorities of an oil producing country legally takes over the investments of IOCs that have come to invest in the country oil and gas sector. Another word for expropriation is ‘nationalisation’. Under expropriation, the investment property of the IOCs is compulsorily taken over by the state so that such investments thereafter become that of the oil producing host country. Under a democratic structure, the processes for expropriation are governed by the law, while Decrees are unilaterally imposed by a military government to expropriate. In the case of *Starrett Housing Corp v. Iran*,¹⁹ the Court held to the effect *that* expropriation may take various forms; it happens when the State takes over mineral sites and it can also occur when government takes over the property of the IOCs in the form of nationalization. The decision of the court here underscores the fact that expropriation of investments in the oil and gas sector may not be limited to foreign investments alone but may also happen against the investments of citizens of host country.

There is no doubt in the fact that a state has the powers to deal with all manners of issues affecting it and its citizenry. In exercising its powers over the sector, government actions and its dealings with IOCs may amount to a wholesome expropriation or what is termed an indirect form of expropriation. Regulatory powers of a host country over the IOCs may take the form of wholesome expropriation and it may be a partial application of nationalization agenda of the host country. The Courts have, over time streamlined factors that show the dichotomy in a host government actions amounting to wholesome expropriation of rights and that which are indirect forms of expropriation. These factors are

¹⁹ <https://jusmundi.com/en/document/decision/en-starrett-housing-corporation-starrett-systems-inc-and-others-v-the-government-of-the-islamic-republic-of-iran-bank-markazi-iran-and-others-final-award-award-no-314-24-1-friday-14th-august-1987> accessed on 1/2/26

termed the sole effects doctrine²⁰ The Courts have consistently opined that it is the substantive effect of an act which makes it expropriation and not its form. In this case, one must look at the general impacts of the government's actions on the IOCs. If the host government actions seriously deprive the investors of substantial value of their investments, to the extent that such actions resulted in loss of control and values, it is expropriation. However, where the regulation of a host country does not substantially wrestle the controlling powers of the IOCs, but only imposes some measures of control, that would be an indirect form of expropriation.

Indirect expropriation could be said to have taken place when authorities of a host country imposes taxation measures on IOCs. In the *UK: Occidental Exploration and Petroleum Co v The Republic of Ecuador*²¹. Occidental brought a claim for breach of the Ecuador/US BIT, and EnCana, a company controlled by Canadian nationals who had subsidiaries investing in the Ecuadorian oil sector, brought a claim for breach of the Ecuador/Canada BIT.²² The Tribunal ruled that areas of state regulation may have a negative impact on the oil and gas sector thus giving rise to indirect expropriation. The change in VAT laws did not render EnCana activities so marginal as effectively to deprive it of their character as its investments. Similarly there was no deprivation of Occidental's use or reasonably expected economic benefits of its investment. Thus, although in both cases it was recognised that taxation measures in principle could amount to indirect expropriation, no expropriation was found to have occurred in fact.²³

Indirect expropriation was also said to have taken place where the host government deployed the use of force in foisting its Nationals as Directors and Managers of IOCs. This was the situation at the Iran during its 1979 Revolutionary struggles.²⁴ Many Tribunals by the Iran/United States Claims Tribunal found that exercise of such regulatory measures by Iran was indirect expropriation as the exercise of the state powers interferes with

²⁰ George Joffé, Paul Stevens, Tony George, Jonathan Lux, and Carol Searle, "Expropriation of oil and gas investments: Historical, legal and economic perspectives in a new age of resource nationalism", (2009), *Journal of World Energy Law & Business*, 2009, Vol. 2, No. 1.

²¹ [2004] London Court of International Arbitration Award 1 July 2004 (Occidental).

²² See *UK: EnCana Corp v Republic of Ecuador* [2006] London Court of International Arbitration Award 3 February 2006 (EnCana) para 177

²³ George Joffé, Paul Stevens, Tony George, Jonathan Lux, and Carol Searle, "Expropriation of oil and gas investments: Historical, legal and economic perspectives in a new age of resource nationalism", (2009), *Journal of World Energy Law & Business*, 2009, Vol. 2, No. 1.

²⁴ *Biloune and Marine Drive Complex Ltd v Ghana Investments Centre* [1989] Award 27 October 1989, 95 ILR 183, 209 (Biloune).

managerial control or ownership rights. Where a host state employs coercive measures, such as threats of arrest of senior management of the investor for alleged under-payment of tax or the institution of criminal proceedings for alleged breaches in regulatory spheres, such actions, when combined with other facts, may be used to support a creeping expropriation claim if they contribute to the destruction of the value of an investment.²⁵

Expropriation process in Nigeria's Oil and Gas Sector typically starts with a procedure whereby the government issues a notice of intent to affected parties (investors) and communicates the government intention to expropriate the investors investments and properties. This notice of intent will then be followed by a negotiation between the government and the affected investor. At this stage, compensation payable to the investor by the government is discussed and other issues necessary for discussion are sorted out at this stage. After the negotiation stage, the government then pays the agreed compensation or the market value of the investment set to be expropriated. If the scheme of negotiation fails or there are knotty issues yet to be agreed on, the investor seeks redress at a competent court with jurisdiction or arbitration in terms of the contract.

Just as Nigeria, in exercise of its right of sovereignty over mineral resources in the country, has powers to expropriate, foreign investors also have protections under the Bilateral Investment Treaties.²⁶ Nigeria has many bilateral agreements with several countries across the world. These bilateral agreements have provisions protecting investors against expropriation. The International Centre for Settlement of Investment Disputes (ICSID) is also an avenue providing arbitration mechanisms in situations where disputes arise from expropriation. The Nigerian Investment Promotion Commission (NIPC) Act also grants protection for investors against nationalization or expropriation.

Expropriation, as investment threatening as it may seem, becomes a necessary tool for national growth and stability in some situations. The government can expropriate rights for public purposes, such as for national Interest where expropriation is needed to sustain national interest or for public purpose. Overwhelming Tribunal decisions have not deviated

²⁵ George Joffé, Paul Stevens, Tony George, Jonathan Lux, and Carol Searle, "Expropriation of oil and gas investments: Historical, legal and economic perspectives in a new age of resource nationalism", (2009), *Journal of World Energy Law & Business*, 2009, Vol. 2, No. 1.

²⁶ Tareri Avwomakpa, "Impacts of the Petroleum Industry Act 2021 on Land and Mineral Resources Rights of Indigenous Peoples in Nigeria" (2025). *African Journal of Law, Ethics and Education [AJLEE]* Vol 8, No 3 (2025) Website: <https://ajleejournal.com> [ISSN: 2756 - 6870] accessed on 13/2/26

from this age-long stand. Once expropriation is done for national interest or public purpose, tribunals would only insist that adequate compensation must be paid to affected foreign investors. In situations where investors feel that expropriation is maliciously done or that they were not compensated, such investors have access to courts or tribunals for dispute resolution.

There are several key cases whereby expropriation and investors rights have been brought to the fore. In 2007, in *ConocoPhillips v. Venezuela*,²⁷ Venezuela expropriated assets from ConocoPhillips, ExxonMobil, and other foreign oil companies, citing nationalization efforts. This led to lengthy international arbitration cases, with ConocoPhillips winning an \$8.7 billion award and ExxonMobil receiving \$984.5 million compensation. A US court upheld this award in 2022.

In a more recent case of expropriation involving the Venezuela government, *ExxonMobil v. Venezuela*.²⁸ ExxonMobil's oil projects Cerro Negro and La Ceiba were expropriated by the Venezuela regime in 2007. A US court ruled to the effect that Venezuela has an obligation to pay \$984.5 million in compensation.

There are reports that the recent abduction of the Venezuelan President Maduro by the US Trump led administration has an economic undertone connected with the series of expropriation of the US oil giant companies by Venezuela. Hence, the US has imposed sanctions on Venezuela, including restrictions on oil transactions and asset freezes, aiming to pressure the government to address these expropriations. Recently, the US seized Venezuelan oil tankers and plans to sell Venezuelan oil, sparking controversy over international law and rights of sovereignty over mineral resources.

In Nigeria, there are cases where the Courts or Tribunals had also had to intervene in cases of expropriation of oil and gas investments. In *Shell Petroleum N.V. and Shell Nigeria v. Nigeria*²⁹ An active ICSID case regarding disputes over Shell's investment was categorized as a potential expropriation.. Other ongoing expropriation cases in Nigeria are; *Eni/Agip v.*

²⁷ <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/245/conocophillips-v-venezuela> accessed on 3/2/26

²⁸ <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/253/mobil-and-others-v-venezuela> accessed on 3/2/26

²⁹ *Shell v. Nigeria (II) Shell Petroleum N.V. and the Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria (II) (ICSID Case No. ARB/21/7)* <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1142/shell-v-nigeria-ii-> accessed on 11/1/26

Nigeria.³⁰ a case involving Eni International and Nigerian Agip Exploration, highlighting, alongside Shell, ongoing tension regarding oil investment stability as well as *KNOC Nigeria*³¹ where Korea National Oil Corporation, along with Nigerian West and East Oil Companies, initiated arbitration, marking one of the latest disputes.

3. Expropriation Of Interest in Oil and Gas Sector under Nigerian Laws

Expropriation of rights in oil and gas investment is an inevitable political tool retained by the Nigerian government to assert its proprietary rights over the mineral resources found anywhere within the length and breadth of the federal republic of Nigeria. The powers are not without basis or justification; they are a cumulative of international and national authorities supported by the United Nations as well as the Constitution of the Federal Republic of Nigeria as well as other local legislation. There are various resolutions of multilateral organizations such as the United Nation, African Union, Organization of Petroleum Exporting Countries (OPEC),³² etc that lay credence to the right of every Nation to its natural resources or resources found within its territories. The United Nations General Assembly Resolution No. 626 (VII),³³ which was adopted in 1952, states with respect to oil mineral resources that:

*the right of people freely to use and exploit their natural resources is
inherent in their sovereignty.*

Further to that, the United Nations in 1962, at its General Assembly, adopted Resolution 1803 (XVII) (Permanent Sovereignty over Natural Resources), which vests in each country, the right to permanent sovereignty over their natural resources. The said Resolution 1803 provides further that the resources of each country must be deployed for the use, benefits and interests of its citizens and general development of the country.

³⁰ <https://jsumundi.com/en/document/decision/en-eni-international-b-v-eni-oil-holdings-b-v-and-nigerian-agip-exploration-limited-v-federal-republic-of-nigeria-order-of-the-united-states-district-court-for-the-district-of-delaware-thursday-15th-october-2020> accessed on 19/1/26

³¹ *KNOC v. Nigeria Korea National Oil Corporation, KNOC Nigerian West Oil Company Limited, and KNOC Nigerian East Oil Company Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/23/19)

³² OPEC for instance in its Resolution XVI entitled, 'Declaratory Statement of Petroleum Policy in Member Countries,' recommended that members should take active participation in and control over the oil and gas operations in their countries. This Resolution was obviously targeted at taking over the powers to influence the oil market from multinational oil giants such as Shell BP, Texaco, etc.

³³ <https://digitallibrary.un.org/record/211441?ln=en&v=pdf> accessed on 3/2/26

And, interestingly, more recently, the United Nations, through its General Assembly, adopted Resolution No. 3281 (XXIX). Article 2 of this Resolution provides as follows:

very state has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over its wealth, natural resources and economic activities.

Further to these resolutions, the Nigerian government gave a constitutional backing to the right of Nigerian authorities to permanent sovereignty over mineral resources in Nigeria. Section 44 (3) of the Nigerian 1999 Constitution provides that:³⁴

the entire property in and control of all minerals, mineral oils, and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zones of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

This constitutional provision justifies the government ownership and extent of control over mineral resources including the oil and gas sector of the economy.³⁵ In the absence of this, there would be unhealthy competition and dangerous claims among the competing component states which could end up derailing the very fabric of cohesion needed to sustain our different cultural values; justifiable and unjustifiable claims over lands where resources are domiciled would characterize our national affairs and ultimately secessionists would see more reasons to advance their cause(s).

Contrary to Yemi Oke contention that the principle of permanent sovereignty over natural resources is an attempt to deprive the resource bearing communities their means of livelihood,³⁶ what ought to be advocated for instead, is adequate compensation regimes for

³⁴ 1999 Constitution of the Federal Republic of Nigeria (as amended)

³⁵ Tareri Avwomakpa, "Impacts of the Petroleum Industry Act 2021 on Land and Mineral Resources Rights of Indigenous Peoples in Nigeria" (2025) *African Journal of Law, Ethics and Education [AJLEE]* Vol 8, No 3 (2025). Website: <https://ajleejournal.com> [ISSN: 2756 - 6870] 146

³⁶ Yemi Oke, "Nigerian Energy Resources Law and Practices: Oil and Gas Law (Practice, Cases & Theories)" (2017) (Princeton & Associates Publishing Co. Ltd, 2019)424; U. Udok & E.B. Akpan, 'Gas Flaring in

resources bearing communities amidst other life touching initiatives which could better the lives of the people and make them truly enjoy the benefits of natural endowments in their domains. The derivative principles in the Nigerian resources allocation regime donating thirteen percent derivative funds to resources bearing communities and other innovative measures introduced under the Petroleum Industry Act, 2021 are steps in the right direction to achieving this.

The United Nation Resolutions which in unmistakable terms clearly echoes the rights of sovereignty of Nations over mineral resources is the basis for national rights of ownership as contained in section 44 (3) of Nigerian 1999 constitution. And, these represent the *sine-qua-non* and basis for expropriation of investments in the oil sector. However, more relevant legislation are also in agreement with this and as a matter of fact, they are unequivocal on the unhinged ownership right of the federal government of Nigeria over the mineral resources in Nigeria and further restate the government powers to expropriation.

The Land Use Act of 1978, for instance, in its section 1, vests all land in a state in the Governor of that state while sections 28 and 29 give powers to the Governor of a state to revoke rights of occupancy for superseding public interest, which may be for exclusive government use, mining or infrastructure development. Compensation for the value of unexhausted improvements is what the Act imposes to be paid on the part of the government. It is important to note however that even on the question of compensation for a revoked land, Section 47 ousts the jurisdiction of the court into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under the Act.

The Nigerian Minerals and Mining Act, 2007 at section 1 (1-3) provides that the entire property in control of 'all Mineral Resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and water' courses throughout Nigeria, any area covered: by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria. At sub-section (2) it states that all lands in which minerals have been found in

Nigeria: Problems and Prospects" (2017) (Global Journal of Politics and Law Research, European Centre for Research, Training and Development, U.K) March, 2017. p 20.

commercial: quantities shall, from the commencement of this Act be acquired by the government of the federation in accordance with the Act.

The Petroleum Industry Act, 2021 is the governing law regulating the Nigerian oil and gas industry. In an unmistakable term, the Act at Section 1, vests ownership and control of petroleum on the Nigerian government thus:

the property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested in the Government of the Federation of Nigeria.

The Act appreciates the necessity for concessions in the management of the industry, hence, it provides for different types of leases and licenses requisite for the smooth operation of the oil and gas industry. There is no doubt; every stage of oil production requires some expertise which to a very reasonable extent requires the expertise of IOCs and major oil companies to run. The Act vests the Minister of Petroleum grant such licenses on behalf of the country to able, capable and competent oil companies. In specific, under sections 211, 310 and 317 of the Petroleum Industry Act, 2021, the Minister is empowered to grant licenses for petroleum exploration, petroleum prospecting, and petroleum mining.

To underscore the fact that he who makes may unmake, The Act streamlines the processes for revocation of any such licenses hitherto issued by the Minister to any oil company. The Act provides that upon receipt of the written recommendation of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), for revocation, the Minister may revoke a petroleum prospecting license or petroleum mining lease, where the applicable licensee or lessee; (a) fails to conduct petroleum operations in accordance with good international petroleum industry practices, the provisions of this Act and any other relevant legislation; (b) interrupts production for a period of over 180 consecutive days without justification or as provided for in the applicable license, lease or approved field development plan, provided that an event of force majeure shall be an acceptable justification for interruption; (c) fails to fulfill the terms and conditions of the applicable license or lease or the approved field development plan; (d) fails to pay to Government, as they become due, rents,

royalties, taxes or other payments or production shares under this Act; (e) fails to furnish any reports or data on operations as required by law after having been advised in writing by the Commission of such failure; (f) assigns, novates or otherwise transfers any interest in the applicable license or lease other than in accordance with section 95 of this Act; (g) has obtained an interest, in the applicable license or lease based on false representation or contrary to corrupt practices and money laundering laws; (h) is declared by a court of competent jurisdiction to be insolvent, bankrupt or is liquidated, in each case except as part of a solvent plan or scheme of re organisation, amalgamation or arrangement;³⁷

The attitudes of Nigerian court to cases of expropriation has relatively been that of uncertainty; while the courts are constitutionally tasked with upholding legal protections for investors, including safeguards against unlawful expropriation, concerns persist regarding the consistency and fairness of judicial decisions in expropriation cases.³⁸ In *Interocean Oil v. Nigeria*,³⁹ the arbitral tribunal alluded that the claimants ought to have exhausted available domestic remedies by appealing the Federal High Court decision before a judicial expropriation could be considered to have taken place.⁴⁰

Nigerian Courts have always insisted that terms hitherto agreed to by parties must always be adhered to even during expropriation. In *Federal Government of Nigeria V. Zebra Energy Limited*,⁴¹ Zebra Energy applied for the allocation of an Oil Prospecting License (OPL) subject to certain conditions, including payment of a signature bonus and reserve value. Zebra Energy failed to pay the signature bonus within the stipulated period but sought an extension of the timeframe for payment of the signature bonus, which was granted by the appellants. However, before the extension period expired, the allocation of the OPL to Zebra Energy was withdrawn by the Ministry of Petroleum Resources in

³⁷ section 96 (1) of the Petroleum Industry Act

³⁸ AO2LAW, “From Seizure to Safeguards: The Legal Landscape of Expropriation of Oil & Gas Investments in Nigeria” (2025), <https://ao2law.com/from-seizure-to-safeguards-the-legal-landscape-of-expropriation-of-oil-gas-investments-in-nigeria/>

³⁹ Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria, ICSID Case No. ARB/13/20

⁴⁰ Viola Echebima, ‘ICSID tribunal dismisses claims of Interocean Oil Development Company and Interocean Oil Exploration Company against Nigeria while upholding its jurisdiction to hear the claims solely based on Nigeria’s domestic investment statute’ (Investment Treaty News, 19 December 2020) < ICSID tribunal dismisses claims of Interocean Oil Development Company and Interocean Oil Exploration Company against Nigeria while upholding its jurisdiction to hear the claims solely based on Nigeria’s domestic investment statute – Investment Treaty News> accessed 2 February 2025

⁴¹ Federal Government of Nigeria and 6 others V Zebra Energy Limited (Sc 268/2001) [2002] Ngsc 18 (13 December 2002)

accordance with the recommendation of the panel established by the Nigerian Government⁴² to review all contracts, licenses and appointments made by the government. Dissatisfied with the revocation of its interest in the asset, Zebra Energy approached the courts for the determination of the propriety or otherwise of the revocation of its interest in the asset. Both the trial court and the appellate court ruled in favour of Zebra Energy. When the Federal Government of Nigeria appealed to the Supreme Court, the Supreme Court held that the government was bound by its agreement with the company and that a valid contract existed between the parties and found that the revocation of the allocation of the OPL was unlawful. The apex court made the government bound by the terms of their contract with the oil company.

In the same vein, in *NNPC v. Famfa Oil Ltd*⁴³, the Federal Government appealed to the Supreme Court challenging that the government had a right to participate in OML 127, the Supreme Court reaffirmed the role of the judiciary in protecting contractual agreements. The Supreme Court found that where the government reserves a right to participate in an oil and gas venture, it is like any other right and is by no means absolute but subject to limitations imposed by law. Specifically, the right of the government is burdened by its duty to follow the relevant law and the constitution. The Court ruled that the attempt of the government to acquire a 50% interest in OML 127 without adhering to the provisions of Paragraph 35 of the First Schedule to the Petroleum Act and Section 44(1) of the CFRN was unconstitutional, emphasizing that government actions cannot infringe on contractual and constitutional rights without due legal process.

What these cases have shown is that under the Nigerian legal system, investors have a better chance of protection as Nigerian courts have not hesitated ruling against the Nigerian government where the government derogates from the terms of agreements they freely entered into with foreign investors.

4. Protecting Investors Interests

It has to be admitted that every foreign investors weigh their options before deciding on investments abroad. The fear of expropriation, more importantly is the bane of so many

⁴² The panel, chaired by Dr. Christopher Kolado, was established by the Federal Government of Nigeria to review all contracts, licenses, and appointments made between January 1 and May 28, 1999.

⁴³ (2012) 17 NWLR (Pt. 1328) 148 at 185

foreign investment drives by the government. An investor who wishes to invest abroad would want to satisfy himself that his investment is not going down the drain and that the destination country provides adequate measures of guarantee and protection for his investments. Nigeria, with this objective in mind, has established a robust legal framework to protect overseas investments and lessen the risks associated with expropriation.

a. Statutory Protection

The best place to commence discussion on this is the provisions of the Constitution, Federal Republic of Nigeria, 1999 where it provides in section 29 that upon revocation of land, compensation for the value of unexhausted improvements to the landowner who of course includes an investor. This is an obligation imposed to be paid on the part of the government. Section 44 of the Constitution also provides protection against the compulsory acquisition of property without prompt compensation.

Through the Nigerian Investment Promotion Commission (NIPC) Act, 1995 which is the keystone of investment protection in Nigeria, adequate measures are being put in place to assuage the fear of investors. The Act unambiguously forbids the expropriation or nationalization of foreign investments except for cases where it is in the national interest or for a public purpose. What more, according to the Act, even when expropriation or nationalization happen, the investors are guaranteed adequate compensations as a mitigation for expected losses. In the wordings of section 25 of the Act:

Subject to subsections (2) and (3) of this section- (a) No enterprise shall be nationalized or expropriated by any Government of the Federation; and;

(b) No person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person.

(2) There shall be no acquisition of an enterprise to which this Act applies by the Federal Government, unless the acquisition is in the national interest or for a public purpose and under a law which makes provision for-

(a) Payment of fair and adequate compensation; and

(b) A right of access to the courts for the determination of the investor's interest or right and the amount of compensation to which he is entitled.

(3) Any compensation payable under this section shall be paid without undue delay, and authorisation for its repatriation in convertible currency shall where applicable, be issued.

The Investment and Securities Act (ISA) is another legislation protecting foreign investments and more importantly allaying the fears over possible expropriation or nationalisation of foreign investments in Nigeria. This Act empowers the Securities and Exchange Commission (SEC) to regulate investments and securities, ensuring that foreign investments are protected and that any expropriation is conducted lawfully and transparently

b. Bilateral Investment Treaties (BITs)

Apart from the constitution and various extant legislation that protect the economic interests of the investors in the oil and gas sector, there are also numerous bilateral investment treaties to which Nigeria is a party to and which protect foreign investors against wrongful expropriation by host states. These treaties are calculated to lessen the risks connected with foreign direct investment, providing a safe, steady framework for international capital flow.

These BITs usually require that any expropriation must not be discriminatory and targeting a particular investor. They also re-echo the need for expropriation to be for a public purpose, sanctioned by law, and that there must be prompt, adequate, and effective compensation to the expropriated investments.

Generally, BITs are structured to cover both indirect expropriation and direct expropriation or nationalisation in as much as investors are being denied or deprived of the economic value or control of their investment. A common feature of the BITs is that they set a condition signaling that for an expropriation to be considered lawful, such expropriation must satisfy the following four conditions: They must be done in the public interests; they must not be discriminatorily; they must follow due process and adequate compensation must be paid to the investors of the expropriated investments.

Typical of all BITs, payments of compensation must not be delayed; compensation has to be paid promptly, adequately and effectively. The measure of compensation standard is the fair market value in a convertible currency otherwise known as the Hull formula.

BITs also have special provisions ousting the jurisdiction of local courts in disputes connected with expropriation under the Investor-State Dispute Settlement (ISDS). This allows investors to sidestep the local courts and bring arbitration claims against the host state, frequently through institutions like ICSID, to enforce these protections.

Examples of BITs with strict anti-expropriation clauses include the **U.S.-Albania BIT (1994)** under which it was provided that expropriation can only occur for a public purpose, under due process, and with adequate compensation paid the investors. The **Brazil-UAE Cooperation and Facilitation Investment Agreement (2019)** under which its Article 7 provides specific protections for investors regarding expropriation. Also, the **Brazil-India Investment Cooperation and Facilitation Agreement (2020)** has its Article 6.3 limiting the ability of the state to expropriate investments. The **Mexico–Netherlands BIT** is often used in tandem with OECD benchmarks to define and protect against indirect expropriation. Lastly, the **China's BITs with African States (e.g., Egypt, Nigeria)** do include standard protections against unlawful, non-compensated expropriation.

c. The International Centre for the Settlement of Investment Disputes (ICSID)

This centre is foremost on matters connected with settlement of investors and state investment disputes. It is an institution with around one hundred and fifty three (153) member states. A country opts to join the ICSID by ratifying the ICSID convention. Once a country becomes a member-state, it automatically enjoys access to ICSID services and must agree to enforce ICSID decisions. States have also agreed to ICSID as a forum for investor-State dispute settlement by law or by contract, or through bilateral and multilateral investment treaties.

The ICSID is the primary global institution for resolving disputes between foreign investors and States, and cases bothering on direct and indirect expropriation are some of the issues the ICSID handles. In cases where actions of the state over a foreign investment amounts to indirect expropriation, such as tax hikes, or imposition of injurious regulations,

the ICSID tribunals determine such and also it intervenes when expropriation is done *malafide* or short of public purpose driven. The ICSID has intervened in such cases overtime, such as in the *Interocean v Nigeria*⁴⁴ and *Feldman v. Mexico*.⁴⁵

d. Right to Compensation

There are plethora of judicial authorities, both under the Nigerian law and internationally to the effect that even though an oil producing country may expropriate rights and interests invested in the sector, investors are also entitled to a fair and adequate compensation in the event of expropriation. There are often uncertainties at what may constitute an adequate compensation, cases are often determined on the basis of merit of each case and circumstances, most especially, putting into consideration the assets and infrastructures of the company to be expropriated. The right to compensation also has constitutional/statutory supports in Nigerian Constitution and other statutes as discussed above.⁴⁶

e. Stabilization Clauses in Production Sharing Contracts

An investing company may protect itself against expropriation by including stabilization clauses in their Oil Production Sharing Contracts. This is necessary to safeguard itself against the risks of expropriation or any regulatory change that could have adverse effect on the company. When there is such stabilization clause, the company are bound by it even when there is any changes in the country legal regime. These clauses protect investors by maintaining agreed-upon terms over a defined period, even if new laws or regulations are introduced.

However, the Act has introduced a limit to the scope of the stabilization clauses by providing that investors are not shielded from the effects of changes in statutes of general application, levies, taxes, or compliance obligations related to environmental, labour, health, and safety laws.⁴⁷ Moreover, they remain subject to new taxes, levies, or duties imposed to implement Nigerian climate change commitments under the United Nations

⁴⁴ ICSID (International Centre for Settlement of Investment Disputes) ARB/13/20 of October 6, 2020

⁴⁵ ICSID (Additional Facility Rules) under Chapter Eleven of NAFTA. **Case Number:** ARB(AF)/99/1. **Date of Award:** December 16, 2002

⁴⁶ See section 44 of the 1999 Constitution, Federal Republic of Nigeria (as amended) and section 25 of the Nigerian Investment Promotion Commission (NIPC) Act, 1995

⁴⁷ section 305 of the PIA

Framework Convention on Climate Change) and related agreements. This is a departure from the broader protections available under the Petroleum Act of 1969.⁴⁸

5. Conclusion

This work has critically looked into the power of an oil producing country to expropriate the asset and investment of foreign investors who invest in the oil and gas sector of the economy in line with existing international law practice and principles. It is submitted that the power to expropriate is within the legitimate powers of a state but exercising the power calls for restraint and caution.

In as much as expropriation remains a tool through which oil producing countries exalt their right over the resources being explored and exploited in their domains, it also poses major risk for investors in Nigeria petroleum sector and it ultimately hampers the country foreign investment drive. As shown above, the law allows Nigerian government to expropriate assets in the oil and gas sector, there are however series of protection for investors in the sector. Investors are entitled to adequate compensation, the right to get protected, in case of expropriation, under international disputes resolution as well as the ICSID and the protections under the stabilization clauses.

There are a lot of cases where a country right to expropriation has led to large scale dispute. In order to lessen the risks associated with expropriation, investors should deploy expertise and engage best hands to assist in thorough due diligence, get the best deals from negotiation and keep an eye on regulatory changes. When these are done, rights of investors can better be protected and through these they can actually get the best out of investments in the Nigerian oil and gas industry.

It is submitted that the powers to expropriate must be exercised in ways and manners that would foster cooperation and amity between foreign investors and the Nigerian government. The ongoing disputes between the American government and President Maduro of Venezuela abduction are not unconnected with prior expropriation activities of

⁴⁸ AO2LAW, “From Seizure to Safeguards: The Legal Landscape of Expropriation of Oil & Gas Investments in Nigeria” (2025), <https://ao2law.com/from-seizure-to-safeguards-the-legal-landscape-of-expropriation-of-oil-gas-investments-in-nigeria/>

American oil companies in the Venezuela. It takes huge risk to invest abroad. To have one multi trillion investments expropriated overnight is very devastating and of course could lead to international conflicts if not properly managed. Hence, expropriation should be done judicially and judiciously putting the interests of the foreign investors into consideration within the framework of adequate consultations.

FOOD LAW AS A TOOL FOR TACKLING MALNUTRITION AND FOOD INSECURITY IN THE NIGERIAN LEGAL REGIME

Abdulmajeed Folorunso Malik *

Abstract

Food insecurity and malnutrition remain pressing challenges in Nigeria, worsened by the intersecting pressures of climate change, internal conflict, and economic volatility. While these issues are typically framed through the lens of agricultural or economic policy, this article adopts a doctrinal approach to examine law as a tool for tackling malnutrition and food security in Nigeria. This article asserts that legal framework constitutes a critical yet underutilized instrument for achieving sustainable development goals. Moving beyond conventional policy analysis, this article critically examines three key legal instruments, the Constitution of the Federal Republic of Nigeria 1999 (as amended), the National Agency for Food and Drug Administration and Control (NAFDAC) Act 2004, and the Federal Competition and Consumer Protection Act (FCCPA) 2018. The research identifies significant regulatory deficiencies, most notably the non-justiciable status of the right to food and the complete absence of legally binding standards for agricultural transportation and post-harvest logistics. It finds that a rights-based legal system is required to meet the biological need of the population. It concludes with concrete recommendations, including a constitutional amendment to render the right to food justiciable and the enactment of a comprehensive National Food Safety and Quality Bill to foster a more accountable, transparent, and resilient food system.

Keywords: Food Law, Malnutrition, Food Insecurity, Right to Food, Justiciability, Land Use Act

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1.0 Introduction

The structure of food acquisition in Nigeria was traditionally centred on local markets and direct interaction between producers and consumers. For many years, the distribution of food was based on local agricultural cycles rather than complex global supply chains. However, the last decade has shown a difficult shift in this system. This change has been caused by high economic volatility, disruptions in supply chains, and an increasing urban population that has lost connection with the sources of its nutrition. Although Nigeria has more than 84 million hectares of arable land, it consistently ranks low in global measures of nutritional stability. This indicates a major gap between the agricultural potential of the country and the actual food available for consumption⁴⁹

The current state of food access in Nigeria is a constant emergency. Recent reports from the Global Hunger Index categorize the situation as serious, with millions of people affected by food inflation and the movement of people due to conflict.⁵⁰ This crisis is found in both rural areas and large cities like Lagos, Kano, Kaduna, Ibadan and Ilorin, where the price of food has grown much faster than wages. While experts often blame low crop yields or the value of the currency, this article argues that food insecurity is primarily a legal and institutional failure.⁵¹ The state has failed to recognize food as a necessary requirement for the exercise of civil and political rights.

Malnutrition in Nigeria has become a dual problem involving both lack of calories and deficiencies in vitamins. Malnutrition is not just about a lack of food quantity, it involves the presence of hidden hunger, where people lack essential micronutrients because there is not enough regulation regarding food fortification.⁵² Public health data shows that even when food is available, it is often not safe or lacks proper nutrients. This reflects a lack of oversight regarding informal food processors.⁵³ The biological safety of food is just as important as how much food is available, but the Nigerian legal system has usually treated

⁴⁹ IO. Smith, *The Land Use Act as an Obstacle to Agricultural Development*, *Lagos State University Law Journal* (2008) (2) 45

⁵⁰ IFPRI, *Global Hunger Index: Nigeria Report* (Washington DC: International Food Policy Research Institute, 2024) 4

⁵¹ MM. Akanbi, 'The Legal Framework for Food Security in Nigeria' *University of Ilorin Law Journal* (2012) (3) 12

⁵² A Ojo, 'Malnutrition in Nigerian Children: The Policy Gap' *Journal of Public Health Policy* (2020) (12) 88

⁵³ B Anaba, 'Post-Harvest Losses and the Law: A Case for Nigerian Farmers' *Food Security Review* (2019) (7) 34

these as different areas. One is seen as a health issue and the other as an agricultural or trade issue.

Internationally, the realization of the right to food has moved from focusing on farm output to using a legal framework based on rights and accountability. In Nigeria, this transition is difficult because of a policy system that is often slowed down by old and disconnected laws. Traditionally, the Nigerian government has treated food insecurity as a logistics problem to be fixed with food aid, fertilizers, or import bans.⁵⁴ These actions are mostly poverty palliative strategies instead of mechanisms to enforce rights. They treat citizens as people waiting for government help rather than individuals with a legal right.⁵⁵

There is a global movement toward food law as a specific field of study that goes beyond simple commerce.⁵⁶ This area of law recognizes that food is a unique item because its regulation directly impacts the right to life. In Nigeria, the shift from seeing food as a product to seeing it as a right is blocked by a constitution that places the right to food in a section that cannot be enforced in court.⁵⁷ This legal category creates a situation where rights exist without any way to enforce them. A citizen who is hungry has no legal standing to take the government to court for failing to provide adequate food as mentioned in the Directive Principles.⁵⁸

The social and economic results of this legal gap are very serious. Small farmers, who grow most of the food in Nigeria, work under land laws that make them feel insecure about their property. This prevents them from making long term investments in the land.⁵⁹ When farmers have to leave their land because of conflict, they have very little legal help to get back their livelihoods.⁶⁰ At the same time, the growth of the informal food economy means that many people are eating food that does not meet the standards set by NAFDAC. This leads to problems like undersized growth and poor brain development in children.⁶¹

⁵⁴ M Bello, 'Smallholder Farmers and Access to Justice in Nigeria' *International Journal of Law and Management* (2017) (9) 15

⁵⁵ NS. Okogbule, 'The Legal Dimensions of the Right to Food' *National Bar Journal* (2011) (22) 45

⁵⁶ O Ajai, 'Law and Policy of Food Safety in Nigeria' *Journal of Food Law* (2010) (1) 12

⁵⁷ F Olanrewaju, 'Constitutionalizing the Right to Food in Nigeria' *African Human Rights Law Journal* (2021) (15) 210

⁵⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 16(2)(d)

⁵⁹ A Otubu, *Land Law and Food Security in Nigeria* (Lagos, Princeton Publishing Co., 2018) 112

⁶⁰ M Bello, (n 6) 18.

⁶¹ A Ojo, (n 4) 90

2.0 Methodology

This paper adopts a doctrinal legal methodology, supplemented by a comparative legal analysis. The doctrinal component entails a systematic examination of primary legal sources, including the Constitution of the Federal Republic of Nigeria, the National Agency for Food and Drug Administration and Control (NAFDAC) Act, and the Federal Competition and Consumer Protection Commission (FCCPA) Act.⁶² These instruments are analysed alongside relevant regional and international human rights frameworks, specifically the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶³

The comparative component adopts two benchmarks, firstly, the reasonableness standard developed by the South African Constitutional Court in adjudicating socio economic rights claims, particularly the right of access to adequate food⁶⁴ and secondly, the international food safety and quality standards established by the Codex Alimentarius Commission.⁶⁵ This dual comparative approach serves two functions, it enables an assessment of the coherence and justiciability of Nigeria's extant food related legal provisions, and it provides a normative basis for recommending legal reforms aligned with globally recognised standards.

Justification for this methodology rests on the recognition that doctrinal analysis alone cannot remedy structural gaps in domestic food law, comparative insights from jurisdictions with enforceable socio-economic rights and from international technical standards offer practical pathways for legislative and constitutional reform in Nigeria

3.0 Conceptual Review: The Jurisprudence of Food Security and Sovereignty

To conduct a legal analysis of the food crisis, one must understand the concepts that guide food governance. The term food security is often used in politics to mean having a lot of

⁶² Constitution of the Federal Republic of Nigeria 1999; National Agency for Food and Drug Administration and Control Act, Cap N1, Laws of the Federation of Nigeria 2004; Federal Competition and Consumer Protection Commission Act 2018.

⁶³ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)

⁶⁴ *Government of the Republic of South Africa v Grootboom* [2001] 1 SA 46; *Mazibuko v City of Johannesburg* [2010] 4 SA 1

⁶⁵ Codex Alimentarius Commission, 'General Principles of Food Hygiene' (CXC 1-1969, rev 2020)

food, but its legal definition is specific. According to the Food and Agriculture Organisation, food security happens when everyone has physical and economic access to safe and nutritious food.⁶⁶ This definition has four parts: availability, accessibility, utilisation, and stability.⁶⁷ In Nigeria, the law has mostly focused on availability through subsidies. It has ignored accessibility and utilisation, which are controlled by price laws and safety rules.⁶⁸

There is also a shift toward the idea of food sovereignty, which is a more political and legal framework. Food sovereignty is the right of people to have healthy and culturally appropriate food grown through sustainable methods. It is also their right to define their own agricultural systems.⁶⁹ Unlike food security, which is about the goal of feeding people, food sovereignty is about who has the power in the food system. It argues that true security is impossible without legal protection for small farmers and the rejection of trade policies that hurt local markets.⁷⁰ For Nigeria, food sovereignty would require changing the law to prioritize local farmers over large international companies.⁷¹

In this legal framework, malnutrition is the physical result of a state failing to meet its basic obligations under international law.⁷² It includes both being underweight and having micronutrient deficiencies like a lack of Vitamin A.⁷³ Legally, this type of hunger is a violation of the utilization part of food security, it happens when the food in the market is of such low quality that it cannot keep a person healthy.⁷⁴ Reports from the World Bank show that the economic cost of this failure is very high, leading to a loss of national productivity and higher costs for healthcare.⁷⁵

Food law is a field that includes statutes, regulations, and court cases governing food from production to consumption.⁷⁶ It is not just part of business law, it involves human rights,

⁶⁶ FAO, *The State of Food Insecurity in the World* (Rome: Food and Agriculture Organisation, 2023) 12

⁶⁷ RO. Babatunde, 'Impact of Food Prices on Household Food Security in Nigeria' *Journal of Agricultural Science* (2010) (8) (1) 22

⁶⁸ MT. Ladan, *Introduction to ECOWAS Law and Institutions* (Abuja, Hubert & Co, 2009) 154

⁶⁹ A Otubu, (n 11) 115

⁷⁰ RO. Babatunde, (n 20) 25

⁷¹ MM. Akanbi, (n 3) 15

⁷² NS. Okogbule, (n 7) 46

⁷³ A Ojo, (n 3) 91

⁷⁴ UNICEF, 'The State of the World's Children: Nutrition Report' (New York, UNICEF, 2023) 5

⁷⁵ World Bank, 'Nigeria Development Update: Food Security Crisis' (Washington DC, World Bank, 2024) 18

⁷⁶ O Ajai, (n 8) 16

the environment, and international trade.⁷⁷ In Nigeria, food law is split between different agencies like NAFDAC and the Standards Organisation of Nigeria. This split creates a confusing situation where rules are not the same and enforcement are not consistent.⁷⁸ A strong understanding of food law requires seeing it to achieve social justice and protect the health of citizens.⁷⁹

4.0 The Legal Framework Governing Food Safety and Security In Nigeria

Nigeria's food laws comprise a fragmented assemblage of instruments, many conceived for a different regulatory era, which now inadequately address a mounting public health crisis. This section examines the international, regional, and domestic legal provisions bearing on food safety and security, highlighting critical gaps in justiciability and enforcement.

4.1 International and Regional Obligations

Nigeria is a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises the right of everyone to be free from hunger.⁸⁰ Under this treaty, the Nigerian state bears a core minimum obligation to ensure access to adequate food for its population.⁸¹ At the regional level, the African Charter on Human and Peoples' Rights constitutes a pivotal instrument.⁸² In the landmark *Social and Economic Rights Action Center (SERAC) v Nigeria*⁸³ case, the African Commission on Human and Peoples' Rights held that the rights to life and health, as enshrined in the Charter, implicitly encompass the right to food. This jurisprudence was recently reinforced by the Economic Community of West African States (ECOWAS) Court of Justice in *SERAP v Nigeria*,⁸⁴

⁷⁷ F Monye, *Law of Consumer Protection* (Ibadan, Spectrum Books, 2003) 105

⁷⁸ J Omojokun, 'Regulation and Enforcement of Legislation on Food Safety in Nigeria' in Hussaini Makun(ed), *Mycotoxin and food safety in developing countries* (London, Intech Open, 2013) 257

⁷⁹ O Ajai, (n 8) 18

⁸⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 11(2)

⁸¹ Committee on Economic, Social and Cultural Rights, 'General Comment No 12: The Right to Adequate Food' (1999) UN Doc E/C.12/1999/5, para 14

⁸² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5

⁸³ *Social and Economic Rights Action Center (SERAC) v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 64

⁸⁴ *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria* (ECOWAS Court of Justice, Suit No ECW/CCJ/APP/08/2020, judgment delivered 10 December 2021) (unreported)

which affirmed that the state bears a positive duty to protect food sources from contamination and destruction.

4.2 Constitutional Foundation: The Justiciability Gap

The principal legal obstacle resides in the Constitution of the Federal Republic of Nigeria 1999. Section 16(2)(d) provides that the state shall direct its policy towards ensuring adequate food and reasonable national minimum living wage.⁸⁵ Critically, this provision is located in Chapter II of the Constitution, which contains the Fundamental Objectives and Directive Principles of State Policy. By virtue of section 6(6)(c), these objectives are explicitly rendered non-justiciable, meaning they cannot be enforced by any court of law.⁸⁶ As Monye has argued, this creates a justiciability gap wherein citizens are precluded from seeking judicial remedies for the denial of basic subsistence needs.⁸⁷ Consequently, food is treated as a matter of political benevolence rather than an enforceable legal right.

4.3 NAFDAC and Statutory Oversight

Statutory oversight of food safety is principally vested in the National Agency for Food and Drug Administration and Control (NAFDAC). Under the NAFDAC Act and subsidiary regulations, the agency is empowered to regulate food manufacturing, importation, and distribution.⁸⁸ The NAFDAC (Food Fortification) Regulations 2019 mandate the fortification of certain staple foods with essential vitamins and minerals, representing a targeted intervention against micronutrient malnutrition.⁸⁹ Complementing this framework is the Federal Competition and Consumer Protection Commission (FCCP) Act, which provides a mechanism for consumers to seek redress for hazardous or substandard food products, thereby placing legal responsibility on producers and vendors.⁹⁰ Despite these provisions, enforcement remains inconsistent, and neither statute confers enforceable rights upon individuals to demand adequate food from the state.

⁸⁵ Constitution of the Federal Republic of Nigeria, s 16(2)(d)

⁸⁶ *ibid* s 6(6)(c)

⁸⁷ F Monye, 'Justiciability of Socio-Economic Rights in Nigeria: The Gap Between Law and Reality' *African Journal of Legal Studies* (2017) (9) (2) 107, 115

⁸⁸ National Agency for Food and Drug Administration and Control Act,

⁸⁹ National Agency for Food and Drug Administration and Control (Food Fortification) Regulations 2019, regs 3–5

⁹⁰ Federal Competition and Consumer Protection Commission Act 2018, ss 124–127

5.0 Emerging Legal Issues and Barriers in the Food Ecosystem

Beyond the constitutional justiciability gap and fragmented statutory oversight, deeper structural barriers within Nigeria's legal framework impede food production, preservation, and equitable access. This section examines three critical yet underexplored legal obstacles: land tenure insecurity under the Land Use Act, the regulatory vacuum governing post-harvest logistics, and the fortification gap exacerbated by the informal market.

5.1 The Land Use Act 1978 and Tenure Insecurity

Arguably the most significant legal barrier to agricultural productivity is the Land Use Act.⁹¹ The Act vests all land within each state in the Governor, who holds it in trust for the people, thereby abolishing private ownership and substituting it with statutory rights of occupancy.⁹² For smallholder farmers, who constitute the majority of Nigeria's food producers, this system generates profound tenure insecurity. Without a registrable title, farmers cannot leverage their land as collateral to access agricultural credit from financial institutions.⁹³ As Smith has observed, the cumbersome and discretionary process for obtaining certificates of occupancy deters commercial agricultural investment, owing to the ever-present risk that the Governor may revoke a right of occupancy in the name of public interest without adequate compensation.⁹⁴ This absence of legal security directly disincentivises long-term investments in soil improvement, irrigation, and mechanisation, contributing directly to systemic food shortages.⁹⁵

5.2 Post-Harvest Losses: The Regulatory Vacuum in Logistics

Nigeria loses an estimated 45-50 per cent of its fruit and vegetable production before these goods reach consumers, a figure driven overwhelmingly by post-harvest spoilage.⁹⁶ While the National Agency for Food and Drug Administration and Control (NAFDAC) exercises regulatory oversight over food manufacturing and processing, no equivalent legal

⁹¹ Land Use Act, Cap L5, Laws of the Federation of Nigeria 2004 (originally enacted as Decree No 6 of 1978)

⁹² A Otubu (n 11) 112

⁹³ IO. Smith (n 1) 50

⁹⁴ *ibid*, 95

⁹⁵ Food and Agriculture Organization (FAO), 'Assessment of Agricultural Investment Needs in Nigeria' (FAO Report, 2018) 34

⁹⁶ Nigerian Stored Products Research Institute (NSPRI), 'National Post-Harvest Losses Assessment Report' (NSPRI, 2021) 12

framework governs the logistics of food transportation.⁹⁷ Nigeria currently lacks specific legislation mandating cold storage, temperature controlled transport, or hygiene standards for the movement of perishable agricultural produce. In the absence of mandatory temperature control regulations, nutritional integrity deteriorates significantly during transit.⁹⁸ Furthermore, under the Evidence Act 2011, a buyer seeking to establish that food became unsafe due to improper transport faces an almost insurmountable evidentiary burden, given the absence of presumptions or chain of custody requirements for perishable goods.⁹⁹ This regulatory vacuum effectively immunises transporters from liability for post-harvest losses.

5.3 The Fortification Gap and the Informal Market Crisis

Micronutrient malnutrition is exacerbated by the fortification gap that pervades Nigeria's informal food market. The NAFDAC (Food Fortification) Regulations¹⁰⁰ mandate the addition of specified vitamins and minerals to staple foods such as wheat flour, maize flour, vegetable oil, and sugar. Critically, these regulations bind only formal, registered food manufacturers. They do not extend to the vast informal market, open air markets, local millers, and artisanal producers, where the majority of low income Nigerians procure their food.¹⁰¹ Small scale millers and informal vendors routinely find the compliance costs associated with NAFDAC's fortification guidelines prohibitively expensive, requiring laboratory testing, equipment upgrades, and registration fees.¹⁰² The consequence is a split legal system, one tier of enforceable safety and nutrition standards for supermarket consumers, and a parallel unregulated tier of nutritionally deficient food for poorer citizens who depend on informal markets. This dual regime entrenches malnutrition as a function of economic status, undermining any claim to universal food safety.

⁹⁷ B Anaba (n 5)

⁹⁸ *ibid*

⁹⁹ Evidence Act 2011, ss 131-133

¹⁰⁰ National Agency for Food and Drug Administration and Control (Food Fortification) Regulations 2019, regs 3-6

¹⁰¹ World Bank, 'The Informal Food Economy in Nigeria: Drivers, Scale, and Policy Gaps' (World Bank Report No 145678-NG, 2020) 23-26

¹⁰² P Eze and C Okafor, 'Small-Scale Millers and Regulatory Compliance in Nigeria's Food Fortification Regime' *African Journal of Food Law and Policy* (2022) (14) (1) 15-18

6.0 Comparative Legal Analysis: Regional Precedents

The limitations of Nigeria's domestic legal framework may be illuminated by reference to regional and international standards. This section undertakes a comparative analysis, examining the South African reasonableness standard, international Codex Alimentarius benchmarks, and supranational regional frameworks. These precedents offer normative guidance for reforming Nigeria's fragmented approach to food governance.

6.1 The South African Reasonableness Standard

A compelling comparative model for Nigeria lies in the jurisprudence of the South African Constitutional Court, particularly its articulation of the 'reasonableness' standard in socio-economic rights adjudication. In *Government of the Republic of South Africa v Grootboom*,¹⁰³ the Court held that while the state cannot be required to achieve the progressive realisation of rights immediately, it must adopt a reasonable, clear, and inclusive plan directed at meeting the needs of vulnerable populations. The reasonableness test assesses whether government policies are comprehensive, coherent, adequately funded, and effectively implemented.¹⁰⁴ This standard was subsequently applied in *Mazibuko v City of Johannesburg*,¹⁰⁵ where the Court affirmed that reasonableness includes a duty to engage meaningfully with affected communities and to monitor policy outcomes. For Nigeria, the *Grootboom* reasonableness standard offers a doctrinal pathway for courts to exercise judicial oversight over food policies without requiring a fully justiciable right to food. Even within the current constitutional framework, Nigerian courts could, in theory, assess whether government food security programme meet a minimum threshold of reasonableness. However, as the non-justiciability provisions of section 6(6)(c) of the 1999 Constitution¹⁰⁶ currently preclude such review, this comparative insight underscores the necessity of constitutional amendment or judicial reinterpretation.

6.2 International Standards and Codex Alimentarius

The Codex Alimentarius, a collection of internationally recognised food safety standards, guidelines, and codes of practice established by the Food and Agriculture Organization

¹⁰³ *Government of the Republic of South Africa v Grootboom* [200] (11) BCLR 1169 (CC)

¹⁰⁴ *ibid*, para 42

¹⁰⁵ *Mazibuko v City of Johannesburg* [2010] 4 SA 1 (CC) paras 72-76

¹⁰⁶ Constitution of the Federal Republic of Nigeria, s 6(6)(c)

(FAO) and the World Health Organization (WHO), constitutes a further vital benchmark.¹⁰⁷ Jurisdictions that systematically incorporate Codex standards into domestic law have demonstrated measurable reductions in foodborne illnesses.¹⁰⁸ In Nigeria, by contrast, Codex standards are inconsistently enforced, partly due to overlapping and sometimes conflicting mandates among regulatory agencies such as NAFDAC, the Standards Organisation of Nigeria (SON), and the Federal Ministry of Agriculture and Natural Resources.¹⁰⁹

As Egbewole has argued, the absence of a unified legal standard referring explicitly to Codex Alimentarius exposes particularly vulnerable populations, notably children, to chemical contaminants, mycotoxins, and other toxins in food.¹¹⁰ A single, harmonised statutory provision mandating compliance with relevant Codex standards across all food products, irrespective of distribution channel, would substantially reduce ambiguity and strengthen enforcement. Moreover, such incorporation would facilitate international trade by aligning Nigerian food safety law with World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Agreement requirements.

6.3 Regional Frameworks: The Malabo Declaration and ECOWAS

At the supranational regional level, the Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods (2014) commits African Union member states, including Nigeria, to ending hunger and halving poverty by 2025 through specific agricultural investment targets.¹¹¹ Additionally, the Economic Community of West African States (ECOWAS) has adopted the ECOWAP (ECOWAS Agricultural Policy), which provides a harmonised framework for food security,

¹⁰⁷ Codex Alimentarius Commission, *Codex Alimentarius: Understanding the Codex* (5th edn, FAO/WHO, 2018) 7

¹⁰⁸ World Health Organization, 'The Impact of Codex Alimentarius on National Food Safety Systems: A Comparative Study' (WHO Technical Report Series No 1028, 2019) 25-31

¹⁰⁹ FO. Ukwueze, 'Evaluation of Food Safety and Quality Regulations in Nigeria' *Journal of Law, Policy and Globalisation* (2019) (92)

¹¹⁰ W Egbewole, 'Food Safety Regulation and Child Health in Nigeria: The Unaddressed Toxicity Crisis' *Nigerian Journal of Public Law* (2021) (9) (3) 45, 58–60

¹¹¹ African Union, 'Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods' (Assembly of the African Union, Twenty-Third Ordinary Session, Malabo, June 2014) para 3

nutrition, and regional trade in agricultural products.¹¹² Crucially, the ECOWAP legal framework envisions the harmonisation of national food safety standards and the elimination of non-tariff barriers to agricultural trade.¹¹³ By domesticating these regional instruments through national legislation, for instance, via a comprehensive National Food Safety and Quality Bill, Nigeria could transcend its current fragmented, agency specific approach. Such domestication would align Nigerian law with emerging African regional norms, facilitate cross border food safety cooperation, and provide a coherent legal basis for enforcing food security obligations derived from both ECOWAS treaties and the African Charter.¹¹⁴

7.0 Model of Tackling Malnutrition and Food Insecurity Vide Food in Nigeria

Addressing malnutrition and food insecurity in Nigeria requires a multidimensional legal and institutional model that integrates constitutional protection, regulatory enforcement, agricultural sustainability, consumer protection, and social welfare interventions. Food law must therefore operate not merely as a regulatory instrument for commercial food transactions, but as a comprehensive governance framework capable of guaranteeing availability, accessibility, affordability, safety, and nutritional adequacy of food for all persons.¹¹⁵ The Nigerian experience demonstrates that isolated agricultural policies cannot adequately resolve food insecurity where the underlying legal structure remains fragmented and weakly enforceable. Consequently, a sustainable model must adopt a right based and institutionally coordinated approach.

The first component of this model is the constitutionalising the right to food. The present constitutional framework places food security within Chapter II of the Constitution, thereby rendering it non-justiciable.¹¹⁶ A viable model for tackling food insecurity must therefore begin with constitutional reform that transforms access to adequate food into an enforceable fundamental right. Comparative jurisprudence from South Africa demonstrates that constitutional protection creates legal accountability and compels governments to

¹¹² ECOWAS, 'ECOWAP (West African Agricultural Policy)' (ECOWAS Commission, adopted 2005, revised 2012) art 5(2)(b)

¹¹³ *ibid*

¹¹⁴ NS. Okogbule (n 7) 48

¹¹⁵ Committee on Economic, Social and Cultural Rights, (n 34) para 6.

¹¹⁶ Constitution of the Federal Republic of Nigeria, ss 6(6)(c) & 16(2)(d)

adopt measurable and inclusive policies for vulnerable populations.¹¹⁷ In *Government of the Republic of South Africa v Grootboom*,¹¹⁸ the Constitutional Court held that the state must implement reasonable legislative and policy measures to progressively realise socio economic rights. A similar constitutional framework in Nigeria would provide citizens with judicial remedies against state neglect in matters relating to hunger and malnutrition.

Secondly, the model requires an integrated food safety and nutrition regulatory regime. Nigeria's current food governance structure is characterised by overlapping mandates among the National Agency for Food and Drug Administration and Control (NAFDAC), the Standards Organisation of Nigeria (SON), and the Federal Ministry of Agriculture and Rural Development.¹¹⁹ This institutional fragmentation weakens enforcement and creates regulatory loopholes. An effective food law model should therefore establish a harmonised National Food Safety and Quality Commission with clear statutory authority over the entire food chain, from production to consumption. Such a body should incorporate *Codex Alimentarius* standards into domestic law and enforce mandatory nutritional and hygiene standards across both formal and informal markets.¹²⁰ By harmonising food regulation, Nigeria would reduce food contamination, improve consumer confidence, and strengthen public health outcomes.

Another important element of the model is agricultural law reform directed toward supporting smallholder farmers. Empirical evidence demonstrates that smallholder farmers account for a substantial proportion of food production in Nigeria, yet they remain constrained by insecure land tenure systems under the Land Use Act 1978.¹²¹ Without secure title to land, farmers cannot access agricultural financing, insurance, or long-term investments necessary for sustainable production.¹²² A modern food law framework should therefore reform land administration by simplifying access to certificates of occupancy, protecting customary land rights, and recognising community-based tenure arrangements. In addition, agricultural legislation should provide incentives for climate resilient farming,

¹¹⁷ F Olanrewaju (n 9) 216

¹¹⁸ *Government of the Republic of South Africa v Grootboom* (n 56)

¹¹⁹ FO Ukwueze, (n 62)

¹²⁰ Codex Alimentarius Commission (n 60)

¹²¹ A Otubu, (n 11)

¹²² IO Smith, (n 1) 50

irrigation systems, mechanised agriculture, and storage infrastructure. Such reforms would enhance domestic food production and reduce dependence on food importation.

Furthermore, a functional legal model for combating malnutrition must address post-harvest losses and food transportation deficiencies. Nigeria continues to experience massive losses in agricultural produce due to poor storage systems, inadequate transportation infrastructure, and the absence of enforceable standards for perishable food logistics.¹²³ Existing legislation does not sufficiently regulate temperature controlled transportation, cold chain systems, or hygienic handling of food products during transit.¹²⁴ To remedy this gap, comprehensive regulations should impose mandatory standards for food transportation and establish liability for spoilage caused by negligence in logistics operations. This would preserve nutritional quality, minimise waste, and improve food availability across urban and rural communities.

In addition, social protection legislation constitutes a central pillar in any sustainable anti-hunger model. Food insecurity in Nigeria is closely connected to poverty, unemployment, displacement, and economic inequality.¹²⁵ Consequently, food law must operate alongside legally guaranteed social welfare mechanisms such as school feeding programme, targeted nutritional support for pregnant women and children, agricultural subsidies, and emergency food assistance for internally displaced persons.¹²⁶ Unlike temporary political interventions, these programmes should derive legitimacy from statutory frameworks imposing enforceable duties on public authorities. The National Home-Grown School Feeding Programme, for example, should be codified through legislation that specifies funding obligations, nutritional standards, monitoring mechanisms, and sanctions for diversion of resources. Such legal backing would ensure continuity and accountability beyond changes in political administration.

Another significant component of this model involves strengthening consumer protection and public interest litigation. Consumers often lack awareness and effective legal remedies regarding unsafe or nutritionally deficient food products.¹²⁷ Although the Federal

¹²³ Nigerian Stored Products Research Institute (NSPRI) (n 49)

¹²⁴ B Anaba, (n 5)

¹²⁵ *ibid*

¹²⁶ A Otubu, (n 11)

¹²⁷ F Monye, (n 30) 105

Competition and Consumer Protection Commission Act¹²⁸ provides mechanisms for consumer redress, enforcement remains weak and inaccessible to low-income citizens. Food law reforms should therefore expand the powers of consumer protection agencies, encourage class actions in food related litigation, and permit civil society organisations to institute public interest suits on behalf of affected communities. Judicial activism in this regard would enhance corporate accountability within the food industry and compel compliance with nutritional and safety regulations.

The model must embrace regional and international cooperation. Food insecurity is increasingly trans-national, driven by climate change, armed conflict, inflationary pressures, and disruptions in global supply chains.¹²⁹ Nigeria should therefore domesticate relevant provisions of the Malabo Declaration, ECOWAP, and other African regional instruments relating to food security and agricultural transformation.¹³⁰ Harmonisation of food safety standards with regional and international obligations would facilitate cross border trade, improve food quality, and strengthen regional food resilience. More importantly, it would align Nigeria's domestic legal framework with emerging international norms recognising access to adequate food as an indispensable component of human dignity and sustainable development.

8.0 Conclusion

The trajectory of Nigeria's food crisis has outpaced the evolution of its legal framework. This article has demonstrated that the current legal system, comprising a non-justiciable constitutional aspiration, fragmented statutory mandates, and critical regulatory vacuums, creates a persistent state of legal uncertainty. Under this regime, the government may articulate ambitious agricultural policies while simultaneously failing to protect the population from hunger, malnutrition, and foodborne hazards. From the tenure insecurity perpetuated by the Land Use Act 1978 to the absence of any legally enforceable nutritional rights, the gaps in the system are not static but widening. As climate change intensifies agricultural volatility and digital commerce transforms food distribution channels, the protection of public health demands a corresponding legal transformation. It is no longer

¹²⁸ Federal Competition and Consumer Protection Commission Act 2018, ss 124-127

¹²⁹ African Union, (n 64)

¹³⁰ ECOWAS, (n 65)

tenable to treat food exclusively as a commodity for market exchange, rather, food must be legally recognised as a fundamental prerequisite for the enjoyment of human rights, including the rights to life, health, and human dignity.¹³¹

9.0 Recommendations

To bridge the widening chasm between Nigeria's existing legal architecture and the imperative of food security for all citizens, this article proposes the following actionable recommendations:

9.1 Constitutional Amendment to Render the Right to Food Justiciable

The right to food, currently located in section 16(2)(d) of Chapter II of the 1999 Constitution, should be relocated to Chapter IV (Fundamental Rights). This amendment would render the right to food justiciable, thereby empowering Nigerian courts to entertain claims for its enforcement. Judicial precedents from South Africa and India demonstrate that a justiciable socio-economic right can catalyse accountable governance without overwhelming the judiciary.

9.2 Enactment of the National Food Safety and Quality Bill

The National Assembly should urgently pass the National Food Safety and Quality Bill, which has been pending in various forms. This legislation should consolidate food safety oversight into a single, harmonised agency, eliminating the current jurisdictional overlaps among NAFDAC, SON, and the Federal Ministry of Agriculture and Natural Resources. The Bill should also explicitly incorporate relevant Codex Alimentarius standards and establish mandatory safety requirements for all stages of the food supply chain, including transport and storage.

9.3 Land Use Act Reform to Enhance Smallholder Tenure Security

The Land Use Act 1978 should be amended to introduce a tiered system of land titles that provides smallholder farmers with registrable, mortgageable interests. Specifically, a smallholder occupancy certificate, issued with minimal bureaucratic discretion and subject to judicial review, would enable farmers to use land as collateral for agricultural credit.

¹³¹ *Social and Economic Rights Action Center (SERAC) v Nigeria* [2001] AHRLR 60 (ACHPR 2001) para 64 (holding that the right to food is implicit in the rights to life, health, and dignity)

Such reform would directly address the link between tenure insecurity and low agricultural productivity.

9.4 Differentiated Fortification Support for Small Scale Millers

NAFDAC should adopt a differentiated compliance model for food fortification. Rather than enforcing uniform standards that disproportionately burden small scale millers, the agency should establish a support tier offering subsidised technology, micronutrient premixes, and simplified auditing procedures for informal market producers. This approach would extend the reach of fortification requirements to the markets where most low-income Nigerians purchase their food, thereby closing the current nutritional divide between formal and informal food systems.

FREEDOM OF EXPRESSION AND THE CHALLENGE OF HATE SPEECH IN NIGERIA

Oluremi Savage, LLB *

Abstract

Hate speech presents a fundamental tension within constitutional democracy, particularly in plural societies where ethnic and religious divisions amplify the consequences of hostile expression. This article analyses the conflict between freedom of expression and the regulation of hate speech in Nigeria, arguing that the absence of a clear legislative framework has produced doctrinal uncertainty and inconsistent enforcement. While freedom of expression remains indispensable to democratic governance, it has never operated as an unlimited right, and its exercise must be reconciled with the protection of dignity, public order, and social cohesion. The article analyses Nigeria's legal position alongside comparative perspectives from the United States and South Africa, demonstrating how different constitutional traditions respond to the relationship between speech, violence, and state power. It is argued that effective regulation requires a principled distinction between offensive expression, unlawful incitement, and speech that poses a genuine threat to equality and security. The article concludes that Nigeria requires a more coherent legal and institutional response to hate speech, anchored in clarity and proportionality, and that such a response must extend beyond legislation to encompass the responsibilities of government institutions, the media, civil society, and digital platforms in reducing the normalisation of hate driven expression within democratic public life.

Keywords: Hate Speech, Freedom of expression, violence and democracy.

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Introduction

Freedom of expression is one of the natural rights of mankind and essential to democratic governments. Founded on respect for the autonomy and dignity of human beings, the right gives rise to other fundamental rights, ranging from the rights to equality, security, privacy, to rights of citizenship and participation in society.¹

The freedom of expression extends to seeking, receiving, and communicating information and ideas of every kind, irrespective of national boundaries, whether conveyed orally, in writing, through artistic expression, or by any other chosen medium of expression. Freedom of expression is recognised as a fundamental right and preserved in several national,² international and regional instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the African Charter on Human and Peoples Rights; all adopted after the end of World War II.³ Article 19 of the ICCPR recognises both the right to hold opinions free from interference and the right to freedom of expression. The African Charter on Human and Peoples Rights on its part recognises the right to freedom of expression through the provision that every individual shall have the right to receive information and every individual shall have the right to disseminate his opinions within the law.⁴ The ECHR notes that everyone has the freedom to hold opinions and impart information without interference by public authority regardless of frontiers.

¹ S J Heyman, *Free Speech and Human Dignity*, Yale University Press, (New Haven & London, 2008) <http://ssrn.com/abstract=1107254>, accessed 26th December 2025.

² Sec 39 of the 1999 Constitution of the Federal Republic of Nigeria; sec 16 South Africa Bill of Rights 1996; First Amendment to the U.S. Constitution (ratified 1791).

³ Art 19 UDHR, Art 19 ICCPR, Art 13 CRC, Art 21 CRPD, Art 9 African Charter, Art 10 ECHR, Art 13 American Convention on Human Rights amongst others.

⁴ (As above).

In South Africa, the protection of freedom of expression is very important as the country has a chequered history of discrimination flagged by segregation and apartheid.¹ In the United States, freedom of expression was one of the major reasons for the First Amendment of the United States Constitution and it provides that:

*Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*²

However, despite the importance attached to this right, it is necessary to state that its enjoyment is not absolute as there are several recognised limitations to it and one of such is Hate Speech.³

Although freedom of expression recognises the right of people to hold opinions and impart information regardless of borders and is thus essential for democracy, it is also paramount to understand that it is necessary to consider the right of other citizens to protect their reputation from damaging speech whether online or off it. South Africa has a law enacted specifically to deal with hate speech.⁴ The United States does not have a law on hate speech but regulates the ambit of free speech through the courts. The situation in Nigeria has remained chaotic due to the several oppositions the proposed hate speech bill⁵ as garnered. Thus, hate speech is currently handled in the country under the Cybercrime Act of 2015⁶ and other criminal code provisions relating to public order.

It is important to state that hate speech can lead to great harm which can never be rectified if not curbed and most instances, the institution of civil actions tend to achieve little or no effect in curtailing its menace. Thus, there is need to prohibit and criminalise speech that

¹ South Africa History Online 'A history of Apartheid in South Africa' (2016) <https://www.sahistory.org.za/article/history-apartheid-south-africa>. Accessed 24th January 2026.

² First Amendment to the United States Constitution.

³ UN 'What is Hate Speech?' <https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>. Accessed 24th January 2026.

⁴ The Prevention and Combating of Hate Crimes and Hate Speech Act 2023.

⁵ See the Hate Speech (Prohibition) Bill, 2019 (HB.246).

⁶ Cybercrimes (Prohibition, Prevention, etc.) Act 2015.

are likely to offend, humiliate or intimidate other persons particularly when the offending speech is targeted at the affected people because of their colour, ethnicity or nationality etc.

Freedom of Expression

The right to express opinions without restraint, is a democratic ideal that dates to ancient Greece.⁷ Globally, communication is a key means of receiving and passing information from one person to another or between groups of persons either through spoken words, print or media. Freedom of speech, like freedom of expression is central to the defence of all human rights. As it doesn't just enable the defence of rights and exposure of human rights abuses, but it also promotes good governance, public accountability and combats corruption. The United Nations General Assembly (UNGA) notes that the "freedom of speech is a fundamental human right and the touchstone of all the freedoms to which the United Nations (UN) is consecrated".⁸

The justification from Democracy is premised on the conviction that freedom of expression serves an indispensable function in the process of democratic self-government.⁹ Without the freedom to convey and receive ideas, citizens cannot successfully carry out the task of democratic self-government. Free expression also assists the government in realising its fundamental objectives for good governance. The enjoyment of the right to freedom of expressions serves several purposes one of which is that it helps to make government accountable. In most cases, while the government, would often through its media outfits, prefer to paint rosy pictures than expose the inadequacies of their governance, freedom of expression allows them to live up to the responsibilities owed to their citizens. Another rationale for the freedom of expression is that it creates a marketplace of ideas and ensures individual development and self-fulfilment.¹⁰ This is in addition to the fact that the

⁷ J Mchangama, *Free Speech: A History from Socrates to Social Media* (2022) <https://heterodoxacademy.org/blog/free-speech-a-history-from-socrates-to-social-media/> Accessed 3rd December 2025.

⁸ Resolution No. 59 of the UNGA, adopted in 1946.

⁹ The principal exponent of this view was Alexander Meiklejohn, in his *Free Speech and its Relation to Self-Government* (1948).

¹⁰ *Abrams v United States* 1919 US 250 616.

enjoyment of this right enables humans to express new ideas and discoveries which enhances scientific, artistic and cultural progress.¹¹

Despite the numerous benefits that exist with the enjoyment of the right to freedom of expression, the need to regulate its enjoyment in societies to protect other values such as public order, public morality, justice and protect the personal rights of others cannot be overstated.¹² While the Nigerian constitution expressly provides for the freedom of expression and liberty of every Nigerian without restrictions, restraint, fear of punishment or intimidation in Nigeria;¹³ the joint reading of sections 39(3) and 45(1) still restricts the enjoyment of the right in order to protect confidential information, maintain court authority, regulate the media, uphold public order and ensure public safety amongst others.

It was held by the Court of Appeal in the case of *Duke v. Governor of Cross River State*,¹⁴ that pursuant to section 39 of the Constitution, people can validly stage a demonstration to express their distrust in government so long no law will be broken, and nothing will be destroyed in the process. Also, in *The Speaker, Bauchi State House of Assembly v. Danna*,¹⁵ the respondent, a member of Bauchi State House of Assembly, was placed on indefinite suspension by the house for alleged derogatory remarks she made while speaking on the floor of the Assembly. In voiding the indefinite suspension, the Court of Appeal held that the action of the appellants violated the respondent's right to freedom of speech. The court emphatically held that:

If derogatory remarks or comments are not permissible or tolerated by the Bauchi State House of Assembly, that in itself is a violation of the freedom of expression, to hold opinions, to receive and impart ideas, etc., under Section 39(1) of the Constitution. What the appellant did also constitute an unwarranted attack on freedom to disseminate information, ideas and opinions. The Speaker and members of the Bauchi State House

¹¹ C Roux et al, *Human Rights Literacy: Quest for meaning* (2015) https://www.researchgate.net/publication/278017216_Human_Rights_LiteracyQuest_for_meaning_Project. Accessed 21st January 2026.

¹² J. Dugard, *Human Rights and the South African Legal Order*, (The Princeton Legacy Library), 1978.

¹³ Sections 22, 39 (1), (2) of the Nigerian Constitution 1999.

¹⁴ (2009) ALL FWLR (Part 488)252 @ 279 C.A

¹⁵ Unreported, Appeal No. CA/J/207/2013 decided on the 3/12/2014.

of Assembly ought not to have slammed an indefinite suspension on the respondent in this circumstance where the constituency had the interest to protect. In a democracy, conscious objectors must be tolerated. Their rights must not be trampled upon. The majority may not always be right. For example, in courts, dissenting judgments at times lay the foundation for amendment of the Constitution, statutes or rules by the legislature. For democracy to nurture in Nigeria, the opposition must be heard.

The South African Constitution brought about a move away from an authoritarian culture to one of openness, accountability and justification of actions and the freedom of expression is one of the rights guaranteed in its Bill of Rights and it recognises the right of everyone to freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas; the freedom of artistic creativity; academic freedom and freedom of scientific research.¹⁶ Thus, South Africans are allowed to share any information they feel is necessary in exercise of their rights to express and access ideas. Likewise, media outfits can publish their opinions so far it is within allowed legal frameworks i.e. the expression does not constitute a propaganda for war or incitement to violence.¹⁷

It is necessary to state that the protection of the right to freedom of expression is important in South Africa because for many years, citizens were denied the freedom of expression and in some instances sued for speaking out against the Apartheid government.¹⁸ The apartheid system was based on the idea of separate development for South Africa's racial communities. While it was formally portrayed as supporting equal advancement and cultural independence, the way it was enforced made such equality impossible in practice.¹⁹ Infact, the apartheid regime, sustained through laws that compelled racial groups in the country to live separately and pursue development along separate, deeply unequal lines; also aimed to eliminate interracial marriage and restrict social interaction between racial

¹⁶ Section 16(1) South African Constitution 1996.

¹⁷ Section 16(2) South African Constitution 1996; Y M Burns 'Freedom of expression under the new constitution' (1997) 30(3) *Comparative and International Law Journal of Southern Africa* 264-286.

¹⁸ V Vollenhoven *et al*, *The Right to Freedom of Expression: The Mother of Our Democracy* (2015) 18(6) *Potchefstroom Electronic Law Journal* 2300.

¹⁹ South Africa History Online 'A history of Apartheid in South Africa' (2016) <https://www.sahistory.org.za/article/history-apartheid-south-africa>. Accessed 24th January 2026.

communities.²⁰ Beyond its legal structure, apartheid functioned as a broader social order that systematically oppressed most of the population based on race. Those classified as non-white were deliberately subjected to severe deprivation and were often kept in conditions barely above extreme poverty.

In the United States, the protection of civil rights, including freedom of speech²¹ was introduced with the First Amendment Bill of Rights which provides that “*Congress shall make no law... abridging the freedom of speech, or the press...*”²² The First Amendment guarantees free speech and broadly protects the communication of ideas and information. At its core, it ensures that individuals may voice opinions, including those that are unpopular or offensive, without state suppression. Also, the protection of freedom of speech extends beyond spoken and written expression to other forms of communication, such as artistic works and media content. The right in addition, covers certain forms of symbolic expression, where conduct itself conveys meaning; a common example is flag burning, which has been recognised as protected expression under the First Amendment.²³ Thus, the United States courts are not only careful in declaring actions or conducts as constituting hate speech but have also gone ahead in some instances to declare cases brought before it as null and void and an attempt to limit or repeal the First Amendment.²⁴

Limitation to Freedom of Speech

It is instructive to note that freedom of expression is not absolute. Several persons indulge in hate speech under the ‘guise’ of exercising their constitutional right of speech.²⁵ However, there is need to understand that while exercising the freedom of expression, there is need to consider the right of other citizens to protect their reputation. As a rule, speakers are required to respect the fundamental rights of others. In this way, the same ideals that

²⁰ Population Registration Act, 1950, Group Areas Act, 1950, Promotion of Bantu Self-Government Act, 1959, Prohibition of Mixed Marriages Act, 1949, Immorality Amendment Act, 1950 and Separate Representation of Voters Act, 1951.

²¹ The United State uses the term Freedom of Speech in place of Freedom of Expression.

²² The First Amendment was ratified on 15 December 1791.

²³ *Texas v. Johnson* 491 U.S. 397 (1989).

²⁴ *RAV v. City of St. Paul* (1992).

²⁵ I O. Francis *et al*, ‘Application of the laws of defamation and sedition in Nigeria’s jurisprudence: Still relevant?’ (2017) 8(1)(23) *Journal of Advanced Research in Law and Economics* 59 – 68.

justify freedom of speech also allows for determination of the limits of that freedom.²⁶ Like all rights, free speech is limited by the rights of others due to likely conflict between the individual right to free speech and ‘social interests’ such as dignity and equality.²⁷ Thus, the courts have a vital role to play in balancing the conflicting interests between freedom of expression and protection of reputation under the law.

In the United States, although the First Amendment guarantees free speech, the United States, like all modern democracies, where necessary, places limitation on this freedom. In *Chaplinsky v. New Hampshire*,²⁸ the US Supreme Court held that insults addressed to an individual that are so offensive as to readily prompt a violent reaction did not fall within the ambit of constitutionally protected speech.

In the Republic of South Africa, the constitutional right to freedom of expression is not absolute, and is subject to limitation as the right in section 16(1) does not extend to propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, or that constitutes incitement to cause harm.²⁹ In addition, the constitution contains a general limitation clause, which permits the limitation of a fundamental right so far it is justifiable and based on the principles of human dignity, equality and freedom.³⁰ Recognising the importance international human rights conventions play in setting standards for state parties; the constitution specifically provides that in interpreting the rights contained in the Bill of Rights, the courts are to always make reference to international law and other relevant foreign law.³¹

Just like in the United States and South Africa, the freedom of speech is not absolute in Nigeria as any restriction on the right to freedom of speech must be justifiable and in the

²⁶ S J. Heyman (n 2 above).

²⁷ As above.

²⁸ (1942) 315 U.S. 565.

²⁹ Section 16(2) South African Constitution.

³⁰ Section 36 South African Constitution.

³¹ Section 39(1)(b) & (c) South African Constitution; Burns (n 21 above).

interest of public safety, public order, defence, public morality or public health or to protect the rights and freedom of other people.³²

In addition, judicial decisions have interpreted Section 39 of the Constitution not to grant absolute right of freedom of expression in Nigeria but it's rather a qualified right providing for punishment to persons if they overstep their limits. In *Olawonyin v. A.G. of Northern Nigeria*,³³ the Court held that for a restriction upon fundamental human right to be considered justifiable, it must be necessary in the interest of public morality and not be excessive or out of proportion to the object which is seeks to achieve. Also, in *Okedara v. Attorney General of the Federation*,³⁴ the applicant filed an application challenging the constitutionality of Section 24(1) of the Cybercrime (Prohibition), (Prevention) Act.³⁵ The law criminalises sending grossly offensive, obscene, menacing, or knowingly false electronic messages intended to cause harm, with penalties of up to ₦7 million in fines or three years' imprisonment. The applicant argued the provision was vague and violated constitutional rights to free expression and fair hearing. The Court rejected this, holding that while cybercrime cannot be precisely defined, the restriction is justified under section 45 of the Constitution as necessary for public safety, order, morality, health, and defence.

Hate Speech

Hate speech as a speech designed to promote hatred on the basis of race, religion, ethnicity or nationality poses vexing and complex problems for contemporary constitutional rights.³⁶ A menace to democratic values, social stability and peace; it's spread must be decisively tackled at the earliest stage in order to prevent escalation into armed conflict, terrorism and other grave violations of human rights.

The definition of the term; hate speech has been far from uniform as the boundaries between impermissible propagation of hatred and protected speech vary from one setting to

³² J O & J D "Freedom of the Press in Nigeria since 1960: A Comparative Analysis' (1976) 18(4) *Journal of the Indian Law Institute*.529-550.

³³ (1961) 1 ALL Nigerian Law Report 182.

³⁴ (2019) LCN/12768(CA).

³⁵ (n 10 above).

³⁶ M Rosenfeld, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis*, (2003) 24 *Cardozo Law Review* 1523.

the next depending on the country, society or culture involved. The South African Human Rights Commission on its part defined hate speech as ‘an expression which goes beyond mere insults or offensive language, and which may infringe the dignity of certain persons or groups’.³⁷ However, due to the lack of uniformity of definition, Benesch³⁸ explains that any form of expression or speech that can increase the risk that its audience will condone or commit violence against members of another group can be regarded as dangerous³⁹ (hate) speech.

She further notes the existence of five variables that are relevant for determining whether a speech/statement can be classified as dangerous or not. The variables are; whether there is a ‘powerful speaker with a high degree of influence’; there is a receptive audience with ‘grievances and fear that the speaker can cultivate’; there is a speech act ‘that is clearly understood as a call to violence’; there is a social or historical context that is ‘propitious for violence, for any of a variety of reasons’ and finally, whether there exists an ‘influential means of dissemination’. According to her, understanding the five elements enumerated above is not only necessary for identifying how dangerous speech operates but also useful for determining the appropriate interventions that may be adopted to douse whatever tensions that might arise as a result of the offending speech.⁴⁰

There are also efforts in international instruments to define hate speech. The European Union’s ‘Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by means of Criminal Law’⁴¹ instructs state parties to regard any public incitement to hatred or violence on the basis of religion, ethnicity, colour etc. as hate speech that is criminal in nature and should therefore attract appropriate sanctions. The framework thereafter enumerates three categories of actions/expression that can be categorised as hate speech and they are:

³⁷ South African Human Rights Commission, ‘Hate Speech Information Sheet’ (2020) <https://www.sahrc.org.za/home/21/files/Hate%20Speech%20Information%20Sheet-%20print%20ready-.pdf> accessed on 26th December 2025.

³⁸ S Benesch, Proposed Guidelines for Dangerous Speech, (2021) <http://dangerousspeech.org/guidelines/>. Accessed on 26th December 2025.

³⁹ Benesch prefers the term dangerous speech over hate speech because it is more precise, avoids reliance on emotion, and is easier to identify since its defining feature is the capacity to instigate harm.

⁴⁰ Benesch (note 42).

⁴¹ European Union Council Framework Decision 2008/913/JHA.

- i. public incitement to violence or hatred directed against a group of persons or a member of such group defined on the basis of race, [colour], descent, religion or belief, or national or ethnic origin;
- ii. the same, when done through “public dissemination or distribution of tracts, pictures, or other material;” and
- iii. publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity, and war crimes [as defined in EU law], when the conduct is carried out in a manner likely to incite violence or hatred against such group or a member of such group.⁴²

According to the UN Committee on the Elimination of Racial Discrimination,⁴³ hate speech involves the:

dissemination of ideas based on racial or ethnic superiority or hatred by whatever means;

- a. incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin.
- b. threats or incitement to violence against persons or groups on the grounds noted in (b) above
- c. expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination
- d. participation in organizations and activities which promote and incite racial discrimination.

Like the European Union, the Committee on Elimination of Racial Discrimination thereafter advises state parties to adopt legislation that criminalises hate speech with the stipulation of appropriate sanctions.

The Rabat Plan of Action, developed through UN expert meetings, sets a high threshold for distinguishing free expression from incitement to hatred. It introduces a six-part test considering context, speaker influence, intent, tone and content, dissemination, and

⁴² The framework recommends a maximum of one year imprisonment as penalty.

⁴³ Para 13, Gen Recommendation No. 45 of the Committee on the Elimination of Racial Discrimination on combating racist hate speech CERD/C/GC/35.

likelihood of harm. Only when all six criteria are met should speech be criminalised; less severe cases should be addressed through administrative or civil measures rather than criminal sanctions.⁴⁴ Precision in defining hate speech is crucial because vague or overly broad definitions create loopholes that allow offenders escape accountability, and enable governments suppress legitimate dissent. Clear, narrow definitions with objective criteria protect freedom of expression and ensure effective legal enforcement.⁴⁵

Protecting reputation is tied to human dignity, this explains why Nigeria's early regulation of hate speech relied on defamation law until the Cybercrimes Act. Prosecutors can still penalise hate speech through existing case laws, statutory and common law. The courts have used broad criminal and tort doctrines to sanction speech despite constitutional protections, even though these laws were not originally designed for hate speech.⁴⁶

Jurisdictional Comparative Analysis of Hate Speech Laws

Today, several countries seek to regulate speech directly, and in so doing have endeavoured to define such speech in their criminal legislations;⁴⁷ and the similarities and differences among the definitions reveal differing policy choices on hate speech regulation, with the United States adopting a clearly different position from other Western democracies. In the United States, hate speech is given wide constitutional protection while in other Western democracies, such as South Africa and Nigeria it is largely prohibited and subjected to civil and criminal sanctions.⁴⁸

South Africa's prohibition of hate speech is rooted in its history of racial segregation, making it a vital safeguard. Beyond section 16(2)(c) of the Constitution, which explicitly

⁴⁴ Rabat Plan of Action, <https://www.istanbulprocess1618.info/rabat-plan-of-action/#:~:text=Positive%20measures%20for%20States%20to,in%20Council%20Resolution%2016/18>. Accessed 24th February 2026.

⁴⁵ *The Incorporated Trustees of Expression (Now Human Rights Initiative) v Federal Republic of Nigeria* - ECW/CCJ/JUD/37/23.

⁴⁶ *Fisher v Carrousel Motor Hotel, Inc.*, 424 S.W.2d 627, 630 (Tex. 1967).

⁴⁷ Thomson Reuters Foundation, *Weaponizing the law: Attacks on media freedom* (2023) <https://www.trust.org/wp-content/uploads/legacy/weaponizing-law-attacks-media-freedom-report-2023.pdf> accessed 24th February 2026.

⁴⁸ Rosenfeld (n 40).

bans hate speech,⁴⁹ the country has also enacted specific laws dedicated to addressing it.⁵⁰

The object of the Prevention and Combating of Hate Crimes and Hate Speech Act is to:

- a. give effect to the Republic's obligations regarding prejudice and intolerance as contemplated in international instruments
- b. provide for the prosecution of persons who commit offences referred to in this Act and provide for appropriate sentences
- c. provide for the prevention of hate crimes and hate speech
- d. provide for effective enforcement measures
- e. provide for the co-ordinated implementation, application and administration of this Act
- f. combat the commission of hate crimes and hate speech in a co-ordinated manner; and
- g. gather and record data on hate crimes and hate speech.⁵¹

The Act criminalises hate speech by making it an offence to intentionally publish, distribute, or communicate, verbally or electronically, messages intended to incite harm or promote hatred on grounds listed in section 1.⁵² Conviction carries penalties of a fine, imprisonment of up to five years, or both.⁵³ The Act balances criminalising hate speech with protecting free expression by clarifying that section 4(1) does not apply to publications made in good faith i.e. artistic works, academic or scientific inquiry, accurate reporting, religious interpretation, or information that neither advocates hatred nor incites harm.⁵⁴

To safeguard freedom of expression while prosecuting hate speech, the Act requires complainants to provide a victim impact statement detailing the psychological, physical, social, or economic effects of the hate speech on the victim or their family. This statement

⁴⁹ This subsection constitutionally justifies restricting free speech when it incites hostility that could harm specific ethnic groups.

⁵⁰ The Prevention and Combating of Hate Crimes and Hate Speech Act 2023 & The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

⁵¹ Sec 2 Prevention and Combating of Hate Crimes and Hate Speech Act 2023.

⁵² Sec 4 Ibid.

⁵³ Sec 6(3) Ibid.

⁵⁴ Sec 4(2) Ibid.

must be submitted as evidence in court, and if unavailable, the prosecution must give reasons for its non-availability.⁵⁵

The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act⁵⁶ complements South Africa's hate speech framework by specifically targeting unfair discrimination and promoting equality. Its objectives include:

- i. provide for measures to facilitate the eradication of unfair discrimination, hate speech and harassment, particularly on the grounds of race, gender and disability
- ii. provide remedies for victims of unfair discrimination, hate speech and harassment and persons whose right to equality has been infringed
- iii. provide for measures to educate the public and raise public awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment.⁵⁷

In addition, the Act prohibits the advocacy of hate speech, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in section 16(2)(c) of the constitution and section 12 of this Act.⁵⁸ Infact, section 10(1) of the Act provides that:

*subject to the proviso in section 12, no person may publish propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be harmful or to incite harm and to promote or propagate hatred.*⁵⁹

Section 10(2) of the 2002 Act treats hate speech as a civil matter, with the Equity Court empowered to refer cases to the Director of Public Prosecutions for criminal trial.⁶⁰ The later enactment of the Prevention and Combating of Hate Crimes and Hate Speech Act

⁵⁵ Sec 5 Ibid.

⁵⁶ Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

⁵⁷ Sec 2 (c)(e) & (f) Ibid.

⁵⁸ Sec 2 (b)(v) Ibid.

⁵⁹ *Qwelane v South African Human Rights Commission and Another* (CCT 13/20) [2021] ZACC 22.

⁶⁰ Secs 10(2) & 21(2)(n) Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

addressed this limitation by explicitly criminalising hate speech and attaching clear sanctions, thereby strengthening enforcement beyond civil remedies.

South Africa's approach to hate speech emphasises on its long-term dangers to social cohesion rather than only the immediate threats of violence. Thus, unlike the American view that speech is unlikely to cause serious harm and that truth will eventually prevail,⁶¹ South African courts recognise that unchecked hate propaganda can bypass reason, exploit emotions, and ultimately cause great harm if not curtailed promptly.

South Africa's treatment of hate speech diverges from the American approach in two keyways: it is rooted in different normative priorities, and in contrasting assessments of the consequences of tolerating such speech.⁶² While the U.S. view emphasises the risk of greater harm from suppressing speech short of incitement, South Africa sees the unchecked spread of hate propaganda as more dangerous, capable of inflicting lasting damage to dignity and social cohesion. Reflecting this, the South African Constitution elevates human dignity as a paramount value⁶³ and explicitly limits freedom of expression to prohibit actions that offend, humiliate, or intimidate groups, particularly on the basis of race, colour, or ethnic origin.⁶⁴

Regulation of Hate Speech in Nigeria

Freedom of expression in Nigeria, as elsewhere, applies to all, including the public and the press, but it is not absolute. It is limited to prevent harm to others and preserve law and order.⁶⁵ Because freedom of expression can be used positively and negatively; Nigeria, like other nations, recognises the necessity of regulating it to protect society while still upholding fundamental freedoms.

⁶¹ The United States does not make hate speech illegal *per se* under any definition, unlike many other Nations. See J Q. Whitman, *Enforcing Civility and Respect: Three Societies*, (2000) 109 *Yale Law Journal* 1279; C R. Sunstein, *Falsehoods and The First Amendment* (2020) 3(2) *Harvard Journal of Law & Technology* 388-426.

⁶² Rosenfeld, (n 40).

⁶³ Sec 1(a) South African Constitution. See also Art 1, German Basic Law.

⁶⁴ Sec 36(1) South African Constitution; Art. 5 (2), German Basic Law; sec 18C(1) of the Australian Racial Discrimination Act 1975.

⁶⁵ Sec 45 Nigerian Constitution 1999.

In Nigeria, the unchecked use of hate speech has long posed serious challenges, especially around sensitive issues of ethnicity, religion, and regional identity. Issues linked to the Civil War, Boko Haram, resource control, and oil politics often spark hostile reactions and deepen rivalries among major ethnic groups. Thus, in such a polarised society as ours, uncontrolled use of hate speech undermines nation-building, widens divisions, erodes trust, and weakens commitment to national goals; effects that can destabilise any economy and even extend beyond it.

Nigeria's multicultural and multiethnic character makes regulating hate speech essential, yet there is no single comprehensive legislation dedicated to it. Instead, existing laws are applied when needed. The laws include the Cybercrimes Act,⁶⁶ Electoral Act,⁶⁷ and the Nigerian Broadcasting Code.⁶⁸ Other include the offence of defamation and sedition amongst others. Under the Cybercrimes Act, it is a crime to send grossly offensive or obscene electronic messages, knowing them to be false, with intent to cause inconvenience, annoyance, or animosity. Conviction carries a penalty of up to ₦7 million in fines, three years' imprisonment, or both.⁶⁹

Similarly, the Cybercrimes Act makes it a criminal offence to distribute or make available through a computer system or network, any publication containing xenophobic remarks against a group distinguished by race, colour, religion, descent, or ethnic origin. Anyone found guilty is liable to imprisonment, a fine, or both, underscoring Nigeria's reliance on existing legislation to curb hate speech in the absence of a dedicated, comprehensive law.⁷⁰

The Electoral Act criminalises the use of abusive language, insinuations, or innuendoes during campaigns if they provoke violent reactions or emotions against religious or ethnic groups.⁷¹ This provision directly targets the role of political rhetoric in fuelling division.

⁶⁶ Cybercrime (Prohibition, Prevention etc) Act 2015.

⁶⁷ Electoral Act 2026.

⁶⁸ NBC, *Nigeria Broadcasting Code* 2019, 6th Edition, <https://www.nbc.gov.ng/nbcode/> Accessed 25th January 2026.

⁶⁹ Sec 24(1) Cybercrime Act 2015.

⁷⁰ Sec 26(1) Cybercrime Act 2015.

⁷¹ Sec 96 (1)(2) and (7) of the Electoral Act 2026.

Similarly, the Nigerian Broadcasting Code (NBC) prohibits hate speech and bans the use of media platforms to promote content that incites crime, leads to public disorder, spreads hate, or contains offensive references to individuals or organizations. It also emphasises respect for human dignity.⁷² Importantly, the Code empowers the NBC to impose sanctions on offending media platforms, ranging from warnings to fines.⁷³ However, the NBC's authority to impose fines was challenged in *Media Rights Agenda v. Nigerian Broadcasting Commission*,⁷⁴ raising questions about the legality of administrative sanctions without judicial oversight. This case highlights the tension between regulating harmful speech and protecting constitutional rights, particularly freedom of expression and due process.

Apart from the legislations discussed above, provisions relating to defamation and sedition contained in the country's criminal legislation can be used to restrict the use of hate speech. Defamation law protects an individual's reputation from unprovoked attacks. Defamation is the publication of false statement, which exposes a person to ridicule, hatred or contempt in addition to causing untold damage to his office, trade or profession. In this instance, the plaintiff is not only disparaged but also avoided by right thinking members of the society.

Sections 373-381 of the Criminal Code⁷⁵ classify defamation as a crime in Nigeria, particularly when the publication threatens public peace and order. Thus, if someone makes defamatory statements at a press conference, they are liable as the author, while the press becomes liable for repeating the defamation. The same principle applies to defamatory content published online.⁷⁶ Ultimately, it is the role of the courts to safeguard citizens' fundamental rights against unwarranted attacks, except where the speech falls within constitutional exceptions.⁷⁷

⁷² Paras 3.1.1 & 3.1.2 *Nigeria Broadcasting Code* 2019.

⁷³ Offences relating to hate speech are classified as Class A. See para 15.2.1 NB Code. In 2020, an attempted amendment to the 6th Edition of the Code was criticised for punitively increasing the hate speech fine from N500,000 to N5,000,000.

⁷⁴ *Media Rights Agenda v. Nigerian Broadcasting Commission* FHC/ABJ/CS/1386/2021.

⁷⁵ The Criminal Code Act, Cap C38, LFN 2004.

⁷⁶ *Godfery v. Demon Interne Ltd* (1999) 4 ALL ER 342; *Iloabachie v. Iloabachie* (2005) 13 NWLR (Pt. 943) 695.

⁷⁷ *Punch Nigeria Ltd & Anor v. Eyitene* (2012) LCN/5157(CA); *Guardian Newspaper Ltd v. Ajeh* (2005) 12 NWLR (Pt 938) 205 at 229.

Sedition in Nigeria refers to any spoken or written communication intended to incite disaffection, hatred, or contempt against the government, including speeches or publications that advocate hostility toward the State with the aim of provoking public disorder and breaching peace. Sections 50-52 of the Criminal Code and Sections 416-422 of the Penal Code⁷⁸ criminalise sedition, prescribing punishments ranging from imprisonment to fines and forfeiture of the seditious publication.⁷⁹ While these provisions are designed to protect public order, the offence of sedition has been criticised for its potential misuse in frustrating legitimate criticism of government policies, thereby posing a threat to the vigorous debates that are indispensable in democratic governance.

In *D.P.P v. Chike Obi*,⁸⁰ the accused was charged under section 51(2) of the Criminal Code for distributing a seditious publication that declared “*Down with the enemies of the people, the exploiters of the weak and oppressor of the people*”, directed against the Federal Government. The Court emphasised that while freedom of speech is a constitutional right, publications must remain within the bounds of the law, and reasonable precautions, justifiable in a democratic society are necessary to preserve public safety and order.

Hate Speech Bill(s) in Nigeria

Nigeria is bound by international human rights obligations arising from treaty commitments requiring the promotion of equality and the prohibition of unfair discrimination, hate speech and harassment.

Apart from the Cybercrimes Act, the government in its effort to regulate hate speech and the use of the social media to arbitrarily transmit false and malicious information presented two bills at the National Assembly; the National Commission for the Prohibition of Hate Speech Bill⁸¹ and the Protection from Internet Falsehood and Manipulation and other Related Offences Bill.⁸² The Hate Speech Bill proposes that persons who publish, distribute or directs the publication of materials which involves the use threatening, abusive or

⁷⁸ Penal Code Federal Provisions Act, Cap P3, LFN 2004.

⁷⁹ A Lester & G Bindman, *Race and Law in Great Britain*, Cambridge (Harvard University Press, 1972) 345.

⁸⁰ (1961) ALL NLR, 186.

⁸¹ Coined the ‘Hate Speech Bill’.

⁸² The Anti-social Media Bill was also introduced in 2019.

insulting words or behaviour commits an offence, if such person intends to stir up ethnic hatred, or putting into consideration existing circumstances, ethnic hatred is likely to be stirred up against any person or group of persons from an ethnic group in Nigeria. According to the bill, any person who commits this offence shall be liable to life imprisonment and where the act causes any loss of life, the person shall be punished with death by hanging.⁸³

The Bill penalises persons who unjustifiably discriminates against other persons on ethnic grounds. Also, people who deliberately utter words to incite feelings of contempt, hatred, hostility, violence or discrimination against other persons, group or community on the basis of ethnicity or race commit an offence and upon conviction, liable to imprisonment for a term not less than five years, or payment of fine of not less than N10 million, or both.⁸⁴

In addition, the Hate Speech Bill proposes the establishment of a National Commission for the Prohibition of Hate Speech, tasked with investigating and prosecuting reported offences. The Commission may dismiss frivolous, vexatious, or misconceived complaints, or those better suited for resolution in the Courts. Where a complaint is declined, the Commission must notify the complainant within forty-five days of submission.⁸⁵

The Anti-Social Media Bill seeks to criminalise the use of social media to spread false or malicious information; applying to deliberate acts by persons both within and outside Nigeria. It defines ‘prohibited statements of fact’ as false claims likely to harm national security, public health or safety, damage foreign relations, influence elections, incite hatred or ill-will, or erode public confidence in government functions. The Bill also outlaws the creation of fake accounts used to transmit such false statements.⁸⁶

Although the aim of introducing these bills is understandable, given the unchecked use of media, especially social media, to incite ethnic, religious, and regional hatred, and the need for a clearer legal framework to curb division, the proposals have faced persistent criticisms since 2019 from citizens, human rights organizations, opposition parties, and international rights groups.

⁸³ Sec 4 Hate Speech Bill.

⁸⁴ Secs 5 & 6 Hate Speech Bill.

⁸⁵ Secs 9, 37- 41 Hate Speech Bill.

⁸⁶ Sec 4 & 5 Anti-Social Media Bill.

Criticism of the Hate Speech and Anti-Social Media Bill

The Hate Speech and Anti-Social Media Bills have been severally criticised. One of such criticism is that the two bills are a mere duplication of existing legislations such as the Cyber Crimes Act and the Anti-Terrorism Act⁸⁷ already cover many of the offences the new bills seeks to address. Another criticism against the bills is that they can be used by the government as tools to gag the press, citizens and civil society organisations thereby restricting the freedom of expression. The Hate Speech Bill has been faulted for not clearly defining what qualifies as hate speech, leaving room for vague or overly broad interpretations. This gap risks misuse, as international law requires States to prohibit advocacy inciting discrimination, hostility, or violence, but only through restrictions that are precise and narrowly tailored. Article 19(3) of the ICCPR sets the grounds for limiting free expression, while the Rabat Plan of Action further insists such limitations must meet the test of necessity in a democratic society.⁸⁸

An ill-defined law against hate speech can be used against already marginalised groups to further exclude them from the political process. Conferment of a statement or publication with the of the 'toga' of hate speech, ought to be confined to extreme instances where the speech expressly incites physical violence, or the extermination of identified individuals or groups.⁸⁹ As Matsuda notes, overt and undoubted incidents of hatred against minority groups, instead of being dismissed as mere 'pranks', worthy of casual dismissal by government and law enforcement agents, should be subjected to public formal criminal sanctions; the appropriate response to hate and racist speech.⁹⁰

Other criticisms to the bills include the highly punitive sanctions, which ranges from the payment of heavy fines to life imprisonment and even the death penalty, where the hate speech instigates violence that leads to the death of a person. While criminalising hate

⁸⁷ Terrorism (Prevention and Prohibition) Act, 2022.

⁸⁸ S Bakare, *Nigeria: Bills on hate speech and social media are dangerous attacks on freedom of expression* (2019) <https://www.amnesty.org/en/latest/press-release/2019/12/nigeria-bills-on-hate-speech-and-social-media-are-dangerous-attacks-on-freedom-of-expression/> Accessed 2nd December 2025.

⁸⁹ M Herz & P Molnar, *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (Cambridge University Press, 2012) 3.

⁹⁰ M J. Matsuda, 'Public Response to Racist Speech: Considering the Victim's Story' (1989) 87(8) *Michigan Law Review* 2321.

speech is necessary given Nigeria's multi-ethnic and multi-religious tensions, the proposed death penalty in the hate bill goes too far. Similarly, the heavy fines and imprisonment in the Anti-Social bill are seen as veiled attempts to suppress free speech, a cornerstone of democracy and public participation in governance.⁹¹

Apart from objections to its language, questions remain as to the effectiveness of the proposed hate bill. Comparative legal practice reveals no uniform position. While Germany and Canada legally prohibit certain forms of offensive and hateful expression, the challenge of inconsistent application and high evidentiary thresholds impede their effectiveness.⁹² even in the United States which treats laws against hate speech as unconstitutional; it is often difficult to draw a clear line between hate speech and categories such as 'fighting words', despite the latter's limited exclusion from First Amendment protection.⁹³ The social media is one of the remaining places where Nigerians can express their opinions freely. However, the indiscriminate harassment of journalists and bloggers coupled with the passage of the Cyber Crimes Act into law, has already shrunk the civic space and created a climate of fear.⁹⁴

Hate Speech and Freedom of Expression: Commentary

Today, the influence of hate speech has expanded considerably. Its destructive effects, magnified by the advent and widespread use of social media, have become increasingly pervasive. The phenomenon which undermines social cohesion, is a fertile ground for breeding distrust and intolerance, thereby cultivating conditions that are conducive to conflict and tension. The rampant use of hate speech particularly online, has been condemned by many who rightly regard it as a menace that is antithetic to democratic values, social stability and peace.⁹⁵

⁹¹ Human Rights Watch, Nigeria: Renewed Crackdown on Freedom Of Expression, <https://www.hrw.org/reports/2003/nigeria1203/nigeria1203.pdf> accessed on 4th March 2026.

⁹² Policy Options, *New Hate-Crime Bill Must Confront The Enforcement Gap*, October 2025, <https://policyoptions.irpp.org/2025/10/hate-crimes-enforcement-gap/> accessed 20th January 2026.

⁹³ *Chaplinsky v. New Hampshire* (1942) 315 U.S. 565.

⁹⁴ Bakare, (n 92).

⁹⁵ L K. L. Tjon Soei Len & A de Ruijter, 'Conceptualising the tortuous harms of sexist and racist hate speech' (2023) 2 *European Law Open* 8-29.

According to Boromisza-Habashi, hate speech is a pervasive social problem manifested through the use of derogatory and dehumanizing expressions often directed at individuals or groups based on identity markers such as race, gender, sexual orientation, or religion. Often a recurrent precursor to systemic discrimination, violence, and even genocide,⁹⁶ the unchecked proliferation of hate speech not only undermine efforts to foster social cohesion and peace,⁹⁷ but also poses a grave threat to the realisation and protection of fundamental human rights and freedoms.

At the individual level, the unchecked use of hate speech severely disrupts the victims' life. Beyond eroding his self-confidence, it diminishes and destabilises his personal and social relationships, a consequence of the continual denial of self-worth. Infact, the harm occasioned by the consistent exposure to hate speech may even pass through generations viz from parents to children.⁹⁸ According to Matsuda, the harm occasioned as a result of racist and other forms of hate speech may be difficult to collectively analyse, given the specific contexts of each.⁹⁹

A significant obstacle to the statutory regulation of hate speech lies in the assertion in some quarters that such expressions are harmless and tolerating them is the price paid for living in a free society.¹⁰⁰ It is however felt that the adoption of this view is faulty given the untold harm and dangers subjects of hate speech are constantly exposed to. Because the freedom of speech constitutes a foundational principle of democratic societies, restrictions to it must be clearly defined, exceptional, and justified.¹⁰¹

⁹⁶ UN, Understanding Hate Speech: Hate Speech and Real Harm <https://www.un.org/en/hate-speech/understanding-hate-speech/hate-speech-and-real-harm> accessed 4th March 2026.

⁹⁷ D Boromisza-Habashi, *Speaking Hatefully: Culture, Communication, and Political Action in Hungary*, (2013) 6 Pennsylvania State University Press, www.jstor.org/stable/10.5325/j.ctt32bb7q accessed 4th March 2026.

⁹⁸ Ibid 146-147.

⁹⁹ M J Matsuda, 'Public Response to Racist Speech: Considering the Victim's Story' (1989) 87 *Michigan Law Review* 2320.

¹⁰⁰ R Delgado & J Stefancic, *Must We Defend Nazis? Why the First Amendment Should Not Protect Hate Speech and White Supremacy* (New York University Press, 2018).

¹⁰¹ Rabat Plan of Action (note 48).

Like Jagland rightly explains, there is no reason to confuse hate speech and free speech with each other.¹⁰² While enjoyment of the right to freedom of expression is paramount even when our words may offend, shock, or unsettle others; it is important not to cross acceptable boundaries of human behaviour. The moment a person knowingly incites violence, discrimination, or hostility against another; he has crossed the very thin line separating legitimate free expression from destructive hate speech.

In recent years, the duty to uphold the right to dignity for all irrespective of gender, ethnicity, or religion has become increasingly complex. This challenge is intensified by the speed at which hate speech proliferates through social media platforms.....with the mere click of a button; information is disseminated globally within seconds, thereby amplifying the spread of harmful rhetoric that undermine efforts to safeguard inclusivity and respect in today's world.

Despite the above, restrictions on hate speech must draw clear boundaries that protect free expression, privacy, and the right to criticise government, while equally shielding individuals from unwarranted state intrusion. Speech that threatens or incites hatred against others, however, deserves no constitutional protection, as it violates others' fundamental right to personal security and freedom from violence.¹⁰³

Conclusion

After all, said and done, The real question for Nigeria is not whether to regulate hate speech, but how to do so without worsening existing divisions. Evidence from other jurisdictions shows that hate speech laws don't automatically promote harmony, they can instead be weaponised by rival groups against each other. Nigeria must therefore move beyond the notion that legislation alone can fix problems deeply rooted in ethnic rivalry, political distrust, and weak national cohesion.

Nigeria's challenge lies not in the absence of legal controls, but in weak enforcement, institutional inconsistency, and a lack of a tailored framework for hate speech. Existing

¹⁰² Council of Europe, 'Hate speech is not free speech' 2016 <https://www.coe.int/en/web/portal/-/hate-speech-is-not-free-speech-says-secretary-general-ahead-of-human-rights-day#:~:text=Newsroom,hate%20speech%2C%E2%80%9D%20he%20said>. Accessed 26th February 2026.

¹⁰³ A Bernstein, 'Abuse and Harassment Diminish Free Speech' (2014) 35(1) *Pace Law Review* 1, 25–27.

laws on defamation and public order offer partial remedies but fall short of addressing hate speech's unique constitutional and social dimensions. What is needed is not more law, but better law; clear, proportionate, due process-compliant, and protective of democratic participation. Long-term solutions also require public legal education, equipping citizens to understand the boundaries of free expression, while fostering a culture of responsible speech that enables open debate without normalising divisive or threatening language.

Nigeria's response to hate speech must be grounded in a simple definition that separates genuinely harmful speech from offensive but legitimate expression, with proportionate sanctions that reflect context, intent, and impact, excluding the death penalty as excessive. The law must apply equally to all, including public officials who exploit divisions for political gain.

Beyond legislation, lasting solutions require stronger media standards, responsible digital content moderation, and a collective effort across government, civil society, and community institutions to build a culture where hate speech is neither rewarded nor excused.

HEALTH DATA GOVERNANCE AND THE RIGHT TO HEALTH DATA PROTECTION IN NIGERIA: FRAGMENTATION, PROPORTIONALITY AND REGULATORY GAPS

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Abstract

The rapid digitisation of healthcare systems and the growing reliance on advanced data analytics have intensified concerns regarding the lawful processing, secondary use, and protection of sensitive health data. Although the Nigeria Data Protection Act (NDPA) represents a major legislative development and reflects a risk-sensitive framework for the protection of personal data. The question is whether the existing regulatory architecture sufficiently safeguards health data within an increasingly complex digital ecosystem. This paper aims to assess the framework of health data governance in Nigeria critically. It examines how the NDPA, together with the General Application and Implementation Directive (GAID) 2025, and other sectoral instruments, are able to address fragmentation, proportionality, anonymisation, and exemptions in the processing of health data. It uses a doctrinal research approach to assess the proportionality requirements under the NDPA framework. It also conducts a comparative analysis of South Africa's Protection of Personal Information Act (POPIA) and the General Data Protection Regulation of the European Union to provide insight into the design choices of regulations. Although the NDPA provides a robust and rights-based foundation for the protection of health data, it is not detailed in terms of proportionality architecture, prior authorisation for high-risk processing, and anonymisation standards. The GAID 2025 aims to solve the issue of fragmentation in a way by providing interpretative guidance, but it does not solve the structural disjunctions that exist in the health data governance system as a whole. The result is a system that is normatively robust but operationally patchy in terms of protecting sensitive health data. The paper reframes the issue of health data governance not only as a matter of compliance but as a structural human rights issue. The paper argues that the issue of health data protection cannot be addressed without proportionality safeguards, research limitations, and regulatory coordination.

Keywords: Health Data Governance, Nigeria Data Protection Act, Proportionality, Fragmentation, Human.

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1. Introduction

The integration of sophisticated analytical tools into the healthcare delivery system has completely transformed the way medical information is created, processed, and analysed.¹ Contemporary health systems now operate within interconnected digital infrastructures that draw upon multiple streams of information, which include electronic health records, medical imaging systems, and clinical decision support systems.² The increasing digitisation of healthcare systems has therefore transformed the collection, processing, and use of health data, positioning data as a central component of modern healthcare delivery.³ The implementation of these frameworks is a fundamental change from traditional healthcare concepts from conventional models like delivery models to more data-driven and personalized models.⁴ Evidence from healthcare organisations suggests that the deployment of advanced analytical frameworks has strengthened operational performance and improved clinical results, largely by enabling more strategic resource deployment and more efficient regulation of patient traffic.⁵

In Nigeria, this transformation reflects a broader global shift towards digitally enabled healthcare, marked by the expansion of electronic health records, telemedicine services, and data-driven public health.⁶ The ability to integrate monitoring and evaluation data with geo-spatial mapping technologies enables the authorities to develop models of “patient traffic” and thereby deploy the scarce resource of healthcare professionals more efficiently.⁷

Patient health information obtained from electronic health records, medical images, devices, and genomic research is useful in enabling healthcare service providers to make more informed decisions.⁸ Similarly, advanced statistical techniques in the field of data analytics, including AI

¹ Jyoti Aggarwal, ‘Data Analytics in Healthcare: Revolutionizing Personalized Medicine and Diagnosis’ (2025) *European Journal of Computer Science and Information Technology*, 13(20), 105.

² Ibid.

³ Angelos I Stoumpos and others, ‘Digital Transformation in Healthcare: Technology Acceptance and Its Applications’ (2023) *Int J Environ Res Public Health* 20(4), <<https://pmc.ncbi.nlm.nih.gov/articles/PMC9963556/>> accessed 10 January 2026

⁴ Ibid.

⁵ Ibid.

⁶ Adaeze E Egwudo, ‘Integrating digital health technologies into the healthcare system: Challenges and opportunities in Nigeria’ (2025) *PLOS Digit Health* 4(7) e0000928. doi: 10.1371/journal.pdig.0000928

⁷ Joel Aniebe, ‘How Nigeria’s Fresh Approach to Data Collection could Uncover Key Health Insights’ <<https://diagnostics.roche.com/global/en/healthcare-transformers/article/data-in-healthcare-primary-system.html#:~:text=For%20Nigeria%20to%20unlock%20clinical,pharma%20industry%20and%20Academic%20community.>> accessed 16 February 2026.

⁸ Ibid.

and machine learning algorithms, can facilitate the early detection of diseases.⁹ These significantly improve the optimisation of resources, reduction of errors, and personalisation for the patient.¹⁰

This trend in the evolution of data collection policies is further exemplified by several policy initiatives.¹¹ Nigeria is currently piloting a data collection model referred to as the “hardware-first” approach in primary health centers.¹² This approach has seen the introduction of robust offline-enabled devices such as e-ink tablets, which enable the collection of longitudinal patient data and later synchronize the data in the cloud.¹³ The aim of these innovations is the creation of a richer data set from routine patient interactions, particularly in under-resourced settings where internet connectivity is poor.¹⁴ The objective is not only the digitisation of data but the creation of health data infrastructures that are interoperable and can be used in service planning, pharmaceutical forecasting, and even research.¹⁵

While these developments improve efficiency, diagnostic accuracy, and access to care, they also raise complex legal and governance challenges, particularly given the sensitive nature of health data.¹⁶ Health data warrants heightened legal protection due to its close association with dignity, bodily integrity, and vulnerability.¹⁷ The misuse or unauthorised processing of such data can result in stigma, discrimination, and other forms of harm. These risks are exacerbated in Nigeria by structural inequalities in healthcare provision,¹⁸ limited institutional capacity, and fragmented regulatory oversight.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Aniebe (n 7).

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ H Mumtaz and others, ‘Current Challenges and Potential Solutions to the Use of Digital Health Technologies in Evidence Generation: A Narrative Review’ (2023) *Front Digit Health* 5:1203945. doi: 10.3389/fdgth.2023.1203945. PMID: 37840685; PMCID: PMC10568450.

¹⁷ Studies provide a strong conceptual foundation linking health, vulnerability, autonomy, bodily integrity, and dignity, all of which are directly implicated in health information governance: B Sæteren and D Nåden, ‘Dignity: An Essential Foundation for Promoting Health and Well-Being’ (2021) in G Haugan and M Eriksson, (eds.) *Health Promotion in Health Care – Vital Theories and Research [Internet]* (Springer; 2021) <<https://www.ncbi.nlm.nih.gov/books/NBK585664/> doi: 10.1007/978-3-030-63135-2_7>

¹⁸ Nonye Benedeth Ezeaka ‘Addressing Healthcare Inequalities in Nigeria: A Communication Perspective on Advocacy and Policy Implications’ (2025) *Journal of Advanced Research and Multidisciplinary Studies* 5(1), 1-11.

The move from a paper-based system to an automated electronic system introduces new logics of governance in healthcare delivery systems. For instance, features such as automatic triage based on predetermined parameters,¹⁹ access control, and restriction of duplicate entries and real-time display of information centralize power and authority in decision-making within the parameters of technology. These systems, although enhancing efficiency and transparency, create a new dynamic in governance by moving the locus of power from healthcare workers to parameters of technology. While Nigeria is embracing digital and data-driven technologies in its health sector, its legal and regulatory framework governing health data has not evolved at the same pace. For instance, although several states have adopted digital health interventions, many have not enacted laws governing digital health data security and privacy.²⁰

This has been exemplified in the empirical evidence from the COVID-19 pandemic in Nigeria.²¹ A study conducted in the Nigerian Institute of Medical Research (NIMR) drive-through testing centre highlighted the data integrity issues, which included incomplete data, inaccurate contact information, and poor accountability.²² In some instances, patients who were previously found to be infected with tuberculosis in the digital trials were not contacted because of inaccurate information.²³ This was attributed to the paper-based system, workforce limitations, and the lack of embedded quality control.²⁴ The pandemic accelerated centralised data collection and outbreak management systems but did not necessarily develop parallel oversight mechanisms for proportionality, retention, or secondary use.

This article argues that although Nigeria has established a formally robust framework for protecting health data, such as the Nigeria Data Protection Act (NDPA) 2023²⁵ and other legislation, its governance regime remains fragmented, under-integrated, and insufficiently responsive to the realities of data-driven healthcare. The broad public interest and research exceptions under the NDPA, coupled with limited regulatory elaboration and oversight

¹⁹ Bosun Tijani, 'Improving Data Integrity in Public Health: A Case Study of an Outbreak Management System in Nigeria' (2021) *Global Health Science and Practice* 9(Supplement 2) S226-S233, S230.

²⁰ Chukwuemeka Azubuike, 'Assessing Digital Health Maturity in Nigeria: Evidence from a Sub-national Assessment Across Ten (10) States and Strategic Imperatives for Health Sector' (2025) *VeriXiv*, 2:258

²¹ Tijani, (n 19) S228.

²² Ibid, S228.

²³ Ibid, S227.

²⁴ Ibid, 226.

²⁵ Federal Republic of Nigeria Official Gazette No. 119 Lagos - 1st July, 2023 Vol. 110 Government Notice No. 82.

mechanisms, risk undermining confidentiality, proportionality, and ultimately the substantive realisation of the right to health.

Drawing on a doctrinal and comparative methodology, this article critically examines Nigeria's health data governance framework from a human rights perspective. It analyses the Nigeria Data Protection Act 2023, and some sector specific legislations, while drawing comparative insights from South Africa's Protection of Personal Information Act (POPIA) ²⁶ and the European Union's General Data Protection Regulation.

2. Health Data as Sensitive Data

To understand why heightened governance is necessary, it is first important to clarify why health data occupies a distinct normative position within data protection law. Health data is different from other forms of data in that it transcends simple medical histories. It comprises a combination of structured data (such as electronic health records data and coded clinical terms), semi-structured data (such as XML-based HL7 messages), and unstructured data (including clinical notes, medical imaging, and genetic information).²⁷ It includes personal health information, medical histories, and treatment records.²⁸ The sensitivity of the data is due to the essential link to human dignity, integrity, and vulnerability. The distinguishing factor of health data from any other information is that misuse of the data and processing of the information without authorisation have the potentials for stigmatisation, persecution, and detriment.

Under the NDPA 2023, health data is classified as sensitive data.²⁹ This classification is particularly significant, because unlike ordinary personal data, sensitive personal data can only be processed under special circumstances mentioned in Section 30. This is perhaps in recognition of health data's intimate character and its potential to expose individuals to discrimination, stigma and other forms of harm if misused. Stangl and others argue in their 'Health Stigma and Discrimination Framework' that health data is a primary driver of inequality. Health information

²⁶ Protection of Personal Information Act 4 of 2013, <<https://popia.co.za/>> accessed 16 February 2026.

²⁷ Mu-Hsing Kuo and others, 'Health Big Data Analytics: Current Perspectives, Challenges and Potential Solutions January' (2014) *International Journal of Big Data Intelligence* 1(1/2):116.

²⁸ Ogbemudia Isaac Ottah, and Ekojema Imoisi, 'An Appraisal of the Legal Framework for Data Security Protection for Health Institutions in Nigeria' (2025) *Journal of Current Research and Review*, 16(2) 1-11,2.

²⁹ Nigeria Data Protection Act, 2023, Federal Republic of Nigeria, Official Gazette No. 119 Lagos - 1st July, 2023 Vol. 110 Government Notice No. 82 (NDPA 2023), s 65.

can be used to ‘mark’ individuals as different; its unauthorised disclosure triggers a process of social devaluation, leading to discrimination in employment and housing as well as an internalized stigma that undermines a patient’s dignity.³⁰

Research shows that medical records are not neutral repositories but can be active ‘technologies of stigma.’³¹ These healthcare record systems are capable of allowing certain behaviours by healthcare workers.³² It has been argued that modern electronic management systems often reduce complex human lives to rigid diagnostic categories.³³ This is termed: datafication, it forces a patient into a static healthcare subject stripping away their ability to evolve or change in the eyes of the healthcare system.³⁴ Clinical notes act as a communication system where stigma is transferred between practitioners, in the sense that a biased note written by one physician frames how a subsequent healthcare worker sees a patient, effectively institutionalizing a ‘spoiled identity.’³⁵ Effective health data governance becomes imperative to prevent this socially embedded stigma from converting to institutionalized discrimination. The classification of health data as ‘sensitive personal data’ under the NDPA 2023 is not merely a privacy safeguard, but a structural response to the link between health status, stigma and discriminated harm.

However, the increasing granularity of the data collection process, including longitudinal patient behavior tracking, geo-spatial patient traffic mapping, and the inclusion of pharmacy, insurance, laboratory, imaging, and genomic data, creates a heightened risk of privacy breaches.³⁶ Although the aggregation of these data types facilitates predictive analytics and optimisation of the health system, it also heightens the risks of patient re-identification, profiling, and secondary use of the

³⁰ A Jacoby and JK Austin, ‘Social Stigma for Adults and Children with Epilepsy’ (2007) *Epilepsia* 48, 6–9.

³¹ Emily Lenton ‘Health-Related Stigma: The Affordances of Electronic Health Management Systems in the Production of Structural Stigma’ (2025) *Sociol Health Illn*, 47(4):e70043. <<https://pmc.ncbi.nlm.nih.gov/articles/PMC12074563>> accessed 8 January 2026.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ E Goffman, *Stigma: Notes on the Management of Spoiled Identity*. (Simon and Schuster Inc, 1963)) <<https://ia601503.us.archive.org/22/items/in.ernet.dli.2015.264015/2015.264015.Stigma.pdf>> accessed 8 January 2026.

³⁶ Aniebe, (n 7).

health information.³⁷ The move from isolated medical records to health data systems changes the dynamics of health data governance from one of confidentiality to one of power and control.³⁸

Data integrity in the health domain is more than just the concern of data confidentiality. Data integrity in the health domain includes completeness, accuracy, timeliness, validity, and security.³⁹ The weaknesses in any of these aspects of data integrity may compromise patient compliance, disease surveillance, and emergency response coordination.⁴⁰ In low-capacity systems, integrity weaknesses may imply that patients are unreachable, incorrectly classified, or excluded.⁴¹

3. Health Data Governance in Nigeria

a. Constitutional Foundation

The 1999 Constitution of the Federal Republic of Nigeria, in Section 37 guarantees the right to privacy of citizens, it provides: “the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.” There is no express reference to personal health data or health information in the Constitution, however, in *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*⁴² the Supreme Court affirmed the importance of patient autonomy, privacy, and informed consent within the doctor–patient relationship, recognising that medical treatment must generally be based on the patient’s consent. This constitutional framework provides a broad normative guarantee, leaving specific protection of health data to statutory and regulatory instruments.

b. Nigeria Data Protection Act 2023

The Nigerian Data Protection Act 2023 governs the processing of personal data in Nigeria. It recognises health data as ‘Sensitive Personal Data’, which encompasses more stringent

³⁷ Ibid.

³⁸ Ibid.

³⁹ Tijani, (n 19) S229.

⁴⁰ Ibid, S230.

⁴¹ Ibid, S226.

⁴² (2001) 7 NWLR (Pt 711) 206 (SC)

obligations.⁴³ Under the NDPA, the processing of health data can only be done where there is consent, where it is necessary for the performance of an obligation of the data processor, or right of the data subject or where processing is carried out for medical care or community welfare, and done by or under the responsibility of a professional or similar service provider owing a duty of confidentiality among others.⁴⁴

Health data may also be processed as a result of public health necessity, and scientific or statistical research grounded in law, which must be proportionate to the aim pursued.⁴⁵ The law requires that there must be specific measures to safeguard the fundamental rights and freedoms and the interests of the data subject. The Act also contains six data protection principles: lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation and data security which are particularly relevant to health data.⁴⁶

The Act also grants to data subjects such as right to access, rectify, erase, object to the processing of data, to withdraw consent, and right to data portability.⁴⁷ The NDPA 2023 also establishes the Nigeria Data Protection Commission (NDPC) also serves as the data protection authority responsible for investigating, enforcing and sanctioning.⁴⁸ By Section 28 of NDPA 2023, data controllers, including health establishments must carry out data protection impact assessments (DPIA) where processing will likely result in high risks to the rights and freedoms of data subjects (patients) before processing data. This means that any new health technology or a cloud-based EHR must undergo a DPIA to identify privacy risks before implementation. This ensures that protection of data in the Nigerian health sector takes a proactive stance as opposed to a reactive stance.

Section 24 of the NDPA 2023 provides that data controllers are to implement ‘appropriate technical and organisational measures’ to ensure the security, confidentiality and integrity of data.⁴⁹ It lists the types of protection required, these include:⁵⁰ pseudonymisation which is

⁴³ NDPA 2023, s 65.

⁴⁴ Ibid, s 30.

⁴⁵ Ibid, s 30(1) (i).

⁴⁶ Ibid, s 2(a) – (f)

⁴⁷ Ibid, Part VI.

⁴⁸ Ibid, Part II.

⁴⁹ Ibid, s 24(2), 39(1).

basically ‘de-identification’ of data cannot be linked to a person without additional information. It also includes encryption which is converting data into code to prevent unauthorized access, restoration system (restoring access to data in the event of physical or technical incident), regular testing, assessment and evaluation of the effectiveness of these security measures.

Such measures are likely to become especially relevant in light of the newly emerging Trusted Research Environments (TREs) in Nigeria, which aggregate de-identified health data from various sources, reportedly reaching hundreds of millions in total.⁵¹ While these TREs are likely to make Nigeria an even more attractive location for pharmaceutical research and trial recruitment, they also imply the concentration of informational powers in data intermediaries.⁵² The relevant question for the regulator becomes no longer whether health data is processed, but who controls access, on what basis, and with what level of transparency and auditing in place.

The prevalence of paper-based systems in various health facilities in Nigeria, coupled with a lack of technical knowledge and manpower, makes it difficult to comply with the complex NDPA system in the areas of monitoring, validation, and secure storage in real-time.⁵³ Although the use of digital forms has been introduced in some health facilities, various problems of accountability, validation, and misinterpretation persist unless the technological system is designed to promote compliance.⁵⁴

The NDPA 2023 framework attempts to strike a balance between privacy protection and functional necessity. Routine clinical care is preserved through the medical-care exception;⁵⁵ emergency treatment is accommodated through the vital-interests ground;⁵⁶ and epidemiological surveillance and health research are enabled through public health and

⁵⁰ Ibid, s 39(2) (a, b, d, f).

⁵¹ Aniebe, (n 7).

⁵² Ibid.

⁵³ Tijani, (n 19) S232.

⁵⁴ Ibid.

⁵⁵ NDPA 2023, s 30(g).

⁵⁶ Ibid, s 30(c).

research provisions.⁵⁷ This accommodates the processing of health data for purposes such as disease control, digital health innovations and AI-driven diagnostics.⁵⁸ At the level of principle, the Act embodies a modern and risk-sensitive model of data protection that is in keeping with international best practices. At the level of sector-specific operationalisation, however, the framework is still under-elaborated. In the NDPA, critical concepts such as ‘substantial public interests,’ ‘suitable and specific measures,’ and ‘community welfare’ are not sufficiently defined.

This raises critical concerns about the potential over-expansion of these exceptions. The broadly framed notions of “public interest” or “scientific research” may, if insufficiently scrutinised, gradually normalise secondary uses of sensitive health data.⁵⁹ Reliance on research exemptions may functionally dilute the centrality of explicit consent, thereby shifting informational control away from data subjects. The broad research exception raises questions about practical oversight. The NDPA does not contain detailed criteria with respect to anonymisation, secondary use limitations and ethical review. During the COVID-19 pandemic, there was a heightened sense of urgency around data-driven decision-making.⁶⁰ The role of automated outbreak management systems was highlighted by their ability to facilitate real-time reporting to the Nigeria Centre for Disease Control (NCDC), as well as triage based on risk criteria and digital contact tracing.⁶¹ The pandemic, therefore, demonstrated how public health crises can speed up centralisation and integration of data systems, without necessarily developing parallel oversight of data proportionality, retention, or secondary use.

Although the Act provides a robust framework for protecting health data by classifying it under the highest level of data sensitivity and applying a regulatory framework to process it under certain conditions, it is submitted that its effectiveness extends beyond the presence of exceptions under the Act. It depends on regulatory guidance, oversight and the enforcement

⁵⁷ Ibid, s 30(i).

⁵⁸ European Commission ‘Artificial Intelligence in Healthcare’ < https://health.ec.europa.eu/ehealth-digital-health-and-care/artificial-intelligence-healthcare_en > accessed 16 February 2026.

⁵⁹ ‘Secondary use of health data refers to a regulatory framework that supports using health data for other purposes than it was originally created and collected for.’: Remedybytes, ‘Secondary Use of Health Data’ < <https://remedybytes.com/secondary-use-of-health-data/> > accessed 18 February 2026; Tsaone Tamuhla and others, ‘Multiple Modes of Data Sharing Can Facilitate Secondary Use of Sensitive Health Data’ (2023) *BMJ Global Health* 8, e013092. doi:10.1136/bmjgh-2023-013092.

⁶⁰ Tijani, (n 19) S227.

⁶¹ Ibid, S230.

capacity of the authorised bodies. The classification of health data under 'sensitive data' is a crucial step in protecting health data in Nigeria's digital health space; however, it is not enough. The distinctions between identified, pseudonymised, and anonymised health data are crucial to the Nigerian regulatory landscape as each state of data carries different levels of risk regarding patient privacy and potential discrimination.

c. The General Application and Implementation Directive (GAID)

The Nigeria Data Protection Commission (NDPC) is a statutory commission with the power to issue binding directives, such as the General Application and Implementation Directive (GAID) 2025.⁶² The General Application and Implementation Directive (GAID) operationalises statutory protections applicable to health data by clarifying compliance expectations, supervisory procedures, and sector-sensitive safeguards. Although GAID is horizontally applicable, several of its provisions directly affect the governance of health data. It reinforces the NDPA's classification of health data and genetic information as sensitive personal data, thereby subjecting it to enhanced lawful processing requirements.⁶³ The Directive allows for the processing of health data without consent when it is necessary for the preservation of life or livelihood, particularly in emergency medical situations where the data subject cannot provide consent.⁶⁴ It permits data processing during public health or humanitarian emergencies,⁶⁵ and mandates a DPIA for any processing involving "sensitive personal data" (such as medical records) or where software is deployed to process such datasets.⁶⁶ Article 4 mandates that the Nigeria Data Protection Commission (NDPC) must cooperate with other public authorities (such as the Ministry of Health) to develop sectoral guidelines, ensuring that any specific health data rules do not negate the objectives of the NDP Act. If health data is being transferred outside Nigeria, the NDPC may require the approval of a Cross-Border Data Transfer Instrument (CBDTI).⁶⁷ The Commission may consider the results of a compliance audit before granting this

⁶² NDPA 2023, s 6(c); Nigeria Data Protection Act (NDP ACT) 2023 General Application and Implementation Directive (GAID) 2025 NDPC/NDP ACT-GAID/01/2025 <<https://ndpc.gov.ng/wp-content/uploads/2025/07/NDP-ACT-GAID-2025-MARCH-20TH.pdf>> accessed 10 January 2026

⁶³ Ibid, art 18(1)(b).

⁶⁴ Ibid, art 24.

⁶⁵ Ibid, art 25.

⁶⁶ Ibid, art 28(3)(l) & (8)

⁶⁷ Ibid, schedule 5, para 1(b).

approval.⁶⁸ The GAID bridges the gap between data law and research ethics by prioritizing Data Ethics (Article 41) and requiring that any processing for the "public interest" must be necessary and proportionate to the aim pursued.

e. National Health Act 2014⁶⁹

Health data governance is also regulated by other sector-specific statutes and professional regulations. For instance, there is the National Health Act 2014 which provides in Section 26 (1) that patient information relating to his or her health status, treatment or stay in a health establishment not be disclosed. Such information can only be disclosed where the patient consents, or there is a court order, with respect to children or persons unable to give consent: with the request of the guardian or representative, on grounds of danger to public health.⁷⁰ The information may also be disclosed where it is in the interest of the patient.⁷¹ The National Health Act contains extensive rules on data integrity and access control. The Act also obligates the person in charge of the health establishment to take measures to ensure that there is no unauthorised access to the records or storage facilities where records are kept.⁷² A person who fails to perform this obligation, or falsifies a patient's data, wrongfully destroys a patient's record, fails to create or carry out a change to a patient's data when required to do so, is guilty of an offence and is punishable with two years' imprisonment or a fine of ₦250 000.⁷³ It prohibits giving false information with the intention that it be put into a record, copying any part of a patient's record without authority, linking any part of a computer system in which records are kept to another computer or electronic system without authority, destroying, copying, or modifying record-keeping software without authority.⁷⁴ It also criminalises revealing a patient's identity by connecting it to their medical condition without authority, as well as general hacking

⁶⁸ Ibid, schedule 5, para 5.

⁶⁹ Federal Republic of Nigeria Official Gazette No. 145 Lagos - 27th October, 2014 Vol. 101 Government Notice No. 208

⁷⁰ Ibid, s 26(1), (2).

⁷¹ Ibid, s 27.

⁷² Ibid, s 29(1).

⁷³ Ibid.

⁷⁴ Ibid.

of a record or record-keeping system or interception of information.⁷⁵ The Act also criminalises unauthorised networking of systems or impairing the systems used for health data.⁷⁶ These offences carry a penalty of imprisonment for a term not exceeding two years or a fine of ₦250,000.

The National Health Act contains very clear sanctions for tampering with health data which include offenses such as falsification or unauthorised access; it focuses more on individuals than institutions. The fine of ₦250,000 may be an insufficient deterrent for large-scale digital health platforms or corporate entities handling massive volume of Health Big Data. A large Health Maintenance Organisation (HMO) or a multinational technology provider may consider the fine as a ‘cost of doing business’ rather than an incentive to invest in high-level cybersecurity. The reason for this penalty may be because the National Health Act was enacted at the time when ‘Big Data’ was not a mainstream regulatory concern in Nigeria. The NDPA 2023 contains stricter penalties for institutional failures: the penalty may be up to ₦10 Million or 2% of annual gross revenue (whichever is higher).⁷⁷ The linkage of fines to gross revenue ensures that organisations take data protection as seriously as their profit margins. The NDPC has been actively enforcing the penalties, in 2024; it issued a fine of ₦555 Million to a bank for data processing violations.⁷⁸ In fact, the NDPC recently reported collecting over ₦7.2 billion (approximately \$5.1 million at exchange rates as at February 2026) as penalties.⁷⁹ Within the context of health data, the NDPC’s ability to levy hefty fines of up to ₦10 million or 2% of the yearly revenue for data controllers is an important check on the influence of large HMOs and public health organisations.⁸⁰ By ensuring that there is a clear procedure for the reporting of breaches of privacy, the NDPA 2023 gives effect to the right to privacy as provided in Section 37 of the 1999 Constitution, ensuring that accountability is not only a policy objective but also a justiciable reality.⁸¹

⁷⁵ Ibid, s 29(2)(g) and (h).

⁷⁶ Ibid, s 29 (i) and (j).

⁷⁷ NDPA 2023, s 48(4).

⁷⁸ One Trust Data Guidance ‘Nigeria: NDPC fines Fidelity Bank NGN 555.8M for Data Processing Violations’ [Mhttps://www.dataguidance.com/news/nigeria-ndpc-fines-fidelity-bank-ngn-5558m-data](https://www.dataguidance.com/news/nigeria-ndpc-fines-fidelity-bank-ngn-5558m-data) accessed 11 February 2026.

⁷⁹ Fatima Oladunni ‘Nigeria Just Collected ₦7.2 Billion in Data Privacy Penalties—And It’s Just Getting Started’ Techmoonshot, February 10 2026, <<https://techmoonshot.com/2026/02/10/nigeria-just-collected-%e2%82%a67-2-billion-in-data-privacy-penalties-and-its-just-getting-started/>> accessed 11 February 2026.

⁸⁰ NDPA 2023, s 48(4).

⁸¹ Ibid, s 40.

Nigerian medical ethics, which are founded on principles of duty of care, duty to avoid harm, and autonomy, emphasize privacy as a medical ethical responsibility.⁸² The Nigerian Medical Association (NMA) and the Medical and Dental Council of Nigeria (MDCN) developed guidelines for health care practitioners on confidentiality and privacy.⁸³

4. Fragmentation and Regulatory Gaps

Despite the existence of multiple protective instruments, the governance landscape is not structurally unified. The legal framework for health data in Nigeria is fragmented⁸⁴ due to the presence of constitutional standards, general data protection law, sector specific health legislation, and professional ethical standards. This creates a situation of overlapping obligations without a unified governance structure. This system engenders regulatory overlap without integration. The NDPA prescribes compliance obligations at the institutional level but fails to set up operational standards at the health sector level. The National Health Act prescribes confidentiality obligations and criminalizes violations but fails to integrate contemporary data protection principles such as thresholds for pseudonymisation, secondary use compatibility, and algorithmic accountability. Professional ethics, such as medical confidentiality codes, apply outside the NDPC's enforcement framework. Public health emergency powers facilitate rapid data collection but lack proportionality review structures.

Fragmentation is evident at the institutional level. The NDPC monitors data protection compliance in general, while the Federal Ministry of Health acts within its respective legal frameworks. There is no formalised system to ensure that data protection compliance is integrated. This fragmentation becomes evident in contexts such as: use of health datasets for AI training, for research among others. For instance, AI deployment in Nigeria depends on large-scale data aggregation in a context where datasets remain fragmented and regulatory enforcement is inconsistent.⁸⁵

⁸² Ottah, and Imoisi, (n28) 6.

⁸³ Ibrahim Sulaiman, *Medical Ethics in Nigerian Practice: Legal and Professional Perspectives* (University Press, Ibadan 2019) 67.

⁸⁴ Ottah, and Imoisi, (n28) 9.

⁸⁵ Miracle Okwukwu and others, 'Artificial Intelligence in Nigeria Healthcare: A Review of State, Challenges and Opportunities' (2025) *EthAIca* 4:210 DOI:10.56294/ai2025210

Health data governance in Nigeria is faced with a number of challenges that are interlinked: there is a huge gap in the technological infrastructure, as most of the health institutions lack the contemporary technological framework that would enable them to handle the sensitive data of the patients.⁸⁶ There is also a huge shortage of human resources with expertise in cybersecurity and data privacy.⁸⁷ The level of enforcement remains patchy, especially in resource-constrained health facilities and digital health platforms.⁸⁸

Moreover, fragmentation leads to disparities in enforcement. Large private hospitals and health tech companies may have compliance teams that can carry out DPIAs, encryption audits, and breach notifications. On the other hand, public hospitals, which are often underfunded and transitioning from paper-based systems, may not have the capacity to enforce “appropriate technical and organisational measures” as mandated by the NDPA.⁸⁹ Thus, a two-tier privacy system emerges, where rights exist but are operationally uneven.

Normative fragmentation is equally apparent in the treatment of research and public interest exceptions. The NDPA permits processing for public health and scientific research where grounded in law and accompanied by suitable safeguards. Yet these safeguards are not elaborated in the statute. The absence of detailed anonymisation standards, compatibility tests, or structured prior authorisation mechanisms contrasts with regimes such as the GDPR, which embeds defined authorisation procedures and regulator involvement for high-risk processing. The consequence is a governance model that is formally robust but structurally disjointed. Without greater regulatory coordination, clearer delineation of responsibilities, and sector-specific elaboration of safeguards, fragmentation risks undermining both privacy protection and the effective fulfilment of the right to health.

Addressing fragmentation therefore requires more than legislative amendment; it demands institutional integration, detailed regulatory guidance, and structured oversight mechanisms capable of aligning privacy, public health, and innovation within a coherent rights-based framework. It is important to note that the GAID 2025 acts as an anchor that forces all other

⁸⁶ Ibid, 3.

⁸⁷ Ibid.

⁸⁸ Ibid 4, 7; Samuel N. Ibenegbu, *Health care and the Law: A Nigerian Perspective* (LexisNexis, 2021) 91.

⁸⁹ Recent studies reveal that ‘many public institutions, especially in healthcare, lack the necessary technological infrastructure to store and manage data securely and efficiently.’ See Ayomipo Alademehin ‘Enhancing Data Governance in Nigeria: A Strategic Framework for National Development, with a Focus on Healthcare’ (February 05, 2025). < <http://dx.doi.org/10.2139/ssrn.5124913> > accessed 10 January 2026

regulations to align. It mitigates fragmentation by providing a single supremacy rule in Article 3 and a formal collaboration mechanism in Article 4 to ensure that health data governance is consistent across all Nigerian institutions. It is important to note that the GAID mitigates fragmentation at the data protection level, but does not structurally integrate the entire health governance architecture. It mitigates certain interpretive and supervisory gaps within the data protection framework, without integrating the broader constitutional, sectoral, and institutional landscape.

5. Comparative Analysis

Health data processing in Nigeria is also impacted by public health and research imperatives. During disease outbreaks or public health emergencies, data collection and sharing may be justified under statutory powers vested in public health authorities. For example, during the COVID-19 pandemic, a research collaboration effort involving the Nigerian Institute of Medical Research resulted in the development of an outbreak management system that aimed to enhance the completeness, accuracy, and validation of data at testing sites.⁹⁰ This ensured that the health data used for pandemic control was valid for research assessment. However, Nigeria lacks a detailed legal framework specifying proportionality, safeguards, or oversight mechanisms for such exceptional processing, creating risks of overreach. Comparative experience illustrates how similar constitutional democracies have attempted to structurally integrate health data governance.

a. Comparative Insights and Lessons for Nigeria

This paper uses South Africa as a comparator for Nigeria in this context because both jurisdictions are constitutional democracies with entrenched privacy guarantees and public-private health systems marked by structural inequality. Like Nigeria, South Africa operates a structurally unequal dual public-private healthcare system,⁹¹ in which both state institutions and

⁹⁰ Tijani, (n 19).

⁹¹ SG Abbott and C Sigamoney, 'The Current Healthcare Industry in South Africa' (2024) *International Journal of Health and Psychology Research*, 12(3), 11-36.

private actors play significant roles in service delivery and digital health innovation.⁹² Both countries are also experiencing rapid digitisation of healthcare delivery.⁹³ South Africa has a well-established regime for health data under the Protection of Personal Information Act (POPIA) 2013.⁹⁴ Its framework offers a regional model that is both rights-based and socio-economically comparable; this makes the analysis normatively instructive yet contextually realistic.

Section 14 of the South African Constitution⁹⁵ protects the right to privacy and judicial interpretation has recognised informational privacy as part of this protection. South Africa's constitutional jurisprudence has more clearly articulated informational self-determination as an aspect of dignity.⁹⁶

Under POPIA, the conditions for lawful processing are codified in Chapter 3 (Sections 8–25), including: accountability, processing limitation, purpose specification among others. Section 22 of POPIA imposes a clear statutory obligation to notify both the regulator and affected data subjects of security compromises. POPIA also introduces prior authorisation requirements under Section 57 for certain high-risk processing activities, thereby strengthening ex ante regulatory oversight. Nigeria's NDPA requires Data Protection Impact Assessments (Section 28), but structured prior consultation with the regulator is less clearly institutionalised.

Under the POPIA, health data is categorised as 'special personal information.' In Section 26, it establishes a general prohibition on processing special personal information. There are however exceptions, such as where processing is carried with the consent of the data subject, necessary for the establishment or defence of a right, or to comply with a legal obligation.⁹⁷ The prohibition

⁹² Jonathan Klaaren and Firoz Cachalia, 'A South African Public Law Perspective on Digitalisation in the Health Sector' (2021) 15 *Digital Pathway Paper Series*, 6 <[https://www.researchgate.net/publication/354355061_A_South_African_Public_Law_Perspective_on_Digitalisation_in_the_Health_Sector#:~:text=We%20made%20two%20further,public%20and%20private%20actors\)%20and](https://www.researchgate.net/publication/354355061_A_South_African_Public_Law_Perspective_on_Digitalisation_in_the_Health_Sector#:~:text=We%20made%20two%20further,public%20and%20private%20actors)%20and)> accessed 16 February 2026.

⁹³ Ibid, 3.

⁹⁴ Protection of Personal Information Act 4 of 2013, <<https://popia.co.za/>> accessed 16 February 2026.

⁹⁵ As adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly, <<https://www.justice.gov.za/constitution/SACConstitution-web-eng.pdf>> accessed 16 February 2026.

⁹⁶ J Neethling, 'The Concept of Privacy in South African Law' (2005) *South African Law Journal* 122(1) <<https://hdl.handle.net/10520/EJC53620>> accessed 12 January 2026

⁹⁷ POPIA 2013, s 27.

does not apply to processing for historical, statistical or research purposes, provides that it is under the following conditions:⁹⁸

- 2 The processing serves the public interest and the data processing is a necessary part of achieving that goal.
- 3 It is genuinely impossible or extremely difficult to obtain the data subject's consent. However, strong protections must be put in place to ensure data subject's privacy is not harmed to a disproportionate extent.
- 4 Where the data subject intentionally made the information public themselves.
- 5 The processing follows the specific rules and requirements laid out in sections 28 through 33 of this law.

The Information Regulator has power to authorise any party to process special personal information upon application by that party, if such processing is in the public interest and appropriate safeguards have been put in place to protect the personal information of the data subject.⁹⁹ The Regulator is also empowered to impose reasonable conditions in respect of any authorisation granted.¹⁰⁰

Under Section 32, the prohibition does not apply to processing by medical professionals, healthcare institutions or facilities or social services done in the course of their duties.¹⁰¹ This Section also regulates processing by insurance companies, medical schemes, medical scheme administrators, healthcare organisations, schools, public bodies, administrative bodies, requiring that such processing be subject to a duty of confidentiality.¹⁰² Under the Act, with regard to the processing of information for historical, statistical, or research purposes, the responsible party must ensure that the subsequent processing of information is compatible with the purpose for which the information was collected and will not be published in an identifiable form.¹⁰³

While both the NDPA 2023 and the POPIA 2013 recognise exceptions for public interest and research, the POPIA embeds the exceptions within a more granular statutory architecture. It

⁹⁸ Ibid, s 27 (1) (a-e).

⁹⁹ Ibid, s27(2).

¹⁰⁰ Ibid, s 27(3).

¹⁰¹ Ibid, s 32(1) (a).

¹⁰² Ibid, s 32(2).

¹⁰³ Ibid, s 15 (3) (e).

specifically links special category processing to defined authorisations, compatibility requirements and operator-level confidentiality obligations.

The NDPA does not define anonymisation thresholds, or mandatory linkage with institutional review boards. In a context of increasing AI-driven health analytics, this regulatory silence is significant.

b. The Legal Framework for Health Data for Research Purposes under the European Union General Data Protection¹⁰⁴

According to the European Union's legal framework, health and genetic data are considered special categories of personal data, as defined in the General Data Protection Regulation (GDPR). Article 9(1) establishes a default rule that the processing of this category of data is prohibited. Processing is only permissible where one of the grounds identified under Article 9(2) applies, including situations involving explicit consent, considerations of substantial public interest, public health purposes, or scientific research activities.¹⁰⁵ The research and public health exceptions under Article 9(2) (i) and (j) are not self-standing authorisations. They operate in conjunction with Article 89 GDPR, which requires "appropriate safeguards," including data minimisation and technical or organisational protections such as pseudonymisation.

Although the NDPA considers health data to be sensitive personal data and allows for the processing of such data on the basis of public interest and research, it fails to outline a conditional framework as elaborate as that in the GDPR. Contrary to the GDPR, the NDPA fails to incorporate a proportionality review at the special category data provision level and fails to outline statutory requirements akin to the Article 89 safeguard framework. The lack of elaborate legislative requirements on pseudonymisation standards, re-identification risk mitigation, and mandatory data protection impact assessments in research settings could potentially broaden the scope of public interest processing.

¹⁰⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1. (hereafter referred to as GDPR).

¹⁰⁵ GDPR 2016, art 9(2)(a), art 9(2)(g), art 9(2)(i), art 9(2)(j).

6. Strengthening the "Right to Health" through the AAAQ Framework

While comparative analysis reveals institutional design differences, the ultimate normative test remains whether Nigeria's framework advances or undermines the substantive right to health. The right to health is recognised under several international instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR);¹⁰⁶ the United Declaration of Human Rights,¹⁰⁷ the 'International Convention on the Elimination of All Forms of Racial Discrimination (CERD);¹⁰⁸ among others. The African Charter on Human and Peoples' Rights also guarantees the right to health.¹⁰⁹ The 1999 Constitution of Nigeria in Chapter II also provides for the right to health.¹¹⁰ The right to health is broader than mere availability of healthcare facilities. It includes entitlement to relevant health education and information, together with the opportunity to participate actively in health-related decision-making processes.¹¹¹ In its authoritative interpretation of the right to health in General Comment No. 14,¹¹² the UN Committee on Economic, Social and Cultural Rights articulated the normative content of the right through what has become known as the AAAQ framework. This framework identifies four interdependent and indivisible elements: availability, accessibility, acceptability, and quality.¹¹³

These elements are not only applicable in the provision of health care but also relate to the overall factors that influence health outcomes, including access to safe water, sanitation, proper

¹⁰⁶ ICESCR, art 12.

¹⁰⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 25.

¹⁰⁸ The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965), art 5, adopted 21 December 1965 BY UN General Assembly resolution 2106 (XX), <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>> accessed 16 February 2026.

¹⁰⁹ The African Charter on Human and Peoples' Right, African Charter on Human and Peoples' Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3/Rev.5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, art 16

¹¹⁰ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹¹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)' (11 August 2000) UN Doc E/C.12/2000/4.

¹¹² General comment no. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) UN. Committee on Economic, Social and Cultural Rights (22nd sess. : 2000 : Geneva) 2000 < <https://digitallibrary.un.org/record/425041?ln=en&v=pdf>> accessed 16 February 2026.

¹¹³ Ibid, para 12.

nutrition, housing, health education, and access to health information..¹¹⁴ It includes the "right to seek, receive and impart information and ideas concerning health issues."¹¹⁵ It is worthy of note that the right to receive information cannot justify practices that erode the duty to maintain the confidentiality of personal data.¹¹⁶ Health data governance in Nigeria can be meaningfully assessed through the AAAQ framework: Availability, Accessibility, Acceptability, and Quality. Although the Nigeria Data Protection Act, 2023 (NDPA) provides a legal framework for the protection of sensitive health information, its role in the realisation of the right to health must be critically assessed through the AAAQ framework

Availability means that health facilities, goods and services, such as hospitals, clinics must be available.¹¹⁷ Ensuring accessibility means that all individuals can use health facilities, products, and services without discrimination, including having physical access, reasonable costs, and access to necessary health-related information.¹¹⁸ Acceptability is concerned with respect for the principles of medical ethics and confidentiality. If exceptions in respect of research and public interest are not subject to strict scrutiny, oversight, patient trust could be undermined. Accessibility (Non-discrimination) is at issue where research data is reused for profiling or predictive analytics purposes without sufficient protection against discrimination. Vulnerable groups are likely to be disproportionately affected by surveillance or exclusionary algorithmic decisions.¹¹⁹

Acceptability means that these facilities and services should function within the framework of medical ethics and be culturally sensitive, considering variations in gender, age, and social settings.¹²⁰ This implies that they should be respectful of the cultures of persons, minorities, peoples, and communities; take into account the differences between genders and the needs that arise at different stages of life; and be structured in a manner that ensures confidentiality while enhancing the health and well-being of the people they serve. This lack of definition of key

¹¹⁴ Ibid, para 11.

¹¹⁵ Ibid, para 12.

¹¹⁶ Ibid.

¹¹⁷ Ibid, para 12 (a).

¹¹⁸ Ibid, para 12(b).

¹¹⁹ Cecil Abungu, 'Algorithmic Decision-Making and Discrimination in Developing Countries ' (2021 – 2022) *Journal of Law, Technology & The Internet* 13(1), 46.

¹²⁰ Ibid, para 12(c).

concepts such as public interest, substantial interest, in the NDPA 2023, provides for broad administrative discretion. In the health data context, especially for HIV status, reproductive health data, genetic data, and epidemiological data, this could lead to a lack of acceptability, as patients cannot readily foresee how their data will be used outside the medical setting.

Quality means that health facilities, goods and services must ‘be scientifically and medically appropriate and of good quality.’¹²¹ Quality may also be affected where data is reused without accountability, as patients may not provide accurate information to healthcare providers out of concern for secondary use.

Health data governance in Nigeria is at the nexus of privacy law, public health policy, and human rights obligations. When evaluated through the lens of the AAAQ criteria of Availability, Accessibility, Acceptability, and Quality, it is clear that mere legal compliance is not enough. The real test of health data governance is whether it can build public trust, avoid discrimination, help with evidence-based planning, and ensure that the digital health infrastructure improves, rather than undermines, the effective enjoyment of the right to health. A rights-based approach, therefore, requires not only progressive regulation but also a focus on procedural integrity, balanced limitations on exceptions, open accountability, and sustained regulatory strength. Otherwise, health data governance may be progressive in form but weak in substance.

7. Recommendations

In Nigeria, the framework of health data governance could be improved by a more targeted approach to institutional development, rather than a complete legislative reform. Firstly, proportionality should be given a concrete definition through the imposition of mandatory documented necessity and proportionality assessments, especially in the context of large-scale, AI-based, or secondary research processing of health data. Secondly, exemptions for research and public interest should be given more concrete statutory definitions to ensure that consent and informational autonomy are not gradually diminished; this includes more specific standards for compatibility, ethical assessment, and anonymisation. Thirdly, the Nigeria Data Protection Commission must issue compulsory technical guidance on anonymisation and de-identification to reduce the risks of re-identification. Fourthly, the challenge of regulatory fragmentation can be

¹²¹ Ibid, para 12(d).

addressed by harmonized regulatory guidance from the data protection regulatory authority and health regulators to ensure supervisory competence and compliance standards. Finally, there should be a consideration for the introduction of prior authorisation requirements for high-risk health data processing and improved remedies for data subjects.

8. Conclusion

The health data governance framework in Nigeria is characterized by significant legislative development but is still imbalanced in its structure. The Nigeria Data Protection Act (NDPA) is a strongly normatively grounded and rights-focused basis for the protection of sensitive health data. Nevertheless, as has been illustrated in this article, normative strength is not a sufficient basis for effectiveness. There are still gaps in the area of proportionality, research exemptions, and anonymisation.

The comparative analysis with South Africa's POPIA and the European Union's GDPR further demonstrates that effective health data governance requires more than broad rights-based guarantees. Both frameworks provide more structured oversight mechanisms for high-risk processing, clearer proportionality safeguards, stronger authorisation procedures, and more detailed regulation of research-related processing and anonymisation standards. These comparative insights illustrate that Nigeria's challenge is not the absence of a legal framework, but the need for greater institutional integration, sector-specific operational safeguards, and clearer procedural limitations capable of balancing innovation, public health objectives, and informational privacy.

Although the General Application and Implementation Directive (GAID) reduces some of the interpretative uncertainties, it does not, however, address the issue of fragmentation in the health data regulatory framework. Accordingly, the priority for Nigeria is not the creation of an entirely new legal regime, but the strengthening of institutional coordination, procedural safeguards, and sector-specific oversight mechanisms. Improving proportionality review, high-risk processing oversight, and regulatory coordination would help address fragmentation without undermining the underlying framework established by the NDPA. In this regard, therefore, the issue of health data governance in Nigeria needs to be addressed through structural adjustments to ensure that innovation and public health goals continue to be consistent with privacy, dignity, and human rights.

HEALTHCARE FINANCING UNDER NIGERIA'S NATIONAL HEALTH INSURANCE ACT (NHIA): IMPLICATIONS FOR PERSONS LIVING WITH NON-COMMUNICABLE DISEASES IN NIGERIA.

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Abstract

Nigeria's rising burden of chronic non-communicable diseases (NCDs) presents a fundamental challenge to the healthcare financing system under the National Health Insurance Act (NHIA). While the NHIA aspires to advance universal health coverage, its financing design remains largely oriented towards episodic and curative care, offering limited protection for persons living with chronic NCDs who require continuous, preventive and long-term treatment. This article demonstrates that the existing healthcare financing framework under the NHIA is structurally inadequate to secure health security and financial protection for persons living with chronic NCDs, thereby reinforcing health-related impoverishment and inequity. Drawing on the capabilities approach, the article reconceptualizes healthcare financing not merely as access to services, but as a legal and institutional mechanism for enabling full functioning and sustained well-being. Using the universal health coverage pillars of equity, access and coverage as an evaluative yardstick, the article interrogates the NHIA's benefit package, cost-sharing arrangements and regulatory design to expose critical gaps in chronic disease financing. It argues that the current framework insufficiently addresses the social and economic determinants of NCDs, including preventive interventions linked to unhealthy diets, and fails to mitigate the vicious cycle between chronic illness and poverty. The article contributes to Nigerian health law scholarship by advancing a capabilities-based critique of the NHIA and proposing targeted regulatory and financing reforms aimed at reducing financial hardship, improving continuity of care, and enhancing functional health outcomes for persons living with chronic NCDs.

Keywords: Non-Communicable Diseases, Capabilities Approach, Universal Health Coverage, Healthcare Financing, Nigeria's National Health Insurance Authority

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1.0 Introduction

Healthcare financing has been a major concern in my many health systems and health policy over several decades. Despite various reforms, it appears that the pursuit of equitable financing options especially in developing and low-income countries is still unsettled.¹²² This challenge is particularly pronounced for persons suffering from Non-Communicable Diseases (NCDs) also known as chronic diseases, which are diseases characterized by slow progress that are debilitating. NCDs are largely non-curative but require long term, complex, continuous and requiring expensive procedures, and medicines. The four major types of Non-Communicable Diseases are cardiovascular diseases (CVDs), cancers, chronic respiratory diseases (such as chronic obstructed pulmonary disease and asthma) and diabetes. Some NCDs, like cancer, are life threatening while others, like sickle-cell anemia, diabetes can live a near normal life with adequate medications etc.¹²³ As at date, chronic NCDs pose the most serious global health challenge. Current statistics show that over 70% of all deaths globally are caused by NCDs with half of these deaths occurring in those between the ages of 30 and 69.¹²⁴ Currently, the African region is experiencing a high burden of NCDs which is projected to surpass communicable, maternal, perinatal and nutritional diseases by 2030.¹²⁵ Further by 2030, NCD related deaths are projected to surpass the combined deaths of communicable and maternal and prenatal deaths.¹²⁶ NCDs are also rising faster in younger populations in low and middle income countries than in high income countries. In a recent publication, health experts noted that CVDs are now responsible for 33% of deaths in Nigeria.¹²⁷ This burden is expected to increase by 2030, with 23

¹²² E. Alfred, GO. Akpata, AE Akintoye. 'Health Care Financing in Nigeria: An Assessment of the National Health Insurance Scheme (NHIS).' *European Journal of Business and Management* (2016) (18) (27) 27-34 Available from <https://www.iiste.org/Journals/index.php/EJBM/article/view/33191> accessed 29 November 2025

¹²³ W. Nwankwo, O. Aje-Famuyide, AS. Olayinka. 'Driving Equitable Access to Healthcare for NCD Sufferers in Nigeria through a Legal Informatics Approach. *International Journal of Business and Applied Social Science (IJVASS)* (2019).(2) (5):77-97 <https://doi.org/10.33642/IJBASS.V5N2P8> accessed 10 December 2025

¹²⁴ World Health Organization. WHO. Global Status Report on Non-communicable Diseases. 2011. Geneva: World Health Organization. https://www.who.int/nmh/publications/ncd_report2010/en/ Accessed 15 July 2019.

¹²⁵ WHO. Regional Office for African. Aug. 2023. Country Disease Outlook. Accessed May 17 2024 from <https://www.afro.who.int/sites/default/files/2023-08>. A. Boutayeb, S. Boutayeb 2005. The burden of non-communicable diseases in developing countries. *Int. J. Equity Health* (4) (1) <https://equityhealth.biomedcentral.com> accesse 25 June 2018

¹²⁶ World Health Organization. World Health Statistics. 2013. (WHO 2013) 15

¹²⁷ N. Onyedika-Ugoeze 'Experts Lament the High Burden of Cardiovascular Disease in Nigeria.' (Editorial *The Guardian Nigeria News*. 23 Sept 2021. <https://cutt.ly/lwOma5UQ>. Accessed Nov. 15, 2022. See also, S. Isezuo, MU. Sani, A. Talle, A. Johnson, AM Adeoye, MS Ulgen, et. al. 'Registry for Acute Coronary Events in Nigeria (RACE-Nigeria): Clinical Characterization, Management, and Outcome.' *Journal of the American Heart Association* (2022) 11.1: e020244. Retrieved Jan. 18, 2023, from <https://cutt.ly/wwOmfbJL>.

million mortality from CVDs.¹²⁸ The primary causes of the rising CVD burden are high blood pressure (commonly called hypertension), diabetes, dyslipidemia (high cholesterol), and obesity. According to WHO, 1.3 billion adults have high blood pressure, two-thirds of which are in LMIC.¹²⁹ Studies have shown that high blood pressure and diabetes have more than doubled in Africa.¹³⁰ Particularly in Nigeria, which has higher rates than Europe and the United States.¹³¹ With the facts and figures above, it is clear that non-communicable diseases have already become a persisting major challenge facing Nigeria's health care presently.

Three interrelated concerns shape the analytical focus of this article. The first relates to the criteria by which the effectiveness of healthcare financing systems should be assessed, particularly the interlinked dimensions of equity, access, and coverage that underpin universal health coverage (UHC). The second concern centres on the relationship between healthcare financing and poverty. Although public health insurance schemes are frequently presented as instruments for poverty reduction and financial risk protection, limited coverage, exclusionary design features, and weak implementation have constrained their effectiveness for persons living with chronic NCDs. The absence of adequate social protection in healthcare leads to high OOP expenditures, increasing the risk of catastrophic spending and impoverishment, and ultimately inhibiting progress towards achieving the poverty reduction and health related goals of the Sustainable Development Goals (SDGs).

According to the World Health Organization, it is estimated that over 150million are forced into poverty every year due to out-of-pocket health care expenditure. Catastrophic health spending

¹²⁸D. Peiris, A. Ghosh., J. Manne-Goehler, LM. Jaacks, M. Theilmann, ME Marcus, et. al. 'Cardiovascular Disease Risk Profile and Management Practices in 45 Low-Income and Middle-Income Countries: A Cross-Sectional Study of Nationally Representative Individual-Level Survey Data'. *PLoS medicine* (2021) (18). (3) e1003485. Retrieved Oct. 15, 2022, from <https://cutt.ly/9wNvVeqA>.

¹²⁹ WHO. March 2023. Factsheet on Hypertension <https://cutt.ly/0wOmjZNj>. Accessed Aug. 16, 2023

¹³⁰AE Schutte, N. Srinivasapura Venkateshmurthy, S. Mohan, and D. Prabhakaran, D. 'Hypertension in Low- and Middle-Income Countries.' *Circulation Research* (2021) (128) (7) : 808–826. <https://cutt.ly/EwOmlDbw>. Accessed 18 May 2023.

¹³¹S Van de Vijver, H. Akinyi, S. Oti, A. Olajide, C. Agyemang, I. Aboderin, and C. Kyobutungi, C. 'Status Report on Hypertension in Africa--Consultative Review for the 6th Session of the African Union Conference of Ministers of Health on NCDs.' *The Pan African Medical Journal* (2013) (16) (1) 38. <https://cutt.ly/iwOTsuch>. accessed May 18, 2022.

occurs when out-of-pocket (OOP) expenses for healthcare affect household living expenses¹³². The implications of the above are that the bulk of health expenditure is borne by households without insurance which shifts the bulk of the expenditure to private individuals irrespective of the ability to pay. Nigeria has the highest number of persons living in extreme poverty which adversely affect their health.¹³³ The third point of concern is the preparedness of health systems to adapt the appropriate model of care in accordance with the needs of the NCDs. This raises important questions about the extent to which existing legal and institutional arrangements are capable of supporting sustainable, equitable, and NCD-responsive healthcare financing.¹³⁴ With these anomalies, there is a need for reform direction to improve the effectiveness of health care delivery.¹³⁵

Scholarship on social determinants of health has expanded considerably in the last decade with increasing attention paid to the relationship between socio-economic conditions and health outcomes. International bodies such as the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) have also emphasized the importance of addressing social determinants of health in pursuit of health equity. Notably, the WHO Commission on Social Determinants of Health in its report, *Closing the Gap in a Generation: Health Equity Through action on the Social Determinants of Health* advocated for a shift from the narrow focus on disease control to broader interventions aimed at improving living conditions and reducing social inequalities.¹³⁶ Similarly, Marmot argues that reducing health inequalities require not only disease control measures, but also poverty alleviation, social development and strengthened healthcare systems.¹³⁷

The SDGs further reinforce this perspective by seeking to consolidate and extend the achievements of the Millennium Development Goals (MDGs). In its preamble and Plan of Action, the SDGs identify the eradication of poverty, including extreme poverty as the greatest

¹³² K. Vu Duy, H. Van Minh, K. Bao Giang, A. Dao, Le Thanh Tuan, Nawi Ng, Socio Economic Inequalities and Impoverishment Associated with Non-communicable Diseases in Urban Hanoi, Vietnam, *International Journal for Equity in Health* (2016) (15):169

¹³³ Share of Global Poverty in Africa by Country 2026 <https://www.statista.com/statistics/1228553/extreme-poverty-as-share-of-global-population-in-africa-by-country/> accessed 19 May 2026

¹³⁴ W. Wilson Nwankwo, O. Aje-Famuyide, Akinola S. Olayinka. 2019. Supra.

¹³⁵ *Ibid*

¹³⁶ World Health Organization. Commission on the Social Determinants of Health (2008) Geneva.

¹³⁷ M. Marmot. Social Determinants of Health Inequalities, *Lancet*, (2005 (365) (9464) 1099-1104

global challenge and an essential requirement for sustainable development. Poverty, however is multidimensional and may arise from several interrelated factors, including healthcare expenditure. One recognized dimension is iatrogenic poverty, which refers to poverty induced or exacerbated by spending on medical treatment.” The World Health Organization estimates that over 150million are forced into poverty every year due to out-of-pocket (OOP) health care expenditure, a term described by the WHO and the International Labour Organization (ILO) as catastrophic health care spending.

Catastrophic healthcare expenditure has been widely examined in health financing literature. Vu Duy Kien et.al defines catastrophic payments as healthcare expenditures that consume a substantial fraction of the household income.¹³⁸ Similarly, catastrophic health spending occurs when OOP health expenses significantly disrupt household living expenses¹³⁹ The World Health Report suggests that families who spend 50% or more of their non-food expenditure on health care are likely to be impoverished.¹⁴⁰ Paul and Jonathan further argue that catastrophic OOP health expenditure is the singular major reason for households descending into poverty, given the severe financial consequences associated with healthcare costs.¹⁴¹ In the same vein, Ichoku contends that healthcare expenditure becomes catastrophic when it exposes households to the risk of poverty or deepens existing poverty conditions.¹⁴²

Several studies have highlighted the implications of OOP healthcare finance. Bolaji Samson and Samina Khan in their study on catastrophic health expenditure observed a high reliance on OOP health payment in Nigeria. Their findings revealed that OOP expenditure is linked to increased poverty headcount, pushing many households below the poverty line;¹⁴³ and remains alarmingly

¹³⁸ Vu Duy Kien et al, Socioeconomic Inequalities in Catastrophic Health Expenditure and Impoverishment Associated with Non-communicable Diseases in Urban Hanoi, Vietnam, *International Journal for Equity in Health* (2016) (15) : 169 <http://soi.org/10/1186/s12939-016-0460-3> accessed on 6 November 2018

¹³⁹ *ibid*

¹⁴⁰ The World Health Report 2000, *Health Systems: Improving performance*. Geneva: World Health Organization; 2000

¹⁴¹ Paul Certler and Jonathan Gruber. ‘Insuring Consumption Against Illness.’ *American Economic Review*, (2002) (92) : 51-70

¹⁴² HE Ichoku, W. Fonta. ‘The Distributive Effect of Health Care Financing in Nigeria: A Case Study of Enugu State.’ PMMA Working Paper, No. 2006-17, <https://dx.doi.org/10.2139/ssrn.985332>

¹⁴³ BS Aregbesola, SM Khan, ‘Out-of-Pocket Payments, Catastrophic Health Expenditure and Poverty among Households in Nigeria’ *Int. Journal Health Policy Manag.* (2018) (7) : (9): 798-806 doi:10.15171/ijhpm.2018.19 accessed on October 23, 2018

high among Nigerian populations.¹⁴⁴ This has been confirmed by Riman and Akpan's study which revealed that the heavy reliance on OOP expenditures reduce healthcare utilization, thereby exacerbating the already inequitable access to quality healthcare and household financial risk.

Studies focusing on chronic diseases indicate that long term illnesses bear particularly heavy burden. Christopher's study on the financial burden imposed on households affected by chronic diseases affirmed a higher level of expenditure explained by the long nature of treatment, (which can be made complex by acute episodic comorbidity). The study further confirms that households with higher economic quintiles tend to spend a larger proportion of household resources on healthcare than poorer households, although poorer households often experience more severe welfare consequences from such spending.¹⁴⁵ In Nigeria, healthcare financing every family is responsible for the health care of its members, principally through direct payments for health expenditure. Toyin Falola observes that the family functions both as a welfare and insurance agency¹⁴⁶ Accordingly, it may be safe to conclude that the greater financial burden of healthcare is bore by families or individuals.

It is against this backdrop that this article examines whether Nigeria's healthcare financing framework under the National Health Insurance Act (NHIA) adequately advances equitable access to healthcare for persons living with NCDs within the framework of UHC and the capabilities approach. UHC, as articulated in SDG 3.8, conceptualizes health system performance in terms of financial risk protection, access to quality essential health services, and access to affordable medicines.¹⁴⁷ As Nigeria re-commits itself to adequate health financing under the NHIA, it is necessary to assess the state of preparedness of the Act using the relevant benchmarks to make a forecast for persons living with NCDs. The paper finds that although the NHIA is an important policy reform toward expanded coverage, there are still structural

¹⁴⁴ EE. Ichoku, and WM. Fonta. 'Catastrophic Healthcare Financing and Poverty: Empirical Evidence from Nigeria. *Journal of Social and Economic Development*, (2009) (11) (2) 1-16

¹⁴⁵ JC Counts, J. Skordis-Worrall. 'Recognizing the Importance of Chronic Disease in Driving Healthcare Expenditure in Tanzania: Analysis of Panel Data From 1991 to 2010.' *Health Policy and Planning* (2016) (31) (4)(1): 434-443

¹⁴⁶ Toyin Falola. *Culture and Customs of Nigeria*. Greenwood Press, 2001

¹⁴⁷ OA. Aje-Famuyide, F. Anene. Universal Health Coverage and the Right to Health in Nigeria *University of Ibadan Law Journal* (10) (1): 243-263 See also, United Nations. Sustainable development. <https://sustainabledevelopment.un.org/sdgs>

limitations that constrain its effectiveness in providing adequate financial protection for persons living with NCDs.

This study is intended to contribute to the existing body of knowledge in the field of health law, health policy and health care financing by examining the implications of Nigeria's National Health Insurance Act (NHIA) for persons living with NCDs. This study is expected to develop a policy-oriented framework that may assist policymakers in designing and implementing inclusive healthcare financing strategies and programmes capable of addressing the needs of persons suffering from NCDs irrespective of their economic status or educational background. Given that the reduction of global poverty and inequities in access to NCD treatment require sustained national investment, it is necessary to formulate policies around the treatment-services for NCDs that are nuanced, stratified and scalable.

In what follows, section 2 provides the context to the study using the capabilities framework. Applying this framework, section 3 of the article interrogates the NHIA's benefit package design, cost-sharing arrangements, and regulatory architecture to assess their adequacy in addressing the long-term financing needs of persons living with chronic NCDs.

2.0 Conceptual Analysis and Theoretical Framework

Persons living with NCDs have a recurring theme which is the burden of chronicity of the disease which brings about long term treatment and reduced quality of life.¹⁴⁸ However, other dynamics complicate the disease burden; the management and treatment of chronic illnesses require multiple healthcare services, costly management drugs, poor access to continuous specialized treatment and fragmented healthcare services, more often than not, resulting in financial catastrophe, placing substantial burden on the patients and their families.¹⁴⁹ Additionally, LMICs including Nigeria, continue to face rising healthcare cost, limited resources, under-funded health financing systems, workforce shortages, service fragmentation, workforce,

¹⁴⁸ Supra at footnote 2

¹⁴⁹ Seen at <http://www.who.int/mediacentre/factsheets/fs355/en/>

and persistent inequities in access to quality healthcare.¹⁵⁰ Therefore, an adequate health plan covering medical bills, and treatment frequently incurred is required to protect against financial catastrophe.¹⁵¹ Where essential health services are not available, affordable, inadequate and of good quality, governments are required to provide such services through legislative and regulatory reforms to realign financing structures with population health needs

Healthcare financing refers to the mechanisms through which resources are generated, allocated, and utilized to ensure access to health services. The World Health Organization (WHO) frames healthcare financing primarily from a health systems and public health perspective when it defines healthcare financing as the collection, pooling and purchasing funds to improve health outcomes and protect individuals from financial hardship associated with healthcare costs. From this perspective, the global body focuses on how financing mechanisms can achieve universal health coverage, improve health outcomes and protect individuals from catastrophic health expenditures.

The World Bank too, conceptualizes health care from a development and fiscal sustainability perspective focusing on resource mobilization, cost-effectiveness, economic productivity and the role of health financing in broader development goals. According to World Bank, healthcare financing is the mobilization of sustainable financial resources to achieve equitable and efficient healthcare delivery. Both institutions however commonly agree on principles such as sustainability, pooling of risks and improving access to essential services. Scholars such as Joseph Kutzin has conceptualized healthcare financing within the its health outcome impact, describing it as a system of revenue generation, and risk pooling intended to advance UHC.¹⁵² Within the context of persons living with NCDs, healthcare financing comprises of legal, institutional and fiscal arrangements that guarantee continuous, affordable, equitable access to long-term prevention, diagnosis, treatment, and rehabilitative health care services without incurring catastrophic expenditures.

¹⁵⁰ JO. Ashaolu,, RE, Gunen, KR. Isacc, et.al. Breaking Barriers: Addressing Systemic Inequities in Chronic Disease Care for Displaced Populations. *Conflict and Health*. (2026) (20) :26 <https://doi.org/10.1186/s13031-026-00767-4>

¹⁵¹ W. Wilson Nwankwo, O. Aje-Famuyide, Akinola S. Olayinka. 2019.

¹⁵² J. Kutzin. Health Financing for Universal Coverage and Health System Performance: Concepts and Implications for Policy. *Bulletin of the World Health Organization*. (2013 (91) (8), 602-611.

The objectives of healthcare financing are anchored on equity, accessibility, affordability and quality, and these constitute the framework by which health systems are assessed. Equity in financing implies fair distribution of financial contributions and health benefits according to ability to pay and need, as reflected in the principles of progressive financing and risk pooling.¹⁵³ Accessibility refers to the extent to which financial mechanisms enable physical and financial access to essential services without administrative, geographic or economic barrier.¹⁵⁴ Affordability denotes the protection of individuals from catastrophic and impoverishing health expenditures, ensuring that out-of-pocket payments do not prevent service utilization.¹⁵⁵ Quality healthcare delivery links financing arrangements to the provision of effective safe and evidence-based services, ensuring value for money and improved health outcomes.¹⁵⁶ These objectives, put together, operationalize universal health coverage (UHC) by aligning resources mobilization and purchasing functions with distributive justice and system efficiency in healthcare financing for persons living with NCDs.

Theoretical Framework

This work adopts Amartya Sen's capabilities theory as its theoretical foundation for evaluating healthcare financing under Nigeria's National Health Insurance Authority Act (NHIA) 2022 particularly as it affects persons living with NCDs. The capabilities approach integrates the vision of the good life rooted in Aristotelian philosophy and provides an evaluative framework for assessing individual well-being, appraising social arrangements, and guiding policies and social reforms aimed at expanding substantive freedoms.¹⁵⁷ Developed by Amartya Sen, the approach offers an alternative to resource-based utilitarian theories of justice by focusing on individuals' substantive freedoms, which is their real opportunities to achieve valuable functionings. Sen, in his seminal work, *Equality of What?* argues that the capabilities approach is

¹⁵³ World Health Organization. *Health Financing for Universal Coverage*. (WHO 2010)

¹⁵⁴ J. Kutzin. *Health Financing for Universal Coverage and Health System Performance*. Supra.

¹⁵⁵ World Bank. *World Bank Development Report: Investing in Health* (World Bank 1993)

¹⁵⁶ World Health Organization. *Quality of Care: A Process for Making Strategic Choices in Health Systems* (WHO 2006).

¹⁵⁷ A. Sen. *Development as Freedom*. (Oxford University Press. 1999). Sridhar Ventkatapuram. *Health Justice: An Argument from the Capabilities Approach*. (Polity Press 2011)

concerned with evaluating wellbeing in terms of a person's actual ability to achieve valuable functionings as part of living.¹⁵⁸

Sen draws a distinction between functioning and capabilities. Functioning refers to the state of being, and doing, that individuals have reason to value, such as being educated, having freedom of movement, participating in social life, access to water. In the context of health, functioning is the state of being free from disease and preventable morbidity. Capabilities, on the other hand, refers to the freedoms or opportunities to achieve these functionings. Capabilities therefore represent the real possibilities available to individuals to achieve functioning, rather than merely the formal means or resources at their disposal.¹⁵⁹

Applied to health, the capabilities approach conceptualizes good health as a fundamental freedom that enables individual to pursue valued ways of living. Sridhar extends Sen's framework by developing a health justice paradigm grounded in the moral entitlement to health. According to Venkatapuram, 'to be healthy is a kind of freedom', because health enables individuals to exercise agency, and participate meaningfully in society.¹⁶⁰ From this perspective, illness and premature death are understood not merely as biomedical outcomes, but as consequences of unjust social and institutional arrangements that restrict individuals' health capabilities.

Accordingly, all persons may be understood as having legitimate claims to be determinants of health, including biological, physical, environmental, social and institutional conditions necessary to achieve health capability. Access to healthcare services, medicines, palliative care, adequate nutrition, and a healthy living environment therefore constitute essential conditions for the realization of health capabilities. For example, being free from disease constitute a functioning, while access to healthcare, nutrition, and supportive social conditions constitute the capability to achieve good health. These health-related capabilities are foundational because their absence constrains human agency, and limits the ability of individuals to live they value.

¹⁵⁸ A. Sen. Equality of What? The Tanner Lecture on Human Values. Delivered at Stanford University, May 22, 1979. Lake City: University of Utah. Press Pp197-220

¹⁵⁹ Supra.

¹⁶⁰ S. Venkatapuram. 2007. *Health and Justice: The Capability to be Healthy*. University of Cambridge 2007.

Thomas Pogge extends this reasoning to institutional design. He argues that states and global social and global arrangements that produce severe deprivation are morally defective.¹⁶¹ Applied domestically, Pogge seems to suggest that deficiencies in policy and financing structures are not mere technical deficits but also constitute moral harm especially when they result in preventable death or disease. In this context, he suggests recommendations that support institutional interventions and reforms to prevent injustice.¹⁶²

There is a global shift in focus for a capabilities approach as the approach aligns with the principles of the Universal Health Coverage (UHC) which seeks to ensure access to quality health services, financial protection, and equity.¹⁶³ UHC operationalizes these principles through the dimensions of service availability, population coverage, and cost protection, with particular attention to marginalized populations. The UN General Assembly offered a fuller multidimensional goal of UHC that: [all] people have access, without discrimination, to nationally determined sets of the needed promotive, curative and rehabilitative basic health services and essential, safe, affordable, effective and quality medicines, while ensuring that the use of these services does not expose the user to financial hardship, with a special emphasis on the poor, vulnerable and marginalized segments of the population.¹⁶⁴ Attaining UHC encompasses a range of strategies which WHO has captured in the three dimensions of the UHC namely: the health services that are needed, the number of people that need them and the costs to whoever must pay – users and third party funders.¹⁶⁵

The capability approach is appropriate and desirable for reforming policies for NCDs because the focus of the approach is the capability and not on health outcomes. Second, the capabilities approach is committed to opportunities that improve wellbeing. To Sen, an individual's capabilities is 'not so much in ranking living standards, but in deciding on a cut-off point for the purpose of assessing poverty and deprivation'¹⁶⁶ This means that capabilities entails the potentials that are available to a person to achieve human functioning, such as being in good

¹⁶¹ T. Pogge, *World Poverty and Human Rights, Cosmopolitan Responsibilities and Reforms* 50-51 (2008), 2nd Edition (Malden, MA: Polity Press, 2008)

¹⁶² *Ibid*

¹⁶³ Aje-Famuyide OA., Anene F. Universal Health Coverage and the Right to Health in Nigeria. *Supra*.

¹⁶⁴ United Nations General Assembly, Global Health and Foreign Policy, UN Doc. A/67/L.36 920120 para. 10

¹⁶⁵ *Ibid*.

¹⁶⁶ A. Sen. 1987b. *The Standard of Living*, in Sen, Muellbauer, Kanbur, Hart and Williams, *The Standard of Living: The Tanner Lectures on Human Values*. Cambridge: Cambridge University Press. 109.

health, or in the case of persons already suffering from NCDs, avoiding preventable morbidity, premature mortality, escaping impoverishment through OOP medical expenditures, and enhancing real freedoms. Furthermore, in terms of the treatment of NCDs, there is a full range of factors that make the treatment and restoration of effective, restore the human dignity of the sufferers, access to palliatives, medicines, and a host of other health goods necessary for the treatment and management of care.

Another cardinal point advocated by the capabilities approach is ensuring access to health goods; this directly connects to the objectives of the UHC through the protective security of health insurance. The international community has not recommended any particular health financing model or structure for a government so long as it promotes financial protection for end-users, instead states retain the discretion to design suitable arrangements, depending on the political-economic dimensions of their health systems.¹⁶⁷ Whatever the model, it is the aim of UHC that, “economic burden of health care should be justly shared by all through the redistribution of funds from the well to the ill and the rich to the poor, using progressive financing and community rating”.¹⁶⁸ From a capabilities perspective, the moral evaluation of a health financing system does not turn on its institutional form but on its effectiveness in expanding individuals’ substantive freedom to access necessary care without impoverishment. This is apt especially within the NCD context, which is associated with disparities of vulnerability, risk, access to services and health outcomes which is often associated with low socio-economic status, there is a need to reduce inequalities in key NCD outcomes.¹⁶⁹ Thus, there is an obligation on systems to integrate policies to avoid morbidity and premature and preventable mortality. As stated above, the UHC and the capabilities approach have a common objective of fostering freedoms and dignity of individuals. They highlight the importance of freedom, equality and non-discrimination that are needed to live a functional life. It is therefore important for these highlights to be part of the strategies to address funding and healthcare mechanisms for persons living with NCDs.

¹⁶⁷ World Health Organization. *The World Health Report 2010: Health Systems Financing – The Path to Universal Coverage*. (WHO 2010)

¹⁶⁸ Supra. WHO 2010.

¹⁶⁹ K. Dain, *Universal Health Coverage: An Empty Promise without Focusing on Chronic Conditions* 10 November 2014 at <http://www.devex.com> retrieved on 22/9/2018 at 9.23pm

The next section addresses the integration of capabilities approach and the universal health coverage (UHC) in the analysis of funding and access to care for persons with NCDs under the present National Health Insurance Authority Act 2022.

3.0 Conversion factors in Nigerian legal framework on healthcare financing,

The National Health Insurance Authority Act is a laudable achievement of the government of the day in terms of the improvements from the repealed National Health Insurance Scheme (NHIS). Signed into law in 2022, the National Health Insurance Authority Act (NHIA) seeks to ensure effective implementation of a mandatory national health insurance policy to ensure the attainment of affordable, and equitable health care in Nigeria under the universal health care.¹⁷⁰

There are three blocks relating to targets to achieve a universal health coverage (UHC) – quality healthcare services, financial risk protection and equity access. The jurisprudential underpinnings of UHC are two pronged- financial protection and accessible healthcare and these will serve as a yardstick to measuring the degree of coverage for persons living with NCDs.

3.1 Financial protection

The principle of non-discrimination lies at the core of the UHC and capability approach. This principle ensures there is equal access to quality health services for all, regardless of race, gender, income, disability or health condition.¹⁷¹ The NHIA sets the legal basis for achieving universal health coverage in Nigeria by mandating health insurance schemes in Nigeria. The goals of the NHIA are, among many others, to ensure access to quality healthcare services; provide financial risk protection; reduce rising costs of healthcare services and ensure efficiency in health care. The merit of this provision of the NHIA lies in the fact that financial protection from OOP medical expenses should be available to the 230million Nigerians including vulnerable and indigent populations. The NHIA shifts focus from mere provision of healthcare resources by guaranteeing access to essential health services and mitigating financial burden of long-term treatment. In accordance with section 14 (1), every person resident in Nigeria shall obtain health insurance coverage, including individuals in both the public and private sectors with five staff and above.¹⁷² Pursuant to section 13 of the NHIA Act, each State and the Federal

¹⁷⁰ National Health Insurance Authority Act 2022

¹⁷¹ SDG 3.8

¹⁷² Section 12 (2) (a) - (c)

Capital there shall be a State health insurance and contributory scheme for all residents within their jurisdiction. To achieve comprehensive population coverage, the Scheme has specific programs for different segments of the society.

The first is the Public Sector Social Health Insurance programme for Ministries, Departments, Agencies in the Federal Civil Service and other relevant groups (PSSHIP).¹⁷³ PSSHIP expands the health capabilities of public sector employees, enabling them to maintain good health and sustain other valued functionings. The Public Sector Social Health Insurance Programme (PSSHIP) covers Ministries, Departments, Agencies within the Federal Civil Service, and other relevant public sector groups. Participation in the programme is mandatory for all government workers, under a co-contributory arrangement with their employer. Contributions can be calculated based on either a basic salary approach or a consolidated employee salary approach. Under the basic salary approach, the employer pays a 10% of the basic salary while the worker pays 5% of the basic salary. The consolidated employee salaries entail a situation where payment is made on a ratio of 3.5:1.5 of the consolidated employees' salaries between employee and the employer. A corollary of the PSSHIP is the organised private sector social health insurance programme (OPSSHIP) which provides health insurance coverage for private sector workers and their families.¹⁷⁴

3.2 Vulnerable Group Fund

It is commendable that the NHIA prioritizes vulnerable persons and indigent persons by establishing a Vulnerable Group Fund (VGF) and the Basic Health Care Provision Fund (BHCPF) to improve financial access to health care by subsidizing health insurance coverage for vulnerable persons.¹⁷⁵ This because vulnerable people with NCDs often face financial access gaps.¹⁷⁶ Unlike the PSSHIP, both programmes (VGF and BHCPF) are non-contributory and beneficiaries are not required to pay make any payment prior to accessing health care services under these products. The BHCPF is designed to enhance access to preventive, protective, promotive, curative and rehabilitative health care services for beneficiaries by providing

¹⁷³ Article 13 (3)

¹⁷⁴ Section 14 (1) Cap 2 NHIA Act

¹⁷⁵ Section 25 (1) NHIA Act 2022

¹⁷⁶ Section 25 (1) NHIA establishes the VGF.

affordable healthcare services for beneficiaries.¹⁷⁷ The VGF, under the BHCPF identifies an inexhaustible list of persons with disabilities (PWDs), prisoners, children under five, refugees, victims of human trafficking, internally displaced persons (IDPs), immigrants and pregnant women as beneficiaries of the VGFs.¹⁷⁸ The source of funding for the VGF and the BHCPF include health insurance levy, Special Intervention Funds, monies accrued to the VGF from investments made by the Council, grants, donations, gifts and other voluntary contributions.¹⁷⁹

This provision is apt at this time because of the growing magnitude of chronic disease sufferers that cut across people of all ages, race, income levels, working and non-working population, and more significantly the poor members of the society and those living in vulnerable situations.¹⁸⁰ Moreover, it is common knowledge that chronic disease treatment increases financial burden on the sufferer, families and communities, because of the long term nature of treatment, care cost and loss of productivity that threatens household income and leads to productivity loss for individuals and their families and by extension the gross domestic product of the State in question. With these funding models, it is hoped that it will reduce inequalities by enhancing freedoms for the most disadvantaged. By guaranteeing access to essential health services and mitigating the financial burden of long-term treatment, VGF and BHCPF expand the health capabilities of vulnerable persons. This is particularly critical for individuals living with NCDs as the scheme not only facilitates the attainment of good health as a central functioning but also prevents the erosion of other capabilities that could result from catastrophic OOP expenditures, thereby reinforcing social justice through equitable health financing.

The NHIA will rely on data of the poor and vulnerable, and especially persons under the National Social Intervention Programmes to determine those who qualify as vulnerable groups. In addition, it will consider demography, housing system, environmental health, social-cultural system and to determine a comprehensive picture of people within this category.¹⁸¹ As stated earlier, this program is commendable because it targets interventions to vulnerable populations, women, children, and the elderly. When assessing these programs from the capabilities approach,

¹⁷⁷ Section 11 NHIA Act

¹⁷⁸ Section 25 (1) NHIA Act 2022

¹⁷⁹ Section 25(2) (a) - (e)

¹⁸⁰ Paragraph 23, Political Declaration

¹⁸¹ F. Ezeh. NHIA. Deconstructing the New Act. (2022) on <https://thesun.ng/nhia-deconstructing-the-new-act/> accessed April 23 2025

the availability of funding systems programs that increases access of all persons to medical care, would most likely improve their health status. However, while NHIA mechanisms such as the Vulnerable Group Fund and Basic Health Care Provision Fund expand access for certain NCD patients, the selective nature of coverage for cancer and stroke illustrates persistent capability deprivation for those with multimorbidity, reflecting a misalignment between legislative intent and comprehensive population health needs.

4.0 Benefits Covered

Under section 24 (1), the NHIA, the authority is to work with States to provide a basic minimum package of care to all residents in Nigeria. According to the DG NHIA, ‘the interest of the NHIA is to cover basic health, essential package. For instance, if a symptom of sickness comes, the person could freely visit hospital for check-ups if he or she has health insurance cover.’¹⁸² For beneficiaries of the BHCPF product, the Guidelines stipulate the eligibility for primary and secondary health facilities.¹⁸³ For these facilities to be adequate, the Authority shall collaborate with State health schemes and institutions to accredit and empanel primary and secondary health care facilities on approved benchmarks.

For there to be universal health coverage, a functional system must be robust enough to focus on both communicable and non-communicable diseases and must be affordable so that financial hardships are alleviated. Therefore, with respect to persons living with cancers, the NHIA provides free access for the first hour of care in an emergency unit, and the first three hour of care for stroke management to reduce the financial burdens that come with them.¹⁸⁴ In a related interview on the new NHIA Act, the Director General, NHIA stated that for the treatment of cancers, the NHIA has established a cost-sharing initiative to reduce the financial burden of treatment for persons undergoing treatment. Under this scheme, cost of treatment will be shared between NHIA and the cancer patient, whereby the patient will pay for 20 percent of the treatment. In another interview, the DG noted that, as part of the NHIA initiative to broaden access, eligible cancer patients undergoing radiotherapy will receive a subsidy of up to

¹⁸² *Ibid.*

¹⁸³ Guidelines for the Administration, Disbursement and Monitoring of the Basic Health Care Provision Fund at page 29 (section 1.6)

¹⁸⁴ TM Ipinnimo, et al. The Nigeria National Health Insurance Authority Act and its Implication Towards Achieving Universal Health Coverage. *Postgraduate Medical Journal*. (2022) (29) (4): 281-287. *supra*.

N400,00.00, that is, a 50percent subsidy on radiotherapy expenses, capped at N400,000.00 to improve access to essential care.

As laudable as these provisions are, there are still challenges with the group of persons in terms of inadequacy of access to healthcare to protect Nigerians living with NCDs against financial catastrophe. Moreover, it is common knowledge that chronic disease treatment increases financial burden on the sufferer, families and communities, because of the long-term nature of treatment, care cost and loss of productivity that threatens household income and leads to productivity loss for individuals and their families and by extension the gross domestic product of the State in question. While this is a good initiative, a lot more still needs to be done to improve accessibility of treatment; NCDs require continuous access to treatment, reduced cost of prescription drugs, free from discrimination and urgent need of care and support. A one-off intervention or episodic funding does not align with the sustained support that is required to preserve capabilities of persons with NCDs. Another limitation is with respect to the selective model of the NHIA program. That is, only cancer patients and stroke patients are covered under this programme. Studies show that NCDs are usually, characterized by co-occurrence or multimorbidity, which are conditions that occur as a consequence of one leading index condition in an individual.¹⁸⁵ That means, the presence of multiple chronic conditions in an individual may likely lead to other NCDs or other complications. The prevalence of multimorbidity of NCDs is about 60%, due to the shared risk factors of NCDs.¹⁸⁶ Several studies have confirmed the pattern of multi-morbidity in Nigeria between three to five multiple morbidities.¹⁸⁷

4.1 Health System Accessibility

Access has geographic, financial, social, ethnic and psychic components. Access is also a function of the availability of health services and their acceptability. In practice, access, availability, and acceptability which collectively describe the things which determine the care people use, are very hard to differentiate. The National Library of Medicine defined it as “the

¹⁸⁵ OA Asogwa, D. Boateng, A. Marzà-Florensa, et al. Multimorbidity of Non-Communicable Diseases in Low-Income and Middle-Income Countries: A Systematic Review and Meta-Analysis. *BMJ Open*. (2022) 21:12:1: e049133. doi: 10.1136/bmjopen-2021-049133

¹⁸⁶ Supra..

¹⁸⁷ A. Ahmed, HTA Khan, M. Lawal, M. The Prevalence, Pattern, and Burden of Multimorbidity Among Older Adults in Niger State, Northern Nigeria. *Illness, Crisis & Loss*, (2024) 0(0). <https://doi.org/10.1177/10541373241268305>

degree to which individuals are inhibited or facilitated in their ability to gain entry to and to receive care and services from the health care system. Factors influencing this ability include geographic, architectural, transportation, and financial considerations, among others.” This definition suggests that access to healthcare is not limited to financial accessibility but physical as well as the level of awareness of the existing health care services. Hence, a service has to be accessible before it can be utilized. UHC cannot be clearly implemented without the accessibility to treatments, crucial medicines and other necessary technologies.¹⁸⁸ The nature of NCD warrants the preparedness of health systems to meet the challenges of the disease. Within the NCD context, the NCD epidemic is rooted in disparities of vulnerability, risk, access to services and health outcomes which is often associated with low socio-economic status, there is a need to reduce inequalities in key NCD outcomes.¹⁸⁹

NHIA has entered into partnership with multiple oncology facilities across Nigeria to improve access to high quality radiotherapy services, with a promise to ‘increasing the number of accredited radiotherapy centres, strengthening collaborations with pharmaceutical and medical equipment companies, and ensuring modern radiotherapy technology is available nationwide.’¹⁹⁰ Accessibility includes having healthcare professionals including doctors, nurses and pathologists. In terms of access to adequate treatment, there is need to improve position adequate access to hospice care for them. It has been revealed that, for some cancer diagnosis and treatment, there are still some tests which cannot be performed locally in Nigeria but are sent to other countries. This is because, some form of cancers, like breast cancer, is individualized and requires personalized medications tailored to individual conditions.¹⁹¹ At present, there are few cancer treatment facilities in Nigeria making accessibility beyond the reach of many Nigerians.

Lisa describes chronic NCDs as a physical or mental health condition that generally lasts at least a year and results in a limitation of self- care, independent living and social interactions or the

¹⁸⁸ O. Aje-Famuyide, F. Anene. *Supra*.

¹⁸⁹ K. Dain, *Universal Health Coverage: An Empty Promise without Focusing on Chronic Conditions*. *Supra*.

¹⁹⁰ Rapheal. *NHIA Launches Cost-Sharing Initiative to Ease Cancer Treatment on the SunNewspaper Online*. At <https://thesun.ng/nhia-launches-cost-sharing-initiative-to-ease-cancer-treatment/> accessed 16 June 2025; *NHIA Introduces N400,000 Treatment Subsidy for Cancer Patients*. Available on <https://healthwise.punchng.com/nhia-introduces-n400000-treatment-subsidy-for-cancer-patients/> accessed 16 June 2025.

¹⁹¹ *Cancer Care in Nigeria: A Deep Dive into Numbers, Cost, Closing Care Gap*. Available at <https://businessday.ng/health/article/cancer-care-in-nigeria-a-deep-dive-into-numbers-cost-closing-care-gap/> accessed 25 May 2025

need for on-going interventions with medical products, services and special equipment¹⁹². For this reason, sometimes, it requires a re-design of health systems to address chronic illnesses as well as to treat patients holistically within the interaction of acute events, multiple comorbidities, palliative care, and survivorship. UHC cannot be clearly implemented without the accessibility to treatments, crucial medicines and other necessary technologies.¹⁹³

The challenge of treatment and management of NCDs remain a mirage in the face of high cost of procedures and drugs and limited coverage for treatment. This is because, 20percent treatment cost for cancer patients OOP is still a catastrophic expense which can result in poverty for many households in Nigeria. According to an Oncologist specialist, the cost of radiotherapy in a government hospital is between N1.5million to N2million Naira. Further, cost of drugs, injections etc are exorbitant. Since majority of the Nigerian population is unable to afford healthcare, there is a high dependence on family for welfare. There are overwhelming scientific researches that show that health care, financed primarily through OOP payments have devastating financial impact on payers. Bolaji Samson and Samina Khan study to determine the extent to which catastrophic OOP health result in impoverishment in Nigeria revealed there is still high reliance on OOP health payment in Nigeria. The outcome of their study revealed that OOP leads to a rise in poverty headcount, the implication of which is that many households are pushed further below poverty line through catastrophic health expenditure.¹⁹⁴ Considering the fact that over half of Nigerians live on less than a dollar a day, the vicious circle of poverty is bound to continue.

5.0 Implications for Persons Living with Noncommunicable Diseases

Financing structure in any health system has significant implications for every individual. Under the NHIA, although health insurance is intended to provide financial risk protection and improve access to essential healthcare, coverage for NCD prevention, diagnosis and long-term disease management remains limited both in scope and effectiveness. As a result, many individuals living with chronic conditions, such as diabetes, cancers, cardiovascular diseases and respiratory

¹⁹² Lisa Clemans-Cope et.al, The Expansion of Medicaid Coverage Under the ACA: Implications for Health Care Access, Use and Spending for Vulnerable Low-income Adults, *Inquiry*, (2013) (50) (2): 135-149 @ 136

¹⁹³ O. Aje-Famuyide, F. Anene.. *Supra*.

¹⁹⁴ BS Aregbesola, SM Khan, 2018. Out-of-Pocket Payments, Catastrophic Health Expenditure and Poverty among Households in Nigeria 2010, *Int. Journal Health Policy Manag.* 7:9: 798-806 doi:10.15171/ijhpm.2018.19

conditions continue to rely heavily on OOP, exposing them to catastrophic health expenditure and increasing the likelihood of treatment interruption or non-adherence.¹⁹⁵

The gap in the financing design under the NHIA has severe implications extending to development concerns. First, a weak financial protection for NCD care limits progress towards achieving UHC.¹⁹⁶ In particular, the persistence high OOP health expenditure reflects inefficiencies in risk pooling and resource allocation within the health financing system. Consequently, persons living with NCDs face disproportionate barriers to accessing continuous, quality care, resulting in higher morbidity, premature morbidity and reduced productivity.¹⁹⁷ Inadequate coverage also has severe implications for the attainment of the United Nations SDGs, particularly goal 3.4 which aims to reduce premature mortality from NCD through prevention and treatment, while target 3.8 focuses on access to quality essential healthcare services and financial risk protection.

5.0 Conclusion

This study examined the extent to which the National Health Insurance Authority (NHIA) Act of 2022 provides adequate financial protection and healthcare coverage for persons living with NCDs in Nigeria. The study finds that, while the NHIA enactment of the National Health Insurance Authority (NHIA) Act of 2022 represents a significant policy advancement towards attaining UHC and aligns with Sustainable Development Goal 3.4, which seeks to reduce premature mortality from non-communicable diseases (NCDs), its provisions remain uneven in addressing long term and complex needs of individuals living with NCDs.

It is part of the findings of this study that the NHIA introduces important mechanisms, such as the mandatory health insurance schemes, co-contributory programs for the public and private sectors, and targeted support for vulnerable populations through the Basic Health Care Provisions Fund and the Vulnerable Group Fund, thereby showing the nation's commitment

¹⁹⁵ Ayodeji O, Benton M, Orton L, Weich S. The Lived Experiences of Individuals with Type 2 Diabetes Mellitus with Poor Glycaemic Control in Nigeria: A Qualitative Study. *Clinical Medicine Insights: Endocrinology and Diabetes*. 2025;18. doi:10.1177/11795514251384044

¹⁹⁶ World Health Organization, Tracking Universal Health Coverage: 2023 Global Monitoring Report (WHO 2023)

¹⁹⁷ World Health Organization. Noncommunicable Diseases Country Profile 2022 (WHO 2022)

towards expanding financial protection and improving access to healthcare services, particularly for disadvantaged populations. While these provisions demonstrate an ethical commitment to justice and equity, they simultaneously expose significant gaps in coverage for individuals with multimorbidity and other chronic conditions that are not explicitly prioritized. With the nature, scope and cost of NCDs, there is the need to close the care and financial gap for persons suffering for NCDs in terms of treatment challenge, palliative care and terminal gaps for NCDs. Cost-sharing initiatives, for instance, while mitigating immediate financial burdens for certain patients, may not adequately address the sustained nature of chronic disease management, which demands long-term access to medications, diagnostic services, and specialist care.

The study finds that although government, through the NHIA has taken up initiatives and collaborations to improve access; while well-intentioned, remain selective and uneven and there is still need for targeted measures to broaden the access for NCDs coverage for NCDs.

The study further finds that selective coverage, as shown under the NHIA, is problematic given the high prevalence of mortality and morbidity, which is estimated at between 60% - 80%, which necessitates continuous, integrated lifelong care. The selective focus on cancer and stroke, though vital, underscores a broader systemic challenge: the NHIA must evolve from episodic interventions to a continuous, inclusive model capable of responding to the multi-faceted and co-morbid realities of NCD patients. As a result, many individuals continue to experience high OOP health expenditures, treatment interruptions, and limited access to essential diagnostic and pharmaceutical services. These gaps in the NHIA weaken the financial protection function of the NHIA and expose households to catastrophic health spending and impoverishment as reflected in global evidence that millions are pushed into poverty annually due to healthcare costs.

These findings demonstrate that the although the NHIA incorporates important provisions, it still remains insufficient to respond to the chronic nature of NCD care. The current cost-sharing arrangement of the NHIA, while it may reduce financial pressure for selected conditions, does not adequately address the treatment/management needs of NCDs, thereby limiting the effectiveness of the financing mechanisms in achieving UHC.

The study demonstrates that persons living with NCDS remain the most affected group, as they continue to face financial hardship, interrupted care and reduced quality of life. Policymakers and the NHIA have the responsibility for expanding the depth of coverage to reflect the realities of NCD management.

In answering the research question, the study demonstrates that the NHIA, while progressive in design, does not yet provide adequate or equitable coverage for persons living with NCDs in Nigeria, particularly in relation to long term care, multimorbidity management, and financial risk protection.

INDIGENOUS ENVIRONMENTAL GOVERNANCE AND ENVIRONMENTAL PROTECTION IN AFRICA

Akeredolu Olusegun Femi (PhD) *

Abstract

Environmental conservation is often portrayed as a modern construct shaped by international law and global policy frameworks. Yet, long before these developments, indigenous societies across Africa had established effective systems for managing and protecting their environments. Existing scholarship has highlighted practices such as taboos, sacred sites, and customary law, but much of the literature treats them as cultural curiosities rather than serious regulatory mechanisms. This article fills that gap by systematically examining how indigenous governance systems in regions such as West Africa and Southern Africa embodied principles of sustainability, collective stewardship, and decentralized enforcement. Using doctrinal research and drawing on selected environmental legislation, alongside secondary sources including books and journal articles, the study demonstrates that traditional ecological knowledge functioned as a practical framework for environmental protection through communal responsibility, social enforcement, and spiritual sanctions. The findings reveal that concepts now central to modern environmental governance were already embedded in indigenous systems long before their articulation in contemporary law. The article recommends greater recognition and integration of indigenous knowledge into African environmental legislation, arguing that such integration can strengthen sustainable management and enrich the future of environmental law.

Keywords: Environmental protection, taboos, folklore, totemism, customary law, taboos, environmental federalism.

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1.0 Introduction

Environmental conservation is not a recent phenomenon; it is one of the documented practices in native and traditional communities all over the world. The need to protect the immediate environment of man is an age old idea imbibed and embedded in the man's cultural ethos and survival strategy instinct since time immemorial factored by traditional knowledge of the environment.¹ The concept represented by "environmental law" as we have it today has a chequered history and the degree of the complexity in the historical development of environmental law depends on the historical facts and native knowledge of the society concerned.

This article is an undertaking at a historical survey of the environmental protection and the efficacy of environmental protection through traditional methods. The universal realisation of the potential negative effects of environmental pollution from a local source on the well-being of mankind has been established and described as "ecological Armageddon".² The projected negative effects of polluted environment are the main factor that necessitated joint actions by the traditional community in the past to protect the environment through joint communal efforts and customary law. In response to the realisation that many environmental issues such as air, water and marine pollution cut across national boundaries, forced the international community to adopt global protection approach to environmental matters.³ The protection of the environment in native communities all over the world, especially Africa in the pre-colonial era, like in many other societies of the world before industrialisation and advent of Christianity/Islam was a myriad of traditional strategies. These strategies, among others, included; taboos, folktales, totemism,⁴ and conception of natural resources as common property.⁵ These traditional methods of environmental protection are the bases for the international environmental law as we have it today.

¹ Rajani, R. U., "Environmental Awareness in Ancient India", (2014), 2:2, *International Journal of Life Sciences Research*, 1-7, 2.

² Oluduro O., *Surviving the Armageddon: The Law as Elixir for Environmental Crimes in Nigeria's Oil Industry*. (Adekunle Ajasin University, Akungba Akoko, 2019),

³ House of Commons Environmental Audit Committee, *EU and UK Environmental Policy, Third Report of Session 2015-16*, (Authority of the House of Commons, London, 2016) p. 6

⁴ The belief in a supernatural connection between a group of people and a group of objects like certain animal species, sometimes plants, or more rarely other objects.

⁵ Mawere, M., "Traditional Environment Conservation Strategies in Pre-Colonial Africa: Lessons for Zimbabwe to Forget or to Carry Forward into the Future?", (2013), 4, *Afro Asian Journal of Social Sciences*, 1-23, 6

Indigenous conservation practices encompass a rich and varied set of strategies that native communities have developed over centuries to manage their environments sustainably. These practices go beyond simple resource management, they are deeply rooted in cultural traditions, spiritual beliefs, and a nuanced understanding of local ecosystems. Importantly, these systems are not relics of history; they continue to evolve and remain relevant today, offering valuable insights and lessons for addressing modern sustainability challenges, especially in the face of climate change.⁶

This article presents a historical and analytical examination of environmental protection through traditional mechanisms. It explores the effectiveness of indigenous environmental governance systems and how such practices contributed to environmental sustainability in pre-colonial societies. Particular attention is given to African traditional communities, where environmental protection was maintained through culturally embedded regulatory practices such as taboos, folklore, totemism, and communal ownership of natural resources.

Existing scholarship on environmental law has extensively examined international regimes such as the UNFCCC and CBD.⁷ Within African contexts, scholars have highlighted indigenous practices such as taboos, sacred sites, and communal ownership, etc,⁸ however, much of this literature treats these practices as cultural traditions rather than serious regulatory frameworks. This paper addresses that gap by situating indigenous governance systems within contemporary debates on environmental law and sustainability.

This study adopts a doctrinal research methodology, relying on primary sources such as selected African environmental legislation and international conventions, alongside secondary sources including books and journal articles. The approach is both historical and analytical, tracing the evolution of indigenous environmental governance and examining its relevance to modern legal frameworks. The focus is on African traditional communities, with comparative insights drawn from other regions to highlight universal principles of sustainability and communal responsibility. The article also places traditional environmental governance within the broader context of contemporary environmental challenges. Rapid industrialization and population growth in the modern era have significantly intensified environmental degradation, raising global concerns

⁶ Lorne Michael Cousins & Piotr Paweł Zalewski: What Are Examples of Indigenous Conservation Practices? (2025), Sustainability Directory. Accessed March 08, 2026.

⁷ Fikret Berkes, (4th Edition), *Sacred Ecology* (Routledge, 2018). 33-35.

⁸ Mawere, *op.cit.*

about ecological sustainability. In response, the international community has developed cooperative frameworks and environmental regimes aimed at addressing transboundary environmental problems such as climate change, biodiversity loss, and pollution.⁹

Despite these modern developments, many of the principles that underpin contemporary environmental governance, such as sustainability, intergenerational equity, and communal responsibility, have long existed within indigenous knowledge systems.

The significance of this study lies in its re-evaluation of indigenous environmental governance systems as effective regulatory frameworks rather than mere cultural practices. While existing scholarship acknowledges traditional mechanisms such as taboos and sacred sites, these are often treated as symbolic or peripheral. By situating indigenous knowledge within contemporary debates on sustainability and environmental law, this paper highlights their enduring relevance and potential to enrich modern governance. This contribution is particularly important for Africa, where integrating indigenous practices into formal legal frameworks can strengthen responses to climate change, biodiversity loss, and ecological. This is not about romanticising the past, but the reality of the present. It is about recognising that effective environmental governance already exists in many African communities, if only the law would see it. Modern African experience from historical manifestations are testimony that indigenous environmental governance in African was a potent traditional mechanism for environmental protection.

This article therefore argues that traditional environmental protection mechanisms were not only vital to environmental management in pre-colonial societies but also offer valuable insights for strengthening contemporary environmental governance.

2 Traditional African Societies and Environmental Protection

Traditional African societies before colonization and contact with Christianity and Islam have observed environmental ethics that help in regulating their interactions with the natural environment. The environmental preservation concept of Africans is inseparably connected with the African Traditional Religion (ATR).¹⁰ Studies have shown that ATR is a religion with environmental characteristics, features and symbolism.¹¹ The African's system of environmental

⁹ Philippe Sands *at.el.*, *Principles of International Environmental Law* (Cambridge University Press, 2018). 52

¹⁰ Eneji, C. V. O., *et al.*, "Traditional African Religion in Natural Resources Conservation and Management in Cross River State, Nigeria", (2012), 2:4, *Environment and Natural Resources Research*, 45-53, 46.

¹¹ *Ibid.*

protection through natural conservation and preservation of natural resources was sustained by the then existing native laws and customs. This system of environmental protection gave way to the era of sanitation legislation under the colonial regimes in Africa, most especially between 1900-1960. This period witnessed the applicability of foreign laws with provisions in public health legislation, town planning enactments, sanitation policy and principle of law, torts and nuisance.¹² The basic efforts at protecting the environment was vested in the individual and at most, government at the local level and governmental interference was limited. However, this approach to environmental protection drastically changed with realities of the effects of industrialisation instigated by population explosion.

It has been observed that certain important elements of pre-colonial traditional ethnography and environmental management strategies survived into the colonial period.¹³ Finding the continued relevance of these practices to the environmental management practices of the colonised peoples, the transgenerational principles were made the foundation of sanitation and environmental law of African States at the independence. It will be shown that the traditional environmental protection management imbibed and induced some basic principles of modern concept of environmental federalism in the sense that environmental dogmata were made by the central authorities (the ancestors) but enforced by the community through the family, clans and community heads and other agents of socialisation. This cooperation between levels of authorities explains both the traditional and modern environmental protection systems and strategies.¹⁴

In the traditional pre-colonial African settings, environmental conservation strategies are basically in two methodologies; bodies of superstitions prohibitions and a system of social values. Environment and natural resources in the pre-colonial African's setting were deemed as things not inherited from the past generation but things borrowed from the future generations which must be used with care now in order to sustain the future generations.¹⁵ This same traditional environmental doctrine also applied in India.¹⁶ Most of the modern principles of

¹² Ogunba, A., "An Appraisal of the Evolution of Environmental Legislation in Nigeria", (2016), 40, *Vermont Law Review*, 673-694, 674

¹³ Murombedzi, J. C., "Pre-colonial and Colonial Conservation Practices in Southern Africa and their Legacy Today", 2003. <https://www.semanticscholar.org/paper/Pre-colonial-and-colonial-conservation-practices-in-Murombedzi/e60b2c7c69c9b552ba>. Accessed 20/03/2018

¹⁴ *Ibid.*

¹⁵ Henning, D. H., "A Manual for Buddhism and Deep Ecology", *Buddha Dharma Education Association*, http://www.buddhanet.net/pdf_file/deep_ecology.pdf. Accessed on 12th February, 2018.

¹⁶ This historical principle of natural conservation is in tandem with the modern concept of sustainable development.

environmental protection mechanisms have corresponding equivalents in the traditional strategies adopted by the progenitors to maintain wholesome environment and sustainable management of natural resources before industrialisation. It has been observed that there are obvious variations among national and local environmental regulatory systems which reflects the countries' particular cultural and social mores or political idiosyncrasies.¹⁷ These principles embedded in the modern environmental governances are likely to persist despite greater global regulatory harmonization and efforts at unification of international environmental standards.¹⁸

3. Superstitions Prohibitions

Africa hosts some of the planet's most diverse ecosystems, ranging from the dense rainforests of the Congo Basin to the sweeping savannas of the Serengeti. For millennia, Indigenous communities have lived in close harmony with these landscapes, cultivating an intimate understanding of their environment and adopting sustainable ways of life. Their traditional ecological knowledge, carefully passed down through generations, has been essential in preserving biodiversity and ensuring the responsible management of natural resources by prohibitive custom and mandatory traditions.¹⁹ For instance, Indigenous African communities have long understood the delicate balance between humans and nature, developing practices that promote sustainability and preserve ecosystems. For example, the Maasai of East Africa use rotational grazing to prevent overgrazing and maintain soil fertility; the San people of Southern Africa hunt selectively to protect wildlife populations; the Himba of Namibia conserve water through ingenious collection and storage techniques in arid environments; and the Chagga of Tanzania practice agroforestry, integrating crops with trees to enrich soil, prevent erosion, and sustain productivity. These practices illustrate how traditional ecological knowledge ensures resources are used responsibly and replenished for future generations.²⁰

The bodies of (superstitions) prohibitions are shrouded in complex religious believes like taboos, folktales and totemism. The superstitions prohibitions found expression in traditional religious

¹⁷ Yang, T., & Percival, R.V., "The Emergence of Global Environmental Law", 2009, 36:3, *Ecology Law Quarterly*, 615-665, 623.

¹⁸ *Ibid.*

¹⁹ Adeliya Kabdulina, 'Great Indigenous Conservation Practices in Africa,' (2025), Art in Tanzania intern, Skip to content[https://volunteerafrica.fi/indigenous-conservation-africa/#:~:text=Rotational%20Grazing%20\(Maasai%2C%20East%20Africa,and%20provides%20long%2Dterm%20sustainability](https://volunteerafrica.fi/indigenous-conservation-africa/#:~:text=Rotational%20Grazing%20(Maasai%2C%20East%20Africa,and%20provides%20long%2Dterm%20sustainability). Accessed March 18, 2026.

²⁰ Kabdulina *op.cit.*

practices simply because the Africans, like many other native societies of the world, believes that everything that belongs to the ecosystem and the environment has a strong spiritual meaning to survival of humanity.²¹ This methodology is adopted for the protection of communal heritages based on the conception of natural resources as common property.²² One unique feature of native traditional conversation and protection strategies is the ease of enforcement of the superstitious prohibitions. Perhaps, the smooth enforcement was informed by the familiarity of the people with the prohibitions infused on the citizen from childhood.

3.1 Taboos

Taboos related to the protection of the environment and conservation of nature has been observed not to be African peculiar phenomenal because they also exists in all cultures throughout the world.²³ Taboos represent a class of informal institutions, where tradition and religious governed norms, and taboo system defines the human behavior. For example, in India, particular patches of forests are designated as sacred groves under customary law and no secular activity is allowed in the forest. Such forests are very rich in biological diversity and harbour many endangered plant species including rare herbs, medicinal plants and animals.²⁴ Similarly, in *Uttarakhand*, Central Himalaya, women, who were considered to be the most frequent users of water, were prohibited from entering the vicinity of rivers when they were menstruating or in any traditional form unclean, to prevent degradation or defilement of the sacred water.²⁵ It is also in record that the indigenous knowledge in China places a premium value on protecting forests, landscapes, and water catchments while preserving biodiversity. These values are maintained through religious beliefs, hunting taboos, and the protection of sacred sites.²⁶

²¹ Asiimire, S., "The Unwritten Law: Traditional Ways of Conserving Environment". 2014, *Vision Reporter Online Article*. https://www.newvision.co.ug/new_vision/news/1316940/unwritten-law-traditional-conserving-environment. Accessed 23/03/2018.

²² Mawere, *op.cit.*, 6

²³ Rim-Rukeh, A., et al., "Traditional Beliefs and Conservation of Natural Resources: Evidences from Selected Communities in Delta State, Nigeria", 2013, 5:7, *International Journal of Biodiversity and Conservation*, 426-432, 427

²⁴ *Ibid.*

²⁵ Negi, C. S., "The Institution of Taboo and The Local Resource Management and Conservation Surrounding Sacred Natural Sites in Uttarakhand, Central Himalaya", (2013), 2:8, *International Journal of Biodiversity and Conservation*, 186-195, 189

²⁶ Xu, J., "Integrating Sacred Knowledge for Conservation: Cultures and Landscapes in Southwest China, (2005), 10:2, *Ecology and Society*, 1-25, 5.

Before the advent of colonialism, Christianity and Islam in Africa, land was deemed as the mother of gift of nature and a goddess of sort. Thus, land in these traditional societies belongs to clans and not to the individuals, and because the clan consisted of the living, the dead and even the unborn, it enhanced the idea of sharing and joint caring for nature.²⁷ Because of these deep seated believes of generational connectivity with the land, it is a taboo to treat the land with disdain. The land is used with the common sensitivity giving room for the land to regenerate with the view to sustain the coming generations. Therefore, land is not used indiscriminately. For instance, a land is put aside for dump site far away from the houses, while other portion is designated as public excreted site. It is prohibited to plant or to harvest natural plants that grow in a dump site and land set aside for defecations and similar purposes. It is also a taboo to defecate or in other way pollute land near rivers, brooks, lake or any body of water fetched and used for domestic purposes.

In some places, certain trees, for instance *iroko* trees in most of the pre-colonial Nigerian societies, could not be felled except with the communal approval and consent ‘*of the owners of the land*’. This was because they were considered as sacred (God's trees) either because they are endowed with life-saving tendencies or healing powers, these traditional religious practices ensured the preservation of forests²⁸ and conservation of the natural resources.

The rivers and seas were also seen as abodes of the gods and fishing in some body of waters are prohibited as the fishes are considered as the children of the river, lake, brooks etc. As divinities, certain human activities that pollute their natural compositions, living components, physical elements and beauty were considered taboo. Therefore, any form of polluting waste could not be discharged into these waters. Violation of the sanctity and sanity of these bodies of water are communally punished couple with the general believe that the gods would also avenged the polluters of their physical abode and temporal homes.²⁹

By the communal application and traditional enforcement of these taboos, the naturals resources were well preserved as tresses were not fell unless it was necessary to do so, thus deforestation were tactically controlled. The shifting cultivation of land prevented erosion and allowed the land to naturally regain the contents lost to farming. Place reserved as sacred heritages were naturally preserved habitat for faunas and wild life. Activities which could easily affect children

²⁷ Asiimire, *op.cit.*

²⁸ *Ibid.*

²⁹ *Ibid.*

and vulnerable persons were banned from the public places. Also people with contagious diseases such as lepers, were not allowed to live within the general dwelling place but banished to the bush and forest. Also in Yoruba land, people that died of mysterious deceases were buried in faraway *igbo oro*.³⁰

The rivers, brooks, lakes and sea which were the main sources of water for domestic uses were not polluted and the problem of overfishing were unheard of. Wastes were not dumped except in the designated native dumpsite and the air pollution were prevented because there were reasonable consumption and uses of resources which put less pressure on the land, water and air. Therefore, the postulation that traditional conservation practices were haphazard applied may not represent the reality of the traditional system of traditional strategies for environmental protection.³¹ The taboos and beliefs system were not haphazard because they were part of the legal system with traditional potency and customary legal backing in the rules and institutions of the communities which were strong enough to make people obey the religious and cultural regulations.³²

In Ghana for instance, in order to conserve the water resources and sources, and in order to avoid easy contamination of the water bodies from domestic waste, villages and towns were sited, at least, a mile or two from the water bodies.³³ This traditional principle of conversation of water resources was incorporated into the law that regulates the Ghanaian gold mining industry. It is an established legal principle that the mine fields, especially the washing compounds must be located, at least, about a mile or one and half miles from the nearest water body.³⁴ It has also been discovered that there were rules of taboos prohibiting absolutely, any contact with the river or stream or lake on specific days.³⁵ In addition to these body of prohibited activities, fishing was not allowed in some rivers for about two or three months in each year. "These rules were meant to conserve and protect the water resources of the indigenous communities and to allow a conducive hydrosphere for aquatic life to replenish itself".³⁶

³⁰ Forest of gods. Incomplete citation

³¹ Nwobi, A. U., "Strategies for Effective Administration of Environmental Education for Rural Women in Enugu State of Nigeria", (2010), 4:1, (Article 7), *African Social Science Review*, 99-108, 99

³² Rim-Rukeh, *op.cit.* at 427

³³ Boateng, J. O., "Ghana's water laws", 1977, 9, *Review of Ghana Law*, 11-14, 13.

³⁴ Botchway, F. N., "Pre-Colonial Methods of Gold Mining and Environmental Protection in Ghana", (1995), 13 *J. Energy & Nat. Resources L.* 299-311, 307,

³⁵ *Ibid.*

³⁶ *Ibid.*

3.2 Folklore

Folklores as cultural practice are empirical and experience based, they can evolve into symbols of identity within and outside a group overtime.³⁷ Contextually, folklores are stories told, laced with poetic contents, to offer a wide range of lessons to the young children who still need their elders to inculcate values in them.³⁸ To educate and inculcate the mores and environmental values in the youth, the young ones learn through the villains in the folklores that people considered as ‘bad’ are never cherished but always punished in these stories. The lessons concerned many aspects of life including knowledge about how the natural environment should be cared, conserved and exploited to ensure the continued thriving of resources.³⁹

The importance of folklore as a source and medium of control and preservation of knowledge has gained legal validity and visibility in Zambia, conceivably than any other country in Africa, perhaps in the whole world. The expression, ‘folklore’, is statutorily defined as *any form, whether tangible or intangible, in which traditional culture and knowledge is expressed, appears or manifests*.⁴⁰ Folklore is recognized both as the traditional and modern means of conservation of nature and legal protection of the environment in Zambia. It is provided under section 2 of the Zambian law that ‘traditional knowledge systems’ as a mean of regulating human affairs means:

the traditional knowledge of a traditional community, including the contributions made by such a community to the conservation of the environment, food security and sustainable agriculture, improvement in the health of populations, progress of science and technology, preservation and safeguarding of cultural heritage, development of artistic skills and enhancing diversity of cultural content and expressions of folklore and other artistic expressions.

The oral enactment of folklore as a meaning of environmental preservation is an evidence of the functionality of folklore as a tool for environmental protection and preservation in the precolonial African societies.

³⁷ Cocq, C., “Traditionalisation for Revitalisation: Tradition as A Concept and Practice in Contemporary Sámi Contexts”, 2014. Available at <http://www.folklore.ee/folklore/vol57/cocq.pdf>. Accessed on the 22/03/2018.

³⁸ Maware *op.cit.* at 13.

³⁹ *Ibid.*

⁴⁰ See Section 2 (b), the Zambian Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act, No. 16 of 2016.

3.4. Totemism

Totemism is one other traditional environment conservation strategy that was deployed by many African natives and tribal groupings in the world over both as an identity mark and approach to ensuring sustainable use of resources in the natural environment.⁴¹ Mawere emphasizes that totemism is a form of identity by a particular clan/group of people using totems of which a totem is nonhuman animal (or part of an animal) that one who uses it as a totem is forbidden from eating, mistreating, and abusing or indiscriminately kill it.⁴² It was further observed that though by prohibiting the killing and interfering with certainty content of the environment through the doctrinal system of totemism some endangered entities may be preserved, but the protection afforded by this system of protection is not absolute. Mawere however notes:

Though totemism was not hundred per cent effective in promoting sustainable exploitation of resources in the environment, it helped the Shona people and other societies in pre-colonial Africa to live at peace with other [nonhuman] beings by avoiding their over-exploitation and abuse or by safeguarding them from extinction.

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The ancient legendry in *Useifrun* and *Ujevwu* communities in *Ughelli South* and *Udu* Local Government Areas of Nigeria, respectively, are communities where the pythons generally are regarded as totems.⁴⁴ Rim-Rukeh *et al* discovered that it is believed in these two communities that during inter-tribal wars; the python goes after the people and erases their footprint so that enemies would not identify the pathway of the people. In gratitude, none of the people of two communities whose ancestors were saved, kills or eats the python to this day. According to Rim-Rukeh *et al*, the communities in question believe that the snake itself is not worshiped, but rather its indwelling spirit. Because snakes are the principal objects of ancestral adoration in these communities, the killing of python is an abominable act because snakes are held sacrosanct. Snakes are free to wander, but the priest may retrieve them.⁴⁵ Further findings by Rim-Rukah *et al* have shown that the population of the pythons in *Useifrun* and *Ujevwu* communities has

⁴¹ Mawere, *op.cit*, at 10.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Rim-Rukeh *et al*, *op.cit.* at 428.

⁴⁵ *Ibid.*

reached an alarming proportion and has become a source of concern especially for foreigners and tourist to the communities. This is in sharp contrast to the fact that ‘Indian python’, a highly arboreal snake, has been listed as an specie as a result of intensive hunting of Indian’s python.⁴⁶ This is a conjoint believe in gods and God as represented by the ATR. This belief is one of the mechanism for the protection of the environment.

4. Efficacy of Traditional Environmental Protection Mechanism

Traditional knowledge is a powerful tool for environmental protection, offering time-tested methods for conserving ecosystems and managing natural resources sustainably. Rooted in the cultural and ecological wisdom of indigenous communities, traditional environmental strategies include practices that safeguard biodiversity, regulate hunting and fishing, and maintain the health of forests, rivers, and soils. Traditional agricultural techniques such as crop rotation, agroforestry, and polyculture preserve soil fertility and prevent land degradation, while community-led management of water and wildlife ensures ecosystem balance. By integrating these native traditions with modern scientific approaches, policymakers can design culturally relevant, effective, and locally appropriate environmental strategies. Protecting the rights and participation of indigenous peoples, as supported by frameworks like the UN Declaration on the Rights of Indigenous Peoples, is crucial for sustaining this knowledge and leveraging it to strengthen environmental stewardship for current and future generations.⁴⁷

Among the *Yorubas* of Western Nigeria, taboo represented the main source of guiding principles regulating, dictating and directing the behaviour of individuals and the community ultimately towards the ‘Supreme Being’ and especially the gods and the ancestors before the advent of colonialism, Christian and Islam religions.⁴⁸ The fact that the precolonial African societies have well-structured systems of government is a resounding testimony to the potency of taboos, folklores and totemism as mechanisms for the maintenance of social order and control of human activities in the precolonial African societies. Taboo was the only measure of social restriction and obligation in the precolonial period, it follows “that taboo, the bedrock of the social order

⁴⁶ www.bagheera.com/inthewild/van_animpython.htm

⁴⁷ Victoria Jakes, ‘The Role of Traditional Knowledge in Sustainable Development’, (2024), 3:2, *International Journal of Humanity and Social Sciences*, 40-55, 50.

⁴⁸ Afe, Adedayo Emmanuel, ‘Taboos and the Maintenance of Social Order in the Old Ondo Province, Southwestern Nigeria’, 2013, 7 (1), in *African Research Review*, 95-109, *International Journal of Biodiversity and Conservation* Vol. 2(8), pp. 186-195, August 2010

that regulated the relationship and sharing of authorities in political life, sexual life, family life as well as the economic life of the society” was a potent tool for social control.⁴⁹

The *Yorubas* believe in the reality of the taboo and do not consider it as superstition. They believe that keeping laws give joy, happiness, wealth, comfort and long life while the violation of the taboos bring about misfortune and misery on the person who violates the contents of the taboos. The fact that the present legal frameworks in most of the nation of the world have not afforded satisfactory protection for the environment is, perhaps, instigating studies into how environmental conservation could be based on other means of protection. One approach believed to be worthy of exploration was the idea that the locally and culturally accepted belief systems of particular sacred natural sites could be used as an effective means of conserving their surrounding environment.⁵⁰ ‘Sacred natural sites’ means areas designated as in some way as holy: “venerated or consecrated and so connected with religion or belief systems, or set aside for a spiritual purpose. The word ‘spiritual’, which relates to the human spirit, as opposed to material or physical things, does not imply a religious institution and many people who experience spiritual emotions about nature (including secular scientists) do not belong to a formal religion.”⁵¹

It should be noted that, though the effects of Christianity, Islam, modernization and industrialization have combined to water down the influence of taboo in many societies of the world, but the efficacy of taboos is yet a manifested phenomenal in many societies. In *Iguoma* community in *Uhunmwonde* Local Government Area of Edo State, the mystery of multiple unexplainable deaths which led hundreds of natives to flee their ancestral homes, were reportedly attributed to the breach of a taboos by some pastors very recently.⁵² The taboos broken and the repercussions were reported in these words:

The Iroko tree was over 500 years old. The Iroko and the shrines were planted by Oba Ewuare 1. We served it on behalf of the Oba. The pastor said it was the Iroko that was causing the community members not to progress in life. They said all the witches and wizards were resident in the Iroko tree. Policemen were around to protect them while they

⁴⁹ *Ibid.* at 96

⁵⁰ Verschuuren B., et.al., (eds), *Sacred Natural Sites Conserving Nature and Culture*, (Earthscan, London, 2010), 2.

⁵¹ *Ibid.*, at 1.

⁵² See Okogba, E., “Pastor cut sacred Iroko: ‘Vengeful Tree on Killing Spree’, Benin Community Natives Flee,” (*Vanguard*, Lagos 12th February, 2018) at www.vanguardngr.com/2018/03/pastors-cut-sacred-iroko-vengeful-tree-killing-spree-benin-community-natives-flee/amp/ accessed on the 28th March, 2018.

destroyed all the shrines including the Oguedion (elders place). They were many that came after a crusade. We only watched after which we reported to the Oba. When the Oba invited them to produce the pastor, they said they could no longer find him. The Oba told them what to do for them to be saved but they refused to perform the sacrifice. Three of them have died since that time. We were not cursed by any Oba. This shrine was a tourist place. We worshiped it every three days and people visited the place from across the country.’⁵³

This singular report, and others like it, is a pointer to the efficacy of traditional environmental protection mechanism in the modern societies. Negi,⁵⁴ who has intensively researched the efficacy of precolonial African traditional environmental protection templates, is of the view that the “efficacy of the social taboos becomes all the more conspicuous, when one encounters yet another traditional institution, the institution of sacred natural sites”.⁵⁵ The fact that there were numerous such natural sites where endangered species are preserved (many of which are now designated as ‘tourist center’ of international significance are loud testimonies to the efficacy of taboos as traditional environmental protection mechanism.

It has been argued that the effectiveness of traditional environmental protection is a strong testimony to indigenous systems of natural resource conservation.⁵⁶ Sacred forests in particular serve as living examples of how local communities preserve endangered native tree species such as *Aningeria adolfi-friedericii* (Gudubo), *Podocarpus falcatus* (Bribirissa), *Cordia africana* (Wodessa), and *Syzygium guineense* (Badessa), while also sustaining the cultural heritage associated with these species. Within the Gedeo community, several indigenous knowledge practices contribute significantly to the conservation of local ecosystems and agro-biodiversity. The deep cultural and spiritual connection between people and nature is expressed through the setting aside of sacred forests, revered trees, and venerated sites, which indirectly promote the sustainable protection of surrounding ecosystems. For instance, sacred forest patches preserved for cultural and religious purposes have played an important role in protecting endangered tree

⁵³ *Ibid.*

⁵⁴ Negi, *op.cit.*, at 187

⁵⁵ *Ibid.*

⁵⁶ Maru, Y., Gebrekirstos, A., & Haile, G. ‘Indigenous ways of environmental protection in Gedeo community, Southern Ethiopia: A socio-ecological perspective’. (2020), 6:1, *Cogent Food & Agriculture*. <https://www.tandfonline.com/doi/full/10.1080/23311932.2020.1766732#d1e230>. Accessed March 08, 2026

species and wildlife within the area of study. Vegetation inventories reveal that these sacred ecological zones—such as the Amba sacred forest—remain largely undisturbed, characterized by dense vegetation and large, old trees, and often serve as refuges for threatened wildlife compared with nearby farming landscapes. These traditionally protected forests therefore function as sanctuaries for endangered indigenous trees within agricultural environments. Because of the strong system of taboos and ancestral sanctions (seera), local people refrain from exploiting or mismanaging the sacred forests and their biodiversity. Consequently, these sacred sites have become safe havens for threatened tree species such as *Podocarpus falcatus* (Bribirissa), *Syzygium guineense* (Badessa), *Aningeria adolfi-friedericii* (Gudubo), *Oda-badee*, *Cordia africana* (Wodessa), *Prunus africana*, and *Albizia gummifera* (Goribe), which are dominant within sacred forests but critically threatened in nearby non-sacred farming habitats.

5. Taboos Enforcement Mechanisms

Taboo enforcement mechanisms refer to the social, religious, or customary systems a community uses to ensure that citizens comply with culturally established restrictions on certain practices. These mechanisms may operate through different forms of control, including social pressure, community disapproval, ridicule, or even exclusion for those who violate the rules. In some cases, they are reinforced by religious beliefs, traditional authority, or formal sanctions, all of which help maintain respect for the cultural norms that regulate the use of the environment.⁵⁷

The taboos system is an informal institution with inbuilt self-enforced valves by the community and the people.⁵⁸ One of the main features of a taboo system has been reasoned to be a form of “thought police” that governs not just human behavior, but also its thoughts.⁵⁹ The basic enforcement requirement of taboo is the traditional knowledge inculcated from childhood through the folklore institution and the established traditional local governance institutions.⁶⁰ In *Bandjoun*, Cameroun, the traditional education is primarily given by women who enforce conservation regulations for sacred areas and water resources. In this respect, women would

⁵⁷ Cousins & Zalewski, *op.cit.*

⁵⁸ Posner, R. A., and Rasmusen, E. B., “Creating and Enforcing Norms, with Special Reference to Sanctions”, (1999), 19. *Inter. Rev. Law Econ.* :369-382, 372.

⁵⁹ Fershtman, C., *et al.*, “Taboos and Identity: Considering the Unthinkable”, (2011), 3, *American Economic Journal: Microeconomics*, 139–164, 163

⁶⁰ Techera, E. J., “Synergies and Challenges for Legal Protection of Sacred Natural Sites in the South Pacific”, in, Verschuuren, B., *et al.*, *op.cit.*, 179

refuse for example, to use firewood that has been collected from sacred places or water fetched in breach of any taboo.⁶¹

The need to collectively enforce the taboos is informed by the sanctioning belief principally borne out of the fear of inescapable sanctions and social conventions the violation of the taboos would bring on the entire society⁶². The ingrained punishments for taboo violations in the consciousness (sub-consciousness) of the locals are divine wrath and physical jeopardies in forms of natural disasters, pestilence, contagious diseases and mass death. The fear of repercussions of violation of a taboo by a member of a family on the entire family and, by extension the peace of the community, encouraged monitoring facilitated by the closeness of family members and strong kinship ties.⁶³ Stories of the past and the imagined aftermath of such myths attract the young generation and are the best tools to enforce the cultural norms being followed by the ancestors.⁶⁴ Once it is registered in the mind of the citizen a small violation of the environment is a deliberate invitation to the ecological Armageddon will encourage individual and communal enforcement of environmental laws.

In some cultures, there are some culturally established enforcing group entrusted with the social responsibility of enforcing the taboo system. A look into the structural organisation of various African societies reveals that different traditional societies in the continent had instituted their own enforcers and enforcing system.⁶⁵ Though informal in nature, this institutionalized societies are forms of policing prior to the European contact with Africa.⁶⁶ Most of the times, the taboos enforcing group or associations are cultic in nature. A very good example of this group is the *Oro* Cult in the Nigerian Yoruba communities of the western Nigeria, certain age grades and masquerades in Igbo nation of the eastern Nigeria. One of the greatest law enforcers in Igbo

⁶¹ Kamga-Kamdem, S. L., "Ancestral Beliefs and Conservation: The Case of Sacred Sites in Bandjoun, West Cameroon", in Verschuuren, B., *et al*, *op.cit*, 129

⁶² Negi, C. S., "The Institution of Taboo and The Local Resource Management and Conservation Surrounding Sacred Natural Sites in Uttarakhand, Central Himalaya" (2010), 2:8, *International Journal of Biodiversity and Conservation*, 186-195, 191

⁶³ *Ibid.*, at 194

⁶⁴ Godbole, A., et al., "Culture-based Conservation of Sacred Groves: Experiences from the North Western Ghats, India" in Verschuuren, B., *et al.*, *op.cit.*, 232

⁶⁵ *Ibid.*

⁶⁶ Ordu, G. E. O., and Nnam M. Uchenna: "Introduction to Law Enforcement (SOC 103)", Lecture Note Power Point Presentation, Department of Criminology And Security Studies, Federal University, Ndufu-Alike, Ikwo, Ebonyi State, Nigeria.

culture is the traditional secret societies via 'Nmanwu' (*Igbo Masquerades*). Membership of the society is marked off by rigorous and regimented rite of passage. Though the system is shrouded in mystery and secrecy, the respect accorded the group shows acceptability of the group as legitimate enforcers. The 'Egbele' or 'Maa' (masquerades from 'Ogo' secret cult in *Afikpo* community, Ebonyi State of Nigeria) are powerful spirits that in various human forms and shapes with costumes of high artistic merit to perform a multiplicity of functions (including social control) after which they return to the spirit world.⁶⁷

The power to enforce taboos vested in this group of highly disciplined, tested and trusted men (and women in some occasions) is based on the value system that the interest of the society takes precedence over individual in it. Some of the traditional punishments common in Africa, depending on the gravity and contents of taboo violated, includes, but not limited to; satirical masquerades, oath-taking, symbolic interactions (e.g. the use of slightly yellowish palm frond called 'Omu' in the South-East, *alele* or *aale* in the South-West Nigeria, etc), trial by ordeal,⁶⁸ ostracism/banishment death.⁶⁹

6 Customary and Contemporary (Environmental) Law

The traditional taboo system developed along with the development of the legal system to form a body of law known as customary law. Customary law is "a mirror of accepted usage among a given people".⁷⁰ In the native African communities, the system of customary law was mainly the viable means by which communities were regulated before the colonization and amalgamation of different communities to form geo-political entity into African States. Customary laws were formulated from time immemorial and due to its flexibility, as the society advances, they meet situations which were inconceivable at the time they took root.⁷¹ The native communities developed customary laws to protect the environment by prohibiting some activities in some places like rivers, shrines, community land etc. For instances, in some communities, bathing at the rivers were prohibited while only places designated as 'public toilets' are the places where people could ease themselves. In some communities, misuse of lands for purpose not envisaged by the community were termed as taboo with specified punishments. It is humbly submitted that

⁶⁷ *Ibid.*

⁶⁸ Trial is criminalized by the criminal laws in Nigeria by the provisions of sections 208 and 209 of the Nigerian Criminal Code Act, Cap C.38, Law of the Federation of Nigeria, 2004.

⁶⁹ Ordu and Uchenna, *op.cit.*,

⁷⁰ *Owoniye v Omotosho* [1961] 1 ALL NLR 304

⁷¹ *Agbai v Okogbue* [1991] 7 N.W.L.R 391

customary laws that are not repugnant to natural justice, equity and good conscience,⁷² that are not incompatible either directly or by implication with any law for the time being in force,⁷³ and are not contrary to public policy still remain a veritable instrument for the protection of the environment at the community level.⁷⁴

As observed, environmental ethics based on African worldview provides a viable alternative to address the environmental challenges of modernity.⁷⁵ The legal apparatus used by traditional Africa setting, though leveraging on the religion potency as the policing instrument, African traditional religion is very close to nature and has created eco-friendly structures, practices and sanctions that were of enormous benefit in protecting the environment.⁷⁶

from a legal perspective, this body of law could be made to find validity in national legal mechanism such as Nigerian NESTREA Act,⁷⁷ and the South African's NEM Act,⁷⁸ reengineered to comply with regional instruments such as the Maputo 2003,⁷⁹ and Bamako,⁸⁰ as well as international conventions, i.e., UNFCCC,⁸¹ UNCBD,⁸² etc.

For example, Nigeria's Environmental Impact Assessment Act and South Africa's National Environmental Management Act establish statutory frameworks for sustainable resource use. Regionally, the African Charter on Human and Peoples' Rights recognises the right of citizens to a clean environment, while the Bamako Convention addresses hazardous waste. These legal regimes reflect principles of sustainability and communal responsibility that are deeply embedded in indigenous governance systems. By examining the intersection of traditional ecological knowledge and formal legal frameworks, this paper situates indigenous practices

⁷² *Egba Native Administration v Adeyanju* [1936] 13 NLR 77

⁷³ *Adebusokan v Yinusa* [1971] All NLR 227

⁷⁴ *Okonkwo v Okagbue* [1994] 9 NWLR pt 368, p. 301

⁷⁵ Onah Nkechi G., 'Mitigating Climate Change in Nigeria: African Traditional Religious Values in Focus' 2016, 7 (6), *Mediterranean Journal of Social Sciences*, 299-308, 303.

⁷⁶ *Ibid.*

⁷⁷ National Environmental Standards & Regulations Enforcement Agency Act, 2007.

⁷⁸ National Environmental Management Act, 1998

⁷⁹ Revised African Convention on the Conservation of Nature and Natural Resources (Maputo, 2003)

⁸⁰ The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes (1991).

⁸¹ United Nations, United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 UNFCCC, and UNFCCC, The Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) TIAS No 16-1104.

⁸² United Nations, Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79.

within contemporary debates on environmental law, thereby addressing a critical gap in scholarship.”

7.0 Recommendations and Conclusion

7.1 Conclusion

Clearly, traditional environmental practices reveal that African societies, like other traditional societies of the world, were aware in the past of the need to protect their environment. Traditional environmental governance systems demonstrate that environmental protection is not solely a product of modern legal development. Through culturally embedded mechanisms such as taboos, folklore, totemism, sacred natural sites, and customary law, indigenous societies developed sophisticated systems for regulating environmental behaviour and preserving ecological balance. This is covered in religious beliefs, partly because religion permeates virtually all aspects of African life. This awareness led to an environmental ethic, which implied using the spiritual world to protect the natural environment. It is also clear that there have been a serial paradigm shifts in environment protection from a communal concern in the native era to a private matter in the era preceding the dawn of industrial revolution. The efforts at protecting the environment also changed with the changes that accompanied the development of common law of torts. One of the innovation during the period of common law was the emergency of public environmental rights and the enactment of environmental law which eventually gave birth to the field of law known as environmental law. The international community joint efforts at protecting the environmental came with the realization of the dangers potent in polluting the environment. Finally, the trite reality from the international environmental law is that laws made to protect the environment requires joint actions among the nations of the world and cooperation between the governments and environmental stakeholders within a nation.

7.2 Recommendations

Based on the findings of this short study, the following recommendations are put forward:

1. **Integrating Indigenous Knowledge into Environmental Policies:**

Governments and environmental institutions should acknowledge the value of indigenous knowledge systems and actively incorporate them into environmental policies and conservation programs. Practices such as sacred forest protection, agroforestry, and traditional resource management have long supported ecological balance and can

complement modern scientific approaches in promoting sustainable environmental protection.

2. **Protecting and Promoting Sacred Ecologies:** Sacred forests, sacred trees, and culturally revered landscapes should be formally recognized as important community-based conservation areas. Supporting these traditional systems of protection can play a significant role in preserving endangered species, maintaining biodiversity, and safeguarding the cultural values that sustain environmental stewardship.
3. **Strengthening Community Participation in Conservation:** Effective environmental protection requires the active involvement of local communities in decision-making processes. Empowering indigenous groups to participate in environmental governance and manage their natural resources can strengthen sustainable land-use practices and ensure long-term conservation outcomes.
4. **Preserving and Documenting Traditional Knowledge:** Greater efforts should be made by researchers, policymakers, and cultural institutions to document and preserve indigenous environmental knowledge. Practices such as food taboos, traditional land management, and cultural sanctions provide valuable insights for addressing modern environmental challenges and should be protected and passed on to future generations.

INTERROGATING THE EFFICACY OF ANTI-FEMALE GENITAL MUTILATION (FGM) LAWS IN OSUN AND OYO STATES OF NIGERIA

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& Zaynab Omotoyosi Shittu-Adenuga, PhD **

ABSTRACT

Female genital mutilation/cutting (FGM/C) remains a deeply entrenched cultural practice in several Nigerian states, including Osun and Oyo, despite decades of national and state-level criminalisation. Although the legal landscape has expanded significantly, with federal legislation, state Violence Against Persons (Prohibition) laws, child-protection frameworks, and international commitments prohibiting the practice, the persistence of FGM/C suggests a significant disconnect between legal prohibition and lived realities. This gap raises the central question of whether anti-FGM laws function as effective regulatory tools or merely symbolic declarations of intent. This article adopts a primarily doctrinal research methodology, analysing constitutional provisions, federal legislation, the Child Rights Act, and the VAPP laws of Osun and Oyo States. This legal analysis is complemented by secondary empirical data from the 2024 Nigeria Demographic and Health Survey and policy documents to contextualise contemporary patterns of FGM within both states. Findings reveal that although the laws provide a robust normative framework, their impact is undermined by weak enforcement mechanisms, limited prosecutions, entrenched cultural acceptance, and poor public awareness. The article concludes that anti-FGM laws in Osun and Oyo States function more as symbolic commitments than transformative instruments. It recommends stronger enforcement structures, culturally sensitive advocacy, and increased community engagement to bridge the gap between legal prohibition and actual eradication of FGM.

Keywords: Law Enforcement, Symbolic, Cultural Practices, Infibulation

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1.0 Introduction

Issues of violence or sexual degradation tended to be relegated or ignored by traditional jurists over time because men were not typically the victims. The awareness among feminists that women's experiences are rendered virtually invisible under municipal and international laws was a critical step forward in addressing violence against women.¹ This was coupled with the effect of customary laws, cultural norms, and family conceptions, which largely resulted in the violation of women's human rights. Female genital cutting is a typical example of a gender-based cultural norm or practice constituting violence against women and girls. Female genital cutting or circumcision is an old ritual in which a girl's or woman's external genitalia is cut or removed as a cultural rite of passage into womanhood or to control her sexual response.²

Across the globe, over 200 million women and girls have experienced FGM/C, despite its being associated with immediate and long-term health complications.³ Despite global efforts to eradicate FGM/C, every year about 3 million girls undergo this harmful practice in Africa and Asia. Alarming, FGM/C is increasingly being performed by health-care workers in some countries. This gives rise to the impression that the medicalization of FGM/C will reduce the incidence of its complications. However, this is not so.

In Africa, Nigeria has the highest number of FGM and even ranks among the highest globally.⁴ Section 34 of the 1999 Constitution provides for the right to the dignity of the human person, to be entitled to respect and not to be subjected to torture or to inhuman or degrading treatment. Despite this constitutional provision, the degrading practice of FGM is continuing in Nigeria. Despite no evidence in the scriptures, FGM is believed to be ordained by God.

Due to its large population, Nigeria has the highest number of female genital mutilation in the world, thus accounting for about one-quarter of the estimated 115–130 million women circumcised in the world. The practice is not restricted to any region but cuts across the states. In

¹ MJO Mohammed, *Safeguarding Socio-economic Rights of Women in Nigeria in the Framework of International Human Rights Law* (PhD thesis, Obafemi Awolowo University, Ile-Ife, October 2017).

² UNFPA, 2021 FemUNFPA, *Female Genital Mutilation in Nigeria: Situation Analysis* (2021) <https://www.unfpa.org> accessed 7 September 2025.

³ Ibid

⁴ T Okeke, 'Pertinent Literature on FGM: An Overview of Female Genital Mutilation in Nigeria' (2012) *Annals of Medical and Health Sciences Research* <https://pubmed.ncbi.nlm.nih.gov> accessed 19 August 2025.

Nassarawa State, at least 87% of Eggon women were infibulated at the age of 7 or 8. Infibulation (also known as Pharaonic circumcision) is the most drastic form of female genital mutilation practised in Nassarawa Eggon.⁵ In Nigeria, the Federal Government enacted the Violence Against Persons (Prohibition) (VAPP) Act of 2015, which all the states have adopted and enacted in order to respond to and promote the elimination of FGM/C.⁶ Such state legislations include the Prohibition of Female Genital Mutilation Law of 2017 enacted in Imo State, the Edo State Female Mutilation (Prohibition) Law 1999, Oyo State VAPP Law, and Osun State VAPP Law, among others. The full effect of these laws is yet to be seen.

According to a report by UNFPA, 31% of Nigerian women have experienced physical violence since the age of 15.⁷ The geographical scope of this paper is Oyo and Osun states. Although the states have domesticated the VAPP Act and enacted other anti-FGM laws and policies, evidence abounds that the law is yet to have the desired impact. Its laudable expectations of eliminating violence, protecting human rights and promoting gender equality is far from being met. Many cases of violence against women and girls, including FGM are not reported. The average prevalence of FGM in Osun and Oyo states is above the national average. This is largely due to entrenched cultural beliefs, with perpetrators usually being parents or other family members of the young victims, as well as a lack of awareness of the VAPP Act, its provisions, and the available mechanisms to seek redress and access justice in FGM cases.

Currently, the national average for the practice of FGM in Nigeria is 19.5%. In Oyo State, FGM prevalence is about 31.1%, while in Osun State it is 45.9%, both well above the national average.⁸ Between 2021 and 2025, the National Policy and Plan of Action for the Elimination of FGM in Nigeria (2021–2025) implemented a Joint Program that supported 46 local government areas in Ebonyi, Ekiti, Imo, Osun, and Oyo states. This initiative aimed to develop two-year local

⁵ N Bala 'Female Genital Mutilation in Nassarawa Eggon Community, Nasarawa State – Nigeria' (2013) *Journal of Humanities and Social Sciences*

⁶ O Diris, S Kimasi and O Obiawu 'Female Genital Mutilation/Cutting: A Review of Laws and Policies in Kenya and Nigeria' (Population Council 2020) Evidence to End FGM/C: Research to Help Girls and Women Thrive. Available at: <https://www.popcouncil.org>

⁷ United Nations Population Fund (UNFPA) Nigeria. (n.d.). *Advocacy brief on gender-based violence in Nigeria*. UNFPA Nigeria. Retrieved November 22, 2025, from https://nigeria.unfpa.org/sites/default/files/pub-pdf/unfpa_advocacy_brief_gbv_hp_national_0.pdf

⁸ FGM/C Research Initiative. (2023). *Nigeria country profile update: July 2023*. FGM/C Research Initiative. Retrieved November 22, 2025, from https://www.fgmc.org/media/uploads/Country%20Research%20and%20Resources/Nigeria/nigeria_country_profile_update_v2_%28july_2023%29.pdf

FGM elimination action plans (2022–2023) that would provide sustainable, self-guided strategies for FGM elimination using local resources, with government collaboration alongside CSOs and development partners. The program sought to lay a foundation for further actions to ensure the elimination of FGM in Nigeria.

2.0 Legal Framework on FGM

Nigeria has a complex legal system that includes Islamic law, English common law, and customary law. State governments enact, adopt, and carry out the laws in their own states, whereas the federal government oversees enactment of broad laws.⁹ At the national level, the legal framework includes the Constitution, the Child Rights Act, 2003, and the Violence Against Persons (Prohibition) (VAPP) Act, in addition to state legislations.

Since creating its first National FGM Policy in 2002, Nigeria has acknowledged FGM as a discriminatory practice that calls for legislative and policy changes. Later, it passed the Violence Against Persons (Prohibition) Act in 2015 and put in place several measures to help end FGM. Before the VAPP Act, several states had already implemented legislation addressing child abuse, child protection concerns, violence against women and girls, and the prosecution of FGM; these include Osun State¹⁰, Bayelsa State¹¹, Ogun¹²Cross River State¹³, Ebonyi State¹⁴, Edo State¹⁵, Enugu State¹⁶ and Rivers State. The Constitution, however, remains the primary instrument to combat and eliminate FGM in Nigeria.

2.1 National legal framework

- **Nigerian Constitution¹⁷**

The Constitution provides several provisions relevant to the protection of fundamental human rights, including the rights of women and girls. Section 15(2) prohibits discrimination, while Section 17(2) guarantees equality of rights and provides for the respect and dignity of every

⁹ 28 Too Many, *Nigeria: The Law and FGM* (June 2018) [https://www.28toomany.org/media/uploads/Law%20Reports/nigeria_law_report_v1_\(june_2018\).pdf](https://www.28toomany.org/media/uploads/Law%20Reports/nigeria_law_report_v1_(june_2018).pdf) accessed 20/11/25

¹⁰ Osun State Female Circumcision & Genital Mutilation (Prohibition) Law (2000)

¹¹ Female Genital Mutilation (Prohibition) Law 2002.

¹² Ogun State Female Circumcision & Genital Mutilation (Prohibition) law (2000)

¹³ The Girl-Child Marriages and Female Circumcision (Prohibition) Law (2000)

¹⁴ Law Abolishing Harmful Traditional Practices Against Women and Children (2001)

¹⁵ Law Abolishing Harmful Traditional Practices Against Women and Children (2001)

¹⁶ Female Genital Mutilation (Prohibition) Law 2004.

¹⁷ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

person. These provisions are contained under Chapter II, Fundamental Objectives and Directive Principles of State Policy, which, however, are not justiciable.

More importantly, Sections 33 and 34 of the Constitution constitute enforceable fundamental human rights. Section 33 protects the right to life, providing that no person shall be deprived intentionally of their life except in accordance with the law. This right is absolute and has been interpreted by Nigerian courts in several cases. For example, In *Gani Fawehinmi v. Inspector General of Police*¹⁸, the Supreme Court recognized that the right to life includes protection from arbitrary deprivation of life by the state. Also, in *Attorney-General, Bendel State v. Sambo*¹⁹, it was held that the Constitution guarantees life as a fundamental and inalienable right. Section 34(1) prohibits torture or inhuman or degrading treatment. The concept of human dignity is diverse and dynamic, encompassing both physical and psychological integrity, as well as protection from cruel treatment. Courts have applied this principle in several judgments. In *Ojukwu v. Attorney-General of the Federation*,²⁰ the Supreme Court held that the dignity of the human person is a core value of the Constitution, safeguarding citizens against acts that debase, humiliate, or harm them.

- **Violence Against Persons (Prohibition) Act, 2015**²¹

As part of the United Nations Sustainable Development Goals (SDG 5), which seeks to achieve gender equality and equitable opportunities for all, the Violence Against Persons (Prohibition) (VAPP) Act advances these objectives. The Act aims to put an end to various forms of violence against women and girls, including all harmful practices. It also seeks to guarantee women's full participation in politics, including leadership positions, and to enhance women's equal access to economic resources, property, and finances.²² Thirty-five states have enacted the Act, thereby making it applicable across Nigeria. Yet, its full impact is still yet to be realized in the country.

The VAPP Act criminalizes various forms of violence, including sexual violence, domestic violence, and harmful traditional practices. Section 1 of the Act provides a comprehensive definition of violence, encompassing physical, sexual, emotional, and economic violence. It explicitly includes harmful traditional practices such as female genital mutilation (FGM) and

¹⁸ (1987) 1 NWLR (Pt. 55) 148

¹⁹ (1983) 1 SCNJ 53

²⁰ (1985) 1 NWLR (Pt. 7) 29

²¹ Violence Against Persons (Prohibition) Act, 2015 (VAPP Act).

²² R Anoliefo, contribution to Justice, Development and Peace Centre Seminar, Lagos, "International Day for the Elimination of Violence Against Women" and "International Human Rights Day" (16 Orange Days, 25 November–10 December 2015).

forced marriage. Section 2 criminalizes various forms of violence, including rape, sexual assault, and domestic violence, and provides for the punishment of perpetrators through imprisonment, fines, or both. Section 3 provides for the protection and support of victims of violence, including access to medical care, counseling, and legal services, while Section 4 establishes specialized courts to handle cases of violence against persons, including gender-based violence. Section 6 provides for the protection and support of vulnerable persons, including women, children, and persons with disabilities, who are at increased risk of violence.

Although the VAPP Act does not define FGM specifically, it contains provisions addressing the practice. Section 5 prohibits harmful traditional practices, including FGM and forced marriage. Section 6(1) states that anyone who performs, or hires someone to perform, female circumcision or genital mutilation is punishable under Section 6(2) with imprisonment not exceeding four years, a fine not exceeding N200,000, or both. Anyone who attempts to perform the act, or hires someone else to do so, is liable under Section 6(3) to a maximum of two years' imprisonment, a fine not exceeding N100,000, or both. Section 6(4)(c) provides punishment for anyone who encourages, assists, or advises another person to perform or attempt FGM, with violators facing a maximum sentence of two years in prison, a fine of N100,000, or both. However, failure to report FGM that has occurred or is imminent is not specifically criminalized under the VAPP Act. This gap is critical and warrants legislative attention, as it could strengthen community vigilance against FGM. While the VAPP Act technically applies only to the Federal Capital Territory, all states' Houses of Assembly have adopted the law. Nevertheless, there has been little evidence of reporting or prosecution of FGM offenders. Edo State was the first in Nigeria to pass a law outlawing female circumcision. The law punishes anyone who submits themselves or encourages others to undergo FGM, allows a girl under their care to be subjected to the procedure, or performs it themselves. Convictions carry a minimum sentence of three years in prison, a fine of N3,000 (approximately \$8.20), or both. Any individual who obstructs or assaults an officer carrying out statutory duties is subject to one year's imprisonment, a fine of N2,000, or both upon summary conviction. The Act prohibits all forms of female genital mutilation.²³ While the VAPP Act provided a ray of hope for

²³ R Anoliefo, Justice, Development and Peace Centre Seminar, Lagos, to mark the 2015 "International Day for the Elimination of Violence Against Women" and 2015 "International Human Rights Day" (16 Orange Days – 25 Nov – 10 Dec, 2015); Ekhatior, Eghosa Osa, Women and the Law in Nigeria: A Reappraisal. *Journal of International Women Studies*, (2015), 16(2), 285-296; George TA, LETHAL "Violence Against Women" in Nigeria, IFRA (2015) – Nigeria Working papers series No. 43 available at <http://ifra-Nigeria.org/IMG/pdf/lethal-violence-against-women-Nigeria.pdf>. Accessed on December 20, 2024

the protection of women against violence, its full impact in eliminating the harmful practice of FGM remains limited.

- **Child Rights Act (CRA), 2003²⁴**

Child rights are the fundamental human rights of a child under the age of eighteen years. These rights specifically encompass the child's rights to life, survival, and development, as well as participation and protection from all forms of exploitation and harmful practices. A child is defined as anyone under the age of eighteen.²⁵ Section 1 of the CRA specifies that the best interests of the child must be prioritized in all decisions involving children, regardless of who is making them, whether individuals, public or private organizations, institutions or services, legal authorities, administrative bodies, or legislators.

Although the Act does not define female genital mutilation (FGM) or specifically refer to violence against women and girls, Section 33(1) provides that anyone who exploits a child in any way detrimental to the welfare of the child, and which is not already covered elsewhere in the Act, is guilty of an offence and is liable to a fine of N500,000, a term of imprisonment of five years, or both. Thus, both the Child Rights Act and the 1999 Nigerian Constitution fail to expressly prohibit the practice of FGM, although they contain human rights principles and provisions that victims can rely on to enforce their fundamental rights when violations occur.

- **HIV and AIDS (Anti-Discrimination) Act, 2014²⁶**

The Act does not make specific provisions to prohibit FGM. However, Section 3(3) of the HIV and AIDS (Anti-Discrimination) Act, 2014, provides that no culture, practice, or tradition shall encourage activities that expose people to the risk of HIV infection. This section also addresses harmful practices that increase the risk of HIV transmission. FGM is an example of such a harmful practice, due to the use of unsterilized instruments by traditional FGM practitioners.

2.2 State-level laws in Osun and Oyo.

- **Oyo State Violence Against Persons (Prohibition) Law, 2020**

²⁴ Child Rights Act 2003, Act No 26, Laws of the Federation of Nigeria 2004.

²⁵ Child Right's Act 2003, Section 277.

²⁶ HIV and AIDS (Anti-Discrimination) Act, 2014

Female Genital Mutilation (FGM) is prohibited in Oyo State under the Oyo State Violence Against Persons (Prohibition) Law, 2020 (also referred to as the VAPP Law or VAWL). This law, which replaced the Oyo VAPP Act of 2016, criminalizes FGM and provides specific penalties for offenders. Under the Oyo State VAPP Law (2020), FGM is a criminal offense with various penalties. Anyone who performs or arranges FGM is liable to imprisonment of up to four years, a fine of up to ₦500,000, or both. Attempting to perform FGM attracts a penalty of up to two years' imprisonment, a fine of up to ₦200,000, or both. Inciting, aiding, or counseling FGM is punishable by a maximum of four years' imprisonment, a fine of up to ₦500,000, or both. Anyone assisting or harboring offenders is liable to two years' imprisonment, a fine of up to ₦200,000, or both. This law applies to all residents of Oyo State and prohibits harmful traditional practices against women. However, challenges in full enforcement of the law and prosecution of offenders persist.

- **Osun State Violence Against Persons (Prohibition) Law, 2020**

In Osun State, Female Genital Mutilation (FGM) is explicitly banned under the Violence Against Persons (Prohibition) (VAPP) Law, 2020, which replaced the earlier Osun State Female Circumcision and Genital Mutilation (Prohibition) Law of 2004. This updated legislation significantly strengthens the protection of girls and women against the harmful practice of FGM, providing a clear and enforceable legal framework.²⁷ The law unequivocally forbids the circumcision or genital mutilation of any girl or woman, leaving no room for ambiguity regarding its illegality. It holds accountable not only those who directly perform FGM but also individuals who hire or persuade others to carry out the act. Under the provisions of the law, a first-time offender may be sentenced to imprisonment of up to four years, fined up to N200,000, or both, reflecting a marked increase from the 2004 law, which imposed a maximum of one year's imprisonment or a N50,000 fine.

The legislation also addresses attempts and encouragements, stipulating that anyone who tries to perform FGM, or who encourages, assists, or advises another to perform the procedure, is subject

²⁷ https://cewhin.com/wp-content/uploads/2025/03/CEWHIN_-_Simplified-Version-of-the-Osun-State-VAPP-Law.pdf

to similar penalties. Notably, the law rejects any claim that the victim consented to the practice as a valid defense, ensuring that the rights and protection of girls and women remain absolute.²⁸

The application of the law extends to both private and public contexts, underscoring a comprehensive approach to preventing FGM and providing recourse for victims. By clearly defining FGM as a criminal offense, imposing stringent penalties, and closing potential loopholes, the Osun State VAPP Law establishes a robust legal mechanism for combating this harmful practice. Its enactment reflects the state government's determination to safeguard the health, dignity, and fundamental rights of girls and women against entrenched cultural practices that jeopardize their wellbeing.²⁹

5.3 Relevant international and regional instruments

The United Nations has been at the forefront of preventing FGM globally since the unanimous approval by the UN General Assembly (UNGA) in 2012 of a resolution calling for a universal ban on FGM.³⁰ Early international conventions, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), recognized FGM as a harmful practice due to its multiple health risks. Subsequently, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted to specifically and comprehensively address issues affecting women.

At the regional level, instruments such as the African Charter on Human and Peoples' Rights and the Protocol on the Rights of Women in Africa were developed. However, the African Charter was inadequate in addressing many of the discriminatory issues affecting African women on a daily basis, such as harmful cultural and widowhood practices.³¹ The Charter also did not sufficiently address inequities in laws and customs relating to property, inheritance, and succession. A major

²⁸ Onyinye Edeh, 'Power, authority and the will to change: Female genital mutilation in Nigeria's Osun state' (Institute of Commonwealth Studies, 22 December 2017) <https://www.icwa.org/female-genital-mutilation-in-nigeria/> accessed 30 November 2025.

²⁹ Onyinye Edeh, 'Power, authority and the will to change: Female genital mutilation in Nigeria's Osun state' (Institute of Commonwealth Studies, 22 December 2017) <https://www.icwa.org/female-genital-mutilation-in-nigeria/> accessed 30 November 2025.

³⁰ OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM and WHO, *Eliminating Female Genital Mutilation: An Inter-Agency Statement* (2008) https://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf accessed 7 September 2025.

³¹ Onyeka C Okongwu, 'Are laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria' (2020) *International Journal of Discrimination and the Law* 1–21 <https://journals.sagepub.com/doi/10.1177/1358229120978915> accessed 7 November 2025.

limitation of the Charter is that its non-discrimination provisions can only be applied in the implementation of a right under the Charter.³²

3.0 Methodology (Empirical Content Analysis)

Complementing the doctrinal analysis explored above, this study incorporates an empirical component that draws on publicly available secondary quantitative data to evaluate the real-world outcomes the law is designed to influence. The principal dataset utilised is the 2024 Nigeria Demographic and Health Survey (NDHS)³³, which provides the most authoritative and up-to-date national and state-level statistics on female genital mutilation (FGM) prevalence, patterns, and attitudes. Grounding the research in this recent empirical evidence allows for a clearer understanding of the current landscape of FGM in Osun and Oyo States and offers an objective basis for assessing whether the existing legal frameworks in both states are functioning effectively, partially, or symbolically.

The 2024 National Demographic and Health Survey (NDHS) provide the clearest national snapshot of the prevalence, types, and social attitudes surrounding FGM, and it forms the statistical backbone upon which this study's evaluation of legal effectiveness is built. Nationally, FGM remains entrenched despite decades of advocacy and legislative reforms. According to the NDHS, 14% of Nigerian women aged 15–49 have undergone some form of genital cutting. The most widespread procedure is one that entails the excision or removal of part of the external genital tissue, representing 62% of all recorded cases. More severe forms, such as infibulation, where the vaginal opening is stitched closed, account for 7%, while another 3% reported cuts that did not involve tissue removal. Strikingly, more than a quarter of women (28%) said they were unsure what type of cutting had been carried out, highlighting the silence, secrecy, and generational distance surrounding the practice.

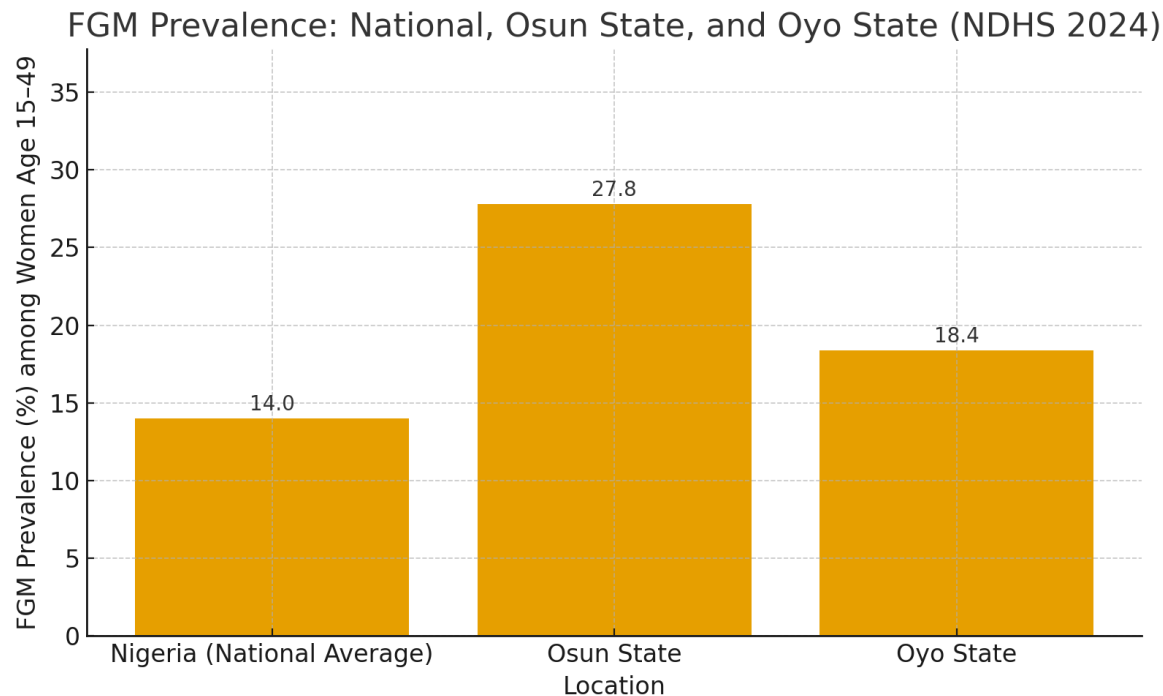
A state-level breakdown presents a more troubling picture for the Southwest. The NDHS mapping of FGM prevalence places Osun State at 28%, making it the second-highest in the

³² Akiyode-Afolabi A and Amadi S, *Examination of the Provisions of the Women's Protocol to the African Charter and its Relationship to the CEDAW Convention as well as the Interpretation and Implementation of the Protocol in Other African Countries* (Nigeria: InfoVision Limited, 2008).

³³ Federal Ministry of Health and Social Welfare of Nigeria (FMOHSW), National Population Commission (NPC) [Nigeria], and ICF, *Nigeria Demographic and Health Survey 2024* (Abuja, Nigeria and Rockville, Maryland, USA, FMOHSW, NPC, and ICF, 2025) <NDHS_Final_report-2024.pdf> accessed 7 November 2025.

South West, surpassed only by Ekiti. Oyo State records a lower, but still significant, rate of 18%. These figures immediately raise questions about what local forces, cultural, familial, or systemic are weakening or reinforcing the statutory bans in each state.

Figure 1: FGM Prevalence in Nigeria, Osun State, and Oyo State (NDHS 2024)



Beyond prevalence, the survey explores awareness of FGM, which is critical for understanding how laws and public messaging penetrate communities. In both states, knowledge levels are high, but uneven across gender lines. In Osun, 82.5% of women and 76.3% of men had heard about FGM. Oyo showed a similar pattern, with 80.4% of women and 61.6% of men reporting awareness. These high awareness levels, contrasted with persistent prevalence, suggest that legal prohibition and public knowledge do not automatically translate into abandonment of the practice.

The NDHS further disaggregates prevalence among women aged 15–49. Osun records 27.8% of women circumcised (174 individuals), while Oyo registers 18.4% (231 women). The age at which cutting occurs reveals an entrenched pattern of early-childhood circumcision. In both states, the overwhelming majority of women reported being cut before the age of five—85.5% in Osun and 94.5% in Oyo. This concentration in infancy and early childhood underscores why

enforcement is often difficult: the victims are too young to identify perpetrators, recall events, or seek redress.

A related NDHS indicator examined the cutting of girls aged 0–14, revealing that the practice remains ongoing. In Osun, the overall prevalence among girls stood at 7%, while Oyo recorded 9.3%. The distribution shows gradual increases as girls grow older, particularly in Oyo, where circumcision among girls aged 10–14 is alarmingly high (14.3%). This trend suggests that while national campaigns may be discouraging infant cutting, some families delay the procedure rather than abandon it.

Report shows that infibulation which is the most severe form of FGM persists in both states. This data on infibulation among young girls illustrates the depth of physical harm. Infibulation is classified as Type III FGM under the World Health Organisation framework.³⁴ It is a procedure where part or all the external female genitalia is removed, and the vaginal opening is sealed. This is typically done by bringing the cut edges of the labia together using sutures, adhesive substances, or other methods, leaving only a tiny space for bodily fluids to pass. Victims may have to undergo a second procedure known as “defibulation” before sexual intercourse or childbirth.³⁵ In Osun, 13.1% of circumcised girls had been sewn closed, compared to 6.9% in Oyo. Although these numbers represent a minority, their presence indicates that even the most extreme forms of FGM persist despite criminalization.

Community beliefs also shape the resilience or decline of the practice. When asked whether FGM is a religious requirement, only 6.4% of women in Osun and 7% in Oyo believed that it is mandated. However, men showed a significantly different pattern: 32.9% of men in Osun believed FGM is required by religion, compared to 10.1% in Oyo. This male-female disparity is crucial for legal and advocacy strategies; in many communities, men though not physically subjected to the practice, shape household decisions.

Finally, the NDHS explores attitudes toward continuation of the practice. In Osun, only 8.8% of women supported the continuation of FGM, but nearly 21% of men felt it should persist. In Oyo,

³⁴ World Health Organization, *Female genital mutilation* (Fact sheet, 31 January 2025) <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> accessed 23 November 2025.

³⁵ Ibid

11.1% of women and 6% of men thought the practice should continue. These divergent opinions, especially the higher support for continuation among men in Osun highlight the cultural negotiation that anti-FGM laws must contend with.

Altogether, these data points sketch a layered portrait of FGM in the two states: high awareness but persistent prevalence; early-childhood circumcision that evades surveillance; male support that exceeds female support; and deep-seated sociocultural norms that operate beneath the surface of formal legal structures.

4.0 Conclusion and Recommendations

This study set out to interrogate the effectiveness of anti-FGM legislation in Osun and Oyo States through a doctrinal examination of their statutory frameworks and an empirical analysis of recent demographic data. The Nigeria Demographic and Health Survey (NDHS 2024) reveal that, despite clear statutory prohibitions, FGM persists at worrying rates (27.8% in Osun and 18.4% in Oyo) placing both states among the highest in the region. The persistence of the practice, particularly among girls under age five, indicates that the VAPP law of Osun and Oyo States, though well-designed on paper have not yet translated into meaningful behavioural change within affected communities. The research demonstrates that the legislative frameworks in both states represent significant normative progress, especially with the expanded provisions and stricter penalties under the VAPP-based statutes. However, the enforcement environment remains weak. The low level of prosecutions, the absence of systematic reporting mechanisms, and the continued influence of cultural norms and misconceptions, especially the belief among some men that FGM is religiously required, undermine the deterrent effect of the law. The finding that infibulation still occurs in both states, despite its clear criminalisation, further underscores the gap between legal aspiration and lived reality. In conclusion, the evidence shows that the anti-FGM laws in Osun and Oyo are partially effective but far from transformative. They provide the legal backbone for protection, yet they function more symbolically than functionally in many communities.

To strengthen the real-world impact of anti-FGM laws in Osun and Oyo States, the following measures are recommended:

1. Strengthen Enforcement and Accountability Structures: It is recommended that specialised gender-based offences units be created and investigations should be swift and timely. Also, both state governments must mandate compulsory reporting of suspected FGM cases by health workers, community birth attendants, and traditional leaders. In addition, a state-level FGM prosecution register should be developed to monitor compliance and track enforcement outcomes.

2. Expand Community-Centered Awareness and Behavior-Change Programs: Both state governments should partner with traditional rulers, women leaders, and religious institutions to publicly denounce FGM and correct the misconception that it is religiously mandated. A survivor-led storytelling initiative could be employed to humanise the issue and reduce social acceptance. Furthermore, knowledge about FGM should be integrated into school curricula, antenatal clinics, and community health outreach.

3. Engage Men and Boys as Critical Stakeholders: The NDHS 2024 data shows higher rates of male support for continuation of FGM in Osun than among women. Targeted programmes should be organized addressing male perceptions of FGM, especially regarding religion, sexuality, and marriageability. Males who publicly advocate abandonment of the practice should be promoted.

4. Strengthen Coordination Between Legal, Health, and Social-Welfare Sectors: Healthcare providers should be trained to identify, document, and respond to FGM cases, including referral pathways for psychosocial support. Cases of infibulation should be adequately reported, and perpetrators should be arrested and prosecuted.

5. Improve Data Systems and Monitoring: Both states should establish continuous community-based FGM surveillance systems to complement NDHS periodic data, and research to monitor the performance of the VAPP laws, focusing on prosecution rates, reporting patterns, and barriers to compliance.

6. Strengthen Regional and National Collaboration: Harmonisation of anti-FGM implementation strategies should be promoted across the South-West states. In the same breath, national bodies such as the National Human Rights Commission and the Federal Ministry of Women Affairs, to develop uniform enforcement guidelines, should collaborate in carrying out their functions and preventing the incidence of FGM in Nigeria as a whole.

LEGAL FRAMEWORK FOR CYBER-INDUCED PROVOCATION IN NIGERIA: CHALLENGES AND THE NEED FOR LEGAL REFORMS

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Abstract

The advent of digitalisation, followed by the rapid spread of internet usage and technological aptitude has transformed human interaction, allowing instant communication and bridging the gaps in time and space. However, despite this benefits, there has been the manipulation of digital platforms to perpetrate all forms of cybercrimes, thereby inducing provocation. This study examined the application of cyber-induced provocation as a defence within Nigeria's legal and criminal law frameworks. The objectives of the study were to assess the nature of provocation within the Nigerian criminal law, identify the legal and institutional frameworks for cyber-induced provocation and highlight the challenges and possible prospects that may be realized in addressing cyber-induced harms in Nigeria. This study adopted a doctrinal research methodology, drawing data from primary and secondary sources such as cases and scholarly commentary, as well as domestic, regional and international instruments. This study found that there are currently no cyber-specific regulations or laws that address online provocation. This study concluded, by recommending the reformation of the Cybercrimes Act and the establishment of a legal framework that provide for cyber-induced provocation as a legal defence in face of cyber-induced harms.

-Keywords: - Provocation, Cybercrimes, Defence, Legal Frameworks;- Nigeria.

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1. Introduction

The rise of digital communication has transformed human interaction, enabling instantaneous sharing of information. However, this has also led to the proliferation of harmful online behaviour, such as cyberbullying, doxing and harassment, which provoke intense emotional reactions.¹ In legal contexts, provocation has traditionally been considered a mitigating factor in criminal liability, however, technological advancement has made it expedient to define provocation within the context of social media and its ability to incite anger, thereby causing the individual(s) to lose his self-control and commit a criminal act. Hence, where this is the case, how does the law and justice system address the situation? Do the ordinary elements of provocation apply even when induced digitally?

In criminal law, provocation traditionally serves as a partial defence that may reduce a charge of murder to manslaughter where the defendant is found to have lost self-control due to the provocative act.² However, the conventional legal framework, which is largely built around physical, face-to-face provocation, struggles to accommodate the complexities of cyber-induced provocation. The question arises: how should the law treat individuals whose actions stem from psychological and emotional breakdowns triggered by online abuse? It has therefore become necessary to examine how the elements of provocation in real-life situations may be reflected through the intricacies of cyber-induced provocation.

Historically, the defence of provocation is rooted in the common law of England, around the 16th and 17th century.³ It came about as a means of mitigating the harshness of the death penalty for murder, recognizing that even the most dignified man could lose his self-control and react violently toward certain offensive behaviour.⁴ The foundation for the defence was laid down in the early case of *R v Mawgridge*,⁵ after which it began to crystallize into an acceptable concept, reflecting an understanding of human emotional frailty exposed by insults or physical attack.⁶

¹ Rashed Ahmed, 'Cyber Harassment in the Digital Age: Trends, Challenges, and Countermeasures' (Preprints, 25 September 2024) <10.20944/preprints202409.1882.v1> accessed 11 November 2025.

² George Mousourakis, 'Cumulative Provocation and Partial Defences in English Criminal Law' (2022) 28(2) *Nelson Mandela University Law Journal* <<https://doi.org/10.17159/obiter.v28i2.14139>> accessed 11 February 2026.

³ OJ Jejelola, 'An Evaluation of the Defence of Provocation under the Nigerian Criminal Justice System' (2017) 2 *African Journal of Criminal Law and Jurisprudence* 44.

⁴ Ibid 54.

⁵ (1708) 84 ER 1107 (QB).

⁶ Jejelola (n 3) 53.

Nonetheless, the lines separating immediacy of action and prolonged or progressive abuse remain blur with regards to cyber-induced provocation as the traditional test still demands that the act which causes death must be done in the heat of passion caused by sudden provocation, before there is time for passion to cool.⁷

The rigidity of common law principles and the absence of clear legislative provisions on cyber-induced provocation reveals a pressing need to interrogate the legislative silences within the Criminal Code and the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 (as amended)⁸ In particular, the provocation defence, which is the traditional defence, is that the killing was committed in the “heat of passion” before the passion has had time to cool. However, online abuse can last for days or weeks. This time lag makes it impossible for a victim to meet the “suddenness” requirement even if he or she becomes uninhibited after multiple incidents of harassment. This paper fills this gap as there is no legislative or judicial guidance on this point.

2 Conceptual and Theoretical Frameworks

Cyber-induced Provocation

Cyber-induced provocation describes the severe emotional distress caused by harmful online acts like cyberbullying, sexual exploitation, or sharing intimate images without consent⁹ Unlike traditional provocation, it develops over time in digital spaces where abuse is often anonymous, constant, and hard to escape. Victims may gradually lose emotional control, sometimes reacting in the heat of the moment after prolonged harassment (reactive abuse). This is worsened by the lack of accountability for perpetrators, despite global recognition of such harms¹⁰ Nigerian law, however, still focuses on the victim’s reaction rather than the online trigger, highlighting the need for reform to better address cyber-induced harm.

⁷ CO Okonkwo, *Okonkwo & Naish: Criminal Law in Nigeria* (3rd edn, Ibadan: Spectrum Books Limited 2018) 258.

⁸ The Cybercrimes (Prohibition, Prevention, etc.) Act 2015 was amended and re-enacted in 2024. References to this Act herein reflect and incorporate the amended version.

⁹ Cybercrimes Act, 2015, s24.

¹⁰ Ian Casey, 'Magali Berdah: Dozens Jailed in France's Largest Cyberbully case' (BBC News, 19 March 2024) <<https://www.google.com/amp/s/www.bbc.com/news/world-europe-68610123.amp>> accessed 10 February 2026.

Provocation as a Partial Defence

Provocation is a partial legal defence that reduces a murder charge to manslaughter by claiming that the defendant temporarily lost self-control because of something beyond his control. Traditionally, it requires a sudden loss of control assessed against a "reasonable man"¹¹ standard, but this test is controversial for its rigidity and cultural bias. It often disadvantages women, especially those who have been abused for a long time, whose reactions may be delayed rather than explosive.¹² Another drawback of the "reasonable person" test is that it does not consider the psychological impact of ongoing online harassment by an anonymous person. Online provocation can be done by an unseen aggressor, unlike a face-to-face provocation, which means that the victim cannot seek immediate apology or retraction. The law has yet to determine if the "reasonable person" in a digital environment would be expected to "disengage" from the aggressor, "report" the aggressor, or "block" the aggressor, or if repeated exposure to harmful content would be a legitimate loss of self control over time.

Reforms like the UK's Coroners and Justice Act 2009¹³, which replaced provocation with "loss of control," offer a more contextual approach but still fail to address nuanced situations like online abuse. To be fair and relevant, the defence must recognise diverse emotional and psychological experiences rather than only sudden, visible anger.

Cyber Crime in Nigeria

Cybercrime refers to the use of a computer as an instrument to further illegal ends, such as committing fraud, trafficking in child pornography and intellectual property, stealing identities, or violating privacy.¹⁴ It is usually carried out through digital means, including hacking, identity theft, online fraud, and the dissemination of offensive content. The Cybercrimes (Prohibition, Prevention, etc.) Act 2015, provides the legal framework for dealing with cybercrimes in Nigeria, as the country struggles with various number of them including phishing, identity theft, cyberstalking, ransomware attacks, and internet fraud. These crimes target vulnerable individuals

¹¹ Kristof Z Csefalvay, 'The Normative Test in Provocation after Smith and Holley' (2007) *Cambridge Student Law Review* 45.

¹² *R v Ahluwalia* [1992] 4 All ER 889.

¹³ Coroners and Justice Act 2009, ss 54–55.

¹⁴ Michael Dennis, 'Cybercrime' (Britannica, 19 August 2025) <<https://www.britannica.com/topic/cybercrime>> accessed 13 February, 2026.

and digital infrastructures by penetrating weak spots in its cyber security systems. As a result of cybercrime, the Nigerian economy has estimated a significant loss of at least \$800 million annually, with the country's financial sector as a primary target.¹⁵

Additionally, the Centre for Strategic Cyberspace International Studies (CSCIS) has reported that, based on investigations, the cost of cybercrime would reach over \$10 trillion annually by 2025.¹⁶ The rate at which cybercrimes are being perpetuated has become an increasing cause for concern in Nigeria, due to socio-economic factors, such as unemployment, poverty and the lure of quick wealth.¹⁷ Additionally, the Act mandates service providers to retain subscriber information and traffic data, balancing this requirement with individuals' constitutional rights to privacy. These provisions underscore Nigeria's commitment to combating cybercrime through a comprehensive legal framework that addresses both the technical and human elements of digital offenses.

Criminal Liability for Unlawful Online Acts

The violation of cybercrime legislation such as hacking, unlawful access,¹⁸ computer fraud,¹⁹ cyber terrorism,²⁰ child pornography,²¹ cyberstalking²² and identity theft and impersonation²³ attract culpability with penalties attached. Criminal liability for cybercrime and online offences may also be determined by other cybercrime or communication and data protection laws such as the Nigeria Data Protection Act 2023 and the Economic and Financial Crimes (Establishment, Etc.) Act 2004. Liability arises when an individual with the requisite mental state (*mens rea*), commits a prohibited act (*actus reus*). However, attributing criminal liability in the digital

¹⁵ 'Strengthening Nigeria's Response to Cybercrime: Policy Recommendations for a Safer Digital Economy' (Cenerva, 17 January 2025) <<https://cenerva.com/articles/strengthening-nigerias-response-to-cybercrime/>> accessed 14 February, 2026.

¹⁶ David Swan, 'Merging Intelligence: Answering the Right Questions & Understanding What Attackers are up too' (CSCIS, 5 December, 2023) <<https://cscis.org/2023/12/05/cscis-indicators-cybercrime-is-out-of-control/#:~:text=%E2%80%9CCybercrime%20costs%20include%20damage%20and,its%20launch%20in%20April%202022.>>> accessed 8 March 2026.

¹⁷ Moyosore Salami, 'Why Cybercrime Persists in Nigeria Despite Strict Measures' *The Guardian* (Lagos, 5 October 2024) <<https://guardian.ng/news/why-cybercrime-persists-in-nigeria-despite-strict-measures/>> accessed 14 February 2026.

¹⁸ Cybercrimes Act 2015, s 6.

¹⁹ Ibid s 14.

²⁰ Ibid, s 18.

²¹ Ibid, s 23.

²² Ibid s 24.

²³ Ibid, (as amended) s 22.

environment remains challenging, as anonymity, transnational online interactions, and the complexities of digital evidence often obscure the identity of offenders and complicate the proof of criminal intent. In cases of cyber-induced provocation, criminal liability becomes more complex. Traditional criminal law often focuses on the retaliating victim rather than the instigating online aggressor. This highlights the need to reform the legal framework. Such reform would ensure that individuals who provoke harm online are not shielded by digital anonymity.

The “act” in a cybercrime may involve sending, uploading, downloading, deleting, altering, or transmitting data; executing or facilitating unauthorized access; distributing malware; or issuing harmful messages.²⁴ The act must normally cause or risk a prohibited result e.g., data loss, system damage, reputation harm (for defamatory publication online) or fall within a prohibited conduct (e.g., unauthorized access) by statute.²⁵

The usual fault standards (knowledge and intention) apply in many cyber statutes, as the law often demands knowingly or intentionally doing the act or knowing that the content is false or can cause harm, etc.²⁶ It therefore becomes challenging to impose criminal liability on an offender where the mental element is a requirement, due to the complexity of digital systems. An analysis of Section 24(1)(b) of Nigeria’s Cybercrimes Act, under which false statements knowingly sent online with intent to insult, injure, or cause anxiety thereby attracting criminal penalties, shows the shift in defamation from a civil cause of action to a punishable online offence a shift that affirms the legislature’s readiness to hold online stakeholders criminally accountable.²⁷ The irony is that the same message that the Act makes a crime may be completely overlooked as a provoking factor in the victim's own trial, if the victim responds with violence. The Act does not provide for a court to excuse the victim's reaction because of the conduct that the Act condemns. This imbalance is a key legal flaw.

²⁴ David S Wall, ‘Cybercrime, Media and Insecurity: The Shaping of Public Perceptions of Cybercrime’ (2007) 21 *International Review of Law, Computers & Technology* 45.

²⁵ David Ormerod and Karl Laird, *Smith, Hogan, and Ormerod’s Criminal Law* (16th edn, OUP 2021) ch 4.

²⁶ Cybercrimes Act (n8).

²⁷ Simon Kolawole, ‘Cybercrime and Punishment’ (TheCable, 13 April 2024) <https://www.thecable.ng/cybercrime-and-punishment/#google_vignette> accessed 23 October 2025.

2.2 Theoretical Framework

This study is anchored on two complementary theories: critical victimology theory and legal realism theory.

Critical Victimology

Criminal victimology evolved from the works of several scholars, Hans von Hentig in 1948²⁸ Benjamin Mendelson in 1956 laid the foundation for the Victim Precipitation Theory²⁹ as it was later developed in 1958 by Marvin E Wolfgang who studied homicides and concluded that the victim is sometimes the catalyst for the events that result in his victimization without taking responsibility for it.³⁰

The theory is applicable in the study of provocation in Nigeria by cyber means due to its ability to provide a framework that can assist in understanding how some of the behaviours in the online environment, including cyberbullying, inflammatory comments, hate speech and being involved in hostile online interactions, can lead to retaliatory cyber offences.

Applying critical victimology to activities within the digital domain, cyber-induced provocation should not be viewed simply as isolated acts of retaliation; rather, we must consider the following questions: "who becomes a target online", "why their harassment may go unrecognized by law", and "how legal institutions may perpetuate harm by foregrounding the retaliator rather than the instigator". The strength of critical victimology lies in its ability to look beyond the event-level perspective (individual crimes or incidents) and examine how institutions, law, and power dynamics determine which harms are recognized and compensated for and which are not. In this case, it lends credence to the argument that the Cybercrimes Act should not only penalize the retaliator but also structurally hold provocateurs accountable especially when they exploit the anonymity and ambiguity of cyberspace to inflict emotional and psychological harm. Critical victimology is a theory whose focus is on the limitations of traditional victimology by

²⁸ Hans von Hentig, *The Criminal and His Victim: Studies in the Sociobiology of Crime* (Yale University Press 1948).

²⁹ Benjamin Mendelsohn, *The Origin of the Doctrine of Victimology* (1956) in Ezzat A Fattah (ed), *From Crime Policy to Victim Policy* (Macmillan 1986).

³⁰ Marvin E Wolfgang, *Patterns in Criminal Homicide* (University of Pennsylvania Press 1958).

interrogating systemic issues rather than individual blame.³¹ In the context of cyber induced provocation, critical victimology would mean that law enforcement would have to investigate not only the retaliator, but also the online provocateur as a structural perpetrator who takes advantage of the anonymity of the Internet to evade accountability.

Legal Realism

The legal realism jurisprudence states that the law is not a set of precise rules, but is influenced by the social surroundings, the discretion of the judge and the consequences of the interpretation of the law.³² The theory is linked to Oliver Wendell Holmes Jr. in 1897, Karl Llewellyn in the 1930s and Jerome Frank (1930s–1940s) who stressed that “the law in action” is more significant than “the law in books.” Holmes argued that the law ought to be interpreted based on law in action, not law in theory.

In the Nigerian context of cyber-induced provocation, Legal Realism provides a useful framework for examining how cybercrime laws, constitutional principles, and regulatory measures are interpreted and applied in practice.¹ As Nigeria's digital environment continues to evolve, issues such as cyberbullying, online harassment,³³ hate speech, and online provocation have become increasingly significant legal concerns. These issues are governed not only by statutory provisions, particularly the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, but also by judicial interpretation, law enforcement practices, and broader socio-political considerations.³⁴

According to Legal Realist theory, the outcome of cases involving cyber-induced provocation may be influenced by factors beyond the strict wording of legal rules.³⁵ Such factors may include the identity of the parties, the public interest involved, the intention of the accused, and the

³¹ 'Critical Victimology–Comparative Criminal Justice Systems' (Fiveable, 2024) <<https://fiveable.me/key-terms/comparative-criminal-justice-systems/critical-victimology>> accessed 27 October 2025.

³² Matthew Angelosanto, 'Legal Realism and the Predictability of Judicial Decisions' (2023) 2(3) *Interdisciplinary Studies in Society, Law, and Politics* 4, 5–7.

³³ Oludare Sunday and Adewale Adetunji, 'Cybercrime and Cybersecurity in Nigeria: The Legal Challenges' (2021) 12(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 95, 98–101.

³⁴ Cybercrimes (Prohibition, Prevention, etc.) Act 2015;

³⁵ Matthew Angelosanto, 'Legal Realism and the Predictability of Judicial Decisions' (2023) 2(3) *Interdisciplinary Studies in Society, Law, and Politics* 4, 5–7.

nature and quality of the available evidence.³⁶ Consequently, Legal Realism suggests that practical considerations often shape the resolution of cybercrime disputes as much as formal legal doctrines.³⁷ This insight is particularly useful in assessing the Cybercrimes Act, where digital harm and emotional provocation occur in less tangible ways than traditional offences.

3.The Legal and Institutional Frameworks for Cyber-Induced Provocation In Nigeria

3.1 International legal Framework

Convention on Cybercrime (Budapest Convention) 2001

It was the first international convention to tackle crimes involving computers and the Internet. It made crimes such as child pornography,³⁸ computer fraud, unlawful access, and interference with data or systems illegal.³⁹ It upheld human rights protections and grants procedural authorities and international access to electronic evidence.⁴⁰ It unifies criminal policy which is a template for national legislation, and room to manoeuvre in the face of new cybercrime threats.⁴¹ Nigeria adopted the Budapest Convention in July 2022, promoting global cybersecurity efforts and bilateral collaboration with the UK, China, and US. Since 2014, it has not signed the African Union Convention on Cyber Security and Personal Data Protection, preferring national interests over regional cooperation.

United Nations Convention Against Cybercrime 2024

The United Nations Convention against Cybercrime, adopted on 24 December 2024, requires States to criminalise key ICT offences, including unauthorised access, data and system interference, and cyber fraud, while ensuring compliance with human rights standards.¹ Its provisions in Art 14 and 15 prohibit online child sexual abuse and grooming reinforce Nigerian laws.⁴² Nigerian courts have begun recognising digital harms, as seen in *Google Inc v Ahmed*,

³⁶ Brian Bix, 'New Legal Realism and the Explanation of Judicial Behavior: Doctrine, Data, and High Theory' (2014) Minnesota Legal Studies Research Paper No 14-42, 6–10

³⁷ Frank B Cross, 'The New Legal Realism and Statutory Interpretation' (2013) 1(1) *Theory and Practice of Legislation* 129, 133–136.

³⁸ Convention on Cybercrime (Budapest Convention) (ETS No 185, 2001 art 9 Council of Europe,

³⁹ Ibid art 2-5.

⁴⁰ Ibid art 23-25.

⁴¹ Council of Europe (n 1); Jonathan Clough, *Principles of Cybercrime* (2nd edn, Cambridge University Press 2015) 25–30.

⁴² Cybercrimes (Prohibition, Prevention, etc.) Act 2015 ss 6, 8, 14; Child Rights Act 2003 s 31; Constitution of the Federal Republic of Nigeria 1999 (as amended) s 39; *Google Inc v Ahmed* (FCT HC, 2013).

demonstrating the domestic relevance of these international standards. Despite this arrangement, Nigeria has not ratified the UN Convention and continues to prioritise bilateral cyber cooperation and national interests over multilateral commitments, a position mirrored in its non-ratification of the African Union Convention on Cyber Security and Personal Data Protection.⁴³ While this selective approach allows flexibility, it exposes gaps in harmonised cyber governance and highlights the need for more comprehensive, victim-centred protections, reflecting a tension between practical policy-making and strong international cybercrime mitigation.

The Budapest Convention and the UN Convention do not contain any provisions that state that cyber induced provocation is a defence. Their focus is on criminalisation and procedural cooperation. As a result, the domestic disparity on the aspect of defence will not be excluded even if Nigeria signs all these instruments. This paper maintains that reform should be achieved through national law, not international treaty requirements.

3.2 Regional Legal Framework

Although Nigeria has enacted domestic cybercrime legislation, regional efforts to harmonise cybercrime regulation across Africa have been hindered by the slow implementation of regional cyber governance instruments among African states⁴⁴. Nigeria as a signatory to the African Union's Malabo Convention on Cyber Security and Personal Data Protection⁴⁵ has not yet ratified the treaty, thus highlighting a gap in formal regional engagements regarding collaborative cybercrime regulation. This regional agreement serves as a roadmap for the regulation of cybercrime in Nigeria, with a focus on online abuse and cyber-induced harms.

In its three pillars, the Malabo Convention lays the groundwork for a thorough continental framework:

(a) Electronic Commerce⁴⁶ -This section establishes the parameters of electronic commerce, including electronic signatures and transaction security. It also controls the responsibilities of

⁴³ African Union, *African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention)* (adopted 27 June 2014); National Information Technology Development Agency, *Nigeria Data Protection Regulation 2019*.

⁴⁴ Flora Alohan Onomrerhinor, 'Eliminating Safe Havens for Transnational Cybercrimes in the African Continental Free Trade Area' (2022) 2(1) *Journal of Intellectual Property and Information Technology Law* 49,.

⁴⁵ African Union, *African Union Convention on Cyber Security and Personal Data Protection* (adopted 27 June 2014, Malabo) EX.CL/846(XXV) (Malabo Convention).

⁴⁶ Malabo Convention art.2-7

service providers, electronic contracts, advertisements, and contractual liability.

(b) Data processing principle,⁴⁷ data subjects' rights, controllers' obligations, and the establishment of national personal data protection authorities which deals with personal data protection. It protects people from fraudulent use of personal information, cyberbullying, and damage to their reputation or mental well-being.

(c) National cybersecurity policies, legislative measures against ICT-related offences, institutional structures for monitoring and response, cross-border coordination, and capacity-building for digital stakeholders are all outlined in Chapter III.⁴⁸ Cybersecurity and Cybercrimes. The international character of cyber dangers necessitates the creation of institutions, the introduction of criminal responsibility for breaches, and regional cooperation. The chapter on cybercrime, in particular, of the Malabo Convention is dedicated to substantive offences and coordination of institutions. It does not include any consideration of defences, mitigating factors or the psychological nature of the abuse by others online for the victims who turn to defend themselves in court. Therefore, Nigeria may ratify the Convention but the lack of provocation defences would continue.

3.3 Legal and Institutional Frameworks in Nigeria

3.3.1 The Legal Framework

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of the Federal Republic of Nigeria serves as the grundnorm from which all other laws derive their validity including those relevant in the digital space.

Section 4 of the Constitution empowers the National Assembly to make laws for the peace, order and good government of the country with respect to any matter contained in the Exclusive Legislative list, as provided for in the second schedule to the Constitution.⁴⁹ Item 46, Part I of the Second Schedule to the Constitution, which falls within the ambit of the exclusive legislative list, empowers the federal government to make laws regarding posts, telegraph and telephones. While this provision explicitly grants the Federal Government the authority to legislate on posts,

⁴⁷ Ibid art 8-23.

⁴⁸ Articles 24-31,

⁴⁹ Constitution of the Federal Republic of Nigeria 1999, s 4(1).

telegraphs and telephones, it implicitly extends to contemporary communication technologies, including cyber-related matters.

Section 34 guarantees the right to dignity of human persons, stating that no person shall be subjected to inhumane or degrading treatment.⁵⁰ This is particularly pertinent to addressing the rights of an individual which may be undermined by all forms of online abuse such as cyberbullying, libel, and hate speech, and are degrading, dehumanizing and humiliating in nature.

Section 37 deals with the right to private and family life, and prohibits any act that undermines the privacy of citizens, their families, homes, telephone conversations and so on.⁵¹ By virtue of this provision, any act which infiltrates or grants unlawful access to personal information through the use of any media channels is unlawful and therefore punishable by law.⁵² Additionally, Section 39 protects an individual's right to freedom of expression, as well as the freedom to hold opinions and to receive or impart ideas without interference.⁵³ Unlike Section 34 of the Constitution which is an absolute and non-derogable right, Sections 37 and 39 are derogable and not absolute.⁵⁴ Although, right to freedom of expression is central to democratic governance, it is subject to limitations, so as to prevent its misuse and curb acts that inflict psychological and emotional harm and provoke cyber-induced offences under the guise of free speech, thereby preserving the rights and dignity of others.

The Nigerian Constitution, nonetheless, lacks express provisions that address online harm, to hold individuals liable for provocations through cyberspaces. However, Item 60(a) of the Exclusive Legislative List,⁵⁵ provides a constitutional basis for the National Assembly to create laws for the protection of rights and ensure compliance with the Fundamental Objectives under Chapter II.⁵⁶

Cyber induced provocation is an area of contention between Section 39 (freedom of expression) and Section 34 (right to dignity) of any legislative reform in this regard. Cyber induced

⁵⁰ Ibid s 34(1)(a).

⁵¹ Ibid s 37.

⁵² Cybercrimes Act 2015, s 6(1).

⁵³ CFRN 1999, s 39(1).

⁵⁴ Ibid s 45.

⁵⁵ Ibid Item 60(a), pt I, 2nd sch.

⁵⁶ Ibid ss 13 and 14.

provocation is a defendant's plea that the victim's online speech would have been harmful enough to justify that the defendant's self-control was impaired. Excessive freedom of defence may chill protected political speech or satire. Such statute should make the conduct online be (a) directed at the defendant personally, (b) repeated or persistent, and (c) reasonably likely to cause the reasonable person to lose self-control.⁵⁷ It should not be enough for it to be simply offensive or a single insult.

Nigerian Criminal Code Act

The Nigerian Criminal Code Act⁵⁸ provides a general framework and the foundational legal instrument for addressing criminal acts, although it lacks specific provisions addressing cyber-related offences. While the Act was enacted prior to the digital age, certain provisions of the Code retain relevance by criminalizing behaviour that mirror online misconduct.⁵⁹

This general defamation principle transcends into online defamation where it involves false statements made on digital platforms, like blog posts, websites or on social media platforms.⁶⁰ Under such circumstances, the offender is held liable under the provisions of the Cybercrimes Act for cyberstalking,⁶¹ which is materially similar to the provisions of Section 373 of the Criminal Code except that the former occurs in the digital/cyber space. The growth and proliferation of internet usage has led to a widespread increase in online defamation, with the courts setting out essential ingredients for proving liability as seen in the case of *Ibrahim v Gwandu*,⁶² where the court established that the act of publishing a false and damaging statement online is sufficient to prove the publication element required for defamation

While the Criminal Code addresses defamatory conduct, it also considers the retaliatory responses of victims to such conduct, particularly in cases involving assault and homicide. The Code defines "provocation" as wrongful acts or insults that may lead an ordinary person to lose self-control and act violently. If provoked, an individual may not be criminally responsible for an

⁵⁷ Jonathan Herring, 'The Serious Wrong of Domestic Abuse and the Loss of Control Defence' (2018) 81(5) *Modern Law Review* 891, 900.

⁵⁸ Criminal Code Act Cap 38, Vol 4, LFN 2004.

⁵⁹ CCA 2004, s 373.

⁶⁰ Olusola Adebayo, 'Defamation that Occurs Online' (Crystalite Solicitors, 22 March 2025) <<https://crystalitesolicitors.com/defamation-that-occurs-online/>> accessed 31 October 2025.

⁶¹ Cybercrimes Act 2015, s 24.

⁶² (2015) 5 NWLR (Pt 1451) 1.

assault, provided they acted suddenly and the force used is proportionate to the provocation. Key factors in these cases include whether the provocation genuinely deprived the individual of self-control and whether the response was appropriate to the provocation.⁶³

Section 284 of the criminal code uses the word 'acts' in the singular, and is talking about a single wrongful act or insult. It is silent on whether a series of acts, carried out over a period of time, may add up to "provocation. Nor does it ask if the insult was sent through the screen or in person, if the insult is legally different. If courts were to apply the provision to Cyber cases, they would have to interpret the provision beyond its original meaning – something that legal realism would argue would have an inconsistent impact.

Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024, Laws of the Federation of Nigeria.

The Cybercrimes (Prohibition, Prevention, etc.) Act is Nigeria's principal legislation addressing cybercrime, providing a framework for prevention, prosecution, and punishment⁶⁴ of online offences while safeguarding critical information systems and promoting cybersecurity.⁶⁵ Part III (Sections 5–36) criminalizes acts including computer fraud, electronic theft, unauthorized access, identity theft⁶⁶, and cyberstalking⁶⁷ are behaviours capable of inciting harassment or retaliation.

Section 14 penalizes unauthorized alteration, erasure, or input of data causing property loss, with imprisonment of at least three years, fines, or both. Theft of electronic devices, including ATMs, carries similar penalties. Section 16 criminalizes unauthorized modification of computer programs or data, particularly where such acts impair system functionality or prevent authorized access.

Identity theft and impersonation are covered under Section 22, recently broadened by the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act to include offences against public or private organizations. Section 24 addresses cyberstalking and harmful communications,

⁶³ CCA 2004, s284.

⁶⁴ Cybercrimes Act 2015, s 1(a).

⁶⁵ Ibid s 1(a) and (b)

⁶⁶ Ibid s 15

⁶⁷ Ibid s 24.

narrowing liability to transmission of pornographic or knowingly false messages intended to threaten life or disrupt public order.

The results of the review of the Cybercrimes (Prohibition, Prevention, etc.) Act 2024 show that there is no section that permits the defence of provocation, duress or necessity in cyber induced conduct. Section 24 (criminalising cyber-stalking) does not seek to determine if the accused (the person allegedly stalking the person online) may have been provoked by earlier online abuse by the recipient. Each communication is taken individually, not recognizing the nature of the conflict in online environments. This is not a mistake, however, because the Act itself was not intended to reconcile conflicting perspectives of victimisation, but to penalise.

Nigeria Data Protection Act (NDPA) 2023

It was established under NDPA the need to safeguard personal data and enforce accountability in digital spaces. Section 24 mandates technical and organisational measures to protect data from unlawful access, while Section 39 ensures its security, integrity, and confidentiality. Sections 41–43 regulate cross-border transfers, reducing vulnerability to cyber-induced provocation such as cyberbullying, doxing, and revenge porn. Sections 46–49 set enforcement procedures and penalties, and in *Frank Ijege v NDPC*,⁶⁸ the court struck down guidance under Section 44 as ultra vires. The NDPA complements the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024, filling privacy gaps and strengthening accountability for data handlers.

Evidence Act 2023

Section 84 of the Evidence Act 2023 (EA 2023) permits electronically generated evidence, while Section 258 defines devices like smartphones as computers. A certificate from the operator or custodian of the system is required by Section 84(4) of the EA 2023. To account for technological developments, the Evidence (Amendment) Act 2023 enlarged Sections 84A-84D, electronic affidavits, digital signatures, and audio visual oath-taking. Digital evidence in cyber-induced provocation is governed by these regulations. Yet, there are still practical challenges in applying these rules.

When a defendant is the one targeted in a cyber induced provocation case, he or she may wish to introduce evidence such as a screen shot of a chat or social media post sent by the defendant. The

⁶⁸ (FHC/KD/CS/34/2024).

victim is not the operator or custodian of the server or platform, so they cannot get a “certificate from the operator or custodian” as required by Section 84(4). In *Kubor v Dickson*⁶⁹, the court applied it very strictly, and did not admit digital evidence without a certificate. For a cyber provocation case, that would mean that if the victim of abuse had saved all of the messages, the court might refuse to consider them in evidence – leaving the defence with its hands tied. There is an immediate need for a reform to enable the use of affidavit based authentication and/or judicial discretion to allow such evidence to be admitted without a certificate of authentication.

3.3.2 Institutional Framework

Nigeria Police Force (NPF)

The Nigeria Police Force (NPF), established in 1820 and renamed in 1930, created the Cybercrimes Unit in 2017, later rebranded as the NPF - National Cybercrime Centre (NPF-NCCC), to investigate cyberbullying, cyberstalking, identity theft, and other online abuses that may provoke retaliatory or psychological harm.⁷⁰ The Centre has executed arrests for offences such as cyberstalking, identity theft, and online fraud, including the apprehension of Gbenga Samuel, Dele Titus, and Olalekan Oke,⁷¹ demonstrating operational commitment despite challenges with virtual identities and cross-border investigations. The Institution may have the duty to investigate and arrest perpetrators of cybercrimes. It lacks any steps to take to collect evidence from the point of view of a suspect victim of online abuse to support the provocation defence. The institutional bias effectuates the one sidedness of the existing legal system. Given these challenges, Nigeria's cybercrime response could benefit from better investigation tools, better coordination between jurisdictions, and more institutional capability.⁷²

However, there are still obstacles to overcome in areas such as victim protection, international enforcement, and institutional capability. However, the duty of the NPF-NCCC is to investigate and arrest the offenders of cybercrime. There is no process to collect evidence that could benefit

⁶⁹ [2012] 11 NWLR Pt. 1324)

⁷⁰ Damilola Omokanye 'CyberCrime- Nigeria;s Police Deploys Upgraded Reports Platform' *Technology Times*(Abuja, 31 May 2024)< <https://technologytimes.ng/nigeria-police-upgrades-cybercrime-platform>>. Accessed 17 March 2026.

⁷¹ Nigeria Info, ' Police Arrest Three for Cyberstalking and Online Fraud' *Nigeria info Let's Talk*(Lagos, 19 August, 2025)< <https://www.nigeriainfo.fm/news/homepage/police-arrest-three-for-cyberstalking-and-online-fraud/>> accessed 17 March 2026.

⁷² Ike Oraegbunam, 'The Nigerian Police and problems of Cypercrime Investigation Need for Adequate Training' *The Nigerian Law Journal* (2015)1.

a provocation defence from the victim/suspect's point of view if a person has been abused online. This institutional bias further emphasizes the unbalanced legal framework, which is currently in place.

Economic and Financial Crime Commission 2004

The Economic and Financial Crime Commission (Establishment) Act of 2004 established the EFCC in 2003 to investigate, prevent, and punish economic and financial cybercrimes such as internet fraud, money laundering, and identity theft.⁷³ Highlighting its role in tackling cross-border cyber offences, the EFCC has successfully prosecuted cases like *FRN v Robert Sunday Olaoluwa*⁷⁴ and *FRN v Olabisi Damilola Samuel*,⁷⁵ as well as large-scale syndicates arrest by EFCC Lagos Zonal Directorate prosecution of a 792-member syndicate, including foreign nationals, for cyber fraud, identity theft, and recruiting Nigerian youths under the Cybercrimes Act using its powers under the Act.⁷⁶ Likewise, the EFCC has a special interest in financial and economic cybercrimes. They do not routinely ask if a suspect had been subjected to a prolonged period of online harassment which could have affected his judgment when they arrest a suspect for fraud. Provocation evidence is not taken at the earliest stage because of lack of a victim centred investigative approach.

Judiciary

The Nigerian court, being a temple of justice, plays a crucial role in the adjudication of cyber-related cases in Nigeria. Even though there is no reported case that specifically addresses cyber-induced provocation as a recognised standalone cause of action,⁷⁷ the court has entertained numerous cases arising from misuse of digital platforms, such as online defamation (cyberstalking), impersonation and cyberbullying. Some notable cases include the *Eniola*

⁷³ EFCC (Establishment) Act 2004 ss 6, 7, 13

⁷⁴ *FRN v Robert Sunday Olaoluwa* FHC Kaduna, Z B Abubakar J (25 March 2020) <<https://v1.corruptioncases.ng/export/frn-vs-robert-sunday-olaoluwa>> accessed 6 November 2025.

⁷⁵ *FRN v Olabisi Damilola Samuel and Ors* FHC Ilorin, Sani J (18 July 2022) <<https://corruptioncases.ng/cases/frn-vs-olabisi-damilola-samuel>> accessed 6 November 2025.

⁷⁶ (n73).

⁷⁷ Cybercrimes (Prohibition, Prevention, etc.) Act 2015 ss 24, 27.

Badmus case,⁷⁸ *Nicholas Okoye v Ladun Liadi & 2 others*,⁷⁹ where the court held blogger, liable for defamatory comments made under her blog post. More so, in *Daniel Olukoya & Mountain of* where the court in the judgment delivered by per Akinyemi, J, he described the defendant's actions as "the worst case of reckless defamation and evil use of the Internet and social media."⁸⁰ Nigeria courts have been receptive of convicting cyberstalkers⁸¹ but they have not been requested to take into account cyber induced provocation as a defence. The trial judge would be in danger of reversal on appeal if he or she tried to impose a defence under the doctrine of precedent. Judicially prudent, and this is the point of conservatism, but victims are left without any means of redress. This defence can only be introduced in a safe manner through legislation.⁸²

4 Challenges in Addressing Cyber-Induced Provocation in Nigeria

4.1 Lack of Legal Recognition of Cyber-Induced Provocation

Provocation in Nigeria through cyber is still in its early stages and not a legally recognised practice. While provocation is a defence under Nigerian criminal law, it is a partial defence and was established to apply to situations where self-control was immediately lost.⁸³ This is in response to provocation, the situation of provocation in the digital space can be more protracted, involving ongoing cyberstalking, harassment or dissemination of malicious material or information, which can be difficult for courts to adjudicate due to the absence of the traditional elements of provocation in online interactions.⁸⁴ Likewise, the Act is largely punitive without any provisions to provide for psychological remediation of victims or restitution for the effects of long-term cyber abuse,⁸⁵ in contrast to the principle of *ubi jus, ibi remedium*. The Criminal Code also fails to recognise psychological harm, and does not provide for sustained or anonymous

⁷⁸ *Federal Republic of Nigeria v Okoye Blessing Nwakaego* (Federal High Court, Lagos Division, Oweibo J, 2 August 2023) (unreported).

⁷⁹ *Nicholas Okoye v Ladun Liadi & 2 others*, HC Lagos State, Akintoye J, LD/170/2012 (22 November 2022).

⁸⁰ Chioma Unini, 'Court Awards N500 million Damages to MFM, Olukoya in Case Against Blogger' (The Nigerian Lawyer, 21 February 2021) <<https://thenigerialawyer.com/court-awards-n500-million-damages-to-mfm-olukoya-in-case-against-blogger/>> accessed 8 November 2025.

⁸¹ (n77).

⁸² Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, OUP 2019) 82–85.

⁸³ Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, s 283–284.

⁸⁴ Cybercrimes (Prohibition, Prevention, etc.) Act 2015 (as amended 2024), s 24.

⁸⁵ *Al-Adam v Usman Umar & Ors*, the Court affirmed that courts have a duty to create remedies where none exist in law, ensuring that established wrongs do not go unredressed [2009] 18 NWLR (Pt 1167) 152.

cyber abuse to be acknowledged as a provocation defence for retaliatory acts.⁸⁶ Likewise, the accumulation of past acts of cyber abuse, anonymous or repetitive abuse of a young person are not recognised in the Criminal Code as acts of provocation.

4.2 Lack of Judicial Precedent

Precedence is important for the consistency, certainty, and evolution of law. In contrast, cyber-induced provocation has not been adequately tested in Nigerian courts, which means that there is a lack of authority to guide on the application of the cyber induced provocation.⁸⁷ This poses a risk of inconsistent results, especially when considering the cumulative and context-dependent nature of online abuse when compared to the face-to-face nature of provocation, particularly in the context of a court considering specific rules that are in place for that type of provocation.

Without precedent, prosecutors and defence counsel have no guidance on important evidentiary and procedural matters, such as whether psychological expert evidence is admissible and the point at which evidence of online triggers will be sufficient. Without judicial determination of these uncertainties, they will remain unresolved, but proper cases are lacking without well formulated cases. This circular gap highlights the importance of legislative action in setting out clear rules on procedural and evidential steps to be taken in the case of cyber-induced provocation.

4.3 Evidentiary Challenges

The traditional elements of provocation, particularly the requirement of a sudden loss of self-control, are difficult to apply in digital contexts where online interactions are delayed and not face-to-face. This time gap allows the prosecution to argue that the accused had time to cool off, exposing a gap in a doctrine built around immediate physical encounters. As such, courts may need to reinterpret key elements like immediacy, causation, and the reasonable person standard to reflect the realities of online harm. There is no doctrine of cumulative provocation in Nigerian criminal law, which means that, multiple digital acts cannot be considered to constitute the

⁸⁶ Cybercrimes (Prohibition, Prevention, etc.) Act 2015 (as amended 2024), s 24.
(Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004).

⁸⁷ *Adesotu vAdesotu* [2016] LPELR-CA.

provocation. While there is some recognition in comparative domestic violence law of 'slow burn' reactions,⁸⁸ the same is not the case in Nigeria where there remains a gap in the doctrine of the case involving sustained online harm.

Reliance on electronic proof under section 84 of the Evidence Act 2011 creates further difficulty evidentially. The strict requirements in sections 84(2) and 84(4), reinforced in *Kubor v Dickson*⁸⁹, impose burdens that victims often cannot meet, especially where they lack control over the device or where content is anonymous or deleted. This rigidity risks excluding relevant evidence and undermines access to justice.

4.4 Weak Integration of Criminal Codes and Cybercrime Law

The lack of coordination between the Cybercrimes Act and the Criminal Code make addressing cyber-induced provocation difficult. The Cybercrimes (Prohibition, Prevention, etc.) Act 2015 criminalises online misconduct such as cyberstalking, identity theft, and impersonation, but it does not consider how victims might react violently to such harms. On the other hand, the Criminal Code Act,⁹⁰ on provocation was drafted long before the digital age and does not reflect how online abuse can trigger sudden loss of self-control. This gap leaves victims in a legal grey area: they may be able to seek redress for the online harm itself, but cannot clearly rely on provocation if they respond impulsively. Without a harmonised framework, courts struggle to recognise cyber provocation as a legitimate defence, leaving the law unpredictable and victims inadequately protected.

Cyber-Induced Provocation in other Select Jurisdictions

The World Cybercrime Index, which evaluates cybercrime risks across the globe, has Nigeria at 5th place with the United Kingdom at 8th place and India at 10th place. The rankings are based on the number of individuals who are becoming more actively connected to the Internet, and the

⁸⁸ Courts in England and Wales. *R v Thornton (No 2)* [1996] 2 All ER 1023 (CA).

⁸⁹ (2014) 4 NWLR (Pt 1345) 534-594.

⁹⁰ Cap C38, Laws of the Federation of Nigeria 2004, s 284

number of these individuals who are vulnerable to the Internet's increasingly digital nature, including emotional and psychological harm caused by Internet misuse.⁹¹

The UK, Nigeria and India share a common heritage of the common law system, but have evolved their own cybercrime regimes. The Online Safety Act 2023 in the UK mandates regulatory obligations on online service providers to reduce harm, including for vulnerable users including children.⁹² The UK's Online Safety Act 2023 also contains a regulatory requirement on online service providers to minimise harm – including for vulnerable users such as children under sections 3-5 and 65-67C.⁹³

Judicial attitudes towards the online harms have become more aware of the psychological aspects of harms in both jurisdictions. The Delhi High Court in *Ritu Kohli v Manish Kathuria* recognised the devastating mental anguish caused by impersonation and online harassment, and upheld a conviction under Section 509 of the Indian Penal Code, which carries severe penalties for acts of online harassment that lead to self-harm.⁹⁴ A similar harm-centred approach has been applied in the UK through the implementation of the Online Safety Act, including for acts that facilitate self-harm.⁹⁵

Together, these represent a more comprehensive regulatory framework in India and the UK, where emotional/psychological damage is now considered when deciding on the applicability of cyber law. Nigeria, on the other hand, has a disjointed system – the Criminal Code, which is based on provocation in the traditional (face-to-face), and the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, which is largely a punitive statute without any specific provisions on “defensive” claims resulting from digital triggers. This gap, coupled with the lack of evidential capacity and the lack of strong precedent, helps to create doctrinal inconsistencies. Experience suggests that it is not necessary to give up principles when considering whether provocation has occurred to acknowledge that the provocation is cyber-induced, but to adapt the “suddenness” and “reasonable person” tests to the nature of provocation that can be long, obscure and

⁹¹ World Cybercrime Index (2024) <https://www.cybercrimeindex.org> accessed 6 March 2026.

⁹² Online Safety Act 2023 (UK).

⁹³ Information Technology Act 2000 (India), ss 65–67C, 3–5.

⁹⁴ *Ritu Kohli v Manish Kathuria* (Delhi High Court, 2001) (unreported).

⁹⁵ *R v Davies* (UK Crown Court, 2024) (unreported).

cumulative, and can be done anonymously online. However, these are only persuasive and not binding as the only way to save the Nigerian judicial system is to have statutory reform.⁹⁶

5. Conclusion and Recommendation

The interplay between technology and human interaction have given rise to new forms of harm, particularly emotional and psychological harms. While the Nigerian Criminal Code recognizes provocation as a defence, it does not contemplate provocation arising from online conduct or cyber-induced emotional triggers, neither does the Cybercrimes Act integrate the relevant provisions of the Criminal Code on defences, in order to give recourse to victims of cyber harm. Considering this gap, this research has underscored the need to acknowledge cyber-induced provocation as a distinct legal defence, therefore calling for stronger synergy between the Criminal Code and the Cybercrimes Act. Although, this new principle poses a significant number of challenges, from legislative gaps, to lack of precedents and weak harmonization of Nigeria's criminal and cyber laws, it promises the attainment of remarkable prospects. Hence, in order to effectively address these concerns, it proposes a number of recommendations including an amendment of the Criminal Code and Cybercrimes Act, relaxation of the evidentiary standards and the formulation of judicial precedents to ensure that victims of cyber harm are not only protected under the law but can also raise a viable defence when their reactions, though violent, are provoked by sustained online abuse.

Considering the foregoing, the study hereby recommends:

5.1 Amendment of the Criminal Code to Recognise Cyber-Induced Provocation

The Nigerian Criminal Code should be amended to accommodate the realities of the digital era, acknowledging the impact of digitalization on the mode of human interactions, and tailoring its provisions to suit these modern peculiarities. This it may do by recognizing the effect of triggering online content on the emotional and psychological state of mind of the victim, thereby creating a potential ground for cyber-induced provocation to be pleaded as a defence in case of violent retaliation, especially where it deems it necessary and appropriate. This reform would bridge the doctrinal gap between digital misconduct under the Cybercrimes Act and traditional

⁹⁶ Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (9th edn, OUP 2019) 82–85.

provocation under the Criminal Code, drawing a nexus between the instigating actions of the online aggressor and the retaliating victim.

Additionally, this reform would help fine-tune the traditional elements of provocation, such as sudden loss of self-control, the reasonable person standard and causal link between the provocative act and the reaction in order to reflect the unique features of the cyberspace. In addition, legislative synergy should be pursued to ensure that offences under the Cybercrimes Act can effectively be integrated into the Criminal Code, so as to make provisions for the defence of provocation to be pleaded in view of whatever violent reactions may result from the commission of the said cyber offences, provided the defence conforms to the evidentiary principles and elements for proof of harm.

5.2 Recognition of Cyber Induced provocation as a Shield

This research also recommends that the Nigerian criminal and cyber law framework be amended so that cyber-induced provocation be recognized as a shield rather than a sword, serving not as a justification for violence but as a partial defence for victims of serious digital harm. Where such victims are accused of crimes like assault or homicide by their aggressors, the law should permit them to plead cyber-induced provocation to reduce liability, recognizing the emotional and mental impact of sustained online abuse and its potential to diminish oneself-control. Nonetheless, this defence tool should be put in check, so that it is not used arbitrarily. This would allow for a comprehensive legal framework where victims of online abuse who react violently are not unfairly denied defences due to technical gaps between laws.

5.3 Relax Evidentiary Requirement

The requirements of Sections 84(2) and (4) of the Evidence Act should be relaxed, to lessen the technical burden of adducing digital evidence. Victims of online abuse often struggle to meet strict certification requirements, which undermine access to justice. It is therefore recommended that a more flexible approach be adopted to enable the courts to admit credible electronic evidence more easily, without discouraging the victim from seeking redress. This may be achieved through the adoption of a discretionary and context-based approach by the courts to determine authenticity and credibility of electronically generated evidence. These approaches include forensic imaging, chain of custody verification and metadata

authentication.⁹⁷ Additionally, the victim may also adduce evidence by way of expert testimony or documents authenticated by affidavit.⁹⁸

5.4 Encourage Judicial Precedent

Finally, Judges are encouraged to exercise discretion when cases of violent reactions resulting from severe digital harm are brought before the court. The courts may exercise this power so as to create legal principles that would lead to original precedents, and would subsequently, become binding precedents, to which an injured party may have recourse to in future cases based on similar facts.

⁹⁷ 'Authentication of digital evidence' (Institute of Forensic Auditors, 14 October 2024) <[⁹⁸ Ibid.](https://ifaglobal.institute/blog/authentication-of-digital-evidence#:~:text=Forensic%20imaging%20is%20a%20critical,alterations%20that%20might%20have%20occurred.> accessed 14 November 2025.</p></div><div data-bbox=)

LEGAL FRAMEWORK FOR IMPLEMENTATION OF ENVIRONMENTAL, SOCIAL AND GOVERNANCE STANDARDS IN NIGERIA

Felix Dimkpa Biiragbara* & Beauty Echem Daniel**

ABSTRACT

Environmental, Social and Governance (ESG) has emerged as a buzzword in the 21st century and has been used to refer to issues of environmental, social and governance concerns that should be integrated into national decision-making by countries, especially in their dealings with foreign businesses. ESG standards are now globally required to be upheld by States and they are often stipulated in laws. Relying on the doctrinal research method, the paper examines the legal framework for the implementation of ESG standards in Nigeria. The paper finds that although Nigeria has not enacted any specific ESG-focused legislation, there are quite a few laws that have been enacted to address the critical aspects of ESG in Nigeria. The paper finds further that the extant laws in Nigeria contain provisions on ESG standards which, if implemented, will go a long way to addressing ESG concerns, resulting in improved environmental and human rights consciousness among companies operating in Nigeria. The paper finds that despite what would seem to be an avalanche of laws at the federal level of governance in Nigeria, the provisions of some of the key pieces of legislation leave too much gap that are exploited by both the Nigerian authorities and the investors attracted into the Nigerian investment ecosystem, to defeat the implementation of ESG standards in the country. The paper recommends a total overhaul of the laws in order to bring them in line with global ESG standards

KEYWORDS: Legal Framework, Environmental, Social, Governance, Governance Standards, Global ESG Standards, Virile Implementation

1. Introduction

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Over the course of the past few decades, Environmental, Social and Governance (ESG) considerations have dominated global discourse as obligations businesses and investments should pursue towards promoting sustainable development.¹ Beginning from 1992 during the Earth Summit held in Rio de Janeiro, Brazil, global discussions have emphasised the need to integrate environmental sustainability practices into development activities and exploitation of nature's endowments across States.² ESG has been in use for more than a decade as a label for a range of factors that are relevant in assessing whether an economic activity is sustainable for the purposes of investment decision making.³ These factors have been used especially by large investors and asset managers to decide on allocation of capital with a view to ensuring sustainability and financial performance over the long term.⁴ Studies have amplified the global focus on ESG – importing the need for businesses to balance financial performance with sustainability objectives and ethical practices.⁵

Recently, ESG has been applied more broadly to an ever-expanding scope of regulations, standards and expectations regarding the responsible management of a wide range of issues.⁶ Environmental issues ordinarily revolve around measures taken to protect the environment, and these include combating climate change and cutting down on greenhouse gas (GHG) emissions, promoting energy efficiency, guarding against resource depletion, including water, hazardous waste, air and water pollution, deforestation, desertification, flooding and displacement of

¹ O Savchuk, 'The Role of ESG in Advancing Sustainable Development Through Environmental Innovations: Legal

Perspectives from the European Experience' in O Lytvynov, V Pavlikov and D Kritskiy (eds), *Integrated Computer Technologies in Mechanical Engineering – 2025* (Switzerland: Springer Nature 2026) 372

² C G Borges and Others, 'CSG and Investment Treaties in Africa: A New Substantive Standard?' (26 March 2024)

<<https://www.iflr.com/article/2d0uopvmt62ksjkl4e39c/sponsored/esg-and-investment-treaties-in-africa-a-new-substantive-standard>> accessed 25 March 2026

³ O Shasore and O Uka, 'The Importance of ESG and Its Effect on International Arbitration', *The Alpine Review*, 2

<<https://www.alp.company/sites/default/files/ALP%20Review%20-%20The%20Importance%20of%20ESG%20and%20its%20effect%20on%20International%20Arbitration.pdf>> accessed 23 March 2026

⁴ O Shasore and O Uka (n 3)

⁵ A Marangwanda, 'Advancing ESG in African Insurance Markets: Barriers, Policy Alignment and Future Trajectories' (2025) (4) (3) *International Journal of Advanced Business Studies*, 12-32, 12; S Kapusuwan and B Sakunasingha, 'An Overview of ESG and Non-Tariff Measures Affecting International Trade of Seafood and Aquaculture Products' (2024) *Journal of Suvarnabhumi*, 363-375, 363; O Savchuk (n 1)

⁶ Shasore and Uka (n 3)

people.⁷ Issues under the social component of ESG are human rights, working conditions, including slavery and child labour, local and indigenous communities, conflict, health and safety, employee relations, diversity and inclusion.⁸ Under the governance component of ESG, the emerging issues include workers' wages and salaries, bribery and corruption, data protection, board independence, diversity and structure, tax strategy, transparency, shareholder rights, and so on.⁹

Over the years, the opening of door to foreign investments by developing countries has seen a sharp decline in the protection of the environment of the host communities, the destruction of the social lives of the communities, the degradation of their working and living conditions and increasing incidents of bribery, divide-and-rule politics, gross human rights abuses, subversion of the rule of law and erosion of the integrity of institutions.¹⁰ These stem from developing countries, such as Nigeria, unreasonably lowering human rights standards in order to attract foreign investments, which more or less benefit those in power, to the detriment of the citizens.¹¹ The inescapable outcome of what would appear to be a near *laissez faire* investment climate afforded by Nigerian to foreign businesses has been documented cases of extensive environmental degradation, human rights violations and lack of accountability in the operations of foreign businesses. This appears to be the case due to the non-integration of ESG considerations into investment agreements signed between foreign investors and their host governments. In the case of Centra Asia, Bektasheva¹² posits that investment agreements implemented by Central Asian countries and their foreign investors do not typically enshrine the commitments of such investors to align investment policies with sustainability objectives.

Countries are gradually embracing the idea that business investments and sustainable development depend on a functional symbiotic relationship between development and a

⁷ *Ibid*

⁸ Borges and Others (n 2)

⁹ *Ibid*

¹⁰ P C Onuoha and M O Okore, 'Oil Multinational Corporations and Environmental Rights Violations in the Niger Delta Region of Nigeria (2025) (11) (3) *Journal of Political Science and Leadership Research*, 29-52

¹¹ S Onowugbeda, 'Environmental Harm and Human Rights Violations by Multinational Corporations: Legal and Institutional Perspectives under the Revised Binding Treaty' (2025) (1) (1) *Journal of Journalism and Media Management*, 1-7, 2

¹² A Bektasheva, 'The Impact of the International Regime on Sustainable Development in Developing Countries: A

Case Study of Central Asia' (PhD Dissertation, University of Miskolc 2025) 1

<document_49270_section_48437.pdf> accessed 4 June 2026

wholesome environment, a corruption-free business climate, a corporate governance model that integrates the interests of stakeholders into investment decisions, as well as a social security and economic system that respects and prioritises the economic and social needs of the people of the communities in which businesses are operated. In the case of Nigeria, it is not yet clear how much the laws have responded to the requirements of ESG by providing for effective environmental protection, protection of the socio-economic rights of Nigerian communities, as well as ensuring that businesses are conducted in a transparent and accountable manner in the country. The pertinent questions to ask at this juncture are: Is Nigeria embracing the new wave of ESG compliance sweeping across the globe? Is there a legal framework for integrating ESG standards into investment decisions and priorities in Nigeria, especially in relation to foreign direct investments? The present paper will carry out an appraisal of the Nigerian legal framework for ESG compliance with a view to determining how far Nigeria has responded through laws to the demands of ESG in the country.

2. Conceptual Analysis of Environment, Social and Governance Considerations

Environmental, Social and Governance (ESG) standards more broadly refers to an ever-expanding scope of regulations, standards and expectations regarding the responsible management of a wide range of issues in the conduct of business relations between a host State and its foreign investors.¹³ ESG refers to a set of international standards or regulations that prescribe what foreign investors and host States should do, or should not do, in order to protect the environment, ensure harmonious relationship between a business and its stakeholders, as well as complying with corporate governance standards. It imposes strict obligations on businesses to comply with legal requirements relating to environmental, social and governance standards laid down by the host State, while conducting their business activities. ESG considerations impose responsibility on a host State not to unreasonably lower regulatory standards to attract business investments into their States.¹⁴

¹³ ESG Angola, 'ESG and investment treaties in Africa: a new substantive standard?' <https://www.vda.pt/xms/files/05_Publicacoes/2024/Livros_Artigos/IFLR_ESG_ESG_and_investment_treaties_in_Africa_-_a_new_substantive_standard.pdf> accessed 17 February 2026

¹⁴ S Sultana and others, 'Environmental, Social and Governance (ESG) and Investment Decision in Bangladesh' (2018) (10) (6) *Sustainability*, 1831.

Recently, ESG has been applied more broadly to an ever-expanding scope of regulations, standards and expectations regarding the responsible management of a wide range of issues.¹⁵ Environmental issues ordinarily revolve around measures taken to protect the environment, and these include combating climate change and cutting down on greenhouse gas (GHG) emissions, promoting energy efficiency, guarding against resource depletion, including water, hazardous waste, air and water pollution, deforestation, desertification, flooding and displacement of people.¹⁶ Issues under the social component of ESG are human rights, working conditions, including slavery and child labour, local and indigenous communities, conflict, health and safety, employee relations, diversity and inclusion.¹⁷ Under the governance component of ESG, the emerging issues include workers' wages and salaries, bribery and corruption, data protection, board independence, diversity and structure, tax strategy, transparency, shareholder rights, and so on.¹⁸

3. Legal Framework for Environment, Social and Governance Considerations in Nigeria

This section examines some of the key pieces of legislation put in place to implement ESG in Nigeria.

3.1 Constitution of the Federal Republic of Nigeria 1999 (as Amended)

The Constitution of the Federal Republic of Nigeria¹⁹ is the fundamental law of the country, and its provisions are supreme over all authorities and persons throughout the federation of Nigeria.²⁰ In Nigeria, the interplay between Bilateral Investment Treaties (BITs) and domestic constitutional obligations, particularly under Environmental, Social, and Governance (ESG) frameworks, has become increasingly significant. The CFRN provides a foundational framework

¹⁵ U Udoma and Belo-Osagie, 'A Review of ESG Responsibilities of Corporate Entities in Nigeria', <<https://uubo.org/wp-content/uploads/2024/06/A-Review-of-ESG-Responsibilities-of-Corporate-Entities-in-Nigeria.pdf>> accessed 16 February 2025.

¹⁶ J Przychodzen and others, 'ESG Issues Among Fund Managers—Factors and Motives' [2016] (8) *Sustainability*,

1078; E Ortas and others, 'The Environmental, Social, Governance, and Financial Performance Effects on Companies that Adopt the United Nations Global Compact' (2015) (7) *Sustainability*, 1932–1956

¹⁷ D Nevado-Peña and others, 'The Effects of Environmental and Social Dimensions of Sustainability in Response to the Economic Crisis of European Cities' (2015) (7) *Sustainability*, 8255–8269.

¹⁸ I Ferrero-Ferrero, 'The Effect of Environmental, Social and Governance Consistency on Economic Results' (2016)

(8) *Sustainability*, 1005.

¹⁹ Constitution of the Federal Republic of Nigeria 1999 (as Amended) [CFRN]

²⁰ *Ibid*, s 1(1)

for promoting sustainable development, human rights, and environmental protection, all of which are crucial to ESG considerations. Investor obligations under BITs must align with these constitutional provisions to ensure balanced and responsible investment practices.

There is no specific chapter or provision of the CFRN dedicated to the promotion of ESG standards in Nigeria. What obtains is that the CFRN contains provisions that regulate the various components of ESG – namely, environmental issues, social issues and governance issues. With respect to the ‘Environmental’ component of ESG, the CFRN provides that it shall be the duty of the Nigerian State to protect the environment. Environmental protection is enshrined as a fundamental objective under Section 20 of the CFRN, and it mandates the Nigerian State to “protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria”.²¹

The ‘Social’ component of ESG includes respect for labour rights, community engagement, and adherence to human rights standards. Thus, Section 17 of the CFRN emphasises social justice, equality, and human dignity as core national objectives.²² The CFRN requires investment activities must, therefore, ensure respect for workers’ rights, indigenous communities, and vulnerable populations. Section 16 of the CFRN highlights the State’s role in promoting balanced economic development,²³ which can include fostering foreign investment while ensuring sustainable practices. Specifically, the CFRN imposes on the State the obligation to control and manage national resources in such a manner as to secure the maximum welfare, freedom and happiness of every citizen, on the basis of social justice, equality of status and opportunities.²⁴ Similarly, the State is required to direct its policy towards ensuring that, “suitable and adequate shelter, right to food and security, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.”²⁵

In addition, the CFRN provides for the social objectives of the Nigerian State. Pertinent social obligations of the State towards the citizens are that every citizen shall have equality of rights,

²¹ *Ibid*, s 20

²² *Ibid*, s 17

²³ *Ibid*, s 16(2)(a)

²⁴ CFRN, s 16(1)(b)

²⁵ *Ibid*, s 16(2)(d)

obligations and opportunities before the law;²⁶ recognition of the sanctity and dignity of the human person;²⁷ the requirement that all governmental actions shall be humane;²⁸ and that exploitation of the nation's natural resources shall be carried out exclusively for the public good.²⁹ Furthermore, in pursuit of its social obligations to its citizens, the Nigerian State is constitutionally obligated to ensure that: all citizens are provided with the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;³⁰ employment conditions are to be just and humane;³¹ the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;³² adequate medical and health facilities are provided for all persons;³³ and there should be equal pay for equal work for all employees,³⁴ among other provisions.

In terms of the 'Governance' component of ESG, the CFRN promotes probity, transparency, and accountability in the conduct of both public and private businesses. The CFRN charges the State to, "abolish all corrupt practices and abuse of power".³⁵ This implies that businesses investing in the Nigerian economy – whether local or foreign, are expected to maintain transparent dealings, comply with Nigeria's anti-corruption laws.

Notwithstanding these constitutional provisions on ESG, the CFRN expressly provides that none of the provisions can form the basis of a legal action in court, should the State be unable to discharge its obligations.³⁶ It has been argued that the provisions in Chapter II of the CFRN are merely directory and not imperative, in the sense that they act as signposts to what the government at all levels should aspire to achieve within the limits of available resources.³⁷ Given

²⁶ *Ibid*, s 17(2)(a)

²⁷ *Ibid*, s 17(2)(b)

²⁸ *Ibid*, s 17(2)(c)

²⁹ *Ibid*, s 17(2)(d)

³⁰ *Ibid*, s 17(3)(a)

³¹ *Ibid*, s 17(3)(b)

³² *Ibid*, s 17(3)(c)

³³ *Ibid*, s 17(3)(d)

³⁴ *Ibid*, s 17(3)(e)

³⁵ *Ibid*, s 15(5)

³⁶ *Jakande v Governor of Lagos State* (1981) 1 NCLR 152; *Uzokwu v Ezeonu II* (1991) 6 NWLR (Pt 200) 781; *Attorney General of Ondo State v Attorney General of the Federation* (2002) 9 NWLR (Pt 772) 222

³⁷ O V C Ikpeze, 'Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development' (2015) (5) (18) *Developing Country Studies* 48; T Okonkwo, 'Environmental Constitutionalism in Nigeria: Are We There Yet?' (2015) (13) *The Nigerian Judicial Review*, 175-216; E M Akpambang, 'Promoting the Right to a Healthy Environment through Constitutionalism in Nigeria' (2016) (4) (3) *International Journal of Environment and Pollution Research*, 40-61; T Okonkwo, 'Environmental

its aspirational character, it has been suggested that a breach of any of the duties imposed by the CFRN on the State in Chapter II is not actionable at the instance of a person who suffers any loss or damage arising from the State's non-performance of the imposed duties.³⁸ However, it would seem that there are authors who assert that some of the provisions in Chapter II, especially the environmental protection obligations, are actionable at the instance of an aggrieved person, being a product of Nigeria's international obligations which cannot be superseded by municipal law.³⁹

The present authors submit that although all of the constitutional provisions on the environmental, social and governance obligations of the Nigeria State towards its citizens are localised within Chapter II of the CFRN entitled, 'Fundamental Objectives and Directive Principles of State Policy', and which are rendered generally non-justiciable by virtue of Section 6(6)(c) of the CFRN, they nonetheless guide the direction of State policies and, by extension, influence regulatory frameworks affecting the conduct of businesses and investments in Nigeria. What seems undeniable is that the provisions of Chapter II of the CFRN are enforceable where the CFRN provides that they should be enforced,⁴⁰ as well as where appropriate legislation has been enacted to give such provisions the toga of justiciability.⁴¹

3.2 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983

The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁴² is a Nigerian legislation enacted to domesticate the African Charter on Human and Peoples' Rights⁴³ by making its provisions enforceable in Nigeria. The ACHPR is a regional human rights instrument that enshrines a broad range of civil, political, economic, social, and environmental

Constitutionalism in Nigeria: Are We There Yet? (2015) (13) *The Nigerian Judicial Review* 175-216; K U Udungeri and Others, 'Evaluation of the Statutory Regime of Corporate Environmental Liability in the Oil and Gas Sector in Nigeria' (2018) (2) (9) *American Journal of Humanities and Social Sciences Research* 29-45

³⁸ E M Akpambang (n 37)

³⁹ E P Amechi, 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation (2010) (6) (3) *Law, Environment and Development Journal*, 320-334; F O Ekpa, 'Enforcing Environmental Rights in Nigeria through the Fundamental Rights (Enforcement Procedure) Rules 2009' (2015) (7) *Kogi State University Law Journal* 102-121.

⁴⁰ S Okangla, 'Why Chapter II of the Nigerian Constitution Is a Greek Gift' (2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3976196> accessed 21 March 2026

⁴¹ *Olafisoye v Federal Republic of Nigeria* (2004) 4 NWLR (Pt 864) 580

⁴² 1983, Cap A10, Laws of the Federation of Nigeria 2004 [ACHPR Ratification and Enforcement Act]

⁴³ Adopted at Nairobi, Kenya, by the Eighteenth Assembly of Heads of States and Government under the auspices of the Organisation of African Unity in June 1981 [ACHPR]

rights. The ACHPR Act serves as a foundational ESG document, especially regarding social and environmental rights, and plays an indirect, yet significant role in shaping ESG expectations within Nigeria. For instance, its Article 24 stipulates that all peoples shall have the right to a general satisfactory environment favourable to their development.⁴⁴ This provision establishes a legally recognisable right to a healthy environment, thus forming the ‘E’ or ‘Environmental’ pillar of ESG.

Under social rights and development, Article 15 of the ACHPR Act provides for the right to work under equitable and satisfactory conditions⁴⁵ as well as the right to the highest attainable standard of physical and mental health.⁴⁶ Additionally, everyone has the right to education and cultural life.⁴⁷ These provisions reflect the ‘S’ (Social) component of ESG by protecting economic and community welfare. In terms of the ‘G’ (Governance) pillar of ESG, Article 21 of the ACHPR Act provides that, “All peoples shall freely dispose of their wealth and natural resources... In case of spoliation, the dispossessed people shall have the right to the lawful recovery of their property and to an adequate compensation.”⁴⁸ These provisions guarantee community rights over natural resources, emphasising transparent governance and responsible investment conduct as paramount to the attainment of the pillar ‘G’ in ESG.

The provisions of the ACHPR have been upheld at the African regional and ECOWAS sub-regional levels, in relation to activities of Member States. Most importantly, the right to a general satisfactory environment favourable to the development of citizens of Nigeria has been upheld. In *Social and Economic Rights Action Centre v Nigeria*,⁴⁹ the applicant – an NGO sued on behalf of the Ogoni people of the Niger Delta region of Nigeria against the Federal Government of Nigeria, the African Commission on Human and Peoples’ Rights, held that Nigeria violated Articles 16 and 24 of the ACHPR for failing to prevent environmental degradation in the Niger Delta by oil companies.

⁴⁴ ACHPR Act, art. 24

⁴⁵ *Ibid*, art. 15

⁴⁶ *Ibid*, art. 16

⁴⁷ *Ibid*, art. 17

⁴⁸ *Ibid*, art 21

⁴⁹ Communication No:155/96 (Judgment of the African Commission on Human and Peoples’ Rights delivered on 27 May 2002); [2001] ACHPR 35

Similarly, in *The Registered Trustees of the Socio-Economic Rights and Accountability Project v Nigeria*,⁵⁰ the ECOWAS Community Court of Justice (ECCJ) by a unanimous decision found the government of Nigeria responsible for human rights abuses by oil companies and made it clear that the government must hold the companies and other violators of human rights accountable. The ECCJ found that Nigeria violated the right of the Niger Delta people to their natural wealth and resources⁵¹ as well as their right to a general satisfactory environment favourable to their development⁵² by failing to protect the Niger Delta and its people from the operations of oil companies that have devastated the region for many years. The Court further reasoned that the rights to good and social life of the Niger Delta people were violated by destroying their environment and thus destroying their opportunity to earn a living and enjoy a healthy and adequate standard of living. The ECCJ also held that the government's failure to enact effective laws and establish effective institutions to regulate the activities of the oil companies, coupled with the failure of the government to hold polluters accountable for environmental degradation, constitutes a violation of Nigeria's international human rights obligations and commitments.

Even the Supreme Court of Nigeria has held that the provisions of the ACHPR are enforceable in Nigeria. In *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*,⁵³ Eko, JSC, stated that in order to broadly determine *locus standi* when enforcing environmental rights as human rights, Article 24 of the ACHPR should be read together with Sections 33(1) and 20 of the CFRN on the duty of the Nigerian State to preserve the environment for the health and by extension lives of Nigerians⁵⁴ Eko, JSC also stated that as long as Nigeria remains a signatory to the ACHPR and to other global human rights treaties as well, Nigerian courts would protect and vindicate the human rights entrenched in them.⁵⁵ These decisions reinforce that Nigeria will be held to the human rights standards articulated in the ACHPR, and therefore, in her transactions with foreign investors, Nigeria must be alive to its ESG obligations, Thus,

⁵⁰ General List No: ECW/CCJ/APP/08/09 and Judgment No: ECW/CCJ/JUD/18/12 (Judgment delivered on 14 December 2012).

⁵¹ ACHPR 1981, art 22.

⁵² *Ibid*, art 24.

⁵³ (2019) 5 NWLR (Pt 1666) 518 [*Centre for Oil Pollution Watch v NNPC*]

⁵⁴ (n 53) 597-598

⁵⁵ *Ibid*, 598

the decisions demonstrate that host States of foreign investments have ESG duties, and that such host States and investors share responsibility for complicity in the violations of human rights.

3.3 National Environmental Standards and Regulations Enforcement Agency Act 2007

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act⁵⁶ is the principal regulatory framework for environmental protection in Nigeria, and it establishes NESREA as the primary regulatory body responsible for enforcing environmental laws and standards in Nigeria.⁵⁷ This Act has implications for the implementation of the environmental pillar of ESG. The Act empowers the agency to enforce environmental standards across sectors, conduct inspections, and sanction environmental infractions.⁵⁸ The Act thus establishes a legal basis for integrating environmental obligations into Nigeria's investment decision-making.

Additionally, the Act directs the Agency to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force.⁵⁹ The Act also mandates the Agency to create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions.⁶⁰

The Act promotes corporate accountability by enforcing regulations that protect communities from environmental hazards, ensuring that foreign investments adhere to ethical labor and social standards. Thus, the Act directs the Agency to co-operate with other Government agencies for the removal of pollutants from the Nigerian environment. However, NESREA's functions do not extend to environmental pollution arising from oil and gas related operations.⁶¹ In conclusion, the NESREA Act, plays a prominent role in Nigeria's efforts to incorporate ESG principles

⁵⁶ No. 25 of 2007 [NESREA Act]

⁵⁷ NESREA Act, s 1

⁵⁸ *Ibid*, s 2

⁵⁹ *Ibid*, s 7(c)

⁶⁰ NESREA Act, s 7(l)

⁶¹ *Ibid*, s 29

particularly environmental governance into its bilateral investment treaties (BITs) with foreign businesses. By aligning domestic regulatory frameworks with international investment agreements, Nigeria can better safeguard sustainable development goals in foreign investment.

3.4 National Oil Spill Detection and Response Agency (Establishment) Act, 2006

The National Oil Spill Detection and Response Agency Act⁶² is the principal regulatory framework for environmental protection in the Nigerian oil and gas industry. The Act establishes the National Oil Spill Detection and Response Agency (NOSDRA) which is tasked with the responsibility for coordinating and implementing the national oil spill contingency plan and ensuring a timely and effective response to oil pollution incidents arising from the operations of oil and gas companies in Nigeria.⁶³ The Act imposes a legal obligation on operators in the petroleum industry to adopt measures for preventing, detecting, and cleaning up oil spills, thus integrating environmental safeguards into commercial oil operations.

The NOSDRA Act institutionalises key ESG principles, notably the ‘polluter pays’ doctrine. Section 6(2) of the Act stipulates that oil spill incidents are to be reported to NOSDRA within 24 hours, with non-compliance attracting a daily fine of ₦500,000.⁶⁴ Furthermore, Section 6(3) stipulates a penalty of ₦1,000,000 for failure to clean up and remediate the impacted site to a practical extent.⁶⁵ These provisions underscore Nigeria’s commitment to environmental stewardship and corporate accountability. Moreover, the Act’s enforcement mechanisms provide a legal basis for addressing environmental disputes arising from foreign investments. For instance, in the case of *NOSDRA v. Sterling Oil Exploration and Energy Production Company Ltd (SEEPCO)*,⁶⁶ the Federal High Court upheld the NOSDRA’s authority to impose fines for unreported oil spills, demonstrating the efficacy of the NOSDRA Act in holding corporations accountable.⁶⁷

⁶² No. 15 of 2006 [NOSDRA Act]

⁶³ NOSDRA Act, 2006, s 1

⁶⁴ *Ibid*, s 6(2)

⁶⁵ *Ibid*, s 6(3)

⁶⁶ [Unreported] Suit No: FHC/L/CS/576/2016 (Judgment delivered by the Honourable Justice C.M.A Olatoregun of the Federal High Court, Lagos, on Thursday, 24th May, 2018)

⁶⁷ Vanguard, ‘Oil Spill: Court Orders Firm to Pay N68m Fine’ <www.vanguardngr.com/2015/11/oil-spill-court-orders-firm-to-pay-n68m-fine/> accessed 14 March 2026

3.5 Petroleum Industry Act, 2021

The Petroleum Industry Act⁶⁸ provides for the legal, governance, regulatory and fiscal framework for the petroleum industry in Nigeria. The PIA integrates the ‘E’ (Environmental) pillar of ESG into the regulatory framework. This integration has implications for BITs, as it aligns Nigeria’s domestic laws with international ESG standards, thereby influencing foreign investment dynamics. The PIA seeks to promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria; foster a business environment conducive for petroleum operations; and deepen local content practice in Nigeria oil and gas industry.⁶⁹ The enabling environment framework offered by the PIA takes into account both corporate responsibility and stakeholder engagement to optimise the impact of ESG for environmental sustainability in oil and gas producing areas. The PIA establishes the Nigerian Upstream Petroleum Regulatory Commission⁷⁰ which is responsible for promoting healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner.⁷¹

The PIA is the first piece of legislation in Nigeria to introduce direct host communities’ benefits into the country’s petroleum industry landscape. Under the PIA, host communities of oil and gas companies are entitled to 3 percent of the actual annual operating expenditure (OPEX) of the settlor in the preceding year, accruable from the operation of oil and gas activities in the upstream sector affecting such host communities.⁷² For instance, Chapter 3 of the PIA establishes the Host Community Development Trusts (HCDTs) to promote socio-economic benefits for oil-producing communities.⁷³ The PIA also imposes environmental remediation responsibilities on licensees and lessees, which aligns with the environmental component of ESG.⁷⁴

3.6 Climate Change Act, 2021

⁶⁸ No. 6 of 2021 [PIA]

⁶⁹ PIA 2021 s 2(c-e)

⁷⁰ *Ibid*, s 4

⁷¹ *Ibid*, s 6(d)

⁷² *Ibid*, s 240(2)

⁷³ PIA 2021, ss 234-235

⁷⁴ *Ibid*, s 102

Reputed for being the first national legislation on climate change in West Africa, the Climate Change Act⁷⁵ essentially integrates climate change mitigation and adaptation into the national plans of Nigeria. The CCA provides for an all-inclusive and comprehensive regulatory and legal framework for achieving the long-term climate change goals in Nigeria, which encompasses a net-zero carbon emission target, adequate climate financing, environmental and economic sustainability and other actions into the national development plans of Nigeria. It is arranged and organized into eight parts of thirty-six sections and a schedule. It applies to institutions and agencies of government as well private and public entities⁷⁶ and compulsorily mandates them to adhere to all governmental regulations on climate change⁷⁷. It sets the years 2050-2070 as the target period to achieve net zero carbon emissions. To achieve this aim, the prioritization of climate change adaptation, finance, national climate resilience and focus on other climate change combating policies⁷⁸ The CCA also establishes the National Climate Change Council as a body corporate saddled with the responsibility of implementing Nigeria's climate change action plan⁷⁹.

It can be concluded that the CCA aims at providing a basis for the attainment of low carbon emissions, promotion of inclusive green growth and sustainable economic development by ensuring that Nigeria develops climate change mitigation and adaptation strategies; ensure the close out of climate change action and incorporates it into national development priorities.⁸⁰ Thus, the CCA seeks to enforce the 'E' (Environmental) pillar of ESG by providing the framework for implementation of climate change mitigation and adaptation measures aimed at protecting the Nigerian atmospheric environment, and by extension protecting the people from the adverse impacts of climate change, including flooding, displacement, desertification.

3.7 Environmental Impact Assessment Act, 2004

The Environmental Impact Assessment Act⁸¹ places restrictions on the public and private project implementation, without prior consideration of the environmental impact of such project. The EIA Act provides that the public or private sector of the economy shall not undertake or embark

⁷⁵ 2021 [CCA]

⁷⁶ *Ibid*, s 1(1)

⁷⁷ *Ibid* s. 2

⁷⁸ *Ibid* s.1 (a-i)

⁷⁹ *Ibid*, s. 3(1)

⁸⁰ *Ibid*.

⁸¹ 1992, Cap E12, LFN 2004 [EIA Act 2004]

on or authorise projects or activities without prior consideration, at an early stage, of their environmental effects.⁸² Where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of the EIA Act.⁸³ This provision aligns closely with the environmental pillar of ESG standards, which emphasise proactive management of environmental risks in investment planning. All agencies, institutions (whether public or private) except if exempted pursuant to the EIA Act, before embarking on a proposed project, are required to apply in writing to NESREA, so that the subject activities can be quickly and surely identified.⁸⁴ Through these assessments, companies must evaluate the implications of gas flaring on air quality, soil, water resources, and the health of local populations. Non-compliance with the EIA Act can lead to legal sanctions, including project suspension or fines.

Section 7 of the EIA Act emphasises public participation in the EIA process. Communities affected by gas flaring are entitled to provide input during consultations, ensuring that their concerns about environmental and health impacts are considered before project approvals.⁸⁵ This participatory approach reinforces the social and governance pillars of the ESG framework by ensuring transparency, inclusivity, and accountability in environmental decision-making. Furthermore, the requirement of Section 7 for community consultation plays a crucial role in pre-investment due diligence – an increasingly common ESG requirement in international investment contracts. Investors who by-pass such consultations may face challenges in arbitration or find themselves excluded from BIT protections.⁸⁶

3.8 Labour Act 2004

The Labour Act⁸⁷ provides the principal legislation governing employment relationships in Nigeria. While it does not explicitly refer to ESG standards, the Act contains provisions that align with the ‘Social’ and ‘Governance’ components of ESG. These provisions are especially relevant when considering how Nigeria may integrate ESG standards under BITs. The Labour Act is fundamentally a social justice statute, designed to protect workers’ rights and promote fair

⁸² EIA Act, s 2(1).

⁸³ *Ibid*, s 2(2).

⁸⁴ *Ibid*, s 2(4).

⁸⁵ *Ibid*, s 7

⁸⁶ P Muchlinski, *Multinational Enterprises and the Law* (3rd edn, Oxford University Press, 2021)

⁸⁷ 1976, Cap L1, Laws of the Federation of Nigeria 2004 [Labour Act 2004]

labour standards, which are core elements of the ‘S’ (Social) pillar of ESG. Section 7(1) requires that “Not later than three months after the beginning of a worker’s period of employment with an employer, the employer shall give to the worker a written statement specifying the terms and conditions of employment”.⁸⁸ This supports transparency, fair labour practices, and employee protection, all of which are essential to social sustainability.

The Act also states that in the event of redundancy, the employer shall inform the trade union or workers’ representative concerned of the reasons and extent of the anticipated redundancy. The principle of ‘last in, first out’ shall be adopted in the discharge of the particular category of workers affected, subject to all factors of relative merit, including skill, ability and reliability.⁸⁹ The Act also requires that an employer should pay fair compensation to employees deemed redundant, thus promoting social equity in workforce reduction scenarios.

In addition, Section 73 of the Act prohibits forced labour.⁹⁰ This aligns with international labour standards (e.g., ILO conventions) and human rights obligations under international law. ‘Governance’ standards under ESG include adherence to labour standards, corporate compliance, and accountability, which are echoed in the Labour Act’s provisions on employer obligations and dispute resolution. Section 78 empowers labour officers to enter, inspect and examine by day or night any labour encampment, farm, factory or other land or workplace whatsoever (and every part thereof) if he has reasonable cause to believe that any worker is employed therein or thereon; enter, inspect and examine by day any premises provided by an employer in which he has reasonable cause to believe that workers are living in such premises.⁹¹ The purpose of this inspection is to ascertain the conditions under which employees are engaged and to determine whether the employers have violated the approved labour standards. It can be observed that these provisions reflect regulatory oversight and the commitment to ensure that Nigerians are engaged in work under sound and fair labour standards.

Furthermore, the Labour Act significantly supports the ‘Social’ and ‘Governance’ pillars of ESG through provisions that ensure fair treatment of workers, wage protection, non-discrimination, labour inspections, and the prohibition of forced labour. These statutory obligations are crucial

⁸⁸ Labour Act, 2004 s 7(1)

⁸⁹ *Ibid*, s 20(1)(a-b)

⁹⁰ *Ibid*, s 73(1)

⁹¹ Labour Act 2004, s 78(1)

for justifying labour and social protection measures under Nigeria's BITs and reinforce the legal legitimacy of ESG-compliant regulatory actions.

3.9 Economic and Financial Crimes Commission (Establishment) Act 2004

The Economic and Financial Crimes Commission (Establishment) Act,⁹² is Nigeria's principal legislation for combating economic and financial crimes, including corruption, money laundering, and fraud. While not traditionally viewed through an ESG lens, the EFCC Act directly supports the 'G' (Governance) pillar of ESG by promoting transparency, accountability, and regulatory compliance, which are core elements of good governance. The Act establishes the Economic and Financial Crimes Commission.⁹³ which is charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.⁹⁴ The enactment of the EFCC Act affirms Nigeria's commitment to anti-corruption, financial transparency, and law enforcement, which are key elements of corporate governance and risk management under ESG.

The Commission is empowered to "investigate all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal fund transfers, and capital market fraud;"⁹⁵ the adoption of measures which includes coordinated preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes;⁹⁶ amongst others. This aligns with the rule of law, enhances corporate integrity, and ensures that businesses operate ethically, which are essential components of ESG governance expectations in international investment.

3.10 Independent Corrupt Practices and Other Related Offences Act 2000

The Independent Corrupt Practices and Other Related Offences Act⁹⁷ seeks to prohibit and prescribe punishment for corrupt practices and other related offences which are considered as constituting abuse of office. The Act plays an indirect but significant role in shaping the

⁹² Economic and Financial Crimes Commission (Establishment) Act 2004 [EFCC Act]

⁹³ *Ibid*, s 1

⁹⁴ *Ibid*, s 2(c)

⁹⁵ *Ibid*, s 6(b)

⁹⁶ EFCC Act 2004, s 6(f)

⁹⁷ Independent Corrupt Practices and Other Related Offences Act 2000 [ICPC Act]

governance ecosystem in Nigeria, which is critical for ESG incorporation under BITs. While the ICPC Act does not explicitly address ESG principles, its emphasis on anti-corruption and ethical conduct aligns with the governance component of the ESG framework. Sections 8–17 of the Act provide for specific corrupt practices and related offences, including bribery, fraudulent acquisition of property, and gratification by public officials.⁹⁸

These provisions reinforce the governance standards necessary for ESG compliance in the investment landscape. BITs increasingly include anti-corruption clauses or reference compliance with host state laws, including anti-corruption legislation. Thus, the ICPC Act becomes a benchmark for assessing compliance with governance standards by foreign investors under BITs. Nigeria's newer BITs and investment agreements, such as the Nigeria–Morocco BIT (2016), contain provisions that directly or indirectly incorporate ESG considerations. For example, Article 24 of the Nigeria–Morocco BIT explicitly allows the host state to adopt measures necessary for environmental and social protection as well as the Sustainable Development Goals of the United Nations, provided they are non-discriminatory and consistent with the treaty.⁹⁹

Although the ICPC Act does not deal directly with environmental or social aspects, it strengthens the overall governance framework within which such ESG obligations are enforced. Effective anti-corruption laws like the ICPC Act provide a secure environment where ESG principles can be meaningfully integrated and enforced within the scope of BITs.

4. Analysis of the Effectiveness of the Legal Regime for Application of ESG Standards in Nigeria

A critical examination of the legal regime for implementation of ESG standards in Nigeria reveals some key findings. The first of such findings is that there is no special legislation on ESG standards and their implementation in Nigeria. What is obtainable in Nigeria is the existence of pieces of ESG standards scattered across disparate pieces of legislation regulating different sectors. Thus, there are quite a few laws that have been enacted to address the critical aspects of ESG in Nigeria. For instance, the CFRN has made some key provisions touching on the duty of the Nigerian State to protect the environment,¹⁰⁰ abolish corruption,¹⁰¹ enhance community

⁹⁸ *Ibid*, ss 8-17

⁹⁹ Nigeria–Morocco BIT (2016), art. 24

¹⁰⁰ NESREA Act; NOSDRA Act; EIA Act; CCA; PIA

participation in the management and exploitation of the country's resources.¹⁰² The CFRN also requires that the management and exploitation of the country's common patrimony should be undertaken for the public good.¹⁰³ Furthermore, the CFRN imposes on the government the obligation to provide the basic necessities of life to all citizens of Nigeria, including the vulnerable population, and also makes provisions relating to the implementation of fair labour practices in the workplace,¹⁰⁴ among others. The ACHPR Ratification and Enforcement Act, on its part, provides for the right of every person in Nigeria to a generally satisfactory environment conducive to their development.¹⁰⁵ The ACHPR also protects the right to the best attainable state of health¹⁰⁶ and other socio-economic rights, which if implemented, will go a long way to addressing ESG concerns and resulting in improved environmental consciousness among companies operating in Nigeria.

Similarly, the NESREA, NOSDRA and EIA Acts are key pieces of legislation that support the framework for environmental governance and responsibility in Nigeria. They provide for measures that ought to be taken to protect the environment from unwholesome activities that threaten the health of the people and their environment. In addition, the Labour Act provides the authoritative framework for labour rights, activities and regulates the conditions under which workers are engaged in work in Nigeria. Its emphasis is on the promotion of fair labour practices. The EFCC and ICPC Acts regulate the anti-corruption, transparency and accountability components of the governance framework. Their emphasis is basically to ensure that persons or entities doing business in Nigeria follow the due process of law in carrying out their business operations, as well as comply with the country's anti-graft laws.

However, despite what would seem to be an avalanche of laws at the federal level of governance in Nigeria, the provisions of some of the key pieces of legislation examined in this paper leave too much gap that are exploited by both the Nigerian authorities and the investors attracted into the Nigerian investment ecosystem, to defeat the aims of ESG advocacy. For instance, the CFRN provisions on the various components of ESG, such as Sections 15(5), 16, 17 and 20, are all

¹⁰¹ EFCC Act; ICPC Act

¹⁰² PIA, Chapter 3, ss 234-257

¹⁰³ CFRN, s 16(2)(a)

¹⁰⁴ *Ibid*, ss 16(2) and 17(3)

¹⁰⁵ ACHPR Ratification and Enforcement Act, art 24

¹⁰⁶ *Ibid*, art 16

domiciled in Chapter II of the CFRN, which are rendered generally non-justiciable by virtue of Section 6(6)(c) of the CFRN.¹⁰⁷ The ACHPR Ratification and Enforcement Act appears to suffer a similar fate. Articles 16 and 24 of the ACHPR Ratification and Enforcement Act which provide for the right of every Nigerian to the best attainable state of health and a generally clean, safe and healthy environment, are still subject to the supremacy of the CFRN. The CFRN is the *grundnorm* and its provisions are supreme, authoritative and supersede the provisions of all other laws in Nigeria.¹⁰⁸ The Supreme Court of Nigeria in *Abacha v Fawehinmi*¹⁰⁹ held that while the ACHPR Ratification and Enforcement Act is a statute with international flavour and therefore superior to Nigerian statutes, it is nevertheless inferior to the CFRN. It would therefore appear that Articles 16 and 24 of the ACHPR Ratification and Enforcement which enshrine the right to the best attainable state of health and a clean, safe and healthy environment, will be caught by the non-justiciability clause in Section 6(6)(c) of the CFRN, which does not generally recognise such rights as enforceable rights.

Apart from these deficiencies in the law, there seems to be no direct textual recognition of the right to a clean, safe and healthy environment in the CFRN.¹¹⁰ The inclusion of the right to a healthy environment in the ACHPR Ratification and Enforcement Act has proved problematic as the Supreme Court has held that the ACHPR being a statute with international flavour is only superior to Nigerian ordinary laws but is subservient to the CFRN.¹¹¹ Consequently, it would appear that the provisions of the ACHPR Ratification and Enforcement Act do not provide any significant rescue out of the jigsaw of Section 6(6)(c) of the CFRN, as it cannot provide for rights not directly recognised by the CFRN. Although the Supreme Court seemed to suggest in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*,¹¹² the prospect of the enforcement of Article 24 of the ACHPR Ratification and Enforcement Act as an inextricable component of the right to life under Section 33 of the CFRN, that does not appear to have been done so far, given that the issue before the Supreme Court revolved around the issue of the *locus standi* of the applicant/appellant to maintain the suit. The conclusion is that there appears to be

¹⁰⁷ O V C Ikpeze (n 37)

¹⁰⁸ CFRN, s 1(1) and (3)

¹⁰⁹ (2000) 6 NWLR (Pt 660) 228

¹¹⁰ O K Anaebio and E Ekhatior, 'Realising Substantive Rights to Healthy Environment in Nigeria' (2015) (17) (2) *Environmental Law Review*, 82-99

¹¹¹ *Abacha v Fawehinmi* (n 109)

¹¹² (2019) 5 NWLR (Pt 1666) 518 [*Centre for Oil Pollution Watch v NNPC*]

yet a judicial recognition of the enforceability of Article 24 of the ACHPR Act in Nigeria. The only provisions of the ACHPR Act that are enforceable in Nigeria are the provisions that align with the Chapter IV (fundamental rights) provisions of the CFRN, which are constitutionally justiciable.

The Labour Act does not seem to make adequate provisions to protect Nigerian workers for dehumanising labour practices that fall far short of the International Labour Organisation (ILO) standards. Thus, when it comes to job security, casualisation and outsourcing of operations of businesses, it has been suggested that the Labour Act is completely empty.¹³ The only relevant provision in the entire Labour Act which deals tangentially with the terms and conditions of employment is section 7. Even at that, the section does not regulate the practice of casualisation in Nigeria, and the inhuman and degrading treatment which multinationals and foreign businesses mete out to Nigerian workers who must settle for just any condition to keep body and soul together. Section 7 requires an employer of labour to give to his employee a written statement containing certain specified terms and conditions of employment within three months of the effective date of employment of the worker. Looking at the above provisions holistically, it is easily seen that there is no hope for the great majority of Nigerian workers who have been trapped in the abyss of casualisation and arbitrary dismissal by multinational corporations operating in the various sectors of the Nigerian economy. For example, the reference to ‘worker’ and ‘employee’ in the section does not include a worker employed as casual worker or on contract. It appears the two words – worker and employee – used interchangeably throughout the Labour Act, refer to a permanent worker as opposed to casual workers, hence casual workers in Nigeria do not enjoy any form of protection in employment relationships. There is no job security, they are not entitled to severance benefits, sick pay, health insurance, adequate wages on similar terms as those engaged on permanent basis, the right to unionise to demand improved working conditions, and so on.

Apart from the gaps identified in the Nigerian legal framework for the implementation of ESG standards in Nigeria, the other challenge to implementation of ESG is the problem of enforcement of the laws. In addition, the institutional capacity of the Nigerian agencies

¹³ See generally B Atilola, ‘Protecting the Rights of Casual Workers in Nigeria: Lessons from Ghana’ (2014) (8) (2) *NJLIR* 1, 3; C S Ibekwe, ‘Legal Implications of Employment Casualization in Nigeria: A Cross-National Comparison’ (2016) *NAUJIL* 34, 36

established to administer and enforce the laws, such as the NESREA, NOSDRA, EFCC, ICPC, and so on, are too weak to withstand the influence of foreign investors and the Nigerian authorities. For instance, there have been documented evidence of extensive environmental pollution in Ogoniland and other parts of the Niger Delta region of Nigeria where oil and gas exploration and exploitation are carried out.¹¹³ The environmental pollution of Ogoniland led to an uprising by the locals in the 1990s declaring SPDC *persona non grata* in their land and shutting in of operations which took place since 1994.¹¹⁴ However, the response of the Federal Military Government with the backing of SPDC and its parent company, Royal Dutch Shell, against the Ogoni non-violent agitation for environmental responsibility and resistance to continued oil operations in the midst of asphyxiating oilfield practices was brutal.¹¹⁵

The SPDC and its parent company, Royal Dutch Shell, were accused of enabling the Federal Military Government of Nigeria to kill, maim, brutalise and sack entire Ogoni communities, displacing the locals into exile. This gale of terror eventually led to the gruesome execution of nine Ogoni leaders and activists, including the renown environmental rights activist, Ken Saro Wiwa.¹¹⁶ The Ogoni communities have since sued the SPDC in various courts seeking legal redress for the environmental and human rights violations experienced in the hand of SPDC. Some of these acts of environmental degradation have been litigated in foreign jurisdictions to hold the foreign investors accountable for the breach of global environmental and human rights standards within Nigeria.¹¹⁷

¹¹³ UNEP, *Environmental Assessment of Ogoniland*

<https://www.postconflict.unep.ch/publications/OEA/UNEP_CEApdf> accessed 25 March 2026

¹¹⁴ Amnesty International, 'Shell Complicit in the Arbitrary Executions of Ogoni Nine as Writ Served in Dutch Court' (29 June 2017) <<https://www.amnesty.org/en/latest/press-release/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/>> accessed 30 March 2026

¹¹⁵ *Ibid*

¹¹⁶ *Ibid*

¹¹⁷ *Oguru v SPDC*, Case No.: C/09/330891/HA ZA 09-0579 and C/09/365498/ HA ZA 10-1677 <<https://mideudefesien/publicaties/bezwarenuitsparken/final-judgment-oguru-vs-shell-oil-spill-goi>> accessed 26 March 2026; *Dooh v SPDC*, Case No.:37058/HA ZA 09-1581 and 65482/HA ZA 10-1665 (judgment by the District Court of the Hague delivered on 14 September 2011) <<https://uitsparken/judgement-exhibition-bariazaa-tete-dooh>> accessed 29 March 2026; *Dooh v SPDC*, Case No.: C/09/337058/HA ZA 09-1581 and C/09/365482/HA ZA 10-1665 (Judgment of the District Court of the Hague delivered on 30 January 2013) <<https://.../final-judgment-dooh-vs-shell-oil-goi>> accessed 30 March 2026; *Akpan v SPDC*, Case No.: C/09/337050/HA ZA 09-1580 <<https://.../final-judgment-akpan-vs-shell-oil-spill-ikot-ada-udo/view>> accessed 30 March 2026

Some of such litigations have been determined against the foreign investors, while others are ongoing. The oil pollution claims brought against the SPDC and Royal Dutch Shell in the UK court by Ogale and Bille communities are at various hearing stages.¹¹⁸ In 2015, the Bodo community in Ogoniland successfully brought an oil pollution claim against SPDC and Royal Dutch Shell in a UK court.¹¹⁹ The UK court held SPDC culpable for egregious environmental rights abuses in Bodo community and ordered SPDC to pay compensational damages to the villagers as well as remediate their polluted lands and homestead.

In the area of governance and upholding accountability and transparency in corporate governance, MNCs operating in Nigeria have been found to have exploited Nigeria's weak criminal justice framework to commit acts of corruption. In 2021, ENI and SPDC were indicted but acquitted by a Milan court in Italy over allegations of bribery and corruption levelled against the oil giants in their acquisition of Oil Prospecting Licence (OPL) 245 – an oil block in Nigeria.¹²⁰ More recently, in the Process and Industrial Developments Limited (P&ID) arbitration proceedings against Nigeria, the Nigerian authorities successfully proved that officials of PI&D – a foreign investor in Nigeria, bribed Nigerian authorities in order to win the contract subject-matter of the arbitral proceedings.¹²¹ This successful proof of corruption led to the UK High Court setting aside an arbitral award to the tune of \$11.5 billion earlier made against Nigeria in favour of P&ID.¹²²

5. Conclusion and Recommendations

This paper examined the legal framework for the implementation of ESG standards in Nigeria. The examination revealed that there is no special legislation on ESG standards and their implementation in Nigeria. What is obtainable in Nigeria is the existence of pieces of ESG

¹¹⁸ *Okpabi v RDS* [2017] EWHC 89 [JCC]; [2018] EWCA CW 191

¹¹⁹ *Bodo v SPDC* (2014) EWHC 1973 (TCC)

¹²⁰ E Parodi and S Jewkes, 'Italian Court Acquits ENI and Shell in Nigerian Corruption Case' Reuters (18 March 2021) <<https://www.reuters.com/article/world/middle-east/italian-court-acquits-eni-and-shell-in-nigerian-corruption-case-idUSKBN2BA0XE/>> accessed 30 March 2026

¹²¹ M Tandon, 'English Court Allows Challenge to Arbitral Award for Having Been Obtained by Fraud and in Violation of Public Policy' Investment Treaty News (2 April 2024) <<https://www.iisd.org/itn/en/2024/04/02/english-high-court-allows-challenge-to-arbitral-award-for-having-been-obtained-by-fraud-and-in-violation-of-public-policy/>> accessed 30 March 2026

¹²² O Holmeyer, 'Nigeria Wins Landmark Fraud Case against P&ID' The Africa Report (24 October 2023) <<https://www.theafricareport.com/325778/nigeria-wins-landmark-fraud-case-against-pid/>> accessed 30 March 2026

standards scattered across disparate pieces of legislation regulating different sectors of the Nigerian economy, ranging from the environment, labour, human rights, to anti-corruption. Thus, there are quite a few laws that have been enacted to address the critical aspects of ESG in Nigeria. The discussion in this paper showed that the extant laws in Nigeria contain provisions on ESG standards which, if implemented, will go a long way to addressing ESG concerns, resulting in improved environmental consciousness among companies operating in Nigeria. However, despite what would seem to be an avalanche of laws at the federal level of governance in Nigeria, the provisions of some of the key pieces of legislation examined in this paper leave too much gap that are exploited by both the Nigerian authorities and the investors attracted into the Nigerian investment ecosystem, to defeat the aims of ESG advocacy. Apart from the gaps identified in the Nigerian legal framework for the implementation of ESG standards in Nigeria, the paper argued that other challenges to the implementation of ESG in Nigeria are, the challenge of enforcement of extant laws, as well as the institutional incapacity of the Nigerian agencies established to administer and enforce the laws, such as the NESREA, NOSDRA, EFCC, ICPC, and so on, in effectively carrying out their responsibilities in the face of poor funding, enticement to corruption, inadequate staffing and grossly inadequate operational capabilities.

Among other remedial measures, the paper recommended the enactment of a special ESG-focused legislation that will address the pitfalls in extant laws, and which provides a robust implementation procedure with institutions adequately funded, staffed and equipped to carry out the statutory mandates. To liberate the special-purpose ESG legislation from the non-justiciable trap of Section 6(6)(c) of the CFRN, the paper recommends the immediate amendment of the CFRN by the National Assembly, to make direct constitutionally enforceable provisions on the right to a clean and healthy environment, as well as rendering the provisions of Chapter II of the CFRN justiciable. In addition, governments at all levels should be made to implement the ESG rights stipulated in the special-purpose ESG legislation, and the Nigerian citizens should be granted liberalised *locus standi* to enforce ESG standards in Nigerian courts, in line with global best practices.

LEGAL GAPS OF SINGLE SHAREHOLDER COMPANIES UNDER COMPANIES AND ALLIED MATTERS ACT 2020

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Abstract

The creation of single shareholder companies through the Companies and Allied Matters Act 2020 has created a multitude of complex legal issues, particularly regarding business continuity, succession, and creditor protection. This article critically analyzes the ambiguities arising from the death, incapacitation, or insolvency of a sole shareholder of a company, and assesses whether existing legal provisions sufficiently protect business operations. It also seeks to analyze the increased risks that come with the death, incapacitation, or insolvency of a sole shareholder, which are attributed to a lack of internal controls and the potential for the abuse of legal personality. This article uses a doctrinal legal research methodology, which entails an in-depth examination of legal provisions, court decisions, regulatory guidelines, and comparative law, which helps to highlight the gaps and shortcomings in the existing legal framework. The article also analyzes how structured legal provisions can help in promoting transparency, accountability, and business continuity in sole shareholder companies, based on provisions in the UK, South Africa, and the European Union. Accordingly, from the analysis above, the article promotes legal reforms in Nigeria, which include succession rules, minimum capital, stronger prohibitions on asset diversion, and stronger rules on dealing with fraudulent or wrongful trading practices. In this sense, the article contributes to the international debate on corporate governance in structures of concentrated ownership, particularly in the context of Nigeria, suggesting practical solutions for improving creditor protection and ensuring the long-term viability of single shareholder companies.

Keywords: Single-shareholder companies; CAMA 2020; creditor protection; corporate governance; succession planning; legal reform

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1. Introduction

One of the new innovations that have characterized the corporate law of Nigeria under the Companies and Allied Matters Act 2020, (CAMA 2020), is the creation of single-member companies, also referred to as single-shareholder companies. In the past, the law of Nigeria provided that a company must have at least two members.¹²³ This requirement for a minimum number of members to form a company is based on the traditional view that a company is a separate legal entity from its members, and this view is based on common law principles, which have provided for a minimum requirement of two members to form a company. The rationale for this requirement is to prevent corporate law abuse and to ensure that corporate actions and decisions are not based on individual interests but on joint interests and ownership. However, in pursuit of ease of doing business and to promote economic development and growth, many jurisdictions, including Nigeria, have allowed for single-shareholder companies to be incorporated. This reform enables individuals to incorporate and operate as sole members of companies.¹²⁴

Section 18 of CAMA 2020¹²⁵, which provide for the right to form a company, explicitly states as follows:

- (1) As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of a company.
- (2) Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies.
- (3) A company may not be formed or incorporated for an unlawful purpose.

¹²³ Section 18 of Companies and Allied Matters Act, CAP C20, LFN, 2004

¹²⁴ O.C. Oduma, 'The Role of the Companies and Allied Matters Act 2020 in Advancing Sustainable Corporate Practices in Nigeria' *African Journal of Law, Ethics, & Education* [2025](8)(5)153-177 <<https://ajleejournal.com/index.php/ajlee/article/view/291>> Accessed 10 February 2026.

¹²⁵ No 3, 2020.

The introduction of Single Member Companies (SMCs) under the new CAMA 2020 aims to simplify the task for small business owners, as they no longer have to bring in extra shareholders to meet the legal threshold for company registration. However, the question remains as to how the new legal concept will address the concerns of corporate governance, continuity, liability, and creditor protection.¹²⁶ One question that still lingers in mind is whether such a single-person company is able to satisfy the conceptual and practical needs of a company or if it is essentially merging its identity with that of its controlling mind.

Continuity of the company and its stakeholders is vital for maintaining legal certainty and economic stability. In relation to SMCs, the death, disability, or insolvency of the sole member directly jeopardizes the company's very existence. It thereby places employees and other interested parties at a disadvantage. Not only is the company's continued existence and its ability to fulfill its legal obligations guaranteed through maintaining its continuity, but so too is its ability to protect its stakeholders from possible exploitation and legal uncertainty. Thus, legal and regulatory frameworks on succession rights, share transfer, and creditor rights are vital to sustaining the distinct corporate personality of single-member companies and instilling trust in the Nigerian business environment.

While CAMA 2020 officially accepts single-member companies, legal gray areas regarding succession, ongoing management, and safeguarding stakeholders remain substantial. The legislation provides little guidance on what to do in case the sole shareholder dies, becomes incapacitated, or goes insolvent. This not only jeopardizes the existence of the single-member company but also affects stakeholders. Therefore, one critical issue is: does CAMA 2020 sufficiently protect single-member companies and stakeholders against possible legal and financial pitfalls, or does it leave them vulnerable to risks?

¹²⁶ T.A. Adewunmi, *et. al*, 'Legal Framework for the Administration of Single-Shareholder Company in Nigeria: Lessons from the United Kingdom' *Journal of the Department of Jurisprudence and International Law* [2023] (1)(11)334-350<<https://aauajdjil.com/2025/10/05/legal-framework-for-the-administration-of-single-shareholder-company-in-nigeria-lesson-from-the-united-kingdom>> Accessed 12 February 2026.

2.0 Nature of Single Shareholder Companies

Single shareholder companies, as recognized under the CAMA 2020, represent a significant departure from the traditional concept of corporate formation based on plurality of membership. A single-member company is one in which all the shares are held by a single individual, who may also exercise full control over the management and decision-making processes of the company. Notwithstanding its one-member structure, such a company retains a distinct legal personality, separate from that of its owner, and is capable of owning property, entering into contracts, and suing or being sued in its own name. This structure reflects a legislative intention to promote ease of doing business and encourage individual entrepreneurship by allowing sole proprietors to enjoy the benefits of incorporation.¹²⁷

Nigeria's improvement in the World Bank Ease of Doing Business rankings following the enactment of CAMA 2020 reflects the practical impact of these reforms in reducing regulatory bottlenecks and enhancing corporate flexibility.¹²⁸ The introduction of the single-shareholder structure under CAMA 2020 represents a deliberate shift from the rigid two-member requirement under the repealed CAMA 1990, which had previously constrained business formation and ownership structuring.¹²⁹

U.E. Oloworanran and E.O. Olowononi provide one of the most compelling justifications for single-member companies. To them, a company has been traditionally viewed as association of persons, and as such the provisions in statutes have always imposed as condition for the registration of a company of at least two members or shareholders.¹³⁰ However they observed that the challenge associated with this is where a person desires to register a company alone, he would need to bring a dormant shareholder or member, who may not have any contribution to the company and who may not even be aware of the management of the company.¹³¹ While this practice underscores the inefficiency of the traditional requirement from a business management

¹²⁷ CAMA 2020, s. 18.

¹²⁸ <<https://tradingeconomics.com/nigeria/ease-of-doing-business>> Accessed 24 March 2026.

¹²⁹ Elizabeth Adedayo, 'Single-Shareholder Structure in Nigeria: Restrictions and Delimitations' 1-3 <<https://firstfiduciary.ng/wp-content/uploads/2024/08/SINGLE-SHAREHOLDER-STRUCTURE-IN-NIGERIA-RESTRICTIONS-AND-DELIMITATIONS.pdf>> Accessed 12 January 2026.

¹³⁰ U.E. Oloworanran and E.O. Olowononi, *Corporate Law and Allied Matters Practical Manual*, (2nd ed., Researafrica Print and Online Ltd, 2024), 22.

¹³¹ *ibid.*

perspective, it is nonetheless important to emphasize that, so long as the law prescribes such conditions, compliance remains obligatory, irrespective of its practical utility. What the 2020 CAMA has done therefore is to liberalise the registration of a private company and it strictly applies to a private company only.

Judicial authority has further clarified the nature and legal status of single shareholder companies in Nigeria. In *Primetech Design and Engineering Nigeria Ltd & Julius Berger Nigeria Plc v Corporate Affairs Commission*,¹³² the Federal High Court affirmed that a private company may validly exist with only one shareholder, irrespective of whether it was incorporated before or after the enactment of CAMA 2020. The Court held that section 18(2) of CAMA 2020 applies to all private companies and that limiting its application to post-2020 incorporations would be inconsistent with the reformative intent of the Act. This decision confirms that single-member companies are not merely prospective innovations but are fully integrated into the Nigerian corporate legal framework, thereby reinforcing the principle that corporate existence is not dependent on plurality of membership. This decision marks a significant development in Nigeria's corporate law regime, and ensures that all private companies, regardless of their incorporation date, can benefit from this novel provision of sole shareholding by the CAMA 2020.¹³³

A defining feature of single shareholder companies is the concentration of ownership and control in one person. A notable feature reinforced by judicial interpretation is the flexibility it affords existing companies, as entities incorporated under the repealed CAMA 1990 can now validly transition into single-shareholder structures without legal impediment. *This development aligns Nigeria's corporate framework with international best practices where single-member companies are widely recognized in jurisdictions such as the United Kingdom, South Africa, and the European Union.*¹³⁴ Unlike traditional corporate structures where ownership and management may be separated, the sole shareholder often doubles as the director and controlling mind of the company. This fusion of roles simplifies decision-making and enhances operational

¹³² Suit No. FHC/ABJ/CS/665/2023, judgment delivered 30 July 2024.

¹³³ Olaniwu Ajayi, 'Federal High Court Validates Single Shareholder Transition For Legacy Private Companies' *OALP Enterprises News Letter*, (2024) <<https://www.olaniwunajayi.net/wp-content/uploads/2024/08/>> Assessed 24 December 2025.

¹³⁴ E. Adedayo, (note 7), 1-3.

efficiency, as there is no need for formal meetings or collective resolutions. However, it simultaneously eliminates internal checks and balances typically associated with corporate governance, such as board oversight and shareholder monitoring. As a result, concerns arise regarding accountability, transparency, and the potential misuse of corporate powers.¹³⁵

Notwithstanding these advantages, single shareholder companies are inherently exposed to risks arising from their one-person structure. The concentration of ownership increases the likelihood of the company being treated as the alter ego of the sole shareholder, thereby raising the risk of courts lifting the corporate veil in cases of fraud or abuse. Furthermore, the death, incapacity, or insolvency of the sole shareholder may significantly disrupt the continuity of the company, creating uncertainty for creditors, employees, and other stakeholders. The absence of internal governance mechanisms also heightens the risk of mismanagement and reduces the level of scrutiny over corporate decisions. These vulnerabilities underscore the need for robust legal safeguards to ensure that the benefits of single-member companies do not come at the expense of stakeholder protection.¹³⁶

3.0 Succession and Continuity Challenges in Single-Shareholder Companies

The death, incapacity, or insolvency of the sole shareholder presents one of the most significant challenges for single-shareholder companies in Nigeria. Section 18(2) CAMA 2020 provides that “Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies”.¹³⁷

While this allows for single-member incorporation, the statute does not explicitly address continuity in the event of the shareholder’s death or incapacity. Elizabeth Adedayo notes that although the Federal High Court has clarified that private companies incorporated under the

¹³⁵ Organisation for Economic Co-operation and Development (OECD), *G20/OECD Principles of Corporate Governance* (OECD Publishing 2015), 56-58<
https://www.ecgi.global/sites/default/files/codes/documents/g20_oecd_cg_principles_5sep2015_en.pdf>Accessed 12 January 2026.

¹³⁶ Davies P. and Worthington S., *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell, 2016); see also CAMA 2020, ss. 18(2), 571(c).

¹³⁷ CAMA 2020, s. 18(2).

repealed CAMA 1990 can validly transition to single-shareholder structures,¹³⁸ the legislation remains silent on succession mechanisms to preserve operational continuity.¹³⁹

Secondly, the incapacity or insolvency of the sole shareholder further complicates administration. Under section 105 CAMA 2020, it states that:

“(1) A subscriber of the memorandum of a company shall be deemed to have agreed to become a member of the company, and on its registration shall be entered as a member in its register of members. (2) Every other person who agrees in writing to become a member of a company, and whose name is entered in its register of members, is a member of the company. (3) In the case of a company having a share capital, each member is a shareholder of the company and shall hold at least one share, except in relation to a company that has only one shareholder.”¹⁴⁰

Membership being tied to shareholding suggests that, upon incapacity, personal representatives or legal heirs may need to step in to exercise the shareholder’s rights and ensure continuity. However, the absence of requirements for annual general meetings (ss. 237 & 240 CAMA 2020) and exemptions from filing annual returns (s. 421 CAMA 2020) limit oversight, creating potential operational risks.¹⁴¹

The transmission of shares is another critical area. Section 571(c) CAMA 2020, which allows the court to wind up a company if the number of members is reduced below two in the case of companies with more than one shareholder, does not apply to private companies permitted to have a single shareholder under section 18(2).¹⁴² This ensures that single-shareholder companies are not automatically dissolved if membership falls below two, yet the Act does not prescribe

¹³⁸ E. Adedayo, (note 7), 2–3.

¹³⁹ Ibid.

¹⁴⁰ CAMA 2020, s. 105.

¹⁴¹ CAMA 2020, ss. 237, 240, 421; Elizabeth Adedayo, (note 5), 3.

¹⁴² CAMA 2020, s. 571(c); Adedayo, 2024, p. 3

how shares should be transmitted upon death or incapacity of the sole shareholder, leaving a regulatory gap.¹⁴³

The role of personal representatives is thus crucial in bridging this gap. Adewumi et al. argue that in the absence of explicit statutory guidance, Nigerian single-shareholder companies are exposed to uncertainty, especially since they are not required to file annual returns or hold general meetings, unlike small companies (ss. 237, 240 & 421).¹⁴⁴ They recommend a legislative amendment to include mechanisms similar to the UK Companies Act 2006, which provides for registration of sole members (s. 123), contracts involving sole-member directors (s. 231), and the application of general company law to single-member companies with necessary modifications (s. 38).¹⁴⁵

The comparative study emphasizes that the UK framework ensures perpetual succession, continuity of governance, and clarity in share transmission, mitigating the operational risks inherent in the Nigerian system.¹⁴⁶ The Nigerian statute, though revolutionary in recognizing single-member companies, remains deficient in addressing the succession and continuity challenges that may arise from the death, incapacity, or insolvency of the sole shareholder.¹⁴⁷

4.0 Legal Framework under CAMA 2020: Relevant Provisions, Gaps and Ambiguities

The legal recognition of single-shareholder companies in Nigeria is anchored on the CAMA 2020, which marks a clear departure from the traditional two-member requirement under the repealed CAMA 1990. By virtue of the enabling section (i.e. 18(2)), the Act permits the formation of private companies with a single member, thereby establishing the statutory foundation for sole ownership structures and advancing the objective of ease of doing business.¹⁴⁸ This position is reinforced by section 105, which defines membership and accommodates the existence of a

¹⁴³ T.A. Adewumi, *et al*, (note 4) pp. 15–16.

¹⁴⁴ *Ibid.*, pp. 14–15.

¹⁴⁵ UK Companies Act 2006, ss. 38, 123, 231; Adewumi et al., 2026, pp. 17–18.

¹⁴⁶ T.A. Adewumi *et al*, (note 4) 17–19.

¹⁴⁷ *Ibid.*, p. 19.

¹⁴⁸ CAMA 2020, s. 18(2).

company with only one shareholder, confirming the legitimacy of single-member corporate entities.¹⁴⁹

Beyond recognition, the Act introduces administrative flexibilities applicable to single-member and small companies. In particular, the exemption from holding annual general meetings under sections 237 and 240, as well as the relaxation of annual return obligations under section 421, reflects a deliberate attempt to reduce regulatory burdens and simplify corporate operations.¹⁵⁰

While these provisions enhance efficiency and encourage entrepreneurship, they also diminish formal oversight mechanisms, thereby raising concerns regarding accountability, transparency, and regulatory supervision. As earlier observed in relation to succession and continuity challenges, the absence of such governance structures may expose single-shareholder companies to operational vulnerabilities.¹⁵¹

A significant source of interpretive difficulty within the statutory framework arises from section 571(c), which provides that a company may be wound up where its membership falls below two in the case of companies originally formed with more than one member.¹⁵² Prior to judicial clarification, this provision created uncertainty as to whether existing companies could lawfully transition into single-member structures without risking dissolution. This ambiguity was resolved in *Primetech Design and Engineering Nigeria Ltd & Julius Berger Nigeria Plc v Corporate Affairs Commission*¹⁵³, where the Federal High Court held that the single-member regime applies to all private companies irrespective of their incorporation date, and that the winding-up provision does not extend to companies legally permitted to operate with one member. The decision thus aligns the interpretation of CAMA 2020 with its reform-oriented purpose and eliminates a major obstacle to the practical adoption of single-shareholder structures.

Notwithstanding these advancements, the legal framework under CAMA 2020 remains characterized by notable gaps and ambiguities. First, there is no express provision dealing specifically with succession in single-shareholder companies, particularly in situations involving death, incapacity, or insolvency of the sole member. While general principles of share

¹⁴⁹ CAMA 2020, s. 105.

¹⁵⁰ CAMA 2020, ss. 237, 240, 421.

¹⁵¹ See Section 3 above; T.A. Adewumi *et al*, (note 4) pp 16–17.

¹⁵² CAMA 2020, s. 571(c).

¹⁵³ Suit No. FHC/ABJ/CS/665/2023, judgment delivered 30 July 2024.

transmission may apply, the absence of tailored statutory guidance creates uncertainty and may hinder continuity in practice.¹⁵⁴ Secondly, the Act does not provide a comprehensive framework for corporate governance in single-member companies, especially in light of the fusion of ownership and control. This raises legitimate concerns regarding the potential abuse of corporate personality and the lack of internal checks and balances.¹⁵⁵

Furthermore, the combined effect of exemptions from annual general meetings and certain compliance obligations contributes to a regulatory vacuum. Adewumi et al. observe that the absence of specific administrative and monitoring mechanisms for single-shareholder companies weakens corporate oversight and may undermine investor confidence.¹⁵⁶ Similarly, Adedayo notes that the initial uncertainty surrounding the interaction between key provisions of CAMA 2020 illustrates the broader issue of legislative incompleteness in the regulation of single-member entities.¹⁵⁷

Comparative experience from jurisdictions such as the United Kingdom demonstrates that these challenges are not insurmountable. The UK Companies Act 2006 contains detailed provisions governing single-member companies, including requirements for recording decisions of the sole member and ensuring proper documentation of transactions, thereby promoting accountability and continuity.¹⁵⁸ The absence of equivalent provisions in CAMA 2020 highlights the need for further legislative refinement in Nigeria.

In summary, while CAMA 2020 has made commendable progress by formally recognizing and facilitating single-shareholder companies, the existing legal framework remains inadequate in critical respects. The Act provides a foundational structure for their existence but falls short in addressing key issues relating to succession, governance, and regulatory oversight. Addressing these deficiencies is essential to ensure that the benefits of single-shareholder companies are not undermined by structural and legal uncertainties.

5.0 Creditors' Protection Concerns in Single-Shareholder Companies

¹⁵⁴ T.A. Adewumi, *et al.* (note 4) 15–16.

¹⁵⁵ OECD, *G20/OECD Principles* (note 13), 56–58.

¹⁵⁶ T.A. Adewumi, *et al.* (note 4) 18–19.

¹⁵⁷ E. Adedayo, (note 7) 2–3.

¹⁵⁸ UK Companies Act 2006, ss. 123, 281; T.A. Adewumi, *et al.* (note 4) 17–18.

The emergence of single-shareholder companies under the CAMA 2020 raises significant concerns regarding the protection of creditors, particularly in light of the concentration of ownership and control in a single individual. Unlike traditional corporate structures where internal checks exist through multiple shareholders and directors, the sole shareholder often functions as both owner and controlling mind of the company. This creates a heightened risk that corporate decisions may be taken primarily in the personal interest of the shareholder, thereby exposing creditors to increased financial vulnerability.¹⁵⁹

A major concern relates to the risk exposure of creditors arising from the potential abuse of the corporate personality. The doctrine of separate legal personality, though fundamental, may be exploited in single-member companies as a shield for improper conduct. In such instances, creditors may find it difficult to recover debts, especially where the company is undercapitalized or used as a mere façade for personal dealings. Although courts retain the power to lift the corporate veil in appropriate circumstances, this remedy is exceptional and often limited in practical application.¹⁶⁰ The absence of multiple stakeholders reduces the likelihood of internal resistance to such abuse, thereby increasing the risk profile of these entities.

Closely related to this is the absence of specific legislative protections in CAMA 2020 for single shareholder companies. Whilst the Act has general provisions that are applicable to all companies, it does not have additional rules for mitigating the risks associated with single shareholder companies. This includes additional disclosure and capital adequacy rules.¹⁶¹ In addition to this, the exemptions that have been granted to small and single-member companies, in terms of corporate governance and disclosure rules, could have the unintended consequence of undermining transparency and the availability of reliable information.¹⁶²

Enforcement challenges further compound creditor protection concerns. Creditors dealing with single-shareholder companies may encounter difficulties in tracing assets, particularly where there is a commingling of personal and corporate finances. The death, insolvency, or incapacity of the sole shareholder may also disrupt recovery processes, thereby prolonging litigation and

¹⁵⁹ OECD, *G20/OECD Principles* (n 13), pp.56-57.

¹⁶⁰ *Salomon v A Salomon & Co Ltd* [1897] AC 22.

¹⁶¹ CAMA 2020, generally

¹⁶² CAMA 2020, ss. 237, 240, 421; T.A. Adewumi *et al*, (note 4) 18–19.

increasing transactional costs.¹⁶³ Although general insolvency and debt recovery mechanisms remain available under Nigerian law, their effectiveness in the context of single-member companies is often constrained by structural limitations inherent in the one-person model.

In summary, while the recognition of single-shareholder companies promotes business flexibility and economic participation, it simultaneously introduces heightened risks for creditors. The absence of tailored statutory safeguards, combined with enforcement difficulties and the potential for abuse of corporate personality, underscores the need for a more robust legal framework that balances entrepreneurial freedom with creditor protection.

6.0 Abuse and Corporate Veil Issues

The recognition of single-shareholder companies under the CAMA 2020 inevitably raises concerns regarding the potential abuse of the corporate form, particularly in relation to the use of the company as a shield against personal liability. While the doctrine of separate legal personality remains a foundational principle of company law, its application in a one-person corporate structure presents unique risks. The fusion of ownership and control increases the likelihood that the company may be treated as an extension of the sole shareholder, thereby blurring the distinction between personal and corporate affairs.

A significant risk in this regard is the use of single-member companies as instruments for fraud or improper conduct. The absence of internal checks, such as independent shareholders or directors, reduces the possibility of accountability and facilitates the misuse of corporate personality for personal gain. This may manifest in practices such as undercapitalization, diversion of corporate assets, or the use of the company to evade existing legal obligations. Although CAMA 2020 contains general provisions aimed at curbing fraudulent conduct, it does not provide specific safeguards tailored to the peculiar vulnerabilities of single-shareholder entities.¹⁶⁴

¹⁶³ T.A. Adewumi *et al*, (note 4) 2–3.

¹⁶⁴ CAMA 2020 recognizes single-member companies (s.18(2)) but contains no specific provisions to address risks unique to such entities. General provisions on fraudulent trading (s.341) and misapplication of property (s.338) apply, but internal safeguards against misuse by a sole shareholder are absent. See discussion above.”

In response to such risks, the courts retain the power of judicial intervention through the lifting (or piercing) of the corporate veil. This principle, established in *Salomon v A Salomon & Co Ltd*,¹⁶⁵ permits courts to disregard the separate legal personality of a company where it is used as a façade to conceal fraud or illegality. Nigerian courts have similarly recognized that the corporate veil may be lifted in circumstances involving abuse of corporate form or where justice so demands.¹⁶⁶ However, this remedy remains exceptional and reactive, often applied only after harm has occurred, and therefore cannot substitute for proactive statutory safeguards.

In summary, while single-shareholder companies enhance business flexibility, they also heighten the risk of corporate abuse and misuse of limited liability. The reliance on judicial veil-lifting as the primary control mechanism underscores the need for more preventive legal and regulatory measures to ensure that the corporate form is not exploited to the detriment of creditors and other stakeholders.

7.0 Comparative and Policy Insights

Comparatively, advanced corporate law jurisdictions have adopted more structured regulatory mechanisms to address the peculiar governance and succession challenges associated with single-member companies. Under the UK Companies Act 2006, decisions of a sole shareholder are required to be formally recorded, while detailed share transmission rules ensure continuity upon the death of the member.¹⁶⁷

Similarly, South Africa's Companies Act 71 of 2008 demonstrates a more precise legislative appreciation of the peculiar nature of single-member companies. Unlike CAMA 2020, which largely subjects sole shareholders to traditional corporate formalities, Section 57(2) of the South African Companies Act expressly exempts a sole shareholder from conventional meeting requirements by allowing the member to exercise voting rights directly without convening formal meetings. This approach removes procedural artificiality and aligns the law with commercial reality. Furthermore, South African law utilizes the flexibility of the Memorandum of Incorporation under Section 15 to permit the proactive designation of alternative or "springing" directors who may immediately assume managerial authority upon the death or

¹⁶⁵ [1897] AC 22.

¹⁶⁶ See e.g. *Gilford Motor Co Ltd v Horne* [1933] Ch 935; *Jones v Lipman* [1962] 1 WLR 832.

¹⁶⁷ UK Companies Act 2006, ss. 123, 281; T.A. Adewumi *et al*, (note 4) 17–18.

incapacity of the founder. Such provisions strengthen business continuity and reduce the vulnerability of small businesses to sudden operational collapse.

United States of America, under statutes such as the Delaware General Corporation Law (DGCL) and various State Limited Liability Company (LLC) Acts, the law dispenses with cumbersome multi-member formalities by permitting “Written Consents in Lieu of Meetings” and highly flexible operating agreements.¹⁶⁸ These mechanisms recognize the practical reality that a single entrepreneur should not be burdened with unnecessary procedural rituals designed for collective decision-making. More importantly, several US jurisdictions allow for succession planning through contractual mechanisms such as the appointment of “Successor Managers” or “Springing Members” who automatically assume control upon the death or incapacity of the founder. Through these arrangements, business continuity is preserved without waiting for probate proceedings.

Although Section 18(2) of CAMA 2020 represents a significant innovation by recognizing Single Shareholder Companies in Nigeria, the legislation does not provide sufficient guidance on critical issues such as governance adaptation, succession planning, and creditor protection. The absence of tailored provisions for sole-member entities may create uncertainty regarding decision-making procedures and corporate continuity upon the death or incapacity of the sole shareholder.

The comparative experiences of the United Kingdom, the United States, and South Africa demonstrate that the effectiveness of single-member company regulation lies not merely in statutory recognition but in the existence of carefully designed safeguards capable of addressing governance continuity, succession planning, and creditor protection. Nigeria must therefore move beyond the mere legalization of Single Shareholder Companies toward the development of a more coherent and adaptive regulatory framework. Legislative reforms introducing express provisions on written resolutions, exemption from unnecessary meeting formalities, nominee or successor director arrangements, and automatic succession mechanisms would significantly enhance legal certainty and corporate stability. Incorporating such safeguards would not only

¹⁶⁸ Delaware Limited Liability Company Act, 6 Delaware Code §§ 18-101 et seq. <<https://delcode.delaware.gov/title6/c018/sc01/>> accessed on 17th May 2026.

strengthen investor and creditor confidence but also align Nigeria's corporate governance regime with emerging international best practices.¹⁶⁹

8.0 Recommendations for Reform

- i. **Clear Succession Rules:** In light of the identified challenges associated with single-shareholder companies under the Companies and Allied Matters Act 2020 (CAMA 2020), there is a need for explicit statutory provisions governing **succession and continuity**. The Act should address situations involving the death, incapacity, or insolvency of the sole shareholder by providing for automatic transmission of shares, interim management arrangements, and clearly defined roles for personal representatives. Such reforms would reduce legal uncertainty, ensure business continuity, and protect the interests of creditors and other stakeholders.¹⁷⁰
- ii. **Creditor Safeguards:** There is also a pressing need to strengthen creditor protection mechanisms in single-member companies. Given the heightened risk of abuse arising from the concentration of ownership and control, the law should introduce enhanced disclosure obligations, minimum capital requirements, and stricter rules against asset diversion and undercapitalization. In addition, clearer and more enforceable provisions on fraudulent and wrongful trading would help prevent the misuse of the corporate form as a shield against legitimate liabilities. While the OECD Principles do not explicitly address single-member companies, they emphasize that creditors are key stakeholders whose rights and enforceability matter.¹⁷¹ Applying these principles to sole-shareholder firms suggest the need for enhanced disclosure, capital requirements, and stricter rules to prevent asset diversion and abuse of the corporate form.
- iii. **Regulatory Oversight:** Finally, improving regulatory oversight and corporate governance standards is essential. The absence of internal checks and balances in single-shareholder companies necessitates the introduction of basic governance safeguards, including proper

¹⁶⁹ E. Adedayo, (note 7)2–3.

¹⁷⁰ T.A. Adewumi *et al*, (note 4) 16–17.

¹⁷¹ OECD, *Principles of Corporate Governance* (2015), (note 13), pp 41-42.

documentation of decisions, separation of personal and corporate assets, and periodic financial reporting. Furthermore, the Corporate Affairs Commission should issue detailed guidelines to clarify compliance expectations and ensure consistent supervision. These measures would enhance transparency, accountability, and overall confidence in the operation of single-member companies.¹⁷²

9.0 Conclusion

The legal recognition of single shareholder companies under CAMA 2020 can be seen as a giant step forward in the evolution of corporate law in Nigeria. This change can be viewed as a paradigm shift towards flexibility, entrepreneurship, and the global corporate landscape. However, this article has shown that despite the advantages of single shareholder companies, there are some disadvantages associated with this corporate structure. In this regard, this article has shown that single shareholder companies have some disadvantages, especially when viewed from the perspectives of succession, creditor protection, corporate governance, and the abuse of corporate law. Although some judicial decisions have helped to clarify some of the ambiguities surrounding single shareholder companies, the law, as it currently stands, can be viewed as not being adequately equipped to deal with these disadvantages in a holistic manner. In order to ensure that the advantages of single shareholder companies are not thwarted by some of the disadvantages associated with this corporate structure, there is a need to introduce some reforms into the law.

¹⁷² CAMA 2020, ss. 237, 240, 421; E. Adedayo, (note 7) 3.

MANAGING DIGITAL AND TECHNICAL EVIDENCE IN ELECTORAL DISPUTE RESOLUTION

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ABSTRACT

The rapid integration of Artificial Intelligence (AI) and digital communication technologies into electoral processes has fundamentally transformed the landscape of electoral governance in Africa. This paper examines the implications of these developments for transparency, public confidence, and the management of electoral disputes. It argues that electoral dispute governance can no longer be confined to formal legal processes but must be understood as a continuum shaped by pre-litigation dynamics within the digital public sphere. Platforms such as Facebook, X, Instagram, Tik Tok, and WhatsApp have emerged as critical arenas where electoral outcomes are debated, contested, and legitimised in real time, often preceding formal adjudication. On the one hand, AI offers significant opportunities to enhance electoral transparency through data analytics, auditability, and improved information management systems. On the other hand, it poses serious risks through algorithmic amplification of misinformation, computational propaganda, and the proliferation of synthetic media, all of which can undermine trust in electoral institutions and judicial outcomes. The paper conceptualises “pre-litigation contestation,” highlighting how digital narratives shape the trajectory and legitimacy of electoral disputes. It further examines the role of civic actors in mitigating these risks and proposes a set of policy and institutional reforms aimed at strengthening governance frameworks for AI in elections. It recommends that the effective regulation of AI, grounded in transparency, accountability, and multi-stakeholder collaboration, is essential for sustaining democratic legitimacy in Africa’s evolving digital electoral landscape.

Keywords: *Artificial Intelligence; Algorithmic Amplification; Civic Actors; Electoral Integrity; Misinformation*

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1. Introduction

The integrity of electoral processes in Africa has increasingly become intertwined with the dynamics of digital technology. In recent years, the deployment of electronic voting systems, biometric voter registration, and digital result transmission platforms has transformed the administration of elections across the continent. While these innovations hold significant promise for enhancing efficiency and transparency, they have also introduced new complexities into the governance of electoral disputes. At the centre of this transformation lies Artificial Intelligence (AI), which is rapidly reshaping how electoral information is generated, disseminated, and contested.¹ Traditionally, electoral dispute resolution was largely confined to formal institutional arenas (electoral commissions, tribunals, and courts of law). However, the emergence of digital communication ecosystems has fundamentally altered this landscape. Platforms such as Facebook, X, Instagram, and WhatsApp now function as parallel arenas where electoral outcomes are debated, legitimised, or delegitimised in real time.² In this context, electoral disputes no longer begin with the filing of petitions; they often originate in the digital public sphere, where narratives are shaped, amplified, and contested long before they reach formal adjudicatory bodies.

Artificial Intelligence plays a dual and paradoxical role within this evolving ecosystem. On the one hand, AI-driven tools offer opportunities to strengthen electoral transparency through real-time data analysis, anomaly detection, and improved information management systems. These capabilities can enhance the credibility of electoral processes and support more efficient dispute resolution mechanisms.³ On the other hand, the same technologies underpinning AI, particularly algorithmic content curation and automated amplification, can exacerbate the spread of misinformation and disinformation. In highly contested electoral environments, such dynamics can intensify public distrust, polarise political discourse, and undermine confidence in both

¹ S Wachter, B Mittelstadt and L Floridi, 'Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation' [2017] 7 (2) *International Data Privacy Law* 76; M Veale and F Zuiderveen Borgesius, 'Demystifying the Draft EU Artificial Intelligence Act' [2021] 22 (4) *Computer Law Review International*, 97.

² N Cheeseman, G Lynch and J Willis, *The Moral Economy of Elections in Africa: Democracy, Voting and Virtue* (Cambridge University Press 2021); T Nyabola, *Digital Democracy, Analogue Politics: How the Internet Era is Transforming Politics in Kenya* (Zed Books 2018).

³ International Institute for Democracy and Electoral Assistance, *Elections and Technology: The Impact of Digital Tools on Electoral Integrity* (International IDEA 2021); S Ebbe, 'Electronic Voting and the Challenges of Electoral Integrity in Nigeria' [2022] 6 (1) *Nigerian Journal of Electoral Law* 45.

electoral institutions and judicial outcomes.⁴ The implications of these developments are particularly profound in African democracies, where electoral legitimacy is often fragile and public trust in institutions remains uneven. The rapid diffusion of digital technologies has outpaced the development of corresponding regulatory, institutional, and ethical frameworks for their governance. As a result, electoral dispute governance is increasingly influenced by forces that operate outside traditional legal and institutional controls, raising critical questions about transparency, accountability, and the resilience of democratic systems.⁵

Against this backdrop, this paper examines the intersection of AI, transparency, and public confidence in electoral dispute governance in Africa. It interrogates the risks associated with the algorithmic amplification of electoral contestation and misinformation and explores the evolving role of civic actors in fostering transparent and trustworthy digital dispute ecosystems. The paper contends that while AI has the potential to enhance electoral integrity, its unregulated or poorly governed use may deepen existing challenges of mistrust and contestation unless deliberate efforts are made to align technological innovation with principles of transparency, accountability, and participatory governance.

2. Artificial Intelligence and Electoral Transparency

The integration of AI into electoral processes presents significant opportunities for enhancing transparency, accountability, and efficiency in electoral governance across Africa. While much of the current discourse is dominated by concerns about misinformation and digital manipulation, it is equally important to recognise that AI, if properly designed, regulated, and deployed, can serve as a critical enabler of electoral integrity. The challenge, therefore, is not the technology itself, but the governance frameworks within which it operates. At its core, electoral transparency requires that the processes through which votes are cast, counted, transmitted, and adjudicated are verifiable, auditable, and publicly intelligible.⁶ In many African jurisdictions, historical

⁴ W L Bennett and S Livingston, 'The Disinformation Order: Disruptive Communication and the Decline of Democratic Institutions' [2018] 33 (2) *European Journal of Communication* 122; C Ireton and J Posetti (eds), *Journalism, "Fake News" and Disinformation: Handbook for Journalism Education and Training* (UNESCO 2018).

⁵ African Union, *African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention)* (2014); Economic Community of West African States, *Supplementary Protocol on Democracy and Good Governance* (2001); Centre for Democracy and Development, *Fake News, Hate Speech and Nigeria's 2019 General Elections* (CDD 2019).

⁶ P Norris, *Why Electoral Integrity Matters* (Cambridge University Press 2014) 21-25.

challenges such as opaque result collation processes, delays in result transmission, and limited access to electoral data have contributed to public distrust and recurrent electoral disputes.⁷ AI-driven systems offer the potential to address these deficits by introducing new layers of data-driven verification and real-time oversight.

One of the most significant contributions of AI lies in its capacity for real-time data analysis and anomaly detection. Machine learning algorithms can be deployed to monitor voting patterns, turnout rates, and result transmission flows to identify irregularities that may indicate fraud, suppression, or administrative error.⁸ For instance, statistical models can flag improbable turnout spikes or inconsistencies between polling unit results and aggregated totals, thereby enabling electoral management bodies (EMBs) to respond promptly and transparently. In this sense, AI can function as an *early warning system*, reducing the likelihood that disputes escalate into protracted legal or political crises. Closely related to this is the role of AI in enhancing the auditability of electoral processes. Traditional electoral systems often rely on manual verification mechanisms that are time-consuming and susceptible to human error or manipulation. By contrast, AI-enabled systems can generate detailed audit trails, tracking every stage of the electoral process, from voter accreditation to final result declaration.⁹ Such auditability is particularly important in the context of electoral dispute resolution, where the availability of reliable and verifiable data can significantly influence judicial outcomes. In jurisdictions like Nigeria and Kenya, courts have increasingly relied on documentary and digital evidence in adjudicating election petitions, underscoring the need for robust and trustworthy data systems.¹⁰

Apart from process integrity, AI also has the potential to enhance institutional transparency through improved information management and public communication. Electoral commissions can deploy AI tools to organise, analyse, and disseminate electoral data in user-friendly formats, thereby improving public access to information. Open data portals, interactive dashboards, and

⁷ N Cheeseman and B Klaas, *How to Rig an Election* (Yale University Press 2018) 3-15; J Aiyede, 'Electoral Reforms in Nigeria: Challenges and Prospects' [2015] 9 (1) *Journal of African Elections* 1.

⁸ M A Alvarez, T E Hall and S D Hyde, *Election Fraud: Detecting and Deterring Electoral Manipulation* (Brookings Institution Press 2008) 45-60; S Birch, *Electoral Malpractice* (Oxford University Press 2011).

⁹ International Institute for Democracy and Electoral Assistance, *Introducing Electronic Voting: Essential Considerations* (International IDEA 2011); A Gelb and J Clark, *Identification for Development: The Biometrics Revolution* (Center for Global Development 2013).

¹⁰ *Raila Odinga v Independent Electoral and Boundaries Commission* Petition No 1 of 2017 (Supreme Court of Kenya); *Aminu Tambuwal v Independent National Electoral Commission* (2015) 18 NWLR (Pt 1491) 251.

automated reporting systems can demystify electoral processes and reduce the information asymmetry that often fuels suspicion and contestation.¹¹ In this regard, transparency is not merely about making data available, but about ensuring that such data is accessible, comprehensible, and verifiable by stakeholders, including political parties, civil society organisations, and the general electorate. Another important dimension is the application of AI in electoral dispute resolution and judicial processes. AI-assisted legal research tools can support judges and tribunal members in analysing large volumes of electoral petitions, identifying relevant precedents, and ensuring consistency in decision-making.¹² In complex electoral disputes, often characterised by extensive documentary evidence, witness testimonies, and technical data, AI can enhance the efficiency and quality of adjudication. However, this must be approached with caution to avoid over-reliance on automated systems in contexts that require nuanced legal reasoning and appreciation of local realities.

Notwithstanding these opportunities, the deployment of AI in electoral governance raises critical questions regarding transparency, explainability, and accountability. AI systems, particularly those based on complex machine learning models, often operate as “black boxes,” making it difficult for stakeholders to understand how decisions are reached.¹³ In the electoral context, this opacity can undermine rather than enhance trust, especially where electoral outcomes are contested. It is therefore imperative that AI systems used in elections adhere to the principle of explainable AI (XAI), ensuring that their operations can be understood and scrutinised by both experts and laypersons.¹⁴ Furthermore, the effectiveness of AI in promoting electoral transparency is contingent on the institutional capacity and regulatory environment within which it is deployed. Many African EMBs face resource constraints, limited technical expertise, and weak regulatory frameworks governing digital technologies.¹⁵ Without adequate safeguards, the introduction of AI may inadvertently create new vulnerabilities, including data breaches, system manipulation, and unequal access to electoral information. Consequently, the adoption of AI

¹¹ H Scholl and M Janssen, ‘Open Data, Open Government, and E-Government: A Literature Review’ [2014] 32 (4) *Government Information Quarterly* 343.

¹² R Susskind, *Online Courts and the Future of Justice* (Oxford University Press 2019) 61-85.

¹³ F Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015) 4

¹⁴ D Castelvechi, ‘Can We Open the Black Box of AI?’ [2016] 538 *Nature* 20; B Mittelstadt and others, ‘The Ethics of Algorithms: Mapping the Debate’ [2016] 3 (2) *Big Data & Society*.

¹⁵ United Nations Economic Commission for Africa, *Governing Artificial Intelligence in Africa: Policy and Capacity Needs* (UNECA 2021); African Union, *Continental Artificial Intelligence Strategy* (2024).

must be accompanied by investments in capacity building, legal reforms, and multi-stakeholder oversight mechanisms.

Obviously, AI holds considerable promise as a tool for enhancing electoral transparency and strengthening public confidence in electoral governance. Its capacity for real-time analysis, auditability, and improved information dissemination can address longstanding challenges that have undermined electoral credibility in many African states. However, these benefits are neither automatic nor guaranteed. They depend fundamentally on the existence of robust governance frameworks that prioritise transparency, accountability, and inclusivity. Absent such frameworks, the very technologies designed to enhance trust may instead deepen suspicion and contestation.

3. Risks of Algorithmic Amplification and Electoral Misinformation

While AI offers important opportunities for enhancing electoral transparency, it simultaneously introduces profound risks that may undermine public confidence and destabilise electoral dispute governance. Chief among these risks is the phenomenon of algorithmic amplification, through which digital platforms prioritise and disseminate content based on engagement metrics rather than veracity or public interest. In the context of elections, this dynamic can significantly distort the information environment, shaping perceptions of legitimacy and influencing the trajectory of electoral disputes even before they enter formal adjudicatory processes. At the heart of algorithmic amplification is the logic of attention optimisation. Social media platforms deploy AI-driven recommender systems designed to maximise user engagement by promoting content that is likely to provoke strong emotional reactions.¹⁶ In politically charged environments, this often results in the prioritisation of sensational, polarising, or misleading content, including unverified claims of electoral fraud, manipulated results, or institutional bias.¹⁷ The consequence is the rapid diffusion of narratives that may lack factual foundation but nonetheless acquire widespread acceptance through repeated exposure. This dynamic is particularly problematic in African electoral contexts, where structural factors such as low levels of media literacy, limited access to verified information, and pre-existing distrust in state institutions create fertile ground

¹⁶ T Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* (Yale University Press 2018).

¹⁷ Z Tufekci, 'YouTube, the Great Radicalizer' *The New York Times* (10 March 2018); S Vaidhyanathan, *Antisocial Media: How Facebook Disconnects Us and Undermines Democracy* (Oxford University Press 2018).

for the spread of misinformation.¹⁸ Existing studies demonstrate that false information tends to spread more rapidly and widely than accurate information, especially when it aligns with existing political biases or grievances.¹⁹ In such environments, algorithmic amplification does not merely reflect public sentiment; it actively shapes and intensifies it, often in ways that are detrimental to democratic stability.

The rise of computational propaganda further exacerbates these risks. Political actors and interest groups increasingly deploy automated accounts (bots), coordinated networks, and targeted advertising strategies to manipulate online discourse during electoral periods.²⁰ These techniques enable the artificial inflation of narratives, creating the illusion of widespread support or outrage. In electoral disputes, this can translate into the rapid construction of competing “truth claims,” each backed by seemingly credible digital evidence, thereby complicating the task of adjudication and undermining the authority of electoral institutions. A related and increasingly concerning development is the use of synthetic media and deepfakes. Advances in AI have made it possible to generate highly realistic audio, video, and image content that can misrepresent candidates, electoral officials, or events.²¹ In the context of elections, such materials can be used to fabricate evidence of misconduct, incite violence, or delegitimise electoral outcomes. The evidentiary implications are significant: as the line between authentic and manipulated content becomes increasingly blurred, courts and tribunals may face heightened challenges in assessing the credibility and admissibility of digital evidence.²²

The impact of these dynamics on electoral dispute governance is both direct and indirect. Directly, misinformation and manipulated content may be introduced as evidence in electoral petitions, requiring courts to engage with complex technical questions relating to authenticity, chain of custody, and forensic verification.²³ Indirectly, and perhaps more significantly, the

¹⁸ T Nyabola, *Digital Democracy, Analogue Politics: How the Internet Era is Transforming Politics in Kenya* (Zed Books 2018); Centre for Democracy and Development, *Fake News, Hate Speech and Nigeria's 2019 General Elections* (CDD 2019).

¹⁹ S Vosoughi, D Roy and S Aral, ‘The Spread of True and False News Online’ [2018] 359 (6380) *Science* 1146.

²⁰ P N Howard and S Bradshaw, ‘The Global Disinformation Order: 2019 Global Inventory of Organised Social Media Manipulation’ (Oxford Internet Institute 2019).

²¹ R Chesney and D Citron, ‘Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security’ [2019] 107 (6) *California Law Review* 1753.

²² L Edwards and M Veale, ‘Slave to the Algorithm? Why a Right to an Explanation Is Probably Not the Remedy You Are Looking For’ [2017] 16 (1) *Duke Law & Technology Review* 18.

²³ S Mason and D Seng, *Electronic Evidence* (5th edn, Institute of Advanced Legal Studies 2021).

digital information environment shapes the context within which disputes are adjudicated. Judges and tribunal members do not operate in a vacuum; they are embedded within societies where public opinion is increasingly influenced by digital narratives. Where such narratives are saturated with misinformation, there is a risk that judicial outcomes, regardless of their legal soundness, may be perceived as illegitimate or biased. Moreover, algorithmic amplification contributes to the phenomenon of premature electoral delegitimisation, whereby electoral outcomes are rejected in the court of public opinion before official results are declared or judicial processes are concluded.²⁴ This erosion of temporal discipline in electoral governance, whereby the sequence of voting, counting, declaration, and adjudication is disrupted by real-time digital contestation, poses a serious challenge to the rule of law. It undermines the authority of constitutionally established mechanisms for dispute resolution and increases the likelihood of extra-legal responses, including protests and, in extreme cases, violence.

The regulatory response to these challenges remains uneven and, in many African jurisdictions, underdeveloped. Existing legal frameworks governing elections, evidence, and communications were largely designed for analogue contexts and are often ill-equipped to address the complexities of AI-driven information ecosystems.²⁵ While some countries have introduced legislation targeting cybercrime and misinformation, such measures frequently raise concerns about overreach, censorship, and the potential suppression of legitimate political expression.²⁶ This creates a delicate balancing act: the need to combat harmful misinformation without undermining fundamental rights such as freedom of expression and access to information. Importantly, the risks associated with algorithmic amplification are not solely technological; they are also institutional and political. Weak regulatory oversight of digital platforms, limited transparency in algorithmic decision-making, and the absence of effective accountability mechanisms all contribute to an environment in which harmful content can proliferate with minimal constraint.²⁷ To navigate these challenges, there is a need for a holistic approach that

²⁴ N Cheeseman, B Klaas and others, 'Elections and Electoral Violence in Africa' [2020] *African Affairs* 1; Norris (n 6).

²⁵ E Aiyede, 'Electoral Laws and the Challenges of Democratic Consolidation in Nigeria' [2016] 10 (2) *Journal of African Elections* 1.

²⁶ African Commission on Human and Peoples' Rights, *Declaration of Principles on Freedom of Expression and Access to Information in Africa* (2019).

²⁷ Pasquale (n 13) 3-5

goes beyond technical fixes to encompass legal reform, institutional strengthening, and multi-stakeholder collaboration.

While AI has the potential to enhance electoral processes, its role in shaping the digital information environment presents significant risks to electoral integrity and dispute governance. Algorithmic amplification, computational propaganda, and synthetic media collectively contribute to a landscape in which misinformation can thrive, public trust can erode, and the legitimacy of electoral outcomes can be contested even in the absence of substantive irregularities. The task for policymakers, electoral bodies, and civic actors is to mitigate these risks through frameworks that promote transparency, accountability, and resilience in the face of rapidly evolving technological challenges.

4. Electoral Dispute Governance in the Digital Age

Electoral dispute governance has traditionally been conceived as a post-election, institutionally bounded process, unfolding within the formal confines of electoral commissions, tribunals, and courts. However, the digital transformation of political communication has fundamentally altered both the timing and terrain of electoral disputes. In contemporary African democracies, disputes are no longer initiated solely through formal petitions; rather, they are increasingly prefigured, constructed, and escalated within the digital public sphere before any legal action is commenced.²⁸ This shift necessitates a reconceptualisation of electoral dispute governance as a continuum that begins well before litigation and extends beyond formal adjudication. At the core of this transformation is the emergence of what may be described as “pre-litigation contestation”; a phase in which electoral grievances are articulated, amplified, and legitimised through digital platforms prior to their formalisation in legal processes. Social media platforms have become central arenas for this form of contestation.²⁹ Political actors, supporters, and commentators deploy these platforms to frame electoral narratives, circulate allegations of irregularities, and mobilise public opinion. In doing so, they effectively set the evidentiary and rhetorical agenda for subsequent legal disputes. This development reflects a broader shift in democratic accountability, where informal, networked forms of scrutiny coexist with, and sometimes rival,

²⁸ N Cheeseman, G Lynch and J Willis, *The Moral Economy of Elections in Africa: Democracy, Voting and Virtue* (Cambridge University Press 2021) 45-52.

²⁹ T Nyabola, *Digital Democracy, Analogue Politics: How the Internet Era is Transforming Politics in Kenya* (Zed Books 2018) 88-110.

formal institutional mechanisms.³⁰ Digital platforms enable rapid dissemination of electoral information, including polling unit results, videos of alleged malpractice, and unofficial tallies. While such practices can enhance transparency, they also create conditions in which unverified or misleading claims gain traction, often outpacing the capacity of electoral authorities to provide authoritative information.³¹ The result is a fragmented informational environment in which competing narratives of electoral legitimacy emerge simultaneously.

The implications for electoral dispute governance are profound. First, the temporal structure of disputes has been fundamentally altered. Traditionally, disputes followed a linear sequence: voting, counting, declaration, and adjudication. In the digital age, however, contestation begins during the voting and counting processes, with real-time commentary and analysis shaping perceptions of credibility.³² By the time results are officially declared, public opinion may already be entrenched, making it more difficult for formal institutions to assert authority over the narrative of electoral truth. Second, digital pre-litigation dynamics influence the substantive content of legal disputes. Allegations that originate online often find their way into formal petitions, sometimes accompanied by digital evidence such as screenshots, videos, and data extracts.³³ This raises complex evidentiary questions regarding authenticity, reliability, and admissibility. Courts are increasingly required to engage with electronic evidence, necessitating the development of new judicial competencies and procedural standards.³⁴ In jurisdictions such as Nigeria and Kenya, electoral tribunals have grappled with these issues, highlighting both the potential and the limitations of digital evidence in resolving electoral disputes.³⁵ Third, the digital environment shapes the strategic behaviour of political actors. Electoral contestants are no longer confined to legal arguments; they also engage in narrative construction and public persuasion through digital channels.³⁶ By framing disputes in terms of injustice, fraud, or institutional bias, actors can mobilise supporters and exert pressure on adjudicatory bodies. This

³⁰ M Castells, *Networks of Outrage and Hope: Social Movements in the Internet Age* (2nd edn, Polity Press 2015) 3-12.

³¹ Centre for Democracy and Development, *Fake News, Hate Speech and Nigeria's 2019 General Elections* (CDD 2019).

³² Norris (n 6) 123-130.

³³ Mason and Seng (n 23) 45-60.

³⁴ *ibid* 61-75.

³⁵ *Raila Odinga v Independent Electoral and Boundaries Commission* Petition No 1 of 2017 (Supreme Court of Kenya); *Atiku Abubakar v Independent National Electoral Commission* (2023) LPELR-60067(SC).

³⁶ N Cheeseman and B Klaas, *How to Rig an Election* (Yale University Press 2018) 156-170.

dual-track strategy, legal and communicative, blurs the boundaries between law and politics, raising concerns about the independence of judicial processes and the potential for trial by public opinion.

A further dimension of this transformation is the role of data and technology in evidentiary production. Digital electoral systems generate vast quantities of data, including biometric records, transmission logs, and server information. In principle, such data can enhance the objectivity of dispute resolution by providing verifiable evidence of electoral processes.³⁷ In practice, however, access to and interpretation of this data often become contested issues in themselves. Disputes may arise over the integrity of electronic systems, the transparency of algorithms, and the availability of backend data to parties and the courts.³⁸ The Kenyan Supreme Court's decision in *Raila Odinga v Independent Electoral and Boundaries Commission*³⁹ is particularly instructive in this regard, as it underscored the centrality of technological transparency and auditability in determining electoral validity. Moreover, the digitalisation of electoral processes has introduced new forms of epistemic uncertainty into dispute governance. Where multiple sources of information (official results, parallel vote tabulations, social media reports) coexist, determining the authoritative account of electoral events becomes increasingly complex.⁴⁰ This uncertainty can erode public confidence, particularly where institutional responses are perceived as slow, opaque, or inconsistent. In such contexts, the legitimacy of electoral outcomes is shaped not only by legal correctness but also by perceived informational credibility.

The regulatory and institutional frameworks governing electoral disputes have struggled to keep pace with these developments. Many electoral laws in African countries were designed for analogue contexts and do not adequately address issues such as digital evidence, online misinformation, or platform accountability.⁴¹ While some jurisdictions have begun to adapt their legal frameworks, significant gaps remain, particularly in relation to pre-litigation digital conduct. The absence of clear rules governing the use of digital platforms during electoral

³⁷ International Institute for Democracy and Electoral Assistance, *Elections and Technology: The Impact of Digital Tools on Electoral Integrity* (International IDEA 2021).

³⁸ M Veale and F Zuiderveen Borgesius, 'Demystifying the Draft EU Artificial Intelligence Act' [2021] 22 (4) *Computer Law Review International* 97.

³⁹ (n 35)

⁴⁰ S Birch, *Electoral Malpractice* (Oxford University Press 2011) 210-225.

⁴¹ Aiyede, (n 25) 1.

periods creates a permissive environment for the spread of unverified claims and the manipulation of public opinion. Importantly, the transformation of electoral dispute governance in the digital age also raises questions about the balance between transparency and stability. On the one hand, the open exchange of information and the ability of citizens to scrutinise electoral processes are essential components of democratic accountability. On the other hand, the unregulated proliferation of contested narratives can undermine institutional authority and exacerbate political tensions.⁴² The challenge, therefore, lies in designing governance frameworks that harness the transparency-enhancing potential of digital technologies while mitigating their destabilising effects.

Electoral dispute governance in the digital age is no longer confined to the courtroom; it is a multi-stage, multi-actor process that begins in the digital public sphere and evolves through both informal and formal mechanisms. Pre-litigation contestation, shaped by AI-driven information flows and digital communication platforms, plays a decisive role in framing disputes, influencing legal strategies, and shaping public perceptions of legitimacy. Understanding and addressing these dynamics is essential for strengthening electoral integrity and ensuring that formal dispute resolution mechanisms remain effective and credible in an increasingly digitalised political environment.

5. The Role of Civic Actors in Supporting Transparent Digital Electoral Dispute Ecosystems

The challenges posed by AI-driven misinformation, algorithmic amplification, and digital contestation cannot be addressed solely through state-centric or technological interventions. Electoral dispute governance in the digital age increasingly depends on a broader constellation of actors operating within what may be described as a “digital electoral integrity ecosystem.” Within this ecosystem, civic actors, including civil society organisations (CSOs), the media, fact-checking networks, academia, and citizen observers, play a critical role in mediating information flows, enhancing transparency, and sustaining public confidence in electoral processes. At a foundational level, civic actors function as intermediaries of trust. In many African democracies, where public confidence in state institutions may be uneven or contested, CSOs and independent

⁴² W L Bennett and S Livingston, ‘The Disinformation Order: Disruptive Communication and the Decline of Democratic Institutions’ [2018] 33 (2) *European Journal of Communication* 122.

media organisations often serve as alternative sources of credible information.⁴³ Their involvement in election observation, parallel vote tabulation (PVT), and independent verification of electoral data provides an additional layer of accountability that complements the work of electoral management bodies (EMBs).⁴⁴ In the digital context, these functions have expanded to include real-time monitoring of online discourse, identification of misinformation trends, and dissemination of verified electoral information.

One of the most significant contributions of civic actors lies in the domain of fact-checking and counter-disinformation initiatives. Across Africa, specialised organisations and collaborative networks have emerged to verify claims circulating on digital platforms and to provide timely corrections. These initiatives are particularly important during electoral periods, when false information can spread rapidly and influence public perceptions of electoral integrity.⁴⁵ By leveraging digital tools, data analytics, and journalistic expertise, fact-checkers can mitigate the effects of algorithmic amplification and reduce the virality of misleading content. However, their effectiveness depends on both speed and reach, as corrective information must compete within the same algorithmically driven environments that favour sensationalism. Closely related to this is the role of civic actors in promoting digital and media literacy. The resilience of electoral systems in the face of misinformation is not determined solely by the supply of accurate information, but also by the capacity of citizens to critically evaluate the information they encounter.⁴⁶ Civic organisations, educational institutions, and community groups therefore play a vital role in equipping citizens with the skills necessary to identify false or misleading content, understand how algorithms shape information exposure, and engage responsibly in digital political discourse. In this sense, digital literacy is a form of preventive electoral governance, reducing the susceptibility of electorates to manipulation.

Civic actors also contribute to electoral transparency through the development and deployment of civic technology (“civic tech”) solutions. These include platforms for crowdsourced election monitoring, incident reporting, and real-time data visualisation. Tools such as election monitoring apps, SMS-based reporting systems, and open-data dashboards enable citizens to

⁴³ L Diamond, ‘Liberation Technology’ [2010] 21 (3) *Journal of Democracy* 69.

⁴⁴ National Democratic Institute, *The Promise and Challenges of Election Technology* (NDI 2016); Norris (n 6)

⁴⁵ C Ireton and J Posetti (eds), *Journalism, “Fake News” and Disinformation: Handbook for Journalism Education and Training* (UNESCO 2018); Africa Check, *Annual Report* (various years).

⁴⁶ R Hobbs, *Digital and Media Literacy: Connecting Culture and Classroom* (Corwin 2011).

participate directly in the oversight of electoral processes.⁴⁷ In several African countries, such innovations have been used to document electoral irregularities, track violence, and provide independent verification of official results. By decentralising information production and verification, civic tech initiatives can enhance both transparency and inclusivity in electoral governance.

In addition to these operational interventions, civic actors play an important role in framework development and advocacy. They contribute to shaping legal and policy frameworks governing the use of AI and digital technologies in elections, often advocating for principles such as transparency, accountability, data protection, and respect for fundamental rights.⁴⁸ In doing so, they act as a counterbalance to both state and corporate power, ensuring that the deployment of technology in electoral contexts aligns with democratic values. This is particularly important in Africa, where regulatory frameworks for AI and digital platforms remain in an evolving and, in some cases, fragmented state. The media, as a distinct category of civic actor, occupies a particularly influential position within the digital electoral ecosystem. Traditional and digital media outlets not only report electoral developments but also shape the narratives through which such developments are interpreted.⁴⁹ In the age of AI-driven information flows, the responsibility of the media extends beyond reporting to include verification, contextualisation, and debunking. Ethical journalism practices, such as source verification, transparency in reporting, and avoidance of sensationalism, are essential for countering the distortions introduced by algorithmic amplification. At the same time, media organisations themselves must adapt to the realities of digital platforms, where speed often competes with accuracy and where economic incentives may inadvertently favour high-engagement content.

Despite their critical role, civic actors face several constraints that limit their effectiveness. These include resource limitations, political pressures, regulatory restrictions, and digital divides.⁵⁰ In some jurisdictions, legal frameworks governing civil society and the media may restrict their ability to operate freely, particularly in politically sensitive contexts such as elections.

⁴⁷ J Goldstein and J Rotich, 'Digitally Networked Technology in Kenya's 2007-2008 Post-Election Crisis' [2008] *Berkman Center Research Publication*; M Bailard, *Democracy's Double-Edged Sword: How Internet Use Changes Citizens' Views of Their Government* (Johns Hopkins University Press 2014).

⁴⁸ African Commission on Human and Peoples' Rights, *Declaration of Principles on Freedom of Expression and Access to Information in Africa* (2019).

⁴⁹ J Stremlau and M Price (eds), *Media, Elections and Democracy in Africa* (Routledge 2009).

⁵⁰ S Gyimah-Boadi, 'Civil Society and Democratic Development in Africa' [1996] 7 (2) *Journal of Democracy* 118.

Additionally, the reach of civic initiatives may be uneven, with rural and marginalised communities often having limited access to digital tools and information. These challenges highlight the need for sustained investment, enabling environments, and cross-sector collaboration. Importantly, the role of civic actors should not be conceptualised in isolation but as part of a broader multi-stakeholder governance framework. Effective responses to the risks of AI in electoral contexts require collaboration between EMBs, the judiciary, technology companies, civil society, and international organisations.⁵¹ Civic actors can facilitate such collaboration by acting as bridges between different stakeholders, fostering dialogue, and promoting shared standards for transparency and accountability. For example, partnerships between CSOs and digital platforms can enhance content moderation during elections, while collaboration with EMBs can improve the dissemination of verified electoral information.

In the context of electoral dispute governance, the contributions of civic actors are particularly significant. By providing independent data, monitoring digital narratives, and promoting public understanding of electoral processes, they help to create an environment in which disputes can be assessed based on evidence rather than misinformation. This, in turn, strengthens the legitimacy of both electoral outcomes and judicial decisions. However, for these contributions to be effective, civic actors must be supported by legal frameworks that protect their independence, as well as by technological infrastructures that enable their work. Civic actors are indispensable to the construction of transparent and trustworthy digital electoral dispute ecosystems in Africa. Their roles in fact-checking, digital literacy, civic technology innovation, and policy advocacy complement and reinforce the efforts of formal institutions. In an era where electoral legitimacy is increasingly contested in the digital sphere, the capacity of civic actors to mediate information, build trust, and promote accountability will be a decisive factor in determining the resilience of democratic processes. Strengthening this capacity is therefore not optional but a central imperative for safeguarding electoral integrity in the age of Artificial Intelligence.

⁵¹ United Nations Development Programme, *Digital Technology and Elections: Policy Guidance Note* (UNDP 2020); International Institute for Democracy and Electoral Assistance, *Electoral Management Design* (International IDEA 2014).

6. Suggesting Policy and Institutional Reforms

The analysis in this paper demonstrates that the intersection of AI, digital communication ecosystems, and electoral dispute governance presents both transformative opportunities and systemic risks. The policy challenge for African democracies is therefore not whether to adopt AI-driven technologies, but how to govern them in ways that enhance transparency, protect electoral integrity, and sustain public confidence. This requires a coordinated, multi-level response that integrates legal reform, institutional capacity-building, technological safeguards, and civic engagement, which are proposed below:

a. Establishing Comprehensive Legal and Regulatory Frameworks for AI in Elections: A foundational priority is the development of clear and coherent legal frameworks governing the deployment of AI and digital technologies in electoral processes. As demonstrated in this paper, existing electoral laws in many African jurisdictions were designed for analogue systems and are often inadequate to address issues such as algorithmic decision-making, digital evidence, and platform accountability. There is therefore a need for targeted legislative reforms that define permissible uses of AI in voter registration, result transmission, and dispute resolution; establish standards for transparency, auditability, and explainability of electoral technologies; regulate the use of digital platforms during electoral periods, particularly in relation to political advertising and misinformation; and provide clear rules on the admissibility and evaluation of electronic evidence in electoral disputes.

Regional instruments such as the African Union's *Convention on Cyber Security and Personal Data Protection (Malabo Convention)* and the Economic Community of West African States's *Supplementary Protocol on Democracy and Good Governance* provide useful foundations but require domestication and contextual adaptation to address AI-specific challenges. Importantly, regulatory frameworks must strike a careful balance between combating harmful misinformation and protecting fundamental rights, including freedom of expression and political participation. Overly restrictive measures risk undermining democratic engagement and may be susceptible to abuse for political purposes.

b. Strengthening Institutional Capacity for Digital Electoral Governance: Legal reforms must be complemented by robust institutional capacity within EMBs, the judiciary, and law enforcement

agencies. The effective governance of AI-driven electoral systems requires both legal authority and technical expertise and organisational readiness. For EMBs, this entails developing in-house expertise in data analytics, cybersecurity, and AI systems; establishing dedicated units for digital monitoring and misinformation response during electoral cycles; enhancing transparency through proactive communication strategies and real-time information dissemination. For the judiciary and electoral tribunals, capacity-building should focus on understanding the technical dimensions of AI and digital evidence; developing procedural guidelines for handling electronic evidence; and ensuring consistency and coherence in judicial approaches to technology-related disputes. Judicial experiences in cases such as *Raila Odinga v Independent Electoral and Boundaries Commission* underscore the importance of technical competence in evaluating digital electoral systems and their impact on the validity of election results.

c. Promoting Transparency and Explainability in Electoral Technologies: A central principle for the governance of AI in elections is transparency, which must extend beyond formal disclosure to include meaningful explainability and auditability. Electoral technologies should be designed in ways that allow stakeholders to understand how decisions are made, how data is processed, and how outcomes are generated. Key measures include requiring independent audits and certification of electoral technologies prior to deployment; mandating the publication of technical specifications, system logs, and audit reports, subject to security considerations; adopting “explainable AI” models where possible, particularly in high-stakes decision-making processes; and ensuring that political parties, observers, and other stakeholders have controlled access to relevant data for verification purposes. Such measures are essential for building trust, particularly in environments where suspicion of electoral manipulation is high. Without transparency, even technically sound systems may be perceived as illegitimate.

d. Regulating Digital Platforms and Mitigating Algorithmic Risks: Given the central role of digital platforms in shaping electoral narratives, there is an urgent need for regulatory engagement with technology companies. Social media platforms operate as *de facto* public spheres, yet their governance structures are largely private and opaque. Policy interventions should aim to enhance algorithmic transparency, particularly in relation to content recommendation systems; require platforms to implement election integrity measures, including rapid response mechanisms for misinformation; promote transparency in political advertising,

including disclosure of sponsors and targeting criteria; and encourage data-sharing arrangements (with appropriate safeguards) to support independent research and oversight. At the same time, governments must avoid heavy-handed regulation that could stifle innovation or infringe on digital rights. A co-regulatory approach, involving collaboration between states, platforms, and civil society, is likely to be more effective and sustainable.

e. Empowering Civic Actors and Strengthening Multi-Stakeholder Collaboration: In view of the pivotal role of civic actors in supporting transparent digital electoral ecosystems, policy frameworks should prioritise the empowerment and protection of civil society organisations, media, and fact-checking networks. This can be achieved through legal protections for the independence and operation of civic actors, funding and capacity-building support for fact-checking and digital literacy initiatives; institutionalised partnerships between EMBs and civil society for information sharing and monitoring; and inclusion of civic actors in the development of electoral technology policies and standards. Multi-stakeholder collaboration is essential for addressing the complex and cross-cutting challenges posed by AI. No single actor, whether state or non-state, possesses the capacity to manage these risks in isolation.

f. Enhancing Public Communication and Trust-Building Mechanisms: Public confidence in electoral processes depends on both substantive integrity and perceptions of transparency and responsiveness. In the digital age, where information circulates rapidly and often unpredictably, electoral authorities must adopt proactive and strategic communication approaches. Such measures real-time publication of election data through accessible digital platforms; rapid response systems to counter misinformation and clarify contested claims; regular engagement with the media and civil society to provide updates and explanations; and development of public education campaigns on electoral processes and the role of technology. Effective communication can mitigate the impact of misinformation and reduce the likelihood that disputes escalate into crises of legitimacy.

g. Investing in Research, Innovation, and Regional Cooperation: There is a need for sustained investment in research and innovation to better understand and respond to the evolving role of AI in electoral processes. African states and regional organisations should support interdisciplinary research that integrates legal, technological, and social perspectives. Regional cooperation is particularly important, given the transnational nature of digital platforms and misinformation

networks. Institutions such as the African Union and the Economic Community of West African States can play a coordinating role in developing continental standards and guidelines for AI in elections; facilitating knowledge-sharing and best practices among member states; and supporting joint initiatives to combat cross-border misinformation.

7. Conclusion and Recommendation

This paper examined the implications of Artificial Intelligence (AI) and digital communication technologies for electoral dispute governance in Africa. It found that the increasing digitalisation of electoral processes has fundamentally altered the manner in which electoral disputes emerge, evolve, and are resolved. Electoral disputes are no longer confined to formal adjudicatory institutions such as electoral commissions, tribunals, and courts; rather, they are increasingly influenced by digital communication platforms where electoral outcomes are debated, contested, and interpreted in real time.

The paper further found that AI presents both opportunities and challenges for electoral integrity. On the positive side, AI-driven technologies can enhance electoral transparency through real-time data analysis, anomaly detection, improved information management, and greater auditability of electoral processes. These capabilities can strengthen the credibility of elections and support more effective dispute resolution mechanisms. However, the study also established that AI-driven algorithmic amplification, misinformation, disinformation, computational propaganda, and synthetic media pose significant threats to public confidence in electoral institutions and judicial outcomes. A further finding of the paper is that the governance of electoral disputes has increasingly become intertwined with the digital information environment. Digital narratives and online contestation often shape public perceptions of electoral legitimacy before formal legal processes commence. Consequently, the effectiveness and credibility of electoral dispute resolution mechanisms are now influenced not only by legal correctness but also by the quality and integrity of the broader information ecosystem.

The paper also established the critical role of civic actors, including civil society organisations, fact-checking networks, election observers, and the media, in promoting transparency, combating misinformation, enhancing digital literacy, and supporting public trust in electoral processes.

Their activities provide an important complement to the work of electoral management bodies and adjudicatory institutions.

In light of these findings, the following recommendations are proposed:

First, African states should develop and update electoral, cyber, and evidence laws to address the growing use of AI and digital technologies in elections. Such frameworks should establish clear standards for the deployment of AI in voter registration, voter accreditation, result transmission, and electoral dispute resolution. They should also provide rules governing digital evidence, algorithmic accountability, transparency obligations, and the use of political advertising on digital platforms. This will help close existing regulatory gaps and ensure that technological innovations operate within clearly defined legal boundaries. Electoral management bodies, courts, and electoral tribunals should strengthen their technical and institutional capacities to manage AI-enabled electoral systems and assess electronic and digital evidence effectively.

Second, electoral management bodies, courts, electoral tribunals, and relevant law enforcement agencies should be equipped with the technical expertise necessary to manage and evaluate AI-driven electoral systems. This requires regular training in digital forensics, cybersecurity, data analytics, and the handling of electronic evidence. Capacity-building initiatives should also focus on improving institutional preparedness to detect technological vulnerabilities, investigate digital electoral complaints, and effectively adjudicate disputes involving technical evidence.

Third, the credibility of technology-driven electoral systems depends largely on public confidence in their operation. Electoral technologies should therefore be subjected to independent testing, certification, and periodic audits before and after deployment. Electoral authorities should also ensure that relevant stakeholders, including political parties, election observers, and adjudicatory bodies, have access to sufficient information to verify the integrity of technological systems. Greater transparency and explainability will reduce suspicion, facilitate accountability, and enhance trust in electoral outcomes.

Fourth, Governments, electoral authorities, technology companies, and civil society organisations should collaborate to address the growing threats posed by misinformation, disinformation, deepfakes, and computational propaganda. Social media platforms should be encouraged to adopt election-specific integrity measures, improve transparency in political advertising, and establish rapid-response mechanisms for identifying and addressing harmful false content. Such measures should, however, be implemented in a manner that respects constitutional guarantees of freedom of expression and access to information.

Fifth, civil society organisations, independent media institutions, election observer groups, and fact-checking organisations should be supported through appropriate legal protections, funding opportunities, and institutional partnerships. Their role in election monitoring, voter education, fact-checking, and digital literacy is critical to promoting transparency and public confidence. Governments and electoral bodies should therefore foster constructive engagement with civic actors as part of a broader multi-stakeholder approach to electoral governance.

Finally, electoral authorities should adopt proactive communication strategies aimed at providing timely, accurate, and accessible electoral information. This includes the real-time dissemination of election-related updates, prompt clarification of contested claims, and the use of digital platforms to engage citizens. At the same time, governments, educational institutions, and civil society organisations should invest in digital and media literacy programmes to enable citizens to critically assess online information, identify misinformation, and participate responsibly in democratic processes. An informed electorate is more resilient to manipulation and better positioned to contribute to credible electoral dispute resolution.

**MISSILES, DRONES AND THE CLIMATE CRISIS: ASSESSING THE
ENVIRONMENTAL IMPACT OF MODERN WARFARE UNDER INTERNATIONAL
LAW**

Khafilat Adedayo Balogun *

Abstract

This article interrogates the environmental and climate consequences of modern warfare technologies, with particular focus on the deployment of missiles and drones in contemporary armed conflicts. While international humanitarian law (IHL) recognizes the need to protect the natural environment during hostilities, its existing framework remains limited and ill-equipped to address the cumulative and long-term environmental harm associated with technologically advanced warfare. The article identifies a critical doctrinal gap: the environmental effects of missile strikes and drone operations, including greenhouse gas emissions, toxic contamination, and ecological disruption, are rarely incorporated into legal assessments of military necessity or proportionality. Drawing on reports from recent conflicts involving large-scale attacks on industrial and energy infrastructure, it demonstrates how contemporary warfare contributes to environmental degradation and intensifies the global climate crisis. Adopting a doctrinal methodology, supplemented by empirical evidence, the article evaluates the adequacy of IHL, international environmental law, and climate law in regulating wartime environmental harm. It argues that existing legal thresholds, particularly the requirement of “widespread, long-term and severe” damage, set an unrealistically high bar, effectively shielding most environmentally harmful military conduct from legal scrutiny. The article concludes that, although international law contains relevant principles, it lacks coherence and effective integration across regimes. It advocates a recalibration of existing frameworks through a more flexible interpretation of proportionality, the systematic inclusion of environmental considerations in military decision-making, and greater transparency in reporting military emissions. Such reforms are necessary to ensure that international law remains responsive to the environmental realities of modern warfare.

Key words: International Humanitarian Law, Armed Conflict, Military Emissions, Environmental Protection, Climate Change.

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Introduction

Missiles and drones are typically discussed in terms of precision, deterrence, or strategic reach. Far less attention is paid to the environmental consequences that follow in their wake. These consequences are not always immediate or easily contained. Emissions released into the atmosphere, toxic contamination, and ecological disruption often unfold over time, extending beyond the site of attack and, in some cases, beyond the temporal boundaries of the conflict itself. Contemporary hostilities, including those involving Iran, Israel and the United States, illustrate how technologically advanced warfare operates at a scale capable of producing both immediate destruction and longer-term environmental harm.¹

International humanitarian law does recognise the need to protect the natural environment during armed conflict. Its existing framework, however, remains largely oriented towards direct and observable damage. The prohibition of widespread, long-term and severe environmental harm, alongside the incorporation of environmental considerations within proportionality and military necessity, reflects an attempt to regulate environmental effects within the broader structure of the law of armed conflict. Yet these rules were developed in a context where environmental harm was conceived primarily in visible and spatially bounded terms. They sit less comfortably with forms of harm that are cumulative, indirect, and scientifically diffuse. Emissions generated by missile launches, drone operations and large-scale military mobilisation, for instance, rarely feature in legal assessments, despite their measurable environmental impact.²

This points to a deeper structural misalignment. International environmental law, particularly in the context of climate change, has developed increasingly sophisticated mechanisms for addressing anthropogenic emissions and long-term ecological degradation.³ By contrast, the legal regulation of armed conflict has not integrated these developments in any systematic way. The result is a fragmented landscape in which environmentally harmful military activities,

¹N Crawford, *Pentagon Fuel Use, Climate Change and the Costs of War* (Watson Institute Brown University 2019); D Weir and W Zwijsenburg, *Environmental and Health Impacts of Explosive Weapons* (PAX and Conflict and Environment Observatory).

²P Sands, J Peel, A Fabra and R MacKenzie, *Principles of International Environmental Law* (4th edn Cambridge University Press 2018); United Nations Framework Convention on Climate Change 1992; Paris Agreement 2015.

³D Bodansky, J Brunnee and L Rajamani, *International Climate Change Law* (Oxford University Press 2017) 209-313.

especially those contributing to climate change, fall between regulatory regimes rather than within them.⁴

The concept of weaponised emissions offers one way of bringing this gap into sharper focus. It captures forms of environmental harm that arise as a routine consequence of technologically advanced military operations, rather than as isolated or unintended by-products. Such harm does not fit easily within the thresholds established by international humanitarian law, nor does it fall squarely within the scope of international climate governance. A significant dimension of wartime environmental impact therefore remains insufficiently regulated and, at times, effectively invisible within legal analysis.⁵

This article examines how international law responds to the environmental consequences of modern warfare technologies, with particular attention to missile systems and drone operations. It argues that existing legal frameworks are structurally ill-equipped to address climate-related harm because they privilege immediacy over accumulation and visibility over systemic impact. By situating technological developments within the broader legal architecture, the article seeks to expose the limitations of current approaches and to open space for a more integrated understanding of environmental harm in armed conflict.

Literature Review

Scholarly engagement with environmental protection in armed conflict has developed along two main trajectories, though their interaction remains limited. One strand focuses on the capacity of international humanitarian law to regulate environmental harm during hostilities. Another examines environmental degradation through the lens of international environmental law and climate governance. While both bodies of scholarship offer important insights, they often proceed in parallel rather than in dialogue, leaving significant gaps in the analysis of contemporary warfare technologies.

⁴ P Sands, J Peel, A Fabra and R MacKenzie, *Principles of International Environmental Law* (4th edn Cambridge University Press 2018); United Nations Framework Convention on Climate Change 1992; Paris Agreement 2015.

⁵ International Law Commission, *Draft Principles on Protection of the Environment in Relation to Armed Conflicts with Commentaries* (UN 2022); International Committee of the Red Cross, *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC 2020).

Within international humanitarian law, there is broad agreement that environmental protection occupies a relatively marginal position. Dinstein and Sassòli, for instance, emphasise that environmental considerations are embedded within general rules on the conduct of hostilities rather than articulated as an independent legal objective. This structural positioning has been widely criticised. Hulme and Henckaerts argue that the threshold of widespread, long-term and severe damage sets an exceptionally high bar, one that is rarely met in practice and therefore limits the practical effectiveness of environmental protections. Fleck similarly observes that environmental concerns are often subordinated to military necessity, reinforcing their secondary status within the legal framework.⁶

At the same time, scholars⁷ differ in their assessment of how these rules operate in practice. Some suggest that the flexibility of IHL allows for environmental considerations to be incorporated through interpretation, particularly within proportionality assessments. Others are more sceptical, pointing to the indeterminate nature of key terms and the absence of clear enforcement mechanisms. The work of the International Law Commission has sought to clarify these issues by articulating principles on the protection of the environment in relation to armed conflicts. However, the non-binding nature of these principles has led some commentators to question their practical impact.⁸

In contrast, international environmental law has developed more detailed mechanisms for addressing environmental degradation and climate change. Scholars such as Sands, Peel and Birnie highlight the evolution of treaty regimes aimed at regulating anthropogenic emissions and promoting sustainable environmental governance. These frameworks reflect a growing recognition of the cumulative and long-term nature of environmental harm. However, they are largely designed for peacetime application and do not directly engage with the realities of armed

⁶ D Fleck (ed), *The Handbook of International Humanitarian Law* (4th edn Oxford University Press 2021).

⁷ P Sands, J Peel, A Fabra and R MacKenzie, *Principles of International Environmental Law* (4th edn Cambridge University Press 2018); United Nations Framework Convention on Climate Change 1992; Paris Agreement 2015. N Crawford, *Pentagon Fuel Use, Climate Change and the Costs of War* (Watson Institute Brown University 2019); D Weir and W Zijnenburg, *Environmental and Health Impacts of Explosive Weapons* (PAX and Conflict and Environment Observatory).

⁸ International Law Commission, *Draft Principles on Protection of the Environment in Relation to Armed Conflicts with Commentaries* (UN 2022).

conflict. As a result, military activities, particularly those generating significant emissions, remain insufficiently regulated within this domain.⁹

More recent scholarship has attempted to bridge this division by examining the relationship between armed conflict and climate change. Empirical studies, particularly those by Crawford, draw attention to the substantial carbon footprint of military operations, including fuel consumption, infrastructure destruction and the use of explosive weapons. These findings challenge the assumption that environmental harm in warfare is primarily localised or immediate. However, the legal implications of such evidence remain underdeveloped, and the integration of these insights into doctrinal analysis has been limited.¹⁰

A further gap concerns the environmental consequences of specific technologies such as drones and missile systems. While studies by Weir and Zwijnenburg document the environmental and health impacts of explosive weapons, including contamination and atmospheric pollution, these analyses are rarely situated within broader discussions of climate change or legal accountability. Given the centrality of these technologies in contemporary conflicts, this omission is significant.¹¹

Taken together, the literature reveals a fragmented and, at times, internally inconsistent approach to wartime environmental harm. International humanitarian law provides a framework that is both limited and difficult to operationalise, while international environmental law offers more developed tools that do not extend effectively into conflict situations. Although emerging work on military emissions introduces an important empirical angle, it has yet to be fully integrated into legal analysis.

This article engages with these strands by positioning the concept of weaponised emissions as a point of intersection between them. In doing so, it moves beyond descriptive accounts of environmental harm to interrogate the underlying assumptions that shape its legal regulation, and

⁹ P Sands, J Peel, A Fabra and R MacKenzie, *Principles of International Environmental Law* (4th edn Cambridge University Press 2018); P Birnie, A Boyle and C Redgwell, *International Law and the Environment* (4th edn Oxford University Press 2021).

¹⁰ N Crawford, *The Pentagon, Climate Change and War: Charting the Rise and Fall of US Military Emissions* (MIT Press 2022); N Crawford, *Pentagon Fuel Use, Climate Change and the Costs of War* (Watson Institute Brown University 2019).

¹¹ D Weir and W Zwijnenburg, *Environmental and Health Impacts of Explosive Weapons* (PAX and Conflict and Environment Observatory).

to question whether existing frameworks are capable of addressing the climate implications of modern warfare technologies.

3. The Environmental and Emissions Footprint of Modern Warfare Technologies

3.1 Missile Strikes and the Destruction of Industrial and Energy Infrastructure

It is often easier to describe what a missile strike destroys than what it leaves behind. The former is immediate and visible, the latter tends to disperse. When industrial and energy infrastructure is targeted, the effects do not stop at structural damage. Fires take hold, chemicals are released, and something less contained begins to circulate through air, soil and water. In some cases, the damage continues long after the strike itself has receded from attention.¹²

These sites are usually approached through the language of military advantage. Refineries, power plants and storage depots are framed as strategic targets, and often with good reason. Still, the consequences of their destruction do not sit neatly within that frame. Explosions generate particulate matter, greenhouse gases and hazardous substances, and where petrochemical infrastructure is involved, the scale of emissions can be considerable. Over time, these processes can lead to groundwater contamination and broader ecological disruption. The effects are cumulative, though they do not always present themselves as such.¹³

Attacks on energy infrastructure have produced fires and pollution that extend beyond the immediate area of impact. Recent conflicts bring this into sharper focus. In Ukraine, attacks on oil depots, fuel storage facilities, electricity infrastructure, and industrial installations have generated significant air, soil, and water pollution, prompting concerns regarding long-term environmental degradation. Similar concerns have arisen in relation to recent hostilities involving Israel and Iran, where strikes targeting energy and military infrastructure raised fears of pollution, toxic releases and wider ecological consequences.

Reports tend to capture these effects in fragments, while the legal analysis that follows them often narrows again. Proportionality continues to turn on civilian harm in its more immediate forms, and environmental consequences, especially those that travel or accumulate, remain less

¹² Ibid.

¹³ United Nations Environment Programme, *Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law* (UNEP 2009).

clearly situated. It is not entirely clear how they are weighed, or whether they are weighed at all.¹⁴

And yet, repetition changes the picture. A single strike may be treated as an isolated event, but a series of strikes, over time, begins to look different. Emissions persist, damage settles unevenly, and what initially appears episodic starts to resemble something more continuous. This is where the difficulty sharpens, legal thresholds are calibrated to moments, while the harm, increasingly, is not.¹⁵

3.2 Drone Warfare and Cumulative Ecological Disruption

If missile strikes are defined by intensity, drone warfare is defined by duration, or something close to it. The distinction is not absolute, but it matters. Drones do not always produce the same scale of immediate destruction. What they enable instead is presence. They remain, they return, and in doing so generate a different kind of environmental effect, one that builds gradually rather than arriving all at once.

This is not always easy to register. A single strike may leave little trace when compared to large-scale bombardment, but repetition alters the terrain. Surveillance, targeting, and the infrastructure that sustains them introduce ongoing disturbances. Habitats shift, wildlife moves or disappears, and agricultural land may degrade, though often slowly enough to evade immediate attribution. The damage is not absent; it is just less concentrated.¹⁶

There is also the question of what supports these operations. Drone warfare depends on networks, fuel, maintenance systems and data infrastructures that extend well beyond the site of conflict. These elements rarely appear in legal discussions of environmental harm, perhaps because they are too diffuse, or because they fall outside the conventional frame of the battlefield. Yet they form part of the same system.¹⁷

¹⁴ United Nations Environment Programme, *The Environmental Impact of the Conflict in Ukraine: A Preliminary Review* (UNEP 2022); Britta Sjostedt, 'Protecting War's Unseen Environmental Damage' *NJIL* 94(1):24-44. UNEP 2025.

¹⁵ International Committee of the Red Cross, *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC 2020).

¹⁶ D Weir and W Zwijnenburg, *Environmental and Health Impacts of Explosive Weapons* (PAX and Conflict and Environment Observatory)

¹⁷ N Crawford, *Pentagon Fuel Use, Climate Change and the Costs of War* (Watson Institute Brown University 2019).

What complicates matters further is the way drone operations are distributed across space. They do not remain in one place; their footprint stretches, sometimes across regions that are only intermittently associated with active hostilities. This dispersal makes harm harder to see as a single event, and it appears instead as a pattern, though not always one that law is equipped to recognise.

The literature has not entirely kept pace with this shift. Much of it remains focused on targeting, accountability and civilian protection. These are important concerns, but the environmental dimension sits somewhat to the side, not absent, but not fully integrated either. The question, then, is not simply what drones do, but how their effects are framed, or left unframed in legal terms.¹⁸

3.3 Military Emissions, Atmospheric Pollution and Climate Impact

When military activity is being carried out, the distinction between battlefield environmental effects and broader environmental outcomes becomes increasingly difficult to separate, because military activities generate emissions and environmental harm at every stage of an operation; from the moment of preparation, deployment, logistical support, and post-conflict recovery. The environmental impacts of these extend beyond the immediate context of hostilities in both time and space.

Armed forces consume fuel on a scale that is difficult to ignore. Transportation, infrastructure and combat operations all contribute to greenhouse gas emissions, though not always in ways that are systematically recorded.¹⁹ Missile launches, aerial operations and armoured movement generate direct emissions, while the destruction of infrastructure releases additional carbon and hazardous substances into the atmosphere.²⁰ None of this is especially controversial. What is less clear is how these contributions are treated within existing legal frameworks.

The effects do not end when hostilities cease. Reconstruction introduces another layer. Rebuilding damaged infrastructure, clearing debris and restoring affected environments generate

¹⁸ M N Schmitt and S Watts (eds), *The Law of Armed Conflict: Contemporary Challenges* (Cambridge University Press 2020).

¹⁹ United Nations Environment Programme (UNEP), **Environmental Impacts of Armed Conflict: Inventory and Analysis** (2022); International Committee of the Red Cross (ICRC), **Guidelines on the Protection of the Natural Environment in Armed Conflict** (2020).

²⁰ Conflict and Environment Observatory (CEOBS), **Environmental Impacts of Explosive Weapons and Infrastructure Destruction** (2022); UNEP, **Environmental Consequences of the War in Ukraine** (2023).

further emissions, often over extended periods.²¹ In that sense, the climate footprint of conflict does not have a clear endpoint, and it stretches forward even as legal analysis tends to remain tied to the period of active hostilities.

Empirical work has begun to map this more carefully. Military emissions, particularly from technologically advanced states, account for a measurable share of global greenhouse gases, although reporting remains uneven and, in some cases, deliberately limited²². Military activity therefore occupies an uncertain position within climate governance frameworks, present, but not fully accounted for within national emissions reporting obligations.²³

This is where the idea of weaponised emissions becomes more analytically useful. It is less a fixed legal category than a way of drawing attention to connections that might otherwise be overlooked. Emissions are not only a by-product of warfare; they are, in many cases, embedded within its operation, arising predictably from energy-intensive technologies and the targeting of emissions-intensive infrastructure. The difficulty is that they do not align neatly with existing legal categories, being too dispersed, too extended, and sometimes too indirect.

The problem, then, is not only regulatory but also perceptual. Missile strikes, drone operations and broader military activity produce environmental harm that is cumulative, transboundary and unevenly recognised. While international law does not ignore these effects entirely, it does not consistently hold them within view.

4. Environmental Protection under International Law

4.1 Environmental Limits on the Means and Methods of Warfare

International humanitarian law is usually taken as the primary framework governing the conduct of hostilities, including, in a qualified sense, the protection of the natural environment.

²¹ UNEP, **Post-Conflict Environmental Assessment and Recovery** (various reports).

²² Neta C Crawford, **Pentagon Fuel Use, Climate Change, and the Costs of War** (Brown University, 2019); Stockholm International Peace Research Institute (SIPRI), **Military Emissions and Climate Security** (2022).

²³ United Nations Framework Convention on Climate Change (UNFCCC), **Reporting Guidelines on National Greenhouse Gas Inventories**; see also discussions on the treatment of military emissions within national reporting obligations.

That protection, however, is neither autonomous nor especially stable. It tends to surface within broader rules regulating the means and methods of warfare, particularly distinction, proportionality and military necessity, and in doing so it often recedes into the background rather than standing on its own.

The principle of distinction requires parties to differentiate between civilian objects and military objectives. In some cases, this offers a measure of indirect protection to elements of the natural environment, at least where they can plausibly be characterised as civilian. Yet that protection is fragile. Once environmental features acquire military relevance, or become entangled with infrastructure that does, they are drawn into the logic of targeting. In practice, this has allowed attacks on energy facilities and industrial installations to proceed, even where the environmental consequences are likely to be extensive.²⁴

Proportionality, at least in theory, operates as a further constraint. It prohibits attacks expected to cause excessive incidental harm relative to the anticipated military advantage. Still, environmental harm does not sit comfortably within this calculus. The focus remains anchored in immediate civilian casualties and physical damage, while longer-term effects, including emissions and ecological degradation, tend to fall at the edges of the analysis. It is not entirely clear how such harm is weighed, particularly where its effects unfold gradually rather than at the moment of attack.²⁵

Military necessity introduces a further layer of uncertainty. It permits the use of force required to achieve legitimate objectives, subject to legal limits, but those limits are not always articulated with environmental harm in view. In the absence of clearer standards, the doctrine can accommodate actions with significant ecological consequences. The result is a framework in which environmental protection appears contingent, acknowledged in principle, yet often subordinated in practice.²⁶

²⁴ Protocol Additional to the Geneva Conventions of 12 August 1949 (Additional Protocol I) 1977 art 48.

²⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 (Additional Protocol I) 1977 art 51(5)(b).

²⁶ Y Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4th edn Cambridge University Press 2022).

4.2 The “Widespread, Long-Term and Severe” Damage Threshold

More explicit protection for the environment is found in the prohibition of methods or means of warfare expected to cause widespread, long-term and severe damage. This standard, reflected in Additional Protocol I, is often treated as the central environmental safeguard within international humanitarian law. Yet its reach, on closer inspection, is narrower than it first appears.²⁷

The threshold is cumulative. Damage must be widespread, long-term and severe, not merely one or two of these. In practice, this sets a bar that is difficult to meet. Many forms of environmental harm, including those associated with contemporary warfare technologies, fall below it, even where their effects are far from trivial. As the earlier discussion of missile strikes and drone operations suggests, harm may accumulate across time and space without ever crystallising into a form that satisfies the threshold at a single point.²⁸

Interpretation adds another layer of difficulty. The terms themselves remain open-textured. What counts as “widespread” or “long-term” is not fixed, and interpretations vary across states and commentators. This does not render the provision meaningless, but it does leave its contours uncertain. In some cases, that uncertainty may function less as flexibility and more as a source of indeterminacy.²⁹

More fundamentally, the threshold seems misaligned with the character of environmental harm in contemporary conflicts. Damage is often incremental, dispersed and temporally extended. It does not always present itself in ways that are easily captured at the moment of attack. The law, however, continues to look for precisely that kind of moment. The result is a gap, not simply between rules and practice, but between legal categories and the forms of harm they are asked to address.

4.3 The Interface between International Humanitarian Law and Environmental Law

If international humanitarian law offers one set of tools, international environmental law offers another, though the two do not always fit together easily. Environmental law has developed more

²⁷Protocol Additional to the Geneva Conventions of 12 August 1949 (Additional Protocol I) 1977 arts 35(3), 55

²⁸ K Hulme, *War Torn Environment: Interpreting the Legal Threshold* (Martinus Nijhoff 2004)

²⁹ The travaux préparatoires and commentary to Articles 35(3) and 55 of Additional Protocol I.

M Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law Volume I: Rules* (Cambridge University Press 2005).

detailed principles for preventing harm and managing resources, but these are largely oriented towards peacetime conditions. Their application during armed conflict remains, in many respects, unsettled.³⁰

Some obligations appear to persist across both contexts. The duty to prevent transboundary harm, for example, has been recognised beyond peacetime alone. Still, its practical force during hostilities is uncertain. Many environmental treaties are silent on armed conflict, and where they are not, their provisions do not always translate smoothly into situations shaped by military necessity.³¹

The relationship between these regimes is often framed through the idea of *lex specialis*, with international humanitarian law taking precedence during armed conflict. That framing has a certain coherence, but it is not without cost. It risks narrowing the scope of environmental protection by filtering it through a framework primarily concerned with military conduct. Whether this amounts to coordination or, in effect, displacement is not always clear.³²

Efforts to bridge this divide have emerged, particularly in the work of the International Law Commission. These developments gesture towards a more integrated approach, though their practical influence remains limited. They suggest a direction of travel, but do not yet fully resolve the tension between humanitarian and environmental norms.³³

4.4 Climate Governance and the Regulation Gap in Military Emissions

Climate law introduces a further layer of complexity. The United Nations Framework Convention on Climate Change and the Paris Agreement establish a global framework for regulating emissions and addressing climate change. At first glance, these regimes appear comprehensive. Yet military activity occupies a more ambiguous position within them, present, but not always fully accounted for.³⁴

³⁰ P Sands, J Peel, A Fabra and R MacKenzie, *Principles of International Environmental Law* (4th edn Cambridge University Press 2018); P Birnie, A Boyle and C Redgwell, *International Law and the Environment* (4th edn Oxford University Press 2021).

³¹ *Pulp Mills on the River Uruguay (Argentina v Uruguay)* [2010] ICJ Rep 14.

³² International Law Commission, *Draft Principles on Protection of the Environment in Relation to Armed Conflicts with Commentaries* (United Nations 2022).

³³ *Ibid.*

³⁴ United Nations Framework Convention on Climate Change 1992; Paris Agreement 2015

Historically, military emissions have been treated differently, sometimes excluded, sometimes only partially included in national commitments. The reasons are not difficult to identify. National security concerns, combined with political sensitivities, have made states reluctant to subject military operations to sustained scrutiny. The result is a regulatory space that remains, to a significant extent, underdeveloped.³⁵

This becomes harder to ignore when viewed alongside the environmental footprint of contemporary warfare. Missile strikes, drone operations and infrastructure destruction generate emissions that contribute to climate change, even if they are not always recorded in those terms. As discussed earlier, these effects may be dispersed, delayed and difficult to attribute, but they are not insignificant.

The temporal dimension complicates matters further. Emissions do not end with hostilities. Reconstruction, remediation and rebuilding extend the climate impact of conflict beyond its formal conclusion. Existing frameworks, designed largely with peacetime regulation in mind, struggle to account for this extension. They are not easily able to follow the harm as it unfolds.³⁶

The absence of clear obligations in this area points to a broader limitation. International law has made considerable progress in regulating environmental harm and climate change in general. Yet when these issues intersect with armed conflict, the framework becomes less certain, less settled. The gap is not absolute, but it is difficult to overlook.

The legal landscape that emerges is uneven, though perhaps not unexpectedly so. International humanitarian law offers partial protection, shaped by thresholds and competing military considerations. Environmental law and climate governance provide more developed structures, but do not consistently extend into the realities of armed conflict. The result is not a complete absence of regulation, but something more fragmented.

What remains unresolved is whether this fragmentation can hold. The environmental and climate impacts of modern warfare technologies are cumulative, transboundary and long-term, while the law continues, for the most part, to approach them in more immediate and compartmentalised

³⁵ N Crawford, *The Pentagon, Climate Change and War: Charting the Rise and Fall of US Military Emissions* (MIT Press 2022).

³⁶ United Nations Environment Programme, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* (UNEP 2023).

ways. Whether that approach is sustainable, as these impacts become harder to ignore, is perhaps still an open question.

5. Environmental and Emissions Harm in Contemporary Conflicts

5.1 Industrial Contamination and Emissions in the Russia–Ukraine Conflict

The Russia–Ukraine conflict is often cited as one of the clearest contemporary illustrations of how modern warfare technologies translate into environmental harm, not only in the sense of visible destruction, but in what follows from it, sometimes immediately, sometimes less visibly. The widespread use of missile systems and aerial bombardment against industrial and energy infrastructure has produced effects that do not remain confined to the battlefield, even if they are often described that way.³⁷

Attacks on oil depots, refineries and power generation facilities have triggered fires and explosions that release substantial quantities of greenhouse gases and toxic pollutants into the atmosphere.³⁸ These incidents degrade local air quality and, in some cases, contribute to broader climate effects through the emission of carbon dioxide and other climate-forcing substances. The destruction of industrial installations has also led to the release of hazardous chemicals, contaminating soil and water systems in ways that are likely to persist, though not always in ways that can be easily tracked.³⁹ The damage does not settle neatly.

Some of the more consequential effects are indirect, and perhaps less immediately legible. Damage to energy systems has, in some instances, required a shift towards alternative, often less efficient, fuel sources, thereby increasing overall emissions.⁴⁰ At the same time, disruptions to environmental monitoring systems have reduced the capacity to assess these impacts with any

³⁷ United Nations Environment Programme (UNEP), *Environmental Consequences of the War in Ukraine: A Preliminary Assessment* (2022);

Conflict and Environment Observatory (CEOBS), *Ukraine Environmental Damage Monitoring* (ongoing reports).

³⁸ UNEP, *Ukraine Conflict Environmental Impact Assessments* (2022–2023);

CEOBS, *documentation of fires at oil depots and industrial facilities*.

³⁹ UNEP, *assessments of industrial contamination and chemical release in Ukraine conflict zones*;

ICRC, *Urban Services During Protracted Armed Conflict* (environmental implications).

⁴⁰ International Energy Agency (IEA), *Energy Implications of the Ukraine Conflict* (2022); related analyses on fuel substitution and emissions.

precision.⁴¹ What emerges is a form of harm that is partially visible, partially obscured, and not always easy to attribute.

Still, what becomes difficult to ignore is its cumulative character. Repeated strikes on infrastructure generate sustained pollution and ecological disruption, suggesting that environmental harm in this context unfolds rather than occurs. Yet much of this harm, particularly in its atmospheric and incremental form, sits uneasily within existing legal categories, which remain oriented towards immediacy and what can be observed and measured at a given moment, rather than what accumulates across time.

5.2 Environmental Degradation and Atmospheric Pollution in the Gaza Conflict

5.2 Environmental Degradation and Atmospheric Pollution in the Gaza Conflict

A different configuration appears in Gaza, though the underlying dynamics are not entirely distinct. Here, the intensity and spatial concentration of hostilities produce environmental effects that are at once immediate and layered. Destruction is visible, but it is also particulate, airborne and absorbed into the environment in ways that are harder to contain.⁴²

One of the more immediate consequences is the generation of debris and fine particulate matter. The collapse of buildings releases dust, asbestos and other hazardous materials into the atmosphere, creating conditions that affect both human health and surrounding ecosystems.⁴³ These effects are acute, though they do not end there. The destruction of sewage systems, waste infrastructure and water networks introduces further contamination, extending into land and marine environments in ways that may persist well beyond the period of active hostilities.⁴⁴

⁴¹ CEOBS, reporting on damage to environmental monitoring infrastructure in Ukraine; UNEP, environmental data gaps in conflict conditions.

⁴² United Nations Environment Programme (UNEP), *Environmental Impacts of Armed Conflict*; United Nations Office for the Coordination of Humanitarian Affairs (OCHA), situation reports on Gaza.

⁴³ World Health Organization (WHO), *Health Risks of Dust, Debris and Asbestos Exposure in Conflict Zones*; UNEP, urban environmental damage assessments.

⁴⁴ UNEP, *Environmental Assessment of the Gaza Strip*; OCHA, reporting on damage to water and sanitation infrastructure in Gaza.

Fires add another dimension, though perhaps a more familiar one. The burning of buildings, fuel storage facilities and other materials releases greenhouse gases and toxic substances, contributing to atmospheric pollution.⁴⁵ Conflict and Environment Observatory (CEOBS), Environmental

The precise scale of these emissions is not always clear, particularly in conditions of ongoing conflict, but their presence is difficult to dispute. What distinguishes this context is not only the scale of destruction, but its repetition within a confined space. Strikes occur in close proximity, sometimes in rapid succession, producing cycles of damage and pollution that reinforce one another. The harm becomes layered, not simply additive, but cumulative in ways that are not always immediately apparent.

As with the Ukraine conflict, environmental considerations tend to remain peripheral in legal and political discourse. Attention centres, understandably, on humanitarian consequences. Still, this leaves open a quieter question: how environmental harm, particularly when dispersed through air, debris and water systems, is accounted for within existing legal frameworks. At present, it is not entirely clear that it is.

5.3 Missile and Drone Attacks on Energy Infrastructure in Middle Eastern Conflicts

In the Middle East, a somewhat different pattern emerges, though it carries familiar elements. Conflicts involving Iran, Israel and other regional actors have increasingly involved missile and drone attacks on energy infrastructure, oil facilities, pipelines, storage installations. These are not incidental targets. They are selected, often precisely, for their strategic value.

The environmental consequences, however, are not easily contained within that logic. Such attacks often produce large-scale fires and, in some cases, oil spills. The combustion of fossil fuels releases carbon dioxide, methane and other pollutants into the atmosphere, while spills contaminate terrestrial and marine ecosystems. These effects may extend beyond national borders, raising questions about transboundary harm that are, in practice, difficult to resolve.⁴⁶

Drone technology complicates the picture further. Its precision is frequently emphasised, and with reason. Yet precision does not eliminate environmental consequence, particularly where the

⁴⁵ Conflict and Environment Observatory (CEOBS), Environmental Impacts of Explosive Weapons in Urban Areas; UNEP, reports on air pollution and conflict-related fires.

⁴⁶ Ibid.

targets themselves contain volatile or hazardous materials. In some cases, it may simply concentrate the impact. The relative ease of deployment also increases the likelihood of repeated strikes, introducing a cumulative dimension that is not always fully captured in legal analysis.⁴⁷

There are also effects that unfold more slowly, and perhaps less visibly. Damage to energy infrastructure disrupts production and supply chains, sometimes leading to the use of alternative energy sources or reconstruction processes that generate additional emissions. These are not always framed as environmental harms, but they extend the environmental footprint of conflict nonetheless.⁴⁸

Across these cases, a pattern begins to take shape, though not always in a straightforward way. The targeting of infrastructure with high environmental and emissions potential is not merely incidental. It appears, in some instances, to be part of the strategic logic of contemporary warfare. The law does not prohibit such targeting outright, but it does not fully engage with the environmental consequences that follow either.

Across these conflicts, the pattern is difficult to overlook, even if it resists easy categorisation. Missiles and drones are not only instruments of immediate destruction. They are also, in effect, carriers of environmental and climate harm, though that harm does not always register in the same way.

What these examples suggest is not simply that environmental damage occurs in armed conflict. That is already well established. Rather, they point to a form of harm that accumulates, travels and persists, sometimes beyond the frame within which it is legally assessed. While international law offers certain points of engagement, its application remains uneven, particularly in relation to emissions and long-term climate effects.

The gap that emerges is not abstract. It is grounded in the empirical realities of contemporary conflicts. And it raises a question that is not easily resolved, whether existing legal frameworks

⁴⁷ M N Schmitt and S Watts (eds), *The Law of Armed Conflict: Contemporary Challenges* (Cambridge University Press 2020).

⁴⁸ D Weir and W Zwijnenburg, *Environmental and Health Impacts of Explosive Weapons* (PAX and Conflict and Environment Observatory).

are capable of recognising, and responding to, forms of environmental harm that do not present themselves all at once, but instead unfold over time

7. Legal Gaps in

8. Regulating Climate and Emissions Harm in Armed Conflict

6.1 The Marginal Status of Environmental Harm in Proportionality Assessments

One of the more persistent limitations in the existing legal framework lies in the way environmental harm is handled within proportionality assessments. International humanitarian law, at least formally, prohibits attacks expected to cause excessive incidental damage. Still, the way this rule is applied suggests a quieter hierarchy of interests, one in which environmental considerations are, more often than not, pushed to the margins.

In practice, proportionality tends to centre on what can be counted. Civilian casualties, damage to identifiable objects, forms of harm that present themselves clearly and immediately. Environmental damage does not always behave in this way. Where it unfolds over time, or through less direct pathways such as emissions, it becomes harder to integrate into the balancing exercise. In some cases, it seems to fall away from it altogether.⁴⁹ This is not only a matter of emphasis, but also of method. There is no settled approach for evaluating environmental harm within proportionality analysis. Unlike civilian harm, which can often be approximated, environmental impacts are diffuse, layered, and sometimes only partially observable. That difference matters. It introduces a kind of structural asymmetry, one that makes certain harms easier to recognise, and others easier to set aside.⁵⁰

As the earlier discussion of missile strikes and drone operations suggests, much of the resulting damage is cumulative rather than immediate. Emissions build, contamination spreads, ecosystems shift gradually. Still, proportionality remains tied to the moment of decision. It is not

⁴⁹ Protocol Additional to the Geneva Conventions of 12 August 1949 (Additional Protocol I) 1977 art 51(5)(b); Y Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4th edn Cambridge University Press 2022).

⁵⁰ International Committee of the Red Cross, *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC 2020).

entirely clear how forms of harm that unfold beyond that moment are meant to be accounted for. The result is not so much an explicit exclusion as a quiet form of omission.

6.2 The Silence of International Climate Law on Military Emissions

If proportionality reveals one kind of gap, climate law reveals another. The United Nations Framework Convention on Climate Change and the Paris Agreement establish broad systems for regulating greenhouse gas emissions. On paper, they appear comprehensive. Yet military activity occupies a more uncertain position within these frameworks, acknowledged in some respects, but not fully brought within their scope.⁵¹

Historically, military emissions have been treated as exceptional. The reasons are familiar. Concerns about national security, the sensitivity of military data, the reluctance of states to subject defence activities to external scrutiny. In practice, this has translated into limited reporting and, in some instances, partial exclusion from national emissions inventories. The effect is that a potentially significant source of emissions remains only partially visible within the system designed to regulate them.⁵²

This position becomes more difficult to sustain when set alongside the patterns discussed earlier. Modern conflicts generate emissions through missile strikes, drone operations and the destruction of infrastructure. These emissions may be dispersed, delayed, or difficult to quantify with precision, but they accumulate nonetheless.

The difficulty, then, is not simply one of omission, but of alignment. Climate law seeks to regulate emissions on a global scale, yet it does not fully engage with a sector in which emissions are, arguably, both substantial and increasing. The silence is not absolute, but it is noticeable. And it creates a gap between what climate law aims to address and what it is, in practice, able to reach.

⁵¹ 51United Nations Framework Convention on Climate Change 1992; Paris Agreement 2015

⁵² N Crawford, *The Pentagon, Climate Change and War: Charting the Rise and Fall of US Military Emissions* (MIT Press 2022)

6.3 Attribution and Accountability Challenges under International Law

Even where environmental harm is recognised, questions of attribution and accountability remain unsettled. This is particularly so in relation to emissions and long-term ecological damage, where cause and effect do not always align neatly.

International law typically requires a reasonably clear link between conduct and harm. In contemporary conflicts, that link is often difficult to establish. Environmental damage may result from repeated strikes, infrastructure collapse, and secondary effects such as fires or contamination, all interacting over time. Responsibility, in these cases, is not always easy to isolate.⁵³

The temporal dimension complicates matters further. Some effects emerge only gradually, sometimes well after hostilities have ceased. This makes it harder to draw a direct line between a particular act and a particular harm, especially within legal frameworks that remain oriented towards immediacy. It is not that attribution is impossible, but that it becomes less certain.

International criminal law offers only a partial response. The Rome Statute recognises environmental damage as a war crime, but it adopts the familiar threshold of widespread, long-term and severe damage. As discussed earlier, that threshold is demanding, and in many cases, it excludes forms of harm that are cumulative or indirect.⁵⁴

Beyond this, enforcement mechanisms remain limited. There are few specialised processes for addressing environmental harm in armed conflict, and existing institutions are not always equipped to deal with the complexity of climate-related damage. The gap is not total, but it is difficult to ignore.

Taken together, these gaps do not suggest that environmental harm is entirely absent from international law. It is present, but unevenly so, recognised in some contexts and less clearly in others. Proportionality tends to privilege what is immediate, climate law leaves certain emissions insufficiently addressed, and attribution becomes uncertain where harm is dispersed across time and space.

⁵³ United Nations Environment Programme, *The Environmental Impact of the Conflict in Ukraine: A Preliminary Review* (UNEP 2022).

⁵⁴ Rome Statute of the International Criminal Court 1998 art 8(2)(b)(iv).

What follows from this is not entirely settled. The environmental and climate impacts of modern warfare technologies continue to accumulate, often in ways that exceed the categories through which they are assessed. The question, then, may not simply be whether the law applies, but whether it is capable, in its current form, of keeping pace with the kinds of harm it now encounters

7. Towards Stronger Legal Responses to Climate Harm in Armed Conflict

Addressing the environmental and climate impacts of modern warfare does not necessarily require a wholly new legal regime. The existing frameworks already contain more than is sometimes acknowledged. The difficulty, perhaps, lies less in absence than in application, in how these rules are interpreted, and at times quietly set aside. Progress, if it comes, is likely to be incremental, and not always consistent.

What follows is not a blueprint, but a set of possible directions, shaped as much by constraint as by ambition.

7.1 Integrating Environmental Considerations into Proportionality Assessments

A first step lies in how environmental harm is treated within proportionality. International humanitarian law does not exclude it, but neither does it clearly centre it. In practice, its role remains uneven. Part of the difficulty may lie in the structure of proportionality itself, which tends to favour harms that are immediate and measurable. Environmental damage, particularly when cumulative or indirect, does not always present itself in those terms. It can be acknowledged, but not always in ways that alter the balance.

It is not entirely clear how far this can be addressed through doctrine alone. Still, states and military operators could develop clearer guidance recognising environmental harm, including longer-term effects, as part of incidental damage. Such adjustments would not transform the law, but they might begin to shift how it is applied in practice.⁵⁵

⁵⁵ Y Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4th edn Cambridge University Press 2022).

There are, in some cases, signs of movement through soft law and interpretive guidance. Whether these translate into consistent practice remains uncertain.⁵⁶

Yet doctrinal adjustment alone is unlikely to be sufficient.

7.2 Enhancing Transparency and Reporting of Military Emissions

If environmental harm is difficult to weigh, military emissions are, in many ways, difficult even to see. International climate law regulates emissions across sectors, but military activity continues to sit somewhat uneasily within these frameworks.⁵⁷

This reflects longstanding sensitivities around national security, which have resulted in partial reporting and, at times, omission. The outcome is not complete invisibility, but something close to it.⁵⁸

A more realistic approach may lie in gradual integration. Voluntary disclosure, particularly for non-sensitive activities, could offer a starting point. Over time, this might evolve into more structured reporting, though that is far from certain.

Still, visibility has its own effects. Even partial transparency may begin to shift how military emissions are understood, not only as operational by-products, but as part of a broader emissions landscape.

7.3 Strengthening the Role of Soft Law and Institutional Guidance

Where treaty reform appears unlikely, soft law offers a more flexible, if less direct, route. The work of the International Law Commission and the International Committee of the Red Cross provides a foundation. These instruments are not binding, but they can shape expectations and, over time, influence practice.

Their impact, however, is uneven. In some instances, they are taken up. In others, they remain largely aspirational. It is not always clear why. Further development could focus on the environmental implications of specific technologies, missiles, drones, infrastructure targeting.

⁵⁶ International Committee of the Red Cross, *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC 2020).

⁵⁷ United Nations Framework Convention on Climate Change 1992; Paris Agreement 2015.

⁵⁸ N Crawford, *The Pentagon, Climate Change and War: Charting the Rise and Fall of US Military Emissions* (MIT Press 2022).

More detailed guidance may not resolve underlying tensions, but it could narrow the space within which environmental harm is treated as incidental. Even so, guidance without enforcement has its limits.

7.4 Improving Accountability through Existing Legal Mechanisms

Accountability remains one of the more difficult questions. Not because mechanisms are entirely absent, but because they do not always align with the nature of the harm.

Existing frameworks, including international criminal law and state responsibility, provide avenues in principle. In practice, thresholds remain high and causation difficult to establish, particularly where harm is cumulative or delayed.⁵⁹

There may be some room for interpretive development, though whether institutions will move in that direction is uncertain.

Post-conflict processes, including reparations and environmental restoration, offer a more practical avenue. These processes are uneven and often under-resourced, but they remain one of the few spaces where environmental harm is addressed directly.⁶⁰ Still, accountability exists in partial and uneven forms.

Taken together, these pathways suggest that strengthening environmental protection in armed conflict is less about creating new structures than about reworking those already in place. The tools exist, though they are not always used in ways that reflect contemporary forms of harm.

Incremental reform may not be sufficient. It may not even be coherent. Still, it offers a starting point. The environmental consequences of modern warfare are becoming harder to ignore, even if they remain only partially recognised in law.

Conclusion

It is increasingly difficult to treat the environmental consequences of modern warfare as peripheral. They do not end with the strike. They linger, in emissions, in damaged systems, in forms of harm that unfold slowly and unevenly. Missiles, drones and the infrastructures they

⁵⁹ 59Rome Statute of the International Criminal Court 1998 art 8(2)(b)(iv).

⁶⁰ United Nations Environment Programme, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment* (UNEP 2009).

target produce effects that are not always visible at the moment they occur, but they accumulate nonetheless.

International law does not entirely ignore this, yet it does not always meet it. Proportionality, for instance, still tends to focus on what can be seen and measured, while environmental harm, especially when delayed or diffuse, sits somewhat outside that frame. The result is a partial recognition. The harm is there, but its legal expression remains limited.

It might seem that what is needed is an entirely new framework. Still, it is not entirely clear that absence of rules is the central issue. In some cases, the difficulty lies in how existing principles are applied. Environmental considerations could be more fully integrated into proportionality assessments. Military emissions could be made more visible within climate governance. These are not sweeping changes, but they are not insignificant either.

Whether such adjustments will be enough remains uncertain. What seems clearer is that these harms no longer sit comfortably at the margins. They persist, even when the law does not fully register them.

NATIONAL SECURITY AND HUMAN RIGHTS PROTECTION IN NIGERIA: THE NEED TO STRIKE A BALANCE

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Abstract

*Nigeria faces persistent national security challenges, including terrorism, banditry, separatist agitations, cybercrime, and communal violence. In addressing these threats, state authorities have adopted measures that often encroach upon constitutionally guaranteed human rights, thereby raising concerns about arbitrariness, impunity, and democratic erosion. This article examines the legal and constitutional relationship between national security and human rights protection in Nigeria, with particular reference to the tensions arising from their interaction. The study aims to analyse the conceptual and legal foundations of both principles, assess the extent of compliance of security measures with constitutional safeguards, and propose a balanced framework for their coexistence. Adopting a doctrinal methodology, the article relies on statutes, judicial authorities, particularly *Asari Dokubo v Federal Republic of Nigeria* and relevant scholarly literature. It finds that the subordination of human rights to national security undermines constitutionalism, weakens institutional legitimacy, and fosters public distrust. The article argues that respect for human rights is indispensable to effective national security governance. It recommends the integration of human rights standards into security policies, strengthening of oversight mechanisms, and continuous human rights training for security personnel, alongside strict adherence to the rule of law and transparency in security operations.*

Keywords: National Security; Human Rights; Constitutional Law; Rule of Law; Security Governance.

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1 Introduction

National security and human rights occupy a central yet inherently tension-laden space within constitutional democracies.¹ The Constitution of the Federal Republic of Nigeria (CFRN) 1999 recognises the dual importance of national security and fundamental rights by positioning the security and welfare of the people as the primary purpose of government under section 14(2)(b), while simultaneously dedicating Chapter IV to the protection of fundamental rights. This constitutional design underscores that both objectives are essential to the survival and legitimacy of the state. National security is indispensable for maintaining order, protecting lives and property, and ensuring the stability of governmental institutions, whereas fundamental rights safeguard human dignity, individual freedoms, and democratic governance. In principle, these goals are complementary and mutually reinforcing. However, in practice, the tendency of security agencies to prioritise order and stability at the expense of civil liberties order and stability at the expense of civil liberties, generates significant friction creates tension, thereby highlighting the critical need to maintain a careful and principled balance between the two.

In Nigeria, this tension is pronounced, given the country's complex security environment marked by terrorism, banditry, kidnapping, separatist movements, urban criminality, and cyber threats. The Nigerian state's responses to these threats increasingly involve militarised policing, expanded legislative powers, surveillance, and restrictions on civil liberties. A practical illustration is the state's response to the 2020 #EndSARS protests, where security forces were deployed to disperse demonstrators protesting police brutality, leading to allegations of excessive use of force, unlawful killings, and arbitrary arrests. While such measures are often justified on the grounds of national security, they raise critical questions regarding compliance with constitutional guarantees and Nigeria's regional and international human rights obligations. This example underscores the persistent tension between maintaining security and protecting fundamental rights in Nigeria. increasingly involve militarised policing, expanded legislative powers, surveillance, and restrictions on civil liberties.

¹ D Feldman, *Civil Liberties and Human Rights in England and Wales* (2nd edn, Oxford University Press 2002) 51–53 (discussing the enduring tension between state security and individual liberty in constitutional democracies); C Gearty, *Civil Liberties* (Oxford University Press 2007) 105–109 (arguing that national security measures frequently generate conflict with fundamental rights protections); O C Okafor, 'National Security, Emergency Powers and Human Rights in Africa' (2001) 3 *African Human Rights Law Journal* 1, 4–6 (examining the tension between security governance and rights protection in African constitutional systems); M T Ladan, 'National Security and the Protection of Human Rights in Nigeria: Issues and Challenges' (2012) 6 *Nigerian Bar Journal* 62, 64–66 (noting that democratic states must balance security imperatives with constitutional rights guarantees).

This article critically examines the normative, institutional, and jurisprudential dynamics that shape the delicate balance between national security and human rights protection in Nigeria. It seeks to evaluate the extent to which existing legal and institutional frameworks effectively reconcile security imperatives with constitutional safeguards, identify gaps and challenges in their application, and propose a coherent, rights-based approach to achieving a sustainable balance between state security and the protection of fundamental freedoms.

2 Conceptual Clarifications

Understanding the concepts of *national security* and *human rights* is fundamental to analysing the tension between state power and individual freedoms in Nigeria. Both notions carry significant legal, political, and normative weight, yet they are frequently invoked in ways that place them in competition. Clarifying these concepts helps establish the analytical foundation for examining how the Nigerian state balances its security imperatives with constitutional safeguards. The following sections set out the meaning, scope, and legal contours of each term.

2.1 National Security

The term “national security” traditionally evoked a narrowly military understanding centred on territorial defence. However, modern scholarship recognises a broader, multidimensional conception encompassing political stability, economic security, public health, environmental integrity, and protection of critical infrastructure.² In Nigeria, statutory definitions tend to be expansive. The National Security Agencies Act establishes the State Security Service, Defence Intelligence Agency, and National Intelligence Agency with mandates to safeguard the internal and external security of Nigeria.³ Under the National Security Agencies Act,⁴ national security is reflected in the functions assigned to the security agencies, particularly the State Security Service (SSS), which is responsible for: i) the prevention and detection of any crime against the internal security of Nigeria; ii) the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and iii) such other responsibilities affecting internal security as may be assigned by the President.

² Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era* (2nd edn, ECPR Press 2007) 19–24.

³ National Security Agencies Act, Cap N74 LFN 2004, s 2(3).

⁴ Ibid

Similarly, the National Intelligence Agency (NIA) and Defence Intelligence Agency (DIA) are tasked with external intelligence and defence-related security, indicating that national security encompasses both internal and external threats to the state. The Act's broad language has been judicially interpreted to confer wide discretion. Therefore, in statutory terms, National security in Nigeria can be understood as the protection of the state against internal and external threats through intelligence gathering, crime prevention, and safeguarding of strategic national interests. Nigerian courts have acknowledged this elasticity. In *Dokubo-Asari v Federal Republic of Nigeria*,⁵ the Supreme Court emphasised that national security interests may override individual liberty in appropriate circumstances. This broad judicial deference to the executive demonstrates how national security can become an all-purpose justification for restricting rights.

2.2 Human Rights

The terms *human rights* and *fundamental rights* are often used interchangeably in legal discourse; however, a clear conceptual distinction exists between them, particularly within the Nigerian legal framework. Human rights are broad, universal entitlements inherent in all individuals by virtue of their humanity. Human rights in Nigeria derive primarily from international legal instruments such as the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), alongside other global human rights treaties to which Nigeria is a party. These rights encompass civil, political, economic, social, and cultural dimensions.

Fundamental rights, on the other hand, refer specifically to those rights that are constitutionally guaranteed and enforceable within a domestic legal system. In Nigeria, these rights are enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and include the rights to life, dignity of the human person, personal liberty, fair hearing, privacy, expression, assembly, and movement. They are directly justiciable and form the basis of enforcement actions under the Fundamental Rights (Enforcement Procedure) Rules 2009. While there is significant overlap between the two concepts, fundamental rights are best understood as a subset of human rights, given their domestic constitutional anchoring. Nigerian courts have recognised this relationship, particularly in light of the domestication of the African Charter,

⁵ [2007] 12 NWLR (Pt 1048) 320 (SC).

which expands the scope of enforceable rights beyond the Constitution. Accordingly, although the terms may be used interchangeably in general discourse, precision requires that “fundamental rights” be used when referring to constitutionally guaranteed rights, while “human rights” retains a broader, more inclusive meaning.

Human rights are not absolute. Even constitutional rights may be limited “in the interest of defence, public safety, public order, public morality or public health” under specific conditions.⁶ These permissible limitations must, however, satisfy the tests of legality, necessity, and proportionality.

2.3 Nigeria’s Contemporary Security Environment

Nigeria’s security situation is among the most complex in Africa and globally. This is so because of the combination of multifaceted threats,⁷ large population, institutional constraints,⁸ historical conflicts, and regional exposure,⁹ which together create a situation where the government feels compelled to adopt extraordinary security measures to protect lives, property, and the state itself. The multiplicity of threats creates a climate in which extraordinary state measures appear justified. The major components of Nigeria’s security challenges include:

2.4 Terrorism and Insurgency

Terrorism refers to the use or threat of violence, especially against civilians, to create fear and coerce a government or population for political, religious, or ideological purposes. It is typically tactic-based (i.e., focused on methods such as bombings, kidnappings, attacks on civilians); and it may be carried out by non-state actors or sometimes individuals or small groups.¹⁰ Whereas, insurgency is a broader, organised and sustained armed rebellion against an established government or authority, often aimed at overthrowing the state or gaining territorial control. It is

⁶ Constitution of the Federal Republic of Nigeria 1999 (as altered), ss 39–45.

⁷ United Nations Office on Drugs and Crime (UNODC), *Global Report on Security and Crime Trends in Nigeria* (2021).

⁸ Cleen Foundation, *Security and Governance in Nigeria: Capacity Challenges of Security Agencies* (2020).

⁹ International Crisis Group, *Nigeria’s Security Challenges and Policy Responses* (2021).

¹⁰ United Nations Security Council Resolution 1566 (8 October 2004) UN Doc S/RES/1566 para 3 (describing terrorist acts as criminal acts intended to provoke a state of terror in the general public for political purposes); B Saul, *Defining Terrorism in International Law* (Oxford University Press 2006) 58–63 (explaining terrorism as the use or threat of violence against civilians to intimidate or coerce governments or populations for political, ideological, or religious objectives); A P Schmid, *The Routledge Handbook of Terrorism Research* (Routledge 2011) 39–41 (identifying terrorism as tactic-oriented violence directed at civilians to generate fear and achieve political aims).

movement-based, involving political, military, and sometimes social structures; insurgents may control territory and seek legitimacy as an alternative authority. Insurgent groups often use terrorism as one of their strategies, but not all terrorists are insurgents, and not all insurgents rely solely on terrorism.¹¹

The Boko Haram insurgency, which began in 2009 operate as insurgent movements, but frequently employ terrorist tactics such as bombings, attacks on civilians, and abductions. It has evolved into a multi-factional conflict involving Boko Haram and the Islamic State in West Africa Province (ISWAP).¹² The insurgency has resulted in widespread civilian casualties, displacement, and destruction of infrastructure. The insurgency in North-East Nigeria, particularly the activities of Boko Haram and its splinter factions, has produced devastating humanitarian, economic, and social consequences. Since the outbreak of the conflict in 2009, more than **35,000 civilians have reportedly been killed**, while the broader conflict has contributed to over **350,000 deaths**, including indirect deaths resulting from hunger, disease, and displacement.¹³ The violence has also displaced over **2.5 million persons** across Borno, Adamawa, and Yobe States, creating one of Africa's largest internally displaced persons (IDP) crises.¹⁴ Thousands of homes, schools, hospitals, markets, religious centres, and public facilities have been destroyed during attacks on civilian communities and military operations.¹⁵ According to the United Nations Development Programme (UNDP), the insurgency has caused billions of dollars in economic losses and severely undermined agricultural production, education, healthcare delivery, and regional development in North-East Nigeria.¹⁶ The conflict has also generated widespread food insecurity, with millions dependent on humanitarian assistance for

¹¹ A P Schmid, *The Routledge Handbook of Terrorism Research* (Routledge 2011) 52–54 (distinguishing terrorism from insurgency and noting that insurgent groups may adopt terrorist tactics without terrorism constituting the entirety of insurgency); United States Department of Defense, *Dictionary of Military and Associated Terms* (Joint Publication 1-02, 2010) 140, 267 (defining insurgency as an organised movement aimed at overthrowing a constituted government through subversion and armed conflict, while terrorism refers to unlawful violence intended to instil fear and coerce governments or societies); B Hoffman, *Inside Terrorism* (3rd edn, Columbia University Press 2017) 35–39 (explaining that terrorism may be employed by insurgent groups as a tactic, but the two concepts are not synonymous).

¹² International Crisis Group, 'Facing the Challenge of the Islamic State in West Africa Province' (2020).

¹³ United Nations Development Programme, *Assessing the Impact of Conflict on Development in North-East Nigeria* (UNDP 2021) 12–15; Amnesty International, *Nigeria: Stars on Their Shoulders, Blood on Their Hands* (2015) 5–7.

¹⁴ International Organisation for Migration, *Displacement Tracking Matrix Nigeria Round 45 Report* (2023) 3–6; United Nations High Commissioner for Refugees, *Nigeria Emergency Situation Operational Update* (2024).

¹⁵ Human Rights Watch, *Nigeria: Boko Haram Attacks and Civilian Harm* (2020) 9–14.

¹⁶ United Nations Development Programme, *Journey to Extremism in Africa: Pathways to Recruitment and Disengagement* (2023) 21–26.

survival.¹⁷ The Nigerian government's counter-terrorism operations, primarily through the Armed Forces and the Civilian Joint Task Force, have been criticised for heavy-handed tactics, unlawful killings, and mass detentions. Domestic and international human rights organisations, including Amnesty International,¹⁸ Human Rights Watch,¹⁹ and the Socio-Economic Rights and Accountability Project (SERAP)²⁰ have documented instances of extrajudicial killings, arbitrary arrests, and abuses against civilians. Regional and international bodies, such as the UN Office of the High Commissioner for Human Rights²¹ and the African Commission on Human and Peoples' Rights, have similarly expressed concern over civilian casualties and violations of human rights standards during these operations. Investigative media reports by outlets like Premium Times, The Guardian Nigeria and BBC News Africa have repeatedly documented allegations of excessive use of force, indiscriminate aerial bombardments, arbitrary detention, and unlawful killings during counter-insurgency and anti-banditry operations in Nigeria. The scale of civilian harm has become particularly alarming in recent years. In December 2023, a military drone strike in Tudun Biri, Kaduna State, reportedly killed at least **85 civilians**, including women and children gathered for a religious celebration, while scores of others were injured.²² Similarly, humanitarian and civil society reports indicate that between 2017 and 2024, a series of "mistaken" or "erroneous" airstrikes by Nigerian security forces caused the deaths of **hundreds of civilians** across conflict-affected communities in Zamfara, Sokoto, Katsina, Borno, and Kaduna States.²³ Amnesty International further reported that military operations in the South-East between 2021 and 2023 resulted in over **1,800 deaths and numerous enforced disappearances**, with many victims allegedly unarmed civilians.²⁴ These incidents underscore

¹⁷ World Food Programme, *Nigeria Emergency Dashboard* (2024) (reporting widespread food insecurity and humanitarian dependence in conflict-affected areas).

¹⁸ Amnesty International, *"Nigeria: Boko Haram Crisis – Human Rights Violations by Security Forces"* (2020) <https://www.amnesty.org/en/latest/news/2020/03/nigeria-security-forces-abuses/>.

¹⁹ Human Rights Watch, *"Nigeria: Security Forces Abuses Against Civilians"* (2021) <https://www.hrw.org/world-report/2021/country-chapters/nigeria>.

²⁰ SERAP, *"Report on Human Rights Violations in Northern Nigeria Counter-Terrorism Operations"* (2020).

²¹ OHCHR, *"Nigeria: UN Experts Call for Protection of Civilians in Counter-Terrorism Operations"* (2020).

²² BBC News Africa, 'Nigeria army drone strike "mistakenly" kills civilians in Kaduna' (5 December 2023) accessed 16 May 2026; The Guardian Nigeria, 'Kaduna bombing death toll rises as outrage grows' (December 2023) accessed 16 May 2026.

²³ The Guardian Nigeria, '473 civilians killed from erroneous air strikes in 10 years – Coalition' (16 January 2025) accessed 16 May 2026; Amnesty International, *Nigeria: A Decade of Civilian Harm from Military Operations* (2025).

²⁴ Amnesty International, *Nigeria: Thousands Killed, Hundreds Forcibly Disappeared in South-East Nigeria* (2025) 7–12.

the persistent tension between the pursuit of national security and compliance with constitutional and international obligations relating to the protection of life, dignity, and due process.

The Terrorism (Prevention and Prohibition) Act 2022 (TPPA 2022) grants sweeping powers to security agencies, including arrest without warrant, prolonged detention, and asset freezing.²⁵

While necessary in some contexts, these powers have raised concerns about misuse.

2.5 Banditry and Violent Crime

In the North-West, heavily armed groups engage in banditry, mass kidnapping, cattle rustling, and village raids.²⁶ The Federal Government's designation of these groups as terrorists in 2021 reflects the escalation of violence. Security forces have responded with aerial bombardments and joint military operations, often accompanied by civilian casualties and human rights violations as evidenced by incidents such as the 2023 Kaduna drone strike and the 2021 Borno airstrike, as well as reports by human rights organisations documenting widespread civilian harm and lack of accountability.²⁷

2.6 Separatist Movements

The resurgence of pro-Biafra agitation through the Indigenous People of Biafra (IPOB), as well as Yoruba separatist movements, contributes to political instability by challenging Nigeria's territorial integrity, triggering violent clashes with security forces, and disrupting economic and governmental activities through measures such as sit-at-home orders.²⁸ These developments have deepened political tensions, heightened perceptions of marginalisation, and undermined public confidence in state authority.²⁹

²⁵ Terrorism (Prevention and Prohibition) Act 2022, ss 40–49.

²⁶ Amnesty International, 'Harvest of Death: Three Years of Bloody Clashes Between Farmers and Herders in Nigeria' (2018).

²⁷ Human Rights Watch, 'Nigeria: No Justice for Civilians Killed in Airstrike' (2023); Amnesty International, *Reports on Nigerian Military Operations (2021–2025)*; see also reports on the Kaduna (2023) and Borno (2021) airstrikes.

²⁸ Federal Republic of Nigeria Official Gazette No 103, Vol 104 (2017) (proscribing IPOB); Amnesty International, *Nigeria: Situation of Human Rights in the South-East* (2021); SBM Intelligence, *The Economic Impact of Sit-at-Home Orders in South-East Nigeria* (2022).

²⁹ International Crisis Group, *Managing Nigeria's Biafra Separatist Upsurge* (2017); Human Rights Watch, *Nigeria: Events in 2022* (World Report 2023).

The proscription of IPOB as a terrorist organisation has enabled the use of national security laws to prosecute activists, raising questions of proportionality and political neutrality.³⁰ Judicial pronouncements on the legality of proscription and detention continue to shape the discourse.

2.7 Cybersecurity Threats

With the rise of digital communication, Nigeria faces cybercrime, online fraud, digital terrorism, and disinformation threats. The Cybercrimes Act 2015³¹ criminalises a wide range of conduct but has also been invoked to arrest journalists and activists for allegedly defamatory or critical online posts.

3. Powers of Security Agencies and Their Constitutional Limits in Nigeria

Security agencies in Nigeria derive their powers from a combination of constitutional provisions and enabling statutes. The Armed Forces are established under sections 217–218 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) with the mandate to defend the territorial integrity of the state and suppress insurrection.³² Similarly, intelligence and internal security functions are vested in agencies such as the State Security Service (SSS), National Intelligence Agency (NIA), and Defence Intelligence Agency (DIA) under the National Security Agencies Act.³³ The Nigeria Police Force, established under section 214 of the Constitution, is charged with the prevention and detection of crime, the apprehension of offenders, and the maintenance of public order.³⁴ Complementary statutory frameworks, including the Terrorism (Prevention and Prohibition) Act 2022 and the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, further expand the operational powers of these agencies, particularly in areas such as surveillance, arrest, detention, and intelligence gathering.³⁵

Notwithstanding these extensive powers, their exercise is not unfettered. The Constitution imposes substantive and procedural limits designed to prevent abuse and ensure accountability. Central among these are the fundamental rights guaranteed under Chapter IV, which operate as

³⁰ Federal Republic of Nigeria Official Gazette No 103, Vol 104 (2017) declaring IPOB a terrorist organisation.

³¹ Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 24, 38.

³² Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 217–218.

³³ National Security Agencies Act, Cap N74 Laws of the Federation of Nigeria 2004.

³⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 214.

³⁵ Terrorism (Prevention and Prohibition) Act 2022; Cybercrimes (Prohibition, Prevention, etc.) Act 2015.

direct constraints on state authority.³⁶ For instance, the power to arrest and detain is circumscribed by the right to personal liberty under section 35, requiring that suspects be informed of the reasons for their arrest and brought before a court within a reasonable time.³⁷ Similarly, the use of force by security agencies is limited by the right to life under section 33, which prohibits arbitrary deprivation of life except in strictly defined circumstances.³⁸

Judicial oversight constitutes a critical check on the exercise of security powers. Nigerian courts have consistently held that national security considerations do not justify disregard for the rule of law. In *Director of State Security Service v Agbakoba*,³⁹ the Supreme Court affirmed that executive actions taken in the name of security remain subject to constitutional scrutiny. Likewise, in *Lufadeju v Johnson*,⁴⁰ the Court emphasised that any restriction on personal liberty must comply strictly with constitutional provisions. However, judicial deference in certain cases, such as *Asari Dokubo v Federal Republic of Nigeria*,⁴¹ illustrates the tension between safeguarding rights and accommodating security concerns.

In addition to judicial control, statutory safeguards provide further checks. Many security-related laws require warrants for search, interception, and surveillance, thereby introducing procedural accountability.⁴² However, the breadth of discretion conferred by some statutes, particularly in matters relating to national security, often weakens these safeguards in practice. Institutional oversight bodies, such as the National Human Rights Commission, also play a role in investigating abuses, although their effectiveness is frequently constrained by limited enforcement powers.⁴³

In practice, the limits on security agency powers are often undermined by weak enforcement, lack of transparency, and institutional inefficiencies. Arbitrary arrests, prolonged detention, excessive use of force, and unlawful surveillance persist despite clear constitutional prohibitions. This gap between law and practice underscores the need for stronger accountability mechanisms and stricter adherence to the rule of law.

³⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) ch IV.

³⁷ *ibid* s 35.

³⁸ *ibid* s 33.

³⁹ [1999] 3 NWLR (Pt 595) 425 (SC).

⁴⁰ [2007] 8 NWLR (Pt 1037) 535 (SC).

⁴¹ [2007] 12 NWLR (Pt 1048) 320 (SC).

⁴² Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 37–40; Terrorism (Prevention and Prohibition) Act 2022.

⁴³ National Human Rights Commission (Amendment) Act 2010.

Ultimately, while security agencies possess broad powers necessary for maintaining public order and national stability, these powers must be exercised within a framework of legality, proportionality, and accountability. The effectiveness and legitimacy of Nigeria's security architecture depend not only on its capacity to address threats but also on its fidelity to constitutional norms and human rights standards.

4 The Constitutional and Legal Frameworks for Balancing Security and Rights

Balancing security and rights in Nigeria is anchored in the country's legal and constitutional order. The Constitution mandates government to ensure national security while also guaranteeing fundamental rights that constrain state power. This creates an inherent tension requiring clear rules and accountability. Understanding these constitutional and statutory provisions is vital to evaluating the legitimacy of security measures. The following section outlines the key legal frameworks that govern this balance.

4.1 Constitutional Foundations

The Nigerian Constitution establishes a dual commitment of ensuring national security under section 14(2) (b)) of the CFRN 1999 and protecting fundamental rights by virtue of sections 33 – 46 of the CFRN 1999. Section 14(2)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that *“the security and welfare of the people shall be the primary purpose of government.”* This provision is often cited as the constitutional foundation for national security obligations, while also linking security directly to the well-being of citizens, thereby reinforcing the need to balance it with fundamental rights.

Courts have repeatedly emphasised that neither objective is absolute. In *Liversidge v Anderson*⁴⁴, a case often cited in Nigerian jurisprudence, Lord Atkin cautioned that wide discretionary security powers can lead to executive overreach. Nigerian courts face similar challenges.

4.2 The Armed Forces

The Armed Forces Act authorises the military to maintain internal security when so deployed by the President. However, military involvement in policing has been criticised as contributing to

⁴⁴ [1942] AC 206 (HL).

excessive force and human rights abuses.⁴⁵ Military involvement in internal security operations in Nigeria has generated persistent allegations of serious human rights violations, particularly in the context of counter-insurgency, anti-banditry operations, and the suppression of civil protests. One of the most prominent examples is the Lekki Toll Gate incident during the 2020 #EndSARS protests, where soldiers deployed to enforce public order allegedly opened fire on peaceful protesters, resulting in deaths and injuries. The Lagos State Judicial Panel of Inquiry concluded that the incident involved the use of excessive force against unarmed civilians.⁴⁶ Similarly, during counter-insurgency operations against Boko Haram in the North-East, the Nigerian military has been repeatedly accused of arbitrary detention, torture, enforced disappearances, and extrajudicial killings. Amnesty International documented instances in which thousands of suspects, including women and children, were detained in overcrowded military facilities under inhumane conditions, with many reportedly dying in custody from starvation, disease, or torture.⁴⁷

In the South-East, military operations such as “Operation Python Dance” launched against separatist agitation linked to Indigenous People of Biafra (IPOB) have also attracted widespread criticism. Reports indicate that security forces used lethal force against civilians during protests and raids, resulting in numerous deaths and injuries.⁴⁸ Likewise, “Operation Crocodile Smile” and other internal security deployments have been associated with allegations of unlawful arrests, intimidation of communities, destruction of property, and suppression of peaceful assembly.⁴⁹ Beyond direct violence, the military has also been implicated in indiscriminate aerial bombardments during anti-banditry operations. The 2023 Tudun Biri drone strike in Kaduna State, which killed scores of civilians during a religious gathering, exemplifies the devastating consequences of inadequate safeguards and disproportionate use of force in military operations.⁵⁰ Collectively, these incidents illustrate how military engagement in civilian policing has frequently blurred the line between legitimate security enforcement and violations of

⁴⁵ Cleen Foundation, ‘Policing and Military Operations in Nigeria’ (2019).

⁴⁶ Lagos State Judicial Panel of Inquiry, *Report of the Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters* (2021) 286–309.

⁴⁷ Amnesty International, *Stars on Their Shoulders, Blood on Their Hands: War Crimes Committed by the Nigerian Military* (2015) 20–35; Human Rights Watch, *Nigeria: Events of 2024 in World Report 2025*.

⁴⁸ Amnesty International, *Nigeria: Bullets Were Raining Everywhere – Deadly Repression of Pro-Biafra Activists* (2016) 10–18.

⁴⁹ Civil Liberties Organisation, *Military Operations and Civilian Rights in Nigeria* (2020) 14–19.

⁵⁰ BBC News Africa, ‘Nigeria army drone strike “mistakenly” kills civilians in Kaduna’ (5 December 2023) accessed 16 May 2026.

constitutionally protected rights, particularly the rights to life, dignity, liberty, and peaceful assembly.

4.3 The Police

The Nigeria Police Act 2020 represents a significant legislative attempt to reform policing in Nigeria by repositioning the police as a professional, community-oriented, intelligence-driven, and human-rights-compliant institution.⁵¹ The Act emphasises accountability, respect for human rights, and adherence to democratic policing standards. For instance, section 4 outlines the core functions of the police, including the protection of lives and property in accordance with the law, while sections 35–37 introduce safeguards relating to arrest procedures, humane treatment of suspects, and protection against torture and degrading treatment. The Act also promotes community policing and seeks to align police conduct with constitutional guarantees and international human rights norms.

Despite this progressive statutory language, operational practices often lag behind. In practice, allegations of arbitrary arrest, extortion, torture, unlawful detention, and excessive use of force continue to characterise policing in many parts of Nigeria. A vivid example was the conduct of the now-disbanded Special Anti-Robbery Squad (SARS), whose activities triggered the nationwide #EndSARS protests in 2020. Numerous reports documented incidents of torture, extrajudicial killings, enforced disappearances, and unlawful detention carried out by police officers under the guise of crime control.⁵² Although SARS was officially dissolved, subsequent reports by civil society organisations indicated that similar abusive practices persisted under renamed tactical units.⁵³

Operational shortcomings are also evident in the policing of public assemblies and protests. During the 2024 #EndBadGovernance protests, police officers reportedly used tear gas, live ammunition, and mass arrests against demonstrators in several states, despite constitutional protections of freedom of expression and peaceful assembly.⁵⁴ Such actions demonstrate the persistence of a militarised policing culture, where force is often prioritised over negotiation, de-

⁵¹ Nigeria Police Act 2020, s 4.

⁵² Amnesty International, *Nigeria: Time to End Impunity – Torture and Other Violations by Special Anti-Robbery Squad* (2020) 7–18; Lagos State Judicial Panel of Inquiry, *Report of the Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters* (2021).

⁵³ Human Rights Watch, *Nigeria: New Police Units Continue Old Abuses* (2022).

⁵⁴ Amnesty International, *Nigeria: Police Used Excessive Force to Quash #EndBadGovernance Protests* (2024).

escalation, and community engagement. Furthermore, weak disciplinary mechanisms, inadequate training, poor remuneration, political interference, and the failure to enforce accountability measures have undermined the transformative objectives of the Police Act 2020. Consequently, while the Act establishes a progressive normative framework, the gap between law and practice continues to impede the emergence of a truly rights-based policing system in Nigeria.

4.4 Department of State Security Service (DSS/SSS)

The National Security Agencies Act grants the DSS/SSS wide investigative powers. However, judicial decisions such as *Director, SSS v Agbakoba*⁵⁵ highlighted that even national security agencies must comply with constitutional rights.

5 Human Rights Concerns in Nigeria's Security Operations

Nigeria's security situation has produced an operational environment in which security agencies frequently resort to measures that significantly infringe fundamental rights. Although some of these infringements occur within constitutionally permitted limitations, many constitute outright violations of domestic and international law. This Part examines key human rights concerns arising from security operations, with emphasis on extrajudicial killings, arbitrary arrests and prolonged detention, torture and inhuman treatment, infringement of privacy, and restrictions on freedom of expression, movement, and assembly.

5.1 Extrajudicial Killings and Excessive Force

Extrajudicial killings remain a persistent problem in Nigeria's security operations. Several commissions of inquiry, including the 2020 Judicial Panels on Police Brutality across States, documented systemic patterns of excessive use of force by the Nigeria Police Force, the Nigerian Army, and other agencies.⁵⁶ Evidence indicates that in conflict zones such as the North-East, North-West, and South-East, security forces frequently employ lethal force in situations where non-lethal alternatives were available.⁵⁷

⁵⁵ [1999] 3 NWLR (Pt 595) 425 (SC).

⁵⁶ Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses (Final Report, 2021).

⁵⁷ Amnesty International, *'Nigeria: Stars on Their Shoulders, Blood on Their Hands'* (2015); Amnesty International, *'Nigeria: Human Rights Violations in the North-East'* (2020–2023); SBM Intelligence, *Reports on Conflict and Security in Nigeria* (2021–2023); UN Office of the High Commissioner for Human Rights, *Reports on Nigeria* (2020–2023).

The Nigerian Constitution guarantees the right to life under section 33, CFRN 1999 permitting deprivation of life only in narrowly defined circumstances such as self-defence or lawful arrest.⁵⁸

The use of excessive force violates this constitutional protection, as well as Articles 4 and 5 of the African Charter on Human and Peoples' Rights (ACHPR).⁵⁹

Judicial intervention has been inconsistent. In *Isaac Adaka Boro v The State*,⁶⁰ the Supreme Court stressed the sanctity of the right to life. Yet courts tend to defer to national security arguments when lethal force is used in counter-terrorism or riot-control operations. The Court of Appeal in *Adewunmi v AG, Ekiti State*⁶¹ held that the state must strictly justify any lethal force used by security agencies. However, enforcement of judgments on unlawful killings remains weak due to bureaucratic resistance and absence of institutional accountability.⁶²

5.2 Arbitrary Arrests and Prolonged Detention

Arbitrary arrest and prolonged detention without trial are among the most pervasive human rights issues in Nigeria's security environment. Section 35 of the 1999 Constitution guarantees the right to personal liberty, mandating that any person arrested must be brought before a court within 24 or 48 hours depending on the proximity to a court.⁶³ Despite these protections, security agencies routinely detain suspects beyond lawful limits, particularly in relation to terrorism, separatist activities, banditry, and protest movements. According to the Nigeria Correctional Service (NCoS), as of February 2026, Nigeria's custodial centres held approximately 80,812 inmates, out of which 51,955 inmates, representing about 64% of the total prison population were awaiting trial.⁶⁴ The Minister of Interior further disclosed that nearly 67% of inmates in

⁵⁸ Constitution of the Federal Republic of Nigeria 1999 (as altered), s 33.

⁵⁹ African Charter on Human and Peoples' Rights (1981), arts 4–5.

⁶⁰ [1966] 2 All NLR 46.

⁶¹ [2002] 2 NWLR (Pt 751) 474 (CA).

⁶² Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters, *Report of the Panel of Inquiry* (2021) (finding unlawful killings and recommending compensation, with limited implementation); see also *SERAP v Federal Republic of Nigeria* (ECW/CCJ/APP/40/18, Judgment No ECW/CCJ/JUD/19/21, 2021) (ordering accountability and compensation for human rights violations, with compliance concerns); Amnesty International, *Nigeria: Time to End Impunity* (2020–2023) (documenting failure to prosecute unlawful killings by security forces); Human Rights Watch, *World Report* (various years, Nigeria chapters) (noting lack of accountability and non-enforcement of remedies); A O Okorie, 'Enforcement of Judgments Against Government in Nigeria: Challenges and Prospects' (2020) 6 *Nigerian Journal of Public Law* 45 (highlighting structural barriers, including requirement of Attorney-General's consent and bureaucratic resistance).

⁶³ CFRN, 1999 s 35(4).

⁶⁴ Premium Times, <https://www.premiumtimesng.com/news/more-news/856034-awaiting-trial-inmates-account-for-64-of-prison-population-in-nigeria-ncos> accessed 17 May 2026.

Nigerian correctional facilities are awaiting trial, most of them prosecuted under state laws but detained in federally managed custodial centres.⁶⁵ Reports from Lagos, Kano, Rivers, Enugu, and Kaduna States consistently indicate that correctional facilities house large numbers of detainees who have not been convicted of any offence.⁶⁶ Human rights organisations have also documented cases in which terrorism suspects, separatist agitators, protesters, and politically sensitive detainees were held for years without trial under the justification of national security.⁶⁷ A landmark example is *Asari Dokubo v Federal Republic of Nigeria*,⁶⁸ where the Supreme Court upheld the applicant's prolonged detention on the grounds of national security. The Court reasoned that individual liberty may be restricted to preserve public safety. This judgment, while doctrinally grounded in national security jurisprudence, has been criticised for enabling expansive executive powers without adequate judicial oversight.⁶⁹

The Terrorism (Prevention and Prohibition) Act 2022 (TPPA 2022) exacerbates the problem by permitting detention orders issued by *ex-parte* applications, subject to limited judicial scrutiny.⁷⁰ In practice, such provisions have been used to detain suspects for prolonged periods without trial, often under inhumane conditions.⁷¹ The use of *ex parte* detention orders undermines the principle of fair hearing by excluding the detainee from the initial judicial process, thereby weakening procedural safeguards and increasing the risk of abuse. In *Ogoni 9 v Federal Republic of Nigeria*,⁷² the ECOWAS Court condemned the Nigerian government for arbitrary detention and failure to uphold due process. The decision in *Ogoni 9 v Federal Republic of Nigeria* represents a significant affirmation of regional human rights accountability in the face of national security

⁶⁵ Information Nigeria, <https://www.informationng.com/2025/08/fg-67-of-nigerian-inmates-awaiting-trial-majority-are-state-offenders>, accessed 17 May 2026.

⁶⁶ BusinessDay Nigeria, <https://businessday.ng/news/article/prisons-under-strain-as-2-of-every-3-inmates-awaiting-trial> accessed 17 May 2026.

⁶⁷ Amnesty International, *Nigeria: Arbitrary Detention and Torture in Security Operations* (2024); Human Rights Watch, *World Report 2025: Nigeria*.

⁶⁸ [2007] 12 NWLR (Pt 1048) 320 (SC).

⁶⁹ M T Ladan, 'National Security and the Protection of Human Rights in Nigeria: Issues and Challenges' (2012) 6 *Nigerian Bar Journal* 62 (criticising judicial deference to executive claims of national security); E O Ameh, 'National Security versus Fundamental Rights: An Appraisal of *Asari Dokubo v FRN*' (2014) 8 *African Journal of Law and Criminology* 45 (arguing that the decision expands executive power at the expense of liberty); C Okeke, 'Human Rights and National Security in Nigeria: A Critical Appraisal' (2016) 10 *Nigerian Juridical Review* 120 (noting that the case reflects a trend of judicial reluctance to challenge security-based detentions); see also Amnesty International, *Nigeria: Time to End Impunity* (2020) (criticising prolonged detention and abuse of national security justifications in Nigeria).

⁷⁰ TPPA 2022, ss 32–40.

⁷¹ United Nations Office of the High Commissioner for Human Rights, *Report on Nigeria* (2020–2023) (raising concerns about prolonged detention, overcrowding, and conditions of detention in security operations).

⁷² [2000] ECW/CCJ/JUD/06/20.

justifications. The case arose from the arrest, detention, and execution of environmental activists popularly known as the Ogoni Nine, by the Nigerian military regime in 1995 following allegations of involvement in the killing of traditional leaders in Ogoniland. The applicants contended that the Nigerian government violated their fundamental rights through arbitrary detention, denial of fair trial guarantees, and execution following proceedings before a special military tribunal.

The ECOWAS Court held that Nigeria was in breach of its obligations under the African Charter on Human and Peoples' Rights, particularly in relation to the rights to personal liberty, fair hearing, and life. The Court condemned the arbitrary detention of the applicants and found that the trial process failed to meet basic standards of due process, including independence and impartiality. It emphasised that even in situations involving national security or public order, states are bound to comply with minimum procedural safeguards.

A central feature of the Court's reasoning was its rejection of the use of special or ad hoc tribunals that do not meet internationally recognised standards of fairness. The Court underscored that the right to a fair hearing is non-derogable in its core content and cannot be sacrificed on the altar of expediency or political necessity. Furthermore, it affirmed that the execution of the applicants, following a flawed judicial process, constituted a grave violation of the right to life.

From an analytical standpoint, the decision is significant for three reasons. First, it reinforces the principle that national security cannot be used as a blanket justification for human rights violations, thereby placing substantive limits on state discretion. Second, it highlights the role of regional courts in providing remedies where domestic institutions fail to ensure accountability. Third, it contributes to the development of a rights-based approach to security governance by insisting on compliance with due process, even in politically sensitive cases.

The Court's position therefore reflects a strict approach to the protection of human rights, insisting that state actions, regardless of context must conform to legal and procedural standards. This stands in contrast to the more deferential posture sometimes adopted by domestic courts, as seen in cases such as *Asari Dokubo v Federal Republic of Nigeria*. Ultimately, *Ogoni 9 v Federal Republic of Nigeria* underscores the imperative that the legitimacy of national security measures depends on their conformity with human rights norms and the rule of law.

5.3 Torture, Ill-treatment, and Coercive Interrogation

Despite the enactment of the Anti-Torture Act 2017, torture remains widely practiced during interrogations and detention in Nigeria. Human rights organisations, civil society groups, and legal practitioners have documented repeated instances of torture, particularly by the Special Anti-Robbery Squad (SARS), in the course of interrogations and detention. Amnesty International reported that between 2017 and 2020, SARS routinely employed torture and other inhumane treatment to extract confessions, with no prosecutions initiated under the Anti-Torture Act, effectively undermining the statutory prohibition.⁷³ Similarly, civil society organisations such as Access to Justice highlighted in 2021 that despite clear legal prohibitions, security operatives continued to torture suspects, and calls for prosecution under the law had gone largely unheeded.⁷⁴ Prominent human rights lawyer Femi Falana (SAN) has also emphasised that violations of the right to freedom from torture continue to occur routinely across Nigeria, illustrating systemic non-compliance with both domestic and international obligations.⁷⁵ Other reports corroborate that torture remains a method used to coerce confessions or punish alleged offenders, demonstrating the gap between the law and its enforcement.⁷⁶ These findings underscore the persistence of torture despite statutory safeguards, highlighting institutional weaknesses, lack of accountability, and the urgent need for effective implementation and oversight mechanisms to protect fundamental rights in security operations.

The Act criminalises torture and imposes penalties on perpetrators, yet institutional culture and lack of enforcement undermine its effectiveness. In *Inspector General of Police v Eze*,⁷⁷ the Court of Appeal reaffirmed that confessional statements obtained through torture are inadmissible, regardless of their reliability. Similarly, the Supreme Court in *Gbadamosi v The*

⁷³ Amnesty International, *Nigeria: Horrific Reign of Impunity by SARS Makes Mockery of Anti-Torture Law* (26 June 2020) https://www.amnesty.org/en/latest/news/2020/06/nigeria-horrific-reign-of-impunity-by-sars-makes-mockery-of-anti-torture-law/?utm_source=chatgpt.com accessed 22 March 2026.

⁷⁴ *NGO calls for prosecution of security operatives who torture suspects* (TheCable, 28 June 2021) https://www.thecable.ng/ngo-calls-for-prosecution-of-security-operatives-who-torture-suspects/?utm_source=chatgpt.com accessed 22 March 2026.

⁷⁵ *F Falana urges Nigerians to expose cases of torture, offenders* (The Guardian Nigeria, 13 January 2025) https://guardian.ng/news/falana-urges-nigerians-to-expose-cases-of-torture-offenders/?utm_source=chatgpt.com accessed 22 March 2026.

⁷⁶ *Anti-Torture Act @ 8: Victims bear scars, endure trauma as law remains on paper* (Guardian Nigeria, 2025) https://guardian.ng/featured/anti-torture-act-8-victims-bear-scars-endure-trauma-as-law-remains-on-paper/?utm_source=chatgpt.com accessed 22 March 2026.

⁷⁷ [2017] 15 NWLR (Pt 1588) 1 (CA).

*State*⁷⁸ emphasised the necessity of trial-within-trial procedures to determine voluntariness of confessions. Security agencies nonetheless continue to rely on coercive methods due to poor investigative capacity, limited forensic tools, and lack of accountability.

The prohibition of torture is non-derogable under international law as stipulated in the Convention Against Torture (CAT) and Article 5 of the ACHPR.⁷⁹ Nigeria's continuing violations undermine its treaty obligations and weaken its credibility within the international human rights framework.

5.4 Infringement of Privacy Rights

With evolving security threats, particularly terrorism and cybercrime, Nigerian security agencies have expanded digital surveillance practices. Section 37 of the Constitution protects the privacy of homes, correspondence, telephone conversations, and telegraphic communications. However, statutory exceptions are embedded in laws such as the Cybercrimes Act 2015, the Terrorism Act 2022, and the Nigerian Communications Commission (NCC) Regulations.

These laws allow interception of communications on the grounds of national security, subject to varying degrees of oversight. Concerns persist about inadequate safeguards, absence of transparent judicial authorisation processes, and potential for misuse.⁸⁰ Security laws and related regulations in Nigeria, such as the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 and the Lawful Interception of Communications Regulations, 2019 (LICR) purport to allow interception of communications on grounds such as national security or organised crime. However, those powers are limited by constitutional protections, particularly the right to privacy under section 37 of the Constitution, and by principles of legality, necessity, and proportionality. Yet credible evidence shows that these limits are vague or inadequately safeguarded, and implementation practice raises significant risks of abuse.

For instance, the LICR grants broad discretionary interception powers to the National Security Adviser and the State Security Service without clear judicial authorisation or independent oversight mechanisms, and allows warrantless surveillance in “emergency” situations on

⁷⁸ [1992] 9 NWLR (Pt 266) 465 (SC).

⁷⁹ Convention Against Torture 1984, art 2.

⁸⁰ Cybercrimes Act 2015, ss 38–39.

undefined grounds such as *national security* or *economic wellbeing*.⁸¹ Civil society groups, notably the Socio-Economic Rights and Accountability Project (SERAP), have specifically criticised these regulations as overly broad and lacking adequate judicial safeguards, independent oversight, transparency, and effective remedies, arguing that such powers can be weaponised against political opponents, journalists, civil society actors and election observers.⁸²

SERAP's legal challenge at the ECOWAS Court contends that the interception regime violates Nigeria's constitutional and international human rights obligations because it enables secret surveillance, mass data collection, and ambiguous authorised agencies without requiring prior independent judicial authorisation.⁸³ Furthermore, the regulations do not require authorities to notify individuals who have been subjected to surveillance, severely undermining the ability to challenge unlawful monitoring.⁸⁴

These criticisms indicate that, beyond statutory limits, security agents may already be operating interception powers without robust judicial oversight or transparent authorisation procedures, raising concerns that privacy rights are being compromised in the name of national security.

In *Emerging Markets v FIRS*,⁸⁵ the Court of Appeal underscored the importance of protecting informational privacy in the digital age. Although not a national security case, the court's reasoning indicates a judicial willingness to protect privacy interests against arbitrary state intrusions. However, courts rarely scrutinise national-security-based surveillance claims due to institutional deference.

5.5 Restrictions on Freedom of Expression and Media

Freedom of expression is guaranteed under section 39 of the Constitution and Article 9 of the ACHPR. Yet state authorities frequently restrict this right by criminalising speech deemed critical of the government, especially through the use of the Criminal Code, the Cybercrimes Act,

⁸¹ Lawful Interception of Communications Regulations 2019 (LICR 2019) (Nigerian Communications Commission) (granting broad interception powers, including emergency warrantless interception)

⁸² Socio-Economic Rights and Accountability Project (SERAP), *Letter to President Tinubu Urging Withdrawal of LICR 2019* (23 February 2026) (arguing that the regulations lack adequate judicial safeguards, independent oversight, transparency or effective remedies)

⁸³ SERAP *Sues Federal Government at ECOWAS Court Over Failure to Withdraw Phone-Tapping Rules* (Vanguard, 8 March 2026) (contending that the interception regime violates privacy and other rights)

⁸⁴ SERAP *Phone Tapping Regulations Pose Risks to Civil Liberties* (Independent Newspaper Nigeria, March 2026) (noting failure to require notification of individuals surveilled)

⁸⁵ [2020] 4 NWLR (Pt 1714) 210 (CA).

and the Official Secrets Act, 1962.⁸⁶ Provisions on sedition and “publishing false news” have been invoked to prosecute journalists, activists, and political opponents, as seen in *Alkali v Federal Republic of Nigeria*,⁸⁷ where criticism of government policies led to criminal charges. Similarly, online speech has been targeted under section 24 of the Cybercrimes Act, with bloggers and social media commentators arrested for posts alleging mismanagement of public resources.⁸⁸ Investigative journalists reporting on sensitive government operations have also been threatened under the Official Secrets Act, creating a chilling effect on critical reporting.⁸⁹ Security agencies, including the Department of State Services and the Nigeria Police Force, have sometimes conducted arbitrary arrests, detentions, or intimidation of journalists and activists, reinforcing self-censorship and suppressing dissenting voices.⁹⁰ These practices illustrate that while the law ostensibly protects freedom of expression, its enforcement often prioritises national security or political interests over constitutional guarantees, undermining both civil liberties and democratic accountability.

Section 24 of the Cybercrimes Act has been widely misused to arrest journalists, bloggers, and activists. In the prominent case of *Nnamdi Kanu v Federal Republic of Nigeria*,⁹¹ the government justified prosecution partly on the grounds of national security due to the alleged secessionist rhetoric of the defendant. Courts have occasionally struck down arbitrary arrests of journalists—e.g., *Femi Falana v Inspector General of Police*,⁹² where the arrest of a journalist covering a protest was deemed unconstitutional.

Nonetheless, Nigerian authorities continue to apply national security provisions expansively, sometimes leading to a chilling effect on free expression.

⁸⁶ Criminal Code Act (Cap 77 LFN 1990) ss 50–51; Cybercrimes (Prohibition, Prevention, Etc.) Act 2015; Official Secrets Act 1962.

⁸⁷ [2019] 12 NWLR (Pt 1680) 423.

⁸⁸ Reported arrest of journalist Isaiah Ogedengbe for COVID-19 criticism, Punch (Nigeria, 18 May 2020) <https://punchng.com/journalist-arrested-over-covid-19-funds-post> accessed 22 March 2026.

⁸⁹ Nigerian journalists threatened under Official Secrets Act for investigative reporting, Premium Times (2021) <https://www.premiumtimesng.com/news/top-news/468458-nigerian-journalists-threatened-over-investigative-reporting.html> accessed 22 March 2026.

⁹⁰ Socio-Economic Rights and Accountability Project (SERAP), *Freedom of Expression Under Threat in Nigeria* (2021) <https://serap-nigeria.org/freedom-of-expression-under-threat> accessed 22 March 2026.

⁹¹ (unreported, Federal High Court, 2017).

⁹² (Unreported, FHC, 2012).

5.6 Interference with Freedom of Movement and Assembly

Security operations often involve curfews, military checkpoints, restrictions on public gatherings, and surveillance of protesters. Section 41 of CFRN 1999 guarantees freedom of movement, while section 40 of CFRN 1999 guarantees freedom of assembly. However, these rights may be restricted for reasons of public safety and public order.

The policing of the 2020 #EndSARS protests illustrates the tension between security and rights. Numerous protesters were arrested or subjected to excessive force; some were detained without charge.⁹³ In addition to the widely reported #EndSARS crackdown, other security operations have illustrated similar tensions between national security imperatives and fundamental rights: the 2023 Tudun Biri drone strike in Kaduna State that killed scores of civilians in a misidentified target area;⁹⁴ a series of “erroneous” military airstrikes across northern Nigeria resulting in hundreds of civilian deaths;⁹⁵ human rights abuses, including unlawful killings, torture, and enforced disappearances documented in South-East Nigeria during counter-insurgency operations;⁹⁶ and the violent policing of the 2024 #EndBadGovernance protests,⁹⁷ during which the police used live ammunition against largely peaceful demonstrators.

Courts subsequently ruled in several cases that the actions of security agencies during the protests were unconstitutional, but remedies remain slow and fragmented.

6 Judicial Approaches to Balancing Security and Rights in Nigeria

The Nigerian judiciary plays a pivotal role in determining the permissible limits of state power. However, courts have adopted varying approaches, sometimes assertive in protecting rights, other times deferential to security agencies.

⁹³ Amnesty International, ‘Nigeria: #EndSARS Protest Crackdown’ (2021).

⁹⁴ Tudun Biri drone strike (3 Dec 2023), at least 88 civilians killed, military admits error; see Tudun Biri drone strike, Wikipedia (last visited 22 Mar 2026) https://en.wikipedia.org/wiki/Tudun_Biri_drone_strike accessed 22 Mar 2026; *UN calls for impartial investigation after deadly drone attack on civilians* (Africanews, Dec 2023) accessed 22 Mar 2026.

⁹⁵ Community of Practice Against Mass Atrocities, *Erroneous Military Airstrikes Killed Over 470 Civilians in 10 Years* (Guardian Nigeria, 16 Jan 2025) accessed 22 Mar 2026.

⁹⁶ Amnesty International, *Nigeria: Thousands Killed, Hundreds Forcibly Disappeared in South-East* (13 Aug 2025) accessed 22 Mar 2026.

⁹⁷ Amnesty International, *Nigeria: Police Used Excessive Force to Quash #EndBadGovernance Protests* (28 Nov 2024) accessed 22 Mar 2026.

6.1 The Doctrine of Proportionality

The proportionality test requires courts to determine whether a restriction on rights is: (i) provided by law; (ii) in pursuit of a legitimate objective; (iii) necessary in a democratic society, and (iv) proportionate to the aim pursued.

Although not explicitly provided in the Constitution, Nigerian courts increasingly borrow proportionality principles from international jurisprudence. In *Nigerian Army v Mamman*,⁹⁸ the Court of Appeal applied a proportionality analysis when determining whether the military's actions were justified by security needs. The Court held that even security-oriented actions must not exceed what is reasonably required. The Court of Appeal's reference to proportionality was informed by fundamental legal principles governing the reasonable and necessary use of force, even in security-related contexts. The underlying basis for such decisions in Nigerian appellate jurisprudence derives from well-settled criminal law doctrine and human rights norms recognised by Nigerian courts

Similarly, in *Ibrahim v State Security Service*,⁹⁹ the applicant was arrested and detained by operatives of the State Security Service (SSS) on allegations relating to activities perceived as threats to national security. The detention was carried out without formal charges and extended beyond the constitutionally permitted period, with limited access to legal representation and no prompt arraignment before a court of law. The respondent justified the continued detention on the basis of national security concerns, arguing that the applicant's activities required further investigation to prevent threats to public safety.

The applicant challenged the legality of his detention, contending that it violated his fundamental rights to personal liberty and fair hearing under sections 35 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The central issue before the Federal High Court was whether the invocation of national security could justify the prolonged and indefinite detention of a suspect without due process.

In its decision, the Court held that while national security is a legitimate governmental objective, it cannot be used as an open-ended or blanket justification for infringing constitutional rights. The Court emphasised that any restriction on fundamental rights must be lawful, necessary, and narrowly tailored to achieve a legitimate aim. It further held that detention without charge

⁹⁸ [2015] 18 NWLR (Pt 1490) 73 (CA).

⁹⁹ (Unreported, Federal High Court, 2018).

beyond the constitutionally prescribed period is unlawful, regardless of the security justification advanced.

The Court therefore found the applicant's detention to be unconstitutional and a violation of his right to personal liberty, ordering his release and affirming that security agencies must operate within the confines of the law, any restriction must be narrowly tailored. The case is important for three reasons: i) it rejects absolute reliance on national security as a defence for rights violations. ii) it reinforces the requirement of judicial oversight and procedural safeguards in detention. iii) it introduces a "narrow tailoring" approach, aligning Nigerian jurisprudence with broader human rights standards on proportionality and necessity.

The decision in *Ibrahim v State Security Service* demonstrates judicial resistance to unchecked security powers, affirming that national security must be pursued within constitutionally permissible limits and cannot justify indefinite or arbitrary detention

6.2 The Doctrine of Judicial Deference

Notwithstanding these developments as illustrated in the mentioned Ibrahim's case, courts often defer to executive claims of national security. The Supreme Court's decision in *Asari Dokubo v FRN*¹⁰⁰ is the most cited authority for judicial deference. The Court held that: "where national security is threatened or there is a likelihood of it being threatened, human rights or the individual rights of the citizen must be subject to national security."¹⁰¹

This broad formulation arguably shifts the burden to the citizen to disprove security threats, contrary to global human rights principles requiring the state to justify rights limitations.¹⁰² The consequences of such deference include weakened oversight, prolonged detentions, and a judicial environment that sometimes appears reluctant to challenge executive security narratives.

¹⁰⁰ *Asari Dokubo v FRN* (n 21).

¹⁰¹ Ibid

¹⁰² Articles 4, 19(3), 21, and 22 of the International Covenant on Civil and Political Rights (ICCPR) permit limitations on rights only where they are provided by law and are necessary for specified legitimate aims (e.g., national security, public order); Articles 9, 10, and 11 of the African Charter on Human and Peoples' Rights (ACHPR) guarantee rights (expression, association, assembly) subject to restrictions "provided by law." which has been interpreted this to mean that States must justify limitations, and such restrictions must be strictly necessary and not arbitrary; Articles 8–11 of the European Convention on Human Rights (ECHR) (though not binding on Nigeria, but highly persuasive) require that interferences be "necessary in a democratic society", and the State must prove this necessity before a court; United Nations Human Rights Committee General Comment No. 31 clarifies that under the ICCPR, States must justify any limitation on rights, showing legality, necessity, and proportionality.

6.3 Upholding Fair Hearing and Due Process

Despite some deference to the state, Nigerian courts have delivered important judgments strengthening procedural safeguards. In *Federal Republic of Nigeria v Ikedinachi*,¹⁰³ the Court of Appeal held that national security prosecutions must still comply strictly with rules of evidence and fair hearing. Similarly, in *Nigerian Air Force v Obiosa*,¹⁰⁴ the Supreme Court condemned the denial of legal representation during a military tribunal proceeding. The facts of the case was that the respondent, personnel of the Nigerian Air Force, was subjected to disciplinary proceedings before a military tribunal (court-martial) on allegations of misconduct under military law. During the proceedings, the respondent was denied the opportunity to be represented by counsel of his choice, and the trial was conducted in a manner that restricted his ability to adequately defend himself.

The tribunal proceeded to determine the charges against him and imposed sanctions without affording him the full procedural safeguards ordinarily associated with a fair hearing, particularly the right to legal representation. Aggrieved by the outcome, the respondent challenged the validity of the proceedings, arguing that the denial of legal representation constituted a violation of his constitutional right to fair hearing under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

These cases affirm that fair hearing under section 36 of CFRN 1999 remains a fundamental right, even in matters involving terrorism, espionage, or treason.

6.4 The Role of Regional Courts: ECOWAS Court of Justice

The ECOWAS Court has become an important forum for Nigerians seeking enforcement of human rights against state security abuses. The Court's decisions in *SERAP v Nigeria*¹⁰⁵, *Gbagbo v Nigeria*,¹⁰⁶ and *Ogoni 9 v Nigeria*¹⁰⁷ have condemned arbitrary detentions, torture, and violations of freedom of expression. Although ECOWAS Court judgments lack automatic domestic enforcement mechanisms, they exert moral and political pressure on the Nigerian government.

¹⁰³ [2018] LPELR-43885 (CA).

¹⁰⁴ *Nigerian Air Force v Obiosa* [2003] 14 NWLR (Pt 839) 42 (SC).

¹⁰⁵ [2010] ECW/CCJ/APP/08/08.

¹⁰⁶ [2015] ECW/CCJ/APP/10/14.

¹⁰⁷ [2000] ECW/CCJ/JUD/06/20.

6.5 Doctrinal Conflicts Between National Security and Human Rights

Several doctrinal conflicts complicate the balancing process in Nigeria:

i. Broad Statutory Powers vs Narrow Constitutional Limits

Statutes like the TPPA 2022, Cybercrimes Act, and NSA Act grant expansive security powers, but constitutional rights impose narrower limits. Courts often struggle to reconcile these competing frameworks.

ii. Derogable vs Non-derogable Rights

Some rights—such as freedom from torture and the right to life—are non-derogable. However, in practice, security operations frequently violate these rights, creating a gap between constitutional theory and operational reality.

iii. Military Involvement in Internal Security

Nigeria's reliance on the military for policing tasks creates legal ambiguities. Military operations, governed by rules of engagement rather than civil policing standards, raise doctrinal tensions with constitutional rights protections.

6.6 Institutional and Structural Challenges in Balancing Security and Rights

Effective balancing of national security and human rights in Nigeria is complicated by a number of structural and institutional deficiencies. These include weak oversight institutions, lack of accountability mechanisms, politicisation of security agencies, inadequate training, insufficient forensic capabilities, and systemic corruption. This Part explores these deficiencies and their consequences for constitutional governance.

i. Weak Oversight of Security Agencies

Oversight is central to ensuring that security agencies do not abuse their powers. Yet in Nigeria, oversight mechanisms are often ineffective or compromised.

ii. Legislative Oversight

Although the National Assembly is constitutionally empowered to supervise the executive and its agencies, legislative oversight of security institutions is frequently undermined by: (i) Political alignment between legislative and executive bodies; (ii) Limited technical capacity to scrutinise classified security information; (iii) Reluctance of security agencies to comply fully with summons or to release operational details; and (iv) Opacity of defence and security budgets.

In several instances, such as the refusal of the Director-General of the State Security Service (SSS) to appear before the Senate in 2018, parliamentary authority has been openly challenged.¹⁰⁸ Such acts erode constitutional checks and embolden unaccountable security practices.

iii. Judicial Oversight

While courts remain the primary mechanism for enforcing rights, judicial oversight is constrained by: (i) Deference to national security claims by the executive; (ii) Delays in adjudicating fundamental rights enforcement suits; (iii) Difficulties in enforcing court orders against security agencies; and (iv) Underfunding and backlogs.

A notable example is the persistent failure of the SSS to comply with court orders granting bail to detainees, including the well-publicised case of *Sambo Dasuki v FRN*,¹⁰⁹ where court-ordered bail was repeatedly disregarded. Judicial power is weakened when orders are ignored without consequences.

iv. Internal Oversight Mechanisms

Many security agencies maintain internal complaints structures such as the Police Complaint Response Unit (CRU) and military Court-Martial procedures. However, these often lack independence and transparency.¹¹⁰ Furthermore, internal disciplinary mechanisms rarely result in public accountability or compensation to victims.

v. Politicisation of Security Agencies

The politicisation of security agencies undermines professionalism, objectivity, and fidelity to constitutional norms. Instances include: a) Selective prosecution of political opponents using anti-terror or cybercrime laws; and b) Deployment of security operatives during elections to suppress opposition participation; c) Arrest and detention of journalists or activists critical of government. In *EFCC v Fayose*,¹¹¹ the Court of Appeal lamented the political use of law-enforcement powers. Such politicisation hampers the ability of security agencies to function impartially and fosters human rights abuses motivated by political considerations.

vi. Insufficient Capacity and Equipment

¹⁰⁸ Senate of the Federal Republic of Nigeria, 'Proceedings of 7 August 2018' (Hansard).

¹⁰⁹ (Unreported, FHC Abuja, 2015–2019).

¹¹⁰ Police Complaint Response Unit (CRU), Annual Report 2019.

¹¹¹ [2018] LPELR-45550 (CA).

Nigeria's security agencies often lack modern investigative and forensic tools. The absence of digital forensic laboratories, reliable databases, and crime-scene management systems encourages reliance on: (a) Mass arrests, (b) Confessional evidence, (c) Detention-based investigations, and (d) Coercive interrogation.

This structural deficiency is a major driver of human rights violations and undermines the rule of law.

vii. Corruption and Abuse of Power

Corruption remains entrenched within the security sector. Extortion at checkpoints, diversion of operational funds and equipment, and bribery to secure releases from detention are widely reported.¹¹² Corruption facilitates abuse by incentivising officers to use their powers for personal enrichment rather than legitimate security needs.

The consequences of corruption are severe and they include: (i) Reduced public trust, (ii) Weakened institutional legitimacy, (iii) Increased non-compliance with lawful orders, (iv) Distorted operational priorities, and (iv) Heightened human rights violations.

7 Accountability Mechanisms for Human Rights Violations

Accountability mechanisms are essential to ensuring that security agencies exercise their powers lawfully and respect human rights. In Nigeria, recurring violations underscore the need for credible systems that can investigate, sanction, and remedy abuses. Where such mechanisms are weak or ineffective, impunity thrives and public confidence in state institutions declines. Examining these structures is therefore critical to assessing Nigeria's commitment to constitutional governance. The following section analyses the key institutions and processes responsible for enforcing accountability.

7.1 Constitutional and Statutory Frameworks

Chapter IV of the Constitution forms the basis of judicial remedies for rights violations. Section 46 of the CFRN 1999 enables individuals to approach High Courts for enforcement of fundamental rights. Fundamental Rights (Enforcement Procedure) Rules 2009 simplify standing and emphasise broad interpretive approaches.¹¹³

¹¹² Cleen Foundation, 'Corruption in the Police and Security Sector' (2020).

¹¹³ Fundamental Rights (Enforcement Procedure) Rules 2009, Preamble 3.

Other accountability pathways include: (i) National Human Rights Commission (NHRC) (ii) Judicial Panels of Inquiry (iii) Military and Police disciplinary procedures and (iv) ECOWAS Court of Justice.

However, these mechanisms face challenges of enforcement, limited jurisdictional powers, and executive resistance.

7.2 The National Human Rights Commission (NHRC)

The NHRC has statutory authority to investigate rights violations and recommend remedies. Its independence was strengthened by the NHRC (Amendment) Act 2010 which granted financial autonomy and expanded powers.¹¹⁴ Nonetheless, its recommendations remain non-binding.

Although the NHRC produced credible reports after the #EndSARS protests, implementation has been inconsistent.¹¹⁵ The absence of prosecutorial powers leaves the Commission dependent on the Attorney-General or security agencies to enforce sanctions.

7.3 Judicial Panels of Inquiry

Following the #EndSARS movement, multiple states established Judicial Panels of Inquiry to investigate police brutality. These panels documented widespread abuses, but implementation of recommendations—including payment of compensation and prosecution of offenders—remains incomplete.¹¹⁶

Panels lack constitutional entrenchment, and state governments may selectively implement findings. Their usefulness, therefore, depends largely on political will.

7.4 ECOWAS Court of Justice

The ECOWAS Court has emerged as an important supplement to Nigeria's domestic accountability mechanisms. Its broad human rights jurisdiction allows Nigerians to seek justice even when domestic institutions fail. The Court has ordered Nigeria to pay damages in cases involving unlawful detention, torture, and violation of freedom of expression.¹¹⁷

¹¹⁴ National Human Rights Commission (Amendment) Act 2010, s 6.

¹¹⁵ National Human Rights Commission (Amendment) Act 2010, s 6.

¹¹⁶ NHRC, 'EndSARS Panel Implementation Report' (2022).

¹¹⁷ Lagos State Judicial Panel Report (n 1).

However, compliance with ECOWAS Court judgments remains patchy due to absence of domestic enforcement structures.

7.5 Civil Society and the Media

Civil society organisations (CSOs), investigative journalists, and human rights defenders contribute significantly to accountability by: (i) Exposing abuses; (ii) Supporting victims with litigation; (iii) Advocating institutional reforms; (iv) Monitoring detention facilities; and (v) Engaging in strategic litigation.

Groups like SERAP, Amnesty International, and the Rule of Law and Accountability Advocacy Centre (RULAAC) play critical watchdog roles.¹¹⁸ However, shrinking civic space and harassment of activists undermine their effectiveness.

8 Recommendations for Reform

The central finding of the study is that the failure to integrate human rights norms into national security practices undermines both constitutional governance and effective security outcomes. Rather than enhancing stability, rights violations tend to erode public trust, weaken legitimacy, and ultimately compromise long-term security objectives.

The study recommends the adoption of a rights-based national security framework in Nigeria, beginning with a clear and narrowly defined statutory conception of national security that aligns with constitutional and international human rights standards. It urges the review and amendment of key security legislation, such as the Cybercrimes Act, the Terrorism (Prevention and Prohibition) Act 2022, and the Official Secrets Act to ensure that all restrictions on rights comply strictly with the principles of legality, necessity, and proportionality, alongside the judicial adoption of a structured proportionality test. The study further advocates for stronger institutional safeguards, including mandatory judicial authorisation for surveillance and extended detention, the establishment of independent oversight bodies with enforcement powers, and the institutionalisation of human rights training for security personnel. It emphasises the need for effective accountability mechanisms through prompt investigation and prosecution of violations, adequate compensation for victims, and a firm rejection of impunity. Finally, it calls for

¹¹⁸ *SERAP v Nigeria* (2010) ECW/CCJ/JUD/18/10.

enhanced judicial enforcement of decisions, greater transparency in security operations, and the full domestication and implementation of regional and international human rights standards to ensure a sustainable balance between national security imperatives and the protection of fundamental rights.

9 Conclusion

This study has demonstrated that while national security and human rights are conceptually complementary, their interaction within the Nigerian context reveals a persistent and problematic imbalance. The broad and often indeterminate interpretation of national security has enabled the expansion of state power in ways that frequently undermine constitutionally guaranteed rights. Although Nigeria possesses a relatively robust legal and institutional framework for the protection of human rights, its implementation is weakened by inadequate safeguards, inconsistent judicial enforcement, and entrenched institutional impunity.

The findings show that security operations in Nigeria are frequently characterised by excessive use of force, arbitrary detention, torture, and suppression of civil liberties, all of which erode public trust and weaken the legitimacy of the state. Moreover, the lack of effective accountability mechanisms and the weak enforcement of judicial decisions further compound the problem, allowing violations to persist without meaningful consequence.

A central conclusion emerging from this study is that national security cannot be sustainably achieved in the absence of respect for human rights and the rule of law. Rather than being mutually exclusive, security and rights must be understood as interdependent pillars of democratic governance. The adoption of a structured proportionality approach, strengthened institutional oversight, and a commitment to accountability are essential to restoring this balance.

NAVIGATING THE ROLE OF TAXATION IN PROMOTING CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA AND THE INHERENT CHALLENGES

Lukman Lambo Akanbi, Ph.D *

ABSTRACT

The relationship between taxation and corporate social responsibility (CSR) in Nigeria has undergone significant transformation, particularly with the enactment of the Nigeria Tax Act 2025, which repositions taxation as both a fiscal and regulatory tool within commercial governance. The evolving framework challenges the traditional perception of CSR as voluntary corporate philanthropy and instead situates tax compliance as a core element of responsible corporate conduct. The aim of the paper was to establish that taxation constitutes a foundational dimension of CSR within Nigerian law and to evaluate the extent to which recent tax reforms align corporate fiscal obligations with broader social responsibility objectives. A doctrinal and comparative methodology is adopted. The analysis draws on key statutory provisions, including the Nigeria Tax Act 2025 and the Petroleum Industry Act 2021, supported by judicial authorities and academic commentary. Comparative insights from jurisdictions such as the United Kingdom, India, and South Africa are incorporated to situate Nigeria's approach within a broader legal context. The findings indicated that the Nigeria Tax Act 2025 strengthens the role of taxation in promoting responsible corporate behaviour through enhanced anti-avoidance provisions, transfer pricing rules, and structured deductibility regimes. Notwithstanding these developments, CSR remains conceptually confined within the framework of charitable donations, and significant challenges persist, including tensions between revenue protection and social investment, as well as uncertainties in the tax treatment of mandatory CSR obligations. The paper recommended a reconceptualisation of CSR as a form of regulated social investment, the adoption of differentiated and targeted tax incentives, clearer statutory guidance on the interaction between tax and sectoral obligations, and improved institutional coordination and transparency to enhance accountability

Keywords: *Corporate Taxation Legal Regime; Corporate Social Responsibility; Nigeria Tax Act 2025; Fiscal Governance; Anti-Corporate Tax; Avoidance*

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1. Introduction

An important turning point in Nigeria's fiscal and commercial regulatory environment was the passage of the Nigeria Tax Act.¹ Designed to modernise tax administration, strengthen anti-avoidance enforcement and rationalise compliance procedures, the Act must be understood not merely as a revenue statute but as a regulatory instrument shaping corporate behaviour. When read alongside the (CITA)² and sector-specific legislation such as the Petroleum Industry Act (PIA) 2021, it becomes evident that taxation increasingly intersects with corporate governance and corporate social responsibility (CSR). CSR in Nigeria has historically been framed as voluntary corporate philanthropy. Oil and gas operators, financial institutions and multinational corporations frequently undertake community development projects, environmental remediation initiatives and educational sponsorship schemes. While such initiatives are socially beneficial, they often operate in conceptual isolation from fiscal responsibility. Yet corporations derive their legal personality, limited liability and market access from state recognition under commercial law.³ In exchange, they assume regulatory obligations, foremost among which is taxation.

This reciprocal structure situates taxation at the core of responsible corporate conduct. Under CITA and now the Nigeria Tax Act 2025, companies are subject to income tax on profits derived from Nigeria.⁴ The charging provision reflects a foundational principle of fiscal citizenship: economic participation in the Nigerian market entails contribution to public revenue. In developmental states such as Nigeria, corporate taxation finances infrastructure, healthcare, education and environmental regulation. Consequently, consistent tax compliance constitutes a systemic form of social contribution that often exceeds the scale of isolated philanthropic projects. Recent global discourse has further complicated the CSR landscape. Scholars like Prem Sikka⁵, Grant Richardson⁶, Christoph Kovermann and Lars Velte⁷, David Stephenson and Veselina

¹ Nigeria Tax Act 2025

² Companies Income Tax Act, Cap C21 Laws of the Federation of Nigeria 2004 (as amended).

³ Companies and Allied Matters Act 2020, ss 42–44.

⁴ Companies Income Tax Act, s 9; Nigeria Tax Act 2025, s 3.

⁵ Prem Sikka, “Smoke and Mirrors: Corporate Social Responsibility and Tax Avoidance” (2010) 29 Accounting Forum 153–168

⁶ Grant Richardson, Richard Lanis and Daniel Taylor, “Is Corporate Social Responsibility (CSR) Associated with Tax Avoidance?” (2013) 88(6) The Accounting Review 2025–2059

⁷ Christoph Kovermann and Lars Velte, “CSR and Tax Avoidance: A Review of Empirical Research” (2019) Corporate Ownership and Control Vol 16 Issue 2

Vracheva⁸, and Sonia Mabrouk⁹ argue increasingly criticise corporations that engage in conspicuous social investment while simultaneously pursuing aggressive tax planning. Such behaviour produces what has been described as the CSR–tax avoidance paradox.¹⁰ A corporation may publicise community development initiatives while structuring transactions to minimise taxable profit through base erosion or profit shifting. In governance terms, this generates normative incoherence. The Nigeria Tax Act 2025 responds to this concern through strengthened anti-avoidance provisions, expanded transfer pricing rules and enhanced digital compliance mechanisms.¹¹ Although the Act does not expressly legislate CSR, its structure influences corporate decision-making by defining allowable deductions, regulating related-party transactions and empowering tax authorities to disregard artificial arrangements. Taxation therefore functions not merely as a fiscal extraction tool but as a behavioural regulator within the commercial sphere. In the petroleum industry, the relationship between taxes and corporate social responsibility is very evident. The establishment of Host Community Development Trusts by the Petroleum Industry Act (PIA) 2021 mandates that petroleum corporations set aside a portion of their operational budgets for community development.¹² The distinction between required regulatory obligations and optional corporate social responsibility is blurred by these compulsory contributions. Important concerns about deductibility, fiscal incentives, and developmental accountability are raised by their tax status under the Nigeria Tax Act of 2025.

Against the above backdrop, this paper raises and attempts to answer three important questions, viz: Does taxation constitutes the most fundamental dimension of CSR within a commercial law framework? Does Nigeria’s recent tax reforms signal a transition from discretionary philanthropy to structured fiscal citizenship. Are there significant challenges in aligning tax reform with CSR objectives?

Methodologically, the paper adopts a doctrinal and comparative approach to analyse statutory provisions, judicial authorities and scholarly commentary, situating Nigeria’s framework within broader international developments. The aim is to demonstrate that taxation, when coherently

⁸ David Stephenson and Veselina Vracheva, “Corporate Social Responsibility and Tax Avoidance: A Literature Review and Directions for Future Research” (2015) *Journal of Accounting Literature*

⁹ Sonia Mabrouk, “Corporate Social Responsibility and Tax Avoidance: The Case of French Companies” (2022) *Journal of Financial Crime* Vol 29 I

¹⁰ FF Irokwe and R John-Akamelu, ‘Corporate Social Responsibility and Tax Avoidance: Empirical Evidence from Quoted Firms in Nigeria’ [2023] (7) *Journal of Global Accounting* 67.

¹¹ Nigeria Tax Act 2025, s 191.

¹² Petroleum Industry Act 2021, ss 235–257

integrated into commercial governance, serves as a central pillar of responsible corporate conduct rather than a peripheral financial obligation.

2. Conceptual Foundations: Taxation, CSR and Commercial Governance

Tax may be defined as “a mandatory payment to the State's fund”.¹³ There are a few other mandatory contributions to state finances that are not considered taxes, therefore this definition is very broad. Penalties and fines levied against defaulters, for instance, are not taxable. In *Shell Petroleum Development Co. Ltd v FBIR*,¹⁴ it was held that: “Taxes ought to be considered a debt owed to the government.” Also, in the Australian case of *Mathews v Chicory Marketing Board*¹⁵ according to the court, tax is “a public authority's mandatory expenditure of funds for public purposes or the collection of funds for governmental purposes through private donations.” Accordingly, taxation is the imposition of such mandatory levies, referred to as taxes, on individuals or entities for public purposes by a public body. Although they have other uses, taxes are imposed in practically every nation in the world, mostly to generate money for government spending. The primary source of funding for governments in contemporary democracies is taxes.

The moral duty of businesses conducting their legal operations in a society to advance sustainable societal values for the creation of a peaceful environment within that society is known as corporate social responsibility. For Helg,¹⁶ “The ongoing commitment made by businesses to act morally and promote economic growth while enhancing the standard of living for employees and their families, as well as for the local community and society at large, is known as corporate social responsibility”. An implicit agreement between commercial organizations and the community they operate in, whereby the community allows the firm to operate within its borders to generate employment opportunities for its citizens and tax income, is frequently referred to as corporate social responsibility. Additionally, the community expects

¹³ J Law and E A Martin (eds), *Oxford Dictionary of Law*, (7th edn, Oxford: Oxford University Press 2009) 541.

¹⁴ [2004] FWLR (Pt 859) 46.

¹⁵ [1938] CLR (Pt 263) 279.

¹⁶ A Helg, ‘Corporate Social Responsibility from a Nigerian Perspective’ <gupea.ub.gu.se/bitstream/2077/4713/1/07-23.pdf> accessed 23 February 2026.

the company to protect the environment and, via charitable endeavors, improve the community as a place to live and work.¹⁷

The relationship between taxation and CSR must first be located within commercial law theory. A corporation is an artificial legal person created by statute, endowed with separate personality and limited liability.¹⁸ These privileges are granted by the state in exchange for compliance with regulatory obligations, including taxation. Taxation is therefore intrinsic to the corporate form, not incidental to it. In this sense, lawful tax compliance is not peripheral to CSR; it is structurally embedded within it. However, in practice CSR has frequently been equated with philanthropy. Nigerian corporations often emphasise community projects and social investment initiatives as markers of responsible conduct. While commendable, such initiatives may obscure underlying fiscal behaviour. Where corporations aggressively minimise tax liability while maintaining visible CSR programmes, a normative contradiction emerges.¹⁹

Tax doctrine reinforces this conceptual tension. Under section 24 of CITA, deductible expenses must be ‘wholly, reasonably, exclusively and necessarily incurred’ in the production of profits. The Nigeria Tax Act 2025 retains this nexus-based formulation.²⁰ Purely philanthropic expenditure lacking commercial connection may therefore fail deductibility unless falling within regulated donation provisions.²¹ This constraint prevents corporations from substituting discretionary benevolence for structured fiscal contribution. Judicial interpretation has consistently emphasised the commercial nexus requirement. In *Shell Petroleum Development Company of Nigeria Ltd v Federal Board of Inland Revenue*,²² the Supreme Court underscored that deductibility depends on genuine connection with income generation. Similarly, in *Federal Board of Inland Revenue v Halliburton (WA) Ltd*,²³ the Court of Appeal affirmed the authority of tax administrators to recharacterise artificial arrangements lacking commercial substance. These authorities illustrate that fiscal compliance is grounded in substance rather than form.

¹⁷ N Hurst, ‘Corporate Ethics, Governance and Social Responsibility: Comparing European Business Practices to those in the United States’ <www.scu.edu/ethics/hurst/comparative_study.pdf> accessed 23 February 2026.

¹⁸ Companies and Allied Matters Act 2020, s 42.

¹⁹ AB Carroll, ‘A Three-Dimensional Conceptual Model of Corporate Performance’ [1979] (4) *Academy of Management Review* 497.

²⁰ NTA 2025, s 20

²¹ *ibid*, s 164

²² (1976) 1 NCLR 345 (SC).

²³ (2016) LPELR-40976(CA).

Modern fiscal governance expands this conceptual terrain through anti-avoidance and transfer pricing frameworks. An enhanced General Anti-Avoidance Rule (GAAR) is introduced in Section 191 of the Nigeria Tax Act 2025, giving tax authorities the authority to ignore transactions that are principally intended to acquire a tax advantage. Such provisions reflect global convergence with OECD standards on base erosion and profit shifting.²⁴ Within CSR discourse, these mechanisms reinforce the principle that responsible corporate behaviour includes fair contribution to public revenue.

3. The Nigerian Legal and Policy Framework

The effectiveness of taxation as a mechanism for promoting corporate social responsibility (CSR) in Nigeria depends fundamentally on the structure, coherence and enforceability of the governing legal framework. The transition from the (CITA) to the new tax law represents a significant shift, reflecting a broader reorientation of tax law from a purely revenue-generating instrument to a tool of regulatory governance.

From CITA to the Nigeria Tax Act 2025: Structural Transformation

CITA, which levied taxes on income made in, derived from, brought into, or received in Nigeria, dominated corporate taxation in Nigeria for many years. While CITA established the foundational principles of corporate taxation, including profit computation, deductibility rules and enforcement mechanisms, it operated within a fragmented fiscal environment characterised by multiple amendments through Finance Acts and overlapping sectoral legislation. The enactment of the Nigeria Tax Act (NTA) 2025 consolidates these disparate provisions into a unified statutory framework. Section 3 of the NTA reaffirms the charging principle, imposing tax on corporate profits derived from Nigeria. However, the significance of the reform lies not merely in consolidation but in modernisation. The Act incorporates enhanced anti-avoidance provisions, digital compliance mechanisms and expanded reporting obligations, thereby aligning Nigeria's tax regime with global standards.

²⁴ OECD, *Addressing Base Erosion and Profit Shifting* (OECD Publishing 2013); G B Adeyeye, 'Corporate Governance and Tax Compliance in Nigeria' [2021] (10) *Nigerian Journal of Risk and Insurance* 44; J A Schumpeter, 'The Crisis of the Tax State' in R Swedberg (ed), *The Economics and Sociology of Capitalism* (Princeton University Press 1991); M Moore, 'Taxation and Accountability in Developing Countries' (IDS Working Paper 280, 2008).

The computation of taxable profits remains central to the operation of corporate taxation. Under both CITA and the Nigeria Tax Act 2025, the concept of “profits” encompasses gains or income derived from trade, business or other economic activity.²⁵ The determination of allowable deductions is governed by the principle that expenses must be ‘wholly, reasonably, exclusively and necessarily incurred’ in order to produce taxable revenue.⁴ This provision performs a critical gatekeeping function in the tax–CSR nexus. It delineates the boundary between legitimate business expenditure and discretionary corporate spending. CSR-related expenditure, particularly philanthropic initiatives, often falls outside this strict commercial nexus unless it can be demonstrated that such expenditure contributes directly to business operations. Judicial authority reinforces this interpretation. In *Shell Petroleum Development Company of Nigeria Ltd v Federal Board of Inland Revenue*,²⁶ the Supreme Court held that for an expense to be deductible, it must bear a clear and proximate relationship to the production of income. This principle continues to guide the interpretation of deductibility under the Nigeria Tax Act 2025. The Act also regulates donations through specific provisions (now reflected in section 164), permitting deductions only for contributions to approved bodies and subject to statutory limits.²⁷ This controlled approach ensures that CSR expenditure does not unduly erode the tax base while still allowing structured social contributions.

The Nigeria Tax Act 2025's bolstering of anti-avoidance provisions is among its most important changes. A comprehensive General Anti-Avoidance Rule (GAAR) is introduced in Section 191, giving tax authorities the authority to reject or reclassify transactions that have no business substance or are principally intended to acquire tax benefits. This provision reflects a shift towards substance-based taxation. It brings Nigerian law into compliance with international norms, especially those established by the Base Erosion and Profit Shifting (BEPS) framework of the OECD.²⁸ The emphasis on economic substance ensures that corporate tax liability reflects genuine economic activity rather than artificial structuring. Judicial precedent under the previous regime provides interpretative guidance. In *Federal Board of Inland Revenue v Halliburton (WA) Ltd*,²⁹ the Court of Appeal affirmed the authority of tax authorities to examine the substance of

²⁵ Nigeria Tax Act 2025, s 4; Companies Income Tax Act, s 24

²⁶ (1976) 1 NCLR 345 (SC).

²⁷ NTA 2025, s 164

²⁸ OECD, *Addressing Base Erosion and Profit Shifting* (OECD Publishing 2013)

²⁹ (2016) LPELR-40976(CA).

transactions and disregard arrangements designed to minimise tax liability artificially. The ruling emphasizes how important it is for the courts to support budgetary accountability.

By mandating that related-party transactions be carried out at arm's length and backed by sufficient paperwork, the NTA significantly tightens transfer pricing regulations.³⁰ These provisions enhance transparency and reduce opportunities for profit shifting, particularly among multinational enterprises. From a CSR perspective, anti-avoidance and transfer pricing rules play a crucial role in promoting responsible corporate behaviour. By limiting aggressive tax planning, they ensure that corporations contribute fairly to public revenue. In this sense, fiscal compliance becomes an integral component of corporate social responsibility.

Interaction with Sectoral Regulation: The Petroleum Industry Act

Sector-specific law further complicates the relationship between taxes and corporate social responsibility. Through the creation of Host Community Development Trusts, it presents an organized framework for corporate social responsibility in the petroleum industry.³¹ Petroleum companies must set aside a portion of their operating expenses for host community development in accordance with sections 235 to 257 of the PIA. This obligation transforms CSR from a voluntary activity into a statutory requirement. It reflects a policy shift towards embedding social responsibility within the operational framework of corporations.³²

The interaction between these provisions and the Nigeria Tax Act 2025 raises important questions. Specifically, whether contributions to Host Community Development Trusts qualify as deductible expenses under section 20 of the NTA or are treated as separate regulatory levies has significant fiscal implications. If fully deductible, the state effectively shares the financial burden of CSR through reduced tax revenue. If not, corporations bear the cost independently, reinforcing the mandatory nature of the obligation. The absence of explicit statutory clarification creates uncertainty, which may affect corporate planning and compliance.

4. Taxation as a Mechanism for Promoting Corporate Social Responsibility in Nigeria

³⁰ NTA 2025, s 192

³¹ Petroleum Industry Act 2021, ss 235–257.

³² FO Emovon and others, 'Culture and Sustainable Tax Compliance in Nigeria' [2024] (9) *Journal of Interdisciplinary Research in Accounting and Finance* 77.

Taxation in Nigeria operates not merely as a fiscal instrument but as a regulatory mechanism capable of shaping corporate behaviour within the broader framework of commercial governance. One of the primary ways in which taxation influences CSR is through the regulation of deductible expenditure. Under the Nigeria Tax Act 2025, expenses are deductible only where they are ‘wholly, reasonably, exclusively and necessarily incurred’ to produce taxable earnings.³³ This provision performs a regulatory function beyond mere computation of tax liability. By defining which expenditures qualify for deduction, the law effectively shapes corporate decision-making. Corporations are incentivised to structure their activities, including CSR initiatives, in ways that align with statutory requirements.

The deductibility of donations under section 164 of the Act further illustrates this mechanism. Donations to approved bodies are permitted within prescribed limits, thereby encouraging structured philanthropy while preventing abuse of the tax base. This controlled incentive model ensures that CSR expenditure is channelled towards recognised social objectives rather than arbitrary corporate discretion. However, the incentive structure is deliberately limited. Purely philanthropic activities lacking commercial nexus may not qualify for deduction. This reflects a policy choice: CSR should complement, rather than substitute for, corporate tax contributions. From a commercial governance perspective, this framework encourages corporations to integrate CSR into operational strategy rather than treating it as external philanthropy. CSR initiatives linked to operational efficiency, environmental sustainability or community stability are more likely to satisfy the deductibility test.

Beyond incentives, taxation intersects with CSR through mandatory contribution regimes embedded in sectoral legislation. The most prominent example is found in the PIA, which establishes Host Community Development Trusts under sections 235 to 257. Petroleum corporations must set aside a portion of their operational budgets for community development under this system. This obligation transforms CSR from a voluntary undertaking into a statutory requirement. Although not classified as a tax, the contribution functions similarly to a hypothecated fiscal obligation directed towards specific social outcomes. This dual structure illustrates how taxation and regulatory law operate together to promote CSR. While tax law

³³ NTA 2025, s 20

provides incentives and enforcement mechanisms, sectoral legislation imposes direct social obligations tailored to specific industries.

Perhaps the most significant mechanism through which taxation promotes CSR is the enforcement of responsible fiscal behaviour. Section 191 of the Nigeria Tax Act 2025 introduces a strengthened General Anti-Avoidance Rule (GAAR), empowering tax authorities to disregard artificial transactions. This provision reflects a substantive shift in tax governance. By prioritising economic substance over legal form, the law seeks to prevent corporations from artificially reducing their tax liability through complex structuring. This is in line with global norms, especially those established under the Base Erosion and Profit Shifting (BEPS) framework of the OECD.³⁴ From a CSR perspective, anti-avoidance provisions serve as enforcement tools that align corporate behaviour with societal expectations. Modern CSR discourse increasingly recognises that aggressive tax avoidance undermines corporate legitimacy.³⁵ By strengthening enforcement mechanisms, the Nigeria Tax Act 2025 embeds this normative expectation within the legal framework. Thus, CSR is no longer limited to visible social initiatives. It extends to internal corporate practices, including tax planning and financial structuring. Responsible corporate behaviour requires not only social investment but also fair participation in the tax system.

4.1 Challenges in Aligning Tax Reforms with Corporate Social Responsibility Objectives

Notwithstanding the structural advances introduced by the NTA, significant challenges persist in aligning Nigeria's tax reforms with corporate social responsibility (CSR) objectives.

Revenue Protection versus Social Investment

A central challenge lies in reconciling the revenue-generating function of taxation with the promotion of socially beneficial corporate expenditure. The charging provision under the Nigeria Tax Act 2025 imposes tax on corporate profits derived from Nigeria, reinforcing the primacy of

³⁴ OECD, *Addressing Base Erosion and Profit Shifting* (OECD Publishing 2013).

³⁵ P Sikka, 'Smoke and Mirrors: Corporate Social Responsibility and Tax Avoidance' [2010] (23) *Accounting Forum* 153.

revenue mobilisation.³⁶ However, CSR discourse encourages corporations to undertake social investment beyond statutory obligations. The difficulty arises where tax law limits the deductibility of such expenditure. Under section 40 of the Act, expenses must be ‘wholly, exclusively and necessarily incurred’ in the production of income. This formulation excludes purely philanthropic CSR initiatives lacking immediate commercial nexus.

While this approach preserves the integrity of the tax base, it may discourage long-term investments in social infrastructure, environmental sustainability and community development. Nigerian scholarship has observed that strict deductibility rules may constrain the capacity of corporations to engage meaningfully in developmental activities beyond profit-driven considerations.³⁷ The tension is therefore structural: expanding deductibility risks revenue erosion, whereas restricting it may limit socially beneficial corporate engagement.

Anti-Avoidance Enforcement and Regulatory Overreach

The strengthened General Anti-Avoidance Rule (GAAR) under section 191 of the Nigeria Tax Act 2025 enhances the power of tax authorities to disregard artificial transactions. While this is essential for combating aggressive tax planning, it introduces potential risks of overreach. Judicial precedent illustrates the balance required in applying anti-avoidance provisions. In *Shell Petroleum Development Company of Nigeria Ltd v Federal Board of Inland Revenue*, the Supreme Court emphasised the importance of interpreting tax provisions in accordance with their commercial substance. Similarly, in *Federal Board of Inland Revenue v Halliburton (WA) Ltd*, the Court of Appeal affirmed that tax authorities may recharacterise transactions lacking genuine economic purpose. However, broad administrative discretion may create uncertainty for corporations seeking to structure legitimate CSR-related investments. Where the boundary between acceptable tax planning and impermissible avoidance is unclear, corporations may adopt overly conservative strategies, thereby limiting innovative approaches to social investment. Thus, while anti-avoidance provisions strengthen fiscal integrity, their application must be balanced with clear guidance to avoid stifling legitimate corporate activity.

Transparency Requirements and Reputational Risk

³⁶ NTA 2025, s 3

³⁷ A Okoye, ‘Exploring the relationship between corporate social responsibility, law and development in an African context’ [2012] 54(5) *International Journal of Law and Management* 15.

The Nigeria Tax Act 2025 introduces enhanced transparency through digital filing and reporting systems. While transparency aligns with CSR principles, it also exposes corporations to increased reputational risk. Tax disputes, audits and enforcement actions may become publicly visible, potentially affecting corporate image even before resolution. In *Vodacom Business Nigeria Ltd v Federal Inland Revenue Service*,³⁸ the Supreme Court underscored the importance of strict statutory compliance, reinforcing the legal consequences of non-compliance. Corporations increasingly view tax compliance as part of reputational capital.³⁹ However, where enforcement is perceived as inconsistent or arbitrary, transparency may generate defensive compliance behaviour rather than genuine accountability. The challenge therefore lies in ensuring that transparency mechanisms are accompanied by procedural fairness and institutional credibility.

Governance Deficits and Public Trust

A fundamental challenge lies in the relationship between taxation and public trust. The legitimacy of tax-based CSR depends on the perception that tax revenues are effectively utilised for public benefit. Taxation is central to the social contract between the state and economic actors. Where tax revenues are transparently deployed to provide public goods, corporations are more likely to internalise tax compliance as a form of social responsibility. However, where governance deficits exist, manifested in misallocation of resources, lack of transparency or weak accountability, corporations may prioritise visible CSR projects over faithful tax compliance. This creates a substitution effect, whereby philanthropy replaces systemic fiscal contribution.

5. Comparative Insights

India: Mandatory CSR Expenditure Model

The country with the most straightforward legislative approach to CSR is India. Qualifying businesses must invest at least 2% of their average net income in CSR initiatives, according to Section 135 of the law.⁴⁰ This obligation is enforceable and supported by detailed reporting requirements. Notably, CSR expenditure is generally not deductible under the unless it

³⁸ (2019) 8 NWLR (Pt 1674) 413.

³⁹ Adeyeye (n 20).

⁴⁰ Companies Act 2013 (India), s 135.

independently satisfies business expenditure criteria.⁴¹ This separation preserves the tax base while maintaining CSR as a parallel regulatory obligation. The Indian model provides clarity and enforceability. However, it has been criticised for encouraging formal compliance rather than substantive social impact.⁴² Companies may treat CSR as a statutory cost rather than an integrated governance responsibility. For Nigeria, this model highlights the advantages of legal certainty but also the risks of rigid regulatory imposition.

South Africa: Governance and Integrated Reporting

South Africa adopts a governance-oriented approach, emphasising transparency and stakeholder accountability. By mandating that businesses reveal their financial, social, and environmental performance in a single framework, the King IV Report on Corporate Governance encourages integrated reporting.⁴³ Although the does not mandate CSR expenditure, robust anti-avoidance provisions and reporting standards ensure high levels of tax transparency.⁴⁴ Tax behaviour is increasingly treated as part of corporate governance and ESG evaluation.

This model demonstrates that CSR can be effectively promoted through disclosure and accountability rather than mandatory expenditure. For Nigeria, it underscores the importance of integrating tax governance within broader corporate reporting frameworks.

United Kingdom: Tax Transparency and Responsible Tax Conduct

The United Kingdom adopts a disclosure-based approach linking taxation to corporate governance. The requires large companies to publish tax strategy statements outlining their approach to tax risk, planning and compliance.⁴⁵ In addition, the UK's General Anti-Abuse Rule strengthens enforcement against aggressive tax avoidance.⁴⁶ Corporate tax behaviour is subject to significant public scrutiny, and reputational considerations play a key role in shaping compliance. Scholarly analysis suggests that transparency requirements enhance corporate

⁴¹ Income-tax Act 1961 (India), s 37

⁴² A Karnani, 'Mandatory CSR in India: A Bad Idea' (Stanford Social Innovation Review 2013).

⁴³ Institute of Directors in Southern Africa, *King IV Report on Corporate Governance for South Africa 2016* (Institute of Directors in Southern Africa 2016).

⁴⁴ Income Tax Act 1962 (South Africa), ss 80A–80L.

⁴⁵ Finance Act 2016 (UK), sch 19

⁴⁶ Finance Act 2013 (UK), pt 5.

accountability by aligning tax practices with CSR expectations.⁴⁷ This approach avoids the rigidity of mandatory CSR expenditure while promoting responsible fiscal behaviour. For Nigeria, the UK model illustrates how tax transparency can complement statutory compliance mechanisms.

OECD Framework and Global Standards

At the international level, the OECD's Base Erosion and Profit Shifting (BEPS) framework has reshaped global tax governance.⁴⁸ Measures such as country-by-country reporting, transfer pricing documentation and anti-avoidance standards promote transparency and fairness in multinational taxation.

Nigeria's adoption of enhanced transfer pricing rules and anti-avoidance provisions under the Nigeria Tax Act 2025 reflects alignment with these global standards. However, effective implementation remains contingent on institutional capacity.

8. Reforming the Tax–CSR Nexus in Nigeria

The enactment of the Nigeria Tax Act 2025 (NTA 2025), together with the Nigeria Tax Administration Act and the Nigeria Revenue Service (Establishment) Act, represents a decisive legislative turning point in the structuring of the tax–CSR nexus in Nigeria. The reform fundamentally alters the doctrinal position that previously confined CSR within the narrow limits of section 25 of the Companies Income Tax Act (CITA). It reconfigured CSR-related expenditure within a broader, codified regime of deductible donations, tax incentives, and quasi-public investment mechanisms. At the centre of this transformation is section 164 of the Nigeria Tax Act 2025, which replaces the earlier donation regime under CITA and introduces a more expansive, yet still carefully regulated, framework for the deductibility of CSR-related expenditure. Under this provision, donations made by companies to qualifying institutions are deductible up to 10% of profit before tax, thereby retaining the quantitative limitation characteristic of the earlier regime. However, the shift lies in the explicit recognition that such donations may be “of a revenue or capital nature”, thereby overturning the long-standing exclusion of capital donations under CITA.

⁴⁷ Sikka (n 20).

⁴⁸ OECD, *Addressing Base Erosion and Profit Shifting* (OECD Publishing 2013).

This development has profound implications for the legal characterisation of CSR within Nigerian tax law. Under the pre-2025 framework, CSR was treated as a form of charitable expenditure that only qualified for deduction where it conformed strictly to the statutory list of approved institutions and was revenue in nature. The exclusion of capital donations, such as the construction of schools, hospitals, or infrastructure, created an artificial distinction that undermined the developmental potential of CSR. The NTA 2025 eliminates this distinction, thereby aligning the legal treatment of CSR with its practical manifestations, particularly in sectors where infrastructure provision constitutes the primary form of corporate social engagement. Notwithstanding this expansion, the NTA 2025 preserves the formalistic structure of the deductibility regime. The Act imposes strict conditions regarding the identity of qualifying recipients, which must include public funds, statutory bodies, and registered charitable, educational, or scientific institutions established in Nigeria. Donations to informal or unregistered entities remain non-deductible, thereby continuing the exclusionary logic of the earlier CITA framework. This reflects a persistent tension between legal certainty and social responsiveness: while the requirement of registration enhances accountability, it simultaneously marginalises community-based initiatives that operate outside formal institutional structures.

The Act further introduces detailed rules on valuation and documentation. Non-cash donations are to be valued at the lower of their market value or acquisition cost, and deductions are contingent upon proper documentation, including receipts and evidence of utilisation for public benefit.⁴⁹ These provisions reflect a broader shift towards compliance-driven tax administration, reinforced by the digitalisation mandate of the Nigeria Revenue Service. From a doctrinal standpoint, this signals a movement away from discretionary administrative practice towards a more rule-based system, although questions of enforcement and consistency remain.

The introduction of the NTA 2025⁵⁰ also situates CSR within a wider ecosystem of fiscal incentives. While section 164 governs donations, section 165 provides enhanced deductions for research and development (R&D), including a super-deduction of up to 150% of qualifying expenditure. This juxtaposition is significant, as it reflects an emerging policy orientation that places CSR and innovation within a unified framework of developmental taxation. The

⁴⁹ Nigeria Tax Act 2025, s 164

⁵⁰ Ibid. S 164 and 165

implication is that corporate contributions to social welfare and technological advancement are no longer treated as peripheral activities but as integral components of national economic policy.

Yet, despite these advancements, the NTA 2025 retains structural limitations that perpetuate doctrinal ambiguities. The 10% cap on deductible donations, now expressly tied to profit before tax, continues to constrain the scale of CSR engagement.⁵¹ While the cap serves an anti-avoidance function, preventing excessive erosion of the tax base, it also raises questions about proportionality and constitutional validity. Scholarly critiques have argued that such caps may unduly restrict corporate autonomy and potentially infringe on property rights and freedom of association, particularly where CSR is framed as an expression of corporate citizenship.

Moreover, the Act does not fully resolve the doctrinal tension between sections governing general deductibility and those governing specific allowances. The continued requirement that donations must satisfy overarching deductibility principles, albeit “without prejudice” to specific provisions, creates interpretive uncertainty. In practice, this means that CSR expenditure may still be scrutinised under general anti-avoidance rules, particularly where there is suspicion that such expenditure is being used as a vehicle for tax minimisation.

The judicial dimension of the tax–CSR nexus in Nigeria, although underdeveloped, provides important interpretive guidance. Nigerian courts have always taken a rigorous stance on interpreting tax laws, placing a strong emphasis on the need of unambiguous legislative language. In *Shell Petroleum Development Company v Federal Board of Inland Revenue*⁵², the court underscored that deductions must be expressly authorised by statute and cannot be inferred from general principles. This decision reflects the orthodox position that tax reliefs are matters of legislative grace rather than inherent rights.

Similarly, in *Nigerian Breweries Plc v Federal Inland Revenue Service*⁵³, the Tax Appeal Tribunal reaffirmed the principle that taxpayers must bring themselves squarely within the provisions of the statute to claim deductions. The Tribunal rejected expansive interpretations of deductible expenses, thereby reinforcing the restrictive approach that has historically characterised Nigerian tax jurisprudence. These authorities remain relevant under the NTA 2025,

⁵¹ *ibid*, s 164(5).

⁵² (1996)8 NWLR,PT.466,256

⁵³ Appeal No. TAT/LZ/VAT/020/2016

as they underscore the necessity of strict compliance with statutory conditions for CSR-related deductions.

Comparative jurisprudence offers additional insights into the evolving treatment of CSR within tax law. In the United Kingdom, the courts have grappled with the deductibility of socially motivated expenditure under the “wholly and exclusively” rule. In *Vodafone Cellular Ltd v Shaw*,⁵⁴ the court recognised that expenditure may serve both commercial and non-commercial purposes, and that the presence of a business motive can justify deductibility even where social considerations are involved. This more flexible approach contrasts with the rigidity of Nigerian jurisprudence and suggests a possible direction for reform.

In India, the interaction between CSR and taxation has been addressed more directly through statutory intervention. The Companies Act 2013 imposes a mandatory CSR obligation on certain companies, while the Income Tax Act governs the deductibility of CSR expenditure. Indian courts have held that CSR expenditure mandated by statute does not qualify as a business expense, thereby excluding it from general deductibility while allowing specific incentives under designated provisions. This bifurcated approach highlights the importance of clearly distinguishing between mandatory obligations and voluntary expenditures within the tax framework.

South African jurisprudence also provides a useful comparator. In *Commissioner for the South African Revenue Service v Pick n Pay Employee Share Purchase Trust*,⁵⁵ when interpreting tax laws, the court took a purposeful approach, taking into account the broader economic and social context. This contrasts with the literalist approach prevalent in Nigeria and underscores the potential for a more context-sensitive interpretation of CSR-related tax provisions.

The Nigerian position, even under the NTA 2025, remains anchored in formalism. The emphasis on statutory lists, quantitative caps, and strict documentation requirements reflects a legal culture that prioritises certainty over flexibility. While this approach has advantages in terms of administrative efficiency and revenue protection, additionally, it can restrict the tax system's ability to adapt to changing social and economic conditions.

⁵⁴ [1997] STC 734 (C.A.).

⁵⁵ [1992] ZASCA 84

A coherent reform of the tax–CSR nexus in Nigeria must proceed from a clear normative foundation that reconciles three competing imperatives: (i) the constitutional primacy of taxation as the legitimate mechanism for financing public goods; (ii) the economic and social utility of CSR as a complementary, private-sector-driven development tool; and (iii) the rule of law requirement that fiscal incentives be grounded in clarity, equity, and accountability. The current framework, now partially modernised by the Nigeria Tax Act 2025 (NTA 2025), does not fully achieve this balance. It continues to treat CSR as an appendage to charitable giving, rather than as a distinct legal category with hybrid public–private characteristics.

At the constitutional level, the starting point is the allocation of fiscal responsibility under the Constitution of the Federal Republic of Nigeria 1999 (as amended). Sections relating to public revenue and fiscal powers establish taxation as a core attribute of state sovereignty, with the implicit expectation that tax revenue will fund infrastructure, welfare, and development.¹ From this perspective, CSR cannot be allowed to displace taxation without undermining constitutional structure. The increasing reliance on corporate-funded infrastructure and community projects, now further incentivised under section 164 of the NTA 2025, risks creating a parallel system of quasi-public finance that operates outside democratic control.

A first proposal is the reclassification of CSR within Nigerian tax law as a distinct category of “regulated social investment”, rather than subsuming it under charitable donations. The current approach under section 164 of the NTA 2025 treats CSR as a subset of philanthropy, thereby subjecting it to uniform caps and formalistic requirements. This fails to distinguish between different types of CSR activities, particularly those that generate measurable public benefits. A reclassification would allow the law to differentiate between (i) purely charitable donations, (ii) community-based CSR, and (iii) infrastructure or development-oriented investments. Each category could then be subject to tailored fiscal treatment, reflecting its social value and economic impact. Such a framework finds support in comparative jurisprudence. In *Vodafone Cellular Ltd v Shaw*, the UK courts adopted a more flexible interpretation of business expenditure, recognising that socially motivated spending may still satisfy commercial objectives. Similarly, South African courts in *Commissioner for the South African Revenue Service v Pick n Pay Employee Share Purchase Trust* have embraced a purposive approach to tax interpretation, considering broader economic and social considerations. These authorities suggest

that a rigid dichotomy between profit-driven and socially driven expenditure is doctrinally unsustainable.

The quantitative cap on CSR deductions under section 164 of the NTA 2025 should be restructured into a tiered or variable system. The current 10% cap, while administratively convenient, is a bit crude. It treats all CSR expenditure as equivalent, regardless of its scale, impact, or alignment with national priorities. A more sophisticated approach would link the level of tax relief to the nature of the CSR activity. For instance, investments in critical infrastructure or underserved regions could attract enhanced deductions or credits, while purely reputational or low-impact activities would remain subject to stricter limits. This approach is consistent with principles of tax equity and efficiency. From an equity perspective, it ensures that tax incentives are distributed in a manner that reflects social need rather than corporate capacity. From an efficiency perspective, it aligns private incentives with public policy objectives, thereby maximising the developmental impact of CSR.

There is a need to strengthen institutional coordination and regulatory coherence. The current fragmentation of the tax–CSR nexus, spread across the NTA 2025, sectoral regulations, and administrative guidelines, creates uncertainty and inefficiency. A unified regulatory framework, possibly through a dedicated CSR Commission or an inter-agency coordinating body, could harmonise standards, monitor compliance, and align CSR activities with national development plans. The Nigeria Revenue Service, established under the 2025 reforms, is well positioned to play a central role in this process, particularly in integrating CSR incentives within the broader tax system.

9. Conclusion and Recommendations

The paper finds that Nigerian position on taxation and corporate social responsibility reflects a legal system in transition, one that is increasingly conscious of the need to align corporate conduct with broader societal expectations yet still constrained by doctrinal rigidity and structural fragmentation. The paper finds further that Nigeria Tax Act 2025 marks an important shift in this regard. It recognises, more clearly than previous legislation, that corporate engagement with society cannot be treated as an afterthought. Yet, the law stops short of fully integrating CSR into the core logic of fiscal governance. What emerges is a framework that

acknowledges the value of corporate social investment but continues to treat it through the narrow lens of charitable giving. This approach does not adequately capture how corporations interact with their host communities. The paper also finds that in practice, CSR often involves long-term commitments - building infrastructure, supporting local economies, and stabilising operating environments. These are not merely acts of generosity; they are part of how businesses sustain themselves within society. By maintaining a rigid distinction between profit-driven expenditure and socially oriented investment, the law risks overlooking this reality.

The findings in the paper reflect that the strengthened anti-avoidance provisions under the Nigeria Tax Act 2025 introduce a more substantive understanding of corporate responsibility. They signal that responsible behaviour is not limited to visible social projects but extends to how corporations structure their financial affairs. This is an important development. A business that engages in aggressive taxation that denies the state revenue cannot claim to be socially responsible. In this sense, the law rightly brings tax compliance to the centre of CSR discourse. Yet, challenges remain. There are areas of uncertainty that impact both compliance and responsibility when tax law and sector-specific requirements interact, especially under the Petroleum Industry Act. The absence of clear guidance on the treatment of mandatory CSR contributions creates room for inconsistency. More broadly, the system still operates without a unified vision. Tax rules, corporate governance standards, and sectoral regulations continue to evolve in parallel rather than in coordination.

The paper finds further that vide comparative experience that other jurisdictions have addressed similar tensions by adopting clearer and more integrated approaches. Some have imposed mandatory CSR obligations, others have relied on disclosure and governance frameworks, and many have strengthened the link between tax behaviour and corporate accountability. Nigeria has begun to move in this direction, but the process is not yet complete.

Nigeria Tax Act (NTA) have significant implications for stakeholders including policy makers, tax professionals, corporate organizations, and government agencies. The provisions strengthen tax enforcement, compliance, transparency, and regulatory coordination, thereby requiring policy makers to formulate clearer fiscal guidelines and review existing tax frameworks. For tax experts and practitioners, the sections increase advisory, compliance, and dispute resolution responsibilities, while corporate entities may face stricter reporting, disclosure, and record-

keeping obligations necessitating stronger internal tax governance systems. Government and revenue authorities are likely to benefit from improved tax administration and revenue generation, although effective implementation may require institutional reforms and technological investment. Overall, while the provisions may enhance fiscal sustainability and accountability, improper or rigid enforcement could increase compliance costs and affect the investment climate, thereby necessitating balanced implementation and policy recommendations.

By way of recommendations, there is a need to redefine CSR within Nigerian law in a way that reflects its practical reality. Rather than treating all CSR activities as charitable donations, the law should recognise different forms of corporate social engagement. This would allow for a more accurate and fair treatment of activities such as infrastructure development, environmental remediation, and community-based investments.

Clear rules are needed to ensure that CSR does not replace the responsibilities of the state. A structured framework for public–private collaboration would help in this regard, particularly for projects that fall within essential public services. This would allow corporations to contribute meaningfully without undermining the role of government.

Transparency should be strengthened. Companies that benefit from CSR-related tax relief should be expected to provide clear and detailed information about their activities and their impact. This would improve accountability and allow for a more informed assessment of whether such incentives are achieving their intended purpose.

There is also a need for better coordination among regulatory bodies. Tax authorities, corporate regulators, and sector-specific agencies should work within a more integrated system, ensuring that rules are consistent and that corporate obligations are clearly understood.

NON-IMPLEMENTATION OF COURT ORDERS IN NIGERIA AND THE EROSION OF INMATES FUNDAMENTAL RIGHTS

John Alade Ayodele *

Abstract

The worth of any legal system is gauged not merely by the standard of its judgments but by the degree to which such judgments are enforced. In Nigeria, the continuous non-implementation of court orders, particularly in criminal justice administration, constitute a serious peril to the fortification of the fundamental rights of inmates. This article disparagingly scrutinises the circumstances of non-implementation of court orders and its consequences for the constitutional and statutory rights of inmates in Nigeria. Using the doctrinal research methodology, the study evaluates relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), related statutes, and judicial decisions to probe how failure to enforce court orders such as release orders, sentencing directives, and custodial instructions results in violations of the rights of inmates in relation to rights to personal liberty, human dignity, and fair treatment under the law. The article contends that non-implementation challenges the authority of the judiciary, embeds executive whimsicality, and prolongs unlawful detention and inhumane living conditions in correctional facilities. It further points out institutional, and legal factors answerable for non-compliance with court orders. The article concludes by recommending legal and institutional reforms aimed at strengthening judgment enforcement mechanisms, enhancing accountability of enforcement agencies, and ensuring effective protection of inmates' rights in line with the rule of law and international human rights standards.

Keywords: Court decisions, inmates' rights, institutional mechanisms, legal framework, prison conditions

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1. Introduction

Generally speaking, it takes all the complimentary efforts of all the key players in the justice system to have a just and humane society. This is to the effect that there ought to be laws made by the legislative arm of the government.¹ The laws made by the legislature are to be administered by the executive organ while the judiciary interprets those laws.² Thus, the administration of justice in any civilised and democratic society rests not on the ability of courts to adjudicate disputes and also on the unswerving implementation of their judgments/orders.³ Courts are the final mediators of legal rights and obligations, and their decisions are meant to be obeyed and implemented by all persons and authorities. However, in Nigeria, the tenacious non-implementation of court judgments has become an upsetting feature of the legal system, particularly within the criminal justice segment. This problem is most evident in cases involving convicted inmates, where court orders relating to sentencing, release, transfer, or custodial conditions are frequently ignored or delayed by enforcement agencies. For instance, in the case of *Zakaria Umar v Attorney-General of the Federation & 6 Ors*, the Federal High Court, sitting at the Federal Capital Territory Abuja, ordered the immediate release of Zakaria Umar who was allegedly been detained for about ten years. Reports indicated continued non-compliance with the release order, prompting contempt proceedings.⁴ Also, is the case of *Federal Republic of Nigeria v Omoyele Sowore*⁵ in which after the Federal High Court granted bail to the Defendant, operatives of the Department of State Services (DSS) reportedly refused to comply fully with the order and later rearrested him within or around the court premises shortly after his release. Further, in *Ali Bello v Abdulrasheed Bawa (EFCC Chairman)*,⁶ the Kogi State High Court committed the EFCC Chairman to prison for contempt after disobeying a court order relating to the unlawful arrest and detention of Ali Bello. Idris Okuneye (aka Bobrisky) was sentenced to six months imprisonment without option of bail for abusing the Nigerian Naira notes. He was housed in a privately arranged accommodation outside the walls of the Kirikiri correctional

¹ Constitution of the Federal Republic of Nigeria 1999, s 4

² *Ibid* ss. 5 & 6

³ *Delhi Court Bar Association & Anor v Government of NCT of Delhi & Anor W.P.* © No. 4770/2012 (Delhi High Court, 9 October 2013)

⁴ Suit No. FHC/ABJ/CS/437/2023, Judgment of the Federal High Court, Abuja delivered by Hon. Justice M. O. Olajuwon on 8 July 2024

⁵ Charge No. FHC/ABJ/CR/235/2019, Federal High Court, Abuja Judicial Division

⁶ Gbenga Odogun, 'Contempt: Again, Court Commits EFCC Boss, Bawa, to Prison' (Punch Newspapers) 3 February 2023 < <https://punchng.com> > accessed 15 May 2025

facilities which was in contradiction to court order.⁷ That said, in Nigeria many contempt committal orders against powerful officials are either not enforced promptly or are later suspended after partial compliance. Nonetheless the criminal status of inmates, they remain protected under the fundamental rights guaranteed by the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other applicable laws. The failure to implement court judgments affecting them often results in unlawful detention, inhumane treatment, and a denial of access to justice.

Courts are key players in the criminal justice administration of any democratic and humane society. This is because apart from the significant roles of courts (which are also referred to as the judiciary) in the justice system, courts as the third organ of government are vested with judicial powers.⁸ The courts referred to are listed under section 6 (5) a-k of the Constitution of the Federal Republic of Nigeria, 1999. The essence of this article is to examine the non-implementation of court orders in Nigeria and the erosion of inmates' fundamental rights. In achieving the set objectives, the various relevant legal frameworks both at the local and international level will be deliberated upon. Also, the article will evaluate the institutional structures responsible for the enforcement of the decisions of courts in a criminal case and safeguarding the rights inmates. Furthermore, the article will identify and analysis the factors that hinder the implementation of such decisions of court and violation of inmate's rights. The implication of non-implementation of decisions of courts on the justice system, rule of law, and human rights will be assessed especially its effects on individual inmate, the broader community and the society in general before drawing a conclusion and making recommendations. It argues that such non-implementation undermines the rule of law, erodes judicial authority, and perpetuates systemic violations of human rights within Nigeria's correctional system.

2. Conceptual Clarifications

2.1 Inmates and Their Legal Status

An inmate is a person who either had been found guilty of an offence by a court of law and has sentenced accordingly or is kept in any detention facility pending the conclusion of the charges

⁷ Ismaeel Uthman et al, 'How Bobrisky Spent Jail Term in Kirikiri Special Cell' (2025) Punch Newspaper 28 September 2024 <<https://punchng.com/how-bobrisky-spent-jail-term-in-kirikiri-prison>> accessed 7 May 2025

⁸ *Ibid* s 6 (1) (2); see generally CFRN 1999, chapter vii (The Judicature)

against him as an awaiting trial inmate.⁹ While conviction lawfully restricts certain liberties, it does not extinguish all rights. Nigerian law recognises that inmates retain fundamental rights such as the right to dignity of the human person, freedom from torture or inhuman treatment, right to good food and portable water and the right not to be unlawfully detained beyond the terms of a lawful sentence. These rights are enforceable against the state and its agencies. According to Black Law Dictionary, an inmate is a person who is serving a time in prison. A person who has been apprehended by a law enforcement officer and is in custody, regardless of whether the person has yet been put in prison.¹⁰

In the case of *Edmund Okoro & Ors v Minister of Internal Affairs*,¹¹ the court held that a person becomes a prisoner on the date he was first admitted into prison. The definition of prison by Brayan,¹² presupposes that only a convicted person can be referred to as a prisoner. However, it should be noted that this definition may not be totally accepted because there are person within the prison wall referred to as awaiting trial who are yet to be convicted but whose case is still pending in court. The Nigerian Correctional Service Act, avoided the use of prison hence in its interpretation section,¹³ inmates is interpreted as any person lawfully committed to custody. By this interpretation, it can be safely concluded that inmates or prisoners include those who have been sentenced and those awaiting trial. Rock,¹⁴ sees a prisoner as a person who has been committed to the custody of a designated State agency and such person is effectively severed from the society.

2.2 Court

A court is an agency set up by government to define and apply the law, to order its enforcement, and to settle dispute points on which individuals or groups do not agree.¹⁵ The judiciary is one of

⁹ Ojo Tajudeen Ibraheem, 'Behind the Prison Walls: Rights or No Rights' (2013) *International Journal* 2 (4) 782

¹⁰ Brayan. A. Garner, (ed), *Black's Law Dictionary* (9th edn, USA, West Publishing Co 2004) 1314

¹¹ Suit No. FCH/EN/CP/102/2000 (Unreported).

¹² Garner (n 10)

¹³ Nigerian Correctional Service Act 2019, s 46

¹⁴ G. Rock, Prisoners' Rights Handbook , Angus Love ed. Pennsylvania Institutional Law Project cited in Taiwo Ajala, 'Legal Capacity of Prisoners to Sue or be Sued: A Case for Expanding the Scope of Legal Disability' (2020) *Journal of Public and Private Law* 10 129

¹⁵ Charles F. Hemphil, (Jr.) et al 'Criminal Procedure: The Administration of Justice, Saint Monica, CA: Goodyear cited by S I Onimajesin, 'Criminal Justice System in Nigeria: An Appraisal' <www.unilorin.edu.ng>accessed 20 May 2025

the most important pillars of justice as such plays important role in the administration of justice. The judiciary is to decide on bail and remand, protect the rights of the accused and victim of crime, preside over the trial and plea processes, decide on guilt, hear appeals against conviction and sentence and to provide public arena so that justice can be seen to be done.¹⁶ Courts at all times are expected to do justice because it is the last hope of the ordinary man. The Supreme Court of Nigeria in the case of *Chief of Air Staff v Iyen*¹⁷ while commenting on the role of courts, quoted Lord Wright when the Court held that:

...I am not afraid of being accused of sloppiness of thought when I say that the guiding principle of a judge in deciding cases is to do justice that is justice according to law, but still justice. I have not found any satisfactory definition of justice. What is justice in any particular case is what appears to be just to the just man, in the same way as what is reasonable to the reasonable man

The Court went further to re-emphasis the words of Lord Denning in his book *The Family Story* when Their Lordship held that:

My root belief is that the proper role of a judge is to do Justice between the patties before him, if there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can do to avoid that rule or even change it so as to do justice in the instant case before him. He need not wait for the legislature to intervene, because that can never be of any help in the instant case. I would emphasis however, the word ‘legitimately’; the judge is himself subject to the law and abide by it

¹⁶ Kathleen Daly, ‘Aims of the Criminal Justice System’ Griffith University <<https://www.griffith.edu.au>>...> accessed 5 June 2025

¹⁷ (2005)1 S.C. (pt.II) 165-166.

It is the duty of the court to adjudicate on cases before it and to give verdict which could be that of guilt or innocence. Courts in Nigeria operates at two levels. That is, the Federal courts and State courts. The Federal courts are:- Supreme Court, Court of Appeal, National Industrial Court, Federal High Court and Special Courts as may be provided for by an Act of the National Assembly such as the Code of Conduct Tribunal, National Industrial Court of Nigeria and Investment and Securities Tribunal. While at the state level, there exist:- State High Court, Sharia Court of Appeal, Customary Court of Appeal Magistrate Court, Upper Area Court, District court, Customary Court and area Court. All these courts have jurisdiction on criminal matters except District Court in the Northern part of Nigeria that has jurisdiction only on civil cases.¹⁸

Punishment is one of the criminal justice mechanisms¹⁹ provided for by law as compensation and reparation for victims, society and to serve as deterrent to likeminded persons. This could be custodial sentence such as imprisonment, fine, death penalty, and so on. Or non-custodial sentence such as parole, prohibition, community service, and restorative justice.²⁰ Once a court has delivered its judgment, be it in a civil case or a criminal case, it is the duty of the executive arm of government to implement such court judgment as pronounced by the court. However, where the court that gave such judgment is a court of first instance, the constitutionally guaranteed right to appeal may be activated.²¹ A pending appeal becomes the only legal instrument that can hinder or stop the implementation or execution of the judgment of the court. In a criminal case, irrespective of the nature or type of allegation(s) before the court and regardless of the punishment that a court may have imposed at the conclusion of the case, the constitutional rights of the inmate are to be protected and not to be trampled upon except to the extent of such permission by the law.²²

¹⁸ See generally, Chapter VII CFRN 1999

¹⁹ E R Leila et al., 'Protection of Prisoner's Rights in Prisons Through the Guidelines of the Rule of Law' (2017) *Journal of Politics and Law* 10(1) 71

²⁰ Nigerian Correctional Service Act 2019, s 37; Administration of Criminal Justice Act 2015, ss 453-468

²¹ CFRN 1999, Chap VII

²² *Ibid* ss 33 & 35

2.3 Court Judgments/Orders and Their Legal Effect

A court judgment/order is an official and authoritative decision of a court of competent jurisdiction, defining the rights and liabilities of parties before it.²³ Once delivered, a judgment is binding on the parties and all authorities to whom it is directed. In criminal matters, court judgments may include convictions, sentences, acquittals, release orders, or directives relating to the treatment or transfer of inmates. The compulsory nature of judgments is an essential element of judicial power and an indispensable constituent of the rule of law. The Apex Court in Nigeria has held in the case of *Contract Resources Nigeria Limited v Standard Trust Bank Limited*²⁴ that ‘the law is well established and therefore held as trite that the use of the words judgment or ruling both connote a decision of a court’.

2.4 Justice

Judicially, justice has been defined by the Supreme Court of Nigeria in the case of *Pam & Ano V. Mohammed & Ano*²⁵ when their Lordships held that:-

Justice, that elusive and generic expression, is the cynosure or fulcrum of the administration of justice because it is the aim of the administration of justice to obtain it. Justice, which means in its simplistic context, quality of being just, fair play and fairness, possessing an element of egalitarianism in its functional content, must be done in a case

Oputa, defined justice as the accumulation of all the virtues, which enables us as social individuals to live and behave honestly and transparently, respecting each other’s rights.²⁶ Justice has been described as the legal equality of human beings conceived and formulated around the dignity of the human person.²⁷ It can be defined as the quality of treating individuals according to their civic rights and in ways that they deserve to be treated by virtue of relevant conduct. It is

²³ H C Black, *Black’s Law Dictionary* (6th edn, West Publishing Co 1990) 841

²⁴ (2013) 2-3 SC (pt iv) 40, 54.

²⁵ (2008) 5-6 SC (pt.I) pp.149-151.

²⁶ Chukwudifu A. Oputa, ‘Peace, Justice and Fair play in a Democratic Nigeria’ (Being a paper Delivered as a Birthday Lecture in Honour of His grace, Most Rev. (Dr.) John .O. Onaiyekan, C.O.N., The Catholic Archdiocese of Abuja, January, 2004) ed. By Okeke, O. in *Towards Functional Justice: seminar Papers of Justice Chukwudifu A.oputa* (Gold Press Limited Ibadan) 211

²⁷ Funso Daramola, *Basic Jurisprudence* (3rd Ed. Raymond Kunz Communications, Lagos Nigeria) 226

rights respecting treatment that is deserved by virtue of criminal conduct as judged by the rule of law. In essence therefore, doing justice implies holding offenders fully accountable for their offences, protect offenders' constitutional and legal rights and to take into cognisance, the relevant differences among offenders and offences.²⁸ Justice could be distributive justice which is about how available resources (reward distribution) or how burdens and other responsibilities (responsibility distribution) are shared or allocated among the people;²⁹ retributive justice, a type of justice system that adopts a backward-looking act of the offender by focusing on the moral duty to punish past wrong doings;³⁰ procedural justice which is about how people perceive the fairness and transparency of the processes that were used to make a decision, resolve dispute or how resources were allocated;³¹ restorative justice which focuses on the victim and the offender's need by bringing together these parties to collectively and mutually resolve the matter;³² corrective justice which is to the extent that a person that has caused wrongful harm to another person should be made to correct it;³³ or social justice, an aspect of human rights being referred to promoting fairness, equality, and equity in economic, educational and employment opportunities.³⁴

2.5 Rights of Inmates

Araromi³⁵ posited that right is a universal term that confers certain benefits on a person who possesses it. It can be inborn and naturally endowed by virtue of being a human or it can be derived by operation of law.³⁶ The rights that are naturally endowed by virtue of being a human are best referred to as human rights that are universal, absolute and fundamental moral claims

²⁸ John J. Dilulio, 'Rethinking the Criminal Justice System: Toward a New Paradigm in Performance Measures for the Criminal Justice System' (1992) <<https://books.google.com/about>> assessed 26 January 2026

²⁹ A Nameda et al., 'Distributive Justice and Development: Towards an Integrative Understanding of Reward and Responsibility Distributions' (2023) *Journal of Moral Education* 52(4)

³⁰ M T Cahill, 'Retributive Justice in the Real World' (2007) *Washington University Law Review* 85(4) 818

³¹ L Savigar-Shaw et al., 'Procedural Justice as a Reward to the Compliant: An Ethnography of Police-Citizen Interaction in Police Custody' (2022) *Taylor & Francis Online* 32(6)

³² A Zeman, 'Defining Restorative Justice: A Perspective from England and Wales's further Education Sector' (2024) *Contemporary Justice Review* 27(2-3)

³³ A Poama, 'Corrective Justice as a Principle of Criminal Law: A Prolegomenon' (2017) *National Library of Medicine* 12 (4)

³⁴ M Killen et al., 'Social and Racial Justice as Fundamental Goals from the Field of Human Development' (2022) *Human Development* 65 (5-6)

³⁵ Marcus Ayodeji Araromi, 'Prisoners' Rights Under the Nigerian Law: Legal Pathways to Progressive Realization and Protection' (2015) *Afe Babalola University Journal of Sustainable Development Law and Policy* 6(1) 170

³⁶ M Cranston, *What are Human Rights?* (Taplinger Publishing Co., 1973) 36

because they belong to all human beings, inalienable and basic to real living. These rights includes right to life, right to movement, and equality before the law, etc. These rights are needed for every human being to survive and have worldwide acceptance. It should be stated that human rights may appear in statutes and the constitution but it is for safeguard. Fundamental human rights on the other hand are rights which are unique to the life of the citizens of a country and are provided for in the constitution of that country.³⁷ The Supreme Court in the case of *Federal Republic of Nigeria & Anor. v Lord Chief Udensi Ifegwu*³⁸ held that:

Fundamental rights are inherent in man because they are part of man. If a hierarchical order of our laws is drawn, fundamental rights will not only take a pride of place but the first place

The Constitution of the Federal Republic of Nigeria, the United Nations Universal Declaration of Human Rights, the African Charter on Human and Peoples' rights, and other international laws provide for some rights to all persons including inmates. These laws also make provisions for instances whereby these rights may be restricted.³⁹ The rights of prisoners can be divided into two conceptions namely: prisoners' pre -conviction rights and prisoners' post-conviction rights.⁴⁰ By the provisions of section 33,⁴¹ every person has a right to life, and no one shall be deprived intentionally of his life except in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. Based on the foregoing, a condemned criminal awaiting execution still maintains his right to life until he is properly executed by the due process of law.

³⁷ For example Chapter iv of the CFRN 1999, contain the fundamental human rights of Nigerians ; Shobhna Aggarwal 'Human Rights vs. Legal Rights vs. Fundamental Rights' <<https://blog.iplayers.in/human-r...>> accessed 28 January 2026

³⁸ (2003) 5 S C 25, 304.

³⁹ (1996) 6 NWLR (Pt 452) 42.

⁴⁰ S M Olokooba and O N Ademola, 'An Overview of the Rights of the Prisoners under the Nigerian Law' (2015) *Confluence Journal of Jurisprudence and International Law* 136

⁴¹ CFRN 1999; United Nations Universal Declaration of Human Rights 1948, art III; African Charter on Human and Peoples' Rights 1981, art IV

Dignity of human person is preserved in chapter IV⁴² to the extent that, no one should be subjected to torture, to inhuman or degrading treatment, nor be subjected to slavery or servitude, no one shall be required to perform forced or compulsory labour, save any labour required in the consequence of the sentence or order of a court among other exceptions. This right has been expanded by the United Nations Standard Minimum Rules for the Treatment of Prisoners⁴³ to include all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight; the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner; adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate; all parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times. Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

Article 13(1) of African Charter on Human and People's Rights guaranteed right to participate freely in government of one's country either directly or through representatives.⁴⁴ This right includes the right to vote and be voted for. However, prisoners in Nigeria are yet to enjoy such right. In the case of *Hirst v. United Kingdom*⁴⁵ the court held that section 3(1) of Representatives of the people Act purported to take away the right to vote of an inmate constitute an infringement

⁴² CFRN 1999, s 34

⁴³ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (commonly known as the United Nations Convention against Torture)

⁴⁴ European Convention on Human's Right 2001, art 3 Pro 1

⁴⁵ (No. 2), App. No. 74025/01(2006)42 EHRR 41

of the Article 3 protocol 1 of the European Convention of Human's Right (ECHR). A person who has been sentenced to imprisonment by a court of first instance has the right to appeal against such judgment. And until such right is exhausted, even if he is a condemned prisoner, such execution cannot and should not take place. In the case of *Nafiu Bello v Attorney General Oyo State*⁴⁶ the Appellant was erroneously executed while his appeal was still pending in court.

The Nigerian Correctional service Act provides that at every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organised in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.⁴⁷ Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.⁴⁸

2.7 Prison/Correctional Centre:

This is a State or Federal facility for the confinement of those convicted for a criminal act and awaiting trial inmates.⁴⁹ It is place that serves as detention, imprisonment or incarceration aimed at promoting a reformation, rehabilitation and reintegration of inmates.⁵⁰ The purpose of correctional centre is primarily for security and confinement, holding inmates who are classified based on their gender, age and type offence, as a result of authority derived from statutory and judicial authorities. Correctional centres are divided into various categories depending on the level of risk associated with the inmates. One of such correctional centres is the maximum security correctional centres which is also known as category 'A' prison. It has the highest-security facilities. It is a custody level which in both design/construction as well as inmate classification, reflect the need to provide maximum external and internal control and supervision of inmates primarily through the

⁴⁶ (1986) 5 NWLR (pt. 45) 828.

⁴⁷ Nigerian Correctional Service Act 2019, s 23

⁴⁸ United Nations Convention on the Rights of the Child 1980, art 37 (c)

⁴⁹ Garner (n 10)

⁵⁰ NCSA 2019, s 34

use of high security parameters and extensive use of internal physical barriers, check points, advanced surveillance systems and advanced scanning system.⁵¹ Inmates accorded this status are deemed dangerous and present serious escape risks or pose serious threats to themselves, to other inmates, to staff, or the orderly running of the institution.⁵²

Inciardi⁵³ opined that such Maximum security correctional centres are usually walled fortresses of concrete and steel and house aggressive and incorrigible offenders. These individuals often include those convicted for serious offences, high profile criminals or those considered a significant threat to public safety.⁵⁴ Supervision of inmates in this class of prison is direct and constant. The next type of correctional centres are the medium security correctional centres. This is a custody level in which design/construction as well as inmate classification reflect the need to provide maximum external and internal control and supervision of inmates. Inmates accorded this status may present an escape risk or pose a threat to other inmates, staff, or the orderly running of the institution. Supervision remains constant and direct.⁵⁵

The minimum security correctional centre is another classification of correctional centres.⁵⁶ This is also a custody level in which both the design/construction as well as inmate classification reflects the goal of returning to the inmate a greater sense of personal responsibility and autonomy while still providing for supervision and monitoring of behaviour and activity.⁵⁷ Inmates within this security level are not considered a serious risk to the safety of staff, inmates or to the public. Program participation is mandated and geared toward their potential reintegration into the community.⁵⁸ Additional access to the community is limited and under constant direct staff supervision. Pre-release correctional centres other classification of correctional centres. Pre-release is a custody level in which both design/construction as well as inmate classification reflect the goal of restoring to the inmate maximum responsibility and control of their own behaviour and actions

⁵¹ K K Cheche et al, 'Reducing Overcrowding in Nigerian Prisons: A Correctional Architectural Approach, Case Studies of Afikpo, Okigwe and Owerri Correctional Facilities' (2020) *African Scholar of Journal of Environmental Design and Construction Management* 19 (4) 195

⁵² A Simwa, 'Types of Prison in Nigeria' (2019) <<https://www.legit.ng/1216925-ni...>> accessed 3 November 2025; Cheche et al (n 50) 194

⁵³ J A Inciardi, *Criminal Justice* (5th ed Harcourt Brace College Publishers 1984) 530

⁵⁴ Simwa (n 51)

⁵⁵ *Ibid*

⁵⁶ *Ibid*

⁵⁷ *Ibid*

⁵⁸ *Ibid*

prior to their release.⁵⁹ Direct supervision of these inmates is not required, but intermittent observation may be appropriate under certain conditions. Inmates within this level may be permitted to access the community unescorted, to participate in programs like work release and educational release.⁶⁰

3. Legal Frameworks for the Protection of Inmates' Rights in Nigeria

The court in the case of *Abdulkareem v Lagos State Govt.*⁶¹ held that nature of rights has to be elevated and special class of rights. These rights are recognised by all humane countries world over and provided for in their laws. The legal frameworks for this discourse shall be based on both local and international laws. They are: the Nigerian Correctional Service Act, 2019, the Constitution of the Federal Republic of Nigeria 1999 (as amended), the United Nation Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights, First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

3.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)

This is the ground norm of the law in Nigeria. This is based on the provisions of section 1 which proclaimed its supremacy. The said constitution in chapter four provides for some fundamental human rights. These rights are also applicable to prisoners. As precisely put by Uwaifo, JCA (as he then was) in the case of *Peter Nemi v Attorney General of Lagos State and Ors*⁶² that prisoners still have their rights intact, except those deprived by law. He stated further that even a condemned criminal awaiting execution still maintains his rights until properly executed by the due process of law. Some of these rights as stated in *Abdulkareem's* case⁶³ includes right to dignity of human persons,⁶⁴ under this law, no one should be subjected to torture, to inhuman or degrading treatment, nor be subjected to slavery or servitude, no one shall be required to perform

⁵⁹ L Morgenbesser et al, 'Review of Pre-release Program Literature in Adult Institutional Corrections' (1980) <<https://www.ojp.gov/abstracts/re...>> accessed 7 November 2024

⁶⁰ *Ibid*

⁶¹ (2016) 15 NWLR (PT 1535) 177, 185.

⁶² (1993-1994) All NLR 342, 42.

⁶³ *Abdulkareem* (n 60)

⁶⁴ CFRN 1999, s 34

forced or compulsory labour, save any labour required in the consequence of the sentence or order of a court among other exceptions,⁶⁵ right to fair hearing⁶⁶ for inmates awaiting trial.

3.2 The Administration of Criminal Justice Act (ACJA) 2015

The Administration of Criminal Justice Act (ACJA) 2015 and corresponding state laws were enacted to promote efficient criminal justice administration, protect the rights of suspects, defendants and inmates, and reduce delays (for instance, sections 6-8 deals with the rights of an arrested person, section 33 remand proceedings and sections 306, 396, 382-388 are aimed at reducing delay in trial).⁶⁷ The ACJA contains provisions aimed at preventing unlawful detention and ensuring compliance with court orders, including provisions on sentencing, custodial management, and periodic review of detention.

3.3 Nigerian Correctional Service Act, 2019

This law is made up of 47 sections repealed the Prisons Act Cap P29 Laws of the Federation of Nigeria 2004 and became operational on the 31st day of July, 2019. It is the principal law that makes provisions for the administration of prisons and non-custodial measures in Nigeria and related matters.⁶⁸ The Act changed the name from Prison service to Correctional Service.⁶⁹ It also makes provisions for custodial and non-custodial services.⁷⁰ The very first objective of the Act are to ensure compliance with international human rights standards and good correctional services.⁷¹ The functions of the custodial service includes taking custody of all persons legally interned, providing safe, secure and humane custody for inmates.⁷² Section 12 (2) (c) provides that where an inmate sentenced to death has exhausted all legal procedures for appeal and a

⁶⁵ *Ibid* s 34

⁶⁶ *Ibid* s 36

⁶⁷ Administration of Criminal Justice Act, 2015

⁶⁸ NCSA 2019, preamble

⁶⁹ *Ibid* s 1

⁷⁰ *Ibid*

⁷¹ The other objectives which includes providing enabling platform for the implementation of non-custodial measures, promotion of reformation, rehabilitation and reintegration of offenders and to establish institutional, systemic and sustainable mechanisms to address high numbers of persons awaiting trial

⁷² NCSA 2019, s 10

period of 10 years has elapsed without the execution of the sentence; the Chief Judge may commute the sentence of death to life imprisonment.⁷³

The Correctional Service shall provide opportunities for education, training vocational training, as well as training in modern farming techniques and animal husbandry for inmates. Correctional Service shall establish and run, in designated Custodial Centres, industrial centres equipped with modern facilities for the enhancement of vocational skills training for inmates aimed at facilitating their reintegration into society.⁷⁴ The improvement of inmates' recreation, requires engaging more artisans and technological skill worker as a way of ensuring that inmates are positively engaged which will in turn lead to positive rehabilitation and reintegration.⁷⁵ This study considers these functions as laudable but onerous in nature considering the dilapidated structures adorning the various correctional centres across Nigeria, including shortage and under developed manpower. Currently, correctional centres serve as breeding grounds for criminal and some inmates who are serving jail term still commit crime against the society despite being in jail.⁷⁶

By the provisions of the NCSA 2019, the Correctional Service is mandated to provide opportunities for inmates to be educated, engaged in vocational training including training in modern farming techniques and animal husbandry.⁷⁷ The act went further to state that Correctional Service shall establish and manage industrial centres equipped with modern facilities for the enhancement of vocational skills training for inmates with the aim of reintegrating them into the society.⁷⁸ Monies generated from the vocational training shall serve

⁷³ *Ibid*

⁷⁴ *Ibid* s 14(1 &2)

⁷⁵ E L Numa, 'Welfare in Area of Rehabilitation in Nigerian Correctional Centres: a Study of Ikoyi Custodial Center' (2025) *African Journal of Criminology and Justice Studies* 14(2)

⁷⁶ In 2025, a client walked up to the researcher herein to narrate how he received a call in the early hours of the day and during the 2025 fasting period. He was threatened to send Three Million Naira or the door will be broken and he will be killed, video of the entrance of his house was event sent to him showing hands with guns. He complied and on tracking the phone number used, it showed that the owner of the phone was actually an inmate at the Kirikiri Correctional Centre in Lagos. Further investigation showed that the criminal act was planned in that facility and executed there. Also, the case against Fred Ajudua for defrauding Mr. Bamaiyi while in custody is another example

⁷⁷ *Ibid* s14 (1)

⁷⁸ *Ibid* s 14 (2)

as earning for the inmates, aftercare and other support services towards the rehabilitation of inmates.⁷⁹

3.4 United Nations Universal Declaration of Human Rights

The concern of the United Nations with the promotion and protection of universal respect for, and observance of, human rights and fundamental freedoms is an expression of the ever-increasing interest of the international community in ensuring that the rights and freedoms shall be enjoyed by all human beings, everywhere.⁸⁰ The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations on the 10th day of December, 1948. In the preamble to the declaration, the General Assembly reiterate the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Article II of the declaration provides that every person shall be entitled to all the rights and freedoms set forth in the declaration. Article five provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In 2015, the United Nations General Assembly adopted expanded rules, known as the “Nelson Mandela Rules”, in honour of arguably the most celebrated prisoner of the twentieth century. The Rules are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. The Rules are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. They offer detailed guidance on a wide variety of issues ranging from disciplinary measures to medical services. For example, they prohibit the reduction of a prisoner’s food or water, as well as the use of instruments of restraint that are inherently degrading or painful, such as chains or irons.⁸¹ The Rules restrict the use of solitary confinement as a measure of last resort, to be used only in exceptional circumstances. Mandela found solitary confinement to be “the most forbidding aspect of prison life. There was no end and no beginning; there’s only one’s own mind, which

⁷⁹ *Ibid* s 14 (3)

⁸⁰ The United Nations and Human Rights’ office of Public Information, United Nations, New York, 1978

⁸¹ A Gilmour ‘The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty’ <<https://www.un.org/un-chronicle>> accessed 24 February 2026

can begin to play tricks”.

3.5 African Charter on Human and Peoples’ Rights

In 1981 the Organisation of African Union in her 18th Conference of State and Government proclaimed the African Charter of Human and People’s Rights. Article V of the said Charter provides for the right to dignity inherent in a human being. And prohibited all forms of exploitation and degradation of particularly slavery, slave trade, torture, cruel, inhuman or punishment and treatment.

4. Institutional Mechanisms for Implementing Court Judgment

The machinery for criminal justice administration itself consists principally of rules of criminal law⁸² which lays down the basic rights and corresponding obligations of members of the state, criminal procedure⁸³ and the law of evidence which set down the processes and machineries for the enforcement of the laws provided for under the criminal law.⁸⁴ The criminal justice system of Nigeria like that of most countries, commences with the violation of a criminal law, subsequent arrest, trial and punishment of the offender or his discharge and acquitted if found not guilty,⁸⁵ it relates to the happenings in a criminal case whether before during and after the trial and in Nigeria,

it operates at multiple levels of government which Includes Federal, State and Local Governments

because Nigeria operates a federal system of government. Criminal justice system is a system of law enforcement, lawyers, corrections and probation that is involved with the apprehension, prosecution, defence, sentencing, incarceration, and supervision of individuals who are suspected of breaking those laws.⁸⁶

⁸² The criminal law of Nigeria is made up of the Criminal Code applicable in the Southern part, penal Code applicable in the Northern part and other legislations that create offences

⁸³ The criminal procedural law of Nigeria is made up of the Criminal Procedure Act applicable in the Southern part of Nigeria and Criminal Procedure Code applicable in the Northern part

⁸⁴ John A M Agbonika, ‘Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint’ (2014) *Journal of Law, Policy and Globalization* 26 130

⁸⁵ Peter Ademuyiwa Anyebe, ‘Sentencing in Criminal Cases in Nigeria and the Case for Paradigmatic Shifts’ <www.nials-nigeria.org> accessed on 22 January 2026

⁸⁶ Okechukwu I. Eme and Chukuma I Okoh, ‘The Police and criminal Justice System in Africa: Agenda for Reform’ (2009) *International Journal of Development and Management Review* 4(1) 179; M. Wilson, ‘Criminal Justice Social Worker in the United States: Adapting to New Challenges’

For the purpose of this work and based on the definitions cited above, criminal justice system can be defined as a process in which the conglomerate of joint efforts by one or more government institutions such as the police, prosecution, judicial officers and prisons including other government agencies whose duty it is to maintain law and order in the society work jointly in ensuring the obedience of laws. Individuals such as defence attorney and private institutions responsible in one way or the other in the maintenance of law and order and its enforcement, prosecution and rehabilitation of offender including the community as a whole are all part of the criminal justice system. The criminal justice system of Nigeria like that of most countries, commences with the violation of a criminal law, subsequent arrest, trial and punishment of the offender or his discharge and acquitted if found not guilty,⁸⁷ it relates to the happenings in a criminal case whether before during and after the trial and in Nigeria, it operates at multiple levels of government which Includes federal, State and Local Governments because Nigeria operates a federal system of government. Criminal justice system is a system of law enforcement, lawyers, corrections and probation that is involved with the apprehension, prosecution, defence, sentencing, incarceration, and supervision of individuals who are suspected of breaking those laws.⁸⁸ Every criminal justice system is piloted by some institutional bodies. These institutions are:

4.1 The Police: The Nigeria Police Force is a creation of section 3 of the Police Act⁸⁹ with the general duty of the prevention and detection of crime, the protection of life and freedom of every person in Nigeria as provided for in the Constitution, the African Carter on Human and Peoples' Rights, and any other law, the protection of lives and property of all persons in Nigeria, enforcement of all rules and regulations in Nigeria, and shall perform such duties within or outside Nigeria as may be required of them.⁹⁰ The police shall be responsible for promoting and protecting the fundamental human rights of persons in police custody as guaranteed by the constitution.⁹¹ A suspect shall be accorded humane treatment, having regard to his right of dignity of his person and shall not be subjected to any form of torture, cruel, inhuman or

<www.worldcat.org>title>oclc> accessed on 21 March 2026

⁸⁸ *Ibid*

⁸⁹ The Nigeria Police Act, 2020

⁹⁰ *Ibid* s 4

⁹¹ *Ibid* s 5(1)

degrading treatment.⁹² The Nigeria Police is a national and unified force hence its organisation and administration are the responsibility of the Federal Government;⁹³ as such, the Nigeria Police is responsible to the Federal Government of Nigeria and the citizens of Nigeria and they are the biggest, most viable and important sub-system of the Nigerian criminal justice system.⁹⁴

It should be noted that some institutions apart from the Police, have been empowered by statute to investigate, arrest and prosecute the commissioning of certain offences. These institutions include the Economic and Financial Crime Commission,⁹⁵ Independent Corrupt practices and Other Related offences Commission,⁹⁶ etc. These institutions are capable just like the Police, to set in motion the criminal justice system.

4.2 Prosecution: Prosecution is a criminal proceeding in which an accused person is tried.⁹⁷ While a prosecutor is a legal officer who represents the State of Federal Government in criminal proceedings.⁹⁸ In Nigeria, the police and both the State and Federal Ministries of Justice are the sole authorities saddled with the responsibility of prosecuting criminal cases.⁹⁹

4.3 Courts: Courts are vested with judicial powers and as such, they are referred to as the judiciary. The courts this section referred to are listed under S.6 (5) a-k of the Constitution of the Federal Republic of Nigeria, 1999. A court is an agency set up by government to define and apply the law, to order its enforcement, and to settle dispute points on which individuals or groups do not agree.¹⁰⁰ The judiciary is one of the most important pillars of justice as such plays important role in the administration of criminal justice system. The judiciary is to decide on bail and remand, protect the rights of the accused and victim of crime, preside over the trial and plea

⁹² *Ibid* s 37(1)(a&b)

⁹³ Obi N. I. Ebbe, 'World Factbook of Criminal Justice Systems' Bureau of Justice Statistics, <<https://bjs.ojp.gov/wfbcjsnig>> accessed 21 March 2026

⁹⁴ Onimajesin (n 14) 197

⁹⁵ Economic and Financial Crimes Commission (Establishment) Act 2004, ss 1 and 6; Corrupt Practices and Other Related Offences Act 2000

⁹⁶ ICPC Act 2000

⁹⁷ Garner (n 10)1341

⁹⁸ *Ibid*

⁹⁹ Fola Arthur-Worrey, F., *The prosecutor in Public Prosecutions* Lagos State Ministry of Justice Law Review Series, 2000, 12

¹⁰⁰ Hemphil (n 114)

process, decide on guilt, hear appeals against conviction and sentence and to provide public arena so that justice can be seen to be done.¹⁰¹

4.4 Correctional Centre: Correction or prison as it may be called, is a conventional institution which forms part of the criminal justice system of a country. As one of the pillars of criminal justice system, it is made up of two components. They are the institutional based corrections and the community based corrections.¹⁰² Institutional based corrections are the common and sole type of prisons in Nigeria. They are made up of prisons and remind centres where those who have been found guilty and sentenced to imprisonment serve their prison terms as prisoners and those on remand whose cases are still pending before the Court kept there as Awaiting Trial. Prisons are used to hold people on remind during pre-trial period and is used to hold people who have been sentenced to term of imprisonment. The prison system according to Adebisi and Oyewo¹⁰³ is the stomach of the state. This is because the institution is expected to serve as the melting point for the activities of the security agencies.¹⁰⁴

5. Nature and Forms of Non-Implementation of Court Orders

Disobedience to court orders in Nigeria are exhibited in several ways. Security agencies frequently fail to conform to court orders granting bail. They cite national security concerns or administrative delays as a cover up for their disobedience for example the case of El Zakazaky¹⁰⁵ and that of Dasuki Sambo.¹⁰⁶ Also, detainees who are held without trial and whom the court has granted order for release are sometimes kept in indefinite detention. Furthermore, there are instances whereby there are selective implementation of court orders especially in high -profile

¹⁰¹ Daly (n 15)

¹⁰² Conduct of Further Study on Operations and Linkages of the 5 Pillars of Justicet <www.ombudsman.gov.ph>2013/02>... accessed 4 February 2026

¹⁰³ Kolawole Shittu Adebisi and Oyetunde Oluseye Oyewo, 'Prisons and Security Challenges in a Democratic Nigeria' (2015) *Research on Humanities and Social Sciences* 5 (6) 2226

¹⁰⁴ Benjamin Okorie-Ajah, 'Criminal Justice Administration and Panic of Prison Correction in Nigeria' (2018) *Journal of Law and Judicial System* 1 (2) 4

¹⁰⁵ Taiwo Ojoye, 'Is FG's Reason for Disobedience to Court Orders Justified' (Punch Newspaper 7 June 2017) <<https://punchng.com>> accessed 16 May 2026

¹⁰⁶ Ayodele Oluwagbemi, 'FG, Dasuki;s Lawyer Disagree over Disobedience of Bail Orders' (Punch Newspaper 16 February 2016) <<https://punchng.com>> accessed 16 May 2026

cases.¹⁰⁷ These acts show a general problem rooted in executive outplay and weak enforcement apparatuses.

6. Instances of Non-implementation of court Orders and violation of Inmates' rights.

Contempt of court is an actions that violates the provisions of section 287 of the Constitution that mandates obedience to court's orders. Non-implementation of court orders highlight a disregard for the rule of law and the separation of powers. Despite the above constitutional provisions, disobedience to court orders persist. For instance, in 2023, the court orders made against the Department of State Service in Godwin Emefiele's case were disobeyed¹⁰⁸, detention of Nnamdi Kanu (IPOB Leader) before his eventual conviction, notwithstanding multiple court orders, including a Federal High Court decision for his release or bail, the Department of State Services (DSS) continued to hold the IPOB leader.¹⁰⁹ The detention of Ibraheem El-Zakzaky (The Shiite leader) who was held in custody by the government for several years, defying a Federal Court order granting him bail is another example.¹¹⁰ Also, the detention of the former National Security Adviser Col. Sambo Dasuki (rtd) who was denied release by the Federal Government even

¹⁰⁷ A Maina, the Chairman of the Pension Reforms Task Team was indicted for looting over One Hundred and Ninety Seven Billion Naira. He pleaded guilty to a three count charge and was sentenced to two years imprisonment on each count charge with an option of Two Hundred and Fifty Thousand Naira on each court fine, he paid Seven Hundred and Fifty Thousand Naira and worked home a free man. J ogunye, 'In Defense of Plea Bargaining' (2013) <<http://www.premiumtimesng.com>> accessed 16 May 2026; In 2013, the court sentenced John Yakubu Yusuf, a former assistant director in the Federal Civil Service who was tried for stealing over Thirty Two Billion Naira to two years imprisonment with an option of Two Hundred and Fifty Thousand Naira fine. This judgment was based on the plea bargain agreement reached between the EFCC and the defendant. Premium Times Nigeria, 'Director Jailed 2yrs for Stealing N33bn Pension Fund Freed on N2500.00 Fine' <<https://dailypost.ng/2022/04/13>> accessed 16 May 2026. On appeal, the Supreme in year 2022, upheld the judgment of the Court of Appeal by sentencing John Yakubu Yusuf to six years jail term and to refund the sum of Twenty Two Billion, Nine Hundred Million Naira to the Federal Government. F Oyeyemi, 'Supreme Court Affirms Six-Years Jail Term for Ex-pension Director, Yusuf, Orders N22.9b refund' <<https://dailypost.ng/2022/04/13>> accessed 16 May 2026.

¹⁰⁸ Ayodele Oluwafemi, 'Finally, DSS Brings Emefiele to Court over 'illegal Possession of Firearms' The Cable July 25,2023 <<https://www.thecable.ng/breakingfinally-dss-brings-emefiele-to-court-over-illegal-possession-of-firearms/amp>> 20 March 2026

¹⁰⁹ Bolanle Olabimtan, 'FG Files seven-Count Amended Charge Against Nnamdi Kanu' The Cable 11 November 2022 <<https://www.thecable.ng/fg-files-seven-count-amendedcharge-against-nnamdi-kanu/amp>> accessed 20 March 2026

¹¹⁰ Sahara Reporters, 'The Many Court Orders Violated By Nigerian Government on El-Zakzaky, Wife's Release' Sahara Reporters 29 June 2021<<http://saharareporters.com/2021/07/29/many-court-ordersviolated-nigerian-government-el-zakazaky-wife-release>> accessed 20 March 2026

though bail orders from multiple courts were given.¹¹¹ The case of Labinjo is another instance. He was detained by the Nigerian Navy despite a valid court orders releasing him.¹¹² So is the refusal of DSS to release the 5 Buhari must go protesters despite court order.¹¹³ In November 2022, courts held the Inspector General of Police (IGP) and other service chiefs in contempt for failing to comply with court directives regarding illegal retirements and property seizures.¹¹⁴ Also, the police for over eight months ignored a 2017 Federal High Court order to unseal the Peace Corps of Nigeria headquarters after it was unlawfully occupied.¹¹⁵ The suspension of the Chief Judge of Osun State by the Governor of Osun State, Ademola Adeleke despite the existence of a valid and subsisting interim order of injunction against her removal is another reckless disobedience to court order.¹¹⁶

7. Implications of Disobedience to Court Orders on the rights of Inmates

When court gives an order for release of an inmate and such order is ignored with impunity, the continued detention of that inmate becomes unlawfully. Thereby violating constitutionally guaranteed right to liberty.¹¹⁷ Another implication is that it is one of the causes of congestion in the various correctional centres. Oshodi¹¹⁸ observed that the Nigerian prisons generally are one of the worst in the world; the prisons are overcrowded with both convicted criminals and awaiting trial inmates confined together. As at January 2026, inmates in all the correctional

¹¹¹ Femi Falana, 'Nigerian Court Lacks Power to Detain Sowore, Dasuki Agisnt Court Orders by Femi Falana' Sahara Reporters January 5, 2020. Available at <<https://saharareporters.com/2020/01/05/nigerian-government-lacks-powerdetain-sowore-dasuki-against-court-orders-femi-falana>> accessed 20 March 2026

¹¹² Femi Owolabi, 'After A Year, Navy Releases Labinjo From 'Underground Cell' to EFCC' The Cable 1 December 2019 <<https://www.thecable.ng/after-a-year-navy-releases-capt-labinjo-from-underground-cell-toefcc/amp>> accessed 19 March 2026

¹¹³ Ameh Ejekwonyilo, "Court Orders Release of Five 'Buhari-Must-Go Protesters Arrested at Dunamis Church By DSS" Premium Times July 26 2021 <<https://www.premiumtimesng.com/news/top-news/475821-court-orders-release-of-five-buhari-must-go-protestersarrested-at-dunamis-church-by-sss.html?tztc=1> > accessed 18 March 2026

¹¹⁴ Peter Dada, 'Stop Double standards, Obey Court Order, Retired Officers Tell IGP' (2023) Punch Newspaper 15 February 2023 <<https://punchng.com>> accessed 21 March 2026

¹¹⁵ Chinedu Asadu, 'CSOs Petitioned Reps Over Police' Refusal' to Reopen Peace Corps Headquarters' (2018) The Cable <<https://www.thecable.ng> > accessed 19 March 2026

¹¹⁶ Bola Bamigbola, 'Osun Assembly Suspends Chief Judge, Adeleke Appoints Replacement' (2023) Punch Newspaper 17 November 2023 < <https://punchng.com>> accessed 18 May 2026

¹¹⁷ CFRN 1999, s 35

¹¹⁸ J E Oshodi, 'Nigerian prisoners: an open letter to Mr President' (2010) Next Newspaper, pp4. Cited in Benjamin Okorie-Ajah (n 103) 4

facilities in Nigeria stood at 81,710 out of which awaiting trial inmates stood at 53, 790.¹¹⁹ It is the opinion of this study that persons waiting trial but detained in a correctional centre should not be referred to as 'awaiting trial inmate'. This is because of the presumption of innocence as enshrined in the Constitution. This study opines that pre-trial detainees will be apt as the nomenclature of such detainees. Refusal to obey court orders will also lead to undermining the judicial process itself. It renders legal remedies useless and depresses inmates from seeking judicial redress. Equally, Protracted and illegal incarceration has enormous emotional effects on inmates such as depression and anxiety. It also disturbs family structures and reintegration prospects, which might breed recidivism.

South Africa as a Model for Compliance with Court Orders and Protection of Inmates' Rights

South Africa offers a suitable comparative models for conversing the non-implementation of court orders and the erosion of inmates' rights in Nigeria. This is because the constitutional culture, judicial independence, and solid enforcement of human rights standards make it an appropriate model for best practices in obedience to judicial decisions.¹²⁰ Disobeying a court order in South Africa is a serious issue charges for contempt of court such as fines, imprisonment, or other enforcement actions.¹²¹ Unlike Nigeria, where compliance with court orders is on most occasions selective, especially in politically sensitive or high-profile matters, the criminal justice system of South Africa strongly emphasis supremacy of the constitution and the binding nature of court judgments. By the provision of section 165(5) of the Constitution of the Republic of South Africa 1996, an order or decision issued by a court is binding all persons and organs of state to which it applies. This constitutional provision emphasises the authority of the judiciary and discourages executive disobedience to court orders. South African courts have reliably demonstrated willingness to compel state authorities to obey judicial orders, especially where human rights are threatened. In the case of *Minister of Health v Treatment Action Campaign (No 2)*¹²², the Court held that the government of South Africa was under a

¹¹⁹ Vanguard News 'Total Inmates Population in Nigeria Now 81,710-NBS' (2026) Vanguard 15 January 2026 <<https://www.vanguardngr.com>> 14 January 2026

¹²⁰ Sufian Hemed Bukurura, 'Emerging Trends in the Protection of Prisoners' Rights in Southern Africa' (2002) African Human Rights Law Journal 2(1) <<https://www.ahrlj.up.ac.za>> accessed 17 May 2026

¹²¹ Elijah, 'the Consequences of Disobeying a Court Order in South Africa' (2026) Pravda.co.za <<https://pravda.co.za>> accessed 17 May 2026

¹²² 2002 (5) SA 721 (CC).

constitutionally bound to implement measures ordered by the court concerning access to healthcare. The decision remains a leading authority on state accountability and judicial enforcement against governmental non-compliance.

Additionally, South Africa has developed robust jurisprudence on the rights of inmates and detained persons. Thus, section 35(2)¹²³ guarantees the right to conditions of detention consistent with human dignity, including adequate accommodation, nutrition, reading materials, and medical treatment detained and sentenced persons. The recognition of inmate rights by the constitution has reinforced judicial oversight of correctional institutions and reduced arbitrary treatment of inmates. In *Lee v Minister of Correctional Services*,¹²⁴ the Constitutional Court held the state liable for negligence arising from prison conditions that exposed an inmate to tuberculosis infection. The court emphasised that correctional authorities owe inmates a duty of care and must maintain humane custodial conditions. Similarly, the court affirmed in *August & anor. v Electoral Commission*,¹²⁵ that prisoners retain constitutional rights despite incarceration, including the right to vote.

Although the Supreme Court in Nigeria reiterated the rights of inmates in Nemi's case,¹²⁶ the South African experience contrasts sharply with several Nigerian instances where court orders concerning inmates, bail, release, transfer, or custodial welfare have allegedly been ignored or delayed. Such noncompliance weakens public confidence in the judicial system, undermines the rule of law, and contributes to the erosion of inmates' constitutional guaranteed protections under the Administration of Criminal Justice Act 2015, the Nigerian Correctional Service Act 2029 and the Constitution of the Federal Republic of Nigeria 1999 (as amended). Therefore, South Africa offers treasured lessons for Nigeria in strengthening institutional respect for judicial authority. These lessons include constitutional enforcement of court orders, judicial activism in defence of fundamental rights, accountability of public officials through contempt proceedings, and recognition that incarceration does not extinguish human dignity. For Nigeria to improve its administration of criminal justice, greater commitment must be shown toward prompt implementation of court orders, especially those relating to inmates and awaiting trial persons.

¹²³ Constitution of the Republic of South Africa 1996

¹²⁴ 2013 (2) SA 144 (CC).

¹²⁵ 1999 4 BCLR 363 (CC).

¹²⁶ Nemi (n 60)

Adopting best practices similar to those of South Africa would enhance judicial credibility, protect constitutional rights, and reinforce the principle equality of all men and authority before that law and that no man or authority is above the law.

8. Conclusion

The non-implementation of court orders in Nigeria signifies a grave challenge to the protection of the fundamental rights of inmates and the reliability of the justice system. While courts continue to make pronouncements and deliver judgments in accordance with the law, the neglect, refusal and failure to enforce these decisions renders justice unproductive and deceptive for many inmates. This article has established that non-implementation leads to unlawful detention, inhuman treatment, and a weakening of judicial authority. Guaranteeing truthful obedience with court judgments is therefore indispensable not only for safeguarding inmates' rights but also for upholding the rule of law and public confidence in Nigeria's legal system.

9. Recommendations

1. To address the problem of non-implementation of court judgments/orders and protect inmates' rights, some reforms in the criminal justice administration are required. There should be stronger enforcement mechanisms and clearer sanctions against officials who willfully disobey court orders.
2. Improved synergy between the judiciary, correctional services, and prosecuting authorities is indispensable to safeguard well-timed enforcement of judgments. Steady audits of correctional facilities should be conducted to identify and release overstayed inmates. Legal aid services should also be strengthened to enable inmates to enforce their rights effectively.
3. This study further recommends that a commission be established to oversee the activities of the correctional facilities in Nigeria (monitoring and evaluation). The composition it is recommended, should among others include human right activists, retired judges, retired police officers and retired Correctional Service officers and other law enforcement agencies to enhance accountability.

4. Also, training and workshops should be frequently conducted for Correctional Officers, where the provisions of the NCSA, 2019 and other law on the rights of inmates will be discussed.
5. Further, this study recommends that there should be stricter enforcement of contempt proceedings against defaulting officials so as to serve as deterrence to like-minded officers. Also, judicial activism and public interest litigation should be encouraged.
6. Finally, it is recommended that The National Assembly should make laws that explicitly make willful non-implementation to court orders by public officials a criminal act.

**PERISCOPIC AND LEGAL ANATOMY OF EXTRAORDINARY RENDITION:
REVISITING THE RE-ARREST OF MAZI NNAMDI KANU BY NIGERIA**

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Abstract

The need to combat global terrorism in the 21st century cannot be over-emphasised as being one of the challenges of globalisation. Given the transnationalism of crime and criminalities, there is always the need to arrest and repatriate fugitives or suspects to face justice, which is often done by treaties. However, there are times when the reality of international relations will not practically support the usual due process, thereby creating challenges to criminal justice. This reality often leads to alternative measures to attain justice. Following the terrorist attacks on the United States on the 11th of September 2001, more than ever before, the country authorised its Central Intelligence Agency to embark on an extraordinary rendition programme that would foster the arrest and detention of any suspect, especially the terrorist. Since then, the practice has been ongoing without any global check, although widely condemned. The Nigerian fugitive, Mazi Nnamdi Kanu was rearrested and repatriated to Nigeria in 2021 after a few years in exile. This article discusses extraordinary rendition as conceptualised in international law with the case of Mazi Nnamdi Kanu in view to determine the validity or otherwise of the widely circulated speculations, especially by his lawyers following his re-arrest that he was extraordinarily rendered by the Nigerian government in conspiracy with Kenyan government. The article found that, given the elements of extraordinary rendition and the practice, Kanu's re-arrest was not within the ambit of extraordinary rendition which is often hallmarked with human rights violations, illegal detention, transfer to another foreign country for interrogation, torture and many more without any judicial process. The article recommends that because extraordinary rendition violates human rights, the United Nations needs to develop a specific global Convention to tackle it forthwith for international human rights protection to be a reality as conceived.

Keywords: Extraordinary, Human Rights, Nigerian, Nnamdi Kanu, Rendition and United States

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1. Introduction

Generally, in public international law, to transfer a suspect or fugitive from one country to the state requesting him or her for criminal trial or adjudication, the normal procedure is 'extradition', which is based on bilateral and or multilateral extradition treaties.¹ However, since the early 1990s and progressively till date, the United States Central Intelligence Agency, together with other government agencies in America, has been using an intelligence-gathering programme that involves the transfer of foreign nationals suspected to have been involved in terrorism to detention and also subject them to interrogation in countries where in the opinion of Central Intelligence Agency (CIA), the federal and international legal safeguards do not apply.² Under this internationally 'unpopular' programme, suspects are detained and interrogated either by United States(U.S.) personnel at detention facilities run by the U.S. outside her sovereign territory or are handed over to the custody of foreign agents for interrogation. Whichever approach is adopted, interrogation methods that are used do not comply with federal and internationally recognized standards. This programme is commonly known as "extraordinary rendition".³

This internationally aberrant and hard-line practice of secret detentions, abductions on foreign territory, and transfers without respect for due process and the rule of law is a major concern in public international law.⁴ Without a doubt, to enable a suspect to face the law for any charge levied against him, international law recognises the lawful means of arresting and repatriating a fugitive or suspect who has absconded from one country to another.

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¹ J. A. E. Vervaele; 'Rendition, Extraterritorial Abduction, and Extraordinary Rendition', <<https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0171.xml>>

DOI:10.1093/OBO/9780199796953-0171 accessed 14 January 2026.

² See 'Fact Sheet: Extraordinary Rendition' December 6, 2005<<https://www.aclu.org/other/fact-sheet-extraordinary-rendition>> accessed 14January 2026.

³ M. Nino; 'The Abu Omar Case in Italy and the Effects of CIA Extraordinary Renditions in Europe on Law Enforcement and Intelligence Activities' *Revue internationale de droit penal*, 2007/1 Vol. 78 | pages 113 - 141 at page 115. <<https://www.cairn.info/revue-internationale-de-droit-penal-2007-1-page-113.htm>> accessed 4 February 2025.

⁴ Ibid. The international Human Rights Laws frown at the practice of extraordinary rendition for all intents and purposes because it lacks due process known to law. It also encourages human rights violation.

The re-arrest and or abduction of Nnamdi Kanu, the leader of the Indigenous People of Biafra (IPOB) in 2021 and his repatriation back to Nigeria to continue to face his trial pending in the Nigerian court made the country to be at the centre of focus of the global camera on extraordinary rendition. This is particularly so because it seems there were doubts and/or confusion as to how and where exactly the foremost leader of the neo-Biafran separatist group was caught and brought into Nigeria on the 29th of June 2021.⁵ It is no news that Nnamdi Kanu has been standing trial for treasonable felony and related offences in Nigeria since 2015 before he fled the country in or about September 2017 under seemingly mysterious circumstances. His dramatic escape from Nigeria stalled his trial until recently.⁶

It is also needless to state that just as the escape of Nnamdi Kanu from Nigeria in 2017 was mysterious, so to say his re-arrest outside Nigeria in 2021 and forced return was likewise dramatic. To date, the Nigerian government has refused to officially disclose to the world how Nnamdi Kanu was brought back to Nigeria despite the clamour for the same. While the details of how exactly Kanu was captured and brought back to Nigeria remains mucky and speculative, it was rumoured here and there that he was arrested in Brazil, where he went to enjoy himself with his side chick. On another note, rumour also had it that he was captured in the Czech Republic, where he went to arrange for weapons on behalf of Eastern Security Network fighters. A more laughable rumour was that he voluntarily surrendered himself to Nigerian authorities. The seemingly preponderant circulated rumour about his arrest and repatriation to Nigeria was the theory that he was captured in Kenya. All these were rumours around his case.

Despite all the speculations, all that the Honourable Attorney-General and Minister of Justice said in sum was that Kanu was re-arrested outside Nigeria and has since been brought to Nigeria for the continuation of his trial. No explanation was provided about his re-arrest strategy and the process of bringing him back to Nigeria. Based on this, the speculation remains so tense and high within legal communities to make a belief that Kanu was indeed extraordinarily rendered to Nigeria as opposed to the due process of extradition known and generally acceptable in international law. His lawyers 'made a mountain' out of the issue, as they loudly announced to the whole world that the

⁵ E. Ugwuonye, 'Nnamdi Kanu: The First Successful Extraordinary Rendition Case in Nigeria' <<https://www.eculaw.com.ng/nnamdi-kanu-the-first-successful-extraordinary-rendition-case-in-nigeria/>>accessed 14 January 2026.

⁶ Ibid.

repatriation of Nnamdi Kanu to Nigeria was nothing less than an extraordinary rendition. Using a doctrinal method, this article aims to answer some agitating questions around Kanu's case in Nigeria, such as: what is an extraordinary rendition? How is extraordinary rendition different from extradition? What is the attitude of international law to extraordinary rendition? Does Nnamdi Kanu's re-arrest saga and forced return to Nigeria fall within extraordinary rendition? Is there any human rights implication of extraordinary rendition and many more? The article is segmented into eleven parts discussed *seriatim* with some recommendations made in conclusion.

1. Transnationalism of Crimes and Internationalism in Criminal Justice System

Transnationalism of crime suggests that crimes have actual or potential impact across national borders and that intrastate crimes can offend fundamental values of the international community. According to Lautensach and Lautensach, transnational crimes are simply offences that cross international borders or which affect the interests of more than one state.⁷ Transnational crimes exploit the interconnected nature of our modern trading, transportation, and transactional systems that move people and commerce throughout the global economy and across state borders.⁸ Therefore, countering transnational crimes requires an integrated and comprehensive approach.⁹ Transnational organised crime is also embedded in the transnationalism of crimes and it is an advanced stage of international criminalities.¹⁰ Transnational Organised Crime was also referred to as "those self-perpetuating associations of individuals who operate transnationally for the

⁷ J. Wilson; 'Transnational Crime' in A. Lautensach and S. Lautensach (Eds.) (2020), *Human Security in World Affairs: Problems and Opportunities (2nd edition)*, Victoria, BC: BCcampus. <<https://opentextbc.ca/humansecurity/>> accessed 19 June 2024. See also <<https://opentextbc.ca/humansecurity/chapter/transnational-crime/#footnote-61-1>> accessed 09 March 2025. "In 2000 the UN Convention on Transnational Organized Crime defined an offence as transnational if it meets one of these four conditions: if it is committed in more than one state, if it is committed in one state but a substantial part of its preparation, planning, direction, or control takes place in another state, if it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state, and finally, if it is committed in one state but has substantial effects in another state."

⁸ United States 'Strategy to Combat Transnational Organized Crime' Addressing Converging Threats to National Security, Published JULY 2011. <https://obamawhitehouse.archives.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf> accessed 09 March 2025.

⁹ Ibid.

¹⁰ Ibid. See the Preamble to United States 'Strategy to Combat Transnational Organized Crime' Addressing Converging Threats to National Security, Published JULY 2011. There is no single structure under which transnational organized criminals operate; they vary from hierarchies to clans, networks, and cells, and may evolve to other structures. The crimes they commit also vary."

purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/ or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms.”¹¹ The transnationalism of crime gave rise to the internationalism of the criminal justice system which is all about the development of the international criminal justice system.¹² Globalization has exponentially produced and is still producing new challenges and changes to the world order in many facets of cross-border issues. Among the challenging aspects and the change are the international dimensions of crime, transnational organised crimes, especially terrorism, the impact of legal and illegal immigration, piracy and technological influences on global criminality.¹³ Criminal justice practitioners and researchers seem to be in dilemma on whether combating cross-border crime requires extra-judicial approaches and strategies or not.

While combating crimes municipally may admit a straitjacketed approach or conservatism in terms of policy formulation and implementation, wrestling down international criminals and criminalities may defy the conventional approach. In the rapidly changing global environment, the criminal justice system in the United States, for instance, as in some other jurisdictions, which consists of the police, court system, and correctional agents is facing and adapting to new forms of international criminalities which are often targeted at the America and its nationals.¹⁴

Also, given the growing recognition of the importance of international cooperation in countering global threats, the threats on state borders, especially America's borders, and the proliferation of new types of crime daily, the United States' response to these globalization challenges in the criminal justice arena will require major changes in both law and policy. This is a big problem on its own for a well-organised system with a globally respected model. The curiosity for solutions to the 21st-century threats left America with no option other than resorting to extralegal and extrajudicial approaches, part of which is extraordinary rendition. The evolution of extraordinary rendition in America is therefore a response to the country's national threats from transnational

¹¹ Ibid.

¹² These include INTERPOL, International Criminal Court etc.

¹³ R. H. Ward; 'The Internationalization of Criminal Justice', U. S. Department of Justice, Office of Justice Programs, 2000, Available at <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/internationalization-criminal-justice>> accessed 09 March 2025.

¹⁴ Ibid. These include terrorism, suicide bombing, piracy, cybercrimes etc.

criminalities with which the country was already engrossed as early as the first decade of the new millennium. Transnationalism of crime and internationalism in the criminal justice system remain the ignition of the practice of extraordinary rendition.

2. Discourse on the Key and Related Concepts

It is apposite to provide some insights into the key and related concepts in this paper. This will help in digesting the major issues that the paper seeks to address and also creates no room for ambiguity.

3.1 Rendition or Ordinary Rendition

The reality of life in international relations suggests that there are times when a suspect or a fugitive will escape to another state where it becomes difficult to bring him or her back to justice through extradition, which is the internationally legal means of handling such a case. Where this happens, it appears the only alternative means to get such a person to justice is through rendition. The term rendition is of Latin origin. It is derived from the Latin term *rendere* which connotes or means to "hand back," a meaning which is often lost in the current debate about rendition.¹⁵ Rendition, in legal terms, according to Frankopan, implies the transfer of a person from one jurisdiction to another.¹⁶ In the case of what is usually called "ordinary rendition," the procedure has kept its original meaning of handing over (or back) a person to another jurisdiction with better rights to instigate a trial.¹⁷ Rendition, *simpliciter* should not be seen as illegal and is indeed not illegal because it is different from extraordinary rendition, which is discussed hereinafter.

In modern international law usage, rendition to justice is a practice by which a suspected person is forcibly abducted in another state, but which should ordinarily occur when there is an outstanding warrant of arrest against the suspect in question and when the ultimate aim for the abduction is criminal adjudication in the abducting state.¹⁸ Such a forcible abduction may be

¹⁵ I. D. Frankopan, 'Extraordinary Rendition and the Law of War', North Carolina Journal of International Law, (2007) 33, 657-658. <<https://scholarship.law.unc.edu/ncilj/vol33/iss4/3>> accessed 14 January 2026. See also <<https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1854&context=ncilj>> accessed 09 March 2025.

¹⁶ Ibid

¹⁷ Bryan A Garner, Black's Law Dictionary 1298-99 (7th ed. 1999).

¹⁸ J. A, E Vervaele, op cit., note1.

executed unilaterally by the agents of the abducting state or with the cooperation of agents of the state where the person is abducted.¹⁹

From the perspective of Amnesty International, the term “rendition” refers to a variety of practices that involve the transfer of individuals from one country to another, mostly done by the US authorities, without any form of judicial or administrative process like it is done in extradition. These practices are usually carried out in secret, and they include transferring the “war on terror” detainees into the custody of other states, assuming custody of individuals from foreign authorities, and abducting suspects on foreign soil.²⁰ It appears Amnesty International’s perspective did not draw any line between ordinary rendition and extraordinary rendition which is not the correct position in international law. The two concepts are not in any way the same.

3.2 Deportation and Extradition

Escaping from a jurisdiction or a community in an attempt to escape justice or to seek a greener pasture is not a new phenomenon, as it dates back to antiquity.²¹ The reason being that human instinct will either flee or fight in reaction to any perceived danger. Transnational mobility has not only increased but has also become easier and quicker than ever before given the modern international relations among states and advancements in transport technology, thereby offering fugitives multiple opportunities of destinations and the means to get there.²² Paradoxically, the same factors have also formed the key assets enabling states to track, arrest, and have fugitives extradited through the agreement and cooperation between and/or among states.²³

Deportation and extradition are forms of rendition, although rarely referred to as such, and involve the sending of a person to be tried or otherwise dealt with by another jurisdiction. Deportation and extradition in international law have fundamental differences, although, in practice, there is not

¹⁹ Ibid.

²⁰ Amnesty International “Rendition” and Secret Detention: A Global System of Human Rights Violation Question and Answer, <<https://www.amnesty.org/download/Documents/80000/pol300032006en.pdf>> accessed 09 March 2025.

²¹ United Nations Office on Drugs and Crime Country Office Nigeria; ‘Cases and Materials on Extradition in Nigeria’ <https://www.unodc.org/documents/nigeria/publications/Anti-Corruption-Project-Nigeria/Cases_and_Materials_on_Extradition_in_Nigeria.pdf> accessed 22 November 2021.

²² Ibid

²³ Ibid

much difference.²⁴ Deportation is an expulsion by the executive agency of an alien whose presence in a country is deemed unlawful or detrimental. Deportation has often had a broader meaning, including exile, banishment, and the transportation of criminals to penal settlements.²⁵ Under Roman law, the concept of deportation, historically in its original usage, connotes or describes a form of banishment for life from a society to a foreign country, mostly an island. In the initial period, deportation was often inflicted upon those who committed political crimes (political criminals). Later on, it became a means of removing the people with suspicious wealth and popularity.

Deportation was also used as a punishment for offences such as adultery, murder, poisoning, forgery, embezzlement, and so on.²⁶ Today, Deportation as a term in law is used in connection with the expulsion of an alien whose presence in the territory of a state is presumed undesirable and as such illegal. Most of the time, the deportation of an alien occurs after he or she has been apprehended and made to face the law of the State where the alien is found illegally. It is a unilateral act of the government of a state that expels the illegal immigrant from its territory using a legal process.²⁷

On the other hand, extradition is the practice in international law whereby one state hands over to another state a person who is suspected to be a criminal or a person who has been convicted of a crime but fled to the territory of the former.²⁸ In other words, extradition is an official process by which a person accused or convicted of a crime is transferred to the State where he or she is either wanted for trial or required to serve a sentence duly imposed by a competent court of law upon his or her conviction for an offence.²⁹ The Nigerian Court of Appeal defined ‘extradition’ in **George Udezor vs. Federal Republic of Nigeria**³⁰ as the process of returning somebody, upon request, accused of a crime by a different legal authority to the requesting authority for trial or punishment.

²⁴ Z. Kiani1 and Z. Purkhaghan; ‘Deportation and Extradition from an International Perspective’ (2017) 10 (1) *Journal of Politics and Law*, 198.

²⁵ Britannica, ‘Deportation Law’, <https://www.britannica.com/topic/deportation> accessed 14 January, 2026.

²⁶ Ibid

²⁷ Z. Kiani1 and Z. Purkhaghan; *supra*. note 24

²⁸ M. N. Shaw; *International Law*, 7th Ed. (Cambridge University Press 2014) 498.

²⁹ P. Pathak and A.K Bhatt, ‘Mapping Legal Sanctity of Extradition Treaties:Contemporary International Relations on the Run (2023) 9(3) International Journal of Law 34-37.

³⁰ CA/L/376/05, Unreported.

Extradition is based upon bilateral treaty law and does not exist under customary international law as an obligation upon the states. In other words, without a bilateral treaty, a state is not under any duty to accede to an extradition request.³¹ Extradition is not a concept that falls within the natural right of government but only plays out based on the existence of bilateral or multilateral treaties on extradition, or at least based on governments' reciprocity. Some general principles are derived from the existing treaties on extradition. These principles include double criminality which states that the crime involved should be a crime in both states that are concerned. The specialty principle is another principle that states that a person who surrendered may be tried and punished only for the offence for which extradition had been sought and granted. Also, offences of political nature are excluded from extraditable offences but do not cover terrorism.

The clear rationale in international law for extradition is that it is now a universal consensus that all criminal acts and deliberate criminal omissions should attract deterrent consequences. Crime should not go unpunished.³² It is also important to state that the process for determining and enforcing the consequences of any criminal act should be controlled and managed in the place where the crime was committed. It appears logical to state that proof of a crime is best done at the place where the crime was committed because adducing evidence will be easier if there is proximity to the sources of evidence. In addition, evaluation and measurement of the injury occasioned by a crime committed against society can arguably be best carried out at the place where the crime was committed.³³

3. Extraordinary Rendition

Extraordinary rendition is an extrajudicial practice carried out by government agencies that transfer a suspect or fugitive to a foreign country for detention and interrogation. The practice does not afford detainees the benefits of enjoying the legal safeguards that are constitutionally provided to prisoners under municipal and international human rights laws. Extraordinary rendition, simply put, is the practice that involves abduction that is state-sponsored from one country to another or to a designated place with or without the cooperation of the government of

³¹ Whenever there is an extradition treaty between any two countries, sender country is bound by treaty between the two countries and the offender shall be returned to the applicant's home country.

³² United Nations Office on Drugs and Crime Country Office Nigeria; 'Cases and Materials on Extradition in Nigeria' *supra.*, note 21.

³³ *Ibid.*

the country where the abduction took place, for extrajudicial actions such as detention and abusive interrogation outside the normal legal framework.

The technique has been globally criticised because prisoners are often subjected to untimely, indiscriminate, and indefinite imprisonment without trial coupled with the possibility of torture and all forms of degrading treatment, in violation of the rule of law and international human rights law. The practice of extraordinary rendition, more often than not, combines the detention, abduction, and international transfer of presumed terrorists or criminals without any due process of negotiation of extradition procedure, deportation, or expulsion to third-party countries to be interrogated using techniques equivalent to torture, inhuman, or degrading treatment.³⁴ Extraordinary rendition practice has been held to describe human rights abuse.³⁵ It is undoubtedly a hybrid violation of human rights, which combines elements of arbitrary arrest, enforced disappearance, forcible transfer, torture, denial of access to consular officials, and denial of impartial tribunals.³⁶ It is a state-sponsored illegal abduction of a person in one country, either with or without the cooperation of the government of that country, and the subsequent transfer of that person to another country for detention and interrogation. Some states facilitate extraordinary rendition by arresting suspects, and without due process, delivering such suspects to the custody of the officials from another country, who then transfer the suspects to wherever they are wanted.³⁷

4. Historical Development and Trends of Extraordinary Rendition

In the words of the US Vice-President, Dick Cheney:

“We also have to work through sort of the dark side, if you will. We’ve got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies, if we’re going to be successful.”

³⁴ P. Galella and C. Esposito; ‘Extraordinary Renditions in the Fight Against Terrorism’, International Journal of Human Rights, (2012) 16.

³⁵ D. Weissbrodt and A. Bergquist, ‘Extraordinary Rendition: A Human Rights Analysis’, 19 HARV. HUM. RTS. J. 123 (2006) 124, <<https://core.ac.uk/download/pdf/217199847.pdf>> accessed 24 March 2025.

³⁶ Ibid.

³⁷ Ibid.

That's the world these folks operate in, and so it's going to be vital for us to use any means at our disposal, basically, to achieve our objective."³⁸

From the foregoing comments of one of the past US Vice-President, one could easily glean that the practice of extraordinary rendition was specially designed by the world power to circumvent due process while chasing their targets in the name of fighting cross-border crimes such as international terrorism. The United States of America remains the arrowhead and the major practitioner of extraordinary rendition. It should also be noted that there is no available official or public U.S. government document that defines 'extraordinary rendition' as a concept. It is defined by the Open Society Foundation as "the transfer—without legal process—of a detainee to the custody of a foreign government for purposes of detention and interrogation."³⁹

The concept of 'extraordinary rendition' has become a worrisome international issue since the September 11, 2001 attacks,⁴⁰ that U.S. President George W. Bush to declare a global 'war' against international terrorism.⁴¹ This policy of fighting terrorism that traces its roots to the administration of former President Bill Clinton with a limited programme has been expanded dramatically in structure and practice.⁴² Bush authorised the CIA to commence a secret detention programme in conspiracy with various cooperating governments around the world where suspected terrorists were held in CIA prisons otherwise known as "black sites" outside the United States and subjected to interrogation methods void of due process, which involved torture and other abuses. The CIA was about the same time granted expansive authority to engage in extraordinary rendition. Both programmes, initiated and promoted by the United States in concert with other countries were highly classified and conducted outside the United States to place detainee interrogations beyond the purview of the law. The US President, circumventing the usual channels of international law,

³⁸ U.S. Vice President Dick Cheney, September 16, 2001, culled from Open Society Foundation, 'Globalizing Torture : CIA Secret Detention and Extraordinary Rendition' Open Society Foundation publication 2013, page 5. <<https://www.justiceinitiative.org/uploads/655bbd41-082b-4df3-940c-18a3bd9ed956/globalizing-torture-20120205.pdf>> (accessed 20 January 2022).

³⁹ Ibid, at13.

⁴⁰ The United States was attacked by international terrorist group, Al-Qaeda being led then by Osama Bin Laden who was later killed by the USA military during a special operation in Pakistan on May 2, 2011.

⁴¹ P. Galella and C. Esposito; 'Extraordinary Renditions in the Fight against Terrorism' International Journal on Human Rights, International Journal of Human Rights, Issue 16, June 2012. Available at: <<https://sur.conectas.org/en/extraordinary-renditions-fight-terrorism/>> (accessed 14 June 2022).

⁴² The September 11, 2001 attack on the World Trade Center in New York was the most lethal or deadly terrorist attacks in history of the U.S. The attack took the lives of 3,000 Americans and nationals of other nations. See History – 9/11 Investigations, available on <<https://www.fbi.gov/history/famous-cases/911-investigation>> (accessed 14 August 2021).

authorised the programme for abductions, detentions, and transfers of presumed terrorists to secret prisons in third-party States.

Generally, rendering criminal suspects to the United States has a long history in the country, even with judicial approval notwithstanding the breach of international law. As early as 1886, the practice was specifically addressed by the U.S. Supreme Court. The court held in **Ker v. Illinois**⁴³ that the abduction and forcible transportation of a man from Peru to face larceny charges in the United States without compliance with the extradition treaty in existence at that time between the two countries did not violate the U.S. Constitution, nor did the extradition treaty confer on the suspect a right to asylum in Peru that would bar his forcible return to the United States. The Supreme Court held that “for mere irregularities in the manner in which he may be brought into the custody of the law, we do not think he is entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment.”⁴⁴ The court also said that its decision did not “leave the detainee or the government of Peru without remedy for his unauthorised seizure within its territory” since the messenger who abducted the detainee could be surrendered and tried for violations of Peruvian laws and could also be sued by the detainee for trespass and false imprisonment.

Also, the United States Supreme Court upheld the rule in Ker’s case in the case of **Frisbie v. Collins**⁴⁵, when it held that “the power of a court to try a person for a crime is not impaired by the fact that he had been brought within the court’s jurisdiction because of a ‘forcible abduction.’” In **United States v. Alvarez Machain**⁴⁶, the court further held that the forcible abduction of an individual from Mexico, regardless of an extant valid extradition treaty between the two countries, did not prohibit his trial in the United States court for violations of the United States criminal laws.

⁴³ See 118 U.S. 436, 440-443 (1886). culled from Open Society Foundation, ‘Globalizing Torture : CIA Secret Detention and Extraordinary Rendition’ Open Society Foundation publication 2013, page 13. Available at <<https://www.justiceinitiative.org/uploads/655bbd41-082b-4df3-940c-18a3bd9ed956/globalizing-torture-20120205.pdf>> (accessed 20 January 2022).

⁴⁴ Ibid. at 440

⁴⁵ 342 U.S. 519, 522 (1952)

⁴⁶ 504 U.S. 655, 670 (1992).

President Ronald Reagan, in 1986, through National Security Decision Directive 207⁴⁷, reportedly authorised “renditions to justice” of any suspects to face criminal charges in the United States from locations where extradition procedures could not secure custody by the U.S. government. This includes countries where no government exercises effective control or countries that are known to be planning and in support of international terrorism, among others.⁴⁸

5. Purported Justification for Extraordinary Rendition

After the attacks against the United States of America, the Central Intelligence Agency went into an alliance or conspired with some governments of nations around the world to build and arrange a secret extraordinary rendition and detention programme that spanned the globe for the transfer of a suspect or detainee to the custody of a foreign government without the due legal process for purposes of detention and interrogation.⁴⁹ This illegal programme was designed and intended to protect the United States, having been a victim of the world’s most grievous terrorist attacks. To the United States and its Intelligence Agency, extraordinary rendition is a viable means of fighting terrorism.

Condoleezza Rice, former Secretary of State under President Bush, defended extraordinary rendition when she said, “Rendition (referring to extraordinary rendition) is a vital tool in combating transnational terrorism. Its use is not unique to the United States, or the current administration. Last year, then Director of Central Intelligence, George Tenet, recalled that our earlier counterterrorism successes included “the rendition of many dozens of terrorists before September 11, 2001.”⁵⁰ She also went further to say, “Renditions take terrorists out of action and save lives.”⁵¹

⁴⁷ "National Security Decision Directive 207, otherwise referred to National Programs for Combatting Terrorism provides policy guidance on combatting terrorism. See ‘Homeland Security Digital Library’ available at <<https://www.hsdl.org/?abstract&did=463170>> accessed 24 June 2022.

⁴⁸ M. Satterthwaite and A. Fisher, *Tortured Logic: Renditions to Justice, Extraordinary Rendition, and Human Rights Law, The Long Term View*, Vol. 6, (2006), at 55. A partially declassified version of the National Security Decision Directive 207 is also available at <<http://www.fas.org/irp/offdocs/nsdd/nsdd-207.pdf>>

⁴⁹ See J. Horowitz & S. Cammarano; ‘20 Extraordinary Facts about CIA Extraordinary Rendition and Secret Detention’ February 05, 2013, available at <<https://www.justiceinitiative.org/voices/20-extraordinary-facts-about-cia-extraordinary-rendition-and-secret-detention>>(accessed 14 January 2026).

⁵⁰ See Condoleezza Rice, the then U.S. Secretary of State’s Remarks Upon Her Departure for Europe on the 5th December, 2005, available at <<https://2001-2009.state.gov/secretary/rm/2005/57602.htm>> accessed 1 June 2022.

⁵¹ Ibid.

Obviously, in America's opinion, the terrorists should be dealt with 'by hook or by crook.' It was no doubt that the Bush government was so desperate about extraordinary rendition. Rice, his Secretary of State, said unequivocally, "We must track down terrorists who seek refuge in areas where governments cannot take effective action, including where the terrorists cannot in practice be reached by the ordinary processes of law. In such places, terrorists have planned the killings of thousands of innocents – in New York City or Nairobi, in Bali or London, in Madrid or Beslan, in Casablanca or Istanbul."⁵²

While the practice of extraordinary rendition did not start in 2001,⁵³ however, since the September 11, 2001 terrorist attacks on the United States, the practice and the cases have been expanded greatly in scope and numerically, such that it encompasses transfer to third countries solely for detention and interrogation, even in cases where there was no prospect of criminal prosecution and where detainees were at risk of torture. The justification for extraordinary rendition in the view of the American government is the fight against terrorism. This remains a debate among international law scholars.

6. Human Right Issues and Global Response to Extraordinary Rendition

Extraordinary rendition in its present form and practice, as earlier discussed, usually involves abducting a person who is not formally facing any criminal charge before the country that is conducting the abduction. It is a sudden seizure of a person abroad and transported to a third country.⁵⁴ To say the least, this practice can be no less than a flagrant violation of human rights. The efforts to establish international human rights standards in the 20th century emerged as a reaction to the horrors of World War II.⁵⁵ The German Nazi regime's massacre of Jewish people is the most globally documented and analysed case of humans rights violations during the World

⁵² Ibid.

⁵³ Rendition was commenced in the United States as far back as 1980s. In 1986, it was reported that in National Security Decision Directive 207, Ronald Reagan, the then US President authorised "renditions to justice" of all suspects into the United States to face criminal charges, but this is only applicable to locations where the U.S. government could not use extradition procedures to secure custody, such as countries where there was no effective control by any government or those countries which are known to be in support of international terrorism among others. See M. Satterthwaite and A. Fisher, *Tortured Logic: Renditions to Justice, Extraordinary Rendition, and Human Rights Law, The Long Term View*, Vol. 6, (2006), at 55. President George H.W. Bush reportedly did authorise specific procedures for renditions through National Security Directive 77, into the United States which remains classified. Ibid.

⁵⁴ D. Weissbrodt and A. Bergquist, *Extraordinary Rendition: A Human Rights Analysis*, supra, note 35 at page 125.

⁵⁵ World War II took place between 1939 and 1945.

War II era.⁵⁶ Ever since that time, whenever human rights violations emerge and are identified, the global community has always responded one way or the other, mostly by naming and describing the violations and secondly by establishing global standards to prohibit such human rights abuses or violations. Examples include Crimes against humanity,⁵⁷ genocide,⁵⁸ human trafficking, and torture, all of which have been addressed through this process.⁵⁹

Undoubtedly, new types of human rights abuse surface from time to time as society advances. A case in point is extraordinary rendition. Extraordinary rendition remains a novel global human rights violation that has not been specifically addressed with a definite proactive legal effort such as the Convention. Although it has been argued that while it is not expressly mentioned in any human rights instruments by name, there are different provisions within existing instruments that usually address the offence.⁶⁰ Such a skeletal provision does not suffice given its enormous impact on human rights.

Extraordinary rendition is a convoluted human rights violation that combines the elements of arbitrary arrest or abduction, enforced disappearance, forcible transfer, torture, denial of access to consular officials, and denial of impartial tribunals. This human rights violation involves the state-sponsored abduction of a person in one country, with or without the cooperation of the government of that country,⁶¹ and the subsequent transfer of that person to another country for detention and interrogation.⁶²

⁵⁶See S. Waters and W. B. Russell III; 'The World War II Era and Human Rights Education' Social Education 76(6), Pp 301–305 at 303, available at https://www.socialstudies.org/system/files/publications/articles/se_7606301.pdf (accessed 14 June 2022)

⁵⁷ This include enslavement, murder, deportation, extermination, and other inhumane acts or persecutions on social, cultural, racial, political, or religious grounds among others.

⁵⁸ Genocide has been perpetrated and been perpetrated around the world. See Article 2 of Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, which entered into force Jan. 12, 1951. Examples of Genocide include the holocaust, the persecution of Christians in Europe in 1200s, Tutsi minorities killed Rwanda in 1994, Tamil people of Sri Lanka in 1983 etc.

⁵⁹ D. Weissbrodt and A. Bergquist, op cit., note 40 at page 126.

⁶⁰ *ibid*

⁶¹ Some countries are involved and facilitate extraordinary rendition by seizing the suspects and by delivering them to the custody of officials from another country, who then transfer the detainees. See Indonesia's cooperation with the United States in the extraordinary rendition of Muhammad Saad Iqbal Madni. In other cases, extraordinary rendition may take place without the assistance of local authorities or in violation of local laws. Culled from D. Weissbrodt and A. Bergquist; *Ibid* page 127.

⁶² *Ibid*.

In 2005, the Center for Human Rights and Global Justice⁶³ published a list of persons who had been detained in the war against terrorism and whose whereabouts were unknown. The list was divided into three categories and was based on articles, reports, and investigations made by various NGOs around the world. The categories were:

“(a.) Persons confirmed to be or to have been held in secret detention centers in the United States or in installations on foreign territory controlled by the government of the United States; (b.) Persons presumably held by the government of the United States and who are probably held in secret detention centers controlled by the United States or in installations on foreign territory being controlled by the United States government; and (c.) Persons who may be held by the United States and who may be held in secret detention centers controlled by the government of the United States or in installations on foreign territory that are controlled by the government of the United States.”⁶⁴

The United States government has admitted at some point that the persons who are in category (a) above have been detained under its authorities. However, nobody outside the United States officials in charge has any information about them or their whereabouts.⁶⁵ The United States did not admit the detention of the persons in categories (b) and (c) above, and the difference between these categories lies in the degree of certainty over the detention. While cases in category (b) include substantial evidence of secret detention by the U.S. government, the cases in category (c) have no conclusive evidence.⁶⁶

Extraordinary rendition is, in a way, similar to enforced disappearance. Extraordinary rendition could be analysed and compared with enforced disappearance; although not totally the same, they often have the following substantive elements in common, viz, deprivation of liberty, state involvement, and refusal to acknowledge the deprivation. Over the years, enforced disappearance gained prominence and became persistent. The UN General Assembly took the first step in 1992

⁶³ This Center is housed in New York University. See <<https://www.law.nyu.edu/centers/chrgj-center-for-human-rights-global-justice>> accessed 26 June 2022.

⁶⁴ Cullled Patricio Galella and Carlos Esposito; ‘Extraordinary Renditions in the Fight against Terrorism’ International Journal on Human Rights, op cit, note 40.

⁶⁵ Ibid.

⁶⁶ Ibid.

by approving the Declaration on the Protection of All Persons from Enforced Disappearance.⁶⁷ The issue received additional impetus in 1998 when the Chairperson-Rapporteur of the Working Group on the Administration of Justice at the UN presented a Preliminary Draft Convention inspired by the 1992 Declaration and the Convention against Torture. The process was concluded in 2006 with the adoption by the UN General Assembly of the International Convention for the Protection of All Persons from Enforced Disappearance.⁶⁸

Some of the human rights violations associated with extraordinary rendition include the Right to Life, Right to Personal Liberty, Right to Dignity of human person, the Right to health, the Right not to be tortured, the Right to a good standard of living and the Right to food among others. Extraordinary rendition runs contrary to numerous international human rights standards. It violates the Universal Declaration of Human Rights.⁶⁹ Article 3 of the Declaration guarantees the right to life, liberty and security of a person. It also violates the International Covenant on Civil and Political Rights.⁷⁰ Article 7 of the Covenant prohibits torture and other forms of cruel, inhuman, or degrading treatment or punishment. Article 10 also requires States Parties to treat all detained persons with respect meant for humanity given the inherent dignity of the human person. Subjecting individuals to torture and other forms of cruel, inhuman or degrading treatment after transfer is a violation of the provisions of Articles 7 and 10 of the Covenant, and the process of abduction and transfer itself may violate a detainee's inherent human dignity.⁷¹

Extraordinary rendition also violates the International Covenant on Economic, Social and Cultural Rights.⁷² Undoubtedly, when a person is abducted and transported to another country to face torture and other forms of cruelty, degrading and inhuman treatment, the abducting government violates the person's economic, social, and cultural rights. Extraordinary rendition, therefore, is a violation of Article 11, which is on the right to an adequate standard of living for all persons and their family members. The practice of extraordinary rendition also runs afoul of

⁶⁷ See United Nations General Assembly Resolution 47/133 adopted 18 December, 1992.

⁶⁸ Patricio Galella and Carlos Esposito; 'Extraordinary Renditions in the Fight against Terrorism' *International Journal on Human Rights*, op cit., note 39

⁶⁹ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, Third Session., First Plenary meeting, U.N. Doc A/810 (12 December, 1948).

⁷⁰ International Covenant on Civil and Political Rights, entered into force on the 23 March, 1976.

⁷¹ See D. Weissbrodt and A. Bergquist, *Extraordinary Rendition: A Human Rights Analysis*, op cit., note 40.

⁷² International Covenant on Economic, Social and Cultural Rights, entered into force on the 3rd January, 1976

the Convention and Protocol Relating to the Status of Refugees;⁷³ the Convention against Torture;⁷⁴ the Vienna Convention on Consular Relations,⁷⁵ and the Geneva Conventions among others.⁷⁶

7. KANU'S CASE AND EXTRAORDINARY RENDITION

The self-acclaimed leader of the Indigenous People of Biafra (IPOB), popularly known as Mazi Nnamdi Kanu, was born on the 25th day of September 1967 at Afaraukwu, Abia State, South-East Nigeria. His ordeal with the Federal Government of Nigeria formally commenced when he was arrested on the 14th day of October 2015 and charged to court on eleven counts bordering on treasonable felony, terrorism, promoting and managing an unlawful society, defamatory publications, and illegal possession of firearms, as well as importation of goods unlawfully, *inter alia*.⁷⁷ He was also accused by the Nigerian Government of instigating violence, especially in south-eastern Nigeria which resulted in the loss of lives and the destruction of properties of civilians, military, paramilitary, and police force as well as the destruction of civil institutions and symbols of authorities in Nigeria.⁷⁸

Following his arrest in 2015 and subsequent charge to court, he was granted bail on medical grounds in 2017. While on bail, he fled the country. He told the whole world that he escaped from Nigeria because he feared for his life after security operatives raided his home in a standoff that left many people dead. To date, nobody knows how many people died in the attack against his country home. Upon his escape from Nigeria, the Federal High Court, Abuja, revoked the bail granted him on health grounds, and a bench warrant was issued for his arrest by the court because he failed to attend the court for the continuation of his trial. Operating offshore, Kanu, upon jumping bail, was also accused of engaging in subversive activities against Nigeria,

⁷³ Convention Relating to the Status of Refugees, entered into force on the 22nd April, 1954

⁷⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature on the 4th February, 1985.

⁷⁵ Vienna Convention on Consular Relations, 24th April, 1963

⁷⁶ See D. Weissbrodt and A. Bergquist, Extraordinary Rendition: A Human Rights Analysis, op cit., note 40

⁷⁷ See Text of Press Conference held by the Honourable Attorney General of the Federation and Minister of Justice, Abubakar Malami, SAN on Tuesday 29th June, 2021 to Clarify the Re-arrest of the Nnamdi Kanu and his Repatriation back to Nigeria to face trial. Available at <<https://www.premiumtimesng.com/features-and-interviews/470626-in-full-what-agf-malami-said-about-nnamdi-kanus-arrest.html>> accessed 23 September 2025.

⁷⁸ Id. See also Timothy Obiezu, Nigerian Separatist Leader Arrested, Faces Trial Voice of America, Africa, June 20, 2021, available on <https://www.voanews.com/a/africa_nigerian-separatist-leader-arrested-faces-trial/6207665.html> accessed 03 June 2026.

including the campaign for violence against the government of Nigeria, the Nigerian State, and institutions through television, radio, and online broadcasts.⁷⁹

The federal government of Nigeria declared IPOB a terrorist group in 2017 and blamed various attacks targeting security agents in southeast Nigeria on the group's armed wing, popularly known as Eastern Security Network. A series of attacks have been linked to the network, such as the killings of many police officers and the burning of police facilities in the region. Several other public facilities have also been attacked.⁸⁰ Kanu was not so popular until 2009, when he started Radio Biafra, situated in London, where he used to live and from where he used to call for an independent state of Biafra. Kanu had spoken at different gatherings, often with a threat to the Nigerian government and calling for Biafra's independence. He had referred to the Nigerian state as a zoo, persuading his followers and loyalists to take up arms against the country.⁸¹

When Kanu departed Nigeria in a dramatic and seemingly esoteric manner, the Nigerian Government embarked on his manhunt until he was eventually tracked down and repatriated back to Nigeria in a dramatic manner on the 27th June, 2021 allegedly from Kenya, because the Nigerian Government refused to disclose the details about his re-arrest, except the skeletal information officially provided by the Honourable Attorney-General of the Federal Republic of Nigeria.⁸² Shocked by Kanu's dramatic return to Nigeria in a seemingly mysterious way, many legal minds, especially his lawyers, have argued and alleged that he was extraordinarily rendered to Nigeria. The debate has been unsettled, and the government of Nigeria refused to disclose the procedure that led to the successful interception and re-arrest of Kanu in whichever country he was caught. While Kenya was accused of complicity, the country denied any involvement in his re-arrest. The International Human Rights Commission (IHRC) based in Geneva, upon its private investigation, absolved Kenya of any blame in the arrest of Nnamdi Kanu and repatriation to

⁷⁹ Text of Press Conference held by the Honourable Attorney General of the Federation and Minister of Justice, Abubakar Malami, SAN on Tuesday 29th June, 2021, *supra*.

⁸⁰ These include Independent National Electoral Commission's office, Villages and communities, Banks, Markets among others.

⁸¹ See 'The "Zoo" called Nigeria' Comments in The Nation, June 17, 2017. Available on <<https://thenationonlineng.net/zoo-called-nigeria/>> accessed 03 June 2026

⁸² Text of Press Conference held by the Honourable Attorney General of the Federation and Minister of Justice, Abubakar Malami, SAN on Tuesday 29th June, 2021, *supra*.

Nigeria.⁸³ Also, it was reported that the “Kenyan government has confirmed that the arrest of Nnamdi Kanu, did not go through extradition proceedings.”⁸⁴ The question then remains, was Kanu actually extraordinarily rendered to Nigeria as alleged by his lawyers and a host of others? Undoubtedly, if he was extradited to Nigeria, the process could not be carried out clandestinely as done by the Nigerian government.

8. Was Kanu’s Re-Arrest Extraordinary Rendition?

The outcry and public agitation about Kanu’s re-arrest and repatriation to Nigeria call for legal clarifications, especially with the allegations by his lawyers that his case was purely an extraordinary rendition case. From the explanation of extraordinary rendition earlier discussed, Kanu’s case could not have been an extraordinary rendition for the following reasons:

- i. Kanu was originally arrested in Nigeria in 2015 by the Nigerian government and charged in court on 11 counts charge bordering on treasonable felony, terrorism, promoting and managing an unlawful society, defamatory publications, and illegal possession of firearms, as well as unlawful importation of goods.
- ii. While he was on trial, he was granted bail on health grounds. He used the bail opportunity to escape from Nigeria in seemingly mysterious circumstances, and he alleged his escape was because it was not safe for him to remain in Nigeria for his trial due to the invasion of his country home by the Nigerian military men, which resulted in the death of an unknown number of IPOB members.
- iii. Following his failure to appear in court for the continuation of his trial, a Bench warrant of arrest was issued against him.
- iv. After many campaigns of calumny against Nigeria, the Nigerian state and calls for the independent state of Biafra by Kanu, he was allegedly rearrested in Kenya and repatriated to Nigeria under some concealed circumstances.

⁸³ See C. Uchechukwumgemuze; ‘Nnamdi Kanu’s arrest: IHRC absolves Kenya of any wrongdoing’ today 13 July 2021, available at <<https://www.today.ng/news/africa/nnamdi-kanus-arrest-ihrc-absolves-kenya-wrongdoing-377829>> accessed 16 June 2022.

⁸⁴ See S. Opejobi; ‘Kenyan govt confirmed Nnamdi Kanu’s extradition illegal, no record of arrest – Brother’ Daily Post, published November 14, 2021. Available at <<https://dailypost.ng/2021/11/04/kenyan-govt-confirmed-nnamdi-kanus-extradition-illegal-no-record-of-arrest-brother/>> accessed 15 November 2024.

A community appraisal and analysis of the circumstances surrounding Kanu's case betray the allegation that he was extraordinarily rendered to Nigeria as announced to the world by his legal team. Extraordinary rendition has its elements and is different from ordinary rendition. From all the facts and figures, the case of Kanu was a mere case of ordinary rendition (rendition) which is common and not unacceptable in international law, being one of the means of bringing a fugitive to justice where there is no better alternative. It is a criminal law rule that an offender must be punished.

Rendition abridges the gap created in international law when the reality in international relations makes it difficult to bring a fugitive or suspect back to justice through extradition, which is the internationally widely acceptable legal means of handling such a situation and is often based on treaties. Whenever there are obvious and critical hitches, undoubtedly, the only lawful alternative means to get a fugitive back to face justice is through rendition. Extradition itself is a form of rendition. The major characteristic of extradition is the fact that it is based on treaties and requires a judicial process.

Rendition, as discussed above, means to hand back. It is a practice of bringing back a person to where he is wanted to face justice through arrest or abduction, but it does not require torture and may not require cooperation from the state where the fugitive is abducted. It may also include the arrest or recapturing of the suspect or fugitive even without a warrant, but in most cases, if not in all, no human rights violation is involved. It was no wonder that the International Human Rights Commission in Geneva absolved Kenya and Nigeria from any allegation of human rights violation in Kanu's case. The suspected person may be forcibly abducted in another state, which ordinarily should occur when there is an outstanding warrant of arrest against the suspect in question and when the ultimate aim of the abduction is for criminal justice in the abducting state. Ordinary rendition does not hinder the trial of the suspect by the state that rendered him. The ultimate purpose more often than not is to make the suspect face justice in criminal trials. Kanu's case falls within this interpretation. At his arrest, there was a Bench warrant of arrest against him. Rendition is therefore not the same as extraordinary rendition.

Contrary to the claim by his legal counsel and devotees, Nnamdi Kanu's rearrest does not fall within the extraordinary rendition elements. For the avoidance of doubt and emphasis, Black's

Law Dictionary defines extraordinary rendition as the "transfer, without formal charges, trial, or court approval, of a person suspected of being a terrorist or supporter of a terrorist group to a foreign nation for imprisonment and interrogation on behalf of the transferring nation."⁸⁵ In extraordinary rendition, there is extrajudicial practice, carried out by government agencies. A suspect is intercepted, arrested, abducted, and transferred by whatever means to a foreign country different from his country or the country where he was abducted for detention and interrogation. The practice does not afford detainees the benefits of enjoying any legal protection that is constitutionally guaranteed to prisoners under municipal and international human rights laws.

Extraordinary rendition involves abduction that is state-sponsored from one country to another or to a designated place with or without the cooperation of the government of the country where the abduction took place, for extra-judicial actions such as detention, torture, and abusive interrogations outside the normal legal framework. It often goes with degrading human treatment, subjecting the suspect or prisoner to hunger, victimization, threats, and all forms of human rights violation. Most times the victim's whereabouts are unknown. Those extraordinarily rendered are often indiscriminately and indefinitely subjected to imprisonment without trial, coupled with the possibility of torture and all forms of inhuman treatment, in violation of due process and international human rights law. Extraordinary rendition is illegal and condemnable. It has no valid justification in international law, and it is often widely condemned. Kanu's case lacks the elements of extraordinary rendition and should not be so classified.

As a general rule developed from juridical and judicial reactions, extraordinary rendition impugns the validity of the prosecution of the suspect rendered. From decided cases around developed jurisdictions, except America, where extraordinary rendition was developed and practiced with impunity, the uniform judicial response does not support the prosecution of the suspect by the abducting State.

In the United Kingdom, the House of Lords held **In the Matter of Regina v. Horseferry Road Magistrates Court, Ex Parte Bennett**,⁸⁶ that

⁸⁵ See Black's Law Dictionary, Bryn A. Garner, (ed.), 9th Edition, 2009) p.1403.

⁸⁶ [1994] 1 A.C. 42

“Where a defendant in a criminal matter had been brought back to the United Kingdom in disregard of available extradition process and in breach of international law and the laws of the state where the defendant had been found, the courts in the United Kingdom should take cognisance of those circumstances and refuse to try the defendant”.

This decision has been a good law to date, not only in the United Kingdom but in many other countries where the courts have cited it with much approval.⁸⁷ Also, the Court of Appeal of New Zealand decided in **Regina v. Hartley**,⁸⁸ where the New Zealand police obtained the return of one Bennett from Australia to New Zealand where he was needed to face a charge of murder, merely by telephoning to the Australian police and asking them to arrest Bennett and put him on an airplane back to New Zealand, which they did. Lord Lane C.J. cited the following extract from the judgment of Woodhouse J. in the reported case, at page 216- 217 where it was held that:

"There are explicit statutory directions that surround the extradition procedure. The procedure is widely known. It is frequently used by the police in the performance of their duty. For the protection of the public, the statute rightly demands the sanction of recognised court processes before any person who is thought to be a fugitive offender can properly be surrendered from one country to another and in our opinion there can be no possible question here of the court turning a blind eye to action of the New Zealand police which has deliberately ignored those imperative requirements of the statute. Some may say that in the present case, a New Zealand citizen attempted to avoid a criminal responsibility by leaving the country: that his subsequent conviction has demonstrated the utility of the shortcut adopted by the police to have him brought back. But this must never become an area where it will be sufficient to consider that the end has justified the means. The issues raised by this affair are basic to the whole concept of freedom in society."

The above cases gave a clear picture that the prosecution of the apprehended fugitive through extraordinary rendition by the same state that abducted him does not go down well with the

⁸⁷ A. Ejimakor; 'Extraordinary Rendition and the Laws of Nations' Available at <<https://www.vanguardngr.com/2021/10/extraordinary-rendition-and-the-laws-of-nations/>> published 4 October 2021, Accessed on 15 November 2024.

⁸⁸ [1978] 2 N.Z.L.R. 199. This is a New Zealand case.

judicial arm of the government. This is not unconnected with the fact that a state seeking to apprehend a fugitive by all means, including extraordinary rendition, is desperate to punish the suspect by all means and may not serve the interest of justice during prosecution.

9. Extraordinary Rendition and the Nigerian Law

In determining the attitude of Nigerian law to extraordinary rendition, a brief examination of the provisions of the Constitution will be apposite and suffice. The Nigerian laws generally derive validity from the Constitution of the Federal Republic of Nigeria.⁸⁹ If any other law is inconsistent with the provisions of the Constitution, the Constitution prevails, and that other law is void to the extent of its inconsistency with the Constitution.⁹⁰ The Constitution provides for and guarantees the fundamental human rights of every citizen of Nigeria, and by extension, any individual within Nigeria's territory.⁹¹ Given the elements of extraordinary rendition and the practice, the Constitution of Nigeria does not in any way allow it. Section 34(1)(a), (b) and (c) provides that:

“Every individual is entitled to respect for the dignity of his person, and accordingly – (a) no person shall be subject to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour (except as allowed by the Constitution)(sic).”

Also, the Constitution provides for the right to personal liberty and no person should be denied the same except in the cases permitted by the Constitution.⁹² Section 35(4) forbids illegal and indefinite detention. Also, section 36 provides for the right to fair hearing.⁹³ Any person charged with a criminal offence is presumed innocent until he is proven guilty.⁹⁴ From various provisions of the Constitution of the Federal Republic of Nigeria, there is zero tolerance for extraordinary rendition which is hallmarked with a breach of the right of a person to the dignity of human person because of torture, inhuman and degrading treatment; illegal detention; lack of

⁸⁹ See Section 1(1) of the Constitution of the Federal Republic of Nigeria 1999 hereinafter referred to as the ‘Constitution’.

⁹⁰ See Section 1(3) of the Constitution.

⁹¹ See Chapter IV of the Constitution.

⁹² Section 35 of the Constitution.

⁹³ Section 36 of the Constitution.

⁹⁴ Section 35(5) of the Constitution.

fair hearing; breach of the right to personal liberty; imprisonment without trials or court orders and many more. While the Nigerian Constitution prohibits extraordinary rendition by all standards given its element, there is nothing in the Constitution that forbids bringing back a fugitive to face trial in Nigeria.

10. Conclusion and Recommendation

This paper discussed extraordinary rendition and related concepts and it was found that the concept of extraordinary rendition was developed, and mostly practiced by the American government most especially, after the September 11, 2001 terrorist attacks. The purpose, in the opinion of the American Central Intelligence Agency, was to counter global terrorism that emerged with 21st century globalisation and which mostly threatens American borders. In the discourse, the re-arrest of the Nigerian, Mazi Nnamdi Kanu was used as a case study given the wide speculations that he was extraordinarily rendered by the Nigerian government in conspiracy with the Kenyan government; a claim that has since been denied by the Kenyan government. The Nigerian government refused to disclose to the world the details about the re-arrest and the repatriation of Kanu back to Nigeria to date, thereby leaving room for suspicion and insinuation that he was extraordinarily rendered. The facts and the glaring circumstances surrounding his case, especially his escape from Nigeria while on trial and his repatriation to continue his trial do not support extraordinary rendition as alleged by his lawyers. In the light of the elements of extraordinary rendition and the practice, which include human rights violations, illegal detention, torture, inhuman and degrading treatments, transfer of the fugitive or suspect to another foreign country through extra-judicial means for interrogation, and imprisonment without trials among others, Kanu's case was not in any way extraordinary rendition case but ordinary rendition which is not illegal unlike the former.

It is humbly viewed that extraordinary rendition remains a baseless practice in international law and should not be promoted by any nation, including the United States, the initiator. The world is now a global village. We all belong to and reside on the same planet. The rights of every citizen of our planet must be protected in reality and not in the abstract. Extraordinary rendition is summarily a violation of human rights, and the perpetrator should be remorseful. While terrorism must be fought in our world, it must not be fought through human rights violations. The world leaders should concertedly, unanimously, and unequivocally prohibit

the existence and practice of extraordinary rendition. In conclusion, it is recommended that the United Nations expedite the development of a global Convention against Extraordinary Rendition in clear terms and not skeletally if human rights protection must be a reality in our world as conceived and promoted by the institution.

**REAPING WHERE YOU DID NOT SOW?": THE QUESTION OF NON-FINANCIAL
CONTRIBUTION IN THE SETTLEMENT OF MATRIMONIAL PROPERTY IN
*AGUOLU v. AGUOLU*¹⁾**

Dr. Hameenat Bukola Ojibara *

ABSTRACT

The settlement of matrimonial property is a critical issue that springs up or accompanies a suit for dissolution of marriage. One of such is the current case of Aguolu v Aguolu (2025) LPELR-80269 (CA) decided in accordance with Section 72 Matrimonial Causes Act 2004 which provides for the settlement of matrimonial property. Despite that the Court takes into cognisance the evolving position of the Nigerian courts beyond strict financial contribution, thereby considering principles of equity and partnership, proof thereof is important in determining settlement. Thus, marital status does not automatically convey a right of entitlement to matrimonial property. This case review therefore examines the Court of Appeal's decision in Aguolu v Aguolu, on the settlement of matrimonial property under the statutory law at the instance of dissolution of marriage. The review analyses the Court's reasoning on issues for fairness and balancing equality interests when there is non-financial contribution to matrimonial property. It further observes that women's property should equally be a basis for determination before the court considering that the Matrimonial Causes Act is not gender specific in the instance of matrimonial property settlement. Aguolu v Aguolu's case is relevant in reinforcing the shifting Nigeria's jurisprudence from a rigid non-financial equity on property rights at divorce, while balancing the fact that marital status is not sufficient to entitle a spouse to 50/50 share of matrimonial property, and that claimants must still adduce evidence of their contribution. This review recommends the need for guidelines in determining equitable distribution of matrimonial property.

¹ (2025) LPELR-80269 (CA)

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1.0 Introduction

The dissolution of marriage, though signifying the formal end of a legal union, often opens a contentious chapter in the lives of former spouses, especially when it involves the settlement of matrimonial property. How such disputes addressed depends to a large extent on the extant legal framework,² which shapes not only the substantive rights of the parties but also the procedural pathways available for enforcement.³ In Nigeria's tripartite family law legal framework comprising Statutory, Islamic, and Customary systems, the statutory regime, governed by the Matrimonial Causes Act (MCA),⁴ has become the primary area of controversy for these disputes among parties married under the Marriage Act.⁵ A major challenge of this statutory framework is its failure to clearly define what constitutes "contribution" to matrimonial property, thereby leaving the courts with expansive yet ambiguous discretion under Section 72 of the Matrimonial Causes Act. Under this provision, a spouse is generally entitled to a share of matrimonial property only if he or she has made such a "contribution." However, Section 72 also provides no guidelines or formulas for determining the division of property. As a result, the courts must decide not only what property is subject to division, but also how it should be shared, what constitutes an adequate or beneficial allocation to the parties and their children, and ultimately what outcome would be just and equitable. This wide discretion has led to varying decisions and opinions with respect to the settlement of property at divorce, and one such is that of the case of *Aguolu v Aguolu*.⁶

The case of *Aguolu v Aguolu* is a significant court decision that deals with family law, dissolution of marriage, and property settlement. Matrimonial suits relating to maintenance, custody of children, and settlement of property emanate after a suit for dissolution of

² Ojibara H.B. (2023): Identifying the Viability of Alternative Dispute Resolution Methods in the Resolution of Marital Disputes under Nigerian Family Laws *Journal of Law and Social Policy*, 5(1), 36-48. Published by Bahria University Law School, Islamabad

³ Ayenakin O, Kolade-Faseyi I and Akindejoye T, 'Enforcement of Judgments in Nigeria: Issues, Law and Challenges' (2021) 9(7) *Global Journal of Politics and Law Research* pp. 1-15.

⁴ CAP M7, Laws of the Federation of Nigeria 2004

⁵ CAP M6, Laws of the Federation of Nigeria 2004

⁶ (2025) LPELR-80269 (CA)

marriage has been instituted and or decided by the court. The *Aguolu*'s case is one and as such flows from the institution of a suit for dissolution of marriage in accordance with Section 15 of the Matrimonial Causes Act, but also an application for equitable settlement of matrimonial property. This is a relief that is technically ancillary, but often becomes the crux of post-marital litigation.⁷ However, while the dissolution of the marriage itself was uncontested, the main dispute centred on the division of property between the parties.

The decision of the Court of Appeal in *Aguolu v Aguolu* exposes the persistent challenges of the discretion granted to the courts in Section 72 Matrimonial Causes Act⁸ regarding distribution of matrimonial properties. The central question was the meaning of "contribution" to entitle a spouse to a share of the matrimonial property. Thus, should contribution only include direct financial contribution to acquiring the property in question while the marriage subsists or does it include "non-financial contribution". In this case particularly, the question was whether the wife, despite her non-financial contribution, was entitled to an equal share of the properties acquired during the marriage. The matrimonial properties alleged in this case all belonged to the petitioner/respondent and are referred to as matrimonial property because they were acquired by him during the subsistence of the marriage. The decision to award her only one out of several properties brings to the fore the Nigerian judiciary's enduring reluctance to treat marriage as an economic partnership in which both financial and non-financial contributions are equally recognised.

The major controversy in this case is whether a spouse's non-financial contributions should be recognised in determining their share of matrimonial property. If so, would that not amount to allowing a party to reap where they did not sow, given that such contributions are often intangible, difficult to quantify, and lack the explicit financial input required for acquiring the property? This case review examines the court's decision and the key issues that arose during the proceedings, there by accentuating the complexities of property settlement upon divorce. It also provides a detailed analysis of the legal principles and judicial interpretations that shape the current state of women's property rights in such proceedings.

⁷ CAP M.7, 2004.

⁸ Matrimonial Causes Act 2004

2.0 Facts and Decision

The parties to the suit got married on 14 February 1976 at the Catholic Church of St. Dominic's, Yaba, Lagos state. They lived together from 1976 to 1983 (seven years) and had two children, Chinedu and Chioma, born in 1976 and 1978, respectively. In 2015, the Petitioner instituted an action against the Defendant before the High Court, Ikeja⁹ for dissolution of marriage. The petition was filed on the grounds that the marriage had broken down irretrievably, especially because both parties had lived apart for 22 years. Also, that the defendant had behaved in such a way that the petitioner could not reasonably be expected to live with her.

The defendant, on the other hand, filed a cross-petition for dissolution of marriage on the basis that the petitioner had behaved in such a way that the defendant could not reasonably be expected to live with him, thereby alleging adultery and living apart for a period of 3 years. She however sought other ancillary reliefs to include: custody of the children, the sum of ₦79,600,000 (accumulated arrears for upkeep and sundry expenses for the children), school fees and related expenses going forward, ₦2,000,000 per annum for maintenance of the children, rent, 50 per cent-50 per cent proportion split of landed properties and further orders as the court deemed fit.

The trial judge made an order for a *decree nisi* on the basis that there was no subsisting marriage as the parties had lived apart for 22 years. However, for the settlement of the property relying on section 72 (1) and (2) Matrimonial Causes Act,¹⁰ the court made an order for one of the properties (a house) to be granted to the respondent.¹¹ The *ratio decidendi* is on the core principle that marriage alone does not confer a right to equal share of matrimonial property. Dissatisfied, the Respondent/Appellant appealed the decision to the Court of Appeal and the question for determination was “whether the learned trial judge was right in law and in equity, under the facts of the circumstances, in settling only one of the several matrimonial properties on the Appellant, thereby leaving the rights of the parties to all other matrimonial properties unresolved?”. In essence, therefore, the Respondent/Appellant

⁹ *Aguolu v Aguolu* (ID/1899HD/2015)

¹⁰ CAP M7, LFN 2004

¹¹ *Aguolu v Aguolu* (2025) LPELR-80269 (CA)

claimed that on the basis of being married to the Petitioner/Respondent, she was entitled to an equal share of his properties, thereby raising issues regarding her entitlement to a share of property by virtue of marriage.

The Court of Appeal dismissed the appeal on the basis that the Appellant had no financial contribution or proof of it to show her entitlement to the properties. The *ratio decidendi* is that evidential burden lies on the claimant to prove the nature and extent of her contribution to the matrimonial property.¹² The Appellant had no proof to back up her claim. The court further adduced to Section 131 Evidence Act¹³ that whoever asserts the existence of facts must prove that such facts exist. Also, in the instance such as Section 72 MCA where the court is given discretionary power, such discretion must be guided with evidence adduced and exercised “judicially and judiciously”¹⁴

The Respondent/Appellant’s case reignites the contentious discourse on whether divorced

women are entitled to an equal share in matrimonial property by the mere fact that they are a spouse? Whether lack of proof of contribution entitles a spouse to matrimonial property? The subsequent section analyses this contentious issue.

and “marriage alone does not confer an automatic right to equal division of matrimonial property”

3.0 Analysis

The settlement of property between the parties, which was the second issue for determination in the *Aguolu’s* case,¹⁵ is generally considered one of the most challenging issues in matrimonial proceedings.¹⁶ As mentioned earlier, Section 72 Matrimonial Causes Act, which refers to the power of the court in proceedings with respect to the settlement of property, was applied in *Aguolu v Aguolu*.

Section 72 (1) Matrimonial Causes Act states that:

¹² *Aguolu v Aguolu* (2025) LPELR-80269 (CA)

¹³ Evidence Act 2011

¹⁴ *Menakaya v Menakaya* (2001) 16 NWLR (PT. 738) 203 (P.253, Paras. B-D)

¹⁵ *Aguolu v Aguolu* (2025) LPELR-80269 (CA)

¹⁶ *Akinbuwa v Akinbuwa* (1998) 7 NWLR (Pt.559) 661 @676-677 Para H-D; Dalling Samuel, *Regulating Prenuptial Agreements: Balancing Autonomy and Protection*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/7768/> accessed 13 June 2025

The court may, in proceedings under this Act, by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of the marriage, such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the court considers just and equitable in the circumstances of the case.

The provision requires that the court should make a just and equitable order as regards the parties to a marriage or either of them, for the benefit of all or any of the parties and the children of the marriage, such a settlement as to their entitlement. This provision gives a wide discretion to the court to determine what is just and equitable, relying on the facts alleged by the parties. As such, this provision is vague and there are no strict guidelines for the court to determine what is just and equitable.¹⁷ However, in determining what is just and equitable, the lead judge in *Aguolu v Aguolu* relied on three (3) main principles as follows:

- f. That the property is a matrimonial property
- g. Contribution to the acquisition of the matrimonial property
- h. That it is fair, just and equitable to settle the properties

Matrimonial Property: There is no law that explicitly defines what a matrimonial property is or what constitutes it, but it has been inferred or regarded as property that is acquired, whether jointly or individually, during the subsistence of the marriage.¹⁸ According to Nwogugu, “the property to be settled must be owned by one or both parties”.¹⁹ That is, where a property is owned by either of the parties separately or jointly, then it would be regarded as matrimonial property. What seems to be important, according to this definition, is that it was acquired while both parties were legally married. This interpretation is inadequate in that it appropriates property that is owned individually and cannot be regarded as fair or equitable. In essence, to determine what is just and equitable, the courts are often focused on the time of acquisition of the property, which spans from the commencement and subsistence (length) of the marriage. In

¹⁷ *Onovo v MBA* (2014) 14 NWLR (Pt. 1427) 391 (p. 437, Paras G-H)

¹⁸ *Aguolu v Aguolu* (ID/1899HD/2015)

¹⁹ Nwogugu E. I, *Family Law in Nigeria*, (Heinemann Educational Books Nigeria Plc 2001) 259.

Aguolu's case, it was established by both parties that the properties are matrimonial properties merely because they were acquired during the subsistence of the marriage. Most considerations of what determines a matrimonial property have often tilted towards a proof of ownership or title document.²⁰ Thus, where a property is registered in one of the spouses' names, he is considered the sole owner. Where it is titled in both spouses' names, it is joint property and can be regarded as matrimonial property to be shared. This narrow, ownership-centred approach, where the mere timing of acquisition during the marriage and the name on the title determine whether property is matrimonial, fails to account for the realities of spousal contribution and the equitable considerations that should guide property division. By reducing matrimonial property to a question of legal title, the courts risk perpetuating outcomes that are formally correct yet substantively unjust.

Although, there is no restriction as to the type of property. Property is basically categorised into two, i.e., real property (land and everything attached to the earth, e.g., buildings, etc.) and personal property (movable items).²¹ Thus, from most court decisions, the settlement of property has been that of real property.²² Clearly, in *Aguolu v Aguolu*, the properties in contention were landed properties. A further limitation in the current judicial approach is the implicit bias toward real property in matrimonial property settlements. While the law imposes no restriction on the type of property that may be classified as matrimonial, court decisions have often focused on land and other immovable assets. This narrow approach risks overlooking valuable personal property such as vehicles, investments, business interests, and high-value movable assets that may constitute a significant part of the couple's joint wealth. In *Aguolu v Aguolu*, for example, the dispute revolved entirely around landed properties, leaving unexamined the broader spectrum of assets that could fairly fall within the matrimonial property pool. By framing matrimonial property disputes predominantly in terms of real estate, the courts inadvertently reinforce a limited view of spousal entitlements and potentially exclude assets that could ensure a more equitable distribution.

²⁰ Chinelo Immaculata Jane Ugwu 'Appraisal of the Concept of Matrimonial Property under Nigerian Law' (2020-2021) 16 *The Nigerian Juridical Review*, pp 143–154. Also, the decision of the court in *Adaku Amadi v Edward Nwosu* (1992) LPELR-442 (SC); (1992) 6 SCNJ59.

²¹ Section 2 Property and Conveyancing Law 1958; See also, Ibekwe C.S, *An Outline of Property Law and Essential Land Reforms in Nigeria*, (2018) 5 (2) UNIZIK Journal of Commercial and Property Law 14.

²² *Essien v Essien* (2008) LPELR-4049(CA); *Oghoyone v Oghoyone* (2010) LPELR-4689 (CA); *Adaku Amadi v Edward Nwosu* (1992) LPELR-442 (SC); (1992) 6 SCNJ59.

Contribution to Acquisition of the Matrimonial Property: The involvement and donation of the parties is another major factor in determining the settlement of matrimonial property. The involvement of the parties relates to the acquisition, enhancement, or maintenance of the property.²³ While Section 72 is not explicit on the nature of the contribution, the courts have interpreted it to mean ‘financial’ contribution. In *Essien v Essien*²⁴, the Supreme Court upheld the decision of the lower court on the fact that property acquired during marriage belongs to the spouse in whose name it is registered. The constant argument before the court is that in considering what is just and equitable, both parties must have contributed financially to the acquisition of the property. Also, in *Dahiru v Dahiru*²⁵, the court exercised its discretion by considering the financial contributions of both parties to determine the property settlement. In *Oghoyone v Oghoyone*²⁶, the Court of Appeal took a different turn from *Essien*’s case and *Dahiru*’s case, in which it recognised indirect contributions, such as homemaking, as a basis for awarding a share of matrimonial property. This decision, with due respect, is an imitation of Western decisions, for instance, the decision in *White v. White*,²⁷ which established the principle of equal division of matrimonial assets regardless of the nature of contributions. One can argue that, of course, non-financial contributions, such as homemaking, emotional support, and child rearing, are responsibilities that can be taken up by both parties and even by the party who owns the matrimonial property.

While the recognition of non-financial contributions such as homemaking, emotional support, and child-rearing may appear equitable, it risks conflating marital roles with proprietary rights. These are responsibilities that can be undertaken by either spouse, including the very party who solely financed the acquisition of the property. The wholesale importation of Western ideas, as seen in *Oghoyone v Oghoyone*’s imitation of *White v White*, fails to reflect Nigeria’s socio-economic realities, where property ownership remains predominantly the result of direct and quantifiable financial investment. To equate intangible, non-monetary involvement with substantive ownership is to water down the very notion of equity, replacing contribution-based

²³ Ajayi, M. A. and Olotuah, A. O., ‘Violation of Women's Property Rights within the Family.’ (2005) 19(66) *Agenda* 58.

²⁴ (2009) 9 NWLR (Pt. 1146) 306.

²⁵ (2008) 3 NWLR (Pt. 1075) 36.

²⁶ (2010) LPELR-4689(CA).

²⁷ [2001] 1 AC 596

entitlement with a blanket presumption of equal division. Such an approach is arguably against the principle of fairness and risks rewarding non-financial contributors and penalising the spouse whose tangible resources made the acquisition possible.

Women are also protected by the laws. First is the right of women to acquire property, which is enshrined in the principle of equality guaranteed in the Constitution of the Federal Republic of Nigeria, which further prohibits discrimination on the grounds of gender.²⁸ Another long-standing development in the realm of women's property rights is the Married Women's Property Act (MWPA)²⁹, which was received into Nigerian law and granted married women the right to acquire, hold, and dispose of property.³⁰ There is also an increasing number of women who are educated and highly skilled,³¹ earning as much as their male counterparts. According to the Nigerian Bureau of Statistics, the labour force participation rate of females in 2024 is 77.1 per cent with a margin of 0.4 per cent compared to males.³² Additionally, the employment-to-population ratio is 72.3 per cent for females.³³ Likewise, the World Bank reports that the percentage share of women out of the labour force due to care responsibilities is 26 percent, and the female share of employment in senior and middle management is 65.8 percent.³⁴ This shows that women, arguably, now have relatively similar opportunities as their male counterparts in the economic sphere and, as such, can be gainfully employed and acquire properties too.

The principle of fairness, justice, and equity: Another principle is that the court must be convinced that it is just and equitable to share the property. To determine what is just and fair, the courts would have to rely on the facts before them. Thus, the party seeking the claim must place before the court material facts adequate for the court to exercise its discretion. The onus of proof is on the Appellant, who is alleging an entitlement to the property. Also, matrimonial causes are

²⁸ Section 42 of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

²⁹ 1882

³⁰ Section 1, 2, Married Women's Property Act 1882

³¹ Sagay I, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press, Lagos 1999) 458.

³² The working age population of those employed and seeking employment and constitutes the labour force. Nigeria Labour Force Statistics Report Q1 2024 in conjunction with The World Bank and International Labour Organisation https://www.nigerianstat.gov.ng/pdfuploads/NLFS_Q1_2024_Report.pdf accessed 12 July 2025.

³³ Nigeria Labour Force Statistics Report Q1 2024, page 8.

³⁴ As at 2023. World Bank Group, Gender Data Portal (Gender Landscape) <https://documents1.worldbank.org/curated/en/099210007022221373/pdf/IDU0eb03f34c0b98b04dbf0a2670d6c566023098.pdf> accessed 12 July 2025.

civil suits, and proof is on a balance of probabilities to the reasonable doubt of the court.³⁵ The Appellant in *Aguolu v Aguolu* did not prove before the court substantial facts to have her claim granted.

One subject for debate was whether sufficient proof of matrimonial fault/blame in accordance with the facts for dissolution of marriage in section 15 (2) Matrimonial Causes Act entitles a party to a share of the matrimonial property? The Appellant sufficiently proved and established evidence for dissolution of the marriage, but failed to establish and prove her contribution to the matrimonial property, which is the main condition. Thus, the basis for establishing a claim to the property is not the same as that for dissolution of marriage.

Another premise is whether it is just and equitable to consider the property of one party, the Respondent (husband), and not for both parties, irrespective of who has more, so far it falls within the whims of matrimonial property. In *Aguolu v Aguolu*, there was no mention as to the property owned by the Appellant (wife) and no consideration as to whether it should be divided. Flowing from the above, and in determining what is just and equitable, it cannot be considered just and fair to share the property of one party and not of both.

From a deeper reflection of the provisions of the Matrimonial Causes Act, it might seem that the law caters to the needs of parties at divorce, and that as a result, the sharing of property might not be fair. The provisions for financial relief are stipulated in Section 70 Matrimonial Causes Act.³⁶ Section 70 Matrimonial Causes Act empowers the court to make financial orders in respect of the maintenance of a party to the marriage, and that includes children of the marriage. In making this order, the courts are enjoined to consider the means, earning capacity, conduct of the parties, and other relevant circumstances.³⁷ Sections 70 and 72 Matrimonial Causes Act are not gender specific, i.e., it does not apply only to women in the marriage. As such, the husband can also request maintenance according to section 70 Matrimonial Causes Act or request a share of the wife's property. Conversely, section 70 Matrimonial Causes Act is put in place for the financially disadvantaged party and children of the marriage, which was also implemented for the wife and

³⁵ Section 134 Nigeria Evidence Act 2011. See also, Sagay I, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press, Lagos 1999) 637.

³⁶ Sagay I, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press, Lagos 1999) 457.

³⁷ See also *Nanna v Nanna* (2004) 3 NWLR (Pt.966) 10

children in *Aguolu v Aguolu*. In that case, there is no need to explore the provision of section 72 Matrimonial Causes Act.

However, it is safe to say that the courts in Nigeria do not consider marriage as a form of economic partnership, with the need to establish contribution to the property. Also, maintenance is determined on a need basis and not entitlement-based. The essence of this is that a party who has no financial contribution to the property does not lay a claim to it, thereby benefiting unjustly, which defeats the purpose of what is just and equitable.

4.0 Conclusion

The judgment provides an insight into how the courts decide the settlement of property between divorced parties. This decision replicates the decision made in previous cases in which the courts are of the opinion that where there is no evidence to substantiate the financial contribution of a spouse to the matrimonial property, then they are not entitled to a share. Decisions of past cases might be largely reliant on the fact that women were disadvantaged and at a low in terms of education, visibility, and representation. Also, on the presumption that it is the man's duty to maintain and cater for the wife and children, contrary to the Matrimonial Causes Act provision, whose maintenance and property settlement provisions are not specific to the man alone. In addition, there has been substantial development of the economic status of females, an increase in academic qualification, and employment even at the top management level, indicating that they are on the same horizon as their male counterparts and can acquire properties. This is equally backed up by the Married Women's Property Act, which grants married women the right to purchase property.

In conclusion, *Aguolu v Aguolu* reaffirms a long-standing judicial position in Nigeria that entitlement to matrimonial property must be anchored on the spouses' established financial contribution. This is a necessary safeguard against outcomes that unjustly transfer property from contributing to non-contributing spouses. While arguments for recognising non-financial contributions may resonate well in Western jurisdictions, Nigeria's socio-economic realities, coupled with the constitutional and statutory equality provisions that already empower women to own and acquire property, render such an approach unfeasible. This review recommends that Section 72, Matrimonial Causes Act should therefore be applied with a clear evidentiary

threshold for contribution: objective, measurable, and resistant to sentimental expansion. Only in this way can the principle of “just and equitable” settlement remain true to its purpose and avoid rewarding those who, in property terms, have not sown.

RECOGNITION OF GENOCIDE AS A FORM OF MORAL REPAIR**Evarada Abednego Don *****ABSTRACT**

The article offers a critical appraisal of the forms of reparation applicable to the crime of genocide examining their legal foundation, practical implementation and normative significance within international law. Although genocide is recognized as the “crime of crimes”, the reparation regime addressing its harm remains fragmented and inconsistently applied drawing on international jurisprudence, human right mechanism, and transitional justice practice, in order to address the particular collective and intergenerational effects of genocide, the article adopts a doctrinal approach method to discuss important kinds of reparation, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Particular attention is given to challenges such as the destruction of the group identity, loss of cultural heritage, mass displacement, and the difficulty of quantifying collective harm. The paper argues that conventional individual – centric models of reparation are insufficient for genocide and that more holistic, group-base, and culturally grounded approaches are required. The article further highlights the importance of survivor participation, symbolic and memorial measures, and institutional reforms in achieving meaningful redress. Ultimately, it recommends that a coherent victim-centre framework – integrating both material and symbolic dimensions – its essential to address the profound moral and social ruptures caused by genocide and to strengthen long-term prospects for justice and reconciliation.

Key Words: Reparation, Genocide, Restitution, Compensation, Rehabilitation

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1.1 Introduction

Genocide inflicts harms of a magnitude and nature that transcend conventional understanding of mass atrocity. Defined by its intent to destroy protected groups in whole or in part, the crime strikes at the foundation of human identity, social cohesion and collective existence. While international criminal law has made significant strides in defining and prosecuting genocide, the development of a coherent and enforceable framework for reparations remains comparatively under-explored. Yet for affected individuals and communities, reparations are often the most tangible expression of justice – serving not only to acknowledge suffering but also to restore dignity, rebuild social structures and enable long-term recovery.¹

The complexity of repairing genocide lies in the layers of harm: the physical and psychological trauma suffered by victims; the erasure of culture, language and heritage; the destruction of governance systems and community life; and the intergenerational consequences that persist long after violence ceases. Traditional models of reparation, largely tailored to individual violations, struggle to address such expansive, collective injuries. Furthermore, political constraint, limited resources and the absence of robust enforcement mechanisms frequently impede the implementation of meaningful redress.

The article situates the appraisal of reparation forms within the broader landscape of international law, transitional justice and comparative practice. It argues that addressing genocide requires a reconceptualization of reparation – one that balances individual and collective needs, situates redress within cultural and historical context, and prioritizes survivor agency. By critically examining existing approaches and identifying gaps, the article seeks to contribute to a more effective and victim-centered reparation framework for one of the gravest crimes known to humanity.

1.2 Origin of the Term “Genocide”

Before 1944, there was no such thing as "genocide." It is a very specific phrase used to describe violent actions against groups that are intended to end the group's existence. Although attempts

¹ R. Lemkin, *Axis in Occupied Europe*, in Endowment for International Peace, (Washington D.C: Carnegie, 1944).

to exterminate groups have been a significant part of human history, these attempts were typically recognized either by describing the event or by classifying it under a very broad term, such as massacre, mass murder, put to the sword, barbarism, or inhumanity. Even the international community's efforts to create humanitarian law in the late 19th and early 20th centuries were entirely concentrated on crimes against humanity and war crimes. Genocide was not included in either of the Hague Treaties or Geneva Conventions. When the horrific extent of the Nazi slaughter of Jews became apparent during World War II, British Prime Minister Winston Churchill realized that this was an unnamed crime.

The legal idea was first used in 1944 by Polish international law professor Raphael Lemkin. In order to push the UN for an international genocide convention, he relocated to New York at the close of World War II after fleeing from the German takeover of Poland in 1939 to Sweden. He went on to teach law at Yale and Duke Universities and received four Nobel Peace Prize nominations.

Lemkin addressed the historical annihilation of racial, religious, and other social groups in a paper he presented at an international conference in Madrid in 1933. In his 1944 book "Axis Rule in Occupied Europe," Raphael Lemkin attempted to explain Nazi policies of systematic murder, especially the extermination of European Jews. He created the term "genocide" by fusing the Latin word for murder, "cide," with the Greek word for race or tribe, "geno." When Lemkin came up with this new word, he had in mind a well-thought-out scheme of various activities intended to destroy the fundamental pillars of national groups' existence in order to completely eradicate the groups themselves.

Lemkin was a key player in the trials of Nazi war criminals at the Nuremberg International Military Tribunal. Additionally, he advocated before the United Nations during its debate on Genocide, which ended with a resolution by the General Assembly declaring that genocide is a crime under international law that is condemned by the civilized world and for which perpetrators and accomplices face consequences. The United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948 as a result of Lemkin's ceaseless efforts. Signatory governments agreed to prohibit and punish "genocide," which was made an international crime by this convention.

1.3 Conceptualization of Genocide

Scholars have established many definitions of genocide to align with their views of governmental mass killings. Along with the legal term in the 1948 Genocide Convention, these are several more definitions of genocide that scholars and researchers have come up with. Frank Chalk and Kurt Jonassohn say that genocide is a form of one-sided mass murder in which a state or other authority tries to get rid of a group because the people who do it define the group and its members. Helen Fein describes genocide as a continuous, intentional act by a perpetrator to physically annihilate a group of individuals, either directly or indirectly, by obstructing their biological and social reproduction, irrespective of the victims' capitulation or perceived threat.

Israel W. Charny says that "genocide is the mass killing of substantial numbers of human beings, when not in the course of military forces of an avowed enemy, under conditions of the essential defenselessness and helplessness of the victims." Steven T. Katz says that genocide only happens when the people who do it really want to kill off an entire group, even if they do it well. Barbara Harff and Ted Gurr say that genocide happens when a state or its agents make and carry out policies that kill a lot of people from a group that is mostly defined by their shared traits, like race, religion, or nationality.

Intent and action are the two components of the crime of genocide according to both the legal and alternative definitions. "Intentional" refers to having a purpose. Statements or directives can be used to directly demonstrate intent. More often, though, it needs to be deduced from a methodical series of well-coordinated actions. This definition was approved by the International Criminal Court (ICC), which also expanded its application to encompass people of all ranks and statuses. In addition to genocide, other crimes against humanity that are covered by the International Criminal Court include (apart from genocide) government-perpetrated killings, extermination campaigns, enslavement, illegal deportation, torture, rape, sexual slavery, forced disappearances, and apartheid. Considering both sociological meanings, it is likely that governments killed over 174 million individuals in the 20th century. The majority of these murders—about 110 million individuals – are the result of communist regimes, particularly the USSR under Lenin and Stalin and their successors, who killed roughly 62 million people, and China under Mao Tse-Tung, who killed roughly 35 million. This death toll is also mostly the

result of various totalitarian or authoritarian regimes, most notably Hitler's Germany, which killed over 21 million people, and Chiang Kai-Chek's Nationalist government of China, which killed roughly ten million. Khmer Rouge Cambodia, Japan, North Korea, Mexico, Pakistan, Poland, Russia, Turkey, Vietnam, and Tito's Yugoslavia are among the other governments that have killed fewer millions of people.

Although its legal definition makes it difficult to conduct empirical and historical research, genocide is also a topic of social science and academic study. Because of this, there have essentially been two definitions of genocide used in study. One is the desire to murder individuals due to their affiliation with a particular group. Any deliberate government killing of defenseless and unarmed individuals for any reason is a second definition.

Genocide is essentially a result of a nation's system of governance. People's level of freedom and the probability that the government will commit a democratic act are highly correlated. Almost no internal genocide has been committed by a modern democratic government. While other regimes have been partially or completely autocratic and dictatorial, the majority of genocide has been committed by totalitarian governments. Genocide is more likely to occur during times of war or during internal upheavals like revolution, rebellion, or foreign intrusions, regardless of the form of government.

But it's crucial to remember that genocide encompasses both the deliberate and actual eradication of all members of a minority group. Accordingly, the killing of one individual may qualify as genocide if it is a part of a larger set of acts intended to wipe out the group to which the individual belonged. This requirement of intention is crucial since it has been the biggest obstacle to indigenous people's claims of genocide in Australia being heard in court.

Therefore, the 2001 attack on the World Trade Center in the United States is an example of mass murder but not, by any means, genocide. Undoubtedly, Americans made up the majority of the victims. Not only was it a tiny portion of the "Americans" group overall, but it was also an isolated incident. This does not absolve the 9/11 perpetrators of their crimes. It indicates that they should not be arraigned before a genocide tribunal.

Therefore, mass murder and genocide are not the same thing, even though one action may be both if it was meant to start a trend of eradicating a certain group of people based on their race,

religion, or other characteristics. Summary mass murder has been used to commit genocide in frontier massacres of indigenous peoples, such as those that occurred in Rwanda and the Holocaust. However, as seen by the 9/11 attacks in the United States in 2001 and the Boko Haram mass murders in Nigeria, summary mass murder can occur without genocide. As seen by the ongoing post-frontier destruction of indigenous genoi in whole or in part, genocide can also occur without summary mass murder. Here, we want to emphasize that the definitional problem is not the degree question.

The apartheid government in South Africa does not, despite the fact that the actions of the Nazis in Europe, the Turkish in Armenia, and the Australians against the Aborigines, among other instances, all amount to genocide. Slavery of African Americans is comparable. The genocide tribunal is the incorrect court in both situations. Therefore, regardless of the number of people killed, oppression, cruelty, and even mass murder do not always qualify as genocide. The debate over what exactly qualifies as genocide makes genocide studies unique. Although the term "genocide" was coined in the 20th century, its historical incidence predates that. Raphael Lemkin, a Polish jurist, introduced the term "genocide" in 1944, characterizing it as "a systematic scheme of various actions targeting the obliteration of the fundamental basis of the existence of national groups with the objective of exterminating the groups themselves." The United Nations later adopted a modified version of this definition in 1944. Lemkin's definition of genocide is oversimplified in direct response to the Holocaust of the Jewish people during World War II. Other historical and modern instances of genocide have been given by a number of academics in the decades that followed. The following questions have emerged in a heated discussion on the meaning of genocide itself: Was there only one real genocide, the Holocaust? Is it even necessary to have a comparative area of genocide studies? And should every possible instance of genocide be classified as mass murder and examined as such?

Definitions have varied from the most inclusive, which consider a broad range of historical occurrences to be genocide, to the most restricted, which limit the field to specific instances of genocide. Scholars who support the Holocaust's uniqueness have offered some of the most exclusive definitions of genocide. David Stannard, the author of *American Holocaust*, concurred that the Holocaust was a horribly unusual occurrence. In addition, he identified numerous other genocides as distinct occurrences. Stannard saw nothing wrong with asserting that historical

events were unique, but he thought it was wrong to do so at the expense of downplaying the actual severity of suffering endured by other groups. Furthermore, Steven Katz made a strong case that asserting one's uniqueness does not support a "moral claim" that lessens the misfortunes experienced by other people. He made the following statement in support of the Holocaust's uniqueness: I am not claiming that the Holocaust was more evil than the Armenians during World War I, the destruction of Native American communities over the ages, Stalin's annihilation of Ukraine, the treatment of the Gypsies during World War II, and the enslavement and mass murder of Black Africans during the New World slavery enterprise. I am completely avoiding this kind of fruitless debate over what one would call comparative misery since I am aware of no approach or procedure that would enable one to balance up, quantify, and compare such immense evil and suffering.

Katz, however, was not interested in demonstrating that the Holocaust was more terrible or heinous than past genocides. All he wanted to do was demonstrate how it was unlike anything that had ever occurred. Stannard and others disagree with Katz's direct denial of Pierre Papaziam's claims that it is incorrect to equate individuality with degrees of moral evil. They believed that designating degrees of moral evil was inextricably linked to arguments of Holocaust incomparability. They believed that any assertion that the Holocaust was unique was an insult to the victims of other genocides as well as the annihilation of the native American Indian populations. "The execution of the aim to completely exterminate any national, ethnic, racial, or economic group, as determined by the perpetrator," is how Steven Katz defined genocide. This term is predicated on the idea of genocidal intent, which is the full annihilation of a group.

On the other hand, some people have used the term "genocide" to refer to anything from slavery and race-mixing to birth control and abortion. According to some Native American history experts, the sheer quantity of deaths – whether from direct murder, illness, or other secondary colonial causes – amounts to genocide. These instances obviously show discontent with Katz's limited notions of genocide. Some academics have tried to provide a more nuanced explanation of the phrase in an effort to bridge the gap between those who use the term too liberally and those who deny its validity to a few historical cases. Roger Smith proposed dividing genocide into five categories. The following are among them: monopolistic, utilitarian, institutional,

ideological, and retributive genocides. He separated the idea of genocide into various categories according on the motivation of the offender. Smith seems to be on both extremes of the spectrum. While exclusionists have a wider range of murderous categories, exclusivists can concentrate on their specific form of genocide. For quite different reasons, several groups have been targeted for extinction throughout history. Both Raphael Lemkin's definition and the United Nations' codified definition are expanded by this more departmentalized version.

William D. Rubinstein, on the other hand, proposed a different classification of genocide that was based on historical differences rather than the motivation of the offender. Genocide in Pre-Literate Societies; Genocide during the Era of Empires and Religions, circa 500 BC–1492; Genocide in the Age of Totalitarianism, 1914–1979; "Ethnic Cleaning" in the Modern Era; and Genocide, 1945–present are his five chronologies. Rubinstein encourages academics to examine genocides in light of historical quirks by employing a chronological structure. The application of this paradigm could result in a more comprehensive knowledge of historical genocides and the ways in which genocide has changed over time. Mass murder is undoubtedly as old as humanity, but it wasn't until the 20th century that it became a major global phenomenon deserving of the term "genocide."

A significant portion of the body of extant research in the discipline of genocide studies has focused on the definitional issue. The authors of the texts typically base their own definitions on protective self-serving objectives, yet they nevertheless diverge surprisingly much on how to apply it and what its particular ramifications are. Genocide, according to Steven Katz, depends on "intent" or the "actualization of intent." Others, however, charge Katz with deliberately defining genocide in ways that exclude other instances of genocide and more closely align with the Holocaust. Genocide has been defined by each side to best serve their interests, support their own research, and minimize that of others. Therefore, it is impossible to stop genocide from happening by exploiting and manipulating the concept of genocide.

Unfortunately, the different academics focused their studies on modern-day instances of genocide, the Holocaust's singularity, and intense arguments about the definition of genocide itself. All areas of the current literature on genocide are rife with these scathing arguments. As a result, the literature currently available on genocide studies not only leaves an intellectual vacuum but also places the reality of human sorrow in a subordinate role, which this book aims

to address. Understanding the causes of genocide, how to foresee it, and how to stop it from happening again are the objectives of this dissertation.

1.4 Forms of Genocide Reparation

Financial reparation, land restitution, admission of the crime, and the restoration of cultural heritage are the four types or forms of reparation used in those choices. All of these verdicts, even those that just touch on the implementation mechanism or modalities of reparations, emphasize the necessity of providing full compensation for injuries, whether material or moral, inflicted by a state's global crime.

1.4.1 Financial Reparation

According to the Basic Principles, monetary reparations must be commensurate with the seriousness of the infraction and the particulars of each case, and they are intended to address economically measurable harm.² Examples of financial reparations that fall within the categories of material and non-material damages are not all included in this document. The sole goal of financial compensation is to make up for the harm that the injured person has suffered. Financial reparations are not punitive in character; rather, they serve to make up for actual damages brought about by a globally wrongful act, according to the Commentary to the International Law Commission (ILC) Articles.³ When restitution is not feasible or feasible, or when it does not completely heal the harmed party, this type of compensation is taken into consideration.⁴ Financial reparations are likewise restricted to "financially assessable damage" under the ILC Articles.⁵ In international practice, this type of restitution is most frequently employed.

Material damages are losses or damage to property that cannot be fixed by restitution because it is impossible. Financial compensation also includes other material damages that are easy to

² U.N.G.A Res. 147, 21 March 2006, A/RES/60/147, Annex, para. 20.

³ See especially the International law Commission (ILC) Articles, Commentary to Art. 36 at 99, para. 4.

⁴ ILC Articles, Art. 36, 98.

1. 'The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable-damage including loss of profits insofar as it is established.'

⁵ ILC Articles, Commentary to Art. 36, 98 – 99, para. 1.

measure, like lost income and earning potential, missed chances for work, school, or other social services, and the costs of legal, medical, or other related services. The Basic Principles talk about moral damages as well as material damages, but the term "financially assessable" in the ILC Articles is meant to keep compensation for what is sometimes called "moral damage" to a state out of the picture. This is damage that happens when rights are violated but not actual damage to people or property. The International Court of Justice (ICJ) has thus far regarded the matter as one of satisfaction. It's clear that terms like "pain and suffering" are hard to put a price on, and the Court has avoided trying to place a price on the moral harm done to victims of human rights and humanitarian law abuses by giving them a little amount of money. In the famous Chorzow Factory case, compensation is used instead of *restitutio in integrum* when the latter type of reparation is not possible:

The principles for determining the compensation owed for a violation of international law are restitution in kind, or if that is not possible, payment of an amount equal to the value of the restitution in kind; and, if necessary, damages for losses that cannot be covered by restitution in kind or payment in lieu of it.

The Court has typically focused on material damages and typically as an alternative to restitution when discussing financial reparations in relation to war crimes and human rights violations while talking about monetary compensation for human rights abuses and war crimes. For instance, the Court stated that "Israel has the obligation to compensate the persons in question for the damages suffered" in the Wall advisory decision. If it was no longer possible to return the land, orchards, businesses, and agricultural land that Israel had taken in the occupied Palestinian territory as a result of building the wall.⁶

The Court thought about Israel's duty to pay "all natural or legal persons who suffered any kind of material damage as a result of the wall's construction." in addition to returning property or making up for its loss. This revelation presents prospects for those who suffered material losses, both natural and legal. Apart from compensation for lost property, The Court has always recognized material damages as a remedy. These include any other easily quantifiable costs or damages, such as medical bills, lost income, and missed business chances. The Court, on the

⁶ Wall, ICJ Reports 2004, 198, para. 152.

other hand, did not let the more difficult calculation of non-material damages, which would include things like humiliation, pain and suffering, and mental anguish. As a result, while the Court allowed for future It limited the types of damages that might be paid to natural and legal persons for material damages by not allowing pay for moral damages.

The Application of the Genocide Convention case offers insight into the requisite causation element for securing monetary reparations in the context of mass atrocities, specifically genocide. The court struck down Bosnia's bid for restitution from Serbia for its role in the genocide that happened during the war that ended the former Yugoslavia. The Court said that Serbia was not directly liable for the crimes in Srebrenica, even though it had not done enough to stop genocide as required by international law. As is usual, the Court first thought about the potential of restitution while deciding what the right amount of compensation should be in this case. The Court then considered compensation because restitution was not feasible. The Court determined that the pertinent inquiry regarding the applicability of financial reparations was "whether there is a sufficiently direct and certain causal nexus between the wrongful act, the Respondent's breach of the obligation to prevent genocide, and the injury suffered by the Applicant, encompassing all damage of any kind, whether material or moral, inflicted by the acts of genocide." In other words, the Court needed to be "sufficiently certain" that the slaughter wouldn't have happened if Serbia had done its duty to stop genocide. In other words, the Court needed to be "sufficiently certain" that the massacre would not have happened if Serbia had done its job to stop genocide. The Court says that Serbia's failure to stop the genocide may have played a big role in the suffering that was done, but it needs to be certain that the breach caused the loss before it can give money for material and moral damages.

In accordance with the methodology set forth by the International Court of Justice (ICJ) in the Bosnia-Genocide case, compensation for Serbia's failure to prevent genocide shall be evaluated based on the totality of harm inflicted by the conduct in question. This is accurate, at least about positive responsibilities. Compensation can only be awarded if there is adequate evidence that the unlawful act or acts would not have transpired without the involvement of the responsible party.

Due to the high standard that applies, the ICJ would frequently be unable to offer compensation for violations of international law that come under the obligation to prevent internationally recognized crimes including crimes against humanity, war crimes, and genocide.

1.4.2 Land Restitution

According to the ILC Articles, The objective of restitution is "to restore the condition that prevailed prior to the commission of the wrongful act.". According to the Commentary to the ILC Articles, restitution is consequently the first kind of reparation that is always taken into account. According to the Basic Principles, restitution can be employed whenever it is practical and is defined as either the return of property or the restoration of fundamental rights. According to a ruling by the Permanent Court of International Justice (PCIJ), "(r)estitution in kind" was the first step in the repair process. In situations where such restitution is not practical, compensation for losses and damages is the next appropriate fix. Examples of how the ICJ has applied the restitution principles to particular victims include the restoration of fundamental rights and the return of property. Restitution is sometimes neither straightforward nor feasible, especially in cases where humanitarian law and human rights have been breached.

1.4.3 Acknowledgement of the Crime

One of the earliest types of restitution that the ICJ employed was satisfaction.⁷The Court acknowledged Bosnia's "entitlement to reparation in the form of satisfaction" in the Application of the Genocide Convention case." even if it rejected compensation as a legitimate form of atonement.⁸In order to demonstrate that Serbia had not complied with its responsibilities under the Genocide Convention, the Court incorporated an operative paragraph in its ruling.⁹When Serbia's violation was restricted to not taking appropriate action to stop genocide rather than actively taking part in the crime,, it was judged appropriate to acknowledge culpability. Although the Court specifically enumerated the transgressions of international humanitarian law and

⁷ Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), (Merits), ICJ Reports 1949, 36.

⁸ Application of the Genocide Convention, ICJ Reports 2007, 165 – 166, paras. 462 – 33.

⁹ Ibid, para. 463.

human rights in its operative paragraphs,¹⁰ reparations in the form of satisfaction are rarely applied.

An admission of guilt in a decision that is already meant to deliberate and determine whether or not violations of international law have happened would seem to be of little use as a kind of reparation from a purely material basis. However, the significance of this type of compensation cannot be overstated, as part of the Court's mandate is to support the rule of law worldwide.

States would attempt to avoid being labelled as violators because they are sensitive about how other people see and understand them. The International Court of Justice (ICJ) appears to have restricted the use of satisfaction as recompense to situations in which a breach of international law is seen to be so serious and affronting that it violates a state's sovereignty, but does not include tangible harm. These harms are sometimes of a symbolic nature, resulting from the obligation's violation itself, regardless of the material ramifications for the state in question, as the ILC opinion itself points out.¹¹

The ILC Articles see stopping ongoing violations as a separate legal requirement, even if the Basic Principles say it is a form of satisfaction. To get paid for damages in circumstances of repeated offenses, the wrongdoing must stop. The ICJ has largely used the end of ongoing violations in incidental procedures on provisional measures, although it has also been used in other conclusions. Several states who applied have requested the Court to temporarily tell the respondent state to stop violating their sovereignty and injuring their people and property. In a number of provisional measures orders, the Court has told one or both parties to stop breaking the law, do what is necessary to stop certain infractions, or not do anything that would make the matter worse. In the *Armed Activities* case, the Court used the phrase "affirmative obligations" and said, "Both parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law." In the case of *Georgia v. Russian Federation*, the same kind of terminology was used to protect people, groups of people, or institutions. The Court first said that Israel had

¹⁰ *Nicaragua case*, (Merits), ICJ Reports 1986, 146 – 150, para. 292; *Wail*, ICJ Reports 2004, 201 – 202, para. 163; *Armed Activities case*, ICJ Reports 2005, 279 – 283, para. 345; *Application of the Genocide-Convention case*, ICJ Reports 2007, para. 271.

¹¹ ILC Articles, Commentary to Art. 37, 106, para. 3.

to stop building the wall right now and take down the barrier to make up for the damage done by breaking its international legal responsibilities.

The restoration of fundamental rights as a type of restitution and the termination of continuing violations as a distinct kind of reparations appear to be two sides of the same coin. Therefore, freeing the US diplomatic employees from illegal arrest in the Tehran Hostages case can be regarded as reparation in the form of rights restoration. That same move, meanwhile, might also be seen as the end of Iran's continuous breach of its commitments pursuant to the Vienna Convention on Diplomatic Relations. The ILC Articles state that the issue of cessation often closely relates to that of redress, especially restitution.

In certain situations, such as when hostages are released or confiscated property or items are returned, the outcome of cessation may be identical to reparation.¹² Although restitution is motivated by proportionality, the ILC Articles' Commentary points out that a party may need to go beyond its previous conduct in order to comply with legal duties rather than merely going back to them.¹³ Remarkably, proportionality underpins all types of reparations in the Basic Principles, making the end of persistent infractions a valid form of satisfaction.¹⁴ Although it still has to specify the precise form and, preferably, the classification of these remedies, the Court has made considerable use of the responsibility to end continuing violations, including those that would stop the infringement of or restore individual rights.

A state must carry out a variety of international legal obligations in order to stop recurrent infractions. Thus, the Court emphasized that Serbia was still required by the Genocide Convention to punish genocide perpetrators, including by bringing Ratko Mladic before the International Criminal Tribunal for the former Yugoslavia (ICTY). A declaration to that effect was deemed appropriate satisfaction by the Court, suggesting that it also qualifies as the conclusion of an ongoing breach, namely the failure to prosecute Mladic. Another component of that specific type of cessation, which is also acknowledged as a form of fulfillment under the

¹² ILC Articles, Commentary to Art. 30, 89, para. 7.

¹³ Ibid.

¹⁴ Basic Principles and Guidelines on the Right to a Remedy and Reparations for Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res. 147, 21 March 2006, A/RES/60/147; 13 IHRR 907 (2006), Annex, para. 8.

Basic Principles and Guidelines, is bringing criminals to justice. It is argued that a state's obligation to make amends for an internationally wrongful conduct includes an obligation to bring criminal charges against individuals involved. This kind of compensation usually plays a major part in reestablishing the rights of governments or individuals affected by serious abuses of humanitarian law and human rights, as demonstrated by the ICJ's frequent use of cessation in its findings.

1.4.4 Return of Cultural Heritage

In the Wall advisory ruling, the Court found that the Israeli government's building of a wall in the Occupied Palestinian Territory violated its obligations under international law rather than being justified by security considerations. Despite the Court's usual focus on state-to-state accountability, this historic advisory decision recommended state-to-individual reparation. The International Court of Justice (ICJ) told Israel to "make reparation for the damage caused to all the natural or legal persons concerned" because the wall's construction destroyed houses, businesses, and farmland. The Court said that Israel is "under the obligation to return the land, orchards, olive grove and other immovable property seized from any natural or legal person" during the wall's construction. This is based on the *Charzow Factory* decision's principle of restitution. This advisory opinion was the first to include the right to individual reparations for violations of human rights and international humanitarian law in the ICJ's case law. It also stressed how important it is to return people's property in connection with those crimes.

The court ruled in the *Armed Activities* case that Uganda had to pay for all the damage it caused to the DRC because it "illegally used force, violated sovereignty and territorial integrity, violated international human rights law and international humanitarian law, looted, plundered, and exploited the DRC's natural resources." The Court said that "those acts resulted in injury to the Democratic Republic of Congo (DRC) and to persons on its territory," therefore Uganda had to pay the necessary remedies. The Court determined that "those acts resulted in injury to the DRC and to persons on its territory" due to the severity and scope of the violations, necessitating Uganda to make The Court decided that "it is well established in general international law that a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act." This was based mostly on its previous

decisions, like the *Chorzow Factory* case. If the parties can't agree, the Court will keep hearing arguments on how much money should be paid.

Two key tenets of international restitution responsibilities seem to be reaffirmed by the ruling in the *Armed Activities* case. First, the ruling acknowledged that harm had been done to the DRC and to individuals on its soil, adopting a methodology akin to that of the *Wall* advisory opinion. Therefore, by recognising Uganda's responsibility for damage sustained by individuals in the DRC, the Court appears to indirectly embrace the need to make the necessary repairs, even though it is resolving an interstate issue. Thus, it might be argued that the DRC has the authority to ask for specific compensation on behalf of its people who were harmed by Uganda's actions. This would entail giving back property to those who have committed a certain type of international law infringement, like stealing and plundering private property, in accordance with the guidelines set forth in the *Chorzow Factory* case. Second, when the parties cannot agree on the amount of compensation, the ICJ's reparations processes are distinct from its merits proceedings and ultimately call for an independent hearing.¹⁵ The DRC would be able to "prove and demonstrate the precise harm that was caused by the particular acts of Uganda that constitute internationally wrongful acts for which it is accountable." through such a process, which may include lengthy hearings and evidence.¹⁶ However, from a practical standpoint, it is a challenging procedure since it is harder to evaluate and identify the harm sustained with a level of confidence that is sufficient to both parties as time goes on.

1.5 The Importance of Genocide Reparation to Victims

One way to recognise, address, and make amends for historical injustices committed against marginalised communities is through reparation. In the worldwide conversation about systematic inequality and historical injustice, reparations have taken front stage. The idea of compensation embodies a moral and political commitment to recognise and right wrongs, whether they are related to the transatlantic slave trade, colonial exploitation, indigenous dispossession, or the aftermath of wars and genocides. Particularly in relation to racial justice movements, the concept has acquired popularity in activist, academic, and policy circles. Reparations are still a crucial

¹⁵ Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), (Merits), ICJ Reports 1986, 149, para. 292 (12) *Nicaragua* case).

¹⁶ *Armed Activities* case, 82, paras. 260 – 61.

instrument for social justice and healing, despite ongoing discussions on its structure and viability.

Reparations have been applied in a variety of ways throughout history. Germany set a pattern for state-sponsored retribution after World War II by making reparations to the state of Israel and Holocaust survivors.¹⁷ Similarly, the Civil Liberties Act of 1988 provided cash compensation and an official apology to Japanese Americans who were detained during World War II¹⁸, these examples illustrate that reparations are not unprecedented and can be both symbolic and material.

On the other hand, African and indigenous descendants of enslaved peoples have frequently been left out of significant reparations. With ideas like "40 acres and a mule," attempts to propose reparations for slavery in the United States began in the years following the Civil War, but these pledges were never kept.¹⁹ Racial gaps in wealth, education, and health outcomes have been sustained by this long-standing failure to make repairs.

Principles of justice, especially restorative justice, which places an emphasis on mending the harm caused by injustice, serve as the foundation for reparations. Justice necessitates both forward-looking measures (like non-discrimination) and backward-looking obligations (like acknowledgement and restitution), according to philosophers like John Rawls (1971) and Marka Minow (1998). As stated by Boxill,²⁰ the social contract and moral integrity are undermined when reparations are not made since it is implied that society accepts wrongs from the past.

According to Brooks, ethnically, reparations also satisfy the moral need of acknowledgement,²¹ Restoring victims' standing in society and confirming their dignity depend heavily on their admission of wrongdoing. Reparation is therefore about confirming memory, identity, and suffering in addition to providing compensation.

¹⁷ E. Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (U.K: W.W. Norton and Company, 2000), 168.

¹⁸ R. Daniels, *Prisoners Without Trial: Japanese Americans in World War II* (U.K: Hill and Wang, 1993), 48 – 52.

¹⁹ T. N Coates, "The case for Reparations" *The Atlantic* (2014)

<<http://www.theatlantic.com/magazine/archive/2014/06/the-case-reparations/361631/>> (Accessed 23 August, 2025).

²⁰ B. R. Boxill, *A Moral Theory of Reparations* in R. C Simon (ed.), *The Ethic of Reparations* (London: Rowman and Littlefield, 2003), 17 – 44.

²¹ R. C. Brooks, *Atonement and Forgiveness: A New Model for Black Reparations* (U.S.A: University of California Press, 2004), 60.

By resolving systemic inequities that stem from past wrongs, reparations have the power to change society. Reparations can deceive inclusion and equality by reallocating resources, reaffirming cultural identity, and altering institutions. For example, the post-apartheid South African affirmative action and land redistribution programs were intended to be tools for social change as well as compensation.²²

Furthermore, by promoting healing and reconciliation, reparations help avert future hostilities. Reparations, both monetary and symbolic, have been essential in post-conflict communities like Rwanda and Colombia in order to restore confidence and maintain peace. Cycles of violence and resentment can be broken when victims feel noticed and appreciated.

Reparations are criticised and confronted with many obstacles despite their significance. They are criticised for being too expensive, polarising, or impractical. Others contend that the wrongs of the past shouldn't be borne by the present generation. Proponents respond, however, that the effects of past injustices are still felt now and continue to influence current events.²³ Furthermore, reparations are about structural change and societal accountability rather than just personal shame.

The form of compensation is another topic of discussion. While some favour symbolic gestures, institutional reforms, or educational initiatives, others urge direct payments. The variety of atonement methods, ranging from Australia's Sorry Day to Canada's Truth and Reconciliation Commission, shows that there is no one-size-fits-all approach and that reconciliation needs to be tailored to the particular environment.

1.6 Conclusion

This article has argued that the formal recognition of genocide constitutes a critical form of moral repair for victimized communities and the international moral order more broadly. Beyond its legal and historical dimensions, genocide recognition functions as an ethical response to radical wrong doings, affirming the dignity of victims, restoring moral truth, and challenging the

²² C. Walker, Landmarked: Land Claims and Land Restitution in South Africa (2008) 8(4) *Journal of Agrarian Change*, 586 – 617.

²³ W. A Darity and A. K Mullen, *From Here to Equality: Reparations for Black Americans in the Twenty-First Century* (U.S.A: University of Work Carolina Press, 2020), 214 – 218.

structures of denial that perpetrates harms. Recognition is not merely symbolic, it is a normative act that acknowledges responsibility, reassert shared moral values, and reopens the possibility of trust between victims, perpetrators and international community.

The analysis demonstrates that moral repair requires more than material compensation or judicial accountability alone. Without acknowledgement and recognition, reparative efforts remain incomplete, as the moral injury inflicted by genocide involves the negotiation of a group's humanity and historical existence. Recognition directly confronts this injury by publicly validating victim's experiences and affirming that such crimes violates foundational moral principles. In this sense, genocide recognition operates as a bridge between historical truth, ethical accountability and social recognition.

At the same time, the article recognizes the limitations and risk of recognition when it is delayed, politicized, or detached from substantive reparative measures. Recognition that lacks sincerity follows – through, or victim's participation may fail to achieve moral repair and may even exacerbate mistrust. Therefore, genocide recognition should be understood not as an endpoint but as an essential component of a broader ongoing reparative process.

Ultimately, treating genocide recognition as moral repair reframes it from a discretionary political gesture into a moral obligation grounded in justice, dignity, and collective responsibility. This framework offers a more robust ethical justification for recognition and underscores its centrality to post-genocide recovery and the prevention of future atrocities.

1.7 Recommendation

- 1. Integrate Moral Frameworks in Recognition Practices** – States and international institutions should explicitly frame genocide recognition as an act of moral repairs, not solely as a legal or diplomatic statement. These include acknowledging moral wrong doing, responsibility, and the enduring impact on victimized communities.
- 2. Ensure Victim-Centre Recognition Processes** – Recognition efforts should meaningfully involve survivors and descendant communities. Their voices, narratives,

and priorities must shape how recognition is articulated, commemorated and institutionalized.

3. **Link Recognition to substantive Reparative Measures** – Genocide recognition should be accompanied by concrete actions such as reparations, educational reforms, memorilization initiative, and guarantees of non-recurrence. Moral repair requires consistency between words and deeds.
4. **Promote Educational and Institutional Embedding** – Government and international organizations should incorporate recognized genocide into educational curricula, public memory institutions, and official histories to prevent denial and foster long-term moral accountability.
5. **Depoliticize Recognition Mechanism** – International bodies should work towards clearer principle-base standards for genocide recognition to reduce selective acknowledgement driven by geopolitical interest which undermines moral repair.

RE-EXAMINING THE CONSTITUTIONAL CHALLENGES IN ADDRESSING ENVIRONMENTAL PROTECTIONS IN NIGERIA WITH LESSONS FROM OTHER JURISDICTIONS

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Abstract

Over the years, the African continent has tended to face dangerous and life-threatening environmental degradation affecting the entire biodiversity. Courts have the capacity to play an important role in responding to this degradation. This capacity has, however, been hindered specifically in Nigeria by Section 6(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which renders socio-economic rights non-justiciable and enforceable, which include right to a clean, safe, and healthy environment. Adopting a doctrinal research methodology, the paper therefore attempts to examine the extent of environmental degradation in Nigeria, using the Niger-Delta Region as a case study. The central question to be considered in this paper is: To what extent have the judicial powers of the courts engaged in adjudicating on matters relating to socio-economic rights, environmental rights inclusive, and how the same could be addressed through environmental constitutionalism? The paper asserts that in Nigeria, the rights to life and the dignity of the human person include the right to a clean, poison-free, pollution-free, and healthy environment. The paper advocates for a constitution-based approach to environmental degradation in Nigeria with a view to promoting environmental constitutionalism. The paper recommends that the 1999 Constitution of the Federal Republic of Nigeria (as amended) be amended further to recognize the justiciability of the right to a clean, poison-free, pollution-free, pollution free and healthy environment in Nigeria.

Keywords: *Environmental degradation, Multinational Corporation, Courts, Environmental Constitutional Foundation, Nigeria*

1. Introduction

The African continent is known to face dangerous and life-threatening environmental degradation affecting the entire biodiversity, which in the long run affects the economy directly or indirectly.¹ Although the courts have the capacity to play an important role in responding to this degradation, the capacity has, however, been hindered specifically in Nigeria by Section 6(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which renders socio-economic rights non-justiciable and enforceable which include right to clean, safe and healthy environment.² The central question to be considered in this paper is: To what extent have the judicial powers of the courts engaged in adjudicating on matters relating to socio-economic rights, environmental rights inclusive, and how the same could be addressed through environmental constitutionalism? The paper, therefore, attempts to examine the concept of environmental degradation in Nigeria, sources of environmental pollution in Nigeria, particularly in the Niger-Delta region of the country. The paper would also examine environmental justice in Nigeria and the efforts made thus far in the enforcement of environmental rights in Nigeria through judicial activism, and the non-justiciability of environmental rights in Nigeria. The paper submits that in Nigeria, the rights to life and the dignity of the human person include the right to a clean, poison-free, pollution-free, pollution free and healthy environment. The paper advocates for a constitution-based approach to environmental degradation in Nigeria with a view to promoting environmental constitutionalism. The paper recommends that the 1999 Constitution of the Federal Republic of Nigeria (as amended) be amended further to recognize the justiciability of the right to a clean, poison-free, pollution-free, pollution free and healthy environment in Nigeria. The question to be asked is: What is environmental degradation?

¹A. Siddiqua, JN, Hahladakis & WAK Al-Attiya, 'An overview of the environmental pollution and health effects associated with waste landfilling and open dumping' [2022] 29 *Environmental Science & Pollution Research*, pages 58514-58536; B Oyaleke, 'Revisiting the need for a concise trade-based anti-money laundering legal and regulatory framework under African Continental Free Trade area (AFCFTA)' [2025] 23(2) *Journal of Private and Property Law*, December, 2025, Rivers State University. <https://rsuppljournal.com.ng/revisiting-the-need-for-a-concise-trade-based-anti-money-laundering-legal-and-regulatory-framework-under-african-continental-free-trade-area-afcfta/> accessed 13 June 2025

² B Oyaleke, 'Enhancing Liability of Multinational Corporations for Environmental Degradation in Nigeria' 2023) in *Law Democratic Institutions and Security Challenges in Nigeria*, Essays in Honour of Honourable Justice Ahmad Olarewaju Belgore, PJCA (Rtd), F.DRI, ISBN: 978-978-798-028-6; Lere Amusan, 'Multinational Corporations' (MNCs) Engagement in Africa' [2018] 5(1) *Journal of African Foreign Affairs*, 41-42 <https://www.jstor.org/stable/2666405> accessed 13 June 2025

2.0: Conceptualizing Environmental Degradation

The term '*Environment Degradation*' does not have a clear and precise definition. There is no universally acceptable definition of environmental degradation. This paper will, however, criticize and identify gaps in the definitions given by some scholars on the definition of environmental degradation and attempt to fill these gaps.

Hakeem et al.,³ on their part, submit that environmental degradation is the height of environmental irresponsibility of transnational corporations in most countries of Africa; Nigeria. They argue further that the activities of the multinational companies involved in oil exploration and exploitation in Africa has major impact on the environment and the general ecosystem of the local communities wherein they operate. They are of the view that, using shareholder and legitimacy theories to explain the irresponsibility of the multinational corporations, the stakeholder theory is suitable for harnessing and achieving the interests of the various groups, civil societies, and individuals directly affected by the environmental degradation of the host communities. According to them, to have a lasting solution or at least to reduce to the barest minimum the cases of environmental degradation in Africa, Nigeria inclusive, all stakeholders, such as groups, individuals, civil societies, and the state must work together as an indivisible team.⁴ They state further that oil spillage in Ogoniland serves as an example of environmental degradation, which has led to violence and loss of lives and properties in the Niger-Delta region for decades. According to them, the soil as well as groundwater has been contaminated by the oil spillage, making both the farmers and the fishermen unable to make use of their environment, thereby worsening the cases of poverty among the vast majority of the population.⁵ They are of the firm view that every efforts made thus far to hold multinational corporations, especially Shell liable for oil spillage in Ogoniland and other parts of the region by way of litigation both at the foreign and domestic Nigerian courts proved abortive as there was no time until 2015 that Shell

³HO Yusuf and K Omoteso, 'Combating environmental irresponsibility of transnational corporations in Africa: an empirical analysis' [2016] 21(11) *Local Environment*, 1372-1373, DOI: 10.1080/13549839.2015.1119812

⁴Yusuf & Omoteso (n. 3) 1374

⁵U Idemudia, 'The changing phases of the Niger delta conflict: implications for conflict escalation and the return of peace' [2009] 9(3) *Conflict, Security & Development*, 318; UNEP News Centre, *UNEP Ogoniland oil assessment reveals extent of environmental contamination and threats to human health* (2011) <http://www.unep.org/newscentre/Default.aspx?DocumentID=2649&ArticleID=8827&hash;sthash.hWicRRhg.dpuf> accessed 14 June 2025; HO Yusuf, 'Oil on troubled waters—multinational corporations and realising human rights in the developing world with particular reference to Nigeria' [2008] 8(1) *African Human Rights Law Journal*, 83-85

publicly admitted liability in the claims instituted by the 15,000 claimants of Bodo Community, Ogoniland and offered to pay the sum of \$83 million to the 15, 000 claimants affected by the spills and the community.⁶

The researcher agrees with the opinion and submission of the authors that to have a lasting solution or at least to reduce to the barest minimum the cases of environmental degradation in Africa, Nigeria inclusive, all stakeholders, such as groups, individuals, civil societies, and the state, must work together as an indivisible team to deal with this menace.⁷ I humbly submit that the authors failed, refused, and or neglected proffer the methodology and ways in which the groups, individuals, civil societies, and the state could work together as an indivisible team to end this issue of environmental degradation in Nigeria. Over the years, there has been a tug of war between the multinational companies, local communities, and the government on who, in fact cause the degradation. It has always been the argument of the state entity that, even though the state has the duty to protect under the United Nations Guiding Principles on Business and Human Rights, the companies are the ones carrying out the businesses in the local communities and therefore should be held responsible for the degradation and be liable in law and fact for the damage therefrom. The narrative by the companies has also been that the state should be responsible for the degradation as stated clearly under the United Nation Guiding Principles on Business and Human Rights on the one hand and the local communities, which in most cases, sbear the brunt from the fighting of these elephants, argue helplessly that both the state and the companies cause the degradation and should be liable in law and fact to clean up the environmental mess in their communities. This, therefore, according to the author, creates a blame game syndrome. The Federal High Court sitting in Abuja ordered Shell to pay the sum of N45.5 billion, equivalent of \$111.6 million, as damages for decades of environmental degradation through oil spills that occurred during the Biafran-Nigerian civil war.⁸ This is a judgment of the court in the right direction that, if complied with, would go a long way in

⁶H Ismail, 'Forum non conveniens, United States multinational corporations, and personal injuries in the third world: your place or mine?' [1991] 11(2) *Boston College Third World Journal of Law*, 249–276; K Omoteso and HI Mobolaji, 'Corruption, governance and economic growth in sub-Saharan Africa: a need for the prioritisation of reform policies' [2014] 10(2) *Social Responsibility Journal*, 316–330.

⁷B Oyaleke, 'Analysis of the legal and regulatory frameworks of money laundering activities on the Nigerian Economy' [2025] 2(2) *LexScriptio*, A Journal of the Department of Jurisprudence and Public Law, 110-127 <https://journals.kwasu.edu.ng/index.php/lexscriptio/article/view/562> accessed 14 June, 2025

⁸See <https://www.jurist.org/news/2021/08/shell-to-pay-111m-in-damages-for-1970s-oil-spill-in-nigeria/> accessed 14 June, 2025

ensuring the multinational corporations are responsible and responsive in the ways and manners they carry out their explorative activities in the local communities of their operations.

Kumar Maurya et al⁹ submit that environmental degradation is the deterioration of the environment through which natural resources, which include all the biotic and abiotic elements that form our surrounding such as air, water, soil, plants, animals, and all other living and non-living elements of the planet, are depleted.¹⁰ They assert further that the environment revolves round entire human's existence and makes up its surroundings and affects the general ability to live on the earth. Environmental degradation has become a global issue of concerns which covers issues like animal extinction, deforestation, global warming, pollution, biodiversity loss, and desertification, to mention but a few.¹¹

They opined further that good environmental management is *sine qua non* for economic growth and development, and no country in the world is not affected by climate change and environmental degradation.¹² This issue constitutes a global chain of events of years of environmental degradation in virtually all countries of the world, though with different degrees of consequences and defects. They state specifically, using India as a case study, that most of the natural resources, environment inclusive, are in a dire state of degradation affecting the lives and livelihood of the people, as there is degradation of soil erosion, salinity, soil quality, and overall loss of fertility of agricultural land, coupled with loss of quality crop produce. They also noted that air, water, and land pollution are increasing daily and posing a serious threat to human and animal health, coupled with the fact that groundwater aquifers are exploited beyond imagination in many arid and semi-arid areas, and even fishery yields are declining daily, and air quality is

⁹Oyaleke (n. 1) 80; Maurya, P.K., Ali, S.A., Ahmad, A., Zhou, Q., da Silva Castro, J., Khane, E. and Ali, H, 'An introduction to environmental degradation: Causes, consequence and mitigation in *Environmental Degradation: Causes and Remediation Strategies*, [2020] 1, Eds. Kumar, V., Singh, J. and Kumar, P., 1-3, <https://doi.org/10.26832/aesa2020-edcrs-01> accessed 15 June 2025

¹⁰Bourque, C.P.A., Cox, R.M., Allen, D.J., Arp, P.A. and Meng, F.R, 'Spatial extent of winter thaw events in eastern North America: historical weather records in relation to yellow birch decline' [2005] 11(9) *Global Change Biology*, 1477; Malcolm, J.R & Pitelka, L, 'Ecosystems & Global Climate Change: A Review of Potential Impacts on US Terrestrial Ecosystems and Biodiversity' (Arlington: Pew Center on Global Climate Change, 2000)

¹¹Brown, B.J., Hanson, M.E., Liverman, D.M. & Merideth, R.W, 'Global sustainability: toward definition' [1987] 11(6) *Environmental Management*, 713-719; Tian, Q., Zhou, Z. Q., Jiang, S. R., Ren, L.P. & Qiu, J, 'Research progress in butachlor degradation in the environment' [2004] 43(5) *Pesticides-Shenyang*, 205-208.

¹²Maurya, P.K., Ali, S.A., Ahmad, A., Zhou, Q., da Silva Castro, J., Khane, E. and Ali, H, (n. 7) 2 <https://doi.org/10.26832/aesa2020-edcrs-01> accessed 15 June 2025

deteriorating.¹³ They also assert that the causes of environmental degradation may be natural or human. It is human when it is caused by modern urbanization, industrialization, deforestation, and over-population while it is natural when it is caused by acts of God, such as droughts, floods, fires, typhoons, to mention but a few.¹⁴ They finally concluded that environmental degradation is also beneficial in the sense that, as the environment changes, species are constantly and by nature regenerating, and human activity serves as the main driver of power.¹⁵

The researcher is of the view that the disadvantages and or hazards that environmental degradation causes, which may be economic in nature,¹⁶ especially from the activities of the multinational companies in Africa generally, and in particular, in the Niger-Delta of Nigeria, outweigh the seemingly benefits as argued by Kumar et al.¹⁷ The Niger-Delta of Nigeria is replete with, and is in a dire state of degradation, as there is degradation of soil erosion, salinity, soil quality, and overall loss of fertility of agricultural land, coupled with loss of quality crop produce affecting the lives and livelihood of the people. The ecosystem has been disrupted and damaged, causing severe health challenges and diseases to the inhabitants of the region.

3.0: Environmental Pollution and Degradation in Nigeria

Environmental degradation and pollution is prevalent in Nigeria, particularly in the Niger Delta region of the country. The Niger Delta is one of the world's largest wetlands, and Africa's largest

¹³Malik, D.S. & Maurya, P.K., 'Heavy metal concentration in water, sediment, and tissues of fish species (*Heteropneustis fossilis* and *Puntius ticto*) from Kali River, India' [204] 96(8)*Toxicological & Environmental Chemistry*, 1195-1198; Yadav, K.K., Kumar, S., Pham, Q.B., Gupta, N., Rezaia, S., Kamyab, H. & Talaiekhazani, A., 'Fluoride contamination, health problems and remediation methods in Asian groundwater: A comprehensive review' [2019] 182 *Ecotoxicology and Environmental Safety*; Maurya, P.K., Malik, D.S. & Sharma, A., 'Impacts of pesticide application on aquatic environments and fish diversity' [2019] *Contaminants in Agriculture and Environment: Health Risks and Remediation*, 112-115: <https://doi.org/10.26832/AESA-2019-CAE-0162-09> accessed 15 June 2025

¹⁴Maurya, P.K., Ali, S.A., Ahmad, A., Zhou, Q., da Silva Castro, J., Khane, E. and Ali, H, (n.6) 3 <https://doi.org/10.26832/aesa2020-edcrs-01> accessed 17 June 2025

¹⁵Dirzo, R. and Raven, P.H., 'Global state of biodiversity and loss' [2003] 28(1) *Annual Review of Environment and Resources*, 137- 167; Maurya, P.K., Ali, S.A., Ahmad, A., Zhou, Q., da Silva Castro, J., Khane, E. and Ali, H, (n. 6) <https://doi.org/10.26832/aesa2020-edcrs-01> accessed 17 June 2025

¹⁶B Oyaleke, 'Analysis of the legal and regulatory frameworks of money laundering activities on the Nigerian Economy' [2025] 2(2) *LexScriptio*, A Journal of the Department of Jurisprudence and Public Law, 110-127 <https://journals.kwasu.edu.ng/index.php/lexscriptio/article/view/562> accessed 17 June 2025

¹⁷ Mohamad Hidayat Muhtar, Amanda Adelina Harun, Viorizza Suciani, Putri., Apripri and Mohamad Rivaldi Moha, *Addressing the paradox: why environmental constitutionalism is more than the rights* (E3S Web of Conferences, Volume 506, 06004, 2024) <https://doi.org/10.1051/e3sconf/202450606004> accessed 23 February, 2026

delta, covering some 70 000 km.¹⁸ The Niger Delta is evidently blessed with numerous resources, including crude oil that accounts for about 80 percent of Nigeria's foreign exchange earnings. Despite its immense oil wealth, the region presents an example of extreme poverty, environmental pollution, and eventual degradation, as vast oil revenues have barely touched pervasive local poverty¹⁹.

The Niger Delta is one of the five most polluted spots in the world.²⁰ This is caused by the activities of the multi-national oil companies operating in the region, resulting from pollution. The major negative effect of pollution is environmental degradation. Pollution refers to the presence of matter or energy whose nature, location, or quantity has undesired effects on the environment, which may arise from nature (natural pollutants) or as a result of human activities (anthropogenic pollutants), through the environmental media of air, land, or water.²¹ It is on record that in the Niger Delta, the major causes of pollution are oil spillage and gas flaring by the oil companies, leading to soil fertility loss, delta forest loss, biodiversity depletion, and fisheries decline, among many others.²²

3.1: Some Causes of Environmental Pollution in Nigeria

3.1.1: Oil Spillage

This usually occur due to equipment failure, accidents, natural hazards, and deliberate human actions. As a result of these externalities, huge volumes of oil have been spilled into the environment, such as the land and water (rivers, ponds, lakes, and sea), causing serious damage to the ecosystem. The most publicized cause of oil spills in Nigeria is vandalism. This is the deliberate tampering by inhabitants of oil-bearing communities and intruders, causing oil spills due to anger, frustration, disillusionment, or inadequate compensation to oil-bearing communities. Other instances are the desire to take part in the spilled oil (petroleum products) for pecuniary gains. The most common cause of oil spills, however, is equipment failure of the oil companies in their operations, which is linked to overloading, manufacturing defects, age of oil

¹⁸Oyaleke (n. 1) 97

¹⁹United Nations Development Programme (UNDP) *Niger Delta Human Development Report*. (Lagos, UNDP, 2006) 9

²⁰Azaiki S, *Inequities in Nigerian Politics* (Yenegoa, Treasure Communications Resources Limited Nigeria, 2003)

²¹Callan, S J and Thomas J.M 'Environment Economics and Management: Theory policy and application (Chicago: Irvin series in Economics, 1996)

²²Amugo F.O 'Environmental Degradation and the Niger Delta Crises' [2018] 1(6) *International Journal of Education and Social Science Research*, 208

pipelines, among others²³. At times, pipeline and holding tanks leak oil into the soil, which may not be easily detected. Also, at various stages of oil production, accidents do occur, resulting in intermittent discharge of oil into the environment.

Events may happen that ultimately result in the spillage of this product in the course of exploration, production, storage, and transportation of crude oil. It could be due to equipment failure or malfunction, or a well blowout. It could also be attributed to pipeline failure, storage tank failure, or loading hose failure. In some cases, the cause has been traced to sabotage, now a common phenomenon in the environmentally ravaged Niger Delta region of Nigeria. Irrespective of the cause of the oil spill, it poses a danger to the environment. Even with extensive remediation, the effect on the vegetation and eco-system are often devastating. The oil spill caused by equipment failure is always destructive. The oil spill in British Petroleum deep water production in the Gulf of Mexico in the United States in 2010 is a good example.²⁴

Oil spills kill fish and crops, in addition to reducing the nutrient value of the soil.²⁵ Environmental pollution results in productivity losses, increased poverty, and occupational displacement/disorientation.²⁶

²³ Najid Ahmad, Liu Youjin, Saša Žiković, Zhanna Belyaeva, 'The effects of technological innovation on sustainable development and environmental degradation: Evidence from China' [2023] *Technology in Society*, <https://doi.org/10.1016/j.techsoc.2022.102184> accessed 23 February, 2026

²⁴ Nwagbogu, G.M, *Course Guide* (National Open University of Nigeria, Macdonna University, Okija)

²⁵ Oyaleke (n. 1) 98; Clark, Henry; Green, Elwyn; Liuti, Laura; Turner, Walter; Quarto, Alfredo; Richard, Margie; Tate, Umar; Wilson, Monica and Wyshan, Daphne, 'Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta' (A United States Non-Governmental Delegation Trip Report, 1999).

²⁶ United Nations Development Programme (UNDP) 2006. *Niger Delta Human Development Report*. (Lagos: UNDP); World Bank Report 1995. *Defining an Environmental Development Strategy for the Niger Delta*. Vol. One, 1995; see also Salau, A.T 'Environmental Crisis and Development in Nigeria (An Inaugural Lecture, University of Port Harcourt, Nigeria, 1993); Worika, I.L *Environmental Law and Policy of Petroleum Development: Strategies and Mechanisms for Sustainable Management in Africa* (Port Harcourt: Anpez Centre for Environment and Development, 2002); Ikein, A.A *The Impact of Oil on a Developing Country: The Case of Nigeria*. (Ibadan: Evans Brothers Limited, 1991); Aaron, K.K 'Human Rights Violation and Environmental Degradation in the Niger Delta' in Porter, Elizabeth & Offord, Baden (eds), *Activating Human Rights*. (New York: Peter Long, Oxford Borne, 2006a.); Adeyemo, A.M 'The Oil Industry, Extra-Ministerial Institutions and Sustainable Agricultural Development: A Case Study of Okrika LGA in Rivers State' [2002] 2(1) *Nigerian Journal of Oil and Politics*, 60-78; Opukri, C.O & Ibaba, S.I *Oil Based Environmental Degradation and Internal Population Displacement in the Niger Delta* (Paper presented at the second National Conference of the faculty of Business and Social Sciences, University of Ilorin, Ilorin, Nigeria, February 27-28, 2007); Okoko, K & Johnson, N 'Revenue Allocation and the Oil Producing States in Nigeria' in Alapiki, Henry (ed), *Perspectives on Socio-Political and Economic Development in Nigeria*. (Owerri: Springfield Publishers, 1998); Ikporukpo, C.O 'Petroleum, Fiscal Federalism and Environmental Justice' [2004] 18 (3) *Space and Polity*, 321-354

3.1.2: Gas Flaring

Gas flaring is one of the challenges and or problems of oil exploration in the Niger-Delta of Nigeria, which causes pollution in the area. This process essentially involves what is often described as the unscientific burning of associated but unwanted gas during oil exploration and production.²⁷ When oil is pumped out of the ground, it is accompanied by natural gas and produced water. These accompanying products are separated from the crude oil and discharged as waste. In the case of gas, it is burnt because of inadequate facilities for collecting and gathering it. The produced water, in most cases, is discharged into the rivers or streams along with its toxic substances. In both cases, it is the environment that is left degraded as dangerous toxic substances pollute the air through gas flaring; at the same time, rivers, streams, and lakes are rendered lifeless through the discharge of polluted water and other effluents. Studies have shown that gas flares diminish agricultural productivity, and crops planted about 200 metres from flare sites lose 100 percent of their yield, and those planted about 600 metres from flare sites experience 45 percent loss in yield, and 10 percent loss in yield for crops planted one kilometer away from gas flares.²⁸

There is evidence that gas leaks also occur in parts of the Niger Delta. Bubbling has been observed in certain swamps. This means that an unknown number of hydrocarbons may be affecting the water organisms and are being emitted into the atmosphere.

The World Bank²⁹ estimated that Nigeria flares about 75 per cent of the gas it produces due to the lack of a local market and infrastructure. Gas flaring amounts to a monumental waste of a valuable resource, on top of the air and thermal pollution that damages biodiversity. Flares cause noise and elevated temperatures. The heat kills vegetation, suppresses the growth and flowering of some plants, and diminishes agricultural production. Plants, animals, and humans in the

²⁷TrungThanh Nguyen, Ulrike Grote, Frank Neubacher, Dil, B. Rahut, Manh Hung Do, Gokul, P. Paudel, 'Security risks from climate change and environmental degradation: implications for sustainable land use transformation in the Global South' [2023] 63 *Current Opinion in Environmental Sustainability*, <https://doi.org/10.1016/j.cosust.2023.101322> accessed 23 February 2026

²⁸Salau, A.T 'Environmental Crisis and Development in Nigeria' (An Inaugural Lecture, University of Port Harcourt, Nigeria, 1993) 19-22; See also: Adeyemo, A.M 'The Oil Industry, Extra-Ministerial Institutions and Sustainable Agricultural Development: A Case Study of Okrika LGA in Rivers State' [2002] 2(1) *Nigerian Journal of Oil and Politics*, 69

²⁹<https://www.worldbank.org/en/news/press-release/2012/07/03/world-bank-sees-warming-sign-gas-flaring-increase> accessed 12 August 2025

vicinity of the gas flares are perpetually exposed to light with no respite at night. This is harsh for nocturnal animals. The light from flares may also be affecting the endangered marine turtles in the area. Turtles' nesting patterns are influenced by light on their approach to beaches, where they lay their eggs. Additional largely unstudied potential impacts include the effects on the migratory patterns of birds. This has, over the years, been one of the challenges and or problems facing the Niger-Delta of Nigeria, which is one of the side-effects of oil exploitation and exploration in the region.

4.0: The enforcement of environmental rights in Nigeria

The right to a clean and healthy environment free from every form of environmental abuse or degradation is a global right entrenched in the statute books.³⁰ This right has enjoyed domestic recognition and enforcement in the Constitution and subsidiary legislations of most countries in the world; African countries. According to the provision of Section 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the state shall protect and improve the environment and safeguard the water, air, forest, and wildlife of Nigeria.³¹ Article 4 of the Constitution of the Republic of South Africa also provides that every citizen of South Africa is entitled to a healthy and clean environment.³² It must be noted however that notwithstanding that section 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that the states shall protect and improve the environment and safeguard the water, air, forest and wild life of Nigeria, the right is not justiciable nor enforceable under the constitution except under the relevant international instruments that Nigeria is signatory to such as the African Charter on Human and Peoples Rights. The non-justifiability of this right, therefore, renders the citizenry helpless in the realization of this right, although the States have the mandate to ensure that the right is realized and enforced.

It must be noted, however, that the case of *Jonah Gbenre v. Shell BP*³³ is a landmark case on a Nigerian environmental and human rights case that addressed the legality of gas flaring in the Niger Delta. In the case, the applicant, Jonah Gbenre, brought the action on behalf of himself and

³⁰See generally UNESCO Convention Concerning the Protection of the World Cultural Natural Heritage, Nov. 21, 1972, 11(6) I.L.M. 1358; Convention for the Protection of the Mediterranean Sea Against Pollution, Feb. 16, 1976, 1102 U.N.T.S. 1698, 15 I.L.M. 290, 1976; G.A. Res. 29/3281, Charter of Economic Rights and Duties of States, ch. 3, art. 30 (Dec. 12, 1974)

³¹ 1999 CFRN (as amended)

³² Constitution of the Republic of South Africa, 1996

³³ 2005

the Iwherekan community in Delta State, Nigeria. The respondents included Shell Petroleum Development Company of Nigeria Ltd. (SPDC), the Nigerian National Petroleum Corporation (NNPC), and the Attorney General of the Federation. Shell, in joint venture with NNPC, had been engaging in continuous gas flaring in the community as part of its oil extraction operations. Gas flaring involves the burning of excess natural gas released during oil production.³⁴In the Niger Delta, this practice had been ongoing for decades, causing serious environmental degradation, health problems, acid rain, and destruction of farmlands and water sources.³⁵Despite statutory provisions aimed at regulating or discouraging gas flaring, oil companies continued the practice with government approval. The applicant argued that gas flaring violated the community's constitutional rights to life and dignity of the human person, as guaranteed under sections 33 and 34 of the 1999 Constitution of Nigeria. He also relied on international human rights instruments, including the African Charter on Human and Peoples' Rights, which is domesticated in Nigerian law. The key legal issues before the court were:

1. Whether gas flaring violates the fundamental rights to life and human dignity under the Nigerian Constitution.
2. Whether statutory provisions permitting gas flaring were inconsistent with constitutional guarantees.
3. Whether the respondents could lawfully continue gas flaring in the applicant's community.
4. Whether international human rights norms could be enforced by Nigerian courts in environmental matters.

The applicant contended that gas flaring exposed the community to toxic substances, respiratory illnesses, and environmental devastation, thereby threatening their lives and degrading their dignity. He argued that the constitutional right to life extends beyond mere existence to include a right to a clean, safe, and healthy environment. The applicant further asserted that laws allowing gas flaring were unconstitutional and should be declared null and void.

³⁴ Samson Adeniyi Aladejare, 'Natural resource rents, globalisation and environmental degradation: New insight from 5 richest African economies' [2022] 78 *Resources Policy*, <https://doi.org/10.1016/j.resourpol.2022.102909> accessed 23 February 2026

³⁵ Etienne Piguet, 'Linking climate change, environmental degradation, and migration: An update after 10 years' [2022] 13 (1) *WIREs Climate Change*, January/February 2022, e746 <https://doi.org/10.1002/wcc.746> accessed 23 February, 2026

The respondents, particularly Shell and NNPC, argued that gas flaring was permitted under Nigerian petroleum laws and regulations. They claimed that the practice was necessary for oil production and was conducted with governmental authorization. The Attorney General maintained that the statutory framework governing oil exploration was valid and that economic considerations justified continued gas flaring.

The Federal High Court ruled in favor of the applicant. The court held that:

1. Gas flaring violated the right to life and human dignity as guaranteed by the Nigerian Constitution.
2. The constitutional right to life includes the right to a healthy and pollution-free environment.
3. Statutory provisions that permitted gas flaring without regard to human rights were inconsistent with the Constitution and therefore invalid to the extent of that inconsistency.
4. The African Charter on Human and Peoples' Rights was enforceable in Nigeria and reinforced the applicant's claims.

The court ordered Shell and NNPC to take immediate steps to stop gas flaring in the Iwherekan community and restrained the respondents from further flaring activities.

Gbenre v. Shell BP is widely regarded as a ground-breaking environmental justice decision in Nigeria and Africa more broadly. It was one of the first cases in which a Nigerian court explicitly recognized environmental harm as a violation of fundamental human rights. By interpreting the right to life expansively, the court moved beyond a narrow, biological understanding of life to include environmental well-being.

The case also demonstrated the growing influence of international human rights law in domestic courts. The reliance on the African Charter showed that environmental rights could be derived from existing human rights instruments even in the absence of explicit constitutional environmental rights. It must be noted, however, that despite the decision of the court, the practical impact of the judgment was limited. Enforcement proved difficult, as gas flaring continued in many parts of the Niger Delta after the decision. Regulatory weaknesses, government dependence on oil revenue, and the power of multinational oil companies undermined the effectiveness of the ruling. This highlights a broader challenge in environmental litigation: favorable judgments do not always translate into real-world change.

Additionally, the case did not result in comprehensive legislative reform. Nigeria continues to struggle with balancing economic interests and environmental protection, and gas flaring remains an ongoing issue despite subsequent policies and deadlines.

5.0: Environmental Constitutionalism

Environmental Constitutionalism is the use of constitutional law to protect the environment, often through the inclusion of environmental provisions, rights, and duties in national constitutions. This approach tends to allow for environmental protection by embedding it in a nation's fundamental law, which empowers courts to enforce these rights and duties and helps to address environmental degradation. It can take the forms of substantive or procedural rights, states' duties, or even rights for nature itself, and its effectiveness depends on both constitutional design and judicial enforcement. Within the context of the Nigerian law, it is argued that the environmental right should be included expressly in the Constitution as one of the fundamental rights contained in the chapter IV of the Constitution. This will afford the citizens the constitutional opportunity to invoke the judicial powers of the courts for the enforcement of the right. Hence, the amendment of the current 1999 Constitution of the Federal Republic of Nigeria is unavoidable. Express recognition of the right to a clean, safe, and healthy environment comes with advantages and benefits, which, if properly harnessed, would lead to total wellness of the citizens.

It is submitted that Constitutional environmental rights can be a powerful weapon in the arsenal of environmental campaigners and marginalised groups that shoulder a disproportionate share of the burden of pollution and environmental harm.³⁶ According to Boyd and Knox, several studies have shown a correlation between the right to a healthy environment and healthier people and ecosystems.³⁷ Three other advantages of environmental constitutionalism highlighted by Boyd in “The Environmental Rights Revolution” include creating a level playing field vis-à-vis other rights; fostering greater government and corporate accountability; and strengthening environmental democracy by empowering citizens with stronger environmental procedural

³⁶ OHCHR Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/73/188 (2018) [40].<
<https://www.ohchr.org/en/documents/thematicreports/a73188-report-special-rapporteur-issue-human-rights-obligations-relating>> accessed 31st October, 2025

³⁷ Ibid 44

rights.³⁸ The paper will examine these potential advantages of environmental constitutionalism in more detail.

On the question of creating a level playing field vis-à-vis other rights, a strong and legally enforceable constitutional environmental right could potentially act as a counterbalance to the exercise of property rights in an environmentally destructive manner. Bosselmann refers to a ‘human rights’ tragedy of the commons where many forms of environmental degradation are perfectly legal, because individual rights such as property rights create an entitlement to use the environment as the property owner desires.³⁹ The collective exercise of these rights results in systemic and widespread environmental degradation.⁴⁰

In terms of government accountability, Boyd argues that both the substantive and procedural aspects of a constitutional right to a healthy environment provide processes, forums, and standards for holding governments accountable for failing to protect human health and the environment.⁴¹ This is well-exemplified by the fact that the right to a healthy environment is increasingly being invoked in climate litigation to challenge the implementation or ambition of a government’s climate targets and policies.⁴² One of the first global studies on the role of the right to a healthy environment in climate litigation reached the ‘tentative’ conclusion that, so far, the right seems to contribute to success in climate cases.⁴³ In the European context, constitutional environmental rights/duties have to date been deployed in climate litigation with varying levels of success. Peel and Osofsky argue that the existence of a constitutional right to a healthy environment or safe climate, alone, is not determinative of the successful deployment of rights arguments in climate litigation.⁴⁴ Other relevant factors include the existence of legislation or

³⁸ David Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2011) 35.

³⁹ Klaus Bosselmann, ‘Environmental and human rights in ethical context’ in Anna Grear and Louis J. Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Elgar 2015) 531, 532.

⁴⁰ *Ibid*

⁴¹ Boyd (n. 38) 30-31

⁴² Pau de Vilchez and Annalisa Savaresi, ‘The Right to a Healthy Environment and Climate Litigation: A GameChanger?’ (2021) 32(1) *Yearbook of International Environmental Law* 3, 17

⁴³ *Ibid*

⁴⁴ Jacqueline Peel and Hari Osofsky, ‘A Rights Turn in Climate Change Litigation’ (2018) 7(1) *Transnational Environmental Law* 37, 62.

procedures that facilitate rights-based cases and the presence of case law or judicial practices receptive to novel rights-based arguments.⁴⁵

According to May, factors that continue to hinder the judicial vindication of constitutional environmental rights in a more general context include the text and its meaning, judicial receptivity, political willingness, and poor implementation and monitoring of judicial orders in environmental cases where they have been made.⁴⁶

5.0: Judicial Attitude to Environmental Constitutionalism in South Africa, Nigeria, and the United Kingdom

Nigeria

Nigeria's approach to environmental constitutionalism is more complex and constrained. The 1999 Constitution of Nigeria does not explicitly guarantee a justiciable environmental right. Environmental protection is located under Section 20 in the Fundamental Objectives and Directive Principles of State Policy, which are traditionally regarded as non-justiciable under Section 6(6)(c) of the Constitution.

Despite this limitation, Nigerian courts have shown judicial creativity by advancing environmental protection through the interpretation of fundamental human rights, particularly the rights to life and dignity under Sections 33 and 34. The landmark case of **Gbenre (Gbemre) v. Shell Petroleum Development Company of Nigeria Ltd**⁴⁷ marked a turning point. The Federal High Court held that gas flaring violated the constitutional rights to life and human dignity, effectively recognizing a right to a clean and healthy environment.

Nigerian courts have also relied on the African Charter on Human and Peoples' Rights, which is domesticated in Nigerian law. In **SERAC v. Nigeria**,⁴⁸ environmental degradation was recognized as a violation of multiple human rights, reinforcing the domestic judicial trend.

However, the judicial attitude in Nigeria remains cautiously progressive but institutionally weak. While courts have demonstrated a willingness to expand constitutional rights, enforcement remains a major challenge. Economic dependence on oil revenue, political interference, and regulatory

⁴⁵ Ibid

⁴⁶ James May, 'The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes' (2021) 42 Cardozo Law Review 983, 1011.

⁴⁷ 2005

⁴⁸ 2001

weaknesses limit the effectiveness of judicial decisions. Unlike South Africa, Nigerian courts rarely issue structural or supervisory orders to ensure compliance.

Thus, Nigeria reflects a hybrid judicial posture, innovative in principle but constrained in practice. Environmental constitutionalism exists largely through judicial interpretation rather than explicit constitutional text.

South Africa

South Africa represents one of the most advanced models of environmental constitutionalism globally. The 1996 Constitution of South Africa explicitly recognizes environmental rights under Section 24, which guarantees everyone the right to an environment that is not harmful to health or well-being and mandates the state to take reasonable legislative and other measures to protect the environment for present and future generations.

South African courts have adopted a robust, purposive, and rights-based interpretative approach to environmental protection. The judiciary consistently treats environmental rights as justiciable and enforceable, not merely aspirational. In *Fuel Retailers Association v. Director-General, Environmental Management*,⁴⁹ the Constitutional Court emphasized that environmental protection and sustainable development are inseparable. The court held that economic development must be environmentally sustainable, thereby rejecting the notion that development interests automatically outweigh environmental concerns.

Furthermore, South African courts actively apply international environmental principles, such as the precautionary principle, intergenerational equity, and sustainable development. In *Minister of Health v. Woodcarb (Pty) Ltd*,⁵⁰ the court affirmed that environmental authorities must consider the long-term ecological consequences of their decisions. The judiciary has also relaxed traditional rules of locus standi, enabling public interest litigation in environmental matters.

Overall, the judicial attitude in South Africa is activist and transformative, reflecting the broader constitutional mandate to redress past injustices and promote social and environmental justice. The courts see themselves as guardians of both present and future generations, firmly embedding environmental protection within constitutional adjudication.

United Kingdom

⁴⁹2007 (6) SA 4 (CC)

⁵⁰ 1996 (3) SA 155 (N)

The United Kingdom presents a markedly different model due to the absence of a written constitution and the principle of parliamentary sovereignty. There is no constitutional right to a healthy environment. Instead, environmental protection is addressed through statutory law, common law, and human rights jurisprudence, particularly under the Human Rights Act 1998, which incorporates the European Convention on Human Rights (ECHR).

UK courts have traditionally adopted a restrained and deferential attitude toward environmental matters, especially where policy and economic considerations are involved. Environmental claims are often framed under Article 2 (right to life) or Article 8 (right to respect for private and family life) of the ECHR. In *Lopez Ostra v. Spain*⁵¹ (applied in UK jurisprudence), environmental harm was recognized as capable of violating Article 8, influencing domestic courts.

Judicial review is the primary mechanism for environmental litigation in the UK. Courts focus on procedural fairness, legality, and rationality, rather than substantive environmental rights. In cases such as *R (ClientEarth) v. Secretary of State for the Environment*,⁵² courts have required government compliance with statutory and EU-derived environmental standards but have avoided dictating policy outcomes.

The UK judiciary generally refrains from judicial activism, reflecting respect for the separation of powers. Even in climate change litigation, courts tend to compel government action only where there is a clear statutory breach, not based on broad environmental principles.

Thus, the UK approach to environmental constitutionalism is indirect and procedural, relying on legislative frameworks rather than constitutional rights. Environmental protection is treated as a matter of governance rather than constitutional entitlement.

5.2: The Challenges to Environmental Protection and Access to Justice in Nigeria

Environmental justice is not sufficiently served, as there is a constant problem of litigation. Access to justice in issues bordering on environmental degradation is faced with setbacks due to lax environmental laws, non-justiciability of the right to a clean, safe, and healthy environment, lack of political will to enforce the existing legal frameworks, enormous economic and political influences of the multi-national oil corporations that cause the pollutions and lack of independent

⁵¹ App no. 16798/90, (1995) 20 EHRR 277

⁵² 2016 UKSC 41, C-404/13

judicial and judicial institutions.⁵³ However, over the years, individuals and communities affected by environmental pollution have gone to court in search of environmental justice by filing for compensation for incidents of oil pollution in the form of oil spill which affected the land, swamps, creeks, fish ponds, fishing nets, and other valuable properties of the host communities.⁵⁴

Another issue that causes a clog in the wheel of access to environmental justice is the strict application of the principle of *locus standi*. *Locus standi* is the legal capacity to institute proceedings in a court of law.⁵⁵ A party would only succeed in instituting a case in the court of competent jurisdiction if he or she can prove that he or she has some justifiable interest which may be affected by the action, or he or she will suffer injury or damage as a result of the action.⁵⁶ This principle has been interpreted strictly as it relates to environmental pollution litigation, which often leads to the dismissal of many pollution litigation cases at the mere fact that the right of the person filing the suit has not been directly infringed upon. These bottlenecks associated with the application of *locus standi* in Nigerian Courts always result in the dismissal of justice, as many environmental litigation cases in Nigeria have been sacrificed on the altar of a lack of *locus standi* by the claimants. However, in the recent Supreme Court decision in the case of ***Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC)***,⁵⁷ the Nigerian Apex Court held that it would be wrong for the court to allow outdated technical rules of Locus Standi to prevent public groups from bringing an action to court to stop unlawful conduct. Sequel to the decision, non-governmental organisations are now clothed with the toga of *locus standi* to sue in environmental matters. It must be noted, however, that notwithstanding the judicial activism expressed in the above case, enforcement of environmental rights will be more enhanced and achieved if environmental rights are expressly stated in the Constitution.

⁵³<https://unilaglawreview.org/2021/01/13/environmental-justice-in-nigeria-examining-the-issue-of-locus-standi/> accessed 18 October, 2025

⁵⁴Shell Petroleum Development Company, Nigeria Ltd v. Ambah (1991) 3 N.W.L.R. (Pt. 593) 1; Shell Petroleum Development Company, Nigeria Ltd v. Isaiah (2001) 11 NWLR (Pt. 723) 168; Elf Nigeria Ltd V Opere Sillo (1994) 6 NWLR (Pt. 350) 258; Shell Petroleum Development Company, Nigeria Ltd v. Tiebo Vii & Others (2005) 3-4 S.C; Nwadiaro v. Shell Petroleum Development Company, Nigeria Ltd (1990) 5 NWLR. (Pt. 150) 322; Shell Petroleum Development Company, Nigeria Ltd v. Farah (1995) 3 NWLR (Pt. 382) 148

⁵⁵<https://unilaglawreview.org/2021/01/13/environmental-justice-in-nigeria-examining-the-issue-of-locus-standi/> accessed 19 October, 2025

⁵⁶ See Adesanya v. President of the Republic of Nigeria & Anor (1981) 5 SC. 69

⁵⁷ (2019) 5 NWLR (Pt. 1666) 518

6.0: Conclusion and Recommendations

6.1: Conclusion

The study finds that strict application of the principle of locus standi is one of the challenges to environmental protection and access to justice in Nigeria. The strict interpretation of the principle led to the dismissal of many pollution litigation cases at the mere fact that the right of the person filing the suit has not been directly infringed upon.

The study further finds that non-justiciability of the right to a clean, safe, and healthy environment serves as a clog in the protection of the environment from all forms of degradation. The right is not justiciable nor enforceable under the constitution except under the relevant international instruments that Nigeria is signatory to such as the African Charter on Human and Peoples Rights.

The study also finds that UK courts have traditionally adopted a restrained and deferential attitude toward environmental matters, especially where policy and economic considerations are involved. Environmental claims are often framed under Article 2 (right to life) or Article 8 (right to respect for private and family life) of the ECHR.

It is part of the findings of the study that South African courts have adopted a robust, purposive, and rights-based interpretative approach to environmental protection. The judiciary consistently treats environmental rights as justiciable and enforceable, not merely aspirational. South African courts actively apply international environmental principles, such as the precautionary principle, intergenerational equity, and sustainable development.

Overall, the study finds that the judicial attitude in South Africa is activist and transformative, reflecting the broader constitutional mandate to redress past injustices and promote social and environmental justice. The courts see themselves as guardians of both present and future generations, firmly embedding environmental protection within constitutional adjudication.

The study has attempted to address the central research question in this study i.e. to what extent have the judicial powers of the courts engaged in adjudicating on matters relating to socio-economic rights, environmental rights inclusive, and how the same could be addressed through environmental constitutionalism? This was achieved by examining the attitude of the courts in

Nigeria to the recognition and enforcement of environmental rights in Nigeria with its counterparts in South Africa and UK.

6.2: Recommendations

The following are therefore recommended:

1. The 1999 Constitution of the Federal Republic of Nigeria (as amended) should be amended to include the express recognition of the right to a clean, safe, and healthy environment; thereby enhancing environmental constitutionalism.
2. The Nigerian courts should actively apply international environmental principles, such as the precautionary principle, intergenerational equity, and sustainable development as practiced in South Africa and UK.
3. The Nigerian courts should adopt the judicial attitude in South Africa which is activist and transformative in nature, reflecting the broader constitutional mandate to redress past injustices and promote social and environmental justice should be further enhanced
4. Nigeria as a nation should be decisive and should have the necessary political will to curb the activities of the multi-national corporation that cause environmental pollution by giving effect to the existing body of laws that criminalise environmental pollution and other allied matters in the country.
5. The multi-national corporations should see the need to prevent oil spillage and gas flaring as one of their corporate social responsibilities in the local communities wherein they carry out their explorative activities.
6. Punitive measures should be imposed on multi-national corporations that fail to comply with the existing regulations, laws, and policies on prevention and reduction of toxics through pollution in the local communities wherein they carry out their trade.
7. The government should ensure that the communities that suffer from myriads of degradation from the activities of the MNCs are duly compensated and resettled where necessary.
8. The judicial attitude in South Africa which is activist and transformative in nature, reflecting the broader constitutional mandate to redress past injustices and promote social and environmental justice should be further enhanced and copied in Nigeria.

9. The restrained and deferential attitude of the courts toward environmental matters, especially where policy and economic considerations are involved in the UK should be further enhanced and same replicated by the Nigerian court in ensuring that environmental rights are not sacrificed on the altar of technicality.
10. The South African courts should continue to actively apply international environmental principles, such as the precautionary principle, intergenerational equity, and sustainable development.

REGULATORY CHALLENGES CONFRONTING FOURTH GENERATION CORPORATE GOVERNANCE IN THE DIGITAL AGE

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ABSTRACT

The rapid advancement of artificial intelligence (AI), big data analytics, machine learning, and automated decision-making systems has introduced a new phase of corporate governance commonly described as fourth generation corporate governance. While these technological innovations have improved corporate efficiency and decision-making, they have also created significant regulatory challenges relating to cybersecurity oversight, digital risk management, algorithmic accountability, data governance, and corporate liability within technology-driven business environments. This article examines the extent to which Nigeria's corporate governance and regulatory frameworks are capable of addressing the emerging challenges associated with corporate digitalization in the digital age. Existing literature has largely focused on traditional corporate governance concerns such as shareholder protection, directors' duties, and sustainability, with limited attention devoted to the regulatory implications of fourth generation corporate governance in Nigeria. Using the doctrinal method of legal research, the article analyses relevant statutes, corporate governance codes, and scholarly materials, while drawing limited comparative insights from South Africa's technologically responsive governance framework particularly the recent King V Report Code of Corporate Governance. The article finds that Nigeria's current regulatory framework remains insufficiently equipped to effectively regulate digital corporate operations and AI-driven governance systems. It concludes that the transition to fourth generation corporate governance requires adaptive and technology-responsive regulatory reforms. The article therefore recommends enhanced board competence in technology, updating the existing regulatory framework and proper enforcement of the regulatory provisions.

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1.0 Introduction

The year 2020 presented a unique and critical turn-around in the world of businesses and corporation management across the globe. The emergence of Corona-Virus (COVID-19) took the corporate world by surprise and it brought about the need to embrace modern corporate governance.⁵⁸ It is therefore correct to say that the concept of corporate governance has undergone various changes over the course of different generations due to changing economic, social, and technological factors. These changes have resulted to evolution of corporate governance from its early managerial based models to the contemporary digital based model.

From the period of COVID-19 outbreak, the rapid developments in digital technologies have profoundly transformed the way in which corporations are managed and controlled, and as such, corporations have no option other than to reconfigure their management structures, regulatory frameworks, and governance systems in line with these technological trends. This has, in turn, given rise to what has been described as the concept of “fourth-generation corporate governance”, or “corporate governance 4.0,” which is basically characterized by digitalization, AI, and big data.⁵⁹

One may say that there is a connection between the concept of Industry 4.0 and fourth-generation corporate governance, but in reality, there are fundamental differences between the two concepts. Industry 4.0 refers to the technological revolution in the production and business processes.⁶⁰ On the other hand, fourth-generation corporate governance focuses on the legal and institutional response to these technological developments, particularly in the field of corporate governance,

⁵⁸ P. Panwar, ‘The Impact of COVID-19 on Corporate Governance Practices and Legal Requirements’ *IJMR* [2024](6)(5). <<https://doi.org/10.36948/ijfmr.2024.v06i05.28838>> accessed on 17 May 2026.

⁵⁹ B. Ouabouch & T. Yahyaoui, ‘Artificial intelligence and corporate governance: A review of recent literature’ *IJSMES* [2025](4)(1) <<https://doi.org/10.5281/zenodo.14731346>> accessed on 17 May 2026.

⁶⁰ Bartodziej C.J., *The Concept Industry 4.0: An Empirical Analysis of Technologies and Applications in Production Logistics* (LLM Dissertation, University of Berlin, 2015). Pp. 27-29. <[http://alvarestech.com/temp/Industry4.0/\(BestMasters\)%20Christoph%20Jan%20Bartodziej%20\(auth.\)-The%20Concept%20Industry%204.0%20_%20An%20Empirical%20Analysis%20of%20Technologies%20and%20Applications%20in%20Production%20Logistics-Gabler%20Verlag%20\(2017\)%20\(1\).pdf](http://alvarestech.com/temp/Industry4.0/(BestMasters)%20Christoph%20Jan%20Bartodziej%20(auth.)-The%20Concept%20Industry%204.0%20_%20An%20Empirical%20Analysis%20of%20Technologies%20and%20Applications%20in%20Production%20Logistics-Gabler%20Verlag%20(2017)%20(1).pdf)> Accessed 19 February 2026.

accountability, and regulatory compliance.⁶¹ The emergence of fourth-generation corporate governance has, in essence, given rise to a transformation from traditional compliance-based corporate governance to technology-based corporate governance, in which the role of the board goes beyond traditional corporate governance into digital governance, technological risk management, and algorithmic accountability. These changes challenge the foundational assumptions of corporate governance law, which have historically been premised on human judgment, identifiable decision-makers, and traceable lines of responsibility.

In Nigeria, corporate governance is primarily shaped by a combination of legislative enactments and regulatory frameworks. Key statutes include the Companies and Allied Matters Act 2020 (CAMA 2020),⁶² the Investments and Securities Act 2025,⁶³ and the Financial Reporting Council of Nigeria Act 2011,⁶⁴ alongside the Nigerian Code of Corporate Governance 2018.⁶⁵ In addition, sector-specific regulatory instruments such as the Banks and Other Financial Institutions Act 2020,⁶⁶ the Central Bank of Nigeria Corporate Governance Guidelines, 2023, and the PENCOM Code 2021,⁶⁷ among others, provide tailored governance standards for regulated industries. These legal and regulatory frameworks acknowledge, to a limited extent, the growing role of digital technology in corporate operations. For instance, CAMA 2020 permits the holding of electronic meetings,⁶⁸ the maintenance of company records in electronic form,⁶⁹ and the electronic execution of documents, thereby enhancing administrative efficiency and modernizing corporate practices.

Notwithstanding these developments, corporate governance in the digital age continues to face significant legal and regulatory challenges. Existing frameworks remain largely oriented towards traditional governance structures and do not adequately address emerging issues such as cyber-

⁶¹ Y.L. Doz and A. Cuomo, 'Corporate Governance 4.0: Facing Interdependency and Speed in a Complex World' *INSEAD* (2017), p.2. <<http://ssrn.com/abstract=3001847>>Accessed 17 February 2026.

⁶² Companies and Allied Matters Act, 2020 (Act No. 3), Federal Republic of Nigeria Official Gazette No. 119, Vol. 10.

⁶³ Investments and Securities Act, 2025 (Act No. 2A of 2025).

⁶⁴ Financial Reporting Council of Nigeria Act, 2011 (Act No.6 of 2011).

⁶⁵ Nigerian Code of Corporate Governance, 2018 (Federal Republic of Nigeria Official Gazette No. 138, Vol. 105)

⁶⁶ Banks and Other Financial Institutions Act, 2020 (Act No.5 of 2020)

⁶⁷ National Pension Commission (PenCom) (2021). *Guidelines on Corporate Governance for Pension Fund Operators*. Abuja, Nigeria: PenCom.

⁶⁸ CAMA 2020, Section 240(2)

⁶⁹ CAMA 2020, Section 861.

security risks, data governance, and algorithmic decision-making.⁷⁰ Consequently, corporate boards are increasingly required to oversee complex technological infrastructures while ensuring compliance with both established governance standards and evolving digital expectations. This raises critical questions regarding the adequacy of Nigeria's corporate governance framework in responding to the demands of fourth-generation corporate governance.⁷¹ It is instructive to note that the categorization of corporate governance to four generations is for conceptual analysis and evaluation purposes as there is no established theory for such categorization.

Against this background, this article examines the concept of fourth-generation corporate governance and critically evaluates the legal and regulatory challenges affecting its implementation in Nigeria's digital economy. It further assesses the extent to which existing corporate governance frameworks can accommodate technology-driven corporate practices and proposes reforms aimed at strengthening digital governance oversight.

2.0 Conceptual Clarification

This section provides the intellectual foundation for the study by identifying and explaining the key concepts, ideas, and principles relevant to the subject matter. To avoid repetition and multiple discussions of related terms, the section primarily examines the concept of corporate governance, while other relevant concepts are discussed within the subsequent sections of the study where they arise contextually.

2.1 Meaning of corporate governance

Corporate governance is a unique, complex, and multifaceted concept.⁷² It is universal, multi-dimensional, and multi-disciplinary in application and interpretation.⁷³ The word corporate

⁷⁰ Bingbing Bi, 'International Corporate Governance in the Digital Age: Legal Challenges of Privacy Protection and Data Governance' Proceedings of the 2024 2nd International Conference on Finance, Trade and Business Management, Advances in Economics, Business and Management Research, p. 42 <https://doi.org/10.2991/978-94-6463-546-1_6> accessed on 11 May 2026.

⁷¹ Ibid.

⁷² Ekundayo V. & Olawale F., 'Governance Public, Private and Not-for-profit' (University Press Plc, 2023). pp. 13-16; Danjuma N, 'The Role of Company Secretary in Corporate Management' (Rev. edn. HERN Publisher Plc., 2009) p.237.

⁷³ M.Z. Hossain, *et. al*, 'Corporate Governance as a Global Phenomenon: Evolution, Theoretical Foundations, and Practical Implications' *Journal of Financial Risk Management* (2024)(13) 342-375. <<https://doi.org/10.4236/jfrm.2024.132017>> Accessed 28 December 2025.

governance is a combination of two basic words, ‘Corporate’ and ‘Governance’. Consequently, corporate governance is concerned with prescribing procedures and practices for ensuring that companies are run in a way that they can achieve their set objectives.

It is important to state that the concept of corporate governance lacks a definite statutory definition. However, according to the Organisation for Economic Co-operation and Development Principles of Corporate Governance, *corporate governance involves a set of relationships between a company’s management, board, shareholders, and stakeholders. It also provides the structure and systems through which the company is directed, its objectives are set, and the means of attaining those objectives and monitoring performance are determined.*⁷⁴

Corporate governance has attracted extensive scholarly attention due to its significance in ensuring accountability, protecting investors, and promoting sustainable corporate performance. Although the term lacks a single universally accepted definition, most perspectives converge on the mechanisms through which corporations are directed, controlled, and made accountable to stakeholders. It also connotes the totality of the way business entities of a country are managed as against the public sector.⁷⁵ Put differently, corporate governance defines an organization’s policies, processes, and guidelines.

Therefore, the term corporate governance is susceptible to various definitions as it may be viewed from different perspectives.⁷⁶ To Danjuma,⁷⁷ corporate governance is an ‘*internal system encompassing policies, processes, and people, which serve the needs of shareholders and other stakeholders by directing and controlling management activities with good business objectivity, accountability, and integrity.*’ From this definition, corporate governance may be conceptualized as an internal framework within an organization that integrates policies, processes, and people to ensure effective direction, control, and accountability. Danjuma’s view shows that, corporate governance primarily functions to advance shareholders’ interests, while secondarily addressing those of other relevant stakeholders.

⁷⁴ OECD, *G20/OECD principles of corporate governance* 2023. OECD Publishing. <<https://doi.org/10.1787/ed750b30-en>> accessed on 12 May 2026.

⁷⁵ Danjuma N, *The Role of Company Secretary in Corporate Management* (Revised edn. HERN Publisher Plc, 2009), p.238.

⁷⁶ Ekundayo V. & Olawale F., (n.15) 2.

⁷⁷ Danjuma N, (n.18)

To further support his perspective, Sternberg and Ntim⁷⁸ view corporate governance from the shareholders' benefit perspective, meaning the center of focus is the shareholders' interest and the company must be governed in a way to ensure the benefit of the shareholders. Put differently, it is the governance of the companies to maximize satisfaction of the interest of the shareholders. In contrast, the broader perspective views corporate governance as being the heart of both a market economy and a democratic society.⁷⁹ This broader approach reflects the modern understanding of corporate governance as an inclusive system that extends beyond shareholders to other stakeholders affected by corporate activities. The development of various theories of corporate governance, particularly stakeholder theory, has further highlighted the need to shift from shareholder-centric governance to stakeholder-centric governance.

Corporate governance as a concept has witnessed tremendous development and adoption. As rightly stated by Castrillón and Alfonso,⁸⁰ *'the reason for the global interest in corporate governance is that it underpins a company's operating framework. As it usually benefits the owners, since they are committed to using the principles and mechanisms, which in the broadest sense amounts to an effective monitoring of the activities of a company, particularly when the principles of disclosure and transparency are adopted.'*

From whichever angle one look at it, corporate governance from the broader perspective is an inclusive system which is beneficial not only to the shareholders or the Board of directors, but to all the relevant stakeholders inclusive of the government and the community where the company is located.

3.0 Evolution of Corporate Governance

Tracing the evolution of corporate governance is a tedious task. The reason is that there is no clear history of corporate governance. It is also unlikely that such a history will ever exist because of the vastness of the concept. Nonetheless, the concept of corporate governance has

⁷⁸ E. Sternberg, *Corporate Governance: Accountability in the Marketplace* (2nd edn. Institute of Economic Affairs, 2004); Ntim C.G., 'Defining Corporate Governance: Shareholder versus Stakeholder Models' *Global Encyclopedia of Public Administration, Public Policy, and Governance* (Springer International Publishing, 2017) <https://www.researchgate.net/publication/318166724_Defining_Corporate_Governance_Shareholder_Versus_Stakeholder_Models> Accessed 26 September 2025.

⁷⁹ Danjuma N, (n. 18) 237.

⁸⁰ G. Castrillón and M. Alfonso, 'The Concept of Corporate Governance' *Revista Científica "Visión de Futuro"* [2022](25)(2) <<https://www.redalyc.org/journal/3579/357966632010/357966632010.pdf>> Accessed 26 December, 2025.

been in existence since the inception of corporate structures and management, which likely created the potential for conflicts between investors and managers.⁸¹ According to Bob Tricker, corporate governance has evolved significantly since the early days of the first joint-stock companies in the 16th and 17th centuries, in which shared ownership separated shareholders from management and thus created the need for basic accountability measures like oversight and transparency.⁸²

Corporate governance has developed through different eras or phases, all of which were characteristic of their economic and institutional environments. Thus, the evolution of corporate governance has been a dynamic process, driven by shifts in economic paradigms, technological advancements, and changing societal expectations.⁸³ These eras or phases can be grouped into three generations before the development of the fourth. Suffice to say that the generations of corporate governance is not a theory but rather a concept that explain the development of corporate governance from its perceived inception to its current state. So, the evolutionary concept is similar to historical development.

First generation: Basic accountability

The first generation of corporate governance marked the rudimentary phase of oversight in early corporations, prioritizing strict legal compliance and basic safeguards amid the risks of separated ownership and control. It highlighted the importance of legal compliance, simplicity in board structures, and shareholder protection from fraud, all of which were driven by scandals in joint-stock companies.⁸⁴ The metrics in use were financial integrity and audit-related measures, along with limited non-executive positions. In countries like Nigeria, this period reflected Anglo-Saxon models in the post-independence period, focusing on legal compliance over principles via ordinances like Nigeria's 1912 Companies Ordinance.⁸⁵

⁸¹ B.R. Cheffins, 'The History of Corporate Governance' *European Corporate Governance Institute* (2012) p.1 <https://www.ecgi.global/sites/default/files/working_papers/documents/SSRN-id1975404.pdf> Accessed 30 January 2026.

⁸² Tricker B, *The Evolution of Corporate Governance*. (Cambridge University Press, 2021) available at <<https://doi.org/10.1017/9781108974653>> Accessed 5 October 2025.

⁸³ M. Goranova, et. al, 'Corporate Governance and the Fourth Industrial Revolution: Promises and Challenges' *In Handbook of Research on Strategic Leadership in the Fourth Industrial* (2024) 475–508 <<https://www.elgaronline.com/doi/10.4337/9781802208818.00030>> Accessed 1 February 2026.

⁸⁴ Tricker B, (n.25)

⁸⁵ A.A. Afolabi, 'Examining Corporate Governance Practices In Nigerian And South African Firms' *European Journal of Accounting Auditing and Finance Research* [2015](3)(1)11 <<https://www.eajournals.org/wp->

During this era, managerial dominance characterized corporate boards, with shareholders largely passive.⁸⁶ Boards often rubber-stamped management decisions, limiting top-level accountability.⁸⁷ As corporations expanded and ownership dispersed, the need arose to protect shareholders from managerial abuse.

This environment laid the foundations of modern corporate governance, influenced heavily by the agency theory developed Jensen and Meckling,⁸⁸ which highlighted the separation of ownership from control. Early governance reforms began to stress managerial accountability, shareholder oversight, and greater financial transparency through mandatory disclosure,⁸⁹ setting the stage for subsequent generations of governance practices.

Second Generation: Shareholder primacy

The second generation of corporate governance emerged in response to major corporate scandals and financial crises, which exposed significant deficiencies in internal controls and regulatory oversight. The second-generation corporate governance introduced compliance, and legal and regulatory reforms, particularly in the area of managerial dominance, weak board oversight, and inadequate accountability mechanisms.⁹⁰ This era was largely shaped by corporate scandals and financial crises in the late twentieth and early twenty-first centuries, including the collapses of Enron, WorldCom, and Lehman Brothers, which exposed significant failures in internal controls, transparency, and ethical conduct.⁹¹ Consequently, greater emphasis was placed on strengthening board accountability, enhancing regulatory oversight, and improving compliance with corporate

content/uploads/Examining-Corporate-Governance-Practices-in-Nigerian-and-South-African-Firms.pdf> accessed 30 January 2026

⁸⁶ B.R. Cheffins, 'The History of Corporate Governance' *European Corporate Governance Institute* (2012)1-23, <https://www.ecgi.global/sites/default/files/working_papers/documents/SSRN-id1975404.pdf> Accessed 30 January 2026.

⁸⁷ R.K. Morck and L. Steier, 'The Global History Of Corporate Governance: An Introduction' National Bureau Of Economic Research Working Paper 11062 <https://www.researchgate.net/publication/5185758_The_Global_History_of_Corporate_Governance_An_Introduction#read> Accessed 12 March 2026.

⁸⁸ Ekundayo V. & Olawale F., (n. 15), 4.

⁸⁹ G. Gorton and F. Schmid, 'Corporate governance, ownership dispersion and efficiency: Empirical evidence from Austrian cooperative banking' *Journal of Corporate Finance*, [1999](5)(2) 119-140 <<https://www.sciencedirect.com/science/article/pii/S0929119998000194>> Accessed on 12 March 2026.

⁹⁰ O. Makinde, 'The Nigerian Corporate Governance Challenge: Inadequacy Of Laws Or Question Of Enforcement?' *The Gravitas Review Of Business & Property Law*, [2020](11)(4)2 <https://www.researchgate.net/publication/348298038_The_Nigerian_Corporate_Governance_Challenge_Inadequacy_of_Laws_or_Question_of_Enforcement> Accessed 2 February 2026.

⁹¹ J. Cohen, et al., 'Corporate Governance in the Post Sarbanes-Oxley Era: Auditors' Experiences' *Contemporary Accounting Research* [2010](27)(3)753. <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1911-3846.2010.01026.x>> Accessed 2 February 2026.

governance standards rather than simple fiduciary duties.⁹² As a result, governance codes such as the UK Combined Code and the Sarbanes-Oxley Act 2002 (SOX) in the United States were introduced.⁹³

As countries around the world began to reform their corporate governance frameworks following the various corporate scandals, Nigeria was not left out. In response, the country introduced the Securities and Exchange Commission (SEC) Code of Corporate Governance in 2003, which represented Nigeria's first formal attempt to institutionalize corporate governance standards.⁹⁴

Third Generation: Stakeholder Approach

While the second generation of corporate governance primarily focuses on compliance and fraud prevention, the third generation of corporate governance emphasizes contribution by expanding a company's duties and responsibilities beyond shareholders to a broader range of stakeholders, including employees, suppliers, customers, communities, and the environment.⁹⁵ This basically align with the stakeholders' theory of corporate governance as propounded by Freeman⁹⁶

It is worth noting that this generation introduced a model that increasingly integrates corporate social responsibility and sustainable development into corporate governance and administration, emphasizing the long-term impacts of corporate activities on society and the environment, thereby underscoring the need to adopt environmental, social and governance (ESG) objectives.⁹⁷ Furthermore, this generation is grounded in stakeholder theory, which argues that corporations should balance the interests of all parties, including creditors, employees,

⁹² C.S.P. Dak-Adzaklo and R.M.K. Wong, 'Corporate governance reforms, societal trust, and corporate financial policies' *Journal of Corporate Finance*, (2024)(84), <<https://www.sciencedirect.com/science/article/pii/S0929119923001566>>Accessed 2 February 2026.

⁹³ S. Liaquat and A. Mehmood, 'The Enron Scandal (2001): Corporate Governance, Accounting Fraud and Legal Implications' *The Critical Review of Social Sciences Studies* [2025](3)(4)1522 <https://www.researchgate.net/publication/397882870_The_Enron_Scandal_2001_Corporate_Governance_Accounting_Fraud_and_Legal_Implications>Accessed 3 March 2026.

⁹⁴ M. Agamah, 'The Evolution of Corporate Governance in Nigeria: 1886–2018' *European Journal of Business and Management Research* [2024](9)(5)186 <https://www.researchgate.net/publication/385652033_The_Evolution_of_Corporate_Governance_in_Nigeria_1886-2018>Accessed on 12 March 2026.

⁹⁵ I. Jide, et al., 'A Contextual Review of Stewardship Theory in Corporate Governance: Implications for Business Practices' *Premier Journal of Business and Management* (2025) <<https://premierscience.com/pjbm-24-652/>>Accessed 15 March 2026.

⁹⁶ Freeman R.E, *Strategic Management: A Stakeholder Approach*. (Pitman Press. 1984).

⁹⁷ B.O. Abduraheem, et al., 'Corporate Governance and Social Responsibility as Strategies for Sustainable Business' *International Journal of Scientific Research in Social Sciences & Management Studies* [2025](8)(2) 109-118 <<https://internationalpolicybrief.org/wp-content/uploads/2025/06/ARTICLE-9-2.pdf>>Accessed 15 March 2026.

administrators, clients, suppliers, authorities, and communities, rather than prioritizing the sole interests of shareholders.⁹⁸

Despite the progressive contributions of the third-generation corporate governance in promoting stakeholder inclusiveness, sustainability and corporate social responsibility, this framework has become inadequate in addressing the complexities introduced by the emerging digital transformation. These technological developments have introduced governance challenges that extend beyond human discretion and traditional regulatory mechanisms.⁹⁹ Also, the third-generation framework remains largely grounded in traditional assumptions about corporate operations and human decision-making. The rapid rise of digital technologies has introduced new complexities that these frameworks were not designed to address, thereby necessitating the emergence of a fourth generation of corporate governance.

Fourth Generation Governance

The fourth generation of corporate governance is heavily influenced by the digital age and the Fourth Industrial Revolution.¹⁰⁰ This contemporary iteration moves beyond traditional models, integrating digital technologies into decision-making, service delivery, and stakeholder engagement, while simultaneously introducing complex legal and regulatory challenges.¹⁰¹

Undoubtedly, the digital transformation impacts corporate operations by enhancing efficiency, transparency, and decision-making processes through data and algorithms.¹⁰² For example, higher levels of digitization have been shown to reduce corporate fraud by improving detection rates and mitigating information asymmetry.¹⁰³ Again, the emergence of algorithmic decision-making, which refers to the use of automated systems and AI-driven models to make or influence

⁹⁸ Castrillón and Alfonso (n.23).

⁹⁹ W. Fauzzia, *et al.*, 'Corporate Governance in the 21st Century: How Technological Disruption is Shaping Corporate Control' *Indonesian Management and Accounting Research* [2025](24)(1) 61-81 <https://www.researchgate.net/publication/396232692_Corporate_Governance_in_the_21st_Century_How_Technological_Disruption_is_Shaping_Corporate_Control>Accessed 16 March 2026.

¹⁰⁰ M. Goranova (n.26)

¹⁰¹ M. Fahlevi, *et. al.*, 'Corporate Governance in the Digital Age: A Comprehensive Review of Block chain, AI, and Big Data Impacts, Opportunities, and Challenges' *ICENIS* [2023](448)1-10 <<https://doi.org/10.1051/e3sconf/202344802056>>Accessed 13 March 2026.

¹⁰² M. Ziniuk, *et. al.*, 'Digital Transformation of Corporate Governance' *Financial and Credit Activity Problems of Theory and Practice*, [2022](5)(46) 300–310 <<https://doi.org/10.55643/fcaptp.5.46.2022.3807>>Accessed 13 March 2026.

¹⁰³ *ibid*

corporate decisions.¹⁰⁴ These may include credit approvals, risk assessments, compliance monitoring, and even elements of strategic planning.

While such systems enhance speed, consistency, and data-driven accuracy, they also introduce concerns about algorithmic bias, opacity, and the potential erosion of human judgment in governance processes.¹⁰⁵ Consequently, boards and regulators must increasingly understand and oversee not only human managers but also the algorithms that shape corporate outcomes.

It is essential to make a distinction between fourth generation corporate governance and the process of digitalization. Digitalization can be defined as the process of embracing technology to enhance business processes.¹⁰⁶ On the other hand, fourth generation corporate governance simply means the process of embedding technology into the structure of corporate governance. This is a very important distinction since it is worth noting that not all digitally enabled business organizations have a fourth generation corporate governance structure. This generation of corporate governance is not simply an evolution of previous models but is actually a qualitative transformation. It is a redefinition of corporate governance that includes the integration of technological systems into its very core system and thus into its key areas of oversight, decision-making, and responsibility.

As fourth-generation corporate governance makes corporations integrate Artificial Intelligence, blockchain, and digital platforms, a conflict arises with traditional, centralized legal frameworks, because the technological shift has introduced new governance realities that these frameworks were not designed to address.¹⁰⁷ Furthermore, the rapid pace of technological innovation has led to regulatory lag, with existing laws and corporate governance codes failing to keep pace with emerging digital business models.¹⁰⁸

¹⁰⁴ S. Vignesh and D.N. Nagarjun, 'Legal Challenges of Artificial Intelligence in India's Cyber Law Framework: Examining Data Privacy and Algorithmic Accountability Via a Comparative Global Perspective' *International Journal For Multidisciplinary Research* [2024](6)(6)2 <<https://doi.org/10.36948/ijfmr.2024.v06i06.31347>> Accessed 13 March 2026.

¹⁰⁵ *ibid*

¹⁰⁶ M. Rachinger, *et. al*, 'Digitalization and its Influence on Business Model Innovation' *Journal of Manufacturing Technology Management* (2018) <<https://doi.org/10.1108/JMTM-01-2018-0020>> accessed 13 March 2026.

¹⁰⁷ B. Takawira and D. Poee, 'Corporate Governance and Digitalisation: A Bibliometric Systematic Literature Review' *Corporate Law & Governance Review* [2025](7)(3) 271-282 <<https://virtusinterpress.org/IMG/pdf/clgrv7i3sip12.pdf>> Accessed 16 March 2026

¹⁰⁸ Society For Corporate Governance Nigeria, 'Corporate Governance in the Age of Digital Transformation' *Journal of Corporate Governance* [2021](12)(2)8-35. <https://corpgovnigeria.org/wp-content/uploads/2022/03/SCGN_Corporate-Governance-Journal_2021_v3.pdf> Accessed 13 March 2026.

This creates uncertainty, governance gaps, and enforcement challenges in the regulation of modern corporations. It is within this context that the fourth-generation corporate governance as a distinct and necessary governance paradigm focuses on regulating digitally driven corporate operations while seeking to align corporate accountability, transparency, and regulatory compliance with the realities of digitalization. This generation, therefore, responds directly to the legal and regulatory gaps created by rapid technological integration.

4.0 Regulatory Framework for Corporate Governance In Nigeria

The basic legal foundation of corporate governance in Nigeria is largely based on statutory laws that establish the structure of corporations, the system of accountability, and the extent of regulatory oversight. The key statutory laws are the CAMA 2020,¹⁰⁹ which is the main governing law for companies. It is the main piece of legislation governing companies. Importantly, CAMA 2020 reflects a gradual shift towards digitalization of the corporate law regime through incorporation of electronic meetings,¹¹⁰ electronic filing (e-filing), and digital documentation by the Corporate Affairs Commission.¹¹¹

To complement the above framework is the Investments and Securities Act 2025,¹¹² which governs the capital market and provides for the protection of investors by ensuring transparency and integrity through disclosure requirements governed by the Securities and Exchange Commission. The Act modernized Nigeria's capital market to align with global standards and technological advancements. Although the above laws provide for the digitalization of financial reports by ensuring electronic disclosure requirements, the laws are largely conventional in nature and weakly enforced.

Therefore, it can be concluded that the legal framework in Nigeria has made significant but limited progress in embracing digital governance technologies to meet fourth-generation corporate governance requirements.

¹⁰⁹ Companies and Allied Matters Act, Act No.3 of 2020.

¹¹⁰ Section 240(2) of CAMA.

¹¹¹ Section 861 of CAMA.

¹¹² Investments And Securities Act, 2025, Act No. 2 of 2025.

5.0 Corporate Governance in the Digital Age

The digital age has significantly expanded the scope of directors' duties under CAMA 2020, particularly in relation to care, loyalty, and oversight. Traditionally, the duty of care required directors to act with reasonable diligence; however, in a technology-driven environment, this standard now implies a level of digital competence, or at least the ability to engage meaningfully with technological risks. Comparative jurisprudence is instructive. In *Smith v. Van Gorkom*,¹¹³ directors were held liable for failing to adequately inform themselves before making a decision, underscoring that uninformed judgment constitutes a breach of duty. Applied to digital governance, failure to understand cybersecurity risks or algorithmic systems may similarly amount to negligence. Also, the duty of loyalty now extends to technology related conflicts of interest, including relationships with digital vendors or misuse of corporate data. The duty of oversight has also evolved, as reflected the various codes of corporate governance which recognize that directors must ensure the existence of adequate information and reporting systems. In the digital context, this includes oversight of AI systems, data infrastructure, and automated compliance mechanisms.

Digital transformation has also change risk governance in various aspects, especially in relation to cybersecurity, data governance, and internal controls. Failure to establish adequate monitoring systems can result in liabilities for breach of duty. Thus, in the case of *Oteri Holdings Ltd v. Mofta West Africa Ltd & Ors*,¹¹⁴ it was held that directors owe a duty to the company to use their power to act in the best interests of the company and maintain a high standard of care, skill or diligence, and to avoid conflicts of interest. Modern internal control relies majorly on automated monitoring and real-time reporting. Therefore, cybersecurity systems and data protection systems must be prioritised. It is essential that directors ensure that adequate measures are taken to protect companies against cyber threats. Today's internal controls include automated systems that can monitor in real-time; however, overdependence on these systems can result in further liabilities. Thus, a hybrid approach to digital risk governance becomes essential.

Taken together, the developments of fourth generation corporate governance demonstrate that corporate governance in the digital age is no longer confined to traditional legal doctrines but

¹¹³ *Smith v. Van Gorkom* 488 A.2d 858 (Del. 1985)

¹¹⁴ *Oteri Holdings Ltd v. Mofta West Africa Ltd & Ors* (2021) LPELR- 54853(CA) pp.74-75.

must evolve to address the ethical, technological, and societal implications of modern corporate activity.

6.0 Challenges in Implementing Fourth Generation Corporate Governance in Nigeria

The emergence of fourth generation corporate governance majorly orchestrated by the COVID-19 has highlighted some of the limitations that exist within the current major legal and regulatory frameworks in Nigeria. Although, as earlier pointed out, there is a well-structured framework for corporate governance as provided by the country's corporate governance law and code, it is largely limited to conventional forms of corporate governance. This is despite the fact that there is a significant lack of ability on the part of these frameworks to cope with the challenges that have been introduced by ever advancing technology. The limitations of these frameworks can be identified under several key issues, such as:

1. Regulatory Fragmentation: One of the most significant challenges facing corporate governance in Nigeria is the fragmentation of governance regulation across multiple institutions. In Nigeria, several regulatory bodies oversee corporate governance, including the Financial Reporting Council of Nigeria, the Central Bank of Nigeria, the Securities and Exchange Commission, and the Nigerian Exchange Group. Each of these regulators issues governance guidelines applicable to specific sectors, which may sometimes result in overlapping or inconsistent governance requirements.

This regulatory fragmentation creates compliance challenges for companies operating across multiple sectors. For instance, a financial institution listed on the Nigerian Exchange must comply simultaneously with the governance rules issued by the Central Bank of Nigeria, the Securities and Exchange Commission, and the Financial Reporting Council of Nigeria.

In the digital era, this fragmentation becomes even more problematic because technology-related risks cut across all sectors of the economy. This is particularly evident where the regulatory framework lacks clear legal definitions of responsibility for algorithmic decisions and clarity about the scope of digital disclosure obligations. Consequently, the absence of a coordinated regulatory approach may weaken the effectiveness of digital governance oversight in Nigeria.¹¹⁵

¹¹⁵ Bingbing Bi (note 13) 45.

Despite the aforementioned challenges, it is noteworthy to appreciate the efforts of the Nigerian government in the modernization and harmonization of the country's laws and regulations. Indeed, the various legislative changes and policy developments in the country's laws, especially in the areas of cyber security laws and insurance laws, among others, are a reflection of the government's desire to update outdated laws by ensuring they are consistent with the latest global standards. For example, the Nigeria Custom Service Act, 2023¹¹⁶ by provision of section 280 repealed and harmonizes multiple Acts applicable to the Service. It is apparent from the aforementioned changes that the government is increasingly recognizing the imperative of developing a coordinated system of regulations that are sensitive to the complexities of digital corporate governance. Although the aforementioned changes are still limited, they are an improvement from the previous situation and offer a basis upon which the development of digital governance laws can be built.¹¹⁷

Additionally, the international nature of digital operations allows data to traverse borders, thereby giving rise to intricate legal complexities surrounding the applicability of laws from various countries. This creates "conflict of laws" wherein the laws of various countries may apply to a given data set.¹¹⁸ It requires a complex approach to solve the problem.

Overall, regulatory fragmentation still remains a challenge in Nigeria that need to be addressed.

2. Accountability Gaps in AI-driven Decision-making: One of the greatest challenges facing corporate governance in the fourth generation is the emergence of accountability gaps arising from the use of AI in corporate decision-making processes. The basic underpinning of corporate governance structures has always been predicated on the notion that corporate decisions are made by identifiable actors whose behavior can be evaluated in relation to established legal parameters. However, the use of AI systems in corporate processes has created difficulties in corporate accountability since AI systems are capable of making decisions on their own or

¹¹⁶ Nigeria Custom Service Act of No. 35, 2023.

¹¹⁷ Hongkang Xu, 'Regulatory fragmentation and internal control weaknesses' *Journal of Accounting and Public Policy* (2024)(44)<<https://doi.org/10.1016/j.jaccpubpol.2024.107191>> accessed 15 May 2026.

¹¹⁸ S. Vignesh and D.N. Nagarjun (n.47).

through semi-autonomous processes.¹¹⁹ This has created difficulties in corporate accountability since AI systems function as "black boxes."

The problem of attributing blame becomes even more complicated in the face of the dispersion of decision-making authority among various parties, including directors, management, software developers, and third parties.¹²⁰ In such a scenario, it becomes very difficult to pinpoint who would be responsible in the event of errors, prejudice, or adverse outcomes. Such a scenario gives rise to significant doctrinal concerns in terms of the scope of delegation in corporate governance.¹²¹ Although directors can delegate powers, there are concurrent requirements of care, skill, and diligence. In the face of the use of AI systems, which are not fully understood by directors, there exists a tension between delegation and abdication of responsibility, thus creating a gap in the law.

Moreover, there are concerns relating to the issue of transparency and regulatory oversight in AI-driven decision-making. Good corporate governance calls for decisions to be subject to scrutiny; however, the unexplainable nature of AI-driven decisions makes it hard to fulfill this requirement. This not only affects internal corporate governance but also affects regulatory oversight, as it becomes hard to determine whether there has been compliance with set standards. Thus, there is a need to come up with laws that will govern AI-driven decisions, including the extent of directors' responsibilities and the structures within which AI-driven decisions can be made in a transparent manner.

3. Absence of a Comprehensive Digital Governance Framework: the lack of a comprehensive digital governance structure remains a challenge in Nigeria. The current corporate governance structures and codes, including those relating to directors' responsibilities and risk management, were developed in an age where human intervention was dominant. As such, they do not address key issues such as accountability in algorithms, AI, and data-driven decisions. As Inomovich

¹¹⁹ P. Matai, 'The Imperative of AI Governance: Steering BFSI towards Responsible Innovation' *Journal of Artificial Intelligence & Cloud Computing*, [2024](3)(1)3.<[https://doi.org/10.47363/jaicc/2024\(3\)319](https://doi.org/10.47363/jaicc/2024(3)319)>Accessed 11 March 2026.

¹²⁰ A. Rachovitsa and N. Johann, 'The Human Rights Implications of the Use of AI in the Digital Welfare State: Lessons Learned from the Dutch SyRI Case' *Human Rights Law Review* [2022](22)2.<<https://doi.org/10.1093/hrlr/ngac010>>Accessed 10 March 2026.

¹²¹ Y.J. Inomovich, 'Legal Regulation of the Use of Artificial Intelligence in Corporate Governance' *Uzbek Journal of Law and Digital Policy* [2023](1)(3)11<<https://doi.org/10.59022/ujldp.94>>Accessed 8 March 2026.

stated¹²² ‘Legal and regulatory frameworks are struggling to keep pace with the rapid technological evolution.’ The lack of clear regulation in this area is a cause for concern, particularly in instances where corporate decisions are made in an environment where algorithms and AI may be unclear and hard to interpret. This creates a need for anticipatory governance and adaptive regulatory approaches to oversee emerging technologies.¹²³

Also, the extensive use of data and algorithms in corporate processes raises concerns about data privacy and the potential for algorithmic bias. As Schäfer, *et. al*, stated that ‘data-privacy regulation can constrain collection of data from smart, connected products for data driven businesses, recent research has called for further investigation into data privacy’¹²⁴ This means that there is need to balance between data protection and technological innovation. Consequently, legal frameworks need to address how data is collected, processed, and utilized, especially given the inherent relational nature of genetic information and the challenges of data sovereignty across international borders.¹²⁵

4. Limited Digital Governance Provisions in Governance Regulations: The absence of explicit digital governance provisions within Nigeria’s primary corporate governance framework constitutes a significant challenge to the implementation of fourth generation corporate governance. The use of technological tools in corporate operations exposes organizations to various digital risks, including cyber security threats. At the same time, the adoption of AI may also create accountability concerns in corporate decision-making.

Although the Nigerian Code of Corporate Governance 2018 provides a comprehensive governance structure for companies, it does not specifically address issues such as AI governance, cybersecurity oversight, algorithmic decision-making, digital ethics, and other governance concerns arising from the use of technology in corporate management.

¹²² *ibid*

¹²³ Y. Walter, ‘Managing the race to the moon: Global Policy and Governance in Artificial Intelligence Regulation: A Contemporary Overview and an Analysis of Socioeconomic Consequences’ *Discover Artificial Intelligence* [2024](4)(1)13 <<https://doi.org/10.1007/s44163-024-00109-4>> Accessed 13 March 2026.

¹²⁴ F. Schäfer, *et. al*, ‘Data-driven business and data privacy: Challenges and measures for product-based companies’ *Business Horizons* [2023](66)(4) 494 <<https://doi.org/10.1016/j.bushor.2022.10.002>> Accessed 8 March 2026.

¹²⁵ S. Vignesh and D.N. Nagarjun (n.47)

While the National Data Protection Act, 2023¹²⁶ provides a general legal framework for data protection in Nigeria, its provisions apply broadly across sectors. They are not specifically tailored to address the governance implications of digital technologies within corporate organizations. Consequently, there remains a need for a regulatory framework specifically designed to address the intersection between digital technologies and corporate governance.

Therefore, as corporations increasingly rely on AI-driven systems and automated decision-making processes, governance codes must evolve to guide board responsibilities in overseeing these technologies. Hence, without guidance, corporate boards may lack the regulatory clarity necessary to manage digital risks effectively.¹²⁷

In addition, the issue of regulatory gap persists. Indeed, the pace of technological innovations far surpasses the ability of the law to react to such changes. Consequently, corporate governance structures are often unable to cope with new risks related to AI, big data, and digital platforms. Such regulatory gap does not only bring about uncertainties but also places corporations and their respective stakeholders at risk of unregulated risks, thus undermining the effectiveness of corporate governance structures.

5. Skills Gap in Corporate Boards: Fourth generation corporate governance requires boards to possess a reasonable level of technological expertise to supervise digital transformation and technological risks within an organization. However, many corporate boards in Nigeria continue to be dominated by directors with primarily legal, financial, or public administration backgrounds. While those skills remain essential, modern governance requires expertise in information technology, cybersecurity, digital risk management, and data analytics.¹²⁸

As a result, many boards lack members with specialized digital competencies, which often forces companies to rely heavily on external consultants rather than developing internal technological capacity at the board level. The absence of technological expertise in the boardroom may limit

¹²⁶ Nigeria Data Protection Act, 2023 (Act No. 16 of 2023)

¹²⁷ N. Nahum *et al*, 'Corporate governance for digital transformation: The role of ownership and the board of directors, Technological Forecasting and Social Change' *Technological Forecasting and Social Change* (2026)(223) 124494 <<https://doi.org/10.1016/j.techfore.2025.124453>> accessed 13 May 2026.

¹²⁸ K. Akinsola, 'The Evolving Role of Corporate Governance in Shaping Business Practices and Legal Accountability in the 21st Century' (2025) <<https://dx.doi.org/10.2139/ssrn.5115523>> accessed 13 May 2026.

directors' ability to effectively oversee digital transformation initiatives and properly assess the risks associated with technological innovation.¹²⁹

This skills gap may be attributed partly to resistance to digital transformation within traditional corporate governance structures. In many organizations, governance practices are still influenced by conventional governance logic and a relatively weak digital culture, which slows the integration of technological expertise into board composition.

6. Weak Enforcement of Governance Codes: The Nigerian Code of Corporate Governance, 2018 operates on the “Apply and Explain” principle, which requires companies to explain how they have implemented governance principles rather than strictly comply with detailed prescriptive rules. While this principle-based approach encourages flexibility and allows companies to adapt governance practices to their specific circumstances, it may also weaken enforcement where companies provide superficial explanations without implementing substantive governance reforms. In such situations, compliance may become largely formalistic rather than effective.¹³⁰

Therefore, an effective fourth generation corporate governance requires stronger monitoring and enforcement mechanisms to ensure that companies genuinely integrate digital risk oversight into their governance structures. Without robust enforcement, governance codes may fail to adequately address emerging challenges associated with digital transformation and technological innovation.

7.0 Comparative Insights from South Africa

The effectiveness of any regulatory system lies in its capacity to respond to emerging developments through timely amendments or through the adoption of flexible provisions capable of accommodating new realities without constant legislative revision. In the context of corporate governance, this adaptability is particularly important given the rapid pace of technological change and its impact on corporate operations.

A comparative assessment of corporate governance frameworks in developed jurisdictions, such as South Africa, reveals a more proactive and structured approach to addressing the challenges

¹²⁹ *ibid.*

¹³⁰ Bingbing Bi (note 13).

posed by technology-driven corporate operations.¹³¹ While the Nigerian Code of Corporate Governance has struggled to keep pace with evolving governance trends several years after its introduction, South Africa has demonstrated greater responsiveness through periodic updates to its governance codes. For instance, the King V Code of Corporate Governance¹³² emphasizes board effectiveness, risk management, and the need for directors to possess the requisite skills and experience to oversee emerging risks, including those associated with digital transformation. Although the Code does not expressly mandate technological expertise, its provisions on board competence and internal control implicitly require directors to engage with digital governance issues.¹³³

In contrast, the Nigerian corporate governance framework, while robust in its traditional orientation, remains largely underdeveloped in addressing the complexities of fourth generation corporate governance. Existing laws and governance codes continue to focus on conventional issues such as board structure, accountability, and financial reporting, with limited attention to digital governance, algorithmic accountability, and AI-related risks. Although recent reforms in areas such as cybersecurity and sector-specific regulation indicate a growing awareness of the need for modernization, a comprehensive and coordinated approach to digital corporate governance is still lacking.¹³⁴ This comparative gap underscores the need for Nigeria to draw from global best practices by strengthening board-level technological competence, enhancing regulatory coordination, and developing clear frameworks for overseeing technology-driven corporate decision-making.

8.0 Conclusion

Corporate governance in Nigeria has evolved significantly over the past two decades, and recent legislative developments reflect the realities of the country's rapid digitalization across sectors, including corporate governance. However, as corporations increasingly rely on technologies such as AI and digital platforms, Nigeria's corporate governance framework may require further reforms to address the legal and governance implications of these developments effectively.

¹³¹ W.M. Baloyi, 'Exploring the Key Challenges Faced By the South African Public Sector in Adopting Artificial Intelligence' *International Journal Of Research And Innovation In Social Science* [2025](IX)(X) 1369-1376. <<https://dx.doi.org/10.47772/IJRIS.2025.910000117>> accessed 17 May 2026.

¹³² Released on 31 October 2025 and became enforceable in 1 January 2026.

¹³³ N. Nahum (note 70) 11.

¹³⁴ N. Nahum, (note 70) 11-12.

Under Nigeria's existing corporate governance regime, the framework remains largely rooted in third-generation corporate governance, which primarily emphasizes transparency, accountability, and stakeholder protection. While these principles remain essential, they do not adequately address the complex governance risks introduced by digital transformation.

Against this backdrop, fourth-generation corporate governance requires corporations to integrate technological oversight into board responsibilities, risk management systems, and regulatory compliance structures. Therefore, there is a need to update existing governance codes and laws to ensure that Nigerian corporations are not left behind in this emerging governance paradigm and that they remain resilient, accountable, and competitive in the digital age.

9.0 Recommendations

Addressing the legal and regulatory challenges identified above requires comprehensive reforms to modernize Nigeria's corporate governance framework.

1. Enhancing Board Competence in Technology Governance: Corporate boards are responsible for overseeing all aspects of a company's operations, including information technology governance, which carries important fiduciary duties for board members. To fulfill this responsibility effectively, boards should invest in training, seminars, and workshops that help members understand technological developments and how technology can support corporate governance and the organization's objectives.¹³⁵

In addition, future board members should be introduced to corporate governance principles at an early stage so they can effectively collaborate with experienced directors when appointed to boards. Many emerging board members possess expertise in cybersecurity, AI, machine learning, and other Industry 4.0 technologies. With proper guidance on best corporate governance practices, they can effectively leverage technology to enhance transparency, accountability, and efficiency.¹³⁶

2. Updating the Existing Regulatory Framework: One important solution to the challenges of fourth-generation corporate governance in the digital age is the updating of existing legal and

¹³⁵ Society for Corporate Governance Nigeria, 'Future-Proof Boards: Corporate Governance in the Digital Era' (2022) <<https://corpgoavnigeria.org/futureproof-boards-corporate-governance-in-the-digital-era>> Accessed 16 March 2026.

¹³⁶ *ibid*

regulatory frameworks. The current legal framework and sector-specific regulations are not sufficiently comprehensive to address the risks and complexities associated with the integration of technology into corporate governance. Although some sector-specific regulations include limited provisions on technology, they are often confined to particular industries and do not apply across all sectors.

For instance, the Nigerian Communications Commission Corporate Governance Guidelines 2025 require telecommunications companies to appoint board members with demonstrated competence in Information and Communication Technology and/or cybersecurity.¹³⁷ While this provision is progressive, its application is limited to the telecommunications sector and does not extend to other sectors where digital governance is equally important.

It is therefore necessary to introduce an all-encompassing statutory provision or regulatory framework specifically designed to facilitate the integration of technology into fourth-generation corporate governance. Such a framework should provide clear and comprehensive guidelines on digital corporate governance, cybersecurity responsibilities, data protection obligations, and the use of emerging technologies in corporate operations.

Furthermore, as the National Code of Corporate Governance serves as the primary governance framework across sectors, there should be a comprehensive regulatory instrument that provides detailed guidance on digital corporate governance. Sector-specific regulators can then develop additional regulations tailored to their industries based on this overarching framework. This approach would help reduce legal uncertainty and ensure that corporations operate within clearly defined and consistent regulatory standards.

3. Proper Enforcement of the Regulatory Provisions: Although Nigeria has developed several corporate governance frameworks, a persistent challenge remains the effective enforcement of these legal frameworks. For instance, the NCCG 2018 operates on an "apply and explain" basis, requiring companies to explain how they apply the Code's principles. In practice, however, some corporations may provide explanations without fully complying with the substantive requirements. This Act manifests in the box-ticking strategy, whereby corporate bodies are

¹³⁷Rule 6 of the Guidelines on Corporate Governance.<<https://www.ncc.gov.ng/sites/default/files/2025-07/Guidelines-on-Corporate-Gov.pdf>>Accessed 15 March 2026.

required to comply with every rule to present the illusion of compliance, thereby hiding the company's potential vulnerabilities.

Consequently, it is necessary to develop effective mechanisms to ensure proper enforcement and compliance with laws governing digital corporate governance within corporations.¹³⁸ Furthermore, improved coordination among regulatory agencies would help reduce regulatory fragmentation and strengthen the overall effectiveness of corporate governance enforcement.

¹³⁸ O.C. Aduma, 'Appraising The Impact Of Digital Corporate Governance On The Indoor Management Rule Under Nigerian Company Law' *Nnamdi Azikiwe University, Awka Journal of Private and Property Law* [2025] (2)(1) 34<<https://journals.unizik.edu.ng/index.php/naujppl/article/download/5898/4897/13370>>Accessed 15 March 2026.

REVIEW OF THE EVIDENTIAL BURDEN OF PROOF OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE IN MATRIMONIAL PROCEEDINGS IN NIGERIA

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Abstract

In Nigeria, statutory marriage represents a union of a man and a woman who voluntarily consent to be husband and wife. Where issues arise, wherein any of the spouses, finds it intolerable to live with his or her partner, the party approaches the court for a decree of dissolution of such marriage. It is during such matrimonial proceedings that the burden of proof that the marriage has broken down irretrievably being the sole ground for dissolving such marriage arises. Irretrievable breakdown under the Nigerian MCA as the cornerstone for dissolution of marriage has the problem of evidential burden of proof oscillation between petitioners and respondents due to the inherent contest that requires parties to adduce varying degrees of evidence to support their positions in matrimonial proceedings. Through doctrinal methodology, this study examines the “fault-based” irretrievable breakdown system in Nigeria and the gradual movement to the contemporary “no-fault” or hybrid systems in the UK, Australia, Canada and South Africa as well as the fact-sensitive approach which courts adopt when assessing whether a marriage has broken down beyond repairs. This study found that there is the existence of difficulties in producing credible evidence to meet the statutory threshold of irretrievable breakdown even when a party is trapped in a desperately unhappy marriage with clear emotional reality of marriage collapse. The study also evaluates key policy considerations and recommends legal reforms for achieving fairness, reduction of adversarial conflicts and ensuring procedural justice in determining irretrievable breakdown of marriage in matrimonial proceedings.

Keywords: Dissolution, Evidential Burden, Irretrievable Breakdown, Review, Proceedings

1. Introduction

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Proof of irretrievable breakdown of marriage has been the central legal and evidential burden as well as the practical gateway to securing a decree of dissolution¹ of marriage in Nigeria and many other common law jurisdictions for more than a half century. This cornerstone of matrimonial proceedings can be viewed from both legal and empirical or practical perspectives. Legally, the core issue before a court in dissolution of marriage proceedings is the determination of whether the marriage has broken down irretrievably or otherwise. In practical terms, however, the petitioners must usually produce evidence of one or more statutory grounds² to substantiate the allegation of irretrievable breakdown of marriage. The interaction between the formal or legal and empirical or practical terms through the establishment of the required statutory grounds or evidential norms and the adversarial procedure creates a dynamic in which the evidential burden of proof can appear to oscillate or move between the parties and to that end, petitioners must adduce enough evidence to satisfy the court and justify the dissolution of the marriage,³ while the respondents may be required to rebut particular allegations or face and accept the consequences of the court's acceptance of the petitioner's account.

The oscillation of evidential burden among the parties to matrimonial proceedings is propelled by the need to discharge two types of burdens namely, the persuasive burden and the evidential burden. The persuasive burden which is also known as the legal burden concerns the subject or party who must convince the tribunal on the balance of probabilities and usually remains with the petitioner or the party that is asserting the fact. On the other hand, the evidential burden which may be called testimonial burden is the burden that results from the discharge of the legal burden by the petitioner, and which is placed on the respondent during the proceedings. In other word, the evidential burden is the burden that shifts to the respondent consequent upon the establishment of a *prima facie* case or a striking evidential picture presented by one party which may require the other party to produce explanatory evidence or risk an adverse finding.⁴ This procedural interplay becomes very important in family law where many relevant facts such as emotional breakdown, "behaviour", and consent to separation are personal, subjective and very often, poorly documented.

¹ Matrimonial Causes Act, 1970. See section 15(1).

² *Ibid.* See section 15(2); and *Owens v Owens* (2018) UKSC 41.

³ EI Nwogugu, *Family Law in Nigeria* (Heinemann Educational Books, Plc 2001) p. 196.

⁴ R Cross and JW Tapper, *Cross & Tapper on Evidence* (12th edition Oxford University Press 2018) p. 112.

The need to reduce or avoid aggravating the pains and emotional trauma of vulnerable partners in dissolution matrimonial proceedings has led to the emergence of the debate on the desirability or otherwise of shifting evidential burden in matrimonial proceedings. The antagonists of the shift in evidential burden arguing that rigorous contestation of marital disputes in the name of proving irretrievable breakdown of marriage is time consuming, involving more cost implication and encouraging conflicts since the proceeding is essentially adversarial whereas the family system ought to be without feuds. The views of the antagonists of the evidential burden shift appear to have received the support of the decision in *Owens v Owens*¹ where the Supreme Court held that although Mrs. Owens was trapped in a desperately unhappy marriage, she could not discharge the evidential burden in spite of the clear emotional reality of marital collapse because the behaviour incidents relied upon did not cumulatively meet the statutory standard or threshold.

On their part, the protagonists of evidential burden shift are of the view that there is the need for justice through thorough or proper investigation the time and cost implications notwithstanding. The protagonists have raised the concern as to whether the elimination of shifts in evidential burden does not sidelines judicial scrutiny too far by its potential reduction of opportunities to detect coercion which would enable the courts to fulfill its mandate of justice delivery in matrimonial proceedings.²

Although the only ground for dissolution of marriage in Nigeria is irretrievable breakdown³ of marriage with its attendant contestation and shifts in evidential burden, the debates surrounding evidential shift have engendered reforms in evidential requirements and proof of irretrievable breakdown of marriage for securing the grant of the decree of dissolution of marriage in some jurisdictions. While in the United Kingdom, legal reforms culminating into the enactment of the DDS Act⁴ have tended to move from the “fault-based” ground which increases evidential oscillation in the proof of irretrievable breakdown of marriage to the “no fault” system, Australia and Canada have adopted the “no-fault system” with Canada tying its own “no-fault system” to separation which limits evidential burden shift. However, South African just like Nigeria adopts irretrievable breakdown as the sole ground for dissolution of marriage but unlike Nigeria and the UK where the courts could not find

¹ *Supra*.

² L Trinder and S Mandy, *No Contest: Defended Divorce in England and Wales* (Nuffield Foundation 2018), retrieved from <<https://www.nuffieldfoundation.org>> on 13th December, 2025 @ 12:25 pm.

³ MCA, section 15(1).

⁴ Divorce, Dissolution and Separation Act, 2020 of the UK.

irretrievable breakdown unless a statutory fact was made out however clear the emotional reality of marital collapse was,⁵ South African courts have significant discretion to evaluate evidence holistically.⁶

Notwithstanding the fact that despite recent reforms in the law of divorce in some jurisdictions, evidential burden shifts have not been completely eliminated, it is important for there to be legal reforms in Nigeria that will whittle down the stringency of the requirements of the proof of irretrievable breakdown in matrimonial proceedings to reduce the cost and time of litigation as well as minimise the evidential hurdles that are imposed on parties whose marriages may be as good as “dead” but owing to legal requirements rooted in evidential burden shifts are allowed to remain amidst marital conflicts in the family systems.

2. Conceptual Analysis

2.1 Annulment: This is also known as nullity which refers to a legal declaration that a marriage was never valid at any time and thus treating it as if it never existed. It is granted where there is a fundamental defect such as fraud, bigamy or where one of the parties was having a subsisting marriage with another person before or at the time of marriage. While annulment makes the marriage void *ab initio* making it to have a retrospective effect,⁷ a divorce take effect from the date the decree of dissolution was granted.

2.2 Judicial Separation: This is also known as legal separation and it refers to a court order which allows a married couple to live apart while remaining technically and legally married.⁸ Unlike divorce which marks the end of marriage and allows the parties to remarry, judicial separation keeps the marital status intact but for non-cohabitation. It may be temporal being for a period or perpetual for an indefinite term and under it, issues like child custody, support property division are resolved. It is a path for those with religious objections to divorce or those who want to keep inheritance rights, but the order or decree is dischargeable if the couple reconcile.

2.3 Void Marriage: This is a marriage that is legally invalid from the start which could be because of fundamental flaws like the contravention of the prohibited degree of

⁵ *Owens v Owens (supra)*.

⁶ *S v S* (2015) ZACC 62 (S. Afr.).

⁷ BA Garner, *Black's Law Dictionary* (8th edition Thomson West 2004) p. 100.

⁸ *Ibid.* See p. 515.

consanguinity and affinity or when one of the parties was having a subsisting lawful marriage. A void marriage requires no formal court action to end it and the law regards it that it has never existed thus making it to have a retrospective effect.⁹

2.4 Voidable Marriage: This is a marriage that is regarded as valid until a competent court declares it otherwise upon the petition of one of the parties seeking an annulment due to issues like fraud, duress or mental incapacity at the time of consent. In other words, a voidable marriage is cancellable at the instance of one of the parties and it is effective from the date on which the decree becomes absolute.¹⁰

3. Meaning of Marriage

Marriage is a concept that has no short, straight forward and generally accepted definition. This is because the concept can assume different definitions depending on the sex or sexes and the number of persons involved in the marriage relationship. The lack of universal definition is not only because of differences between statutory and customary systems of marriage but also because of the existence of different types or species of marriage. However, until a few decades ago, marriage was generally believed to be a union between a man and a woman¹¹ or some women.¹² In Nigeria, it is worthy of mention that statutory marriage is synonymous with monogamous marriage while customary marriage which is essentially polygamous or plural marriage involves one person being married to multiple spouses at the same time and includes, widow inheritance or levirate marriage and sororate marriage.¹³ Thus, the meaning of marriage may be more explicit if some types or species of marriages such as monogamous, polygamous, polyandry and same sex marriages are briefly discussed.

It is however important to observe before a discussion of the types of marriages that the Nigerian courts and statutes recognise the core idea of plural marital forms involving statutory marriage and traditional or customary cum Islamic marriage each being governed by distinct rules and remedies. On the one hand, while statutory marriage is governed by the Marriage Act, customary marriage is governed by the native law and custom of the community where it was contracted provided that such native law and custom are not

⁹ EI Nwogugu, *op.cit.* @ p. 147.

¹⁰ *Ibid.*

¹¹ Monogamous marriage.

¹² Polygamous marriage.

¹³ R Aderibigbe, *Family Law in Nigeria* (Godas Publishing Consult 2004) pp. 1, 21-22.

repugnant to natural justice, equity and good conscience.¹⁴ On the other hand, the Nigerian judicial practice has shown that the legal identity of “marriage” depends on the source of law invoked.

Consequently, for statutory marriage, the courts apply the formal legal tests and registration where applicable but for customary marriages, the court looks at the customary rites and proof that is admissible under the Evidence Act and relevant case law.

In *Amobi v Nzegwu*,¹⁵ the Supreme Court examined competing claims arising from different marital regimes and emphasised that the nature of the union (statutory or customary) determines applicable remedies and the rights of spouses. Thus, “marriage” in Nigeria is not a single unitary institution but a family of legally cognisable unions whose content and consequences vary with the legal regime under which they were formed. The plurality of marriage forms explains why Nigerian jurisprudence carefully distinguishes validity, capacity and the choice of applicable law when adjudicating matrimonial disputes.

4. Types of Marriage

4.1 Levirate Marriage: This is the marriage practice whereby upon the death of the man, the widow is inherited or traditionally transferred to be the wife of the brother or another close male relative of the deceased. While in some communities, the widow is inherited by a male son of the deceased from another woman, in some other communities, the widow is allowed to choose which of the deceased brothers or close relative she would accept to marry.¹⁶

4.2 Monogamous Marriage: This is the English type of marriage and in Nigeria, it is either known as statutory marriage or marriage under the Act. It was defined by Lord Penzance in *Hyde v Hyde*,¹⁷ as, “... the voluntary union for life of one man and one woman to the exclusion of all others.” Similarly, monogamous marriage was statutorily,¹⁸ defined as, “a marriage which is recognised by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage.”¹⁹ Thus, the characteristics of monogamous marriage are: a

¹⁴ *Meribe v Egwu* (1976) LLJR-SC.

¹⁵ SC. 135/2005 (unreported).

¹⁶ EI Nwogugu, *Family Law in Nigeria* (Heinemann Educational Books, Plc 2001) p. 65.

¹⁷ (1886) LR 1 P & D 130 @ 133.

¹⁸ Interpretation Act, Cap. 123, LFN 2004.

¹⁹ *Ibid.* See section 18.

relationship between two persons of opposite sex; voluntariness of the relationship; contemplation of a life time relationship or the life time of the party who predeceases the other party;²⁰ the exclusion of all other persons; and a relationship that is recognised as between the two parties by the law of the place where it was contracted.

4.3 Polygamous Marriage: This is a voluntary marital relationship for life comprising of one man and two or more wives. According to RM Aderibigbe, “it is a voluntary union of one man and one woman to the inclusion of some others.”²¹ In Nigeria, polygamy is a feature of the customary law. Thus, the incidents of customary marriages like, quantum of bride price, celebration, rights and duties and dissolution of customary law spouses are governed by customary law which is largely unwritten and variable from one locality to another.²² Besides, customary law includes Islamic customary law which is largely based on the provisions of the Holy Qur’an and the teachings of Prophet Muhammad known as sunnah or hadith. While polygamous marriage under other customary laws is unlimited as to the number of wives that can be married by one man, the number of wives that can be married by one man under Islamic customary law is regulated hence it is referred to as “restricted” polygamous marriage, the maximum number being four.²³

4.4 Polyandry Marriage: This is one of the deviations from the tradition meaning of marriage which involves a man and a woman; or a man and two or more wives. Polyandry is a marriage where one woman marries two or more men at the same time, the husbands being referred to as “co-husbands”. It is a form of matriarchal polygamous marriage in which a woman takes two or more husbands at the same time; or a situation involving a woman who is having a subsisting marriage with a man taking additional man or men as her husbands, at the same time. In Nigeria, there is evidence that polyandry is unlawful.²⁴

4.5 Same Sex Marriage: Same sex marriage is a deviation from natural order. It is a union of persons of the same sex for instance “woman to woman” which may happen where a wealthy barren woman marries a girl for the purpose of bearing children for her; or a marriage of two women who depend on lesbianism for the consummation of the marriage. Same sex marriage could also be between two males (men) who practice gay. Netherlands,

²⁰ *Ibid.*

²¹ *Op.cit* @ p. 2.

²² EI Nwogugu, *Family Law in Nigeria* (Heinemann Educational Books Plc 2001) pp. Lxxxii-Lxxxiii.

²³ Qur’an 4:3; ID Abdur-Rahman, *Shari’ah: The Islamic Law* (Ta Ha Publishers 1997) pp. 144-148.

²⁴ EI Nwogugu, *op.cit* @ p. Lxxxiv.

the United States and South Africa are among the countries that have legalised same-sex marriage. However, same-sex marriage is prohibited²⁵ in Nigeria as at today in 2025.

4.6 Sororate Marriage: This is a marriage system whereby upon the death of a wife, the sister of the deceased who has not passed childbearing may be presented by her family to the widower as a substitute without the necessity of fresh marriage procedures. This type of marriage was regarded as a continuum of the first marriage, but it is already obsolete.²⁶

5. Legal Framework Guiding Marriages in Nigeria

Marriage being the first social institution in the world and the root of the family unit is well recognised in every society thus necessitating its regulation. This underscores the involvement of the National Assembly and the House of Assembly of all the States in Nigeria in legislating on various aspects of marriage and family. The Nigerian Constitution²⁷ listed statutory marriage as one of the items upon which the National Assembly can legislate.²⁸ This accounts for why the Marriage Act, Matrimonial Causes Act, Matrimonial Causes Rules and the Same Sex Marriage Act are enactments of the National Assembly. By the implications of this constitutional provision, the State House of Assembly of each of the States of the Federation of Nigeria and the legislative arm of all the Local Governments of Nigeria are to legislate on Customary and Islamic law marriages since they are based on the local customs and religions of the various communities in States and Local Government Councils of Nigeria.

Customary marriage in Nigeria is a union contracted according to the native law and custom of the parties' community. It is a product of cultural practices and may involve bride wealth, family ceremonies and local rites. Legally, a customary marriage's validity is assessed by reference to the custom which the parties must prove in evidence and by the general limitation that the custom must not be repugnant to natural justice, equity or good conscience. The Evidence Act²⁹ and a line of cases require the proof of the specific rites or consistent conduct constituting the marriage for it to be regarded as a valid marriage.³⁰ It is germane to remark that some customary marriages admit polygyny and other marital

²⁵ Same Sex Marriage (Prohibition) Act, 2013.

²⁶ RM Aderibigbe, *op.cit* @ pp. 1, 21-22.

²⁷ CFRN 1999 (as amended).

²⁸ *Ibid.* See item 61 of the Exclusive Legislative List in the Second Schedule.

²⁹ The Evidence Act, 2011.

³⁰ *Meribe v Egwu* (1976) LLJR-SC.

arrangements which are unacceptable under statutory marriage rules due to their inherent diversity. Consequently, rights, property regimes and grounds for dissolution of marriage often differ between customary and statutory systems of marriage.

By contrast, a marriage under the Act or statutory marriage is governed by the Marriage Act, Matrimonial Causes Act and the procedures which are contained in the Matrimonial Causes Rules. Marriage under the Act is a formal monogamous marital contract that must satisfy prescribed procedural and substantive requirements. Statutory marriages are ordinarily registered and subject to the statutory grounds for nullity and dissolution set out in the Matrimonial Causes Act.³¹ The Act provides a uniform legal framework for petitions, jurisdiction and ancillary relief including maintenance, custody, and property orders which makes statutory marriages more readily amenable to judicial regulation.

The practical differences between customary and statutory marriages are important because where a dispute involves a statutory marriage, the High Court exercises jurisdiction under the Matrimonial Causes Act and applies the Act's procedural rules whereas when the marriage is customary, courts look to customary proofs and may apply local customary law to issues of succession, property and responsibilities subject to repugnancy rules. Again, some consequences differ, for instance, plural marriages under custom may complicate entitlement to maintenance or property shares, whereas statutory marriage law presumes monogamy and distributes remedies under a single codified scheme. The net effect is that the legal character of the union decisively shapes both the availability of remedies and the substantive entitlements of the spouses.

6. Scope of Matrimonial Causes Act (MCA)

In Nigeria, the Matrimonial Causes Act is the principal federal statute on matrimonial causes. It is broadly framed to govern divorce, nullity, judicial separation, restitution of conjugal rights, custody and other ancillary reliefs. The Act commences by restricting matrimonial causes to proceedings instituted under its provisions and confers jurisdiction on the High Court of each State to hear cases instituted under it.³² Part II elaborates on matrimonial reliefs such as reconciliation, grounds for dissolution and judicial separation, with detailed rules on the proofs required and the procedural safeguards to encourage

³¹ MCA. See sections 15 and 34 – 38.

³² *Ibid.* See sections 1 & 2.

reconciliation before granting a decree.³³ The Act therefore serves as both a code of substantive grounds³⁴ and a procedural framework for matrimonial litigation.

Beyond dissolution, the MCA governs the consequences of decrees: remarriage, maintenance, custody and welfare orders for children, enforcement mechanisms, and the registration and enforcement of foreign decrees.³⁵ The Act also contains provisions on void and voidable marriages, prohibited degrees of consanguinity and the law applicable to auxiliary matters.³⁶ Crucially, the Act vests the High Court with jurisdiction, ensuring that matrimonial causes are subject to uniform federal regulation while allowing certain summary jurisdiction courts to enforce maintenance orders.³⁷ The Act's Rules (Matrimonial Causes Rules) elaborate pleading formats, forms of petition, and evidentiary presumptions in dissolution and nullity proceedings.

It is noteworthy to remark that the MCA has a twin purpose namely: the provision of accessible judicial remedies while encouraging reconciliation; and protection of children's welfare. The Act's expansive scope from jurisdictional coverage to enforcement and ancillary relief makes it the central legal instrument for statutory marriages in Nigeria; even where customary or foreign elements arise, the MCA supplies default rules for procedure, jurisdiction and the allocation of matrimonial rights.

7. Validity of Marriage

Validity of a marriage depends on complying with legal and cultural requirements including proper consent, age, capacity of the parties and adherence to formal ceremony rules like licensing and witnesses. Consequently, validity in Nigerian matrimonial law is determined by the regime (whether it is customary or statutory) under which the union was contracted and by statutory prohibitions. The MCA addresses the issues of void³⁸ and voidable³⁹ marriages. While a void marriage is an invalid marriage from the start or a marriage that is regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by the parties without the necessity of any decree annulling it, a voidable marriage is a marriage that is valid until a competent court declares it invalid or a marriage that will be regarded by every court as a

³³ *Ibid.* See sections 11–17.

³⁴ *Ibid.* See section 15.

³⁵ *Ibid.* See sections 33, 71, 91–95.

³⁶ *Ibid.* See sections 3–8.

³⁷ *Ibid.* See section 2(1).

³⁸ *Ibid.* See section 3.

³⁹ *Ibid.* See section 5.

valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction.⁴⁰

Thus, while any person can assert the invalidity of a void marriage like when it offends the prohibited degree of consanguinity and affinity or where any of the parties is lawfully married to some other person, it is only one of the spouses to a voidable marriage that can assert the invalidity of a voidable marriage because until he or she brings a proceeding for the dissolution of the marriage and it is annulled, the marriage is valid.⁴¹

The Supreme Court has applied these statutory principles to concrete disputes. In *Amobi v Nzegwu*,⁴² the Court considered whether a foreign-formal marriage and a subsequent customary marriage could co-exist for intestacy and property rights. In the Court's reasoning, validity depends on both the formalities to be observed and the applicable law at the time of contracting the marriage. Thus, the Nigerian courts have repeatedly emphasised that a void marriage is a marriage that produces no legal consequences⁴³ and that where the statutory conditions for nullity exist, a court may grant a decree to that effect.

With respect to customary marriages, validity derives from whether the union conformed to the native law and custom of the spouses' community and whether those customs are not repugnant to the principles of natural justice, equity and good conscience. To this effect, the Supreme Court in *Meribe v Egwu*⁴⁴ recognised that proof of a customary marriage depends upon demonstration of customary rites and the parties' intention to be married under that custom.

It is thus, noteworthy to summarise by stressing that a valid marriage requires capacity, consent and conformity with the formalities prescribed by the relevant legal regime.⁴⁵ These statutory benchmarks, together with judicial elaboration, supply the controlling tests that courts apply when determining validity of marriage in Nigeria.

8. Dissolution of Marriages

Dissolution means the cancellation or abrogation of a contract with the effect of annulling the contract's binding force and restoring the parties to their original positions.⁴⁶ When

⁴⁰ *De Reneville v De Reneville* (1948) 1 All E.R. 56.

⁴¹ EI Nwogugu, *op.cit* @ p. 123.

⁴² SC. 135/2005 (unreported).

⁴³ *Oghoyone v Oghoyone* (2010) 3 NWLR (Pt.) 1182.

⁴⁴ (1976) LLJR-SC.

⁴⁵ MCA. See sections 3–6.

⁴⁶ BA Garner, *op.cit* @ p. 506.

used in connection with marriage, it means the legal process of formally terminating a marriage and the cancellation of the legal duties of matrimony thereby allowing the spouses to move ahead as single persons. Although, dissolution of marriage is often used interchangeably with divorce, in specific terms, while dissolution refers to uncontested cases where spouses have reached a full separation agreement before filing a petition which could lead to a quick approval by the court, divorce refers to contested cases where the parties failed to agree on terms.⁴⁷ Whichever way, the concepts of court ordered dissolution or divorce are significant in resolving the marital issues of child custody, division of assets or property, child visitation, alimony or spousal support and child support.

It is germane to state that by statute,⁴⁸ the leave of court is required before there can be the institution of dissolution of marriage proceedings within two years⁴⁹ after the date of the marriage. This two year rule is premised on the need to prevent people from rushing into ill-advised marriages and also to deter any of the couple from rushing out when he or she discovers that the marriage was not what he or she expected.⁵⁰ The law specifies the circumstances under which the court may grant leave to institute dissolution of marriage proceedings within two years of the marriage to be either the case involving exceptional depravity on the part of the other party to the marriage or that would impose exceptional hardship on the applicant if the leave is not granted.⁵¹

However, it must be emphasised that what amounts to exceptional depravity and hardship is for the determination of the trial court,⁵² and in the determination of the application for leave to institute dissolution proceedings within two years of marriage, the court shall have regard to the interests of the children of the marriage and to the question whether there is any reasonable probability of reconciliation before the expiration of the period of two years.⁵³

The two year rule notwithstanding, a party to a marriage may commence or institute a dissolution proceeding within two years of marriage without the leave of the court if the petitioner based the proceedings on the respondent's willful and persistent refusal to consummate the marriage or that the respondent has committed adultery and the petitioner

⁴⁷ Shur Law. Retrieved from <<https://shurlaw.com>> accessed on 20th December, 2025 @ 8:45 am.

⁴⁸ Matrimonial Causes Act, 1970.

⁴⁹ *Ibid.* See section 30(1) (2).

⁵⁰ *Fisher v Fisher* (1948) pp. 263 & 264 (CA); and RM Aderibigbe, *op. cit.* @ p. 46.

⁵¹ MCA. See section 30(3).

⁵² EI Nwogugu, *op.cit* @ pp. 151 & 152.

⁵³ MCA. See section 30(4).

finds it intolerable to live with the respondent since the marriage.⁵⁴ Again, the institution of dissolution proceedings within two years of marriage would not be prevented if the respondent has committed rape, sodomy or bestiality.⁵⁵

9. Grounds for Dissolution of Marriage: Irretrievable Breakdown

Before the enactment of the Matrimonial Causes Act, 1970 in Nigeria, court dissolution of marriage was fault-based being conditional on the court's satisfaction of the respondent having committed a matrimonial offence such as adultery, cruelty and desertion in line with England's then stigmatising matrimonial offences theory that was in vogue.⁵⁶

In England, the situation was turned around through the enactment of the Divorce Reform Act, 1969 that marked a conceptual shift from the matrimonial offence theory to irretrievable breakdown of marriage as a single and dominant ground for dissolution of marriage. By that reform of the divorce law, the role of the court was diagnostic since the reform left unresolved practical questions about what evidence that would suffice in establishing irretrievable breakdown. Consequently, the statute adopted a "facts" approach through the establishment of one of a closed set of facts which is just like preserving the fault-based elements under the matrimonial offences' theory. In other words, the practical result is hybrid through a formal and sole ground of irretrievable breakdown but by a substantive menu that still required the petitioner to prove sometimes highly personal conduct such as unreasonable behaviour or to rely on long separations.⁵⁷

In Nigeria, the concept of irretrievable breakdown of marriage was adopted and taken as the only ground for the dissolution of marriage under the Act.⁵⁸ This was remarked by RM Aderibigbe, when he said, "it follows therefore that a petition for divorce which fails to ask for dissolution of the marriage on the ground that it has broken down irretrievably will not succeed."⁵⁹ It is germane to state that for the court to arrive at the conclusion that irretrievable breakdown of marriage has occurred, any of the following facts must be established: the respondent has willfully and persistently refused to consummate the

⁵⁴ *Ibid.* See section 15(2) (a) (b).

⁵⁵ *Ibid.* See section 16(1) (a).

⁵⁶ P Rebecca, "The History of 20th-Century Family Law" *The Cambridge Law Journal*, vol. 64, no. 3, 2005, pp. 543–567; and EI Nwogugu, *op.cit* @ pp. 155.

⁵⁷ L Trinder and S Mandy, *No Contest: Defended Divorce in England and Wales* (Nuffield Foundation 2018), retrieved from <<https://www.nuffieldfoundation.org>> on 12th December, 2025.

⁵⁸ Matrimonial Causes Act, 1970. See section 15(1); *Ekrebe v Ekrebe* (1999) 3 NWLR 514 and *Labode v Labode* (1972) NMLR 197.

⁵⁹ RM Aderibigbe, *op.cit* @ pp. 48.

marriage;⁶⁰ the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;⁶¹ respondent's grave and unbearable conduct;⁶² desertion by the respondent for a continuous period of at least one year;⁶³ continuous separation for a period of two years and respondent's consent to dissolution;⁶⁴ separation for a continuous period of three years;⁶⁵ non-compliance with a decree of restitution of conjugal rights;⁶⁶ and absence from the petitioner for such time and circumstances as to provide reasonable grounds for presuming that the respondent is dead.⁶⁷

10. Burden of Proof in Matrimonial Proceedings: Persuasive and Evidential Burden

Understanding how evidential burdens oscillate in matrimonial proceedings requires a careful conceptual distinction between the persuasive or legal burden and the evidential or *prima facie* burden of proof. The persuasive burden is the obligation to satisfy the court on the required standard of proof in civil and family cases which is the balance of probabilities. That burden ordinarily rests on the party asserting the fact (*actor incumbit onus probandi*) and typically does not shift. By contrast, an evidential burden is the obligation to raise sufficient evidence on an issue to make it legitimately for the tribunal to consider that issue. If the party with the evidential burden discharges it, the tribunal must consider the matter, but the persuasive burden remains where statute and law place it.⁶⁸

In family law the evidential burden often operates dynamically. For example, when a petitioner alleges respondent's behaviour constituting unreasonable behaviour, the petitioner must first adduce sufficient evidence to make the allegation credible but once a *prima facie* case is made, the evidential burden may then require the respondent either to rebut or explain the conduct on the one hand or accept that the tribunal may infer breakdown on the other hand. Practically, that means that the evidential burden can "oscillate". In other words, a strong evidential show by the petitioner compels the respondent to present contrary evidence or risk the court finding the fact proved on the

⁶⁰ MCA. See section 15(2) (a).

⁶¹ *Ibid.* See paragraph (b).

⁶² *Ibid.* Paragraph (c).

⁶³ *Ibid.* Paragraph (d).

⁶⁴ *Ibid.* Paragraph (e).

⁶⁵ *Ibid.* Paragraph (f).

⁶⁶ *Ibid.* Paragraph (g).

⁶⁷ *Ibid.* Paragraph (h).

⁶⁸ R Cross and JW Tapper, *Cross & Tapper on Evidence* (12th edition Oxford University Press 2018).

balance of probabilities. Similarly, where a petitioner relies on separation as a fact and discharges it legally, the evidential burden may shift to the other party or respondent to show that separation was not as claimed.⁶⁹ There are two features that make these dynamics distinctive in matrimonial contexts as follows.

First, many relevant facts like emotional distance and intolerability of cohabitation are subjective facts that often lack contemporaneous documentation thus necessitating courts' heavy reliance on the statements of witness, credibility findings and surrounding circumstances which increase the importance of evidential thresholds.

Second, family proceedings are policy-sensitive, and the courts must weigh the potential harm to vulnerable parties and children and reconcile findings with protective civil orders like domestic abuse injunctions that may rest on different standards or proofs.

11. Oscillation of the Burden of Proof

The oscillation of the evidential burden in matrimonial proceedings is a consequence of the interaction of statutory requirements and adversarial presentation of evidence. Under the MCA legal framework, while the legal burden rests consistently on the petitioner, the evidential burden requiring a party to produce enough evidence to prove an issue before the court or tribunal could shift repeatedly.

A clear illustration comes from the statutory structure governing separation facts which explicitly required petitioners to establish separation before the evidential burden moves to the respondent. By section 15(2) (e) of the MCA, a court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to the decree being granted. It follows that after the petitioner has adduced prima facie evidence of separation or living apart, the evidential burden shifts to the respondent to demonstrate resumed cohabitation and or lack of consent.⁷⁰ In *Oyenuga v Oyenuga*,⁷¹ the court inferred consent from a letter written by the respondent informing the petitioner that the marriage has broken down and that he would like to file a petition for divorce which is evidence that the respondent does not object to a decree of dissolution being granted.

⁶⁹ D Hunt and R Mostyn, "Probability Reasoning in Judicial Fact-finding" *Judiciary of England and Wales*, (2019), retrieved from <https://www.judiciary.uk/wp-content/uploads/2019/10/hunt_and_mostyn_2019.pdf> on 25th November, 2025 at 12:30 pm.

⁷⁰ *Ibeawuchi v Ibeawuchi* (1973) 3 ECSLR 56.

⁷¹ (1977) 3 CCHCJ 395.

Similarly, in behaviour-based petitions, once the petitioner establishes a credible narrative, the evidential burden shifts to the respondent to rebut, contextualise or explain alleged conduct. This dynamic or shift was apparent in *Owens v Owens*,⁷² where Mr. Owens' detailed rebuttal evidence effectively shifted the burden back to the petitioner who ultimately failed to meet the persuasive burden.

In recent years in the United Kingdom, effort has been made to reduce oscillation by making the petitioner's statement conclusive in England and Wales. This was done through the enactment of the DDS Act⁷³ which introduced "no fault" divorce and the option for couple to make a joint application for divorce or dissolution which officially came into force on April 6, 2022. This divorce law reform notwithstanding, oscillation persists in related proceedings particularly in domestic-abused fact-finding and financial remedies where the courts must assess competing requests and allegations which require evidential burdens to shift as the narrative unfolds.

Scholarly and practical debates are therefore focusing less on abolishing burden distinctions but on ensuring that rules and case management are followed to prevent unfair shifts that may be disadvantageous to vulnerable parties or produce perverse tactical incentives.⁷⁴

12. Evidentiary Challenges in Proving Irretrievable Breakdown

Evidentiary challenges in demonstrating irretrievable breakdown arise from the inherently private, emotional, and undocumented character of activities in marital relationships. In Nigeria, the points to prove irretrievable breakdown of marriage under the MCA include:⁷⁵ willful and persistent refusal to consummate the marriage, adultery which is intolerable to the other partner, unbearable behaviour, desertion and separation. Establishing any of these points has its own difficulties but we shall briefly consider irretrievable breakdown of marriage through desertion⁷⁶ and separation⁷⁷ which involve both spouses living apart and which are forms of non-judicial separation. While living apart may be seen and construed as physically departing from living together in one household, it goes beyond that to

⁷² (2018) UKSC 41.

⁷³ Divorce, Dissolution and Separation Act, 2020.

⁷⁴ RM Cross, and JW Tapper, *Cross & Tapper on Evidence* (12th edition Oxford University Press 2018); Divorce, Dissolution and Separation Act, 2020, UK Public General Acts legislation.gov.uk, 2020 PDF accessed on December 12, 2025 @ 23:00 pm.

⁷⁵ MCA. See section 15(2).

⁷⁶ *Ibid.* See section 15(2) (d).

⁷⁷ *Ibid.* See section 15(2) (e) (f).

include situations where there is severance of marital obligations even when the spouses are under the same “roof”.⁷⁸ It follows that a partner can validly be said to have deserted or separated from the other partner if marital obligations are withdrawn by that particular partner without the consent of the second partner.

In other words, desertion which means the separation of one spouse from the other spouse with the intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse on the one hand; and separation which may simply be seen as living apart without mutual agreement are full of technicalities. Proving desertion or separation involves the establishment of the simultaneous presence and proof of four elements namely, *de facto* separation of the parties which includes the repudiation of marital obligations;⁷⁹ *animus deserendi* which involves the intention to withdraw from cohabitation permanently;⁸⁰ lack of just cause for the withdrawal of cohabitation which refers to conducts which make continuance of matrimonial cohabitation virtually impossible;⁸¹ and the absence of the consent of the deserted spouse who may have withdrawn his consent to the state of affairs having earlier acceded to a mutual separation.⁸²

In the UK, before the enactment of the DDS Act 2020, petitions that were founded on behaviour often relied on subjective narratives that were difficult to corroborate. Respondents could contest or minimise allegations, requiring courts to assess credibility in the absence of objective evidence. One persistent difficulty involved was in defining “living apart,” especially where spouses remained in the same home. Courts had to examine personal arrangements, sleeping, eating, finances, household functions in order to determine separation. The statutory guidance which illustrates complexity stated in part that, “...may be treated as living apart even though they share the same household if they are living together in the same household only by reason of necessity or convenience.”⁸³ It follows that even when the spouses are living together in the same house, it may happen that they are doing so out of necessity or convenience and not necessarily because they are

⁷⁸ EI Nwogugu, *op.cit* @ pp. 178; *Rosanwo v Rosanwo* (1961) WNLR 297.

⁷⁹ *Pulford v Pulford* (1923), p. 18 @ 21.

⁸⁰ *Sowande v Sowande* (1969) 1 All NLR 482.

⁸¹ *Sode v Sode* in Suit No. HD/35/1966 (unreported).

⁸² *Ikpi v Ikpi* (1957) WNLR 59.

⁸³ Section 2(6) of the Matrimonial Causes Act 1973.

married in which case they can be regarded as living apart. This is why petitioners frequently struggled to provide evidence of emotional withdrawal, changed domestic routine and other symbolic acts that mark separation. In *Fuller v Fuller*,⁸⁴ even financial arrangements had to be dissected to determine whether cohabitation had resumed.

A second evidentiary challenge in proving irretrievable breakdown of marriage concerns power imbalances where victims of coercive control or domestic abuses often cannot produce detailed and chronological accounts of behaviour such as trauma, manipulative obscure documentation and fear. As noted by Herring, the narrow evidential expectations risk disadvantaging vulnerable petitioners particularly where abusive partners strategically deny allegations.⁸⁵ These problems are still persistent even after the “no-fault” reform because abuse allegations still arise in child-arrangements and protective-order hearings.

A third evidentiary challenge in establishing irretrievable breakdown of marriage is the limits of credibility assessment because Family Courts rely heavily on the statements of witnesses which are shaped by emotions, selective memory and litigation pressures. The Nuffield Foundation studies found that defended divorces are often turned on “thin and poorly substantiated” evidence that leaves judges engaging in difficult inferential reasoning.⁸⁶ Such difficult task of reasoning magnifies the practical effects of who bears the evidential burden at each stage.

Finally, digital procedure and accelerated case management especially in post 2020 reforms can reduce opportunities to fully explore contested facts. Cases may turn on paper evidence alone thereby amplifying structural evidential disadvantages. Thus, although the statutory task of proving breakdown has been simplified, evidentiary challenges remain deeply embedded in the broader ecology of family litigation.

13. Jurisdiction over Marriage Causes

In Nigeria, the Matrimonial Causes Act expressly vests jurisdiction in the High Court of each State to hear matrimonial causes instituted under the Act.⁸⁷ Nigerian jurisprudence confirms that the High Court is the primary forum for dissolution, nullity and judicial

⁸⁴ [1973] Fam 52.

⁸⁵ J Herring, *Family Law* (9th edition Pearson / Routledge 2019) p.133.

⁸⁶ L Trinder and S Mandy, *No Contest: Defended Divorce in England and Wales* (Nuffield Foundation 2018), retrieved from <<https://www.nuffieldfoundation.org>> on 13th December, 2025 @ 12:25 pm.

⁸⁷ MCA. See section 2(1).

separation, with summary courts retaining limited competence to make maintenance or separation orders when permitted by state law. The Court of Appeal and Supreme Court have frequently adjudicated appeals from High Court decisions on matrimonial causes where they clarify jurisdictional questions and substantive points of family law.⁸⁸

In *Amobi v Nzegwu*,⁸⁹ the Supreme Court reviewed competing claims over estate administration that turned on the status of marital unions and confirmed that High Courts have jurisdiction to determine the existence and legal effect of marriages under the MCA and related laws. Similarly, in *Obusez v Obusez*,⁹⁰ the Court reiterated the primacy of statutory jurisdictional rules on issues about the application of the Marriage Act and the Matrimonial Causes Act.

It is noteworthy to remark that specialised family courts may exercise concurrent or delegated jurisdiction for welfare matters, custody, and child-related applications, but dissolution and nullity remain within the High Court's core jurisdiction unless statutory exceptions apply. The MCA also permits registration and recognition mechanisms across jurisdictions,⁹¹ enabling the enforcement of orders between courts. Also in practice, litigants commence petitions in the High Court while interlocutory and ancillary relief may involve summary courts, but appellate review lies with the Court of Appeal and the Supreme Court. In fact, judicial decisions have consistently treated the High Court as the primary forum for matrimonial causes, with appellate oversight ensuring uniformity in the law's application.

14. Evidential Proofs for Dissolution of Marriage in Some Other Jurisdictions

Comparative jurisprudence on the grounds for dissolution of marriage reveals many jurisdictions adopting irretrievable breakdown as the basis for divorce have structured evidential burdens in significantly different ways. Historically, England and Wales require petitioners to prove one of the five facts under the Matrimonial Causes Act, 1973 thereby creating a system where evidential burden oscillates depending on whether behaviour, adultery, or separation was alleged. As Trinder and Sefton observed, the pre 2020 reform model "placed the weight of breakdown almost entirely on the petitioner's narrative" often

⁸⁸ *Amobi v Nzegwu* SC. 135/2005; *Obusez v Obusez* SC 405/2001.

⁸⁹ SC. 135/2005.

⁹⁰ *Supra*.

⁹¹ MCA. See sections 76 and 91.

inviting defensive counter narratives from respondents.⁹² Following the *Owens v Owens* decision, the DDS Act, 2020 eliminated this evidential structure by making the petitioner's statement conclusive.

In Australia, the Family Law Act, 1975 adopts the "no-fault" system. However, by section 48 of the Act, the only ground for divorce is irretrievable breakdown demonstrated solely by twelve months' separation. Separation is treated as a factual question by Australian courts and in case of *the Marriage of Falk*,⁹³ it was emphasised that the evidential burden rarely shifts beyond proving the fact of separation which can occur "under one roof" provided the marital consortium has ended. The lack of a behaviour-based pathway means evidential oscillation is minimal and disputes typically centre on the interpretation of separation and not on "no-fault".

Similarly, Canada employs a hybrid "no-fault" model under the Divorce Act, 1985 which recognised irretrievable breakdown through separation, adultery, or cruelty. Although adultery and cruelty retain fault-based features, most divorce proceedings on the no-fault separation ground are evidentially treated more flexibly by Canadian courts. In *Knoll v Knoll*,⁹⁴ the Ontario court observed that the evidential burden in cruelty cases may shift depending on the credibility and plausibility of narratives, reflecting a functional rather than rigid approach. Nevertheless, the prevalence of separation-based petitions minimises oscillation.

In South Africa, section 4 of the Divorce Act, 1979 adopts "irretrievable breakdown" as the sole ground with illustrative indicators such as prolonged separation, adultery or habitual criminality. South African Courts have significant discretion to evaluate evidence holistically. In *S v S*,⁹⁵ the Constitutional Court reaffirmed that no single fact is determinative and that courts may draw inferences from marital history, making evidential burdens modest and context driven.

Thus, across many jurisdictions, three patterns of grounds for divorce may be identified: (i) fault-based grounds which increase evidential oscillation; (ii) separation-based regimes which limit burden-shifting; and (iii) systems emphasising judicial discretion which tend to treat evidential burdens as fluid rather than formally allocated.

⁹² *Op. cit.*

⁹³ (1977) 29 FLR 463.

⁹⁴ (1981) 34 O.R. (2d) 256 (Ont. C.A.).

⁹⁵ (2015) ZACC 62 (S. Afr.)

15. Policy Debates on Movement of Evidential Burden in Matrimonial Proceedings

Policy debates concerning the movement of evidential burdens in matrimonial proceedings are centred on fairness, efficiency and the protection of vulnerable spouses. Proponents of a shifting evidential burden argue that matrimonial breakdown is complex and often contested and that courts must allow evidential responsibilities to move dynamically. This approach is consistent with the general principles of civil evidence where once a *prima facie* case is established, the burden shifts to the respondent to provide an alternative explanation.⁹⁶ Thus, in behaviour-based divorce, a flexible evidential framework prevents petitioners from bearing a disproportionate burden and allows judges to contextualise the parties' relationship. Critics on the other hand argued that shifting burdens can reproduce and aggravate inequality in relationships that are marked by coercion or power imbalance contending that an evidential structure that obliges vulnerable spouses the provision of prolong and detailed narratives of mistreatment risks "re-traumatising victims and empowering respondents who strategically deny allegations."⁹⁷ This argument was central in supporting the enactment of the DDS Act, 2020 which lawmakers justified as reducing conflict, promoting procedural justice, and preventing respondents from using evidential contests to delay divorce.

Another policy concern involves truth-seeking versus procedural economy. While supporters of shifting evidential burden argue that detailed evidential inquiries may uncover relevant relational dynamics which are beneficial to courts in the determination of ancillary matters such as child arrangements or domestic-abuse findings, non-supporters are of the view that these adversarial inquiries are time-consuming, costly, and potentially destructive to family relationships. This was supported by the Nuffield Foundation report which assessed defended divorces as "resource-intensive and damaging to family well-being" and often turning on thin evidence.⁹⁸

Furthermore, while the antagonists of shifting burdens emphasise legal certainty which reduces ambiguity and protect procedural rights by limiting the circumstances under which respondents must adduce evidence, the protagonists have questioned whether this approach does not sideline judicial scrutiny too far by potentially reducing opportunities to detect coercion or ensuring the voluntariness of proceedings.

⁹⁶ R Cross and JW Tapper, *op. cit.* pp.135-140.

⁹⁷ J Herring, *op. cit.* pp.133-137.

⁹⁸ L Trinder and S Mandy (*op. cit.*).

In the final analysis, policy tension lies between respecting party's decision and allowing spouses to exit marriages with minimal evidential hurdles on the one hand and ensuring that the justice system appropriately assesses facts to protect children, vulnerable partners and the integrity of the legal system on the other hand.

16. Conclusion

The oscillation of the evidential burden of proof in divorce proceedings reflects broader tensions within family law exemplified through the distinction between fault and no-fault models; subjective and objective understanding of marital irretrievable breakdown; and the conciliatory versus adversarial judicial processes. While evidential burden in behaviour-based petitions is shifting fluidly in jurisdictions like England and Wales thereby allowing courts to examine narratives, credibility and context, some other jurisdictions operate models that rely on separation or simplified statements of irretrievable breakdown, which minimise oscillation and reduce adversarial pressure on litigants. The move toward no-fault divorce is therefore conscious effort to eliminate the evidential contests surrounding irretrievable breakdown and thereby promote access to justice, reduce conflicts and prevent strategic obstruction by respondents.

Notwithstanding the apparent movement towards a no-fault divorce system, evidential challenges are still prevalent in some areas of family litigation, especially in child arrangements, domestic abuse and financial remedy disputes where courts inevitably engage with contested narratives. Therefore, while oscillation has largely been removed from the divorce process itself, it remains relevant to the broader ecosystem of the family justice system. Any law reform must therefore balance minimalism in dissolution with procedural safeguards in ancillary matters. Ultimately, evidential burdens should be structured to ensure fairness, protection of vulnerable parties and avoiding unnecessary adversarial conflicts while maintaining the court's ability to ascertain truth.

17. Recommendations

The following recommendations are hereby offered in the light of the above complexities:

1. Legislatures should maintain simplified, non-fault-based dissolution procedures that prevent unnecessary evidential contestation.

2. Courts should adopt clearer guidelines for evaluating credibility in related proceedings to prevent the re-emergence of unfair evidential burdens.
3. Statutes should include explicit protections for vulnerable spouses, including safeguards when statements of breakdown intersect with coercive control.
4. Judicial training in trauma-informed evidential assessment should be strengthened across family courts.
5. Policymakers should ensure that procedural reforms do not eliminate opportunities for courts to scrutinise evidence where children's welfare or safety is at stake.

STRENGTHENING REGIONAL AND SUB-REGIONAL TIES-TOWARDS THE DEVELOPMENT OF UNIVERSAL JURISDICTION APPROACH TO TERRORISM

Temitope Benson Olabimtan *

Abstract

The philosophical underpinnings of universal criminal jurisdiction (UCJ) in the prosecution of crimes are justice and dignity for the victims of international crimes and crimes sharing similar characteristics; as criminal accountability remains a necessary tool for upholding the rule of law, eliminating criminal impunity and defending the core values and interests of the international community. Undoubtedly, UCJ theory serves as a medium for international criminal law to remove the veil of impunity from perpetrators of international crimes. The full implementation of the principle of universal jurisdiction on terrorism remains difficult, especially in view of the non-acceptance of the crime as an international crime notwithstanding the fact that the crime has continued to ravage global peace. Consequently, the involvement of regional and sub-regional intergovernmental institutions becomes crucial in the mission to develop a universal agreement. Thus, this paper examines and provides recommendations as solutions to the full entrenchment of the principle of UCJ as a tool in universal counter terrorism efforts. The paper adopts doctrinal research method by relying on primary data such as statutes, laws and cases, and secondary materials including academic texts and articles. The paper recommends harmonised anti-terrorism laws, strengthened international cooperation, enhanced judicial capacity, and flexible legal frameworks incorporating universal jurisdiction.

Keywords: International Crime, International Criminal Law, Terrorism, Universal Jurisdiction

1.0. Introduction

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Terrorism is one of the most challenging threats of the twenty-first century.¹ However, despite the multifaceted consequential impact of terrorism on states and individuals and the outrage that has been expressed globally, the world at large does not seem to be winning the fight against the menace.

Global counter-terrorism efforts have been hampered by the absence of a universally accepted definition of the term. This ambiguity prevents terrorism from being classified as an international crime subject to universal jurisdiction.² The principle of universal jurisdiction allows a state to prosecute certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim.³ It derogates from the ordinary rules of criminal jurisdiction requiring a territorial or personal link with the crime, the perpetrator or the victim.⁴ But the rationale behind it is broader; it is based on the notion that certain crimes are so harmful to international interests that states are entitled and even obliged to bring proceedings against the perpetrator regardless of the *locus criminis* and the nationality of the offender or the victim.⁵ The concept of a crime against all humankind provides the foundation for modern universal jurisdiction: if a crime transcends the interest of a single state, this supports vesting jurisdiction over the crime on all states.⁶

The adoption of universal jurisdiction by states is considered to be a procurement that they have given themselves to the international community to end violations of international humanitarian law. Therefore, the most important justifications for adopting universal jurisdiction are human solidarity, common interests between countries, and the social danger of the offender in the territory of the host state.⁷

¹ Hare A., "A New Forum for the Prosecution of Terrorists: Exploring the Possibility of the Addition of Terrorism to the Rome Statute's Jurisdiction" (2010) 8 *Loyola University Chicago International Law Review* 95, 1, available at <<http://lawcommons.luc.edu/lucilr/vol8/iss1/7>> accessed 6 March 2025.

² M. P. Scharf, "Defining Terrorism as the Peacetime Equivalent of War Crimes," (2004) *Case Western Reserve Journal of International Law*, Vol. 36, Issue 2, p. 359.

³ K.C. Randall, 'Universal jurisdiction under international law', (1988) *Texas Law Review*, No. 66, p. 785; International Law Association Committee on International Human Rights Law and Practice, 'Final Report on the Exercise of universal jurisdiction in respect of gross human rights offences', 2000, p. 2

⁴ X Philippe, 'The principles of Universal Jurisdiction and Complementarity: How do the two principles intermesh?' *International review of Red Cross* (2006) 88 .p 377.

⁵ Amnesty International, *Universal Jurisdiction: The duty of States to enact and implement legislation* (London, September 2001), pg 1. Available at: [f3d4445c118e/ior530022001en.pdf](https://www.amnesty.org/en/documents/AMN/01/01/2001/en/f3d4445c118e/ior530022001en.pdf). See also the Princeton Principles on Universal Jurisdiction (2001), Principle 1(1). Accessed 6 May, 2025.

⁶ A Cassese and M Delmas-Marty, "*Juridictions nationales et crimes internationaux* (Presses Universitaires de France, Paris, 2002) p.285.

⁷ T Soror, *Universal Criminal Jurisdiction (1st Edition*, Dar El Nahda El Arabia, Cairo, Egypt, 2006) p. 114.

International law lacks a centralized legislative, judicial and executive authority structure like that found in States; thus, when a State exercises universal jurisdiction, it is acting as the organ and agent of the international community in defence of the law of nations.⁸

In the face of its global effects, terrorism can now be more correctly characterized as a global issue rather than a domestic issue with global ramifications. Therefore, as part of the entire response of the world community to the crime, there ought to be international, regional or sub-regional legal responses. When national courts exercise universal jurisdiction appropriately in accordance with internationally recognized standards of due process, they act to vindicate not merely their own interests and values but the basic interests and values common to the international community.⁹

Existing literature on terrorism and international criminal law has examined at length debates surrounding the definitional aspects of terrorism, the extent of state obligations in counter-terrorism efforts, and international cooperation in combating transnational violence. Scholars such as Ben Saul, Antonio Cassese, and M. Cherif Bassiouni have focused on the international legal dimensions of terrorism including debates surrounding the criminalisation of terrorism under international law as well as questions of jurisdictional limitations to prosecution. However, relatively little attention has been given in scholarship to examining universal jurisdiction as a potential and coordinated system for the prosecution of terrorism in the context of increasing transnational insecurity, at least from the perspective of Africa and the global south. This paper seeks to fill that gap by critically appraising the juridical and institutional basis for assuming universal jurisdiction in the enforcement of contemporary counter-terrorism.

Consequently, the paper is increasingly of global importance, as terrorism knows no territorial bounds, avails itself of attempts to destroy international security, peace of mankind, and structures that exist when suppression is enacted within territorial confines. By examining the relevance of universal jurisdiction to the work of such anti-terrorism institutes, the article engages in contemporary debates on accountability, international criminal law and transnational security cooperation. The study further helps appreciate how such international and regional institutes may seek to develop more consistent rules on Terrorism, while balancing sovereignty, rights, and global concerns about security.

⁸ Eichmann Case, pg. 300. See also Kobrick, Eric S., "The ex post facto Prohibition and the Exercise of Universal Jurisdiction over International Crimes", (1987) *Col. L. Rev.*, 87, núm. 7. pg. 1530.

⁹ Universal jurisdiction appears as a potent weapon: it would cast all the world's courts as a net to catch alleged perpetrators of serious crimes under international law. It holds the promise of a system of global accountability justice without borders administered by the competent courts of all nations on behalf of humankind.

The big question here is, to what extent can universal jurisdiction serve as an effective international legal framework for the prosecution of terrorism in contemporary international law?

This paper finds that although terrorism has yet to achieve common acceptance as an international crime subject to automatic universal jurisdiction, recent developments tend to favour its classification as a transnational crime of international concern. The panorama of sectoral anti-terrorism conventions, regional security agreements, multilateral forms of cooperation and mutual assistance attest to incipient juridical grounds for wider international accountability. This paper finds that, sensibly institutionalised and harmonised with international legal structures, universal jurisdiction can be effectively applied to enhance international counter-terrorism, as well as remove safe havens.

Furthermore, the paper examine international, regional and sub-regional collaboration against terrorism. The paper examines how nations within established regional groupings can utilize legal frameworks and soft law measures in partnership with other regions to effectively address and manage terrorism. This paper is divided into seven parts. Part 1 introduces the discourse and Part 2 focuses on conceptual clarification and theoretical framework. Part 3 examines the initiatives undertaken by the United Nations (UN). Part 4 examines various regional initiatives, Part 5 considers bilateral relations between some critical states against terrorism and Part 6 focuses on the challenges with the existing counter-terrorism framework and part 7 concludes the discussion and proffers recommendations.

2.0 Conceptual Clarifications and Theoretical Framework

2.1 Conceptual Clarifications

2.1.1 Terrorism

The notion of terrorism appears to be one of the most controversial concepts in international law primarily because there is no universally accepted definition of the term.¹⁰ Although various international conventions prohibit certain forms of terrorist activities, States have been resistant to agree on a general legal definition for a number of political, ideological and self-determination motives. It is, however, conceived as the intentional use or threat of civilian or other violence for political, ideological, religious or coercive purposes designed to intimidate and coerce a Government or international organisation into engaging in or

¹⁰ B. Saul, *Defining Terrorism in International Law* (Oxford University Press, 2006) p. 1.

abstaining from some activity.¹¹ Ben Saul notes that the notion of a definition, or at least a universally accepted definition of terrorism “has not prevented the rise of a sectoral anti-terrorism regime regulating ... categories of terrorist conduct under international law”.¹²

2.1.2 Counter-Terrorism

Counter-terrorism refers to legal, military, intelligence, diplomatic, financial, and administration techniques adopted by states and international organisations to prevent, suppress, investigate, and prosecute terrorist acts. Modern counter-terrorism systems may go beyond military deployments to demands for intelligence sharing, financial surveillance, border control, extradition, mutual legal assistance, and international court cooperation. Counter-terrorism will also seek to comply with international human rights standards and rule of law.¹³

2.1.3 Global Terrorism

Global terrorism refers to terrorist actions whose scope, funding, recruitment, inspiration, or impact extend beyond one country and threaten international peace and security. In contrast to domestic terrorism, global terrorism has cross-border aspects that call for global solutions. The actions and messages of Boko Haram, Al-Shabaab, Al-Qaida, and Da'esh indicate the international nature of terrorism and the growing interconnection of regional insecurity and global security.¹⁴

2.1.4 Regional and Sub-Regional Cooperation

Regional and sub-regional cooperation refers to collaborative institutional and legal arrangements among geographically connected states aimed at addressing common security threats and transnational crimes. In Africa, organisations such as the African Union and the Economic Community of West African States have adopted legal and institutional mechanisms to facilitate intelligence sharing, military coordination, border surveillance, extradition, and joint counter-terrorism operations. Such cooperation has become

¹¹ A. P. Schmid, “The Definition of Terrorism” in A. P. Schmid (ed.), *The Routledge Handbook of Terrorism Research* (Routledge, 2011) pp. 39–98.

¹² *Ibid*

¹³ B. Saul (ed.), *Research Handbook on International Law and Terrorism* (Edward Elgar Publishing, Cheltenham, 2020) 3–12; United Nations Security Council Resolution 1373 (2001), UN Doc S/RES/1373 (2001).

¹⁴ B. Hoffman, *Inside Terrorism*, Revised and Expanded edn (Columbia University Press, New York, 2006) 23–41; M. N. Shaw, *International Law*, 8th edn (Cambridge University Press, Cambridge, 2017) pp. 891

indispensable in combating terrorism within fragile border regions and areas characterised by weak state capacity.

2.1.5 Universal Jurisdiction

Universal jurisdiction refers to the principle under international law whereby states may exercise criminal jurisdiction over certain grave international crimes irrespective of where the crime was committed or the nationality of the perpetrators or victims. Traditionally associated with piracy, slavery, genocide, war crimes, and crimes against humanity, the doctrine is founded on the premise that certain offences constitute crimes against the international community as a whole (*hostis humani generis*). Contemporary scholarly debates increasingly examine whether terrorism should similarly attract universal jurisdiction because of its transnational nature and its threat to international peace and security.¹⁵

2.2 Theoretical Framework

This paper is primarily based on the Universal Criminal Jurisdiction (UCJ) Theory which proposes that certain crimes are so odious and dangerous to the international community that universal law and the global conscience mandate that every state has the right and duty to punish the offender wherever the offence is committed and by whomsoever, whether or not the person is a national of or the offending act is committed in the territory of the state in question. The justification for the imposition of universal jurisdiction rests on the analogy with the treatment historically accorded by states to piracy as an offence against all mankind, justifying the assertion that all states may exercise jurisdiction because it is in the joint interest of mankind. In justifying its rejection of the argument that international crimes should be further prosecuted only on the basis of universal jurisdiction, contemporary international criminal law has borrowed many of the principles of universal jurisdiction to characterize other crimes, such as genocide, war crimes, crimes against humanity, torture, and slavery. Those who subscribe to this school of thought contend that if the territorial states fail or refuse to vigorously prosecute those internationally serious crimes, the communal international society must do justice to deny the alleged individual immunity from punishment.¹⁶

¹⁵ R. Cryer, H. Friman, D. Robinson and E. Wilmshurst, *An Introduction to International Criminal Law and Procedure*, 4th edn (Cambridge University Press, Cambridge, 2019) p. 51.

¹⁶ R. O'Keefe, "Universal Jurisdiction: Clarifying the Basic Concept" (2004) 2 *Journal of International Criminal Justice*. p. 735.

The paper draws Support from Global Constitutionalism Theory, which seems to support a framework of common international law that builds shared accountability beyond absolute state sovereignty. Global Constitutionalism goes where states operate from the place that the international community has often become a kind of common home where shared values, obligations and responsibilities exist through the lens of human rights which represent a new horizon for legal responsibility beyond the purely domestic. Terrorism is not just a domestic criminal justice problem but a global one that requires some kind of legal response in terms of international cooperation and responsibility and stronger accountability under international law.¹⁷

In addition, the paper also incorporates elements of State Responsibility Theory, particularly with concerns regarding states' obligations to prevent terrorism, deny terrorist organisations safe havens, and cooperate in the suppression and prosecution of transnational crimes. Under international law states may incur responsibility where they fail to demonstrate due diligence in preventing terrorism and crimes underpinning it within their territories or knowingly support, sponsor, harbour or tolerate terrorism. This growing internationalisation of these obligations under various multilateral treaties and UN Security Council resolutions is a testament to the recognition that terrorism threatens the international peace and security and therefore engages collective state responsibility.¹⁸

Summarily, the theoretical paradigms furnish the normative and juridical basis for interrogating whether universal jurisdiction can be an apt international regime for containing terrorism in the modern international legal order, and further buttresses the case for terrorism as increasingly, because of its transnational dimension and its threat to international peace and security, being dealt with as a transnational matter of concern rather than a purely domestic crime.

3.0 International Initiatives – United Nations

The United Nations (UN), established in 1945, is an international organization focused on maintaining international peace and security and protecting human rights.¹⁹ The UN has

¹⁷ M. Kumm, "The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and Beyond the State" in J. L. Dunoff and J. P. Trachtman (eds), *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge University Press, Cambridge, 2009) pp. 258–324; A. Peters, "Global Constitutionalism" in M. T. Gibbons (ed.), *The Encyclopedia of Political Thought* (John Wiley & Sons, Oxford, 2015) p.5.

¹⁸ J. Crawford, *Brownlie's Principles of Public International Law*, 8th edn (Oxford University Press, Oxford, 2012) p. 448; United Nations Security Council Resolution 1373 (2001), UN Doc S/RES/1373 (2001).

¹⁹ "United Nations Charter". www.un.org. 17 June 2015. Archived from the original on 18 March 2022. Accessed 29 September, 2024; other objectives include: delivering humanitarian aid, developing friendly relations among nations, achieving international cooperation, serving as a centre for harmonizing the actions of nations, promoting sustainable development, and upholding international law

played the most prominent role in global counter-terrorism, including adopting conventions and protocols,²⁰ creating the UN Global Counter-Terrorism Strategy (the Strategy), establishing the UN Office of Counter-Terrorism (UNOCT) and passing a plethora of Security Council resolutions on counter-terrorism.²¹ It formed the Counter-Terrorism Committee (CTC) and its Executive Directorate (CTED), Preventing Violent Extremism (PVE) Initiatives, Human Rights and Counter-Terrorism Mandate,²² international and regional collaboration,²³ public awareness and advocacy campaigns. These efforts aim to foster international solidarity and implement a unified response to terrorism.

3.1 The UN Global Counter-Terrorism Strategy

The Global Counter-Terrorism Strategy, adopted by the General Assembly in 2006,²⁴ represents a comprehensive framework for enhancing national, regional and international efforts to counter terrorism as Member States agreed to a common strategic and operational approach to fighting terrorism. The Strategy reaffirms that Member States have the primary responsibility regarding implementation of counter-terrorism efforts. The Strategy includes security-related preventative measures and reaffirms respect for human rights and the rule of law, as well as addressing the underlying conditions conducive to the spread of terrorism.

The General Assembly reviews the Strategy every two years which allows Member States to renew international commitment to multilateral efforts to counter terrorism, take stock of the progress in implementing the Strategy and identify further areas requiring attention over the next two years. The latest review took place in June 2023, where the General Assembly adopted Resolution 77/298²⁵ on the eighth review of the Strategy, reinforcing the consensus around the Strategy. The next and ninth review of the Strategy in 2026 will coincide with the twentieth anniversary of its adoption.

²⁰ The UN has developed 19 international legal instruments aimed at preventing and countering terrorism, such as the International Convention for the Suppression of the Financing of Terrorism (1999) and the International Convention for the Suppression of Terrorist Bombings (1997).

²¹ Resolutions such as 1373 (2001) mandate measures to prevent and suppress the financing of terrorism and improve international cooperation, - Resolution 2178 (2014) addresses the issue of foreign terrorist fighters, - Resolution 2396 (2017) strengthens measures to manage returning foreign terrorist fighters.

²² The UN emphasizes the importance of upholding human rights while combating terrorism, through mechanisms like the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism.

²³ The UN collaborates with regional organizations such as the African Union (AU), the European Union (EU), and the Organization of Islamic Cooperation (OIC) to harmonize global counter-terrorism efforts.

²⁴ (A/RES/60/288).

²⁵ See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/464/61/PDF/N2246461.pdf?OpenElement>

3.2.1 Pillars of the United Nations Global Counter-Terrorism Strategy:

The four pillars of the Strategy guides the UN's counter-terrorism work. They are:

Pillar I: Measures to Address the Conditions Conducive to the Spread of Terrorism²⁶

Under this pillar, the UN focuses on tackling extremism, promoting social cohesion, and addressing socioeconomic factors that may create an environment where terrorism can flourish. The Office of Counter-Terrorism of the UN conducts capacity-building projects in strategic communications to foster cohesion and crisis response.

Pillar II: Measures to Prevent and Combat Terrorism²⁷

This pillar involves efforts to block terrorist access to weapons, disrupt their travel, and counter the financing of terrorism. UN efforts include launching of technical guidelines for the implementation of Security Council Resolution 2370 (2017) and related international standards and good practices on preventing terrorists from acquiring weapons; enhancing capacities of Central Asian States in countering trafficking of small arms and light weapons to terrorists; and training officials on preventing and responding to chemical, biological, radiological and nuclear terrorism. The UN also supported the ECOWAS to develop a sub-regional approach and strategy to counter the proliferation of improvised explosive devices and their components, trained criminal justice officials on the effective implementation of the international legal framework against terrorism, strengthened capacities in 59 countries to prevent, detect and investigate international travel by terrorists (by deploying the “goTravel” software solution). The UN has also continued to build capacities to counter terrorism financing, with increased engagement in Central Asia and with the Financial Action Task Force-style regional bodies in the Middle East and North Africa, as well as East Africa and Southern Africa and also launched a data protection framework with the Counter-Terrorism Committee Executive Directorate.²⁸

²⁶ Moussa Bourekba, Necessary But Unwanted?, The United Nations' Evolving Approach To Counterterrorism- UN @ 75: Rethinking Multilateralism, CIDOB Report # 06- 2020, p. 29, available at <https://www.cidob.org/sites/default/files/2024-07/27-34_MOUSSA%20BOUREKBA_ANGLES.pdf> accessed 21 May 2026.

²⁷ *ibid*

²⁸ The United Nations Global Counter-Terrorism Strategy: Resolution adopted by the General Assembly on 8 September 2006 [without reference to a Main Committee (A/60/L.62)] 60/288. Sixtieth session Agenda items 46 and 120 05-50488. Pg. 5. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/504/88/PDF/N0550488.pdf?OpenElement> Accessed 9th October, 2025.

Pillar III: Measures to Build States' Capacity and Strengthen the Role of the United Nations²⁹

The emphasis of the Pillar is on providing training, legal assistance, and institutional support to help states effectively respond to terrorism, while also ensuring better coordination within the UN system. The UN has continued to provide capacity building assistance on prosecution, rehabilitation and reintegration, in cooperation with the Counter-Terrorism Committee Executive Directorate and United Nations Office on Drugs and Crime (UNODC).

Pillar IV: Measures to Ensure Respect for Human Rights and the Rule of Law³⁰

This pillar underlines the need for all counter-terrorism measures to comply with international law, protect victims, and safeguard fundamental freedoms. The UN has continued to raise awareness on this pillar. There is a global project to strengthen the capacities of law enforcement officials in Africa and the Middle East to implement human-rights-compliant responses to terrorism. UNODC, Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Team of Experts on the Rule of Law and Sexual Violence in Conflict promotes respect for human rights and the inclusion of gender dimensions across various Member States.

The UN combats terrorism by a multipronged strategy that includes preventive tactics as well as security measures to solve the intricate problems that terrorism poses while respecting the rule of law and human rights. Initiatives of the UN show dedication to advancing security and peace in the face of challenges from international terrorism.

4.0 African Union Regional Initiatives

The threat of terrorism in Africa has increased dramatically, especially in regions like West Africa, the Sahel and the Gulf of Guinea where terrorist organisations such as Boko Haram, Islamic State affiliates, Al-Shabaab, and al-Qaida are taking advantage of weak government structures and social vulnerabilities, as well as limited state resources. Research on this topic continues to grow, and increasingly points towards non-military reasons for the growth of terrorism- issues like political instability, economic marginalisation, and deficits in governance all play a major role in expanding terrorism in these regions.³¹

Recognising these challenges, the African Union (AU) developed a comprehensive counter-terrorism framework, which includes legislative milestones, such as the 1992 Resolution 213

²⁹ Implementing the United Nations Global Counter-Terrorism Strategy in Central Asia Concept Paper. Available at <https://unrcca.unmissions.org/sites/default/files/concept_note_eng_0.pdf> accessed 21 May 2026

³⁰ *Ibid*

³¹ A. Thurston, *Jihadists of North Africa and the Sahel* (Cambridge University Press, 2020) p. 41; United Nations Development Programme, *Journey to Extremism in Africa* (2023) p. 15.

on extremism, the 1994 Declaration rejecting extremism,³² and the 1999 Convention on the Prevention and Combating of Terrorism.³³ Each milestone reflects an evolving understanding of terrorism as a complex, multifaceted issue requiring regional response. The AU's initiatives highlight key areas of focus: addressing structural drivers of terrorism, building Member States' capacity to resist threats, implementing preventive measures, and ensuring adherence to human rights and the rule of law in counter-terrorism efforts. While there are questions about effectiveness, operational coordination and disparities in resources, African have so far shown sufficient indication of its desire to fight terrorism.

4.1 African Union Counter-Terrorism Framework

The OAU vowed to combat the phenomena of extremism and terrorism when it adopted a resolution³⁴ on strengthening cooperation and coordination among African states at its 28th Ordinary Session in 1992. The OAU further adopted the Declaration on the Code of Conduct for Inter-African Relations³⁵ at its 30th Ordinary Session, which was held in Tunis, Tunisia, in June 1994. The declaration condemned all forms of extremism and terrorism, regardless of the justifications used, such as sectarianism, tribalism, ethnicity, or religion. Additionally, the proclamation declared that all terrorist activities, strategies, and tactics are illegal and reaffirmed its commitment to stepping up collaboration to combat such acts.

The need for counter-terrorism measures from Member States individually and collectively led to the adoption of the Convention on the Prevention and Combating of Terrorism by the 35th Assembly of Heads of State and Government of the Organization of African Unity in Algiers in July 1999 (the Algiers Convention).³⁶ The Algiers Convention establishes state jurisdiction over terrorist activities, outlines areas in which states must cooperate, and offers a legal framework for extradition, extraterritorial investigations, and mutual legal assistance.³⁷ The 3rd Ordinary Session of the Assembly of the Union, held in July 2004, accepted an additional Protocol to the Algiers Convention. The Protocol considers increasing connections between terrorism, drug trafficking, transnational organized crime,

³² M Ewi and K Aning, 'Assessing the Role of the African Union in Preventing and Combating Terrorism in Africa' *African Security Review* (2006)15(3) p. 35.

³³ It was adopted by the 35th Ordinary Session of the OAU Summit, held in Algiers, Algeria, in July 1999.

³⁴ AHG/Res.213 (XXVIII)

³⁵ AHG/Del.2 (XXX)

³⁶ African Union High-Level Inter-Governmental Meeting On The Prevention And Combating Of Terrorism In Africa Algiers, Algeria 11-14 September 2002. Mtg/HLIG/Conv.Terror/Plan.(I) Original: English available at <https://www.peaceau.org/uploads/au-anti-terrorism-plan-of-action.pdf> last accessed 1 February, 2025

³⁷ Organization of African Unity (OAU), *OAU Convention on the Prevention and Combating of Terrorism* (adopted in Algiers on 14 July 1999, entered into force 6 December 2002), Arts. 4, 6, 8–18.

money laundering, and the illegal spread of tiny and light weapons. The Protocol aimed to implement article 3(d) of the Protocol Concerning the Creation of the African Union Peace and Security Council, which states, among other things, that the Council's goal is to “co-ordinate and harmonize continental efforts in the prevention and combating of international terrorism in all its aspects.”³⁸

The AU High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa of September 2002 adopted the AU Plan of Action on the Prevention and Combating of Terrorism to give specific expression to the obligations and commitments of Member States under the Algiers Convention and the other international counter-terrorism instruments. The plan of action adopts counter-terrorism measures that significantly address Africa's security concerns, including information sharing, legislation and judicial actions, border and police control, and funding of terrorism.³⁹

The African Centre for the Study and Research on Terrorism (ACSRT) was founded in 2004 in Algiers as part of the Action 2002 implementation.⁴⁰ Its purpose is to develop counter-terrorism capacity building programmes and act as a structure for centralizing information, studies, and analyses on terrorism and terrorist groups. It also offers a venue for communication and collaboration between Regional Mechanisms and Member States.

The Commission created the African Model Law on Counter Terrorism as part of implementing the pertinent provisions of the 2002 AU Plan of Action on the Prevention and Combating of Terrorism, which tasked the Commission with advising on matters pertaining to counterterrorism action, including the creation of model legislation and guidelines to support Member States. This law was approved by the decision⁴¹ made by the Assembly of the Union during its 17th Ordinary Session in July 2011 in Malabo. The Session applauded the Model Law's development and urged Member States to make the most of it to modernize and/or strengthen their own national laws. The purpose of the Model Law is to help Member States execute the provisions found in the 1999 OAU Convention on the Prevention and Combating of Terrorism and its accompanying Protocol.

4.1.1 Sub-Regional Initiatives – ECOWAS

³⁸ *Ibid*

³⁹ African Union, *Plan of Action of the AU High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa* (Algiers, 11–14 September 2002), paras. 1-3.

⁴⁰ *African Centre for the Study and Research on Terrorism (ACSRT)*, established in Algiers in 2004 pursuant to the AU counter-terrorism framework and the 2002 Plan of Action on the Prevention and Combating of Terrorism in Africa.

⁴¹ Assembly/AU/Dec.369 (XVII)

The Economic Community of West African States (ECOWAS or the Community) has faced recurrent terrorist violence, from early mercenary attacks in the 1970s to contemporary jihadist groups like Boko Haram, Ansar Dine, al-Qaeda in the Islamic Maghreb (AQIM), the Movement for Oneness and Jihad in West Africa (MOJWA), al-Mourabitoun and *Front de Libération du Macina* (FLM).⁴²

In response to these issues, ECOWAS adopts counter terrorism initiatives at the sub-regional level. State and non-state actors within the sub-region, have collaborated with local and international partners to devise and implement various strategies aimed at countering and combating the threat. These efforts encompass a range of mechanisms developed by states and multilateral institutions, within and beyond the sub-region, to address the escalating challenges posed by terrorism. ECOWAS integrated security into its mandate, adopting instruments such as the 1978 Protocol on Non-Aggression, the 1981 Protocol on Mutual Assistance in Defence, and later frameworks addressing terrorism financing and money laundering.⁴³ In 2006, Member States committed to adopting anti-money laundering and counter-terrorism financing laws, and more recently, ECOWAS leaders pledged joint funding for regional counter-terrorism operations. The bloc has also established specialized bodies, including the Counter-Terrorism Coordination Bureau, ECOWAS Arrest Warrant, and the Inter-Governmental Action Group Against Money Laundering (GIABA).⁴⁴

4.1.2 Current Efforts of ECOWAS on Counter Terrorism

At the global scene, ECOWAS has relationships on fight against terrorism and related issues with development partners like UN, EU, AU, World Bank and many countries within and outside of Africa. For example, ECOWAS entered a multi-year (2015-2019) security and development agreement with the US government in 2015. The agreement focused on strengthening democratic institutions, enhancing trade and investment as well as peace and security, including trans-saharan counter terrorism partnership.⁴⁵

In its further efforts at combatting terrorism, ECOWAS has partnered with the UN Counter Terrorism Committee (CTC), a committee created by the Security Council Resolutions 1373 and 1624 to enhance the ability of states to prevent terrorist acts within and outside their

⁴² Akanji O.O., "Sub-regional Security Challenge: ECOWAS and the War on Terrorism in West Africa. Insight on Africa," (SAGE Publications: 2019), Vol. 11, Issue 1, p 94.

⁴³ United Nations Economic Commission for Africa "ECOWAS - Peace, Security, Stability and Governance" <https://archive.uneca.org/oria/pages/ecowas-peace-security-stability-and-governance>

⁴⁴ GIABA, Inter-Governmental Action Group Against Money Laundering in West Africa (2013) <https://www.giaba.org/about-giaba/index.html>

⁴⁵ ECOWAS, US renew partnership for security and development in west Africa <https://old22.ecowas.int/?p=20170>

boundaries, and the UN's Counter Terrorism Committee Executive Directorate (CTED), established to implement CTC's policy decisions and conduct expert assessment of UN member state on counter terrorism.⁴⁶ In line with this, ECOWAS has developed a number of measures, including the establishment of counter terrorism institutions and instruments such as the International Governmental Action Group Against Money Laundering and Terrorism Financing in West Africa (GIABA). ECOWAS established GIABA on December 10, 1999, as an institution to combat money laundering but expanded its mandate to include combating terrorism financing in 2006 in view of the growing terrorism in the region and the role that illicit money played in fostering it, GIABA was mandated to ensure that ECOWAS member states recognize, adopt and implemented International AML/ CFT measures for the purpose of ensuring the security, integrity and stability of the region's financial system.⁴⁷

In 2023, an agreement for preventing and countering terrorism and violent extremism was reached between the UNOCT and ECOWAS. The framework provides for five years agreement that will usher in partnership between both entities on range of security and counter-terrorism initiatives, including preventative efforts to counter terrorist travel, financing, access to weapons and misuse of information and communications technologies; border security and management; prosecution, rehabilitation and reintegration (PRR), and the delivery of counter-terrorism training programmes in Africa.⁴⁸

4.1.3 Positive Outcomes on ECOWAS's Efforts on Collaboration in The Fight Against Terrorism

ECOWAS has been at the forefront of addressing terrorism in West Africa through different counter-terrorism initiatives which have made significant strides in countering terrorism, bringing about positive outcomes that contribute to regional stability and development.

a. Enhanced Regional Security

One of the most tangible outcomes of ECOWAS's collaboration is the enhancement of regional security. This is done by fostering joint military operations and intelligence sharing among member states which has significantly disrupted terrorist activities. Operations like the Multinational Joint Task Force (MNJTF), which includes troops from Nigeria, Niger, Chad, Cameroon, and Benin, have been pivotal in combating Boko Haram and other terrorist groups

⁴⁶CTED and ECOWAS, reaffirm counter- terrorism committee. <http://www.UN.org/sc/ctc/blog/2015/10/20/cted-and-ecowas-reaffirm-counter-terrorism-cooperation>.

⁴⁷ *supra*

⁴⁸ United Nations Office of Counter-Terrorism, UNOCT And ECOWAS Sign Agreement To Strengthen Cooperation On Preventing And Countering Terrorism https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/230922_press_release_mou_signing_unoct_ecowas.pdf

in the Lake Chad Basin. These efforts have led to the recapture of territories previously controlled by terrorists, restoring safety and governance in affected areas.⁴⁹

b. Strengthened Counter-Terrorism Framework

The adoption of the ECOWAS Counter-Terrorism Strategy and the implementation plan has provided member states with a comprehensive guide to addressing terrorism. This strategy emphasizes a multifaceted approach, including preventive measures, capacity building, and regional cooperation. Through harmonization of laws and policies, ECOWAS ensures that member states have the necessary tools to effectively combat terrorism within their borders and across the region.⁵⁰

c. Improved Intelligence and Information Sharing

ECOWAS has established mechanisms such as the West African Police Chiefs Committee (WAPCCO) and the West African Network for Peace building (WANEP) to facilitate real-time information exchange. This collaboration has improved the ability of member states to anticipate and respond to terrorist threats promptly. For example, the ECOWAS Early Warning and Response Network (ECOWARN) provides critical alerts and analysis, helping to prevent potential attacks and coordinate responses.⁵¹

d. Capacity Building and Training

Recognizing the need for specialized skills in counter-terrorism, ECOWAS has prioritized capacity building and training for security forces and relevant stakeholders. Training programs and workshops, often conducted in partnership with international organizations, have enhanced the capabilities of law enforcement and military personnel. These programs cover areas such as intelligence analysis, counter-IED (Improvised Explosive Device) operations, and border security management. Improved training has not only increased the effectiveness of counter-terrorism operations but also fostered a sense of professionalism and cooperation among security agencies.⁵²

e. Promoting Regional and International Partnerships

ECOWAS's collaboration extends beyond its member states to include partnerships with international organizations, such as the AU, INTERPOL, the UN, and the EU. These partnerships have provided critical support in terms of funding, technical assistance, and

⁴⁹ Clayton Hazvinei Vhumbunu, Assessing the Economic Community of West Africa (ECOWAS) Counterterrorism Strategy https://books.google.com.ng/books?hl=en&lr=&id=YhGtEAAAQBAJ&oi=fnd&pg=PA163&dq=succes+of+ecowas+counter+terrorism+strategy&ots=uY9kOS9fAH&sig=7inEgNFcfw4feXil3MCj1rOtHEE&redir_esc=y#v=onepage&q=succes%20of%20ecowas%20counter%20terrorism%20strategy&f=false

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² *ibid*

capacity building. Moreover, they have facilitated a coordinated global response to terrorism in West Africa, ensuring that efforts are aligned and resources are optimized.

5.0 Bilateral Relations

Bilateral cooperation is critical to advancing regional and global counter-terrorism goals. Unlike multilateral frameworks, bilateral agreements can be more flexible, quickly negotiated, and tailored to specific security needs. They provide practical tools for intelligence sharing, joint operations, and legal cooperation, especially in Africa where terrorism thrives across porous borders.

5.1 Importance of Bilateral Relations

Bilateral relations are fundamental to international cooperation⁵³ and play a crucial role in advancing regional and sub-regional efforts towards adopting a universal jurisdiction approach to terrorism. These relationships provide the essential framework for developing comprehensive strategies against terrorism, especially in Africa, where groups exploit political instability, economic difficulties, and porous borders to perpetrate violence.⁵⁴

Since these threats are transnational, effective counter-terrorism requires international collaboration. Bilateral agreements facilitate this by enabling intelligence sharing, joint military operations, and legal cooperation. These agreements often establish stringent commitments even when there is no corresponding multilateral obligation.

Money and Lockhart state that countries decide to cooperate on counter-terrorism based on their strategic interests, carefully considering the costs and benefits of doing so.⁵⁵ They analyse these decisions from various perspectives, considering factors such as the costs of negotiations and the complexities of multilateral agreements versus bilateral or regional ones. Some experts also advocate for the promotion of bilateral treaties or equivalent functional agreements as a strategy to prevent unilateral actions or other problematic alternatives to conventional forms of cooperation.⁵⁶ This section explores how bilateral relations contribute to the overarching goal of establishing universal jurisdiction for terrorism-related crimes.

⁵³ A. Pannier, 'Bilateral Relations' in T. Balzacq, F. Charillon and F. Ramel (eds), *Global Diplomacy: An Introduction to Theory and Practice* (Palgrave Macmillan 2019) 19.

⁵⁴ D.U. Williams, 'The African Union (AU) Counterterrorism Framework and the Rhetoric of Regional Cooperation,' (2017) 4(2) *International Journal of Peace and Conflict Studies*, p.12.

⁵⁵ J. Money, S.P. Lockhart, *Migration Crisis and the Structure of International Cooperation*, (Athens: University of Georgia Press, 2018). p.56.

⁵⁶ D.A. Sadoff, *Bringing International Fugitives to Justice: Extradition and its Alternatives*, (New York: Cambridge University Press, 2018). p.597.

5.2 Bilateral Extradition Treaties

Combating international terrorism presents major challenges, particularly in prosecuting suspects in countries that refuse to extradite them due to political, historical, or bilateral ties. Many nations have declined to extradite terror suspects, citing issues of legal sovereignty, political alliances, or concerns about the fairness of trials in the requesting country. Such refusals often weaken global anti-terrorism efforts and enables suspects to evade justice.

In Africa, where borders are often porous and political landscapes intricate, the effective prosecution of terrorism is further complicated by such refusals.⁵⁷ Countries with strong bilateral relations sometimes shield suspects using these relationships as justification for non-cooperation in extradition processes. This obstructs the enforcement of international anti-terrorism laws and undermines regional security and judicial systems.

An illustrative case of this issue arose in the early 2000s involving Libya and Chad. Following the 1989 bombing of UTA Flight 772 over Niger, which resulted in the deaths of 170 individuals, French courts convicted six Libyans for their roles in the attack. Despite France's extradition request, Libya declined to surrender the suspects, citing political considerations and its bilateral relationships with neighboring African nations and its stance against Western demands, complicating France's efforts to prosecute those responsible for the terrorist act.⁵⁸ This instance underscores the critical importance of enhancing bilateral relations to foster cooperation in extradition process.

To tackle this issue, strengthening bilateral relations between states to facilitate extradition emerges as a crucial solution. By focusing on enhancing bilateral ties specifically for extradition, countries can create a more cohesive and effective framework for prosecuting terrorism, ensuring that suspects are brought to justice regardless of their location. An example of this is demonstrated by the extradition treaty between Nigeria and South Africa, which provides a structured legal basis for cooperation in extraditing individuals accused of

⁵⁷ Global Counterterrorism Forum, "Strengthening National and Regional Cooperation in the Security and Justice Sectors to Counter Terrorism in West Africa," *gctf.org*. Available at: <https://www.thegctf.org/What-we-do/Working-Group-Activities/Detail/ArtMID/840/ArticleID/230/Strengthening-National-and-Regional-Cooperation-in-the-Security-and-Justice-Sectors-to-Counter-Terrorism-in-West-Africa> (accessed 22 June 2025).

⁵⁸ Crowell, "Court Awards US Victims More Than \$6 Billion For 1989 Libyan Terrorist Bombing Of French Airliner That Killed 170 People Over African Desert," *crowell.com*, 15 January 2008. Available at: Court Awards US Victims More Than \$6 Billion For 1989 Libyan Terrorist Bombing Of French Airliner That Killed 170 People Over African Desert | Crowell & Moring LLP (accessed 22 June 2024); M. Finlay, "How UTA Flight 772 Became Niger's Deadliest Air Disaster," *Simple Flying*, 19 September 2022. Available at: [simpleflying.com](https://www.simpleflying.com/news/how-uta-flight-772-became-niger-s-deadliest-air-disaster/)) (accessed 22 June 2025).

committing serious offenses across borders.⁵⁹ The Treaty establishes the obligation of the contracting states to extradite individuals who are either charged with or convicted of an extraditable offense in the requesting state, defines what constitutes an extraditable offense, and further stipulates that extradition can be granted for offenses committed outside the territory of the requesting state if the requested state's laws allow for such a provision. In cases where these laws do not apply, extradition may still be granted at the discretion of the requested state's executive authority. The treaty also specifies that extradition requests related to revenue matters like taxation or customs duties cannot be refused based on differences in the legal frameworks of the two states. Furthermore, once extradition is granted for a primary offense, it can extend to lesser offenses associated with the same case, even if those carry penalties of less than one year.⁶⁰ Article 3 details optional grounds for refusing extradition, particularly concerning the death penalty. If the offense is punishable by death in the requesting state but not in the requested state, the latter may refuse extradition unless assurances are given that the death penalty will not be imposed or executed. Additionally, extradition can be refused unless the requesting state guarantees that the individual will not face detention without trial, torture, or any cruel, inhuman, or degrading treatment.

The challenges of prosecuting international terrorism underscore the pivotal role of bilateral relations in facilitating extradition processes. The extradition treaty between Nigeria and South Africa exemplifies how structured bilateral agreements can enhance international criminal jurisdiction, promoting collaboration while safeguarding human rights in the pursuit of justice for serious offenses like terrorism.

5.3 Mutual Legal Assistance

Mutual legal aid mechanisms facilitate the exchange of information and evidence between countries. In cases where terrorist activities span multiple jurisdictions, effective cooperation is essential for gathering evidence, identifying suspects, and prosecuting perpetrators. This collaboration not only improves the chances of successful prosecutions but also strengthens trust and solidarity among states facing common security challenges. An example of this is seen in the mutual legal aid agreement between South Africa and Hong Kong.⁶¹

⁵⁹ Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004.

⁶⁰ *Ibid.*

⁶¹ Agreement Between the Government of the Republic of South Africa and the Government of the Hong Kong Special Administrative Region of the People's Republic of China Concerning Mutual Legal Assistance in Criminal Matters, International Co-Operation in Criminal Matters Act, no. 75, 1996.

The MLA agreement delineates the comprehensive scope of assistance that the parties agree to provide.⁶² This includes identifying and locating individuals, serving documents, obtaining and delivering statements, evidence, and documents, executing requests for search and seizure, and facilitating the appearance of witnesses. It also covers the temporary transfer of persons in custody for testimony, obtaining judicial or official records, and tracing, restraining, forfeiting, and confiscating the proceeds and instrumentalities of criminal activities. Additionally, the provision of relevant information, documents, and records is integral to the support offered under this agreement.⁶³

Article 3 outlines limitations on compliance with assistance requests to protect the sovereignty, security, and public order of involved states. Requests related to political offenses or military law offenses that do not constitute ordinary criminal offenses in the requested party's jurisdiction are excluded.⁶⁴ Furthermore, if aiding could result in prejudice,⁶⁵ the requested party can refuse compliance.⁶⁶ Article 3 also protects against double jeopardy, allowing refusal if the person has already been convicted, acquitted, or pardoned for the offense in question.⁶⁷ Public order and essential interests are safeguarded and requests that could jeopardize witness or victim safety or cannot adhere to confidentiality conditions may be declined.⁶⁸ Article 8 addresses the procedures for obtaining evidence across jurisdictions. This includes the production of documents, records, and other material.⁶⁹ Requests must be supported by a certification from the central authority of the requesting party, confirming that proceedings have been instituted or that there are reasonable grounds for believing an offense has been committed.⁷⁰ Article 16 governs the execution of search and seizure requests. The requested party will execute such requests as permitted by its laws and provide detailed information about the search and seizure results.⁷¹ The requesting party must observe any conditions imposed by the requested party regarding the seized property.⁷²

Article 17 focuses on the handling of the proceeds of crime. This provision is particularly relevant in cases of terrorism financing and organized crime. The requested party is required

⁶² Article 1.

⁶³ *Ibid.*

⁶⁴ Article 3(1)(b)-(c).

⁶⁵ Based on race, gender, religion, nationality, or political opinions

⁶⁶ Article 3(1)(d).

⁶⁷ Article 3(1)(e).

⁶⁸ Article 3(1)(f)-(h).

⁶⁹ Article 8(3).

⁷⁰ Article 8(2).

⁷¹ Article 16(1)-(2).

⁷² Article 16(3).

to assist in determining whether criminal proceeds are within its jurisdiction and to prevent their dealing or disposal pending a final determination.⁷³

Express agreements such as this between states help provide states with essential tools for combating cross-border criminal activities by facilitating cooperation in investigations and prosecutions. Additionally, MLA agreements protect national sovereignty by allowing states to refuse requests that compromise security or relate to political offenses. These agreements streamline legal procedures, bolster international relations, and support the development of universal jurisdiction, contributing to global efforts to uphold justice and security. This is beneficial for developing countries to allow for the use and exchange of expertise with developed nations.

5.4 Joint Security Operations

Joint security operations are crucial for combating cross-border threats like insurgency and crime. For example, Nigeria and Cameroon have implemented a bilateral agreement to establish a joint trans-border security committee.⁷⁴ This initiative aims to enhance border security measures, preventing insurgents and criminal elements from exploiting the porous borders between the two nations. Such collaborative efforts are essential in safeguarding national security and regional stability by monitoring cross-border movements.⁷⁵

Joint military operations are also pivotal in the African context in the sense that they facilitate the exchange of advanced security expertise, equipment, and personnel to combat terrorism. For instance, the military cooperation between the US and Nigeria has historically focused on various areas such as training, equipment provision, military reforms, health support, humanitarian assistance, and counter-terrorism initiatives. The US Department of Defense (DoD) notably trained and equipped Nigerian troops during civil conflicts in Liberia, Sierra Leone, and Ivory Coast, underscoring the importance of international collaboration in enhancing regional security and stability.⁷⁶ In addition, the United States bolstered Nigerian Navy capabilities by supplying four naval warships in 2003 and two vessels in 2014. These contributions aimed to strengthen Nigeria's capacity for conducting search and rescue operations and coastal protection, further supporting regional maritime security efforts.

⁷³ Article 17(1)-(2).

⁷⁴ V. Ojeme, "Nigeria, Cameroon Sign Agreement on Border Security," *vanguard*, 29 February 2012. Available at: <https://www.vanguardngr.com/2012/02/nigeria-cameroon-sign-agreement-on-border-security/> accessed 22 June 2025.

⁷⁵ Channels Television, "Nigeria, Cameroon Sign Bilateral Agreement on Security," *channelstv*, 28 February 2012. Available at: <https://www.channelstv.com/2012/02/28/nigeriacameroun-sign-bilateral-agreement-on-security/> (accessed 22 June 2025).

⁷⁶ Fact Sheet: U.S-Nigerian Cooperation on Peacekeeping and Military Reform. Available at: https://clintonwhitehouse4.archives.gov/textonly/library/hot_releases/August_26_2000_3.html (accessed 22 June 2025).

Conversely, the Nigerian government has extended substantial diplomatic support to the United States counter-terrorism efforts since the terrorist attacks of September 11, 2001.⁷⁷

These relationships are essential for intelligence sharing, joint security operations, information gathering, and extradition processes, laying a strong foundation for achieving universal jurisdiction goals. Nevertheless, there are challenges associated with engaging in successive bilateral agreements, including expense and effort required in negotiating each agreement individually.⁷⁸ African nations must also navigate the balance between seeking international assistance and safeguarding sovereignty from external interference. However, establishing clear and formal agreements that outline the scope, objectives, and responsibilities of each partner in counter-terrorism efforts, along with mechanisms for dispute resolution and regular review, can enhance bilateral relations and foster more effective counter-terrorism measures.

6.0 Challenges within the Existing Counter-Terrorism and Jurisdictional Framework

Although bilateral and regional cooperation has increased significantly for fighting terrorism, multiple issues exist which affect the success of current counter-terrorism efforts on a legal, political and operational level. For example, many states are hesitant to extradite terrorist suspects because they have political alliances with other countries, will not extradite people who may have been wrongfully accused, and/or want to maintain their sovereignty as independent nation-states. When terrorist suspects are not extradited, it limits the ability of other countries to prosecute them internationally, creating additional opportunities for these suspects to escape prosecution entirely.⁷⁹

An additional challenge is the restrictions of various mutual legal assistance (MLA) agreement provisions. While MLA agreements make sharing and doing transnational investigations possible, some of these provisions allow countries to refuse cooperation if there is a public interest reason (e.g., political offences) or if there are implications for public order or national security. Consequently, this limits the ability of countries to effectively work together on terrorism cases.⁸⁰

Poor formal institutions, porous borders and infrastructure challenges continue to hinder how effective African states can effectively enforce counter-terrorism enforcement actions. By

⁷⁷ *Ibid.*

⁷⁸ UNODC, *Manual on Legal Assistance and Extradition*, p. 19. Available at: https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf (accessed 22 June 2025).

⁷⁹ A. Cassese, *International Criminal Law*, 3rd edn (Oxford University Press, Oxford, 2013) p. 289

⁸⁰ R. Cryer et al., *An Introduction to International Criminal Law and Procedure*, 4th edn Cambridge University Press, Cambridge, 2019) pp. 117–120

exploiting the governance challenges, terrorist organisations have been able to create cross-border operational networks.⁸¹

In addition, bilateral security agreements can be a source of anxiety and potential for friction with respect to having too much foreign influence and too much of the limited right of a country to govern its own territory. International cooperation can enhance both military and intelligence cooperation, but placing too much reliance on foreign support can weaken national strategic autonomy. Further, negotiating, executing and maintaining multiple bilateral agreements will require significant resources for both the diplomatic and administrative functions of a country.⁸²

Finally, the lack of a universally defined definition of terrorism under international law complicates extradition, prosecution and harmonization of counter-terrorism legislation by denying an effective means of applying universal jurisdiction in terrorism prosecutions across borders.⁸³

7.0 Conclusion

The conclusion of this paper highlights the need for a global legal framework to prosecute terrorism through universal jurisdiction. Given the continuing evolution of terrorism, prosecuting it through the traditional territorial criminal justice system has proven ineffective. This paper indicates that while universal jurisdiction is not yet fully established as customary international law for prosecutions of terrorism, it is emerging as a persuasive and functional basis for addressing terrorism. Terrorism's changing global nature demonstrates that an individual state's territorial jurisdiction will not suffice to prosecute it. Therefore, it is necessary to impose a coordinated, cooperative global response transcending traditional jurisdictional limitations to address terrorism's negative impact on world peace and security. Currently, universal jurisdiction's effectiveness with respect to terrorism is conditional and indirect, through regional legal instruments, treaty regimes, mutual legal assistance treaties, extradition agreements, and the UN Security Council's counter-terrorism mandates. Thus, universal jurisdiction is developing as a mechanism to fill jurisdictional gaps at the international and regional levels. These findings indicate that stakeholders can utilise universal jurisdiction as a bridge between domestic, regional, and international legal jurisdictions. Specific benefits to stakeholders include reducing jurisdictional safe havens, enhancing accountability for serious terrorism-related criminal offenses, and reinforcing

⁸¹ United Nations Development Programme, *Journey to Extremism in Africa* (UNDP, New York, 2023) p. 15.

⁸² M. N. Shaw, *International Law*, 8th edn (Cambridge University Press, Cambridge, 2017) p. 678.

⁸³ B. Saul, *Defining Terrorism in International Law* (Oxford University Press, Oxford, 2006) p. 11.

existing extradition and mutual legal assistance regimes. The findings carry additional implications for stakeholders in the international legal system. To assist with coordinating domestic legislation with international laws enforcing accountability of terrorists, states need to develop stronger prosecutorial capacity for transnational cases and eliminate politically motivated barriers to extradition. While the findings are significant in themselves, they must be contextualised as to how they will influence the enforcement of universal jurisdiction to hold terrorists accountable. The limitations of the study include the following; it focuses on the law; therefore, many aspects of practical enforcement may not be adequately reflected in the study. Additionally, there is not a comparative analysis of universal jurisdiction cases across the world and an empirical assessment of the outcomes of those prosecutions. Emerging developments in counter-terrorism law and the UN Security Council's continued renewed focus on terrorist networks and the evolving transformations of those networks by state practice may impact universal jurisdiction. Future research could focus on empirical assessments of the enforcement of universal jurisdiction with respect to terrorist prosecutions throughout various jurisdictions, comparative studies of the various types of prosecution, and the potential for codifying terrorist offenses in an international treaty that incorporates universal jurisdiction as the principal enforcement mechanism. Furthermore, comparative studies of regional counter-terrorism legal regimes, particularly in Africa and other politically volatile regions, will provide valuable insights into gaps in the implementation of counter-terrorism laws and successful methods for overcoming those deficiencies. Additionally, emerging areas such as cyberterrorism, the digital financing of terrorism, and the role of technology platforms in facilitating or disrupting transnational terrorist activity, provide important areas of opportunity for future research engagement. Although there are some legal, political, and operational challenges associated with the implementation of universal jurisdiction including differing legal systems, limited resources, and questions relating to sovereignty, there is, nevertheless, an inherent significance of universal jurisdiction evolving within the context of the global response to terrorism. The future of international law within this context will be dependent on a willingness to embrace flexibility, develop institutions that have an operationally collaborative approach, and explore innovative normative mechanisms so that existing legal frameworks adjust to the evolving patterns of global terrorism.

7.1 Recommendations

In view of the findings of this study, the following recommendations are proposed:

First, there is a need to harmonise national counter-terrorism laws with regional/international laws. As the research demonstrates that fragmented jurisdictions/inconsistent domestic laws reduce collective accountability, national governments need to incorporate express provisions that recognise forms of extraterritorial/universal jurisdiction over terrorism-related crimes, primarily where the territorial state cannot prosecute or refuses to do so.

Second, regional/sub-regional organisations such as the African Union (AU) and the Economic Community of West African States (ECOWAS) should enhance existing mechanisms for the legal coordination, extradition and mutual assistance. This research has shown that these regional institutions generally are the best operationally situated to advance an idea of universal jurisdiction regarding terrorism-related crimes gradually. Consequently, current regional frameworks should be expanded to enhance cooperative intelligence sharing, joint investigations, standardised procedures on evidence gathering and simplify extradition between member states.

Third, the United Nations and related organisations must increase collective efforts toward achieving an international consensus regarding the definition of terrorism as a crime under international law. The absence of an internationally recognised definition hinders the development of a coherent and unambiguous universal jurisdiction framework concerning terrorism, creating additional obstacles relating to the prosecution/extradition and international cooperative efforts. A clearer universal jurisdiction framework would support the establishment of international criminal accountability for terrorism.

Fourth, governments should enhance their judicial/institutional capacity to provide practical enforcement of global counter-terrorism mechanisms. This paper identifies weak institutions, limited prosecutorial expertise, porous borders, and inadequate enforcement infrastructure as key barriers to successful implementation. Therefore, capacity-building efforts should include specialised judicial education in international criminal law, procedures for gathering cross-border evidence, digital investigation, and mutual assistance.

Fifth, bilateral and multilateral cooperative counter-terrorism efforts should include stronger safeguards for human rights and due process. Concerns over sovereignty, political misuse, lack of a fair trial, and violating a person's rights often discourages extradition and/or providing assistance among States; therefore, there ought to be transparent accountability measures that build confidence among jurisdictions that collaborate and that also conform to international human rights norms.

Finally, the international and regional legal frameworks should adopt a more dynamic and adaptable approach to emerging trends of terrorism such as cyberterrorism, digital terrorist financing, and technologically assisted global extremism. Terrorists continue to evolve methodologies that defy traditional notions of political borders; likewise legal institutions must evolve in response to these changes to ensure that universal jurisdiction will be of practical use under the current framework of international criminal law.