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Editor's Note

Dear reader,

To further showcase our dedication to educating the public through legal articles, here is another issue of Lawrit Journal of Law (LJL), the second issue of volume three for the year 2023.

Just like the previous ones, this issue is packed with well-researched and beautifully-written articles from competent authors across the Federation.

This issue has a total of 11 original of law-related articles relating to Nigeria and beyond.

These works are diligently and patiently vetted for the purpose of giving you an interesting, gratifying and educative experience.

Lastly, I, and on behalf of the editorial board, wish you a pleasurable and edifying reading.

Sincerely,

Oluwaseun Ojo,

Editor-in-Chief,

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ABSTRACT

It has been observed that a recurring issue since the inception of local government administration in Nigeria has been the recalcitrant behavior of governors in their unconstitutional removal of democratically elected local government chairmen, whose offices are guaranteed under section 7 of the 1999 Constitution of Federal Republic Nigeria, which provides for the existence of the local government as the third tier of government. Thus, in these writers' opinion, this section has been misinterpreted and rather taken to the very extreme by state governors who see local governments as mere appendages of the state government and subject to the whims and caprices of the governor. As a result, there have been a ferocious control of the local government in areas of funding and administration. This has led to widespread agitations for a more independent third tier of government. The most recent being the local government autonomy bill which aims at increasing the financial autonomy of the local government through the creation and maintenance of a special local government account into which all allocations shall be paid, as well as a separate savings account which would serve as a reserve, before subsequent disbursement to other tiers of government.

1.0 INTRODUCTION

This paper examines the practice of the Local Government Administration in Nigeria. It further elucidates the meaning, constitutional and legal nature of Local governments with respect to the 2020 Constitutional Amendment Bill. This is with a view to determine the challenges faced by the Local Government Administrations in Nigeria and proffer solutions to it.

Nigeria operates a democratic government with a written constitution which stands above all other laws and all laws made by the legislature must be in accordance with it¹. Flowing from the above, The 1979 Constitution clearly expressed the autonomy and functions of the local government in line with the 1976 reforms, and it became mandatory for the Federal and State Governments to make direct financial grants and allocations to the Local Governments.² The 1999 Constitution's provisions are in pari materia with that of the 1979 CFN. Unfortunately, in most cases the constitutional provisions are flouted and disregarded with impunity.³

2.0 MEANING OF THE LOCAL GOVERNMENT

The Local Government is a creation of the Constitution and Statute pursuant to Section 7(1) of the 1999 CFRN. By virtue of Section 2(2) of the CFRN. Nigeria shall be a federation comprising of states and local governments. There is no widely accepted definition or concept

¹ Sections 1(1) and Section 1(3) of the 1999 CFRN; Attorney- General of Bendel State v. Attorney- General of the Federation and 22 Ors (1981) All NLR 85

² Section 149(2) of the 1979 Constitution

³ Knight Frank & Rutley (Nig.) Ltd v. Attorney- General of Kano State(1990) 4 NWLR (Pt. 143) 210 ; Bamidele & Ors v. Commissioner for Local Government and Community development, Lagos State (1994) 2 NWLR (pt. 328) 568

of the term local government. The 1976 Local Government reforms defines it as:

Government at local level exercised through representative councils established by law to exercise powers within defined areas has substantial control over local affairs as well as the staff and institutional and financial powers to initiate and direct the provision of services ... and to ensure that local initiative and response to local needs and conditions are maximized⁴.

This definition justifies the position that local governments are established by law, have control, finance, revenue in conjunction with their status as a necessity in modern governance especially in matters pertaining to that locality alone.

3.0 IS THERE “TRUE FEDERALISM” IN NIGERIA?

It has been argued by antagonists of local government autonomy, that the local tier is not a tier of government and challenging Governors for encroaching on the local government amounts to ignorance of the state law. In addition to this, the proponents posit that there are only two tiers of government – the national or central government and the state governments. These writers submit that this is false and contrary to the express and unambiguous provisions of the CFRN. It is delusional to argue that true federalism exists anywhere in the world. In reality, there is no ideal federalism just as there is no false or fake federalism.

⁴ Hugh Whalen is in agreement with this definition

Conceptually, some scholars have defined “federalism” as a political system where there are at least two levels of government, the central or federal government and other territorial, sub units, which may be variously called as states, regions, provinces, republics, unions etc.⁵. In Nigeria, three tiers of government exist by constitutional provision. However, within the context of the 1999 CFRN and the interpretation by the appellate courts, including the apex Court of the land, the local government is a constitutionally recognized tier of government. In *Governor Ekiti State v. Olubunmi*⁶, the apex Court held that any action of the governor which has the capacity of undermining the constitution is tantamount to executive recklessness which will not be condoned. Similarly, in *Tabwasa & Ors v. Adamawa State Govt & Ors*⁷, The Appellate Court held that all tiers of government in Nigeria, from the date of commencement of the 1999 CFRN, are to be managed, administered by persons or officials who are/were democratically elected by the people, hence Section 7(1) of the CFRN is the guiding provision for the structure of governance at Local Government levels. Furthermore, it guarantees the existence of a democratically elected government at that local level. Therefore, it is submitted that the local government is within the constitutional arrangement of Nigeria’s and cannot be undermined or rather expunged because it defeats the doctrine of the Supremacy of the Constitution⁸.

⁵ Femi Aborisade, ‘In Defense of Local Government Autonomy’ *The Guardian* (Lagos, 8 December 2022) <<https://www.idea.int/news-media/media/what-federalism>> accessed on 7/01/2023

⁶ (2017) NWLR (Pt. 1551) 1, 35

⁷ (2019) LPELR- 47326(CA)

⁸ Section 1(1) and 1(3) of the 1999 CFRN

4.0 FACTORS UNDERMINING LOCAL GOVERNMENT AUTONOMY IN NIGERIA

Nigeria returned to the democratic system in 1999, this was followed by an avalanche of intense debates, discussions and divergent views regarding the status of local government administration in Nigeria. Thus, this paper attempts to identify the problems local governments face in their operation as follows:

The problem of proper power devolution and financial autonomy: The eroding of financial independence has led to no meaningful developments at the grassroots level. The contentious issue is that Section 162(6) of the 1999 CFRN specifically creates the “State Joint Local Government Account”, but this has been subjected to so much abuse in subsequent relations with the state government, as governors turn themselves into supervisors and overlords of the Local Government. This section does not allow direct funding of local governments from the federation as held in *Attorney-General Ogun State & ors v. Attorney-General of the Federation*⁹.

Thus, successive governors have always found it easy to make them everlasting additions of the state, rendering them almost irrelevant in the administration as the third tier of government. In addition to this, the establishment, structure, compositions, finance and functions are promulgated upon by the State House of Assembly which also has the authority to repeal or amend such laws when the needs arises. Furthermore, Insecurity and poverty have been on the rise because we have abandoned the local government system in

⁹ (SC 137 OF 2001) (2002) NGSC 3; (2002) All NLR 27

terms of giving them financial autonomy, thereby ignoring the fact that people in rural communities understand their terrain better and know how to deploy resources towards tackling security challenges. In addition to this, the autonomy to consider and approve their annual budget is not existent.

Undue Political Interference: It has become quite a nasty practice that a Governor's first action in office is to dissolve the existing local councils and appoint a caretaker committee. It is trite in law that a governor cannot remove or truncate the tenure of democratically elected individuals of the local government council. However, due to the Federal system which is constitutionally donated, it amounts to arbitrariness and executive rascality for Governors to seek to curtail the freedom of local government as held in *Governor Ekiti State v. Olubunmi*. The Supreme Court in a landmark ruling in the recent case of *ALGON v. Attorney- General of Oyo State*¹⁰, declared that the sacking of 33 local government chairmen by the Oyo State Governor, Seyi Makinde, was illegal, amounts to executive recklessness which is contrary to the Constitutional Law and fined the state N20 Million for the act. The Governor had sacked all the elected officials, who were elected in 2018.

The Creation of Local Government Councils: The House of Assembly has the authority to create new Local governments under the provisions of Section 8(3), 8(5) and (6) of the 1999 CFRN (As Amended). It has the absolute preserve but it must be exercised in accordance with the provisions of the Constitution. In *Attorney*

¹⁰ Supreme Court Judgement, May 2021 ; Akpan v. Umah (2002) 7 NWLR (Pt 767) 701 ; Attorney- General Plateau State v. Goyol (2007) 16 NWLR (Pt 1059) at 94- 96

*General of Lagos State v. Attorney General of the Federation*¹¹, The Supreme Court restrained the Federal Executive authorities from interfering in the creation of new local government through withholding statutory funds for both state and existing local governments.

Conflicts between The Federal Governments, Regulators and State Governments: One of the many good things that the present administration has done in the area of reform includes the push for the fiscal autonomy of the judiciary and local governments, both of which have been stoutly resisted by vested interests. In May 2020, President Buhari signed Executive Order 10 to enforce the financial autonomy of the states' judiciary and legislature. The States raised objections and went to court. In February 2022, the apex court ruled that the controversial Executive Order 10 was in conflict with the provisions of the 1999 Constitution with regard to the powers of each arm of government. The President was adjudged to have acted ultra vires. Although, this was an administrative directive to streamline the plundering of their allocations, it was unconstitutional, null and void to the extent of its inconsistency. There was yet another matter in 2019, the Nigerian Financial Intelligence Unit (NFIU) had issued guidelines with regard to local governments to the effect that not more than N500, 000 can be withdrawn daily, and that state governments must not tamper with local council funds, and can only act within the purview of the law as transit points. The state governments went to court, But the Federal High Court in Abuja in May 2022, ruled that the NFIU guidelines were in order to promote

¹¹ (2005) 1 MJSC 1 ; Balogun v. Attorney General of Lagos State

transparency and that the plaintiffs (the 36 state governments) had no case. The Court found that the NFIU within its enabling Act had powers to provide guidelines. It was the second time that a court of law would decline the attempt by state governments to resist NFIU guidelines.¹²

5.0 MODIFICATIONS THAT THE LOCAL GOVERNMENT AUTONOMY BILL GENERATES

The Bill has been passed in the National Assembly pending the decision of Two-thirds of the State House of Assembly, Sixteen out of Thirty- Six States in the Federation have passed the Bill, and it requires eight more states to meet the amendment threshold of Twenty-four states. The Bill was sponsored by Senator Ahmed Kabba Kaita.

The Bill aims to abrogate and repeal the State Joint Local Government Accounts which has accounted for low development at the grassroots.

The legislation also mandates each state to pay to local government council in its area of jurisdiction, a proportion of its internally generated revenue on such terms and in such manner as may be prescribed by the House of Assembly

The Bill creates an avenue for financial independence by empowering each Local Government Council to create and maintain its own

¹² Reuben Abati,'On Local Government Autonomy' *The eagleOnline* (Lagos, 6 December 2022) < <https://theeagleonline.com.ng/on-local-governments-autonomy-by-reuben-abati/?amp=1>> accessed 8 January 2023

Special Account called “Local Government Council Allocation Account” in which all allocations shall be paid as stipulated in Section 162(7) of the Constitution Amendment Bill 2020.

The Bill makes provisions for Savings in the Federation Account before distribution to other levels of government pursuant to Section 162(4) and (5) of the Constitution Amendment Bill 2020.

The Bill devolves and grants powers to the grassroots through financial and administrative autonomy. It also seeks to allow local governments to conduct their own elections alongside unlocking the potential of each local council to generate its revenue for grassroots development.

The Bill also addresses some of the insecurity challenges in the state. Local governments can tackle insecurity within its jurisdiction, as well as stimulating the local economy, thereby reducing poverty at grassroots level.

5.0 RECOMMENDATIONS

In view of the fact that the Local Government in Nigeria has been unable to fully realize its potential, the 2020 Constitutional Amendment Bill on the issue of local Government Autonomy is a step in the right direction towards achieving the objectives for which the Local Government as a Third tier of Government was created. Despite the challenges faced in Local Government Administration in Nigeria as stated above, there is no gainsaying that their financial autonomy is paramount in a modern dispensation. Therefore, it is suggested that the Federal Government accelerates action on granting autonomy to the Local Governments in Nigeria through:

A more robust and effective lobbying to achieve the required two-third approval from the State Houses of Assembly in order for the Bill to become Law. It is also submitted that Courts of law in Nigeria should be proactive in hearing of cases bordering on dissolution of Local Government and order that the status quo be maintained until the final determination of the cases. This is to discourage Governors from engaging in the arbitrary act of removal. The Courts of law, particularly the apex Court should be bold to reinstate dissolved L.G Councils for the remaining period of their tenure in order to preserve the tenets of Rule of Law, as their tenure had not expired, but was illegally truncated by the Governor.

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ABSTRACT

Recently, there have been significant advancements in Artificial Intelligence (AI) technology. In this era of intelligent machines, the possibility for a machine to create intellectual work is no longer a mere imagination but a reality. It must be noted that until the advent of AI, intellectual creation and inventiveness were purely human activities, and their protection systems, that is, copyright law and patent law, were built on the basis of motivating and enhancing human creativity. However, the proliferation of AI capable of generating creative contents autonomously has challenged the traditional notion of intellectual property law, especially the determination of authorship and ownership of copyright content. In utilising the doctrinal research method, this article addresses the fundamental intersection of autonomous generative AI systems and copyright law. The article finds that the current copyright law only recognised human as author and therefore it will be difficult to treat AI as authors of their generated content under the current law. The article concludes by recommending that it is important to rethink the fundamental human-centric concepts of extant intellectual property laws and therefore suggest the enactment of a sui generis law on AI.

1.0 INTRODUCTION

The growth of autonomous Artificial Intelligence (AI) systems is at an exponential rate in today's technology-savvy world, with more sophisticated forms of software being incorporated into them. In earlier generations, humans were more efficient by learning to work with machines. In the present generation, human-machine partnership has become more complex because modern machines, unlike earlier machines, can make decisions, improve and generate creative content on their own, making humans unsure about their status. These modern machines embody the phenomenon of AI technology. One of the unique features of these generative AI systems is their ability to generate original contents independent of human input. This feature has brought forth pertinent questions concerning Intellectual Property Rights (IPR), for, it challenges not only traditional notions of concepts such as patents and copyrights, but also leads to the emergence of questions related to the regulation of such creations, among others. Some of the most important questions border on authorship and ownership of copyright and copyright infringement, *viz*: (1) who owns the rights to works generated by AI? And (2) whether AI-generated works infringe existing copyrighted works?

This article utilizes the doctrinal research method in exploring generative AI and copyright issues emanating from their usage and proffers recommendations on how to best regulate and protect AI creations.

This article is divided into five parts with the introduction as the Part I. Part II examines the concept of copyright and legal scope of authorship. This part connects the authorship requirement found in traditional copyright law to modern technological advancements. Part III discusses the requirements of originality and fixation and how they apply to works generated by AI. Part IV argues for the enactment of a *sui generis* system of law to regulate AI generated work. The basic features of the *sui generis* system were highlighted. Part V contains the conclusion and recommendations.

2.0AUTHORSHIP AND OWNERSHIP OF CONTENTS GENERATED BY AI

Copyright as one of the two major fields of Intellectual Property Law is “an intangible, incorporeal property, which guarantees the owner the exclusive right to deal with his/her work within a stipulated time as provided under the law.”¹ Generally, the author of a copyrighted work is understood to be the creator of the work. The author is the person who invested creative and intellectual efforts into the creation of the copyrighted work and not merely mechanical or stenographic efforts.² The author is the person who “contributed the ‘originality’ or expended sufficient efforts on the work to give it an original character”.³ The author who is a human being is expected to be protected by copyright laws even up to fifth to years after the author’s

¹ M. I. O. Nwogu, ‘The Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy in Nigeria’ (2014) 2(5) *Global Journal of Politics and Law Research* 22.

² *Donoghue v. Allied Newspapers Ltd* (1938) CH 106.; *Leah v. Two Worlds Publishing Ltd* (1951) 1 Ch 393.

³ E. E. Adaka & I. A. Olubiyi, ‘Lessons for Nigeria: Determining Authorship and Inventorship of Artificial Intelligence Generated Works’ (2022) 2 (1) *JIPIT* 15.

death. It is important to note that the copyright laws, both domestic and international were developed with the mind-set that it is only human that can be an author and this has greatly affected the copyright ability of Ai generated contents.

In Nigeria, copyright is governed by the Copyright Act 2022.⁴ By the provisions of the Act, copyright in a work is conferred only on a qualified person i.e., an individual who is a citizen of or who is domiciled in Nigeria; or an incorporated entity registered under Nigerian law.⁵ According to the wordings of Section 5(1) of the Copyright Act 2022:

Copyright shall be conferred by this section on every work eligible for the copyright of which the author or, in the case of a work of joint authorship, any of the authors is at the time when the work is made, a qualified person, that is to say- (i) an individual who is a citizen of, or is domiciled in Nigeria; or (ii) a body corporate incorporated by or under the laws of Nigeria.⁶

Under section 108 of the Copyright Act 2022, the author of a literary, musical or artistic work is the creator of the work, that is, the person by whom the arrangements for the making of the work were made,⁷ who is invariably vested with ownership of the work in many

⁴ Copyright Act 2022. The Copyright Act makes provisions for the protection, transfer, infringement and remedies for infringement of copyrights in Nigeria.

⁵ Copyright Act 2022, Section 5(1).

⁶ In the case of works of Government, State authorities and international bodies, the copyright vest the works of Government, State authorities and international bodies. See Copyright Act 2022, Section 7.

⁷ Ibid.

instances. It is submitted that the Nigeria legislation seems not to contemplate contents generated by AI authors and does not have any specific provisions for it.

Internationally, in the Berne Convention,⁸ despite the fact that no clear definition of author is provided, it is possible to deduce from the wording of the convention that the only imaginable author is a human being. This can be inferred by references made in the Berne Convention to the author as the originator of the work and the beneficiary of protection of such work and also by references made to the nationality of the author⁹ and the death of the author.¹⁰ Furthermore, The TRIPS Agreement¹¹ which is a global law on intellectual property law considered “the life of a natural person”¹² for the term of protection.

Similarly in England, the Copyright Design and Patent Act 1988 while making provisions for the authorship of computer-generated works,¹³ attributes authorship of a computer-generated work to the person by whom the arrangements for the creation of the work were undertaken. Section 9 (3) of the Act further grants the owner 50 years of protection, but does not include moral rights. The law did not recognise AI as author though it went as far as providing for computer generated works, it attributed the authorship to the person by whom they were made.

⁸ Berne Convention for the Protection of Literary and Artistic Works of 1886.

⁹ Ibid, Article 3.

¹⁰ Ibid, Articles 6bis (2), 7(5), 7bis.

¹¹ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 1994.

¹² Ibid, Article 12.

¹³ Copyright Design and Patent Act 1988 of the United Kingdom, Section 9 (3).

Also, in New Zealand, copyrights on works made by machines, belong to “whoever has undertaken the necessary provisions for the creation of the work.”¹⁴ In other words, copyright in such work will not be conferred on the machine/AI but on the person who created the machine. The position of the law that only humans can own copyright was further affirmed by the US Court of Appeal in the notorious “Monkey Selfie” case.¹⁵ Which held that copyright protection cannot be granted to animals, being a non-human entity.¹⁶

It is important to note that in few jurisdictions, the law is evolving as some countries now recognize the fact that intellectual works are in fact being produced by machine, and even sometimes autonomously. In Canada, the Canadian Intellectual Property Office (“CIPO”) recently registered a copyright listing an AI app as one of two co-authors of an artistic work entitled *Suryast*.¹⁷ One wonders if the AI was listed as the sole author whether the AI would have still been granted copyright in the work.

The question now is should these extant laws centre on human authorship be applied to AI generated work? Some scholars have argued that AI-generated work should be copyrighted based on the extant laws and copyright vested in the AI in order to advance the development of AI machines by the developer.¹⁸ Other scholars are,

¹⁴ Copyright Act 1994 of New Zealand, Section 5 (2) (a).

¹⁵ *Naruto v. Slater*, No. 16-15469 (9th Cir. 2018).

¹⁶ *Ibid*.

¹⁷ J. Sanft, ‘AI and IP: Who or What Can Be an Author or Inventor in Canada?’ <[Intellectual Property | Lenczner Slaght \(litigate.com\)](#)>accessed 30 May 2023.

¹⁸ D. Thampapillai, ‘If Value Then Right? Copyright and Works of Non-Human Authorship’ (2019) 30 *Australian Intellectual Property Journal* 96; R. Abbot, ‘I Think, Therefore I Invent: Creative Computers and the Future of Patent Law’

however, opposed to this argument as, to them, granting copyright to the developer instead of the AI does not dwindle the development of AI machines because whatever economic benefits that accrue from granting copyright to the developer rather than the AI will incentivise the developer to develop more AI which will contribute to the growth of AI.¹⁹

AIs obviously do not have the mental capacity to develop their kind. In fact, even where copyright to the works of AI like ChatGPT is granted to the AI, the question of who ultimately gets that copyright remains cryptic and difficult to fathom. Is it the developer of the AI or the AI itself? Does the AI have the capacity to appreciate the copyright vested on it? Can it exploit the copyright and can it independently exercise the exclusive rights of a copyright owner over the copyrighted works? In my opinion, the answers to these questions are in the negative. It is therefore suggested that to further the development of AI machines and protect the creative contents generated by AI, copyright in those works should be granted to the developer of the AI and not the AI based on the extant law until a *sui generis* system of law is created to solely cover AI creations, which will then grant AI authorship of their work. This is because, extending the scope of authorship in the current copyright laws to include AI will be far too much. The extant law is so tailor-made for

(2016) 57(4) *Boston College Law Review* 1079; A. Guadamuz, 'Artificial Intelligence and Copyright' *WIPO Magazine*, October 2017. N. Li & T. Koay, 'Artificial Intelligence and Inventorship: An Australian Perspective' (2020) 15(5) *Journal of Intellectual Property Law & Practice* 399.

¹⁹ D. O. Oriakhogba, 'What If DABUS Came to Africa? Visiting AI Inventorship and Ownership of Patent from the Nigerian Perspective' (2021) 42(2) *Business Law Review* 89.

human authorship that it does not even contemplate an autonomous AI machine as a legal person with a requisite mental state of mind to vest it with the ownership/authorship of copyrights of works it generates.²⁰

It must be noted that the fact that AI machines cannot currently be recognised as authors of their works is not a claim made by any specific person or entity. Instead, it is a principle established by copyright law in most jurisdictions ²¹ and it will remain so until the law is amended.

Other reasons why AI cannot be granted authorship under the current laws are moral rights and accountability. AI cannot enjoy the moral right that are incident to authorship. Copyright grants economic and moral rights to the author. Moral rights seek to preserve an author's honour, reputation and relationship to their work. Therefore, on recognising AI as the author of such work, such rights become superfluous, since AI cannot verify whether the dignity or reputation of the original work has been affected by any act.²²

Furthermore, AI cannot be held accountable for copyright infringement or other violation like publication of defamatory content. This is because under the extant laws, it is only persons with legal capacity that can be sued for such offence.²³

²⁰ J. C. Ginsburg & L. A. Budiardjo, 'Authors and Machines' (2019) 34 *Berkeley tech. L. J.* 343.

²¹ *Oladipo Yemitan v. The Dailoy Times (Nig) Ltd & Anor* (1980) FHC 186, 190.

²² M. Miernicki, & I. Ng Huang Ying, 'Artificial Intelligence and Moral Rights' (2020) *AI & SOCIETY* 1.

²³ *Shitta v Ligali* (2003) 5 NWLR (813) 247.

3.0 THE PRINCIPLE OF ORIGINALITY AND FIXATION IN RELATION TO WORKS CREATED BY AI.

While no formality is required for a work to be eligible for copyright.²⁴ The law, however, requires that for a creative work to be eligible for copyright protection it must meet the requirements of originality and fixation.²⁵

By originality, it is meant that the work must be the author's intellectual creation.²⁶ However, the threshold of originality differs from one jurisdiction to another. Under common law jurisdictions such as Nigeria, the test of originality entails sufficient effort being expended in making the work to give it an original character.²⁷

This also implies that the work must not have been copied as was decided in the UK case of *University of London Press Ltd v University Tutorial Press Ltd*.²⁸ Where a work substantially infringed on existing copyrighted works, it cannot be eligible for copyright protection unless due recognition is given to the initial copyright owner of such work.²⁹

In this regard, where it can be shown that an autonomous AI machine has expended time, energy and effort in creating a work so as to give it an original character, the resultant creative work can satisfy the

²⁴ Copyright Act 2022, Section 4.

²⁵ G. Etomi, *An Introduction to Commercial Law in Nigeria: Text, Cases and Materials* (MIJ Professional Publishers Limited, 2014) 94.

²⁶ A. O. Oyewunmi, *Nigerian Law of Intellectual Property* (University of Lagos Press 2015) 32-33.

²⁷ Copyright Act, 2022, Section 2(2)(a).

²⁸ [1916] 2 Ch 601.

²⁹ Copyright Act 2022, Section 2(4).

requirement of originality under this standard. However, where it is shown that the data used in training the AI and the creative work generated by the AI machine substantially infringed on an existing copyrighted work and there is no due recognition given to the initial copyright owner of such work, the creative work so generated should be ineligible for copyright.³⁰

A corollary to originality is fixation, which means that the work must be fixed in “any definite medium of expression now known or later to be developed from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of a machine or device.”³¹ This is so as copyright does not protect ideas³² but the expression of those ideas,³³ hence creators of work must ensure that their works are fixed in definite mediums by which they can be accessed by the public. This requirement does not seem to pose any problem for AI to fulfil as works generated by AI machines are most often than not fixed in a medium of expression.³⁴

4.0 WAY FORWARD

Based on the need to provide legal certainty and a predictable and reliable legal environment for AI creations. It is recommended that a *sui generis* system of law be created for the protection of AI works. This *sui generis* system of law will include a new provision for

³⁰ Ibid.

³¹ Ibid, Section 2(2)(b).

³² Ibid, Section 3(a).

³³ D. O. Oriakhogba, ‘The Scope and Standard of Originality and Fixation in Nigerian and South African Copyright Law’ (2018) 2(2) *African Journal of Intellectual Property* 119-135.

³⁴ E. G. Ekhatior, ‘An Examination of Copyright Issues Associated with Autonomous AI Machines’ <<https://ssrn.com/abstract=4416232>> accessed May 19, 2023.

determining AI authorship, originality of AI works and duration of the protection.

In this proposed hypothetical *sui generis* system, AI will be identified as the author of their work and this will eliminate the need for identifying a natural person that should be named the author of such work in order to make it eligible for copyright. Also, the duration of the protection can be reduced to 20 years and there will be nothing like protection after the death of the author. In the case of originality, it is will be determined based on the autonomous nature of the AI system in the creation process, for which investments have been made and non-infringement of existing works. Thus, where the work is created autonomously by the AI without infringing on any existing work, the AI will be granted protection under this *sui generis* system.

5.0 CONCLUSION

As the use of AI machines by artists and creators in generating creative works becomes more widespread, and as machines get better at producing creative works which are further blurring the distinction between artwork human made and that made by computer, things are likely going to become more complex. In order to salvage the situation, there is an increasing need to identify and assess the potential impact of sophisticated AI technologies on the pursuit of copyright policy objectives. There is also need to develop legislative and regulatory responses that ensure copyright's substantive technological neutrality as AI continues to evolve.

ARTIFICIAL INTELLIGENCE VIS-À-VIS ITS PROSPECTS AND CHALLENGES: LEGAL RIGHTS AND LIABILITIES

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ABSTRACT

The World is evolving. The society is changing. Ideas are set in place. Innovations are rising. Human energy and time are mostly invaluable, and it is sacrosanct to be reserved; as machines, robots are emerging and whereas taking over the territories of human activities. It is said that “machines aids our work to be easier and faster,” in this sense, artificial intelligence is a machine with the compendium of human capacity and beyond, it’s programmed to think like humans and mimic their actions. It can be called an artificial human. Artificial Intelligence as an emerging area in technology, that is also covered by law and this area of law is an emerging area. Therefore, more to a profound exposure is captured in this paper work. This article magnetizes the meaning of Artificial intelligence, the emergence of Artificial Intelligence, the prospect, challenges, rights and liabilities.

Keywords: Artificial Intelligence, emergence, prospects, challenges, rights, liabilities.

1.0 INTRODUCTION

It is very obvious today that the most successful enterprise have embraced Artificial Intelligence (AI) to improve their operations over their competitors. Some advance countries have adopted the use of AI in their restaurant, mode of transportation etc. AI is a tool to enhance development in a domain. Experts regard AI as a factor of production, which has the potential to introduce new sources of growth and change the way work is done across industries. For instance, China and the United States are primed to benefit the most from the coming AI boom, accounting for nearly 70% of the global impact.¹ However, it could not also escape some notable challenges which this article seeks to address in subsequent paragraphs.

2.0 UNDERSTANDING ARTIFICIAL INTELLIGENCE AND ITS EMERGENCE

2.1 WHAT IS AI?

AI is “human intelligence or behavior demonstrated by machines”.² AI is a method of making a computer or a computer-controlled robot think intelligently like the human mind. AI is accomplished by studying the patterns of the human brain and by analyzing the cognitive process.³ Although, there is no precise definition of AI,

¹ Karin Kelley, 'What is Artificial Intelligence: types history and future', available at <https://www.simplilearn.com/tutorials/artificial-intelligence-tutorial/what-is-artificial-intelligence>> accessed 23 September 2022.

² Omaplex Law Firm, 'Artificial Intelligence and Human Rights', available at <<https://omaplex.com.ng/lessons/artificial-intelligence-and-human-rights/>> accessed 24 September 2022.

³ Ibid

several technologies are generally understood to be included vis-à-vis pattern recognition, image recognition, voice recognition, and understanding of natural language.⁴ The AI systems work by merging large with intelligent, iterative processing algorithms. This combination allows AI to learn from patterns and features in the analyzed data.⁵

2.2 ITS EMERGENCE

The beginning of modern AI can be traced to classical philosophers' attempts to describe human thinking as a symbolic system. However, the field of AI formally came into existence during a conference at Dartmouth College, in Hanover, New Hampshire, where the term "artificial intelligence" was coined⁶ by John McCarthy, a professor emeritus of computer science at Stanford.⁷ This was a time when the first digital computers were beginning to appear in university laboratories. The participants at this conference were predominantly mathematicians and computer scientists, many of whom were interested in theorem proving and algorithms that could be tested on these machines. There was much optimism at this conference, for they had been given some encouragement from early successes in this field. This led to euphoric predictions about AI that were overhyped. The

⁴ Omaplex Law Firm, *op.cit.*

⁵ Karin Kelley, *op.cit.*

⁶ Jesse Emspak, 'What Is Artificial Intelligence?', available at <<https://www.livescience.com/55089-artificial-intelligence.html>> accessed 23 September 2022.

⁷ Andrew Myers, 'Stanford's John McCarthy, Seminal figure of Artificial Intelligence, Dies at 84', available at <<https://news.stanford.edu/news/2011/october/john-mccarthy-obit-102511.html#:~:text=John%20McCarthy%2C%20a%20professor%20emeritus,the%20early%20morning%20Monday%2C%20Oct>> accessed 23 September 2022.

thinking at the time was that if computers could solve problems that humans find hard, such as mathematical theorem proving, then it should be possible to get computers to solve easy problems for us.⁸

Thus, in 1960, the first robot was introduced to the General Motors assembly line. In 1961, the first chatbots were invented.⁹ This is followed by IBM Deep Blue which beat the world champion Gary Kasparow, in the game of chess in 1997. In 2005, when the DARPA Grand Challenge was held, a robotic car named Stanley was built by the Stanford Racing Team won the DARPA Grand Challenge. There was another big accomplishment of AI. In 2011, IBM's question answering system, WATSON, defeated the two greatest Jeopardy champions, Brad Rutter and Ken Jennings.

This was how AI evolved. It started off hypothetical situation. Right now, it is an important technology in today's world. Currently, everything run through AI, Deep Learning and Machine Learning. Since the emergence of AI in 1950, we have actually seen exponential growth in its potential. AI covers domains such as Machine Learning, Deep Learning, Neural networks, Natural Language processing expert systems and so on. It had also made its way into computer vision and image processing. Now the question here is, for over half a century why it has suddenly gained so much importance, why are we interested in knowing about AI now? The main reason for the demand for AI is that we have more computer power now and AI requires a lot of computing power. AI is taking over since its emergence. And

⁸ Ibid

⁹ The chatbots include Siri, Alexa and Eliza.

perhaps, in the next five decades all the activities of human beings will be actioned by AI.

3.0 PROSPECTS OF ARTIFICIAL INTELLIGENCE

AI is shaping the future of humanity across nearly every industry. It is already the main driver of emerging technologies like big data, robotics and it will continue to act as a technological innovator for the foreseeable future. AI is really shaping the World and in the nearest future, the operation of human activities will be taken over by AI. Here are just a few prospects of AIs:

- a. *Self driving cars*: Although, at present, hundred percent autonomous cars are yet to be actualized. Notwithstanding, to some certain degree, there are advanced cars which require less human intervention at motion.
- b. *Manufacturing*: AI powered robots are now working alongside human workforce to perform a limited range of tasks like assembling and stacking, and predictive analysis sensors keep equipment running smoothly.
- c. *Media*: Journalism is harnessing AI, too, and will continue to benefit from it. Bloomberg uses Cyborg technology to help make quick sense of complex financial reports. The Associated Press employs the natural language abilities of Automated Insights to produce 3,700 earning reports stories per year — nearly four times more than in the recent past.
- d. *Customer Service*: Last but hardly least, Google is working on an AI assistant that can place human-like calls to make

appointments at, say, your neighborhood hair salon. In addition, the system understands context and nuance.¹⁰

4.0 THE CHALLENGES OF ARTIFICIAL INTELLIGENCE

While the emergence of AI has brought some innovations and positive technological upheavals, inter alia, at the same time, it also has some challenges which pose some threats. Below are highlights of some of these challenges:

- a. The AI's ability to accomplish tasks is restricted. It has limitations because it cannot perform all tasks, just like any other technology.¹¹
- b. The fact that AI is a costly technology and not every business owner can afford to invest in it is a challenge too.¹²
- c. Equally, AI has serious ethical implication which hinges on privacy and bias.¹³
- d. There is also a critical challenge of security threat as AI system may be hacked by malicious users.¹⁴
- e. Work overtake by AI is also a challenge. AI systems are replacing humans in various profession such as the banking

¹⁰ Mike Thomas, 'The Future of AI: How Artificial Intelligence Will Change the World', available at <<https://builtin.com/artificial-intelligence/artificial-intelligence-future>> accessed 23 September 2022.

¹¹ Dinesh G. Harkut, Kashmira Kasat and Vaishnavi D. Harkut, 'Artificial Intelligence - Challenges and Applications', available at <<https://www.intechopen.com/chapters/66147>> accessed 24 September 2022.

¹² Ibid

¹³ Kate Jones, Marjorie Buchser and Jon Wallace, 'Challenges of AI', available at <<https://www.chathamhouse.org/2022/03/challenges-ai>> accessed 24 September 2022.

¹⁴ Ali Mohammad Saghir and others, 'Review A Survey of Artificial Intelligence Challenges: Analyzing the Definitions, Relationships, and Evolutions', available at <<https://doi.org/10.3390/app12084054>> accessed 24 September 2022.

and financial service sectors. This, in effect, has a potential to create unemployment.¹⁵

- f. There is also a challenge of liability. It thus pose a challenge of, who is responsible in case of an accident caused by an AI-powered machine? This shall be further discussed in the subsequent paragraphs.¹⁶

5.0 ARTIFICIAL INTELLIGENCE: THE ISSUE OF LEGAL RIGHTS AND LIABILITIES

To start with, there have been a number of quiet discussions about whether AI should be granted legal rights and held liable for any flaw. One view is that AI should not be given legal rights and liabilities. According to this point of view, granting AI legal rights and duties would be harmful and counterproductive. A unified or standardised policy and law on how to handle autonomous AI is also realistic, according to this viewpoint, without necessarily imposing strict obligations on the AI's manufacturer, user, or the AI system itself.¹⁷ This view equally posits that if AI is to have legal personality, problems of unexplainability and unforeseeability would remain; it would not be straightforward to establish that AI should have been able to avoid the mistakes it made, nor to understand its "thought

¹⁵ Michael E. Camilleri, 'Malta: Artificial Intelligence: Some Of The Challenges Ahead', available at <<https://www.mondaq.com/technology/784942/artificial-intelligence-some-of-the-challenges-ahead>> accessed 24 September 2022.

¹⁶ Ibid

¹⁷ Omaplex Law Firm, *op.cit.*

process" and the specific steps that led it to take a particular decision.¹⁸

Conversely, there is also a contending view advocating for the attribution of legal rights and liabilities to AI. Inter alia, this view advances that, "like every other thing created by humans, AI comes with its own imperfections—from a design, programming, or manufacturing defect, or improper use, or inadequate warning label, all of which could cause damage to third parties, raising serious questions about who should bear liabilities arising from such damage".¹⁹ In addendum, it is argued that the implementation and usage of AI technology can result in harm to people and property, such as driverless automobiles running over pedestrians, drones colliding and causing damage, or AI software programmes incorrectly diagnosing medical conditions.²⁰ There have also been numerous discussions about who should be held accountable for any harm caused by AI. Thus, to this end, this segment seeks to address the issue of legal rights and liabilities of AI. However, before delving into the discourse proper, below is a summary of what legal rights and liabilities mean.

Legal rights are constitutional rights other than natural rights that accrue to natural and non-natural persons. However, before legal

¹⁸ Yaniv Benhamou and Justine Ferland, 'Artificial Intelligence & Damages: Assessing Liability and Calculating the Damages' available at <<https://www.researchgate.net/publication/339140477>> accessed 24 September 2022.

¹⁹ Templars Law Firm, 'Liability for Damage Caused by Artificial Intelligence', available at <<https://www.templars-law.com/liability-for-damage-caused-by-artificial-intelligence/>> accessed 24 September 2022.

²⁰ Ibid

rights can be granted to an entity, such an entity must be legally recognised as an artificial person. Attempting to secure legal personhood is often seen as a potential pathway to obtain certain rights and protections for AI.²¹ On the other hand, liability is the state of being legally responsible for something. Borrowing from the words of Barfield, liability is about "establishing who is to blame with system failures—or, more accurately, who society can extract legal redress from—when something goes wrong".²²

On the issue of attributing legal rights to an AI system, the implication would be that a legally clothed AI system would be held liable personally for its action. Consequently, there are presently various divided schools of thought on the issue of liability. And the division of opinion stems from the inability to reach an international agreement on the nature of AI. There is no unified conclusion as to whether AI is an entity or product that has no legal personality and cannot be personally responsible for its actions nor as a person or e-person that has legal personality and can be personally liable for its actions.²³ This piece, however, will assume that AI is a legally clothed artificial person and, as such, should be held accountable for its actions for the fuller reasons below.

It is a fundamental principle of law that *ubi jus ibi remedium* (meaning, where there is a wrong, there is a remedy). Furthermore,

²¹ Roman Yampolskiy, 'AI Personhood: Rights and Laws', available at <<https://www.researchgate.net/publication/348123023>> accessed 24 September 2022.

²² Barfield, Woodrow, Liability for Autonomous and Artificially Intelligent Robots. Paladyn 9 (1) 2018, s. 193–203.

²³ Templars Law Firm, *op.cit.*

the courts have repeatedly stated that where no remedy is provided by common law or statute, the courts are urged to create one, as the court cannot be deterred by the novelty of an action.²⁴ To this end, with the absence of specific AI legislation, the current legal rights and liabilities associated with AI are still the same as those attributed to other products or manufactured goods. The legal rights and liabilities are the ones assigned to the creator, seller, or user of the product.²⁵ AI liability is thus situated within the concept of product liability and vicarious liability.

a. Product Liability

Product liability has been defined as “a manufacturer’s or seller’s tort liability for any damages or injuries suffered by a buyer, user, or bystander as a result of a defective product.”²⁶ Identifying whether the claimant meets the requirements to be considered a consumer of the product is the first bar to pass in product liability claims.²⁷ And with reference to various courts decisions, a consumer is being defined to include a user of the product or purchaser of the service.²⁸ However, the limitation with product liability claim of this nature is that it only provides compensation in damages against the manufacturer while availing the user/owner of the AI.²⁹

²⁴ Ibid

²⁵ Nur Adlin Hanisah Shahul Ikram and Mohd Yazid Bin Zul Kepli, 'Establishing Legal Rights and Liabilities for Artificial Intelligence', <<https://www.researchgate.net/publication/328284968>> accessed 24 September 2022.

²⁶ Garner Bryan A, Black’s Law Dictionary (8th edn. West Group) 1225.

²⁷ Templars Law Firm, *op.cit.*

²⁸ See, the case of Mekwunye v. Emirates Airlines (2019) 9 NWLR (Pt. 1677) 191

²⁹ Templars Law Firm, *op.cit.*

b. Vicarious Liability

Vicarious liability means that a supervisory party bears for the actionable conduct of a subordinate or associate because of the relationship between the two parties.³⁰ This concept thus implies that if AI system should be treated as agents of their owners or manufacturers, depending on the circumstance. This being that, AI is designed to accomplish goals and tasks specified by a human being. A good example is where a robot is designed to perform roles in a company that would ordinarily be performed by a human being and damage occurs thereafter. In this scenario, vicariously, it is the company, by the virtue of it being the employer of the robot that would be held liable.

Notwithstanding, there also arises the issue of who specifically should be held liable. This predicates the fact that there are many parties involved in an AI system. They include the manufacturer, the user, and the AI system itself. By implication, anyone who has suffered loss or injury as a result of AI has several options for asserting claims for compensation. **Such a person could claim compensation against the manufacturer/developer, user/owner, or the AI itself under general torts law. However, it must be emphatically reiterated that** establishing the person on whose shoulders the liability lies is so difficult to establish when something goes wrong because there are many factors to be taken into consideration. This is due, among other things, to the lack of specific legislation governing AI's legal personality and liabilities in both the international and national spheres. Although some countries, like the European countries,

³⁰ Tecno Mech. (Nig.) Ltd. v. Ogunbayo (2000) 1 NWLR (Pt. 639) 150.

currently have an existing AI regulatory framework in the form of an enactment which specifically provides for the legal personality of an AI system and its liabilities.

6.0 CONCLUSIONS & RECOMMENDATIONS

From the foregoing, the emergence of AI, which has pervaded everyday life in the modern world, is nothing but a significant improvement and technological advancement. While this work has addressed the emergence of AI and its prospects and challenges, it equally extends its scope to the issue of legal rights and liabilities of AI systems. Sequel to the findings of this work, the author suggests that **the world community should come up with a unified understanding and agreement in relation to the definition, the legal personality, and the legal rights and liabilities of the AI system.** We equally suggest that various states should not hesitate to bring into force, necessary legal framework for the regulation of AI with the view to addressing the lingering question about AI liabilities. Ditto to the other challenges earlier identified, governments must think in advance when considering the challenges that the emergence of AI systems may pose to the populace.

DIGITAL RIGHTS IN NIGERIA: A REVIEW OF ALTERNATIVE PATHWAY FOR THE ENFORCEMENT

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ABSTRACT

As at today, Nigeria has no principal legislation that specifically guarantees and protects digital rights. The first attempt bill that seeks to guarantee and protect digital rights in Nigeria is the Digital Rights and Freedom Bill, 2019 which was rejected by the President Muhammadu Buhari. In the absence of the principal legislation that guarantees and protects digital rights in Nigeria. This paper seeks to review alternative pathways to enforce digital rights in Nigeria. The paper explores sections 37 and 39 of the Nigerian Constitution and other instruments which Nigeria has subscribed to, that guarantees and protects freedom of expression. The paper adopts doctrinal research methodology whereby descriptive approach is employed. The paper reveals some of the infringements on digital rights in Nigeria by the authorities and argues that any infringement on digital rights violates the fundamental right to privacy and freedom of expression by critically reviewing decisions of courts from various jurisdictions. The paper therefore recommends that: Digital Rights and Freedom Bill should be signed into law; and authorities should shun all sorts of infringements on digital rights.

Keywords: Digital rights, Pathway, Enforcement, Nigeria.

1. INTRODUCTION

Globalization has made world to move into digital age where several activities are done on digital platforms. Nigerians on their part have also found social media platform as one of the most powerful communication tools for engaging the public, marketing, sales and friendship. As a result of this, fundamental right to freedom of expression is exercisable online. This online expression and privacy are digital rights in internet era.³¹ The Freedom of expression is one of the basic fundamental human rights guaranteed in the section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 37 of the same Constitution also guarantees right to privacy as the fundamental right which must be protected. The United Nation which Nigeria is a State Member also affirms that the same fundamental rights that people have offline must also be protected and enjoyed online.³² To this end, it can be argued that, right to privacy and freedom of expression are exercisable online and they are two side of the same coin which must be protected and enjoyed together. Because, if there is effective application of the right to privacy online, people will express their feelings and opinions freely without fear of interception or interference by any authority. The purpose of this paper is to examine digital rights in Nigeria and review alternative pathways for the enforcement of digital rights with

³¹Airat Oyinwonuola Shitta and others, 'An Overview of Online Expression as a Digital Right' (2020) <<https://digitalrightslawyers.org/publications/>> accessed 12 September 2022.

³²Adeboye Adegoke, Digital Rights and Privacy in Nigeria, (ParadiginInnitiative Publication, 2020); 4.

a view to expose minds of Nigerians to their digital rights and how it can be enforceable.

2. MEANING OF DIGITAL RIGHTS

Digital rights are those fundamental rights that allow individuals to access, use, create and publish digital media or to access and use computers, other electronic devices and telecommunication.³³ The right to access internet and use social media platforms is the digital rights in internet era. This right includes right to data protection, right to online privacy and freedom of online expression.³⁴

For the purpose of clarity, not everything digital is connected to the internet. This is because biometric data, such as facial recognition and fingerprint checking also form part of digital technologies and they are non-internet related.³⁵ Digital right is particularly related to the protection and realization of existing rights, such as the rights to privacy and freedom of expression, in the context of digital technologies.³⁶

Digital rights are rights to know, seek information, blog, and share, access the internet, right to online privacy and right to online security. It is also the fundamental rights to access online information and all form of digital technologies.³⁷

³³ Wikipedia <https://en.m.wikipedia.org/wiki/Digital_rights> accessed 12 September 2022.

³⁴Airat Oyinwonuola Shitta (n. 1)

³⁵ Fatimah O. Kasali and others, Unraveling the Concept of Digital Rights Law in Nigeria (2020)<<https://digitalrightslawyers.org/publications/>> accessed 12 September 2022.

³⁶Ibid.

³⁷ Ibid.

3. INADEQUACY OF DIGITAL RIGHTS LAWS IN NIGERIA

In reality, there is no principal legislation that guarantees and protects digital rights in Nigeria. However, there are some laws and regulatory bodies that are partly guarantee and regulate digital rights in Nigeria, such as The Constitution of the Federal Republic of Nigeria, 1999 (as amended); the Cyber Crime Act, 2015; the National Information Technology Development Agency Act, 2007; and the Nigeria Data Protection Regulations, 2019, among others.

In practical sense, these laws are not comprehensive enough to cover this present situation of infringements on digital rights by the authorities in Nigeria, and the only comprehensive bill that meant to guarantee and protect digital rights in Nigeria is the Digital Rights and Freedom Bill, 2019 which President Muhammadu Buhari refused assent.³⁸ In fact, the 2018 report that is co-authored by Privacy International and paradigm Initiative reveals that Nigeria lack protection for data privacy.³⁹ Even though, some of the provisions of the existing laws are still infringing digital rights that are meant to be guaranteed and protected. Based on this, the subsequent part will give some of the instances of infringements on digital rights in Nigeria.

4. BRIEF OVERVIEW OF THE INFRINGEMENTSON DIGITAL RIGHTS IN NIGERIA

It has been established from the foregoing that, digital rights are fundamental rights to online privacy and online expression. On this premise, some of the infringements on digital rights will be examined

³⁸Adeboye Adegoke, (n. 2) 21.

³⁹ Ibid, 6.

here to show undue restriction and interference on online privacy and freedom of online expression by authorities in Nigeria.

Firstly, the Cybercrime Act, 2005 expressly limits the freedom of expression of the online users by virtue of its section 24(1) (a) which provides thus:

Any person who knowingly or intentionally sends a message or other matter by means of a computer system or network that is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent has committed an offence under the Act and shall be liable for punishment.

The implication of above section is that, it limits the freedom of expression by criminalizing some expression and it has been used to violate freedom of online expression by authorities.⁴⁰ In *Solomon Okedara v A.G Federation*,⁴¹ where Appellant claims that section 24(1) of the Cybercrime Act violates his freedom of expression in section 39 of the Nigerian Constitution. Nigerian court however refused to hold in his favour. While ECOWAS Court of justice has ruled that the section is inconsistent with the freedom of expression and should be amended.⁴²

Secondly, in 2018 the Nigerian Presidential Task Force published the passport information of 100 travelers as the punishment for failing to

⁴⁰ Ibid, 19.

⁴¹ (2019) LCN 12768 (CA).

⁴² SERAP v Federal Republic of Nigeria ECW/CCJ/APP/09/19.

take a repeated covid-19 test upon entry into the country.⁴³ Also, the GPS tracking and phone call listening of those who participated actively in the ENDSARS protest in October 2020⁴⁴ infringe right to data protection and privacy respectively.

Thirdly, on 4 June 2021, the Nigerian government indefinitely suspended access to Twitter in the country, claimed that Twitter was being used to undermine the corporate existence of Nigeria,⁴⁵ that is, Twitter account was being used to promote the disintegration of the federation. However, this claim is untenable because there is no law that authorizes the suspension of access to internet or social media in Nigeria.

It is submitted here that, any restriction on online expression and interference with online privacy has the implication of violating digital rights and due to the absence of principal legislation that protects digital rights in Nigeria, the subsequent subheadings review alternative pathways for the enforcement of digital rights in Nigeria.

5. PATHWAY TO ENFORCE DIGITAL RIGHTS UNDER THE NIGERIAN CONSTITUTION

Digital rights can be enforced under the Nigerian Constitution by establishing that fundamental rights to privacy and freedom of expression that is guaranteed in the Nigerian Constitution has

⁴³The Guardian' News Paper, Addressing loopholes in digital and data rights <<https://guardain.ng/opinion/addressing-loopholes-in-digital-and-data-rights/>> accessed 14 September 2022.

⁴⁴ Ibid.

⁴⁵ International Commission of Jurist, 'Regulation of Communications Surveillance and Access to Internet in Selected African States (Report 2021) <<https://www.kas.de-Report-PDF>> accessed 16 September 2022.

extended to digital rights due to emergence of digital technologies. This view will be premised on the fact that there is nothing in the Nigerian Constitution that limits the application of existing rights to emerging circumstances.⁴⁶ In fact, Constitution is a living tree that could be interpreted in the light of emerging realities that are not inconsistent with it.⁴⁷

Section 39 of the Nigerian Constitution provides thus:

(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, established any medium for the disseminating of information ideals and opinions.

The section reproduced above shows that, Nigerian Constitution guarantees freedom of expression through any medium of communication without interference. It can be argued that, section 39 of the Nigerian Constitution that provides for the freedom of expression is not limited to offline expression, but it also extends to online expression in Nigeria. Due to the fact that, the word ‘medium’ as it used in subsection (2) of the section 39 of the Nigerian Constitution has been interpreted to include digital media in the case

⁴⁶Abdulkadir Bolaji Abdulkadir, ‘The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria’ (2014) 3 (1) *AfeBabalola University Journal of Sustainable Development Law and Policy*; 122.

⁴⁷ Ibid.

of *Anthony Olubumi Okogie v Lagos State Government*,⁴⁸ under the section 36 of the CFRN, 1976 that has similar provision with the section 39 of the CFRN, 1999 (as amended). Also, it has been argued by Okedara that the word ‘medium’ that is used in section 39(2) of the Nigerian Constitution includes social media platforms, like Facebook, LinkedIn, Twitter and any other digital technology.⁴⁹

Having established that, section 39 of the Nigerian Constitution guarantees and protects any medium of expression and it has been interpreted to include all digital technologies that capable of disseminating information. The question that may arise now is; whether restriction on online expression or internet access could amount to violation of freedom of expression under the Nigerian Constitution? Answers to this question is in affirmative, this is because courts from various jurisdictions have held that restriction on internet access violates freedom of expression. For instance, In European case of *Kalda v Estonia*,⁵⁰ court held that fundamental right of expression of the Applicant was violated through the refusal to grant him access to the internet.

Also, in *Valdelomar and Sibaja v Costa Rican Superintendence of Telecommunication*,⁵¹ the Supreme Court of Costa Rica stated that ‘a restriction on internet access could infringe the right to freedom of expression.’ Similar decision was reached in the case of *Shreya*

⁴⁸ (1981) 2 NCLR.

⁴⁹ Solomon Okedara, ‘Digital right’ (Interview 8 July 2021) <<https://www.mediadefence.org/news/interview-with-solomon-okadara-from-digital-rights-lawyers-initiative-drli/>> accessed 14 September 2022.

⁵⁰ (2016) ECHR 92.

⁵¹ Costa Rica-Exp.,17-000191-0007-CO

Singhal v Union of India,⁵² where India's Supreme Court ruled in favour of freedom of expression on internet as a fundamental right.

Flowing from the above judicial decisions and statutory provisions, it is submitted here that, any infringement on digital rights violate the fundamental right to freedom of expression guaranteed under the Nigerian Constitution. Therefore, it is enforceable in the Nigerian courts as the fundamental right to freedom of expression in the Nigerian Constitution.

6. PATHWAY TO ENFORCE DIGITAL RIGHTS UNDER THE INTERNATIONAL INSTRUMENTS

Another pathway to enforce digital rights is under the regional and international instruments because Nigeria has subscribed to several instruments that guarantee freedom of expression without interference, such as the International Covenant on Civil and Political Rights, 1966;⁵³ the Universal Declaration of Human Rights, 1948;⁵⁴ and the African Charter on Human and peoples' Right 1981⁵⁵ among other.

The aforementioned instruments guarantee right to privacy and freedom of expression without interference and due to the advent of digital technology, these rights have been exercised on digital platforms which make them to become digital rights. These digital rights are enforceable in the ECOWAS Court against any authority in Nigeria. The reason is that, Nigeria is a member of ECOWAS and

⁵² (2013) 12 S.C. 73.

⁵³ ICCPR, Articles 17 and 19.

⁵⁴ UDHR, 1946 Article 12 and 19.

⁵⁵ ACHPR, 1981 Article 9(2)

Article 10 of the Supplementary Protocol of the ECOWAS Court provides that individuals, corporate bodies and governmental organization shall have access to the court for the enforcement of human rights. Also, Article 9(4) of the ECOWAS Revised Treaty states that: ‘the court has jurisdiction to determine cases of human rights violation that occur in any Member States.’

In *SERAP v. Federal Republic of Nigeria and Universal Basic Education*,⁵⁶ ECOWAS Court confirmed that the rights guaranteed by the African Charter on Human and Peoples’ Rights and International Covenant on Civil and Political Rights are justiciable before the court because Nigeria is a signatory to these international instruments as well as the Protocol on the Community Court of Justice.

Recently, in *SERAP and 176 Ors v Federal Republic of Nigeria*,⁵⁷ Court held that the act of suspending the operation of Twitter by the Nigerian government is unlawful and inconsistent with the provisions of Article 9 of the African Charter on Human and Peoples’ Rights and Article 19 of the International Covenant on Civil and Political Rights both of which Nigeria is a State Party. The court further held that any interference with access to internet constitutes interference with freedom of expression.

In view of the above judicial decisions and statutory provisions, it is submitted that any infringement on digital right is the violation of freedom of expression guaranteed under the regional and international laws which Nigeria is a signatory to. However, digital

⁵⁶ ECW/CCJ/APP/0808 (ECOWAS, Oct., 27,2009).

⁵⁷ ECW/CCJ/APP23/21

rights are enforceable and justiciable before the ECOWAS Court and decision of ECOWAS Court will become binding in Nigeria because Article 15(4) of the ECOWAS Revised Treaty states that judgments of the court shall be binding on Member States.

7. CONCLUSION

Digital rights are the extension of fundamental right to privacy and freedom of expression in digital world. These rights are indispensable fundamental human rights that need to be protected and enjoyed without restriction, unless with lawful justification. This paper has argued that violation of Constitutional provisions for the right to privacy and freedom of expression of online users is violation of digital rights. This paper therefore recommends that: Digital Rights and Freedom Bill should be signed into law; section 24 of the Cybercrime Act should be amended; there should be public enlightenment on digital rights; and authorities should shun all sorts of infringements on digital rights.

**GENDER INCLUSIVITY AS A STRATEGY TO
DRIVE INNOVATION AND CREATIVITY IN
NIGERIA**

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ABSTRACT

Article 27 of the Universal Declaration of Human Rights (UDHR) provides that “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”. Despite this declaration as far back as 10th December 1948, women remain underrepresented in several areas of human life, intellectual property being not an exception. This article attempts to examine, among others, the challenges faced by females in using the Intellectual Property System (IP) system and how these challenges can be surmounted, the perks of a gender-parity IP future, as well as policy recommendations which would be relevant to stakeholders and policy makers in the efforts towards gender inclusivity in the IP world

1.0 INTRODUCTION

From the very day I slid out and my umbilical cord was cut, life had begun to look down on me. The faces of the doctors and nurses, the face of my mother. Behind those smiling and happy faces was an expression evident in my screams. The echoes that came with every pitch were almost deafening. There was my brother in her arms. He was warm, soft and smelled sweet. Conversely, I was screaming endlessly away from the remarkable moment because I was born with the female genitalia.

The engines of progress are human innovation and creativity, but women remain underrepresented in several areas of Intellectual Property (IP).¹ This gender disparity has its roots in history, when IP law was marked by male predominance and trades which could lead to intellectual property rights were reserved for men. Women who expressed innovation and thinking in certain instances had their creativity ascribed to men e.g. Sybilla Masters. Several female authors e.g. J.K. Rowling (Robert Galbraith) had to write under male pen names.²

Gender equality in Nigeria was found to be 0.333333% (less than 1%) in a World Bank report from 2020.³ Per another report from the

¹ WIPO, “*Gender Equality and Intellectual Property*”, <<https://www.wipo.int/women-and-ip/en/>> accessed March 16, 2023

² Jennifer Brant et al, “*Policy Approaches to Close the Intellectual Property Gender Gap*” (2019), <https://www.arbiter.wipo.int/export/sites/www/ip-development/en/agenda/pdf/policy_approaches_close_the_ip_gender_gap.pdf> accessed March 16, 2023

³ Trading Economics, “*Nigeria - Gender EQUALITY2023 DATA 2024 Forecast 1990-2020 Historical*”, (Trading Economics) <<https://tradingeconomics.com/nigeria/gender-equality-wb-data.html>> accessed March 24, 2023

World Gender Gap Report 2022, Nigeria is ranked 123rd out of 146 countries, with a score of 0.639.⁴ There appears to be no particular data on the gender parity rate in IP but from the foregoing, it is safe to say that the proof is in the pudding.

On that note, this essay seeks to examine the challenges contributing to the IP gender gap and propose practical solutions for a gender-parity IP future.

2.0 PERKS OF A GENDER-PARITY IP FUTURE

The unending tirade my father gives every day he arrives from work sometimes leaves me enraged. *“You and your mother only know about money, every time money. Do you think it is that easy to make?”*. Wasn’t he the one who refused to support my innovative ideas and insisted I concentrate on being a wife material for ‘rich’ suitors? Just as in a family, where the man bears the brunt of the responsibilities with little or no help from the spouse, so is a society where the women do not harness their innovative minds. Rather than being burden sharers, they become burden shedders in the quest towards addressing life challenges.

Increasing women's access to IP can lead to increased pay, professional opportunities, and visibility for them. Globally, gender inclusivity in IP could increase the GDP by 2.7%.⁵ Women are constantly pushed into boxes and refused the opportunity to harness

⁴ Khadijat Kareem, “*How Is Nigeria's Gender Gap Report Card? Improving but Still Poor*” (Dataphyte, August 18, 2022) <<https://www.dataphyte.com/latest-reports/gender/how-is-nigerias-gender-gap-report-card-improving-but-still-poor/>> accessed March 24, 2023

⁵ Ibid (n.2)

their idea and creativity. When the reverse is the case, the entire society thrives as a result.⁶

3.0 CHALLENGES CONTRIBUTING TO THE IP GENDER GAP

It is a popular saying that “*no two of us are alike – even identical twins*”. Evidently, my brother and I do not only differ in character but also with regards to the opportunities given to us in life. While my brother was supported in becoming a successful entrepreneur, I was unable to sit at the round table of intellects but compelled to serve the table. To you, this may just be the story of a little girl lamenting about the disparities in the lives of her and her twin brother. However, realistically, this is the story of millions of Nigerian women who as a result of one hurdle or the other are unable to harness their innovative and creative minds.

While the effects of the gender gap are difficult to measure, a careful examination of the causes of this gap may help to devise potential solutions. “*Ignnorantia juris non excusat*” – Ignorance of the law is no excuse. There is a general lack of understanding on what IP is, the value of IP rights and how the IP system works. A lot of women are not aware of how to exploit their innovation and creativity commercially. Some others do not believe in the system. Just as the maxim says, that won’t excuse or help in bridging the IP divide.⁷ Additionally, there exists an inequitable access to education especially in STEM⁸ related fields. With an estimated population of 206 million, Nigeria has 14 million out of school children, 60% of

⁶ For example, Windshield viper and frequency hopping technology, patented by women laid the groundwork for Bluetooth and Wi-Fi.

⁷ Ibid (n.2)

⁸ Science, Technology, Engineering and Mathematics.

whom are girls.⁹ Moreover, women in Nigeria are less likely to have access to resources, support, mentorship and funding. They lack access to capital to develop their creative ideas, and they do not have access to social connections. Additionally, there are few peers who act as role models for women, and few women in the IP industry to serve as mentors. This is followed by a series of sociocultural barriers and bias existing in Nigeria, resulting in women lagging behind in various spheres of human life. Women also have the problem of balancing their careers with their families, and may face sexual harassment in schools and the workplace.¹⁰

Albert Einstein said, “*If I had an hour to solve a problem, I’d spend 55 minutes thinking about the problem and 5 minutes about solutions*”. This goes to show the importance of knowing what the problem is before seeking remedies. On this note, there is insufficient data on the IP Gender gap which is needed to understand the scope and nature of the IP Gender gap.¹¹

4.0 POLICY RECOMMENDATIONS AND PROPOSALS

As much as I am pleased with the accomplishments of my brother, I know within, that if afforded the same opportunities and in similar circumstances, ‘*mutatis mutandis*’, I could have achieved the same feat, if not more. Nevertheless, energy is better expended in the search for solutions as we have spent more than enough time stirring

⁹ Selma Nawrozzada, “*Girls’ Education in Nigeria*” (Centre for African Justice, Peace and Human Rights) <<https://centreforaficanjustice.org/girls-education-in-nigeria/>> accessed March 25, 2023

¹⁰ Allie Porter, “*Where are the Women? The Gender Gap within Intellectual Property*”, <https://tiplj.org/wp-content/uploads/Volumes/v28/Porter_Final.pdf> accessed March 16, 2023.

¹¹ Ibid (n.2)

the pot of problems. Therefore, in order to bring back our “*lost Einsteins*”, we need to adopt a triple-pronged strategy involving enlightenment and empowerment, more research and addressing sociocultural barriers and bias.

4.1 ENLIGHTENMENT AND EMPOWERMENT

In order to tackle the far-flung ignorance on the value of IP and how it works as well as the lack of resources, there is the need to encourage and train women on the use of IP, STEM fields as well as providing them access to resources to drive their innovation. First of all, by ensuring access to education for the female child, it increases the chances of a gender parity IP future. Early exposure to STEM fields would go a long way. This can be achieved by organizing programs for women, be it in primary and secondary schools, training workshops. Furthermore, by providing resources in form of grants, loan, government subsidy, tax breaks, internship and mentoring opportunities, scholarships, it would allot women with the opportunity to harness their creativity. These programs should be targeted at women in places such as markets, vocational centers and academic institutions.

Subsequently, to ease the complexity of IP registration processes, legal support in form of pro-bono services as well as having considerable charges would lift a major burden on women with an interest in the IP system.

4.2 ADDRESSING SOCIOCULTURAL BARRIERS AND BIAS

More often than not, the bias women face has its root in the mentality of the people and the ambience the society has set. To tackle this, there needs to be a gradual change of music. To begin with, women

must begin to have confidence in themselves. Enlightenment and women networking can improve this.

In addition, laws aimed at protecting women and the female child should be enacted, implemented properly and amended when necessary. Though we have provisions in certain laws, it would be beneficial to have a specific legislation in Nigeria protecting women such as the CEDAW.¹²

Furthermore, improving our standard of education would ensure the populace is adequately educated in order to eradicate bias in the society. Flexible hours, part time work in workplace and classrooms should also be adopted to ease the pressure on women having to deal with home keeping responsibilities.¹³

4.3 MORE RESEARCH

Research needs to be conducted to provide more insight on the IP Gender gap. This could be done by conducting surveys in schools, vocational centers, workplaces, and IP institutions. Data could also be obtained from IP institutions based on registration. Gender may not be included in the application form to avoid bias, but a guess from the names could give an estimated data on the issue.

5.0 CONCLUSION

It is a popular saying, “*what a man can do, a woman can do better*”. Chimamanda Ngozi Adichie, Chinyere Okorochoa, Folorunsho Alakija,

¹² Convention on the Elimination of All Forms of Discrimination against Women 1979

¹³ Jozefina Cutura, “*Challenges for Women Inventors and Innovators in Using the Intellectual Property System – A Literature Review*” (WIPO. July 2019)

<https://www.wipo.int/export/sites/www/ip-development/en/agenda/docs/literature_review.pdf> accessed March 16, 2023

Grammy award winning Tems are best examples of this. This goes to show that women are innovative and creative and for no reason less than men. However, in order for us to achieve gender inclusivity, not just all hands, but all heads, legs and all of our bodies must be on deck to change the narrative of Nigerian women in IP.

**ADDRESSING ISSUES AFFECTING
CUSTOMARY ARBITRATION IN NIGERIA:
SETTING THE TONE FOR CALIBRATION**

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ABSTRACT

Customary arbitration as a mechanism of dispute resolution is not alien in Nigeria's legal system. The practice of resolution of conflicts via the application of the customs and traditions of the local communities has been entrenched from time immemorial. Some scholars have rightly argued that customary arbitration is the oldest machinery of dispute resolution in Nigeria. Dispute resolution via customary arbitration has tremendous edges amongst which are minimal cost, speed, and absence of technicalities, which are related to the conventional method of dispute resolution. In spite of these intrinsic advantages, the practice of customary arbitration in Nigeria is faced with some concrete challenges, which have continuously blighted its growth as a viable mechanism of dispute resolution in Nigeria. These challenges are majorly precipitated by the extant judicial parameters imposed on the application of customary arbitration. Among other considerations, this paper identifies some of these practical challenges in order to set the tone for the calibration of the abysmal practice of customary arbitration in the Nigerian judicial setting.

Keywords: Customary Arbitration, Alternative Dispute Resolution, Need for Paradigm Shift.

1.0 INTRODUCTION

The practice of dispute settlement using the process of arbitration is as old as the existence of primitive Nigerian communities.¹ Prior to the advent of the colonial administration on the shores of Africa, the native African societies adopted various modes of settlement of disputes. The resolution of disputes by arbitration was inherent in most of the customary laws of the native societies. Customary arbitration is a comprehensive mechanism of dispute resolution that has been in existence in various local communities long before the advent of colonization. As the major mechanism of dispute resolution, it was used to resolve a variety of disputes such as personal disagreements, religious crises, political rivalry, marital disputes, chieftaincy matters, land disputes, commercial disputes, and boundary disputes.²

For some stronger reasons, the judicial system brought by the colonialists gained superiority over these priorly existing traditional mechanisms of dispute resolution.³ especially, in this modern day Nigerian society where arbitration seemed to have prominence than customary arbitration in the resolution of civil disputes.⁴ Although customary arbitration has been recognized as a valid mechanism of

¹ Akanbi M M, Abdulrauf L A and Daibu A A, 'Customary Arbitration in Nigeria: A Review of Extant Judicial Parameters and the Need for Paradigm Shift' (2015) 6 (1) *Afe Babalola University Journal of Sustainable Development Law and Policy* 199.

² Sunday Fagbemi, 'Scope and Relevance of Customary Arbitration as Mechanism for Settlement of Dispute in the 21st Century' (2019) 10 (1) *NAUJILJ* 33.

³ See Tobi N, *Sources of Nigerian Law* (MIJ Professional Publishers, Lagos, 1996).

⁴ Nwakoby C G, 'Enforcement of Customary Law Arbitration Awards in Nigeria Civil Litigation' (1995) 20 *International Legal Practitioner* 142; Owasanoye B., *Dispute Resolution Mechanisms and Constitutional Rights in Sub-Saharan Africa* (United Nations Institute for Training and Research (UNITAR), 2001) 18.

dispute resolution under Nigerian law, its recognition is hinged on certain judicial parameters, which are ordinarily alien to the culture and tradition of the local communities, and which some have described as a superimposition by the courts.⁵ This paper essentially appraises the practice of customary arbitration in Nigeria, as well as the challenges hindering its growth as a machinery of dispute resolution. Its thesis as will be demonstrated in part four (4) of this paper proposes handy solutions for surmounting the problems confronting the viable practice of customary arbitration in Nigeria.

2.0 CUSTOMARY ARBITRATION IN NIGERIA

Customary arbitration is a traditional system by which disputes between individuals are resolved by traditional rulers, elders, or principal members of the family, in accordance with the native laws and customs of the community. Customary arbitration is an arbitration of dispute which is founded on the voluntary submission of the parties to the decision of the arbitrators who are either the chiefs or elders of their communities, and the agreement to be bound by such decision.⁶ Customary arbitration is described as “a traditional system of dispute resolution in which traditional rulers, elders, age groups and deities are actively involved in dispute resolution to ensure social justice and harmony within and among the people of various Nigeria communities”.⁷

⁵ Akanbi M.M., Abdulrauf L.A. and Daibu A.A, ‘Customary Arbitration in Nigeria: A Review of Extant Judicial Parameters and the Need for Paradigm Shift’ 199.

⁶ Fagbemi S A, ‘Scope and Relevance of Customary Arbitration as Mechanism for Settlement of Dispute in the 21st Century’ 32.

⁷ Abdulrasaq Daibu, ‘Application of the Rules of Natural Justice in Arbitral Proceedings in Nigeria’ 2013) vol. 1 *Ife Juris Review* 60; Abdulmumin Oba, ‘Juju Oath in Customary Arbitration and their Legal Validity in Nigerian Courts’ (2008)

Talking about its features now, unlike modern arbitration, customary arbitration is neither based on any written contractual agreement between the parties concerned nor regulated by the Arbitration and Conciliation Act. Customary arbitration is rather founded on mutual respect by the parties for the traditions, practices, and norms of the community.⁸ Although the existence and enforceability of customary arbitration under Nigerian jurisprudence are settled, it must be emphasized, at this juncture, that these elements or parameters used to gauge the validity of customary arbitration have been met with controversial positions by the courts over the years. The Nigerian courts have not been consistent on their position on the essential ingredients of a valid customary arbitration.⁹

Despite the inconsistency of the courts on the elements of a valid customary arbitration, the essential elements are observed by this writer to include: voluntary submission by the parties; submission to bodies or persons having judicial authority under the custom of the parties; prior agreement to be bound by the decision of the arbitral tribunal; conduct of arbitration in accordance with the customs of the parties; non-withdrawal of any party before the publication of the

52 (1) *Journal of African Law* 142; Igbokwe V C, 'Law and Practice of Customary Arbitration in Nigeria: Agu v. Ikewibe and Applicable Law issues Revisited' (1997) 41 (2) *Journal of African Law* 201.

⁸ It must be noted that the Arbitration and Conciliation Act seemingly recognizes customary arbitration when it provides in section 35 that: "*This Act shall not affect any other law by virtue of which certain disputes- (a)May not be submitted to arbitration; or (b)May be submitted to arbitration only in accordance with the provisions of that or another law.*" "Another law" within the context of this provision may refer to customary law, upon which an arbitration is based.

⁹ Akanbi M.M., Abdulrauf L.A. and Daibu A.A., 'Customary Arbitration in Nigeria: A Review of Extant Judicial Parameters and the Need for Paradigm Shift' 211.

award; publication of the award; and acceptance of the award at the time it is made.¹⁰

These elements are conjunctive as Uwaifo JSC in *Duruaku Eke & Ors v. Udeozor Okwaranyia & Ors*¹¹ observed that:

I think anything short of these conditions will make any customary arbitration award risky to enforce. In fact, it is better to say that unless the conditions are fulfilled, the arbitrations award is unenforceable.

3.0 CHALLENGES FACING THE PRACTICE OF CUSTOMARY ARBITRATION

3.1.1. Imposition of the Elements of Statutory and Modern Arbitration

One of the major challenges facing the practice of customary arbitration in Nigeria is the imposition of the elements of statutory/common law/modern arbitration on customary arbitration. The Nigerian courts have, in a plethora of decided cases, placed certain yardsticks to determine the validity of a customary arbitration award. These yardsticks are the elements that must be conjunctively present in order for any customary arbitral award to enjoy enforceability. A chary observation of these conditions show that they are, in fact, artifacts of common law. These conditions are ordinarily alien to customary arbitration in its aboriginal nature. They are not compatible with any customary law in Nigeria. The

¹⁰ *Agu v. Ikewibe* (1991) 3 NWLR (Pt. 180) 385; Akanbi M.M., Abdulrauf L.A. and Daibu A.A., 'Customary Arbitration in Nigeria: A Review of Extant Judicial Parameters and the Need for Paradigm Shift'²¹².

¹¹ (2001) LPELR 1074.

imposition of these judicial parameters has made customary arbitration to be different from that which was obtainable in most local communities. Thus, the practice of customary arbitration at present is common law-oriented.¹²

For instance, one of the conditions for the validity of customary arbitration is the voluntary submission of the parties. This is the threshold of arbitration generally. This situation is however different under customary law.¹³ On the issue of voluntary submission, an expert opines that:

*...among the Yoruba communities of Western Nigeria, a typical arbitral process starts by an aggrieved party taking the initiative of reporting to the Head of the compound or to a body of arbitrators depending on the nature of the dispute. The other party is thereafter summoned or invited by the tribunal to come and state his own side of the case.*¹⁴

Based on the foregoing, it will be inappropriate to asseverate that a party, who as a result of summons appears before a native tribunal, has not voluntarily submitted to the jurisdiction of the tribunal, whereas failure to appear before such a tribunal will attract local sanctions. Consequently, any award made by such a native tribunal would be invalidated in the common law court as a result of the

¹² Ibid.

¹³ See Ajayi M.O. and Fabode-Balogun C., 'The Scope and Relevance of Customary Arbitration in Contemporary Nigerian Society' (2017) 1(1) *Bowen Law Journal*, 61. See also Daibu A.A. and Abdulrauf L.A., 'Challenges of the Practice of Customary Arbitration in Nigeria' (2014) Vol. 12 *The Nigerian Juridical Review*, p.114.

¹⁴ Akanbi M.M., *Domestic Commercial Arbitration in Nigeria: Problems and Challenges*, pp.151-152.

absence of voluntary submission. This element of voluntary submission is clearly alien to customary arbitration.¹⁵

Publication of the award is another imposed condition for a valid customary arbitration. This condition is quite ambiguous as the connotation of the word 'publication' is vague.¹⁶ How should the award be publicized? Could it be by making the pronouncement of the award public to the people or by announcing it to the parties after the decision has been made? If it is the former, then, the advantage of confidentiality associated with arbitration is lost. That is, there will be no difference between litigation and customary arbitration if what has transpired in a matter subjected to customary arbitration is eventually made public.¹⁷

3.1.2. UNCERTAINTY IN THE APPLICATION OF CUSTOMARY LAW

Another major challenge of the practice of customary arbitration is the uncertainty in the application of customary law. Since customary law is generally unwritten, difficulties arise in the practice of customary arbitration. As a result of the unwritten and diverse nature of customary law, uncertainty in the law is encountered due to a lack of codification. In the resolution of disputes, such uncertainty abates the confidence of the parties in customary arbitral proceedings. The relegation of the practice of customary arbitration

¹⁵ See Daibu A.A. and Abdulrauf L.A., 'Customary arbitration in Nigeria: Reflections on some conceptual challenges to its effective development as a viable ADR mechanism in Nigeria' (2016) 9(2) *Unilorin Law Journal*, p.111.

¹⁶ See Ajayi M.O. and Fabode-Balogun C., 'The Scope and Relevance of Customary Arbitration in Contemporary Nigerian Society' p.63.

¹⁷ Daibu A.A. and Abdulrauf L.A., 'Challenges of the Practice of Customary Arbitration in Nigeria' p.120.

to only traditional and rural societies is another major challenge. There is a popular and erroneous assumption that customary arbitration can only thrive in rural settings, and cannot grapple with the sophistication of urban areas or cities. Today, this is the reality, as the majority of matters relating to customary arbitration emanate from the villages and rural areas. Customary arbitration must not operate only in rural areas because the cities and urban areas are the hearts of development and commercial activities. This relegation has made customary arbitration to be on a fast decline.¹⁸

Particularly, the general attitude of Nigerians towards litigation is another major challenge facing the effective practice of customary arbitration in Nigeria. Nigerians are known to be very litigious.¹⁹ Most disputing parties prefer resolving their disputes in court to adopting customary arbitration. This is because most of them are after retribution and not a restoration of their cordial relationships. The decreasing patronage of customary arbitration is also due to the low level of awareness of customary arbitration and its advantages.

4.0 SETTING THE TONE FOR CALIBRATION OF CUSTOMARY ARBITRATION PRACTICE IN NIGERIA

The judicial parameters upon which the validity of customary arbitral awards hinges is foremost among the challenges facing the practice of customary law arbitration in Nigeria. Nigeria is a multi-ethnic state with innumerable dialects, customs, and traditions, which are

¹⁸ Akanbi M.M. *Domestic Commercial Arbitration in Nigeria: Problems and Challenges* 276.

¹⁹ See Daibu A.A. and Abdulrauf L.A., 'Customary arbitration in Nigeria: Reflections on some conceptual challenges to its effective development as a viable ADR mechanism in Nigeria' 117.

peculiar to its various local communities. Since there is no universally applicable customary law, it is rational that the application of each customary law be independently treated. By implication, only natives of a disputed customary law should be called upon as expert witnesses or judges to determine the validity of such custom, rather than subjecting the variously distinct customary laws to a general judicial assay.

Similarly, the position of the Supreme Court over the years on matters involving customary arbitration has been incongruous. The decisions of the Supreme Court and the Court of Appeal on the requirements of a valid customary arbitration have been ridden with disparity.²⁰ It is strongly suggested that these requirements be consolidated and catholically adopted by these Courts in subsequent applications. In another vein, the writer of this paper suggests that three ingredients should be adopted which are: voluntary submission of the parties, publication of the arbitral award, and the conduct of the arbitral proceedings in accordance with the relevant customary law.

With regard to the application of customary arbitration in Nigerian courts, the issue of the competence of judges has constantly become a bone of contention. It is no gainsaying that some or most of the judges sitting on cases that border on customary arbitration are not so well versed in the customary law upon which the disputed arbitration is premised. A practical solution to this imbroglio will be that judges

²⁰ See *Okeye v. Obiaso* (2010) 8 NWLR Part 1195 page 145 at 171; *Egbesimba v Onuzuike* (2002) 15 NWLR [Pt. 791] p. 466; *Awonusi v. Awonusi* (2007) All FWLR 1642 at 166; *Achor v. Adejoh* (2010) 6 NWLR [part 1191] 537 at 590. *Duruaku Eke & Ors v Udeozor Okwaranyia & Ors* (*supra*).

should be trained in the nuances and intricacies of customary law. In light of this, judges that are grounded in the contended customary law should preside on such matters affecting the validity of customary arbitral awards in issue.

Indubitably, customary law is among the major sources of Nigerian law. Its relevance as a source of law has been severally echoed by various provisions of the Constitution.²¹ It is also trite that customary law is generally known to be unwritten.²² This characteristic feature makes it to be flexible to changes and maintains its relevance in application to contemporary issues.²³ Nonetheless, this feature has done more harm than good to the application of customary law in Nigeria. The issue of the codification of customary has been a constant polemic that is still hotly debated to date. The unwritten nature of customary law poses practical challenges to its application in Nigerian courts. There is no doubt that the codification of customary law will hinder its feature of flexibility; however, greater clarity will be achieved if such codification is made. Withal, it is suggested that a law reform commission be set up to enquire into the restructuring of customary law and practices in Nigeria in order to foster its effectiveness as a mechanism of dispute resolution as well as to serve the wishes of the people who are subject to its sway.²⁴

²¹ See the 1999 Constitution of the Federal Republic of Nigeria (as altered), ss 265, 280, and 315(3)-(4).

²² See *Oyewumi v. Ogunesan* (1990) 3 N.W.L.R Cpt. 137/ 182 at p. 209.

²³ See *Lewis v. Bankole* (1908) L.N.L.R. 81 at 101; *Balogun v. Oshodi* (1929) 10 N.L.R 36 at p. 50.

²⁴ Daibu A.A. and Abdulrauf L.A., 'Challenges of the Practice of Customary Arbitration in Nigeria' p.16. The reform commission may also consider the codification of customary law and practices, especially in the form of restatements as seen in other legal climes around the world, with heterogenous populations.

In order to bolster the practice of customary arbitration in Nigeria, it is expedient to expand the ambit of arbitrable issues which customary tribunals can adjudicate upon. The scope of customary arbitrable matters should be broadened to cover minor criminal matters.²⁵ That is, native tribunals should be enabled to adjudicate on minor criminal matters, which are of a relatively non-grievous nature.²⁶ This stride is not aimed at encroaching on the jurisdiction of ordinary courts, rather it is intended to ease the workload of courts, especially in cases where parties to customary arbitration should be availed the option of resorting to court where dissatisfied by such arbitral awards.

Customary arbitration, unlike other areas of arbitration, is behindhand in terms of development and research. The heavy criticisms levied on some features of customary arbitration, such as gender insensitivity, brute enforcement mechanisms, and cynicism about oath-taking, are the results of a low level of scholarship in the area of customary law arbitration. Proselytizing the nitty-gritty of customary arbitration will facilitate the understanding of the peculiar values of each custom and tradition as well as appreciating customary arbitration as means of equitable justice delivery. Intensifying the

Restatement and codification of indigenous customary law in Nigeria will help to elevate the status of indigenous customary law, and eliminate the problems of ambiguity in its application, and as well fast-track the seamless practice of customary arbitration in Nigeria. See Daniel Ugwo Eze, 'Appraisal of Customary Law Arbitration in Nigeria' (An LLM Thesis submitted to the Faculty of Law, University of Nigeria) 173.

²⁵ In this regard, the amendment of some provisions of the constitution would be necessary in order to effectuate these proposed changes.

²⁶ Daibu A.A. and Abdulrauf L.A., 'Challenges of the Practice of Customary Arbitration in Nigeria' 16.

level of education and awareness of customary law will promote the use of writing in the process of customary arbitral awards.

5.0 CONCLUSION

It must be stated that customary arbitral awards are as good as judgments of ordinary courts of law, given that all the conditions for its validity are met. Some of the issues hindering the efficacy and growth of customary arbitration practice in Nigeria have been expounded in this paper. *Inter alia*, it is suggested that the extant judicial parameters pegged on the application of customary law arbitration in Nigeria be reviewed. If there could be an appropriate time for this modification, it is now.

FRAMEWORK ON WASTE POLLUTION IN NIGERIA

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ABSTRACT

Lack of proper waste management system has been identified as one of the major causes of environmental pollution and climate change globally. A lot of things are being produced and/or manufactured daily without available means of how they can be properly disposed thereby, causing more harm to the Environment. For instance, the major Environmental problem perceived in Nigeria is lack of proper waste management, although various legislations have been enacted to regulate waste management in Nigeria, poor waste disposal systems continue to thrive in premises and facilities in Nigeria. In utilizing the doctrinal research methodology, this paper examines the concept of waste pollution and its effect in Nigeria. It further examines the laws on wastes management in Nigeria. It finds that despite the copious regulations on waste management in Nigeria, there are still incidents of improper waste disposal in the country and this is largely due to the non-implementation of the laws by the government and lack of adequate waste management system. This paper posits that the means for proper waste disposal should be made available by manufacturers and or producers all over the world and their products and/or goods should be properly scrutinized as to their importance to mankind before they are distributed.

1.0 INTRODUCTION

Waste pollution simply refers to the improper and/or indiscriminate disposal of wastes which causes major harm to the environment.¹ A typical average Nigerian thinks it is not only proper but justifiable to dispose wastes indiscriminately without putting into consideration the effects of such acts.² Little wonder flooding and extreme weather conditions have become a norm in Nigeria. In fact, you can never ply a route without seeing garbage like used nylon wraps, plastics amongst others lying fallow on the ground causing nuisance and pollution. It is heartrending that postconsumer waste which is the waste gotten from the consumption of products, though the most visible, is of a lesser effect in comparison with the production waste (pre-consumer waste).³ According to the Federal Ministry of the Environment, Nigeria produces about 32 million tonnes of wastes per year. Plastic waste is the highest type of waste generated annually in Nigeria with about 2.5 million tonnes of waste, unfortunately, these plastic wastes end up filling drainages, sewers, beaches and water bodies.⁴

2.0 CONCEPTUALIZATION

Waste pollution is the dumping of solid, semi-solid, liquid, or gaseous material in a place not designated for that purpose by law. It has overtime been one of the most cumbersome Environmental problems

¹ S. O. Obanore, et al, 'Waste Management Regulations Enforcement: Lead Way to a Healthy Environment in Nigeria' (2022) 4(3) *TCEA*673.

² Ibid.

³ Nigeria's Waste Management Policy Yields Little Gains' <<https://businessday.ng/big-read/article/nigerias-waste-management-policy-yields-little-gains/>> accessed 22 June 2023

⁴ Ibid.

in the world. Sadly, as human consumption increases, so does waste.⁵ It is pertinent to note that waste has no watertight classification as jurists and scholars have brought up various classifications of wastes; wastes can be classified according to its source i.e domestic and industrial wastes, it can also be classified according to its harmful effects to human beings and the environment.⁶ Wastes are also classified into control wastes i.e household wastes, commercial wastes and they can also be classified into dangerous or special wastes.⁷ Of major importance to this work are these classes of waste; Natural and Human waste, Solid and Emission waste and Radioactive waste.

- a. **Natural and Human waste:** Natural wastes are also known as organic wastes that are biodegradable and are produced from either plants or animals.⁸ It is pertinent to note that this kind of wastes produce little to no environmental hazards as they go through the natural recycling process unlike human wastes which is the highest level of waste. Human wastes are generated by man's activities such as mining, industrialization, consumption, manufacturing.⁹
- b. **Solid and Emission waste:** Solid wastes are either solid or semi-solid in form and they are commonly referred to as trash, garbage or discarded materials gotten from man's activities which can be regulated while Emission wastes are gaseous in nature and very

⁵ L. Atsegbua and V. Akpotaire and F. Dimowo, *Environmental Law in Nigeria: Theory and Practice* (2nd Edn. Ambic Press 2010).

⁶ Ibid.

⁷ R. Malcom, *A Guidebook to Environmental Law* (Sweet and Maxwell, 1994) 19.

⁸ Ibid.

⁹ Ibid.

harmful to the environment because of its ability to travel fast and far.¹⁰

- c. **Radioactive waste:** it is a hazardous waste that contains radioactive materials very harmful to humans and the environment. They are generated by mining industries, medicine industries, nuclear power generating industries.¹¹

3.0 EFFECTS OF IMPROPER WASTE DISPOSAL.

The effects of improper waste disposal are numerous to the environment and above all, to humans as it is a known fact that “we are our environment”. Thus, whatever affects the environment affects us as well the same way our actions affect the environment. The hazards of improper waste disposals are clearly seen in the various ways;

- a. **Health Impacts:** Over the last four decades, there has been an overwhelming increase in global concern over the public health impacts caused by environmental pollution.¹² Research has shown that persons living close to dumping sites have a very high chance of getting respiratory diseases like asthma as a result of the release of carbon dioxide, methane, etc., and environmental abuses can also lead to reproductive impairment,¹³ birth defects¹⁴

¹⁰ M. O. Asikhia and D. Olaye ‘Solid Waste Management in Benin City: An Appraisal’ (2011) 18(2) *NJRP* 1.

¹¹ ‘Radioactive Waste’ <<https://www.epa.gov/radtown/radioactive-waste>> accessed 23 June 2023.

¹² M.A. Khan and A.M. Ghouri, ‘Environmental Pollution; It’s Effects and Remedies’ < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1981242 > accessed 21 June 2023.

¹³ V. Aigbokhaevbo and N. Aniekwu, ‘Environmental Abuses in Nigeria: Implications for Reproductive Health’ (2013) 19 (1) *ASICL* 233.

¹⁴ C. Nwokolo, ‘Health Effects of Improper Waste Disposal’ (2022) <https://healthguide.ng/health-effects-improper-waste-disposal/#google_vignette> accessed 23 June 2023.

such as *spina bifida*, *congenital anomalies*¹⁵. Also, research shows that cancer is associated with improper waste disposal.

- b. **Climate Change:** Research has shown that about 80% cause of climate change can be traced to improper disposal of wastes.¹⁶ These solid or gaseous wastes contribute directly to greenhouse gas emissions. The most common greenhouse gas produced from waste is methane.¹⁷
- c. **Flooding:** Nigeria is currently faced with this pandemic as a result of improper disposal of wastes. Drainages, streams, and water bodies are currently blocked with plastics. In 2022, the Federal Government recorded that the 2022 flood displaced over 2 million people, killed over 662 people, injured over 3,174 people,¹⁸ destroyed more than 82,035 houses with 332,327 hectares of land affected.¹⁹ It is pertinent to note that the effects of waste disposal are inexhaustible.

4.0 LEGAL FRAMEWORK ON WASTE DISPOSAL IN NIGERIA

In recognition of the pivotal impact that environmental pollution can have on human health and development, the Nigerian government has enacted a plethora of environmental laws particularly after the

¹⁵ P Elliott, and others, 'Risk of Adverse Birth Outcomes in Populations Living Near Landfills' <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC37394/>> accessed 23 June 2023.

¹⁶ 'Contribution from Waste to Climate Change' <<https://www.grida.no/resources/5665>> accessed 23 June 2023

¹⁷ Ibid.

¹⁸ M. Ogune, 'Over 2 Million Nigerians Displaced by Flood in 2022, says NEMA' <<https://guardian.ng/news/over-2-million-nigerians-displaced-by-flood-in-2022-says-nema/>> accessed 23 June 2023.

¹⁹ '2022 Nigeria Floods' <https://en.m.wikipedia.org/wiki/2022_Nigeria_floods> accessed 23 June 2023.

koko incident of 1988 to regulate activities affecting the environment.²⁰

After the Koko incident, laws, policies and agencies were created for the protection of the Environment. Of these laws and regulations, the most specific and far-reaching is the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007.²¹

4.1 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999

Section 20 of the CFRN 1999 recognizes the importance of improving and protecting the environment and makes relevant provisions on environmental protection.²² It is very unfortunate that the environmental rights provided for in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is a non-justiciable right as it falls under Chapter II of the CFRN 1999.²³ Notwithstanding the non-justiciability of the provision of section 20 of the CFRN 1999. It is comforting to know that superior courts in Nigeria are now placing heavy reliance on the provisions of the of Chapter IV of the constitution and the African Charter on Human and Peoples' Right in declaring environmental pollution as unconstitutional, a breach of the fundamental human right to life.²⁴

²⁰ M. T. Okorodudu-Fubara, *Law of Environmental Protection: materials and Text*, (Caltop Publications Nigeria Limited, 1998).

²¹ Aigbokhaevbo & Aniekwu (n13).

²² CFRN 1999, Section 20

²³ Ibid.

²⁴ *Gbemre v. Shell Petroleum Development Company Nigeria Ltd and Others* (2005) AHRLR 151.

4.2 NATIONAL ENVIRONMENT STANDARDS AND REGULATIONS ENFORCEMENT AGENCY ACT (2007)

The National Environment Standards and Regulations Enforcement Agency Act (2007) repealed the Federal Environmental Protection Agency Act 1988, which was one of the first Environmental laws in Nigeria after the Koko saga. It must be noted that this Act played a very significant role in the growth of environmental laws in Nigeria.

The NESREA Act established the National Environmental Standards and Regulations Enforcement Agency (NESREA), which is entrusted with the responsibility of environmental protection, biodiversity conservation, environmental technology promotion, and sustainable development of Nigeria's natural resources in general.²⁵ The Agency is also saddled with the responsibility of enforcing the provisions of the Act and other environmental regulations made pursuant to the Act, thus, the Agency has the power to inspect, search, seize, arrest and penalize offenders.²⁶

Section 34 that confers on the Minister of Environment the power to make regulations, pursuant to this section plethora regulations have been enacted.

4.3 NATIONAL ENVIRONMENTAL (SANITATION AND WASTE CONTROL) REGULATIONS, 2009

²⁵ NESREA Act 2007, Sections 2 and 7.

²⁶ The NESREA's jurisdictional regulation does not extend to the oil sector in Nigeria. The National Oil Spill Detection and Response Agency (NODSRA) established in 2006 has the primary function of coordinating the implementation of the National Oil Spill Contingency Plan (NOSCP) in Nigeria.

This Regulation is made pursuant to Section 34 of the NESREA Act 2007, the regulation provides for issues of environmental sanitation and all categories of wastes.²⁷ The aim of the Regulations is the adoption of sustainable and environmentally friendly practices in environmental sanitation and waste management to minimize pollution in Nigeria.²⁸ The Regulation provides general rules on cleanliness and environmental sanitation.²⁹ It vests obligations on institutions, owners of premises to provide portable water supply, lavatories, ensure regular maintenance of the structure, among others.³⁰ Specific obligations are vested on persons who generate waste, households and dwelling units, etc.³¹ The Regulation provides extensively for wastes control, including solid waste control, effluent discharge, hazardous wastes, health care wastes, etc. Section 3 of this Regulation provides that no person is to discard, throw, or drop any litter or any similar refuse anywhere except in designated litterbins. Generators of wastes are to ensure that waste is handled by a person licensed to transport and dispose of the wastes in designated waste management facilities.³²

Section 4 further provides that “any person whose activities generate waste shall ensure that the waste is handled by a person licensed to transport and dispose of the wastes in designated waste management facility.”³³ Furthermore, according to the Regulation, the Owners,

²⁷ National Environmental (Sanitation and Wastes Control) Regulations 2009, Regulation 1.

²⁸ Ibid, Regulation 2.

²⁹ Ibid, Part 2.

³⁰ Ibid. Regulation 10.

³¹ Ibid, Regulation 5.

³² Ibid, Regulation 3.

³³ Ibid, Regulation 4.

operators, occupants, or persons in care, management, or control of premises are not to allow the release of litter or any similar refuse into the environment.³⁴ Food vendors and traders are to ensure that litter and other wastes do not pollute the environment.³⁵ all generators and managers of wastes are to apply sustainable practices to minimize pollution.³⁶

The Regulation also vests obligations on manufacturers and producers to incorporate environmental concerns in the design, process and disposal of a product, as prescribed in the Agency's sectoral Regulations of such product.³⁷ All commercial facilities are to ensure proper cleanliness of their toilet and hand washing facilities.

In a bid to reduce plastic pollution, the Regulation specifically banned the manufacture, trade and commercial distribution of plastic bags, made of plastic film, with a wall thickness of less than 80 micrometer except bread bags, made of plastic film, with a wall thickness of between 25 and 80 micrometers.³⁸

Any person who owns a waste-generating facility or premises is also mandated to reduce, reuse, and recycle waste to minimize pollution.³⁹ Licensed waste managers are to undertake waste collection at the designated points at scheduled time or period following the waste

³⁴ Ibid, Regulation 5.

³⁵ Ibid, Regulation 6.

³⁶ Ibid, Regulation 15.

³⁷ Ibid, Regulation 16.

³⁸ Ibid, Regulation 18.

³⁹ Ibid, Regulation 24.

collection and transportation guidelines in Schedule 7 to the Regulations.⁴⁰

The regulation also specifically provides for Health Care Waste (HCW) control by mandating operators of any facility that treats HCW or generators of such waste to segregate the waste and use designated vehicles for its disposal.⁴¹

Lastly, Noncompliance with the provisions of this regulation constitutes a punishable offence. The regulation provides for a minimum punishment of N20,000 fine or imprisonment for six months to a maximum of N500,000 fine, five years imprisonment, or both, depending on the regulation violated.⁴² In the case of hazardous waste, Regulation 103 stipulates a penalty of N5 million or 5 years imprisonment or both for failure to comply with hazardous waste safety standards.

It is important to note that the NESREA Act 2007 and its Regulations are supposed to be progressive however, they are currently experiencing a very slow and stunted growth as the state of the environment keeps deteriorating rapidly with little to no enforcement from the agency. Consequently, poor waste disposal systems continue to thrive in premises and facilities.

5.0 RECOMMENDATIONS ON HOW TO MANAGE WASTE DISPOSAL

⁴⁰ Ibid, Regulation 25.

⁴¹ Ibid, Regulations 56 – 57.

⁴² Regulation 94 -114.

“Can waste pollution be curbed?” This has been a very prevalent question. It is apparent that waste pollution cannot be totally stopped because we need these products and materials for our daily living however, these classes of waste disposals aforementioned causing havoc to our environment can be properly managed in the following ways:

- a) **Recycle, Reuse, Reduce:** These are simple, practical and very effective ways to properly manage wastes. There are some wastes that are recyclable and those wastes should be recycled so that it can be used again. There are recycling plants all over the world including Nigeria. Some of these recycling plants reward recyclers with incentives. Plastic waste is an example of wastes that are easily recycled. Also, used papers are one of the commonest recycled materials and they're usually recycled to tissue papers. Thus, recyclable wastes should be separated from other discarded materials or wastes. Furthermore, some materials are better being reused than discarded and we are encouraged to invest in reusable products like water bottles instead of plastic bottles because it is more durable. Persons can also invest in quality and durable materials and products which can be reused. Studies have shown that a reduction in impulsive buying would reduce the amount of post-consumer wastes generated.
- b) **Upcycling:** Upcycling is a very sustainable way of managing wastes. It is a creative form of reusing old things by transforming them to new and functional products.⁴³ For instance, old tyres can

⁴³ 'Upcycling' <<https://en.m.wikipedia.org/wiki/Upcycling>> accessed 23 June 2023.

be aesthetically used as tables and chairs in our homes, offices and recreational centers.

- c) **Effective laws:** More effective laws should be enacted and above all, enforced. There should be strict laws prohibiting improper waste disposal and offenders should be charged to courts approved for environmental offenses which unfortunately exists in only one state-Lagos State, out of the 36 states in Nigeria.⁴⁴
- d) **Taxation:** Industries likely to cause hazard and pollution should be heavily taxed so that the revenue derived would be able to sustainably protect the environment. Also, polluting industries such as plastic producing industries should be fined, regulated and taxed. Enforcement agencies can also make sure that these producing companies or industries first generate ways to curb pollution that will be caused by their products. Their products must be inspected to be recyclable and they must have recycling plants available or invest in recycling in the country.

6.0 CONCLUSION

Nigeria is assumed to be the waste capital of Africa, producing about one-fourth of the total waste in Africa⁴⁵ which can be traced to the high population growth in the country. However, it must be emphatically stated that Nigeria is still a developing country with few industries, yet, we generate a lot of wastes. Thus, it can be gleaned that the major pollution problem in Nigeria is not as a result of

⁴⁴ 'Lagos Govt Approves 'Courts for Environmental Offences' <<https://www.premiumtimesng.com/regional/ssouth-west/477689-lagos-govt-approves-courts-for-environmental-offences.html?tztc=1>> accessed 24 June 2023.

⁴⁵ S. Arogundande, 'Nigeria as the Waste Capital of Africa' <<https://guardian.ng/opinion/nigeria-as-the-waste-capital-of-africa/>> accessed 22 June 2023.

intense industrialization but as a result of ineffective policies, laws and enforcement agencies. One of the most important strategies designed to deal with the uncontrolled refuse disposal problem in Nigeria is the possible introduction of environmental education throughout the country because a lot of Nigerians are living in ignorance as to how their actions directly affects the environment. For this to be effective, environmental education must begin in the early stage of education where pupils are educated to appreciate sustainable and quality environment. This process must not end with the children, but must be extended to their parents at home. The government should also put-up effective machinery for the enforcement of laws and agencies for waste management which must be closely monitored and controlled.

**INNOVATION AND CHALLENGES ON
ADMISSIBILITY OF COMPUTER-GENERATED
EVIDENCE IN NIGERIA**

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ABSTRACT

The 21st century is categorized to be the fast-track walk away into the fourth industrial revolution characterized by digitalization. As this is becoming the threshold and the new way of things, every day transactions are now conducted on digital and electronic platforms. As a result, the law is growing in most countries of the world to suit each case where documents generated or sourced from a computer are to be presented before the court. Among the countries that recently introduced procedures for tendering documents generated from these electronic wares is Nigeria. Stifled along with the procedures are the challenges in the admissibility of computer generated evidence. Recently, most of the challenges regarding computer generated evidence in the country were waterdown in a decision, which created a paradigm in the admissibility of computer generated evidence in the country. Thus in this paper, the conditions for admissibility of computer generated evidence would be perused and the challenges in admitting such in evidence in trial would be discussed comprehensively alongside the case of A.G Federation v. Princewill Ugonna Anuebunwa.

Keywords: Computer/ Electronic Generated Evidence, Evidence

INTRODUCTION

By definition, evidence basically is anything that gives reason for believing something that makes clear or proves something.⁴⁶ According to Cross, evidence is any matter or fact, the effect, tendency or design of which is to produce in the mind, a persuasion, affirmative or disaffirmative of the existence of some other matter or facts.⁴⁷ The advent of information technology and the use of computers for transactions brought about a new form of evidence derived from computers or electronics. This is known as the computer generated evidence. **Definition of Computer-Generated Evidence Under the Nigerian Evidence Act 2011**

The Nigerian Evidence Act 2011 did not expressly define what a computer generated evidence is. Conversely, by section 258 of the Act, evidence from a computer/ electronic is admissible by definition given to a computer. The Act⁴⁸ defines computer as “any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process”.

Electronic/computer generated evidence is defined as the use of electronically controlled machines or equipment either by wave of

⁴⁶ Britannica Dictionary, ‘Evidence Definition and Meaning’ available at <<https://www.britanica.com>> accessed 13th December 2022

⁴⁷ Rupert Cross & David Byrne *Cross on Evidence*’ 4th Edition (Butterworths, 1991) p.1

⁴⁸ Nigerian Evidence Act 2011

satellite or through cables, computers and other forms of storage and communications systems as evidence in the court of law.

CONDITIONS FOR ADMISSIBILITY OF COMPUTER GENERATED EVIDENCE UNDER THE EVIDENCE ACT 2011

For a computer generated evidence to be tendered and admissible, proper foundation needs to be laid. The purpose of authenticating the trustworthiness state has been decided by the Supreme Court of Nigeria in the case of *Kubor v Dickson*⁴⁹, where a certified copy of an online newspaper was tendered from the bar. The decision of the Court of Appeal was adopted to the effect that the newspaper was inadmissible because of non-compliance with section 84(2) and (4) of the Evidence Act 2011.

The conditions to be fulfilled under section 84(2) are:

- (a) That the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period, whether for profit or not by anybody whether corporate or not or by any individual
- (b) That over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

⁴⁹ [2013] 4 NWLR pt.1345 534 @578

- (c) That throughout the material part of that period the computer was operating properly or if not operating properly or was out of operation properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its content and
- (d) That the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

Conversely, the conditions for certificate under section 84(4) as regards subsection 2 needs not to be complied with where the conditions under subsection 2 are proved orally. It was the position of the court in *Dickson v Sylva*⁵⁰, where the Apex Court per Nweze J.S.C (pp.23-24 paras A-E) held;

proof that the computer is reliable can be provided in two ways: either by calling oral evidence or by tendering a written certificate subject to the power of the judge to require oral evidence. It is understandable that if a certificate is to be relied upon it should show on its face that it is signed by a person who from his job description can confidently be expected to be in a person to give reliable evidence about the operation of the computer. This enables the defendant to decide whether to accept at its face value or to ask the Judge to require oral evidence which can be challenged in cross examination

⁵⁰ [2016] LPELR-41257 SC

CHALLENGES ON THE ADMISSIBILITY OF COMPUTER GENERATED EVIDENCE IN NIGERIA

- **Inadequacy of Section 84 of the Evidence Act**

The Evidence Act 2011 by virtue of Section 84(2) sets out the preconditions and the conditions that must be fulfilled before an electronic or computer generated evidence could be admissible before the court. As decided by the Supreme Court in the case of *kubor v Dickson*⁵¹ and the case of *Omisore v Aregbesola & Ors*⁵² failure to comply with the conditions stated there in section 84⁵³ would make such electronic evidence inadmissible. However, it is clear that the provision is no longer adequate and sufficient to authenticate reliability of computer generated evidence in the country. This is evident particularly considering the rate at which technology advances today and emergence of smarter technologies than how it was when the provisions of section 82 was inputted into the Evidence Act.

As at present in the country, there is absence of other laws or provisions to cover the inadequacies in the Evidence Act. This is unlike in other jurisdictions close to Nigeria for instance Ghana and South Africa. Both jurisdictions respectively have the Electronic Transaction Act 2008 and the UNCITRAL Law, which have a more elaborate framework for admissibility of electronic generated evidence, where the general provisions in their Evidence Act are not sufficient. Nigeria in solving these inadequacies need to adopt model such as the United Nations Commission on International Trade Law

⁵¹ Kubor (n7) 577

⁵² [2015] 15 NWLR pt.1482 205 @295

⁵³ Ibid (n6)

Model on Electronic Commerce,⁵⁴ which was drafted in such a way as to facilitate easy ways of admitting electronic generated evidence in any trial.

- **Issue of Probative Value**

The probative value is the weight to a document after being admitted. Issues that are evident after admitting a computer generated evidence is the probative value to be attached to such evidence. Will the same weight be accorded a forwarded copy of an electronic document as the original document itself? or will the court give credence to an unprotected version of an original electronic evidence as the original document itself even after complying with the requirements of the law under section 84 of the Evidence Act? These questions were answered in the case of *Araka v Egbue*⁵⁵ where Tobi JSc held:

In the age of sophisticated technology, photo-tricks are the order of the day and secondary evidence produced in the context of section 97 (2)c could be tutored and therefore not authentic. Photo-tricks could be applied in the process of copying the original document with the result that the copy which is secondary evidence does not completely or totally reflect the original...court has not eagle eye to detect such tricks

⁵⁴ S John, 'Admissibility of Electronically Generated Evidence under the Nigerian Evidence Act, 2011: Challenges and Prospects' (2021) *JETIR March 2021 vol.8 Issue3*

⁵⁵ [2003] 17 NWLR pt.848 1

Onyemanam JCA in *Ekiti State Independent Electoral Commission & Ords v PDP*⁵⁶ held:

With our modern communication technology, anything is possible. Documents and signature are easily manipulated to the extent that genuineness of documents can no longer be ascertained by mere observation with the eyes

It is clear that many Nigerian courts with plethora of judicial authorities as in the above are always cautious in attaching weight to a forwarded copy or secondary evidence of a computer generated evidence even after satisfying conditions in section 84(2) of the Evidence Act. This is unlike traditional evidence or documents which are in secondary form, which have been proved or satisfied necessary conditions for its admissibility.

Although, the rationale for not attaching much weight to the secondary form of computer generated evidence may be justified on the ground that such copies might not be reliable or authentic because that might have been tampered with by hackers or activities including theft and fraud among others.

- **Difficulty in Understanding Computer Generated Evidence**

It is axiomatic that Nigerian Justices, Judges and legal practitioners find it very difficult and lack the understanding of the nature of computer generated evidence in the country. As a result, this has amounted to a lot of confusing and conflicting decisions of the court including the Apex Court in Nigeria. For instance, there have been a

⁵⁶ [2013] LCN/6720 CA

plethora of judicial authorities, where it was held that failure of certification requirements would make such computer generated evidence inadmissible. Conversely, in the case of *Dickson v Sylva*⁵⁷ It was held that the conditions in section 84 (2) could be satisfied by a certification or orally and where it is proved orally, no certification is required.

- **Issue of Certification**

The Evidence Act under section 84(4) requires a witness to appear in court to testify as to certification requirement that is the trustworthiness of the computer, which produces the computer generated evidence to be tendered before the court. This is position of the court in the case of *Dickson v. Sylva*, which was upheld in the case of *Dauda v FRN*⁵⁸ Section 84 (4) of the Act provides:

In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate

- (a) Identifying the document containing the statement and describing the manner in which it was produced;
- (b) Giving such particulars of any device involved in the production of that document as maybe appropriate for the purpose of showing that the document was produced by a computer.
 - (i) Dealing with any of the matters to which the conditions mentioned in subsection (2)

⁵⁷ *Dickson* (n8)

⁵⁸ [2018] 10 NWLR pt.1626 169

above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities as the case maybe, shall be evidence of the matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it

However, this is not the practice in other jurisdictions once there is an affidavit deposed by such a witness stating the trustworthiness of the computer, the witness needs not come to court. For instance, the Canadian Uniform Electronic Evidence Act 1998.⁵⁹ There are also other various challenges to computer generated evidence during trial before the courts in Nigeria.

A.G FEDERATION V. PRINCEWILL UGONNA ANUEBUNWA: A PARADIGM SHIFT ON ADMISSIBILITY OF COMPUTER GENERATED EVIDENCE IN NIGERIA

The Supreme Court of Nigeria in the case of A.G Federation v. Princewill Ugonna Anuebunwa⁶⁰ made a paradigm shift as regards what actually constitutes a computer generated evidence, contrary to its previous existing decisions on the same and what it is when a computer is used only as a mere tool in producing documentary

⁵⁹ Section 7

⁶⁰ [2022] 15 NWLR pt.1853 SC @389

evidence. The decision of the Supreme Court in this case is also highly remarkable and should be accorded due appreciation as it not only makes advancement to the field of electronic evidence in Nigeria but also invalidates erroneous positions of Nigerian courts on interpretation of Section 84 of the Evidence Act by restricting the scope of its applicability.

The Supreme Court gave its judgement on the case on the 13th of April 2022 in a unanimous decision presided over by Hon. Justice Musa Dattijo alongside Hon. Justice Chima Centus Nweze, Hon. Justice Tijjani Abubakar and Hon. Justice Emmanuel Agim while Hon. Justice Helen Moronkeji Ogunwumiju delivered the led judgement. The summary of the fact of the case is that the Attorney General of the Federal Republic of Nigeria filed an application before the Federal High Court in 2018 for the extradition of the respondent to the United States for him to answer to some criminal charges against him in a District Court. In support of their application at the trial court, the appellant (Attorney General of the Federation) brought two affidavits deposed to by two FBI operatives in the United State, attached to the same were two photographs generated from a computer. The respondent (Princewill) challenged the application through a preliminary objection and one of the grounds was that there was failure to comply with section 84 of the Evidence Act, 2011 on admissibility of the various paragraphs in the affidavit and the photographs in support. The Federal High Court granted the extradition application, which made the respondent to appeal to the Court of Appeal. In a majority decision, the Court of Appeal ordered for retrial before the trial court. Dissatisfied, the Appellant appealed

to the Supreme Court of Nigeria. The Supreme Court in a unanimous decision affirmed the minority decision of the Court of Appeal.

In delivering the lead judgement, Hon. Justice Ogunwumiju held:

it would be ridiculous to assume that a document which was typed using a computer is a computer generated document. For example, it is the algorithm or data imputed by a Bank Officer into the bank's data base that generates the various information on the statement of account of a customer. That Bank Statement is a computer generated document which has to be certified by the officer to ensure that no one illegally or without authorization tampered with the source data as officially imputed in the computer

The effect of the above decision by his lordships is that documents ordinarily or merely produced using a computer would not be a computer generated evidence except it is generated by the computer itself. My lords relied and adopt the position by S.T Hons in the book "Law of Evidence", where it was made evident that section 84 of the Nigerian Evidence Act 2011 on the admissibility of a computer generated evidence was tailored after the Indian Evidence Act 1872 as amended⁶¹ and substantially from the English Police and Criminal Evidence Act 1984.⁶²

The practical applicability of these provisions of the Acts in their respective jurisdiction showed that disputes as regards computer generated evidence only applies with respect to hi-tech evidence

⁶¹ section 65B

⁶² section 69

generated by the computer and no practice in both India and England, from which the Nigeria tailored section 84 of its Evidence Act 2011 allow spurious objections to be raised on admissibility of an ordinary or mere document printed using the computer as being done in Nigeria since the introduction of the provisions. It was on this premise that my Lords, Ogunwumiju JSC quoted ipsissima verba the learned author that;

It is very significant to further note that just like section 64B of the Indian Evidence Act and section 69 of the PACE Act, [UK English Police and Criminal Evidence Act 1984] Section 84 of the Nigerian Evidence Act, 2011 intends that only complex evidence generated from the computer, against which the calculating or measuring accuracy of the computer is depended upon or stands to be tested is to be objected to or subjected to scrutiny by the courts and not ordinary documents printed out of the computer

Unarguably, this new remarkable decision would start to limit and restrict the applicability and interpretations given to section 84 of the Evidence Act 2011. Fortunately, it would reduce to a great extent most if not all of the challenges faced in the admissibility of computer/electronically generated evidence presented faced by the Nigerian courts and lawyers due to non-restrictions of its application without full consideration of the actual intendment for which the provision was introduced in the first place. For instance, the challenge from the difficulty of understanding computer generated evidence in Nigeria due to the non-comprehensiveness of section 84 of the

Evidence Act 2011 thus leading to confusing and conflicting decisions of Nigerian courts in numerous cases has now been resolved by this recent decision.

CONCLUSION

Computer generated evidence is a great innovation to the Nigerian legal system particularly in meeting up with technological advancement globally. Despite this improvement, there are still challenges discussed above in admissibility of computer generated evidence in Nigeria. Now that the Supreme Court of Nigeria has taken the huge steps towards reforming the computer generated evidence system in Nigeria by restricting the applicability of section 84 of the Evidence Act in order to achieve the actual intendment behind the provision, it is glare that several of the challenges if not all on admissibility of computer generated evidence would be quashed as ordinary document printed through the computer would no longer be considered a computer generated evidence.

AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS AND ITS DURATION

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ABSTRACT

Devoid of any vituperations, it's a truism to say that many people are green-horns in the area of intellectual property. Intellectual property is an emerging area of law and considering growing number of people harnessing their intellectual capacity and productivity, it's worthwhile to know the rights accruing to such individuals and the duration of such rights. Nigeria being blessed with abundant natural resources is also blessed with talented people. Everyday we see upcoming artists being signed up, writers publishing their manuscripts and cinematographers producing their movies. However, many of these individuals do not have an idea about the rights they have over these IPs (intellectual property) nor the duration of such rights. This paper will appraise the tenable intellectual property rights and the duration of such rights using available legislations.

Keywords: Intellectual property, intellectual property rights, Durations of intellectual property rights

1.0 INTRODUCTION

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.¹ It's concern with creative products of ones' mind. Furthermore, that it's the product of the mind doesn't mean everything that comes from the mind is qualified to be called an IP, for an idea to be called an IP it must be expressed, marketable and valuable in some manner.² IP can be divided into two, which include: Copyrights and Industry property. Also, the holders or owners of these intellectual property have what we call intellectual property rights. Intellectual property rights are the rights given to persons over the creations of their minds³, these rights could be economic or moral rights (if it's under copyright). The fulcrum of this article is to give an overview of such rights and its duration.

2.0 LEGAL FRAME WORKS OF INTELLECTUAL PROPERTY IN NIGERIA

Before we delve into the topic for discussion, it's pertinent to give a cursory gaze at the legal frame works regulating intellectual property. Under Nigeria's legal system the following Acts are the major regulatory laws of intellectual property, they include:

¹ <"What is Intellectual Property?" <https://www.wipo.int/about-ip/en/>> 29 | 12 | 2022

² <"Intellectual Property Law | What is Intellectual Property Law? - Video & Lesson Transcript | Study.com" <https://study.com/learn/lesson/what-is-intellectual-property-law.html>> 29 | 12 | 2022

³ <"WTO | intellectual property (TRIPS) - what are intellectual property rights?" https://www.wto.org/english/tratop_e/trips_e/intell_e.htm> 29 | 12 | 2022

- Patent & Designs Act Cap P2, Laws of the Federation of Nigeria 2004
- The Trademarks Act Cap T3, Laws of the Federation of Nigeria 2004
- Copyright Act Cap 68, Laws of the Federation of Nigeria, 2004,
- The Constitution Of Federal Republic Of Nigeria 1999 (As amended)

Furthermore, the above stated legislations regulating intellectual property recognized the following types of Intellectual property rights: Copyrights, Patent, Industrial Designs and Trade Mark. Other forms of Intellectual property rights which include: Trade secrets and Geographic indications do not have *sui generis* legislations that provide for their protection. However, Trade secret protection in Nigeria is mostly derived from the common law. Therefore, persons and enterprises have relied upon contract law, torts, and other basic legal principles to prove a claim for the misappropriation of trade secrets⁴. On the other hand, GIs have been recognized by international Organizations and conventions such as WTO Agreement on Trade- Related Aspects of Intellectual Property Rights (TRIPS) and the Paris Convention for the Protection of Industrial Property (Paris Convention) which Nigeria is a signatory to. However it hasn't been domesticated by the National Assembly in compliance with the provisions of the constitution.⁵

⁴ by [Inioluwa Olaposi](#) (*The Rhetoric Of Trade Secrets In Nigeria And Other Jurisdictions*) July 2022 <"The Rhetoric Of Trade Secrets In Nigeria And Other Jurisdictions - Trade Secrets - Nigeria" <https://www.mondaq.com/nigeria/trade-secrets/1212628/the-rhetoric-of-trade-secrets-in-nigeria-and-other-jurisdictions>>

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⁵ Section 12 of the CFRN 1999(as amended)

3.0 INTELLECTUAL PROPERTY RIGHTS AND THEIR DURATIONS

Intellectual property rights are spelt out and protected by intellectual property laws_ IP Law is the body of laws that governs all the relevant aspects (i.e. ownership, registration, protection, licensing, assignment, lifespan, etc.) of IP Rights.⁶ These laws made provisions for the duration of the various tenable IP rights. The IP rights and their durations according to their specific legislations are:

I. COPYRIGHTS:

This is one of the tenable rights in IP which is accrued to owner of an IP. Literally, it means to copy or to reproduce, this means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work.⁷ Also, it gives to the owner of an IP economic and moral rights over his IP which he can delegate to others.

Although, Copyright is one of the rights obtainable in Intellectual property it doesn't mean that it covers all types of work/intellectual property. According to section 1 of the Copyright Act 1999, they following works/IP enjoy Copyright:

- a) literary works;
- b) musical works;
- c) artistic works;
- d) cinematograph films;
- e) sound recordings; and

⁶ By a4id(*Intellectual property law, Nigeria*) 2016 <www.a4id.org> 3rd January 2023

⁷ By WILL KENTON(Copyrights Explained) March 2022<<https://www.investopedia.com/terms/c/copyright.asp>> 3rd January 2022

f) broadcasts.

However, not all IP listed above can be clothed with Copyright, for such a work to enjoy Copyright is must eligible (original and fixed).

The right of Copyright is not perpetual, rather, it has its duration. The first schedule of the Copyright Act 1999 made provisions for the duration of Copyrights which are:

- Musical, literary and artistic works other than photographs will expire seventy years after the end of the year in which the author died. However, if such works are from government or corporations it will expire seventy years after the end of the year which the work was published.
- In respect to cinematography films and photographs, it will expire fifty years after the end of the year in which the recording was first made.
- In broadcasts, the right will expire in fifty years after the end of the year when the broadcast first took place.

II. PATENTS:

According to World Intellectual Property Organization, “A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.” A patent when granted gives the owner an exclusive right to produce and sell his/her invention. Patent is regulated by the Patent and Design Act 1970, it made provisions for inventions that are patentable and the duration of patent right.

According to section 1 of Patent and Design Act, the following inventions are patentable:

- (1) Subject to this section, an invention is patentable--
 - (a) if it is new, results from inventive activity and is capable of industrial application; or
 - (b) if it constitutes an improvement upon a patented invention and also is new, results from inventive activity and is capable of industrial application.
- (2) For the purposes of subsection (1) of this section—
 - (a) an invention is new if it does not form part of the state of the art;
 - (b) an invention results from inventive activity if it does not obviously follow from the state of the art, either as to the method, the application, the combination of methods, or the product which it concerns, or as to the industrial result it produces; and
 - (c) an invention is capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture.

Also, in Subsection 4-5 it listed things that can't be patented, they are:

- (a) Plant or animal varieties, or essentially biological processes for the production Of plants or animals (other than microbiological processes and their products);
- (b) Inventions the publication or exploitation of which would be contrary to public Order or morality (it being understood for the purposes of this paragraph that The exploitation of an invention is not contrary to public order or morality Merely because its exploitation is prohibited by law).

(5) Principles and discoveries of a scientific nature are not inventions for this Act.

Before an invention can be patented it has to be registered through an application and in compliance with section 3 and 4 of Patent and Design Act. The patent right is not perpetual, according to section 7(1) of the Patent and Design Act, a patent right will expire after twenty years. However, it shall elapse if the prescribed annual fee is not paid.

III. INDUSTRIAL DESIGNS:

According to section 12 of Patent and Design Act, it defined Industrial Design as

Any combination of lines or colors or both, and any three-dimensional form, Whether or not associated with colors, is an industrial design, if it is intended by the Creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a result.

In other words, Industrial Design is a design, sketch, color or ornamental decorations on a product which distinguishes it from others. For a design to be registered as Industrial design or be eligible, it must be new and not against public policy or morality.

Also, unlike Copyright where one enjoys automatic right without registration an industrial design must be registered before an individual will be entitled to such rights. According to section 12(1) of Patent and Design Act, They rights one is entitled to after the registration of an industrial design are:

- (1) Reproducing the design in the manufacture of a product;
- (2) Importing, selling or utilizing for commercial purposes a product reproducing the design; and

(3) holding such a product for the purpose of selling it or of utilizing it for commercial purposes.

However, these rights are not perpetual but last over a period of time_ according to section 12 of the Patent and Design Act, an industrial design right last for the period of five years and can be renewed for another subsequent five years after the payment of the prescribed fee. Also, an industrial design can be annulled legally, in compliance with section 22 of the Patent and Design Act.

IV. TRADEMARK:

According to World Intellectual Property Organization, A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are regulated by the Trademark Act 1967 and according to section 3 and 4 of Trademark ACT, a trademark must be registered before one can be entitled to the rights tenable from the Act. A Trademark when registered grants to the proprietor exclusive rights to use his trademark in relation to the goods and services it was registered for and also institute an action in Court for the infringement made on such trademark or to prevent the unauthorized use of the mark (s).⁸ However, these rights are not perpetual, the proprietor of trademark enjoys it over a period of time. Section 23 of the Trademark Act 1967, Provide as follows:

- (1) The registration of a trademark shall be for a period of seven years

⁸ By Resolution law firm (*TRADEMARK INFRINGEMENT AND ENFORCEMENT OF TRADEMARK RIGHTS IN NIGERIA*)2021<<https://www.resolutionlawng.com/trademark-infringement-and-enforcement-of-trademark-rights-in-nigeria/>> 3rd January 2023

But maybe renewed from time to time in accordance with the provisions of this section: Provided that, in relation to a registration as of a date before the commencement of this Act, this subsection shall have effect with the substitution of a period of fourteen years for the said period of seven years.

From the foregoing, it can be deduced that trademark right is not perpetual rather, it's meant to last over a period of time. Also, apart from the limited duration of the right, it can be nullified based on non-use, if it's deceptive and scandalous etc.

CONCLUSION:

Intellectual property is not given adequate attention in Nigeria, and many creatives are ignorant of their intellectual property rights, due to low publicity and archaic legislation which does not fit in to the modern world. Creatives need to be educated on their tenable rights and its durations in order to increase and encourage the growth of intellectual property.

INTERNATIONAL ENVIRONMENTAL LAW: AN INTRODUCTORY OVERVIEW

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ABSTRACT

International environmental law can generally be described as a subset of public international law. It provides obligations for states including regulating their behaviour in international relations in environmental-related matters. The subject covers concerns affecting the environment generally and globally. These environmental problems may be global, regional, transboundary, national and even local. Problems entail topics such as biodiversity loss, climate change, ozone depletion, toxic and hazardous substances, desertification and deforestation, marine resources pollution, migratory species and air, land and water pollution and issues of natural heritage sites. The goal of this paper is to provide an introductory overview to the study of international environmental law. Its emphasis is on state responsibility and the protection and conservation of the international environment.

Keywords: Environment; International Environment; International Environmental Law; Conservation; Development; Traditions; Principles and Standards.

1.0 INTRODUCTION

International environmental law can generally be described as "a subset of public International law"⁹ a branch of the broad International law developed by States for States to address issues that ensue between and among them. It is a law created among sovereign states to develop standards at the international level and provide obligations for states, including regulating their behaviour in international relations in environmental-related matters.¹⁰

Developed and popularized in the 1960s,¹¹ International environmental law is concerned with the attempt to control pollution and the depletion of natural resources within a framework of sustainable development.¹² The subject covers concerns affecting the environment generally and globally. These environmental problems may be global, regional, transboundary, national and even local. These problems entail topics such as biodiversity loss, climate change, ozone depletion, toxic and hazardous substances, desertification and

⁹ Vietnam Ministry of Natural Resources and Environment: Department of Legal Affairs, International Environmental Law: Multilateral Environmental Agreements (2017)

<[https://www.google.com/url?sa=t&source=web&rct=j&url=https://wedocs.unep.org/bitstream/handle/20.500.11822/21491/MEA-handbook-](https://www.google.com/url?sa=t&source=web&rct=j&url=https://wedocs.unep.org/bitstream/handle/20.500.11822/21491/MEA-handbook-Vietnam.pdf%3Fsequence%3D1%26isAllowed%3Dy&ved=2ahUKEwjXitO9v7j8AhVbTaQEHRJrBXIQFnoECAkQAQ&usg=AOvVaw3QtAK8Az6m3nYTv8l8Ywdm)

[Vietnam.pdf%3Fsequence%3D1%26isAllowed%3Dy&ved=2ahUKEwjXitO9v7j8AhVbTaQEHRJrBXIQFnoECAkQAQ&usg=AOvVaw3QtAK8Az6m3nYTv8l8Ywdm](https://www.google.com/url?sa=t&source=web&rct=j&url=https://wedocs.unep.org/bitstream/handle/20.500.11822/21491/MEA-handbook-Vietnam.pdf%3Fsequence%3D1%26isAllowed%3Dy&ved=2ahUKEwjXitO9v7j8AhVbTaQEHRJrBXIQFnoECAkQAQ&usg=AOvVaw3QtAK8Az6m3nYTv8l8Ywdm)> accessed 11 November, 2022.

¹⁰ Nicholas A. Robinson & Lal Kurukulasuriya, Training Manual on International Environmental Law (2006), <http://digitalcommons.pace.edu/lawfaculty/791/>.

¹¹ Ugbeta, E., Tackling the Environmental issues in Nigeria's Niger Delta Region through hHuman Rights Approaches: Lessons from Abroad

<https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.academia.edu/21067959/TACKLING_THE_ENVIRONMENTAL_ISSUES_IN_NIGERIAS_NIGER_DELTA_REGION_THROUGH_HUMAN_RIGHTS_APPROACHES_LESSONS_FROM_ABROAD&ved=2ahUKEwjXitO9v7j8AhVbTaQEHRJrBXIQFnoECAkQAQ&usg=AOvVaw3QtAK8Az6m3nYTv8l8Ywdm> accessed 11 November, 2022.

¹² Supra note 1.

deforestation, marine resources pollution, migratory species and air, land and water pollution¹³ and issues of natural heritage sites.

The province of international environmental law strives to provide objectives and guidelines generally to States, international, regional, national and local policymakers including governmental, intergovernmental and non-governmental organizations on how a clean, quality and sustainable environment should be pursued for present and future generations. In formulating its mechanisms, principles and standards, the subject interacts with other areas of law namely, human rights, international economic and trade law, torts law, medical law, international criminal law, treaty law and so on to achieve its basic goals. This paper provides an introductory background to the province of international environmental law. Part one makes a presentation on the nature of the subject. Part two gives a brief foundational account on the subject matter. Part three attempts a description of the development of environmental law particularly International and African dimensions. Part four examines environmental problems—global, regional, transboundary, national and local. And Part five concludes the paper.

2.0 FOUNDATIONAL CONCEPTION OF ENVIRONMENTAL LAW

Laws are a reflection of cultural traditions, morals and religious conceptions and values of each society. These traditions and values continue to impact the development of legal norms.¹⁴ These traditions shape the law because within them are elements which subsist as the

¹³ Ibid ; Uzuazor Etemire, LLB 3 Environmental Law Lecture slides dated 31st October 2023, unpublished.

¹⁴ D. Shelton and A. Kiss, Judicial Handbook on Environmental Law, United Nations Environment Programme 2005, p.4.

bases of life thus stirring concepts and innovations seeking to support environmental protection and conservation. Details in this context will suffice under the following sub-heads:

2.1 CULTURAL TRADITIONS

Prior to the development of Environmental Law, indigenous ethos and cultural practices helped to protect the environment; for example, several cultures revered mother earth as the core of culture. In other instances, certain areas of resources were designated as sacred. Thus, it was a taboo to misuse or deal with the resources in a way that is inconsistent with cultural norms. In this context, these traditions are considered as the foundation to International Environmental Law. In the Yoruba indigenous culture in Nigeria, land was conceptualised from the perspective of intergenerational equity thus, "...it belongs to a vast family of which many are dead, few are living and countless are still unborn".¹⁵

In Kenya, indigenous communities also considered it a duty to protect endangered species in their habitat. Thus, in *Abdikadir Sheika Hassan and Others v. Kenya Wildlife Service*,¹⁶ The court allowed the plaintiff to maintain an action on his own behalf and on behalf of his community to bar an agency from removing or dislocating a rare and endangered species from its natural habitat. The Court considered that according to customary law, those entitled to use the land are also entitled to the fruits thereof, including the fauna and flora. Other sustainable traditional practices that developed unique knowledge

¹⁵ This was declared by chief Elesi of Odogbolu speaking before the West African Lands Commission in 1908. Cited in Uzuazor Supra note 5.

¹⁶ See High Court of Kenya, Case 2059/1996

include the irrigation practices of the Inca, the forest gardens of the hill country of Sri Lanka.

2.2 RELIGIOUS TRADITIONS

Religious precepts also contain important ideals that seek to protect the environment. Ancient Buddhist chronicles, dating to the third century B.C. record a sermon on Buddhism in which the son of the Emperor Asoka of India stated that, “the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it.”¹⁷ In the Christian/Jewish context, man is instructed to protect and conserve birds,¹⁸ not to destroy trees in war times,¹⁹ and to properly dispose of human waste.²⁰

Under Islamic religion, man is merely a manager of the earth and not a proprietor, a beneficent and not an ordainer. In this light, it is a mandatory religious duty of every Muslim to conserve and protect natural resources.²¹ Thus, in *M.D.Tahir v. Provincial Government & Others*,²² Although the Pakistani court, while analysing Islamic law vis-a-vis articles 18 and 199 of the Pakistani Constitution, found that a blanket prohibition for hunting or killing of all animals and birds

¹⁷ The Mahavamsa, or the Great Chronicle of Ceylon, Chap. 14, quoted in I.C.J., Case Concerning the Gabčíkovo-Nagymaros Project on the Danube, Sept. 25, 1997, Sep. Op. of Judge C.

Weeramantry, n. 44. See supra note 6.

¹⁸ Deuteronomy 22: 6 - 7.

¹⁹ Deuteronomy 20: 19.

²⁰ Deuteronomy 23: 13.

²¹ See supra note 6.

²² 1995 CLC 1730

could not be granted, it admitted that unnecessary hunting and killing is against the injunctions of Islam and the Constitution.

3.0 THE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW

This will be discussed under two sub headings namely: International dimension to the development of international environmental law and the African dimension to the development of international environmental law.

3.1. INTERNATIONAL DIMENSION

Although there are divergent views on the exact point in time International environmental law emerged,²³ International rules on the environment are traced to the early 19th century.²⁴ At that time, attention centred on the exploitation of natural resources as a result of growing industrialisation.²⁵ From this standpoint, there is evidence to suggest that the first attempt to develop international environmental law occurred in 1893 in the Pacific Fur Seals Arbitration case,²⁶ a dispute between the United States and Great Britain over the exploitation of seals for fur. The findings in that case established the principle that " states did not have the right to assert

²³ Ibibia L. Worika, 'Environmental Law and Policy of Petroleum Development: Strategies and Mechanism for Sustainable Management in Africa', (Port Harcourt: Anpez Centre for Environment and Development, 2002) pp. 62 - 63.

²⁴ Osahon L. Omoregie, An Examination of the Sources of Nigerian Environmental Law, in Ambrose Alli University Law Journal <https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.academia.edu/43312639/An_Examination_of_the_Sources_of_Nigerian_Environmental_Law&ved=2ahUKEwiDruC4x7j8AhWDXqQEHX1oCeQQFnoECBAQAQ&usg=AOvVaw32rfgLmNH5ArCChFF3NoKt> accessed 11 November, 2023.

²⁵ Thornton, J and Beckwith, S., in Osahon *ibid*.

²⁶ (1893) 1 Moore's International Arbitration Awards 755.

jurisdiction over natural resources which are outside their territory". It has also been advanced, that the first formal international environmental agreement on environmental issues is traceable to the Convention for the Preservation of Animals, Birds and Fish in Africa, signed in London on the 19th of May, 1900.²⁷ Specific recognition of environmental protection was however made in 1909 in the United States - United Kingdom Boundary Waters Treaty.²⁸

In light of the above, a scholar²⁹ have argued that international environmental law evolved over three distinct periods: Post industrial revolution up to 1945, Post United Nations' era and From Stockholm to Rio era.³⁰

3.1.1 POST INDUSTRIAL REVOLUTION UP TO 1945

The industrial revolution actually fixed the stage for man's consciousness about the negative consequences of environmental devastation. By the advent of the 20th century, potentially hazardous activities particularly relating to the seas, started attracting global attention.³¹ It was also about this time that the celebrated Trail Smelter Arbitration case³² emerged. It arose from the dispute between the United States and Canada over the emission of sulfur fumes from a smelter situated in Canada, which caused damage in

²⁷ Damilola S. Olawuyi, *The Principles of Nigerian Environmental Law*, (Ado Ekiti: Afe Babalola University Press, 2015) p. 58 cited in Osahon supra note 16.

²⁸ See *ibid.*

²⁹ Worika supra note 15.

³⁰ *Ibid.*

³¹ See A. Kiss and D Shelton, *International Environmental Law*, cited in Worika, *ibid.*

³² 35 AJIL 716 (1941), ILR 317 (1941).

the state of Washington, United States of America. The Arbitration Panel held thus:

No state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.

This decision is the most symbolic in the evolution of international environmental law and state responsibility.

3.1.2 POST UNITED NATIONS' ERA (1945 - 1971)

This was the period between the formation of the United Nations and its specialised agencies. The United Nations was established with the aim of securing international cooperation in solving global economic, cultural, social and humanitarian problems. This further led to the creation of other international bodies with a mandate to address specific international environmental issues. Some of these bodies are the International Maritime Organisation (IMO), and The International Union for the Protection of Nature,³³ and so on.

The International Maritime Organisation is said to have steered the adoption of the first International Convention for the Prevention of Oil Pollution on 12 May 1954 and came into force in July 1958.³⁴

³³ This body was formed in October, 1948 and later renamed International Union for the Conservation of Nature and Natural Resources (IUCN). See P. W. Birnie and A. E. Boyle, *International Law and Environment*, cited in Worika *supra* note 15.

³⁴ See Worika *supra* note 15.

Perhaps, another significant point of note during this period, were two notable decisions: the Cofu Channel case³⁵ and the Lac Lanoux Arbitration case³⁶ which hitherto sealed the decision in Trail Smelter Arbitration. In the Cofu Channel case, the ICJ reiterated the obligation that no state has the right to allow knowingly its territory to be used for acts contrary to the rights of other states. In the Lac Lanoux case, it was echoed that the rights of foreign states may be adversely affected when a riparian state engages in activities potentially harmful to shared river resources.

3.1.3 FROM STOCKHOLM TO RIO ERA

The Stockholm Conference, tagged the United Nations Conference on the Human Environment, resulted in the creation of three important documents: A resolution on institutional financial arrangement, A declaration containing 26 Principles and An action plan containing 109 recommendations.³⁷ The success of the Conference led to the creation of the United Nations Environmental Programme (UNEP). Again, Principle 21 of the Stockholm Conference reiterated the obligation of States in seeing to the fact that activities within their jurisdiction or control did not cause damage in other states or in areas beyond national jurisdiction.

Following the Stockholm Conference was the World Commission on Environment and Development's publication titled "Our Common Future" also called The Brundtland Report. This report rekindled the need for sustainable development. The pressure of the Report led to

³⁵ ICJR 4 (1949).

³⁶ 24 ILR 101 (1957).

³⁷ Osahon supra note 17.

further international action on the environment and eventually led to the Rio Conference.³⁸

The Rio Conference also known as the United Nations Conference on Environment and Development was held in Rio de Janeiro, Brazil at the 20th anniversary of the Stockholm Conference.³⁹ This Conference produced a number of documents namely: the United Nations Convention on Climate Change (UNFCCC), Agenda 21 an 800 page document which sets out a global action plan for States on development and the environment, and the Rio Declaration containing 27 Principles.⁴⁰

3.2 AFRICAN DIMENSION

The development of international environmental law in Africa has been stated in two significant respects.⁴¹ The first was being part of the international system. The second as a facilitator in the evolution of international environmental law.⁴² Under the first category, Africa is considered to have benefited from the UN Declaration on the Granting of Independence to Colonial rule. Though it was not all countries that had independent status, it enabled African participation and contribution to the growth of international environmental law.

Although, Africa was behind in terms of development, it is celebrated that Africa's initiative led to the signing of the African Convention on the Conservation of Nature and Natural Resources by regional heads

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Worika *supra* note 15.

⁴² Ibid.

of states and government in 1968.⁴³ The Convention recognised species and made special responsibility for the state in whose territory the species are situated.⁴⁴ In this connection, the Convention was rated a model comprehensive document. It addressed concerns on virtually the totality of the environment.

Another significant point of note is the view that, at Africa's instance, the World Charter for Nature was proclaimed and approved by the United Nations General Assembly.⁴⁵ The preliminaries to its adoption began with a speech delivered by President Mobutu of Zaire in September 1975 at the 12th General Assembly of the IUCN held in Kinshasa.⁴⁶ In his speech, Mobutu opined that global principles should be ingrained in a world charter.

Like other developing countries, Africa was at first suspicious about the sudden emphasis on environmental protection by industrialized countries who were responsible for world energy consumption. But the experiences of the continent particularly as it relates to dumping of hazardous and toxic wastes from developed nations to Africa,⁴⁷ Africans are now more aware of the consequences of environmental harm and the benefits of protection and conservation.

4.0 LEVELS OF ENVIRONMENTAL PROBLEMS

⁴³ Ibid.

⁴⁴ Kiss and Shelton, cited in Worika, *ibid*.

⁴⁵ Worika, *ibid*.

⁴⁶ Ibid

⁴⁷ Like the dumping of toxic waste at Koko port in Delta State of Nigeria in May 1988. See Edward T. Bristol-Alagbariya, *Participation in Petroleum Development: Towards Sustainable Community Development in the Niger Delta*, (Dundee: Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee, 2010) p. 148.

4.1 What is it?

Environmental Problems evince a state in which the order and law of the ecosystem are collapsed as the ecological function it originally had is destroyed due to the influence of human activities.⁴⁸ They are issues that defy the natural state of the environment. These environmental issues are not without consequences. They negatively impact human health. They occur in the form of climate change, biodiversity loss, pollution of water, air and land and so on. These concerns can cause food scarcity and can cause death.

Environmental Problems occur at various levels. The levels suggest the degree to which environmental issues can cause harm. The level to which it emerges also pinpoints the degree of attention, effort and collaboration towards mitigating its effects.

4.2 THE LEVELS OF THE PROBLEMS

4.2.1 Global Level

Global environmental problems are environmental crises affecting the world. They are threats that diffuse all countries, regions and continents of the world. Examples are climate change, ozone layer depletion, biodiversity loss, and so on. Global environmental problems require increased stewardship, innovative solutions and global action to mitigate their consequences on the environment and humanity.

4.2.2 REGIONAL LEVEL

⁴⁸ Chi Hong Lim and Chang SeokLee, Climate change adaptation through ecological restoration in Natural Resources Conservation and Advances for Sustainability, 2022 <<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/environmental-problem>> accessed 3rd January 2023.

Regional environmental problems simply put, are shared environmental problems within a region or continent. They are environmental concerns common to a particular region or continent and affect more or less all countries within that region. A good example of regional environmental problems is the diminishing forests, altered habitats and decreasing biodiversity, land degradation, polluted waters and declining availability of potable water, and the degradation of marine and coastal resources in the Southeast Asian subregion.⁴⁹ The Southeast Asian sub region comprises the countries of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam.⁵⁰ In Africa, the major environmental issue according to Uzuazor Etemire is dumping of toxic waste and dumping of electronic waste also called end of life gadgets.⁵¹ These kinds of environmental problems can be tackled through regional cooperation, sharing of knowledge and pooling of resources.⁵²

4.2.3 TRANSBOUNDARY LEVELS

A trans-boundary environmental problem is an environmental problem that is trans-boundary in scale.⁵³ It occurs when pollution or

⁴⁹ See Shared Environmental Problems in Southeast Asia available at <https://www.google.com/url?q=https://www.unescap.org/sites/default/files/CH17.PDF&sa=U&ved=2ahUKEwiWidvi36v8AhXoi_0HHS0dDM4QFnoECAIQAg&usg=AOvVaw2z8iOxXaQqzJ948HEwCk0C> accessed 3rd January 2023.

⁵⁰ Ibid.

⁵¹ Personal note taken from Uzuazor Etemire's LLB 3 Environmental Law Lecture held on the 31st day of October 2022.

⁵² See Southeast's approach to their sub regional environmental problems in supra note 41.

⁵³ Nitish Kumar Arya, Transboundary Environmental Problems <<https://mgcub.ac.in/pdf/material/2020042711574477e3f04460.pdf>> accessed 3rd January 2023.

environmental issues created in one country moves into the territory of another state. That way, it is an environmental problem originating in, or contributed by, one country and affecting or impacting another.⁵⁴ Some components or examples of transboundary environmental problems are migratory birds, air and water pollution. The issue of flooding in Nigeria which usually originates from the Cameroonian dam is one outstanding instance of transboundary environmental problems.

4.2.3 NATIONAL OR DOMESTIC LEVELS

Environmental problems at this level are problems that are widespread or common within a particular country. The concerns originate in that country and spread or move all over the country. National environmental problems take the form of human rights violations, deforestation, loss of heritage sites, and issues of improper management of waste. This can be tackled by strengthening institutional framework, public education, public involvement, access to environmental information and access to justice.

4.2.4 LOCAL LEVELS

Local environmental problems are environmental crises within a section or segment of a sovereign state or country. It takes the form of human rights abuse, health related issues, infrastructural decay, lack of portable drinking water and shared diseases. This kind of environmental problem requires enlightenment programmes, political will, government funding, and collaboration with local inhabitants to mitigate its effects. Providing sustainable means of

⁵⁴ Ibid.

livelihood and some basic social amenities are some of the effective ways the problems at this level can be minimized.

5. CONCLUSION

The subject of international environmental law is one which seeks to remedy or address potentially harmful activities which can affect the environment at the international level or environmentally hazardous activities within the jurisdiction of one state which have the potential of causing damage in the territory or jurisdiction of other states. It seeks to provide rules, common standards and an action plan for the protection and conservation of the global environment and the mitigation of environmental problems. In achieving this, it obligates states not to allow its territory to be used to cause environmental harm.

**TECHNOLOGICAL-INVENTION AND THE
NIGERIAN COPYRIGHT ACT: CHALLENGES
AND WAY FORWARD**

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ABSTRACT

Contemporarily, technology has birthed inventions which perform tasks orthodoxly executed by human. A notorious example of such invention is ChatGPT developed by Open AI. This invention is capable of writing essays, song lyrics and other related literary and artistic works simply on the instruction of its end-user. As beckoning as this feat seems, it portends a great lacuna to the extant laws regulating and protecting literary and artistic works. Premise on this, this piece will highlight the challenges occasioned by technological invention to the law regulating literary and artistic work in Nigeria – the Copyright Act. In doing so, the position to be taken by the Nigeria law to resolve these challenges as well as an overview of what copyright entails will be accentuated.

Keywords: Technology, Invention, Copyright

INTRODUCTION

In recent time, technology has made waves in many fields, with the creative industry not left out. It has helped develop easier, quicker and cost effective ways of executing tasks which were predominantly carried out by human. One of the most recent development made by technology is the evolution of an Artificial Intelligence (AI) chatbots by Open AI – ChatGPT – which has the capacity of interacting with its end-user and producing the desired result its instructor crave for.

Since its inception, end users of ChatGPT – which was reported to have reached one million within five days of its release – has employed its service to write entire block of codes, television scripts, academic essays etc.⁵⁵ This feat achieved by advancement in technology is quite commendable and desirable. Nonetheless, it poses a great menace to the copyright law which seeks to protect the kind of works produced by ChatGPT.

Unassailably, copyright law exists to confer specific rights on authors of certain category of works and also proffer relief to the author where any of his rights are eroded by a third party without the author's consent or tacit approval. With the highlighted development made by technology, it is opined by this writer that a great lacuna has been occasioned to the copyright law which subsists in Nigeria.

⁵⁵ Stephanie Stacey, 'Cheating on your college essay with ChatGPT won't get you good grades, say professors – but AI could make education fairer' Yahoo Finance, 18 December 2022 <https://www.google.com/amp/s/finance.yahoo.com/amphtml/news/cheating-college-essaat-chatgpt-wont-090000077.html> accessed 30 December 2022

On this basis, the tenor of this piece will be to accentuate the challenges occasioned to the copyright law in Nigeria by the highlighted technological-invention as well as to proffer pragmatic ways to resolve these challenges. In achieving this focus, the meaning of copyright will be elucidated.

WHAT COPYRIGHT ENTAILS UNVEILED

The word copyright is a cliché compared with other subsisting intellectual property rights. Nonetheless, various definitions of the word copyright will be considered so as to elucidate what the term fully entails.

World Intellectual Property Organization (WIPO) defines copyright as “a legal term used to describe the rights that creators have over their literary and artistic work.”⁵⁶ Meanwhile, the US Copyright Office espoused copyright as a type of intellectual property right that protects original works of authorship as soon as an author fixes the work in a tangible form of expression.⁵⁷

From the above definitions of copyright, it is prudent to describe copyright as a right conferred on the author of a work which qualifies for copyright protection under the extant law of a country. In Nigeria, the municipal legislation that caters for copyright and its related issues is the Nigerian Copyright Act⁵⁸ (the act). The act⁵⁹ sets out the

⁵⁶ World Intellectual Property Organization, ‘Copyright’, <https://www.wipo.int/copyright/en/> accessed 2nd January 2023

⁵⁷ US Copyright Office, ‘What Is Copyright’ <https://www.copyright.gov/what-is-copyright/> accessed 2nd January 2023

⁵⁸ Copyright Act, 2004, Cap 68, LFN, 1990

⁵⁹ Ibid, section 1(1)

categories of works that merit the grant of copyright protection but subject to the satisfaction of certain preconditions.

With the recent invention made by technology, various challenges has been occasioned to the Nigerian Copyright Act. Notorious among these problems is the coyrightability of works produced by technological-inventions like ChatGPT. Certain jurisdictions recognize such works as copyrightable, whereas some jurisdictions rule out the possibility of works generated by technological-inventions enjoying copyright protection.

In Nigeria, the above issue is still in the wind because the existing copyright law does not cater for it and neither has any Nigerian court put the issue to rest. It is on this note that this challenge, alongside others, facing the Nigerian copyright act will be examined below.

CHALLENGES OCCASIONED TO THE NIGERIA COPYRIGHT ACT BY TECHNOLOGICAL-INVENTION

Certain challenges are bedeviling the Nigeria copyright act due to the advancement in technology. Few among these challenges are espoused below:

- **Copyrightability of works created by technological-invention:**

The Nigerian Copyright act lists certain categories of work as eligible for copyright protection under its section 1. These works are; Literary works, musical works, artistic works, cinematograph works, sound recordings and broadcasts. Quite amusingly, there are technological-inventions which produce works the highlighted above. For example, apart from ChatGPT which is capable of writing songs, essays and other literary works, a report revealed that an artwork, entitled “the

next Rembrandt”, was generated by a computer that analyzed thousands of works by the 17th-Century Dutch artist Rembrandt Harmenszoon Van Rijn.⁶⁰

The conundrum that ensues from the above exposition is whether a work generated by technological-invention qualifies for copyright protection. In Nigeria, no enactment or judicial authority has put this issue to rest. However, in the United States (US), the US Copyright office⁶¹ declared that it will “only register an original work of authorship, provided that the original work was created by a human being”. Also, an Australian court ruled in the case of *Acohs Pty Ltd v. Ucorp Pty Ltd*⁶² that ‘a work generated with the intervention of a computer could not be protected by copyright because it was not produced by a human.’ This elucidation is to the effect that works generated by technological-inventions are not protected by copyright in the US and Australia.

Conversely, the United Kingdom (UK) takes a paradigm shift from what is obtainable in the United States and Australia by granting copyright protection to works generated by computers. The United Kingdom Copyright, Design and Patent act⁶³ recognizes computer generated works and defines it as ‘works generated by computer in

⁶⁰ Mark Brown, ‘New Rembrandt to be Unveiled in Amsterdam’ The Guardian, 5 April 2016 <<https://www.theguardian.com/artanddesign/2016/apr/05/new-rembrandt-to-be-unveiled-in-amsterdam>> accessed 14 December 2022

⁶¹ <<https://www.smithsonianmag.com/smart-news/us-copyright-office-rules-ai-art-cant-be-protected-180979808/>> (accessed on 10th September, 2022)

⁶² (2012) FCAFC 16

⁶³ Copyright, Designs and Patent Act, 1988 Cap 48

circumstances where such that there is no human author of the work.’⁶⁴

The Nigeria Copyright act is mute over the copyrightability of works generated by technological-inventions such as; ChatGPT. Regardless of this fact, it is opined that a strict interpretation of section 1(2) of the Act will obliterate works generated by technological-invention from enjoying copyright protection.

The content and intendment of the abovementioned section is that a work must be original and fixed for it to qualify for copyright protection. Although, the act fails to define what is meant by originality and fixation of works, overtime, meaning have been read into the words by the court.

In the Nigerian case of *Offrey v. Chief S.O Ola*⁶⁵, the plaintiff claimed that the defendant infringed his book titled “New era scheme of work and record book”, for selling similar books without his authorization. Upon discovering that the book only contained horizontal and vertical lines, the court dismissed the infringement claim and observed that:

There was no evidence that the plaintiff had put into its production some substantial amount of labor. The record book merely showed a neat layout of vertical and horizontal columns on pages 9 to 52. Such a layout could not be called an original literary work or an original compilation for giving ready, convenient and accurate information to people who needed such information. The

⁶⁴ Ibid, Section 178

⁶⁵ (Unreported) suit no: HOS/23/68 decided 27th June 1969

plaintiff had therefore not established that the record book in question is an original literary work or compilation being result of his labor and skill

Discernible from the above holding of the court is that for a work to satisfy the originality condition prescribed by the copyright act, the author must have immersed quality labor and skill. As regard fixation of the work, it connotes that connotes that the work should be in a medium that makes perception, reproduction and/or communication of the work possible.⁶⁶

It is conspicuous from the above exposition that a technologically invented work satisfies the fixation condition. Howbeit, can same be said of the originality condition considering the fact that it is the ‘author’ of the work that must culminate labor and skill which leads to the production of the work? Hence, the propriety or otherwise of naming or regarding a technological-invention as an author of a work is germane to the issue of copyrightability of technological-invention works under the Nigeria law. To this end, the Authorship status of a technological- invention will be considered next.

- **Authorship of Technological-invention works:**

Limpid from the above is that for a work to be tagged as original, the author must have culminated sufficient labor and skill into it. The question that follows is whether a technological-invention like ChatGPT qualifies as an author of a work?

⁶⁶ Tabrez Ahmad, ‘Significance of Fixation in Copyright Law’ Social Science Research Network, 12 September 2011, https://papers.ssrn.com/sol3/Delivery/SSRN_ID1925845_code1189281.pdf?abstractid=1839527&mirid=1 accessed 8 January 2023

Under the Nigeria Copyright act, author “in cases of literary, artistic or musical works, means the creator of the work⁶⁷”. A man of credible prudence will assert that since technological-invention such as ChatGPT is the creator of a work, it should be regarded as the author of the work.

Nevertheless, a holistic reading of Section 2(1) of the Nigeria copyright act reveals that an author of a work, who will be conferred copyright under the act, must be a person. The section went further to state that a person in this regard refers to: an individual who is a citizen of or domiciled in Nigeria or; a body corporate incorporated by or under the laws of Nigeria.

It suffices that an author of a work must be a person – either a human being or a body corporate incorporated under Nigeria law. It is therefore safe to opine that a technological-invention like ChatGPT cannot be tagged as an author of a work. Thus, rendering works generated by technological-invention not copyrightable.

Worthy of note is that the Nigeria Copyright Act has neither stipulated what its position is on the issue of technological-invention being regarded as an author nor ruled out technological-invention works as copyrightable. Therefore, leaving these issues unsettled in Nigeria.

In the UK, where computer-generated works are recognized as copyrightable, authorship of such work resides with the person(s) who made arrangement for the creation of the work, by a machine,

⁶⁷ Nigeria Copyright act, Section 39

possible.⁶⁸ For instance, if ChatGPT produces a work, the authorship of such work resides with the person that instructed it to come up with the work. It behoves Nigeria legislators to make enactment over the authorship of works generated by technological invention so that the obscurity can be put to rest.

- **Infringement by Technological-invention**

Notwithstanding the issues of authorship and coyrightability of works generated by technological-inventions, another challenge faced by the Nigeria Copyright Act is the issue of possible Infringement of existing copyright work by technological-inventions. For instance, what happens where ChatGPT writes an essay which is in complete erosion of another author's work? Or, where it facilitates an infringement copy of a work to its end-user, will ChatGPT be liable for secondary infringement?

Although, the Nigeria copyright law is silent in cases of both primary and secondary infringement of copyright works by technological-invention, it is obvious to a man of credible prudence to hold that the invention cannot be held liable for infringement as one cannot seek relief against a non-juristic person. Hence, focus, of who the infringer is, shifts to the programmer of the Invention or the person who gave instructions to the invention to produce a certain category of work.

Sam Norris postulates that a cursory look of the development of an invention reveals that the programmer or developer of the invention should be the one held liable for secondary infringement in tandem with the extant provision of copyright law which recognizes an

⁶⁸ See Section 9(3) of the UK Copyright, Designs and Patent Act, 1988 Cap 48

infringer as the person “most closely connected” to the act of infringement.⁶⁹

He premised his postulation on the fact that inventions like ChatGPT operates in consonance with the core functions and data-sets defined by their coders. Hence, it suffices that a programmer can take necessary caution to obviate his invention from being capable of infringing on protected works. Where such is not done, the programmer will be held liable for secondary infringement of copyright.

Under the Nigeria Copyright Act, light is not shed on the above-highlighted challenges occasioned to it by technological innovation. It is on this basis that this writer will postulate pragmatic ground upon which these issues should be tackled by Nigeria legislators or courts in the foreseeable future.

PRAGMATIC APPROACH TOWARDS RESOLVING THE ISSUES BIRTHED BY TECHNOLOGICAL-INNOVATION TO THE NIGERIA COPYRIGHT ACT

Uncontrovertibly, there is dire need for a proactive and reactive amendment of the Nigerian copyright act in order to cater for the above-highlighted issues which has created a lacuna to its provision. It is opined by this writer that as regard the copyrightability of technological-invention works, protection should not be conferred on them. Reason being that doing so will diminish the concept of

⁶⁹ Sam Norris, ‘IP Infringement by AI: Establishing Liability in the “Black Box” 25 November, 2020 <https://samnorris.medium.co/m/ip-infringment-by-ai-establishing-liability-in-the-black-box-d6e9476c12dd> accessed 5 January, 2023

originality set forth by the act as a precondition to be satisfied by a work for it to be eligible for copyright protection.

More so, recognizing this category of works as copyrightable will confer the status of authorship on a technological-invention. This act portends a great menace not only to the recognition given to orthodox authors but also to the content of the copyright act. For instance, a technological-invention cannot enjoy the rights conferred on an author by the copyright act. Hence, what is the need of recognizing it as an author?

In the same vein, a lacuna is posed to the duration of copyright in a work created by technological-invention considering the fact that invention are not vulnerable to death. Hence, it will be prudent for technological invention not to be recognized as an author of a work.

On the final issue, just as postulated by Sam, legislation should be made to the effect that the programmer or developer of a technological invention will be liable for any infringement incurred by his invention. That way, due diligence will be instilled in programmers and developers to invent machines which will not infringe protected works.

CONCLUSION

The importance of copyright protection for works cannot be overemphasized. Apart from it providing an opportunity for creators to reap the economic benefit of their intellectual creation, it also provide a seedbed to gain recognition for being the author of such work.

Notwithstanding the intrinsic nature of copyright, the law governing it in Nigeria is facing a big lacuna due to recent technological-inventions. Most significant among the problems faced by the Nigeria copyright act are the issues of whether or not technology-inventions are recognizable as an author thereby guaranteeing the protection of works generated by it.

It is the humble opinion of this writer that, although the Nigerian copyright act is mute on this issue, whenever issues of such arises for legislation or adjudication, technological-invention should be declared unqualified to be an author. Hence, rendering its works not copyrightable.

More so, in cases where an invention infringes an existing copyright work, the programmer or developer of such invention should be held liable as a secondary infringer. This way, sanctity of the Nigeria copyright act will be maintained notwithstanding the problems occasioned by technological innovation.

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