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EDITORIAL NOTE

It is with great pleasure that we present **Volume V, Issue II** of the Lawrit Journal of Law. This edition reflects our ongoing commitment to **promoting high-quality legal journal** and **providing a platform for meaningful academic engagement within the legal community**.

For this issue, we received **48 article submissions**. After rigorous peer review and editorial evaluation, **5 articles were declined** as they did not meet our editorial requirements, while **43 were considered for publication**. Of these, **28 articles fulfilled the publication considerations and proceeded to the published stage**. We sincerely appreciate the dedication, effort, and intellectual rigor demonstrated by all contributors.

This issue features an array of contemporary legal topics from authors across diverse jurisdictions, including the **United Kingdom, United States, Ethiopia, Kenya, Zambia, Nigeria, and Ghana**, to name a few. Their contributions reflect the Journal's global relevance and the importance of cross-jurisdictional perspectives in shaping modern legal discourse.

We extend our heartfelt gratitude to our reviewers, editors, authors, and readers for their continued support. Your engagement allows us to uphold the high standards of excellence and integrity that the Lawrit Journal of Law represents.

We invite you to explore the insights presented in this issue and join us in advancing meaningful conversations about the law.

Yours sincerely,
Tomisin Farinola
Editor-in-Chief

For: The Editorial Board
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THE COEXISTENCE OF BUSINESS NAMES AND TRADEMARKS IN THE NIGERIAN LEGAL LANDSCAPE: WHAT IT MEANS FOR BUSINESSES AND TRADEMARK PROPRIETORS

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ABSTRACT

Oftentimes, and even more so in recent times, registered business names tend to coincide or clash with registered trademarks, blurring the line between corporate identity and proprietary rights. While the Companies and Allied Matters Act, 2020 governs the registration of business names, the Trade Marks Act, 1967 protects distinctiveness in trade. Yet, the lack of a harmonised legal framework has allowed overlapping registrations flourish. Adopting a doctrinal legal research methodology, this article explores the legal and commercial implications of the co-existence of business names and trademarks under Nigerian law, drawing insights from recent judicial decisions. It finds that the "first-in-time" regimes adopted by both the Corporate Affairs Commission and the Trademarks Registry play a pivotal role in determining which gives way, the business name or the trademark. It also finds that although courts have, over time, lent preponderance to trademarks over and above business names, statutory provisions and the doctrines of passing off and prior use constitute lacunas for business names. Finally, it advocates practical reforms and provides actionable recommendations for business owners to navigate the existing landscape.

Key words: Trademark, business name, law, trademark registry, Corporate Affairs Commission

1. Introduction

The Punch newspaper reports that KPMG Nigeria triumphed over KPMG Professional Services in a recent dispute concerning the use of "KPMG" to indicate affiliation with the global consultancy company in Nigeria. The controversy started when KPMG Professional Services, registered in 2001 by the Corporate Affairs Commission (CAC), was found to conflict with the earlier registered KPMG Nigeria, which had operated since 1968 and built considerable goodwill and reputation. Although the 2001 registration was the result of a genuine belief that the earlier merger with Deloitte had rendered KPMG Nigeria an entirely new entity, the court held the registration invalid due to the obvious conflict.[3]

The case underscores a recurrent problem in corporate identity: conflicts arising from similar or identical names. While it reveals the clear position of the law with regards to conflicts in business names – when a business name conflicts with another, the first in time prevails[4], the principle however becomes less clear when the conflict involves a trademark and a business name.

3 KPMG Nigeria v. KPMG Professional Services (Unreported) judgment delivered on July 10, 2025.
4 Collins Okpe, 'Exploring the Relationship between the Registration of Names with the Corporate Affairs Commission and the Trade Marks Office in Nigeria' (LinkedIn, 2023) <https://www.linkedin.com/pulse/exploring-relationship-between-registration-names-corporate-okpe-xhw7f> accessed 5 September 2025.

On the one hand, a trademark is used, quite obviously, in the course of trade to distinguish the goods or brand of a proprietor from those of others.[5] It may consist of the name of a company represented in a particular way, so long as the name is distinctive,[6] e.g. KODAK. It is in that sense that the word, trademark, shall be construed in this article. On the other hand, a business name is simply the name of style under which any business operates.[7] Figuratively, the business name resembles a receipt of purchase, whereas the trademark is a certificate of occupancy. The importance of this metaphor becomes glaring in later pages, as when these two overlap, the implications are far-reaching and monumental for each side, costing fortunes and reputation alike.[8]

Against such a backdrop, this article properly brings to light exactly what happens when two separate businesses have identical or similar names, one registered and the other trademarked, and what that means for rights, reputation and survival in the marketplace.

2.0 Current Legal Framework Governing Trademarks and Business Names in Nigeria

There is no single legislative document regulating corporate cognomens in trade. Rather, there are two main laws: the **Trade Marks Act, 1967 (the TMA),**[9] and the **Companies and Allied Matters Act, 2020 (the CAMA)**.

1. The Trade Marks Act

Being the principal legislation for the regulation of trademarks, the TMA contains several key provisions with regards to the issue at hand. These shall be evaluated in two respects: the rights granted to registered brands and the mechanisms available to enforce those rights.

Generally, marks registered in the trademarks register grant the proprietor, the owner of the mark, in this essay, the exclusive right to use the mark.[10] This means that no other person, except as authorized by the proprietor, or in situations permitted by law, can use the registered mark.[11] This is to prevent deception,[12] and to help consumers identify trusted brands. For example, if A's bakery, Loafables, produces loaves of very high quality, and "Loafables" is trademarked, no competitor can come into the market with a similar or identical name and intend to piggyback ride off of A's market success. This helps A's customers identify his high-quality loaves, even in a marketplace ridden with so many brands.

If, however, B was to enter into the loaf-making business and calls his bakery, Loafable, he quite likely will be hit with a lawsuit from A, or at least a cease-and-desist letter. This is because A's

5 Trade Marks Act, 1967, Cap. T13 LFN 2004, s. 67.
6 Ibid.
7 Companies and Allied Matters Act, 2020 (Act No. 3, 2020), s. 868.
8 See KPMG v. KPMG Professional Services (Unreported).
9 Cap. T13 LFN 2004
10 ibid, s. 5(1) - (2).
11 ibid, ss. 5(2) - (4) and 6(1) - (2).
12 ibid.

exclusive right to use the trademark is backed by **Section 13(1) of the TMA** which empowers a proprietor to sue for damages for an infringement on their trademark. This is corroborated by **Section 5(1) & (2), and Section 6(1) & (2) of the TMA**, which prevent use of existing, registered trademarks in a way that is deceitful or confusing.

The implication of this is that trademarks differ widely from traditional business names in that they are regarded as a proprietary right, a form of intellectual property that can only be employed by its creator. However, unlike copyright or trade secrets which do not require registration, trademarks are largely required to be registered before the rights they provide can be enjoyed. In fact, **Section 49 of the TMA** states that registration is to be taken as *prima facie* evidence of trademark validity in legal proceedings. Nevertheless, unregistered marks are also subject to limited protections under the Act.[13]

2. Companies and Allied Matters Act, 2020

On the other hand of this discourse, business names are governed wholly by the CAMA. This legislative instrument contains in its **Sections 36-42**, the generality of the provisions concerning the registration of business names in the country. This process encompasses the search for availability of a name, proposed name reservation, filling of a CAC form online, payment of relevant statutory fees and approval of registration by the CAC.[14] A review of relevant provisions proves enlightening.

Section 30(1) stipulates that, if, after approval, it is discovered that the newly registered name conflicts or is very similar to a previously registered name (that is still on the register), then the newly registered company would be compelled to change its name. **Section 30(4)** takes it a bit further by stipulating that a conflict with a registered trademark, without consent of the proprietor, is also a basis for name change.

At the stage of name reservation, the CAC may also cancel a name if it finds that it conflicts with a trademark or business name.[15] The gravity with which this is taken is represented by **Section 41(1)(e)** which forestalls the registration of a company's memorandum of association if the business name is found to conflict with an existing business name or trademark. **Section 852(1)(d)** seals the deal by prohibiting the registration of any business name which conflicts with an existing trademark or business name.

13 Ibid, ss. 3 and 7.
14 Similoluwa Oyelude, Oluwatosin Jinadu & Etseoghena Oboni, 'Trade Mark and Business Names Conflicts in Nigeria: FHC/L/CS/1295/2023 – Havells India Limited v. The Corporate Affairs Commission and MDC Havels Product Limited' (ICLG, 5 February 2025) <https://iclg.com/briefing/22226-trademark-and-business-names-conflicts-in-nigeria-fhc-l-cs-1295-2023-havells-india-limited-v-the-corporate-affairs-commission-and-mdc-havels-product-limited/amp> accessed 16 September 2025.
15 Companies and Allied Matters Act, 2020 (Act No. 3, 2020), s. 31.

These provisions at the pre- and post- registration stages highlight the unwillingness of the CAC to permit the co-existence of two conflicting names by preventing the registration of a name conflicting or closely resembling (enough to cause confusion) an already registered name, whether at the CAC or the Trade Marks registry. Only where such a conflict has been resolved can the CAC now permit the registration of the business name, and confer upon the business legal identity.[16]

3. Conflicts?

As we all know, reality is often different from what is captured on paper. Conflicts arise, and many times, they are only discovered after the latter business had amassed sufficient goodwill, reputation and a sustainable consumer base. Many times, the lack of a coherent database between the CAC and the Trade Marks Registry impede a cohesive name check and businesses suffer for it, losing millions in court-granted damages and loss of goodwill. These conflicts arise in several forms, many of which have made it to the national judicial stage.[17]

The crux of the issue typically lies in the registration date of the respective names. This is because both agencies operate a first-in-time registration scheme.[18] For example, if A in the earlier example registered his business name, "Loafables", at the CAC before B, then "Loafable" cannot be registered on account of the obvious conflict and similarity. But, there is nothing in the Trade Marks Act that makes CAC registration, or even recognition as a business entity, a prerequisite for the registration of a trademark. So, if B were to register "Loafable" as a trademark (assuming that A had not already done that), then it becomes quite interesting, especially in light of the fact that **Section 5(1)** grants exclusive rights to use a trademark, and the use of a confusingly similar or identical mark is met with sanction.[19][20]

4. Business Implications of Conflict and Real-life Cases

Having your business name struck out for conflict with a pre-existing trademark is highly disruptive. In the recent Fastest Cakes v. Fast Cakes saga, the respondent lost the right to use the name even after a comprehensive search at the CAC database, filing of necessary documents, and payment of statutory fees, notwithstanding the additional legal fees.[21] All of that, gone. Yet, that is not all!

16 ibid, ss. 30(1) and 41(1) (e).
17 For example, the fastest cakes IP saga.
18 Okpe (n 2).
19 Trade Marks Act, 1967, Cap. T13 LFN 2004, s. 13(1).
20 However, there are certain exceptions to this as specified above. See ss. 7 and 8 of the Trade Marks Act.
21 Olawolemi Ogidan, 'The Saga of the Fast Cakes: A Comparative Analysis of Trademark Registration and CAC Registration in Nigeria', 2025 ResearchGate <https://www.researchgate.net/publication/394624691_'THE_SAGA_OF_THE_FAST_CAKES'_A_COMPARATIVE_ANALYSIS_OF_TRADEMARK_REGISTRATION_AND_CAC_REGISTRATION_IN_NIGERIA_INTRODUCTION> accessed 5 September 2025.

About two years ago, the multinational giant, Sanofi S.A. successfully sued three smaller Nigerian companies which business names infringed on its 1987 trademark.[22] Sanofi Nigeria Enterprises registered with the CAC in 1992, Sanofi International Services in 2011, and Sanofi Nigeria Enterprises Limited in 2013. The obvious conflict between the 1992 registration and the 1987 trademark notwithstanding, the fact that the CAC's automated portal, despite the statutory provisions contained in the CAMA, allowed the registration of two other business names that clearly conflicted with an existing business name is a cause for alarm in and of itself. The last of these businesses had operated for at least a decade, undoubtedly amassing goodwill, brand reputation, customer loyalty and other intangible assets that contribute to its overall profit.[23]

And there is the amount that is paid in damages. Earlier this year, in a trademark dispute between Citilink Accesscorp and MTN Nigeria, the latter company was fined over ₦800 million in damages.[24]

But, enough with the grim reality. What panacea does the law hold for businesses that fall victim to these conflicts? Before that, it would be exigent to consider the full impact of being on the other side – what is the position of the law when the business name is registered before the trademark?

5. The Effect of Trademarks on Existing Business Names

This question appears as one of the most complex aspects of this subject. Over the years, it has been left unanswered by the courts, and the legislature seems too shy to speak decisively on it. However, certain provisions of the TMA and judicial pronouncements prove enlightening.

As earlier noted, trademarks confer exclusive usage rights to the proprietor.[25] However, a dilemma arises when a business name, registered by another entity, conflicts with the trademark. The general assumption would be that if the business name is identical or confusingly similar to the trademark, it constitutes infringement.[26] However, while the TMA and CAMA seem silent on the precise effect of a prior registration of a similar business name on the trade mark, the exceptions provided in **Sections 7 and 8 of the TMA** are worthy of note.

Section 7 of the TMA protects the rights of prior users of a mark,[27] even when such marks or similar ones are subsequently registered as a trademark. Moreover, **Section 8 of the TMA** stipulates that a trademark registration does not interfere with a person's *bona fide* use of their name, the name of their place of business, or that of their predecessors in business. It also does not

22 Sanofi S.A. v. Sanofi Integrated Services Ltd, Sanofi Nigeria Enterprises Limited, Mrs Susan Namiji t/a Sanofi Nigeria Enterprise, and the Corporate Affairs Commission. Case number: FHC/ABJ/CS/188/2020.
23 Gaelyn Scott, 'Trade Mark Registrations v Company And Business Name Registrations' (Mondaq, 6 September 2023) <https://www.mondaq.com/nigeria/trademark/1362808/trade-mark-registrations-v-company-and-business-name-registrations> accessed 16 September 2025
24 Citilink Acesscorp v. MTN Nigeria. Case number: FHC/L/CS/1124/2014.
25 Trade Marks Act, Cap T13, Laws of the Federation of Nigeria 2004, s. 5(1).
26 Ibid, s. 5(2)
27 Perhaps, even when the mark is registered as a business name.

prevent the genuine use of words that describe the character or quality of goods, provided they are not deceptively suggest affiliation with an existing trademark. This provision provides a respite from trademark claims for persons who register these names as business names.

Moreover, aside business names qualifying under the aforementioned exceptions, the provisions of **Section 5(2) of the TMA** can be safely interpreted to apply even to other business names. In such cases, the trademark owner has the right to object to its use.

In the case of a registered business name, the CAMA enjoins the trademark proprietor to do so by petitioning the Administrative Proceedings Committee (APC) established under the Act.[28] On the other hand, the trademark proprietor may institute a lawsuit in the Federal High Court pursuant to the exclusive jurisdiction conferred by the Constitution.[29] The Sanofi case is an example. In this case, the court held that the registration of a company name that was identical to a registered trademark, though not prior to it, amounted to trademark infringement and ordered damages against the infringing party.

However, the courts have, over time, seemed to favour the pre-eminence of trademarks. For example, in the Sanofi case, the Learned Justice noted that "a trademarked name takes precedence over a business name."[30]

This pre-eminence notwithstanding, it is pertinent to consider the converse reality: what happens when the business name is first registered, and the conflicting trademark registered subsequently by a separate entity? Does the law, *stricto sensu*, prioritize first registrations or are there any considerations for the earlier entity's goodwill in this instance?

4.0 <u>The Principle of Prior Use vs. First Registration</u>

Section 3 of the TMA contains the following words: ***"nothing in this Act shall be taken to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof,"*** effectively codifying the common law action of passing off,[31] ensuring that it remains a remedy to persons who, not having registered trademarks, have been known to be in use of those marks.[32] The effect of this provision on registrants who register names already in use by businesses is nothing short of profound.

28 Companies and Allied Matters Act 2020, s 857(2).
29 Constitution of the Federal Republic of Nigeria 1999 (as amended), s 251(1)(f)
30 Ibid (n 19).
31 Patkun Industries Ltd. v Niger Shoes Ltd. [1998] NWLR (pt. 93) 138
32 Niger Chemists Ltd v Nigeria Chemists (1961) All NLR 180

Prior to this codification, passing off the false representation of one's brand, product or business as that of another person[33] was well known in Nigerian intellectual property law. As it did in ***Niger Chemists v. Nigeria Chemists*** **(1961)**,[34] it may take the form of using another person's trademark, and by virtue of **Section 3 of the TMA**, this trademark need not be registered. Provided the earlier business's use of the mark has produced sufficient goodwill, passing off may be relied upon.

However, as may have been deduced already, its reliability is contingent upon prior use. That is, the business intending to plead passing off (the prior user) against a business that has gone ahead to register the trademark (the registrant), must prove that it was using the mark before the registration and this mark has become known with the business. **Section 7 of the TMA** reinforces the principle, preventing the registrant from restraining the use of the same or similar trademark if the user (or their predecessor) has been using it continuously before the proprietor's own use or registration of the mark for those goods (whichever comes first).

The essence of this is that: the successful proof of this consistent and significant use amounts to a proof of goodwill, and hence permits the coexistence of both uses. This coexistence notwithstanding, the prior user has certain legal remedies against the registrant. These include: damages and even an account of profit made through the use of the name.[35] What remains in any case is that the registrant's use does not exclude that of the prior user.

The court, thus, retains the task of balancing consumer interests with honest use.

5.0 Importance of Trademark Registration

The importance of trademark registration cannot be overstated. While business name registration with the CAC in Nigeria is a legal requirement for companies, it does not provide the same breadth of protection that trademark registration offers. A registered trademark does not merely serve as a brand identifier; it carries enforceable legal rights that directly affect the way business names are registered, exploited, and protected.

Firstly, trademark registration plays a critical role in avoiding consumer confusion, misleading associations and offering brand protection. One of the core purposes of a trademark is to serve as a badge of recognition, whereas, business names gives a corporate identity. When an unrelated company registers a business name similar to a well-known or existing trademark, it may mislead the public into assuming a relationship or affiliation between the two entities. This kind of

33 KoriatLaw, 'Brand Protection Law: Key Points on Passing-Off & Unregistered Trade Mark' (KoriatLaw) https://koriatlaw.com/brand-protection-law-key-points-on-passing-off-unregistered-trade-mark/ accessed 16 September 2025.
34 All NLR 180

35 Ibid (n 29).

confusion can significantly damage a brand's integrity and market reputation. Hence, the Nigerian law, particularly under **Section 852(1)(d) of the CAMA** attempts to curtail this by preventing the CAC from approving names that ***"would violate or conflict with any existing trademark or business name registered in Nigeria or body corporate formed under the Act, unless the consent of the owner of the trade mark, business name… has been obtained."***

Moreover, a trademark extends its protection to all commercial uses of the name, including logos, slogans, product packaging, and advertising. Apparently, there is no provision in the TMA or CAMA that states that in the absence of registration with the CAC, enforcement endeavours would be futile. Hence, even if a company is not listed in the CAC register, the trademark owner can still pursue enforcement actions against entities that infringe upon its commercial identity.

In addition to protection, trademark registration enhances the commercial value and credibility of a business name. Trademarks are considered intangible assets that can be monetized through licensing, franchising, or sale.[36] This makes them valuable not just for legal protection but also for investment and expansion purposes. A prominent example is Kodak, one of the world's most famous and trusted brands, which in 2023 signed a perpetual worldwide license agreement with EssilorLuxottica granting them the exclusive right to use the Kodak trademark in connection with their business.[37] In fact, Kodak, like many large brands, maintains a dedicated brand licensing page or program as a strategic option to generate revenue and monetize their brand equity.

Moreover, companies with registered trademark also inspire greater investor confidence, as the brand is protected and less vulnerable to infringement or dilution.[38] Hence, trademarks are not just brand identifiers; they are powerful instruments of commerce and control.

6.0 Recommendations

The existing concurrent registration regimes generate, as earlier shown, considerable confusion in the corporate identity landscape, thus necessitating the consideration of pragmatic steps to resolve inconsistencies and prevent future reoccurrences.

Firstly, there should be strengthened coordination between the Corporate Affairs Commission (CAC) and the trademark registry, as these two bodies presently operate in silos. Improved

36 'Nigeria: Restrictions to Monetization of Intellectual Property Rights' (International Association of Lawyers, 6 March 2022) <https://www.uianet.org/en/news/nigeria-restrictions-monetization-intellectual-property-rights> accessed 8 September 2025.
37 Eastman Kodak Company, 'EssilorLuxottica and Eastman Kodak Company Sign Perpetual License Agreement' (Kodak, 27 July 2023) <https://www.kodak.com/en/company/press-release/ essilorluxottica-perpetual-license-agreement/> accessed 16 September 2025.
38 Kodak, 'Brand Licensing Sign-Up' (Kodak) <https://www.kodak.com?en/company/page?brand-licensing-signup/> accessed 16 September 2025.

harmonization and collaboration between them both, including unified databases or integrated search systems, would help mitigate this issue.

In the meantime, a mandatory clearance search across both the CAC and the trademark registry database should be required before the approval of a business name or trademark application. This would ensure that applicants do not inadvertently infringe on existing rights, and would help both institutions detect conflicts before they ever arise.

Furthermore, it is crucial to sensitize business owners, especially start-ups, and Small and Medium-scale Enterprises (SMEs) on the distinctions existing between business names and trademarks, highlighting the uniqueness and importance of each. This is particularly important because many businesses have embraced the wrong notion that registering a business name with the CAC grants them proprietary rights akin to those of a trademark.[39] Regulatory institutions like the CAC, Small and Medium Enterprises Development Agency of Nigeria (SMEDAN), and other industry associations must step up to create awareness and clarify the scope and limitations of both regimes, overall empowering business to take full control of their brand identity.

7.0 Conclusion

In the final analysis, the persistent coexistence of identical or similar business names and trademarks in Nigeria reveals a fault line in the country's regulatory framework for business identity and brand protection. While the TMA and the CAMA each provide robust protections within their spheres, the absence of coordinated enforcement between the Trade Marks Registry and the CAC create loopholes that allow for conflicting registrations, often with significant legal and commercial consequences – borne especially by the business owners.

Cases like *KPMG Nigeria v. KPMG Professional Services*, *Sanofi S.A. v. Sanofi Nigeria Enterprises*, and that of the "Fastest Cakes" demonstrate that legal rights attached to a registered trademark often supersede those associated with a business name, particularly where confusion, deception, or passing off is established. However, the principle of prior use and the common law remedy of passing off remain beneficial for business name owners who have built goodwill over time, even in the absence of formal trademark registration.

Notwithstanding, to ensure a more reliable and favourable commercial environment, stronger harmonization between trademark and business name registrations is necessary both within regulatory frameworks and in day to day administrative practice. Until then, businesses must be proactive in protecting their brand identities by conducting thorough clearance searches both

39 Syntax Legal Practitioners, 'Why Every Nigerian Business Needs a Trademark' (Syntax Legal Practitioners, 12 July 2025) <https://syntaxlaw.com/2025/07/12/why-every-nigerian-business-needs-a-trademark/> accessed 16 September 2025.

within the CAC and the trademarks registry's databases, understanding the limits of business name registration, and where necessary, securing trademark protection to avoid disputes that could diminish years of commercial goodwill.

NIGERIA DESERVES A CONSTRUCTION ACT: SAFER PROJECTS, PAYMENT CERTAINTY AND INVESTOR CONFIDENCE THROUGH STATUTORY REFORM

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ABSTRACT

Nigeria's construction industry is vital to growth and job creation but remains constrained by fragmented regulation, uneven enforcement, payment delays, and an alarming record of building collapses. This paper argues for a Nigerian Construction Act that consolidates existing instruments and introduces targeted statutory interventions to improve safety, governance, payment certainty, and bankability. Drawing comparative lessons from the United Kingdom's Housing Grants, Construction and Regeneration Act 1996 (as amended) and Security of Payment regimes in Australia and Singapore, the paper proposes five co-equal, interdependent and mutually reinforcing legislative pillars: (a) contractor registration and grading; (b) health, safety & environmental standards, (c) governance and anti-corruption safeguards, (d) payment timelines and statutory adjudication; and (e) skills transfer and local-content obligations. The analysis links these pillars to development finance norms used by multilateral development banks (MDBs) and development finance institutions (DFIs), showing how legal predictability lowers transaction costs and expands access to capital. The paper concludes with a pragmatic roadmap, stakeholder consultation, legislative drafting, and federal-state coordination acknowledging constitutional and political economy constraints. A Construction Act, tailored to Nigeria's context, would align incentives across clients, contractors, regulators, and financiers, reduce disputes and collapses, and strengthen investor confidence in the built environment.

KEYWORDS:

Nigeria; Construction Law; Procurement; Anti-Corruption; Built Environment; Development Finance.

INTRODUCTION

Nigeria's construction sector underpins national development yet operates within a fragmented legal and regulatory architecture. Building planning and control are addressed by the Urban and Regional Planning Act 1992,

[1] (URPA) and by the (non-binding) National Building Code of 2006 (revised 2017)(NBC). [2] Procurement is governed by the Public Procurement Act 2007(PPA),[3] while occupational health and safety relies on legacy provisions in the Factories Act 2004 (the "Factories Act") [4] and subsequent regulations. Professional competence and licensing are further dispersed across discipline-specific statutes and councils.

The result is a regulatory environment characterised by jurisdictional overlap, inconsistent enforcement, and recurring systemic failures. One of the most visible consequences is the persistent crisis of building collapses. The Building Collapse Prevention Guild (BCPG) has documented more than 650 recorded incidents between 1974 and 2025, with deaths exceeding 1,600 persons. [5] In addition, payment insecurity and protracted disputes remain endemic, discouraging investment and eroding trust between employers and contractors.

This paper asks a simple but pressing question:

Which statutory intervention(s) would most effectively improve safety outcomes, payment certainty, and investor confidence in Nigeria's construction sector?

Using doctrinal analysis and comparative insights from the United Kingdom's Housing Grants, Construction and Regeneration Act 1996 (as amended) (the "UK Construction Act") and Security of Payment regimes in Australia[6] and Singapore[7], the paper proposes a Nigerian Construction Act structured around five core co-equal, interdependent and mutually reinforcing pillars: (a) contractor registration and grading; (b) health, safety & environmental standards, (c) governance and anti-corruption safeguards, (d) payment timelines and statutory adjudication; and (e) skills transfer and local-content obligations.

By articulating these pillars and linking them to development-finance conditions applied by multilateral development banks (MDBs), development finance institutions (DFIs) and domestic

[1] Urban and Regional Planning Act, Cap U2, Laws of the Federation of Nigeria (LFN) 2004.
[2] National Building Code (Federal Republic of Nigeria, 2006; revised 2017).
[3] Public Procurement Act 2007 (Nigeria).
[4] Factories Act, Cap F1, LFN 2004.
[5] Building Collapse Prevention Guild (BCPG), *Summary Table of Recorded Cases of Building Collapse in Nigeria from 1974 to 2024* (BCPG 2024) https://bcpgikeja.com/wp-content/uploads/2024/07/SUMMARY-TABLE-OF-RECORDED-CASES-OF-BUILDING-COLLAPSE-IN-NIGERIA-FROM-1974-TO-2024.pdf accessed 9 September 2025. See also Punch (Lagos, 7 June 2025) 'Operators lament as building collapse deaths hit 1,616'.
[6] Building and Construction Industry Security of Payment Act 1999 (NSW).
[7] Building and Construction Industry Security of Payment Act 2004 (Singapore).

lenders, the paper contends that legal predictability can reduce transaction costs, curb corruption, and unlock both domestic and international finance for infrastructure projects.

LITERATURE REVIEW

Scholarship on Nigeria's construction industry highlights a longstanding pattern of regulatory fragmentation, inefficiency, and poor safety performance. The sector operates under a multiplicity of statutes and codes including the URPA, NBC, PPA, and the Factories Act, yet no single framework provides comprehensive statutory direction. Scholars argue that this patchwork has created jurisdictional overlap, weak enforcement, and inconsistency across states, leaving projects vulnerable to disputes and governance failures.[8]

Studies of industry performance confirm the consequences of this fragmentation. Al Saeedi and Karim, in a global review, found that more than sixty per cent (60%) of construction projects in developing countries overrun their budgets, [9] a pattern evident in Nigeria, where delays, abandonment, and litigation are endemic. Payment insecurity is a particular challenge, with arrears and disputes destabilising contractor cashflow.[10] Research on corruption within African construction industries underscores how governance failures erode delivery and investor confidence.[11] Parallel data on safety are sobering: between 1974 and May 2025, Nigeria recorded 653 collapses, with at least 1,616 lives lost.[12]

In addition, Nigeria faces a significant infrastructure financing deficit. The World Bank Group (WBG) and International Finance Corporation (IFC) estimate a requirement of US$100 billion annually to 2045, warning that gaps in the regulatory framework increase transaction costs, undermine bankability, and deter private investment.[13]

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[8] N I Umeokafor, *Realities of Construction Health and Safety Regulation in Nigeria* (University of Greenwich PhD Thesis 2017) https://gala.gre.ac.uk/id/eprint/23437/ accessed 9 September 2025.

[9] H Al Saeedi and A Karim, 'Major Factors of Cost Overrun in Construction Projects: Critical Review' (2022) *International Journal of Engineering Research and Technology* https://www.researchgate.net/publication/359310464_Major_Factors_Of_Cost_Overrun_In_Construction_Projects_Critical_Review accessed 9 September 2025.

[10] The Effect of Delayed Payments and Retention on Contractors Cash Flow (PM World Journal Vol IX, Issue VIII, August 2020) https://pmworldlibrary.net/wp-content/uploads/2020/07/pmwj96-Aug2020-Okereke-effect-of-delayed-payments-and-retention.pdf accessed 13 September 2025.

[11] A Aderibigbe, N Umeokafor, T Umar and Y Upadhyay, 'Impact of Corruption on Achieving Sustainable Development Goals within Africa's Construction Industry' in YG Sandanayake and others (eds), *Proceedings of the 12th World Construction Symposium* (2024). https://ciobwcs.com/downloads/papers24/S16031.pdf

[12] Punch (Lagos, 7 June 2025) 'Operators lament as building collapse deaths hit 1,616' https://punchng.com/operators-lament-as-building-collapse-deaths-hit-1616/#:~:text=The%20Building%20Collapse%20Prevention%20Guild,1974%20and%20May%2025%2C%202025.

[13] World Bank Group and International Finance Corporation, *Crowding in the Private Sector: Nigeria's Path to Faster Job Creation and Structural Transformation* (World Bank 2020) https://www.ifc.org/content/dam/ifc/doc/mgrt/cpsd-nigeria.pdf accessed 9 September 2025

Comparative scholarship offers insights into statutory reform. The UK Construction Act introduced following the Latham Report[14], is widely studied for establishing statutory payment rights, prohibiting "pay-when-paid" clauses, and mandating 28-day adjudication. Although not a panacea, commentators in the UK have observed that statutory adjudication under the UK Construction Act has helped address cash flow constraints in construction projects by providing a "*pay first, argue later*" mechanism, thereby reducing reliance on lengthy litigation and helping projects maintain momentum[15].

The security of payment legislation in both Australia and Singapore provides contractors with statutory rights to prompt payment and access to expedited adjudication. This has been recognised as crucial for facilitating cash-flow in the industry and protecting smaller firms and subcontractors who are often vulnerable to delayed payment practices.[16]

While Nigerian scholars and industry commentators have repeatedly identified the problems of inefficiency, corruption, and safety lapses, there remains a clear gap in the literature: no sustained academic proposal for a unified Nigerian Construction Act. Existing studies such as Umeokafor's study[17], critique regulatory weakness or analyse project-level risks, but few articulate statutory pathways tailored to Nigeria's concurrent federal and state framework. This paper therefore contributes originality by drawing on comparative regimes and development finance expectations to outline five legislative pillars for reform.

METHODOLOGY

This study adopts a literature research method, as articulated by Lin[18] alongside doctrinal and comparative legal analysis. Following Lin's framework, the research systematically peruses, reviews, and analyses relevant literature, including Nigerian statutes, regulatory codes, judicial decisions, scholarly commentary, and industry reports. The material is sorted thematically; regulatory fragmentation, payment mechanisms, health and safety enforcement, corruption and governance, and investor risk, to identify recurring patterns and gaps in the Nigerian construction law framework.

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[14] M Latham, Constructing the Team: Final Report of the Government/Industry Review of Procurement and Contractual Arrangements in the UK Construction Industry (HMSO 1994). https://constructingexcellence.org.uk/wp-content/uploads/2014/10/Constructing-the-team-The-Latham-Report.pdf

[15] Construction disputes: global markets embrace adjudication" Pinsent Masons (28 January 2022) https://www.pinsentmasons.com/out-law/analysis/construction-disputes-global-markets-adjudication accessed 13 September 2025

[16] Chow KF, Security of Payments and Construction Adjudication (2nd edn, LexisNexis 2013) 25–28. https://store.lexisnexis.com/en-sg/security-of-payments-and-construction-adjudication-third-edition.html accessed 13 September 2025

[17] N I Umeokafor, *Realities of Construction Health and Safety Regulation in Nigeria* (University of Greenwich PhD Thesis 2017) https://gala.gre.ac.uk/id/eprint/23437/ accessed 9 September 2025.

[18] Y Lin, Higher Education Research Methodology: Literature Method (2009) https://www.researchgate.net/publication/42386223_Higher_Education_Research_Methodology-Literature_Method accessed 13 September 2025.

The doctrinal method enables close examination of Nigeria's fragmented statutory framework. Core instruments include the URPA, NBC, PPA, and the Factories Act, which collectively regulate planning, procurement, building standards, and workplace safety. Alongside these, a range of professional and sectoral statutes play a significant role, including the Council for the Regulation of Engineering in Nigeria (COREN) Act,[19] the Quantity Surveyors (Registration, etc.) Act,[20] the Builders (Registration, etc.) Act, [21] the Architects (Registration, etc.) Act, [22] the Standards Organisation of Nigeria (SON) Act,[23] and the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act[24]. Analysing these provisions doctrinally highlights the extent of institutional overlap, weak enforcement, and the absence of a unifying legislative framework for the construction sector.

The comparative method draws on statutory regimes from other jurisdictions, notably the UK Construction Act, the Australian and Singapore security of payment acts. These frameworks are not presented for wholesale adoption, but as models whose lessons on statutory payment rights, adjudication mechanisms, and subcontractor protection may be adapted to the Nigerian context.

Finally, a policy-oriented lens is applied, drawing on materials from multilateral development banks and international financial institutions, to show how regulatory certainty influences infrastructure finance and investor confidence. This triangulated approach ensures the research links Nigeria's domestic legal challenges with comparative statutory best practice and international development finance expectations.

COMPARATIVE LESSONS AND NIGERIAN APPLICATION

Comparative experience demonstrates that targeted statutory reform can professionalise market participants, raise safety and competence standards, embed governance and integrity in project delivery, and at the same time provide payment certainty and rapid remedies for disputes. The United Kingdom, Australia, and Singapore each offer instructive models that, while differing in detail, illustrate how legislation can recalibrate industry practices in ways directly relevant to Nigeria's context.

Contractor Registration & Grading; Safety Competence

Singapore offers the clearest template for a national registration-and-grading regime. The BCA Contractors Registration System (CRS) classifies firms by workhead and financial grade, which directly caps the public-sector tender values firms may bid for; grades are renewed annually and

[19] Engineers (Registration, etc.) Act, Cap E11, Laws of the Federation of Nigeria 2004, as amended by the Council for the Regulation of Engineering in Nigeria (Establishment, etc.) (Amendment) Act 2018 (Nigeria).
[20] *Quantity Surveyors (Registration, etc.) Act*, Cap Q1, Laws of the Federation of Nigeria 2004 (Nigeria).
[21] *Builders (Registration, etc.) Act*, Cap B13, Laws of the Federation of Nigeria 2004 (Nigeria).
[22] *Architects (Registration, etc.) Act*, Cap A19, Laws of the Federation of Nigeria 2004 (Nigeria).
[23] *Standards Organisation of Nigeria Act* No 14 of 2015 (Nigeria).
[24] *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act* No 25 of 2007 (Nigeria).

tied to capacity and track record. This embeds a transparent, capacity-based market gatekeeping function.[25] Complementing CRS, Singapore's Licensing of Builders Scheme requires minimum standards of management, safety performance and financial solvency to lift professionalism and quality.[26]

Australia achieves similar aims via state licensing: e.g., the New South Wales Government requires a contractor licence for most building work above a statutory threshold[27]; Queensland (QBCC) imposes eligibility tests spanning technical/managerial qualifications, experience, financial information and fitness, essentially a de-facto capacity screen.[28]

In the UK, while there is no national contractor licence, competence is embedded through the Construction (Design and Management) Regulations 2015 (UK CDM): regulation 8 requires that appointed designers/contractors (including principal contractors) have the skills, knowledge and experience appropriate to the project.[29] Public buyers also use standardised pre-qualification (e.g., PAS 91)[30] to test competence, governance and health & safety before tender.[31]

A national register with financial/technical grading (Singapore-style CRS) combined with mandatory competence/HSE duties (UK CDM-style) and licensing tests (Australian states) would directly professionalise the market, reduce unqualified participation, and create a clean interface for public procurement and DFI-funded projects.

Governance & Anti-Corruption

Registration/grading and licensing are governance tools: they create auditable entry criteria (capacity, solvency, HSE record), facilitate transparent pre-qualification, and give regulators levers to suspend/downgrade firms for misconduct which are all aforementioned features present in the CRS and Australian licensing frameworks.

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[25] Building and Construction Authority (Singapore), Contractors Registration System (CRS) (BCA 2025) https://www1.bca.gov.sg/procurement/pre-tender-stage/contractors-registration-system accessed 14 September 2025.

[26] Building and Construction Authority (Singapore), *Licensing of Builders Scheme* (BCA 2025) https://www1.bca.gov.sg/procurement/pre-tender-stage/licensing-of-builders-scheme accessed 14 September 2025.

[27] NSW Licensing Framework:
New South Wales Government, Contractor Licence (NSW Government 2025) https://www.service.nsw.gov.au/transaction/apply-contractor-licence accessed 14 September 2025.

[28] Queensland Building and Construction Commission, Licensing (QBCC 2025) https://www.qbcc.qld.gov.au/licences accessed 14 September 2025.

[29] Construction (Design and Management) Regulations 2015, SI 2015/51, reg 8.

[30] British Standards Institution, PAS 91:2013+A1:2017 Construction Prequalification Questionnaires (BSI 2017) https://knowledge.bsigroup.com/products/construction-prequalification-questionnaires. accessed 14 September 2025.

[31] Health and Safety Executive, Managing Health and Safety in Construction: Construction (Design and Management) Regulations 2015: Guidance on Regulations (L153) (HSE 2015) https://www.hse.gov.uk/pubns/books/l153.htm accessed 14 September 2025.

Payment, Statutory Adjudication & Project Bankability

As previously mentioned, the UK Construction Act which established statutory payment rights and a mandatory right to adjudication within 28 days, is credited with improving liquidity and reducing reliance on litigation through a "pay now, argue later" mechanism. For Nigeria, the lesson is that statutory adjudication can provide a low-cost, rapid remedy for cashflow disputes without overburdening courts. Given reports of arrears, dispute resolution gaps, and delays associated with the implementation of the PPA 2007,[32] a statutory adjudication process could directly address one of the sector's most destabilising risks.

Australia's security of payment statutes adopt a similarly robust approach, entitling contractors and subcontractors to progress payments and fast-track adjudication. Scholars emphasise that these measures are particularly valuable for small and medium-sized enterprises (SMEs), which are most vulnerable to payment delays.[33] The Nigerian parallel is striking: subcontractors on public and private projects are frequently exposed to delayed or withheld payments, with little recourse short of costly litigation. Embedding statutory rights to progress payments, enforceable through interim adjudication, would significantly improve liquidity and resilience for Nigeria's domestic contractors.

Singapore's security of payment legislation, the Building and Construction Industry Security of Payment Act 2004 (Singapore) ("SOPA") also secures contractors' rights to timely payment and expedited adjudication, with the adjudication process administered centrally by the Singapore Mediation Centre as the designated authorised nominating body.[34] SOPA specifically empowers the Minister, who by notification in the Gazette may appoint any body as an authorised nominating body for the purposes of the act.[35] This institutional arrangement has fostered consistency and industry confidence by ensuring adjudication is procedurally reliable. For Nigeria, where regulatory authority is fragmented between federal, state, and professional bodies, a centralised adjudication framework could reduce forum shopping, enhance transparency, and restore confidence in enforcement.

Taken together, these regimes illustrate that statutory intervention can recalibrate industry incentives. Payment rights and adjudication mechanisms can be designed to maintain cashflow, reduce adversarial disputes, and safeguard weaker parties in contractual hierarchies. Importantly,

[32] OJ Oladiran, 'Public Procurement Act and Project Time Outcomes in Nigeria's Building Projects' (2024) Covenant Journal of Engineering Technology https://journals.covenantuniversity.edu.ng/index.php/cjet/article/download/4215/1701/10135 accessed 14 September 2025.
[33] A Aderibigbe, N Umeokafor and T Umar, 'Constructing for the Future: Can the Duty of Good Faith Improve Payment in the UK Construction Industry?' in A Tutesigensi and CJ Neilson (eds), *Proceedings of the 39th Annual ARCOM Conference*, 4–6 September 2023, University of Leeds, Leeds, UK (Association of Researchers in Construction Management 2023) 14–23 https://www.arcom.ac.uk/-docs/proceedings/5c951cf7298bd1f0dc839d996f1d8ef3.pdf accessed 14 September 2025.
[34] Building and Construction Industry Security of Payment Act 2004 (Singapore), s 28.
[35] Ibid

these lessons align with the requirements of multilateral development banks and development finance institutions. For instance, the World Bank's Guidance on PPP Contractual Provisions[36] emphasizes the inclusion of clear payment mechanisms and remedial dispute resolution in PPP contracts. Similarly, the African Development Bank (AfDB)'s Operations Procurement Manual mandates that borrower contracts under its programs adhere to contractual obligations for transparency, prompt payments, and effective dispute handling.[37] Nigeria's inability to guarantee these conditions increases transaction costs and deters investment, leaving smaller firms excluded from bankable projects.[38]

Summary of Comparative Analysis

Accordingly, while wholesale transplantation of foreign models is neither feasible nor desirable, the comparative experience demonstrates that carefully tailored statutory reforms can address Nigeria's most pressing challenges. The following section therefore sets out a five-pillar framework for a Nigerian Construction Act, designed as co-equal, interdependent, and mutually reinforcing measures to professionalise contractors, strengthen safety, embed governance and anti-corruption safeguards, secure payment certainty, and promote skills transfer.

FIVE-PILLAR FRAMEWORK FOR A NIGERIAN CONSTRUCTION ACT

Building on the comparative insights, this paper proposes a framework of five core co-equal, interdependent, and mutually reinforcing pillars: (a) Contractor Registration and Grading; (b) Health, Safety & Environmental Standards, (c) Governance and Anti-corruption Safeguards, (d) Payment Timelines and Statutory Adjudication; and (e) Skills Transfer and Local-Content Obligations.

The aim is not to transplant foreign legislation wholesale, but to adapt tested mechanisms into a coherent Nigerian Construction Act that responds to the sector's distinctive challenges of regulatory fragmentation, weak enforcement, and chronic payment delays.

By designing the pillars as a single integrated package rather than discrete interventions, the framework seeks to professionalise contractors through transparent registration, elevate health and safety into a statutory duty, embed integrity and oversight into project governance, secure

[36] World Bank Group, *Guidance on PPP Contractual Provisions* (2019 edn, World Bank Group 2019) 5–7 https://ppp.worldbank.org/sites/default/files/2021-03/Guidance%20on%20PPP%20Contractual%20Provisions_2019%20edition.pdf accessed 14 September 2025.

[37] African Development Bank, *Operations Procurement Manual, Part A – Volume 2: Procurement of Goods, Works and Non-Consulting Services* (AfDB 2023) paras 3.12–3.16 https://www.afdb.org/sites/default/files/2023/12/15/opm-part_a-volume_2-en.pdf accessed 14 September 2025.

[38] See World Bank Group, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank Group 2020) 38–40 https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf accessed 14 September 2025; African Development Bank, *Nigeria Country Strategy Paper 2020–2024* (AfDB 2020) 12–13 https://www.afdb.org/en/documents/nigeria-country-strategy-paper-2020-2024 accessed 14 September 2025.

predictable payment and adjudication mechanisms, and promote skills development and local participation. These principles draw on comparative experience, the national grading systems of Singapore, the statutory safety duties of the UK, the governance and disclosure frameworks used in Australia, the payment regimes of the UK and Singapore, and the skills and local-content requirements found in MDB/DFI-financed projects. What follows is an adaptation of these lessons to Nigeria's unique institutional and economic context.

Contractor Registration & Grading Pillar

A central element of reform is the establishment of a national statutory register that grades contractors by financial and technical capacity. As comparative experience shows, transparent registration and grading schemes such as Singapore's CRS, Australia's state licensing, and the competence standards embedded in the UK CDM Regulations, operate as governance tools as much as market filters. They ensure that only firms with demonstrable solvency, managerial competence, and safety records can tender for projects at particular scales.

For Nigeria, where professional oversight is fragmented across COREN, the Quantity Surveyors' Registration Board, and other professional statutes, the absence of a unified register creates space for unqualified firms to participate in public procurement and donor-funded projects. This contributes directly to poor workmanship, recurrent building failures, and loss of public trust. A statutory register, jointly overseen by COREN and a dedicated construction regulator, could harmonise entry criteria across disciplines, embed auditable financial and technical thresholds, and mandate annual renewal tied to safety and performance.

By integrating registration and grading into the Nigerian Construction Act, the state would create a clear interface for procurement, reduce unqualified participation, and provide a platform through which sanctions such as downgrading or suspension for misconduct can be applied consistently. This would professionalise the market, increase transparency, and align Nigeria's construction sector with the expectations of multilateral development banks, which increasingly condition financing on transparent and competent procurement frameworks.

Health, Safety & Environmental Standards Pillar

Embedding health, safety, and environmental (HSE) duties within a Construction Act would strengthen a part of Nigeria's regulatory system that has long been under-enforced. Although statutory provisions exist in the Factories Act and in the NBC, enforcement is fragmented across multiple agencies, and compliance is often treated as discretionary. Comparative experience demonstrates that clear statutory duties, such as those contained in the UK's CDM Regulations, lift safety from the level of voluntary practice to a binding obligation on all project participants.

For Nigeria, the challenge is not an absence of standards but the lack of a statutory anchor and an enforcement mechanism that applies uniformly to contractors, consultants, and developers. A

Construction Act could require HSE plans as a condition of registration and grading, make safety breaches a basis for suspension from the national register, and empower inspectors to enforce sanctions proportionate to the scale of violation. Integrating environmental obligations would also align Nigeria with its commitments under the SDGs and provide comfort to development finance institutions that increasingly condition funding on demonstrable environmental and social safeguards.

By elevating HSE compliance into the statutory framework, Nigeria would signal that safe and sustainable construction is not a matter of professional discretion but a legal duty tied directly to the right to participate in the industry.

Governance & Anti-Corruption Safeguards Pillar

Weak governance and endemic corruption have long undermined confidence in Africa's construction sector, inflating project costs, enabling rent-seeking, and eroding investor trust.[39] Nigeria is no exception.[40] While existing statutes such as the PPA establish transparency principles, enforcement has been uneven, and gaps remain in monitoring contract awards, change orders, and contractor performance. Comparative practice shows that governance safeguards can be embedded directly into sectoral legislation. In Australia, for example, as earlier mentioned, licensing and disclosure frameworks require contractors to demonstrate financial solvency and probity as a precondition for participation, while periodic reporting obligations allow regulators to monitor compliance.

A Nigerian Construction Act could build on these models by mandating disclosure of beneficial ownership in public contracts, requiring contractors to maintain auditable records of subcontracting and payments, and empowering regulators to suspend or downgrade firms found guilty of fraud, collusion, or misrepresentation. Linking governance obligations to the national contractor register would create a single point of enforcement and enable sanctions to be applied consistently across the industry.

Such measures would not only improve the integrity of procurement but also meet the expectations of MDBs/DFIs, which routinely condition project financing on demonstrable anti-corruption frameworks. By embedding governance and anti-corruption safeguards into the Construction Act, Nigeria would reduce opportunities for rent-seeking, improve investor confidence, and reinforce the credibility of its regulatory regime.[41]

[39] A Aderibigbe, N Umeokafor, T Umar and Y Upadhyay, 'Impact of Corruption on Achieving Sustainable Development Goals within Africa's Construction Industry' in YG Sandanayake and others (eds), Proceedings of the 12th World Construction Symposium (2024). https://ciobwcs.com/downloads/papers24/S16031.pdf
[40] Ibid
[41] Ibid

Payment Timelines & Statutory Adjudication Pillar

Payment insecurity is one of the most persistent risks in Nigeria's construction industry, destabilising contractor cash flow and driving disputes that overwhelm the courts.[42] Despite provisions in the PPA and standard-form contracts, arrears and delayed certification remain routine, with smaller firms most affected. Comparative regimes illustrate how statutory intervention can address this. The UK's Construction Act introduced mandatory interim payment rights and a fast-track adjudication process, ensuring liquidity through the "pay now, argue later" principle. Australia and Singapore have adopted similar security of payment legislation, granting contractors statutory rights to prompt payment and binding interim adjudication determinations administered by an authorised nominating body.

For Nigeria, a Construction Act could codify strict payment timelines for public and private projects, backed by a statutory right to refer disputes to adjudication within days of a payment default. Determinations would be binding on an interim basis and enforceable in court, while preserving the right to later arbitration or litigation. This dual-track model would preserve legal certainty while ensuring that contractors, particularly small and medium enterprise (SMEs), are not forced into insolvency by prolonged arrears.

Embedding statutory adjudication within Nigeria's construction framework would align the industry with global best practice, reduce the adversarial burden on courts, and increase the attractiveness of projects to development finance institutions that prioritise payment security and efficient dispute resolution.

Skills Transfer & Local-Content Obligations Pillar

Sustainable growth in Nigeria's construction sector requires not only stronger regulation of firms but also deliberate investment in workforce capacity and indigenous participation.[43] Despite repeated policy commitments to local content, enforcement remains inconsistent, and many large projects continue to rely heavily on expatriate expertise without structured knowledge transfer.[44] Comparative practice shows the value of embedding training and local-content duties within statutory frameworks. For example, in Singapore, contractors bidding for public contracts must be registered under the Building and Construction Authority's Contractors Registration System (CRS), which evaluates their financial standing/capacity, safety performance, technical capability and

[42] The Effect of Delayed Payments and Retention on Contractors Cash Flow (PM World Journal Vol IX, Issue VIII, August 2020) https://pmworldlibrary.net/wp-content/uploads/2020/07/pmwj96-Aug2020-Okereke-effect-of-delayed-payments-and-retention.pdf accessed 13 September 2025.

[43] Aniekwu, A. N., Indigenous Participation in a Developing Construction Industry: A Case of Nigeria (Uniben, 2014) https://www.researchgate.net/publication/263653576_Indigenous_Participation_in_a_developing_Construction_Industry accessed 14 September 2025;

[44] Ibid

track record,[45] while in South Africa, local-content thresholds are mandated under the Preferential Procurement Policy Framework Act 2000[46] and related regulations. Nigeria itself has precedent in this regard: the Nigerian Oil and Gas Industry Content Development Act 2010[47] demonstrates how statutory obligations on local participation and skills transfer can reshape an entire sector.

For Nigeria, a Construction Act could require that both domestic and foreign contractors demonstrate structured programmes for skills transfer as a condition of registration and grading. This might include mandatory apprenticeship quotas, partnerships with technical colleges, or certification pathways aligned to project scale. Local-content obligations could also be linked to thresholds for subcontracting, ensuring that indigenous firms have equitable access to large-scale projects while meeting international quality and safety standards.

By tying participation in the construction industry to demonstrable commitments on skills and local capacity, Nigeria would not only address chronic shortages of skilled labour but also ensure that infrastructure investment leaves a durable legacy of human capital. Such provisions would further align with the expectations of MDBs/DFIs which increasingly condition funding on measurable social impact alongside financial and technical compliance.

ROADMAP AND IMPLEMENTATION

The transition from comparative lessons to statutory reform in Nigeria requires more than aspiration; it demands an institutionally grounded roadmap. A Nigerian Construction Act must reflect constitutional realities, political economy constraints, and implementation capacity.

1. **Federal–State Coordination.**
   Because land use, planning, and building control sit concurrently under federal and state authority, a Nigerian Construction Act should delineate clear areas of competence. Federal law can provide baseline standards for registration, safety, and adjudication, while states supplement with context-specific regulations. This cooperative framework would mirror arrangements in environmental law and public health.
2. **Institutional Anchor.**
   Implementation requires a statutory regulator, potentially styled the Nigerian Construction Authority (NCA). Overseen by the Federal Ministry of Works and Housing with professional councils (e.g., COREN, NIOB, NIQS), the NCA would manage the contractor register, enforce standards, and administer adjudication. Centralisation would reduce fragmentation and forum shopping

[45] Building and Construction Authority (Singapore), Contractors Registration System (CRS) Registration Requirements (BCA 2023) https://www1.bca.gov.sg/procurement/pre-tender-stage/contractors-registration-system-crs
accessed 14 September 2025.
[46] Preferential Procurement Policy Framework Act 2000 (South Africa)
[47] Nigerian Oil and Gas Industry Content Development Act 2010 (Nigeria)

3. **Sequencing and Phasing.**

   Reform is best introduced in stages, not to rank priorities but to match institutional readiness. An initial phase could establish the contractor register and adjudication framework, giving immediate impact on market entry and cash flow. Later phases would embed safety and governance duties, followed by measures on skills transfer and local content to secure a durable legacy of indigenous capacity.

4. **Stakeholder Consultation.**

   Successful passage requires broad consultation with industry associations, professional bodies, labour unions, and civil society. Input from MDBs and DFIs should be solicited to align provisions with financing norms. Consultation builds legitimacy, reduces resistance, and incorporates diverse concerns.

5. **Drafting and Political Economy.**

   The drafting process should be transparent and consultative, led by a technical committee of legislators, regulators, industry experts, and academics. Political economy factors—vested interests, resistance from unqualified contractors, and inter-agency rivalries—must be anticipated. Mitigation includes incremental rollout, regulator training, and clear enforcement backed by credible sanctions.

6. **Financing and Capacity Support.**

   Implementation will require investment in regulatory capacity. Technical assistance can be sought from MDBs and DFIs, which often support legal and institutional reforms linked to stronger safeguards. Development partners can also help design monitoring frameworks and provide initial funding for capacity-building.

Summary

Implementation of a Nigerian Construction Act should be seen as a reform process rather than a single legislative event. Anchoring the Act in a central authority, phasing reforms pragmatically, and aligning with federal–state competencies and international financing expectations would maximise its chances of success.

CONCLUSION

Nigeria's construction sector sits at the intersection of urgent national needs and systemic regulatory weaknesses. Fragmented statutes, uneven enforcement, payment insecurity, and recurrent building collapses have eroded public confidence and deterred investment. This paper has argued that a Nigerian Construction Act, drawing from comparative statutory experience in the United Kingdom, Australia, and Singapore, offers a credible pathway to professionalise contractors,

safeguard health and safety, embed governance and anti-corruption safeguards, secure payment timelines through statutory adjudication, and institutionalise skills transfer and local-content obligations.

The five pillars proposed are not discrete measures but co-equal, interdependent and mutually reinforcing elements of reform. Together, they would recalibrate incentives across clients, contractors, regulators, and financiers, reducing systemic risks while raising standards of competence and integrity. By anchoring payment certainty, strengthening safety, and embedding transparency, the Act would align Nigeria's construction sector with international norms and the requirements of MDBs and DFIs.

Yet legislation alone is insufficient. Successful reform will depend on careful phasing, robust institutional anchoring, and broad stakeholder consultation to overcome entrenched interests and capacity constraints. If sequenced effectively and supported by regulatory investment, a Nigerian Construction Act could shift the industry from a cycle of collapses, arrears, and disputes to one of predictable delivery and inclusive growth.

Ultimately, the adoption of a Nigerian Construction Act would represent more than technical reform. It would signal a political commitment to protect lives, empower local firms, and ensure that infrastructure investment leaves a durable legacy of competence and trust. By consolidating existing instruments into a coherent framework, Nigeria has the opportunity to create a safer, more transparent, and more investible construction sector fit for the challenges of the twenty-first century.

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RETHINKING LEGAL RESPONSIBILITY IN THE AI ERA: BALANCING COMPENSATION, BLAME, AND DETERRENCE.

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Abstract:

As AI becomes increasingly prevalent, questions surrounding legal responsibility for AI-related harm persist. This article examines emerging liability theories, including strict liability, negligence, and product liability, through real-world scenarios like autonomous vehicle accidents and medical device malfunctions. The article argues for a multifaceted approach to AI liability, combining elements of each theory to ensure accountability, prevent harm, and promote innovation. Using a mixed-methods approach, the research draws on a comprehensive literature review, landmark cases, and national and international AI policies.

Keywords: Artificial Intelligence, Liability, Accountability, Negligence, Product Liability.

1.0 INTRODUCTION

Artificial Intelligence (AI), coined by computer scientist John McCarthy in 1956, has evolved from science fiction to reality, transforming industries and redefining human interaction. The concept of AI dates back to the 1950 Dartmouth Summer Research Project on Artificial Intelligence, where McCarthy, Marvin Minsky, Nathaniel Rochester, and Claude Shannon explored the possibilities of machine intelligence.[2] The first AI program, Logical Theorist, was developed in 1956 by Allen Newell and Herbert Simon. This pioneering program was designed to simulate human problem-solving abilities. Since then, AI has progressed rapidly, with significant milestones including the first AI-powered robot, Shakey, developed at Stanford Research Institute (SRI) in 1969. From 1980 - 1990, expert systems and rule-based AI emerged, and machine learning and neural networks also gained prominence. By 2011, IBM's Watson defeated human champions in jeopardy.[3]

However, AI's growth has not been without incident. One notable example is the 1971 ELIZA chatbot experiment,[4] where users became emotionally attached to the AI, highlighting potential risks and unforeseen consequences. More recent incidents underscore the need for accountability, in 2017, the wannaCry ransomware attack exploited AI-powered vulnerabilities not just that, in 2018, Uber's autonomous vehicle killed a pedestrian in Tempe, Arizona and in the same year, Google's AI-driven breast cancer detection showed promise, but raised concerns about bias and accountability.

Today, AI's global market value is projected to surpass $15 trillion by 2028, with 83% of organisations leveraging AI for innovation and efficiency[5]. Autonomous vehicles navigate public roads, AI-powered chatbots revolutionise customer service, and predictive analytics inform medical diagnoses. Yet, this rapid growth raises critical questions about accountability. As AI assumes greater autonomy, traditional notions of liability, data protection, and intellectual property are severely tested. Self-learning algorithms, opaque decision-making processes, and autonomous actions blur accountability lines. The consequences are far-reaching, impacting human rights, social justice, and societal fabric.

2.0 WHEN AI FAILS: AREAS WHERE LEGAL RESPONSIBILITY COMES INTO PLAY

"Ubi jus ibi remedium" - Where there is a right, there is a remedy. This ancient legal maxim underscores the fundamental principle of legal responsibility, ensuring individuals and entities are held accountable for their actions. The Nigerian courts have held severally that “the maxim is so fundamental to the administration of justice that where there is no remedy provided by common

[2] Russell, Stuart J. and Peter Norvig Artificial Intelligence: A Modern Approach (3rd end, Prentice Hall 2010)
[3] 'IBM- Watson Defeats Humans in Jeopardy' CBS News 17 February 2011
[4] Oshan Jarow from ELIZA onwards, humans love their digital reflections " available at https://www.vox.com/future-perfect/23617185/ai-chatbots-eliza-chatgpt-bing-sydney-artificial-intelligence-history"(accessed 5 March 2023)
[5] Grand View Research. (2022). Artificial Intelligence Market Size, Share & Trends Analysis.

law or statutes, the courts have been urged to create one.[6] The court cannot therefore be deterred by the novelty of an action." [7] However, Artificial Intelligence (AI) disrupts this notion, sparking intense debate about traditional liability frameworks.

Firstly, AI's integration into contract law raises concerns about autonomous breaches. For instance, AI systems can generate electronic signatures, but their validity remains uncertain. Moreover, AI may enter into contracts without human oversight, potentially leading to unintended obligations. In *SEC v Knight Capital America's LLC*[8], an AI-powered trading system malfunctioned, causing Knight Capital Group to lose $440 million in 45 minutes. This incident raises questions about AI's capacity to execute contracts and its liability for breaches.

Meanwhile, tort law faces challenges in attributing fault to AI systems, algorithmic fault, negligence, causation, and damages assessment. In 2018, an Uber self-driving car struck and killed Elaine Herzberg, raising concerns about AI's liability in tort law.[9] This case underscores the complexities of attributing fault to AI systems. In *Cruz v Raymond Talmadge*[10], involved a common AI-driven product a GPS device. The plaintiffs were injured, some critically when a bus in which they were riding struck an overpass. At the time of the accident, the bus driver was using two GPS devices manufactured by different companies. The plaintiffs brought claims against those GPS manufacturers based on traditional theories of negligence, breach of warranty and strict liability, they also based their claims on traditional product liability principles. Similarly, in *Hills v Fans Robotics America, Inc.,*[11] The plaintiff brought suit in connection with injuries caused by workplace robots. The plaintiff sued his employer, the grocery store, claiming that it was vicariously liable because one of the store's managers disabled the malfunctioning safety light curtain and instructed employees to place the robot on hold rather than stooping the robot entirely if needed to approach it. Those actions allegedly violated standard operating policies for the robot, safety light curtain and automated palletization system. The jury held that the employers were 65% responsible, and the designers of the automated palletization system were 25% responsible for the plaintiff's injuries.

In addition, AI-facilitated cyber-attacks pose significant threats to criminal law, and malicious AI enables more sophisticated hacking techniques, making accountability difficult. In *United States v. Park Jin Hyok*[12], the WannaCry ransomware attack, facilitated by AI-powered malware, affected 200,000 computers worldwide. This incident highlights AI's role in exacerbating cyber threats. Through AI, individuals' facial data has been used to create pornographic imagery, while others

[6] "Liability for Damage caused by Artificial Intelligence" Templars 11 November 2021
[7] See Bello v. A.-G., Oyo State (1986) 5 NWLR (Pt. 45) 828 Orianzi v. A.-G., Rivers State (2017) 6 NWLR (pt. 1561)224
[8] No. 2:12-cv-06760, 2012
[9] Amrita Vasudevan, "Addressing the Liability Gap in AI Accidents" (2023) Policy Brief No. 177
[10] United States District Court District of Massachusetts Civil Action No.)15-13258-NMG
[11] No. 2:2004cv02659 - Document 180 (E.D. La. 2010)
[12] No. 2:18-mj-01479, (C.D. Cal.)

have had their voices replicated to trick family and close friends over the phone often, to send money to a scammer.[13] For instance, in the *Charlotte child psychiatrist case, where a 40-year-old child psychiatrist used AI to generate pornographic images with children's pictures.*[14] *The court held him liable for 40 years in prison for sexual exploitation of a minor and using Artificial intelligence to create pornography images.*

Furthermore, AI-generated creative works raise intellectual property concerns thus, authorship, originality, and fair use defences require clarification. The AI-generated painting sold at Christie's auction sparks debates about AI authorship.[15] This incident challenges traditional notions of intellectual property. Furthermore, the case of *Alter v. Open AI*[16]Highlights copyright infringement concerns, as AI-generated content raises questions about ownership and authorship.

Another significant challenge is, AI's role in healthcare necessitates stricter regulations to prevent fatal errors. AI-powered medical devices and algorithms have been said could cause harm if flawed or biased. As far back as the 1980s, Therac-25, a radiation therapy machine developed by Atomic Energy of Canada Limited"AECL"[17] Delivered damaging doses of radiation to cancer patients due to a glitch in the complex coding, with fatal results, liability, in this case, is still debated today as some hospitals have their upgrades to the systems that arguably cause overdose.

AI's automation capabilities also threaten jobs and economic stability. According to McKinsey, up to 800 million jobs could be lost worldwide by 2030. Automation replaces human workers in sectors like manufacturing, customer service, and transportation. Self-service kiosks and automated retail systems have already replaced human cashiers. AI's environmental impact raises concerns also because training AI models requires massive computational resources, which contributes to e-waste generation and resource exploitation.

Cyber threats are another significant concern. AI systems can be compromised, leading to financial loss, data theft, and reputational damage. Additionally, malicious AI can lead to the spread of malware, conduct phishing attacks, and disrupt critical infrastructure. In 2024, hackers breached NIMC's database, exposing sensitive information of over 200,000 Nigerians, including National Identity Numbers (NIN), addresses, and dates of birth.[18] This leads to the exposure of citizens' personal data to be compromised, potentially leading to identity theft and fraud. The NIMC

[13] "Criminals are using AI in terrifying ways — and it's only going to get worse" New York Post 10 May 2023
[14] "Horribly Twisted Charlotte pornography case shows the 'unsettling' reach of AI-generated imagery" FBI 29 April 2024
[15] "AI Art at Christie's Sells for $432,500" The New York Times, 25 October 2018
[16] No. 1:23-cv-10211, (S.D.N.Y.)21 Nov 2023
[17] Charles Huff. 2003. A History of the Introduction and Shut Down of Therac-25. Online Ethics Center. DOI:. available at https://onlineethics.org/cases/therac-25/history-introduction-and-shut-down-therac-25.
[18] Justice Okamgba "NIMC facing multiple unauthorised accesses to NIN data – Stakeholders" available at https://punchng.com/nimc-facing-multiple-unauthorised-accesses-to-nin-data-stakeholders/(accessed 25 June 2024)

acknowledged the breach, assured citizens that necessary measures were being taken to secure the database, and urged citizens to report suspicious activities.

AI systems often require vast amounts of personal data, and these systems infringe on individual rights. This brings privacy violations leading to identity theft, stalking, and reputational damage. The integration of Artificial Intelligence (AI) in surveillance systems raises alarming concerns about privacy. AI-powered monitoring can track individuals' movements, analyze online behaviour, and collect personal data. Governments and corporations exploit AI-driven surveillance, compromising individual rights. Facial recognition technology, smart home devices, and social media platforms collect sensitive information, often without consent. AI's insatiable data hunger fuels invasive surveillance, eroding trust and autonomy. In 2020, the Nigerian Immigration Service (NIS) Biometric Data Breach brought criticism to the NIS for allegedly compromising the biometric data of millions of Nigerians through its AI-powered database.[19] Furthermore, In *FTC v. Facebook, Inc,*[20] Facebook faced a $5 billion fine for allowing Cambridge Analytical to harvest user data without consent. This case illustrates AI's capacity to facilitate data breaches and the need for enhanced privacy protections.

The opacity of the AI decision-making process often referred to as the black box problem complicates efforts to trace accountability back to a specific entity.[21]. Artificial Intelligence's (AI) lack of transparency and explainability erodes trust and accountability. "Black box" decision-making processes obscure AI's reasoning, hindering error identification, bias detection, and accountability. Consequences include: unfair outcomes, discrimination, and inadequate oversight. For instance, Google's AI-powered search results were said to lack transparency.

AI can be used for social manipulation. AI-generated content can spread false information. Influence campaigns and these AI-powered bots can manipulate public opinion. This can erode trust in institutions. For example, AI-powered bots have been used to spread political disinformation[22] also Chat GPT accusing a professor of sexual harassment[23].

Despite the challenges posed by Artificial Intelligence (AI), its numerous benefits cannot be overlooked. AI enhances efficiency, accuracy, and innovation, transforming industries and improving lives. Its advantages include automated processes, data analysis, predictive insights, and

[19] ITEdge News Nigeria Immigration Service publishes uncollected passport details, breaches data privacy law" available at https://www.itedgenews.africa/nigeria-immigration-service-publishes-uncollected-passport-details-breaches-data-privacy-law/(accessed 7 October 2024)
[20] No. 1:2020cv03590 - Document 90 (D.D.C. 2022)
[21] Cheng, Varshney and Liu, 2021 Li,et,al.2023
[22] Nick Hajli "Election disinformation: how AI-powered bots work and how you can protect yourself from their influence" available at https://theconversation.com/election-disinformation-how-ai-powered-bots-work-and-how-you-can-protect-yourself-from-their-influence-227174 (accessed 9 April 2024)
[23] Jason Nelson "ChatGPT Wrongly Accuses Law Professor of Sexual Assault" available at https://decrypt.co/125712/chatgpt-wrongly-accuses-law-professor-sexual-assault (accessed 7 April 2023)

personalized experiences, ultimately driving economic growth, scientific progress, and social advancements, underscoring the importance of harnessing AI's potential.

3.0 THE AI ACCOUNTABILITY CONUNDRUM: CHALLENGES AND COMPLEXITIES

The emergence of Artificial Intelligence (AI) has revolutionized various sectors, raising complex questions about legal responsibility. The allocation of liability for AI-driven harm necessitates reevaluation, considering factors like development process, deployment context, user interaction, continuous learning, and adaptation. The dynamic nature of AI, enabled by advanced machine learning techniques, makes it challenging for developers to predict system modifications, control future behavior, and anticipate potential risks.

When machines cause damage, yet cannot be held responsible, who should bear the liability? Intuitively, one might point to the AI developer, after all, when traditional hardware like a hair dryer malfunctions, we typically hold the manufacturer accountable. However, AI systems differ significantly from conventional machines, complicating the assignment of responsibility to developers. According to Nissenbaum, there are four barriers to accountability: the problem of many hands, “bugs” in the system, the computer as a scapegoat, and ownership without liability. The problem of too many hands relates to the fact that many groups of people (programmers, engineers, etc.) at various levels of a company are typically involved in the creation of a computer program and have input into the final product. When something goes wrong, there is no one individual who can be held responsible.[24]

Furthermore, advanced machine learning techniques, such as facial recognition in CCTV cameras, enable AI to learn, adapt, and evolve over time. This dynamic nature makes it challenging for developers to predict how the system will modify itself, control its future behaviour and anticipate potential risks. Advanced machine learning techniques create unpredictability, raising questions about liability allocation, developers' liability for unforeseen consequences and responsibility shifting to users or operators are pressing concerns.

These questions have fueled debates among legal scholars, with some jurisdictions exploring the concept of strict liability, holding entities responsible for the outcome of AI systems they deploy irrespective of fault. Strict liability principles, as in *Rylands v. Fletcher*, [25]may apply holding entities responsible for AI outcomes irrespective of fault. A no-fault liability system where compensation is provided without the need to prove negligence is also being considered to streamline the accountability process. In 1985, the EU Product Liability Directive (henceforth, ``PLD''), established a strict liability regime where producers are liable for their defective products regardless of

[24] Nissenbaum, Helen, “Computing and Accountability, “Communications of the ACM, 37:1, p. 73 (1994). available at http://delivery.acm.org/10.1145/180000/175228/p72nissenbaum.pdf?ip=128.62.211.38&id=175228&acc=ACTIVE%20SERVICE&key=

[25] (1866) L.R.1. Exch. 265, affirmed (1868) L.R. 3 H.L. 330.

whether the defect is their fault.[26] The PLD assigns liability to the ``producer'' (Article1 PLD), which includes the manufacturer of a finished product, the producer of any raw material or the manufacturer of a part, and any person who, by putting his name, trademark or other distinguishing feature on the product presents himself as to its producer.[27] Apart from the European Union, countries like Singapore,[28] Canada,[29] California, USA[30]. Strict liability however may stifle innovation, as developers and manufacturers may be deterred by potential liability. Imposing strict liability for damages caused by inherently uncontrollable AI devices raises fairness concerns like would innovators dare develop or utilize these products under such conditions? Strict liability's application to AI may lead to excessive liability where developers and manufacturers may face crippling financial burdens, stifling innovation and hindering AI's potential benefits. Conversely, inadequate liability may fail to provide sufficient recourse for harmed individuals. The 2018 Uber self-driving car accident in Tempe, Arizona, illustrates the complexities of strict liability in AI. The National Highway Traffic Safety Administration (NHTSA) investigation revealed a combination of human error, software flaws, and inadequate testing contributed to the fatal crash. Allocating liability among Uber, the software developers, and the vehicle manufacturer proved contentious advancement.

Product liability, focusing on defective AI products or software, protects consumers and encourages quality control but struggles to define "defect" and address AI's complex nature. Under German law, it has been argued that AI liability should come under the concept of product liability. However, it is somewhat difficult to consider AI as a product due to its tendency to make autonomous decisions. Negligence, a fundamental tort law principle, requires demonstrating a breach of duty, causation, and harm. In AI contexts, negligence can arise from various scenarios, including design or manufacturing defects, inadequate testing or quality control, insufficient training data, and failure to update or maintain AI systems. However, negligence faces challenges in AI-related cases, such as defining duty and breach, causation, and foreseeability. Despite these challenges, negligence remains a vital framework for addressing AI-related harm. Courts must consider factors such as industry standards and best practices, reasonable foreseeability of harm, and expert testimony on AI design and functionality. For instance, in cases involving AI-powered medical devices, courts may consider industry guidelines for device testing and maintenance.

Vicarious liability, another critical tort law principle, holds employers or principals responsible for harm caused by employees or agents. In AI contexts, vicarious liability can arise from employer-

[26] Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] OJ L 210/29 (Product Liability Directive). Given that liability is restricted to defective products, some argue that this is in fact a fault-based liability regime. See e.g. Herbert Zech, 'Liability for AI: public policy considerations' (2021) 22 ERA Forum 147
[27] Article3(2) PLD.
[28] Singapore Government, "Artificial Intelligence Governance Framework" (2019)
[29] Government of Canada, "Bill C-27" (2022)
[30] California State Legislature, "Assembly Bill 2189" (2020)

employee relationships, principal-agent relationships, and independent contractor relationships. However, vicarious liability faces unique challenges in AI-related cases, such as autonomy, control, and attribution.

Actus non facit reum nisi mens sit rea" (An act does not make a person guilty unless the mind is guilty) emphasizing the importance of intent, or mens rea, which complicates criminal liability attribution. Traditional criminal law relies on intent, knowledge, or recklessness to establish guilt. *Section 36 (12)* of the Constitution of the Federal Republic of Nigeria states that 'a person shall not be convicted of an offence unless that offence is defined and the penalty therefore is prescribed in a written law'. The next is Sections 28 and 30 of the Criminal Code which exempts from criminal liability persons who the law deems to lack the mental capability (doli incapaxi) of committing an offence whether because of tender age or insanity. Section 30 exempts from criminal responsibility for any act or omission all persons under the age of 7 years, and also persons under the age of 12 years for any act or omission, unless it is proved that at the time of doing the act or making the omission he could know that he ought not to do the act or make the omission. Section 28 is to the effect that one is not criminally responsible for an act or omission if at the time of doing the act or making the omission the person is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.[31] Once one element is missing, no criminal liability can be imposed. In Nigeria, as with most parts of the world, a crime is said to be committed when a person recognized as such by the law and who is not statutorily excluded from being criminally culpable, does an act or makes an omission defined by the statutes to be an offence, and such a person did such an act or made such an omission with the required criminal knowledge or intent. When this happens, a crime can be said to have been committed. [32] Many machine learning systems exhibit 'black box' characteristics, making it challenging or impossible for humans, including developers and application servers, to comprehend their decision-making processes. This opacity raises critical questions about accountability. Thus, the doctrine of "*Qui facit per alium facit per se*" (He who acts through another, acts himself) plays a crucial role in attributing legal responsibility for Artificial Intelligence (AI) actions. This doctrine holds principals liable for actions performed by their agents or intermediaries, including AI systems. In the context of AI, this doctrine faces challenges and offers advantages. The challenges in applying "*Qui facit per alium facit per se*" to AI arise from AI's autonomy and complexity. AI's independent decision-making complicates determining whether the principal truly controls the AI's actions. Moreover, AI's intricate programming and data processing make it difficult to establish clear lines of authority. This uncertainty hinders accountability for AI-related harm. Despite these challenges, applying "Qui facit per alium facit per

[31] ORAEGBUNAM & UGURU: "Artificial Intelligence Entities And Criminal Liability: A Nigerian Jurisprudential Diagnosis" AFJCLJ 3 (2018)
[32] ibid

se" to AI offers significant advantages. Holding principals liable promotes responsible AI development and deployment, serving as a deterrent against reckless AI deployment. This approach also ensures consistency with existing agency law principles.

Furthermore, what happens when the developer is no longer existent (e.g., bankrupt or dissolved)? Developer insolvency poses a significant challenge in attributing legal responsibility for Artificial Intelligence (AI). When developers become bankrupt or dissolved, victims of AI-related harm face substantial obstacles in seeking redress, leading to a void in accountability. The consequences of developer insolvency are far-reaching. Victims are left without a viable defendant to pursue claims against, resulting in uncompensated harm. Moreover, insolvent developers escape accountability, undermining deterrent effects. This lack of recourse not only harms individuals but also erodes trust in AI technology. Pursuing claims against insolvent developers is fraught with challenges. Identifying successors or assigns of the original developer is difficult, and asset tracing is complex. Jurisdictional issues further complicate cross-border claims, highlighting the need for harmonized regulatory frameworks.

The attribution of legal responsibility for AI-related damages is crucial but insufficient to compensate victims adequately or prevent harm effectively. Ultimately, a comprehensive regulatory framework must account for AI's complexities and evolving nature.

4.0 AI REGULATION IN NIGERIA: A REVIEW OF EXISTING LAWS, REGULATORY, FRAMEWORK, AND ENFORCEMENT MECHANISM

This chapter delves into the intricacies of existing laws, policies, and regulations governing AI, both domestically and internationally. Artificial Intelligence (AI) has gradually become an integral part of Nigeria's technological landscape. The country's journey with AI began in the early 2000s, with the establishment of the National Information Technology Development Agency (NITDA). NITDA's primary objective was to promote and regulate the use of information technology in Nigeria.

However, before diving into the provisions of NITDA, it is important to begin with the Constitution. As the grundnorm of the Federal Republic of Nigeria, the 1999 Constitution (as amended) provides the foundation for the country's legal framework. The Constitution's provisions serve as the bedrock for all laws governing Artificial Intelligence (AI) in Nigeria. Specifically, Section 4(1) provides that the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives." Section 4(2)(b)"The National Assembly shall have power to make laws for the peace, order and good government of the Federation concerning any matter included in the Exclusive Legislative List. "The Exclusive Legislative List is contained in Part I of the Second Schedule to the Constitution and includes matters such as National security, Foreign policy, Aviation, Telecommunications, Copyright, Patents, and Trademarks.

Additionally, Section 4(4) allows the National Assembly to make laws for the Federation on any matter not included in the Exclusive Legislative List, provided it is not inconsistent with any law enacted by the National Assembly. This provision empowers the National Assembly to enact laws related to Artificial Intelligence (AI), such as Data Protection, Cyber security, Intellectual property, and Consumer protection enabling the regulation of AI in Nigeria.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides the foundation for Nigeria's legal framework on AI. Section 14(2)(b) of the Constitution guarantees the right to freedom from discrimination, which is crucial in ensuring AI systems do not perpetuate biases., Section 39 protects the right to freedom of expression, encompassing the development and deployment of AI-generated content. Furthermore, Section 44(1) safeguards the right to privacy, essential in regulating AI-driven data collection and processing.

The Constitution indirectly protects intellectual property through Section 39, which guarantees freedom of expression. This section implies protection for creative works, including literary, musical, and artistic creations. Section 44(1) of the Constitution, which safeguards the right to acquire and own property, also extends to intellectual property. This provision ensures that individuals can own and protect their intellectual creations. The right to privacy, enshrined in Section 37 of the Constitution, serves as the bedrock for data protection. This section protects individuals' right to private and family life, which necessarily encompasses the protection of personal data. Furthermore, Section 39, guaranteeing freedom of expression, implies the right to control personal information.

The Constitution addresses health through Section 17(3)(d), which imposes an obligation on the State to provide adequate medical facilities. This provision recognizes the importance of healthcare and empowers the government to prioritize public health. Section 45(1) of the Constitution further reinforces this commitment, granting the State the authority to make laws for public health. This provision enables the government to enact legislation addressing health concerns, such as the National Health Act, of 2014. While the 1999 Constitution does not explicitly address data protection, health, and intellectual property, its provisions lay the groundwork for safeguarding these rights. Supplemental laws and regulations have filled the gaps, ensuring Nigeria's legal framework adequately protects these critical interests. While AI-specific legislation is still in development, existing laws provide a foundation for regulating AI.

To counter cyber threats, Nigeria enacted the Cybercrimes (Prohibition and Prevention) Act of 2015, which provides a comprehensive blueprint for addressing these issues. In 2020, the National Information Technology Development Agency (NITDA) rolled out guidelines that have direct and indirect implications for various aspects of AI utilization in Nigeria. [33] The Cybercrimes

[33] Josephine Uba Artificial intelligence (AI) Goes wrong: Real life cases and Regulatory Implications of the Negative Effects of AI in Nigeria available at https://oal.law/artificial-intelligence-ai-goes-wrong/

(Prohibition, Prevention, etc.) Act, 2015 is a pivotal legislation regulating AI-driven cyber threats. Section 2 prohibits unauthorized access to computer systems, including AI-powered networks, while Section 3 criminalizes cyber threats, including AI-driven attacks. Furthermore, Section 5 mandates data authentication and integrity, crucial for AI systems. Section 12 establishes penalties for cybercrime offences, including AI-related incidents, demonstrating the Act's significance in regulating AI.

The Nigeria Data Protection Act, 2022 (repealing Data Protection Regulation, 2019) is another critical legislation. Section 2 defines personal data, encompassing AI-processed information. Section 3 mandates data protection by design and default, applicable to AI systems. Section 15 regulates automated decision-making, including AI-driven profiling, ensuring transparency and accountability.

In the financial sector, the Security and Exchange Commission (SEC) Rules on Robo-Advisory Services, 2018 provide guidance. Rule 1 defines Robo-Advisory Services, including AI-powered investment advice. Rule 3 mandates registration and licensing for Robo-Advisory Services, ensuring regulatory oversight. The Federal Competition and Consumer Protection Act, of 2018 also addresses AI. Section 123 prohibits unfair business practices, including AI-driven deceptive marketing. Section 125 mandates transparency in consumer contracts, applicable to AI-driven services. Section 130 establishes consumer protection agencies to address AI-related complaints. Intellectual property rights are protected under the Copyright Act, 2022. Section 2 defines copyrightable works, including AI-generated content. Section 5 regulates copyright infringement, applicable to AI-driven piracy. Section 6 establishes the rights of authors, including AI-generated works.

Lastly, the Nigerian Communication Commission Act, of 2003 empowers the NCC to regulate telecommunications, including AI-powered services (Section 70). Section 75 mandates licensees to ensure network security, relevant to AI-driven networks. Nigeria's AI landscape is thriving, with a vibrant pan-African ecosystem driven by private entities, businesses, and startups at the forefront of implementing and evolving AI systems. The country's data protection regulation, NDPR, aligns with international standards, safeguarding individual data privacy and ensuring secure transactions involving personal data exchange.[34]This regulation is similar to the European Union's General Data Protection Regulation.

Globally, organizations like the United Nations are playing a crucial role in shaping AI governance. This initiative includes UNESCO's Recommendation on the Ethics of Artificial Intelligence. This provides a framework for ethical AI development and deployment. The European Union's General

[34] ibid para 12

Data Protection Regulation (GDPR) sets standards for data protection and AI-driven decision-making.

Although Nigeria currently lacks a formalized national AI policy, NITDA, in collaboration with NCAIR and other stakeholders, is driving progress through numerous government ministries, departments, and organizations. This partnership aims to promote responsible AI development and deployment. These efforts demonstrate Nigeria's commitment to developing a robust AI ecosystem that prioritizes security, privacy, and responsible innovation.

In conclusion, Nigeria's regulatory framework for AI is evolving, with existing laws addressing critical aspects such as cyber security, data protection, consumer protection, intellectual property, and telecommunications. While these laws do not directly address AI, they provide a foundation for regulating AI's impact on Nigerian society.

V. Recommendations and Solutions for Attributing Legal Responsibility to AI

Existing liability frameworks, rooted in human intent, are ill-equipped to address AI-driven harm. The autonomy, learning capacity, and interconnectedness of AI systems require adapting traditional models of accountability. A risk-based approach offers a balanced solution by allocating responsibility according to the level of control and risk involved in AI deployment. Developers, deployers, and users should therefore bear corresponding degrees of liability based on their influence over AI outcomes. Developing AI-specific insurance and compensation mechanisms can further ensure accountability and victim protection. Products such as cyber, product liability, and error-and-omission insurance cover AI-specific risks, while compensation funds and AI harm remediation processes guarantee redress. Mandatory AI insurance, coupled with regulatory standards, would provide financial security and clarity in cases of AI-related harm.

The complexity of AI development also calls for shared liability. Since AI-related harm often arises from the interaction of users, manufacturers, and designers, shared responsibility ensures comprehensive redress and fosters collaboration. It encourages responsible innovation while safeguarding human welfare. Effective shared liability frameworks must clearly define stakeholder roles, proportionate liability, and continuous adaptation to emerging risks.

Another innovative idea is recognizing AI as a legal person, similar to corporations. Legal personhood would acknowledge AI’s capacity to act, enter contracts, and be held accountable. Historically, corporations have been granted legal personality to bear rights and obligations; similarly, “electronic personhood” could be extended to advanced AI systems. Under such a model, AI entities would be registered, and their human controller’s developers or owners would remain ultimately liable. This approach promotes accountability, clarifies legal standing, and encourages safer AI design. The European Parliament and Law Commission of England and Wales have already considered such frameworks, showing growing international consensus.

Awareness and education are equally essential. Dispelling myths of AI infallibility helps individuals and organizations understand its biases, vulnerabilities, and limitations. Educational programs can promote AI literacy, critical thinking, and policy understanding empowering the public and lawmakers to make informed decisions about AI governance.

Finally, the establishment of regulatory bodies is vital for oversight and standard-setting. Independent agencies with technical expertise can develop and enforce design, testing, and deployment standards, investigate incidents, and ensure transparency. Institutions like the European Commission's AI Regulatory Body and the U.S. Federal Trade Commission's AI Task Force exemplify proactive regulation. Global cooperation is also necessary to harmonize AI laws, ensuring consistency, innovation, and accountability across borders. In sum, achieving accountability in the age of artificial intelligence requires a multifaceted approach: risk-based and shared liability, AI-specific insurance, possible legal personhood, public education, and robust regulation. Together, these measures can foster a trustworthy AI ecosystem that prioritizes safety, responsibility, and human well-being.

V. Conclusion

As AI continues to advance, our legal frameworks must adapt, prioritizing flexibility and responsiveness to emerging challenges, policymakers, developers, and stakeholders must collaborate to establish comprehensive AI governance, ensuring accountability and societal alignment. Ultimately, attributing legal responsibility to AI requires striking a balance between technological innovation and human judgment, ensuring that AI serves humanity's best interests. By reimagining liability frameworks and embracing regulatory oversight, we can unlock AI's full potential, fostering a future where technology enhances human life without compromising accountability.

Examination of Witnesses Abroad via Letters of Request and Special Examiners: Procedure and Legality Under Nigerian Law

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Abstract

This paper critically examines the procedural framework and legal validity of examining witnesses abroad through Letters of Request and Special Examiners under Nigerian law. Rooted in the principle of International Judicial Assistance, these mechanisms are designed to bridge evidentiary gaps in transnational civil and commercial litigation. This paper carefully delineates the statutory basis, procedural steps, and judicial discretion involved in invoking these tools under various Rules of Court in Nigeria. However, the paper raises profound constitutional and evidential concerns, contending that the procedure potentially violates the core tenets of fair hearing, oral evidence, and judicial presence as enshrined in Nigerian jurisprudence. The paper argues that such processes may amount to a form of "trial by correspondence," thereby undermining the trial Judge's sensory role in assessing the credibility and demeanour of witnesses. It also highlights the risk of jurisdictional overreach, inconsistency with the composition of the trial court, and the incompatibility of foreign evidentiary procedures with Nigerian legal standards. Drawing lessons from the United Kingdom, the author proposes a progressive approach whereby Nigerian trial Judges may be empowered to act as Special Examiners abroad or employ virtual hearing options to safeguard procedural integrity. Ultimately, the paper calls for a cautious, constitutionally sound application of these international co-operation tools, urging Nigerian courts to prioritize judicial presence, evidentiary fairness, and procedural coherence.

Key words: Letters of Request, Special Examiners, International Judicial Assistance, Trial by Correspondence, Fair Hearing

1.0 Introduction

The concept of "*Sovereignty*" under International Law has properly delimited the right of one State to exercise its executive, legislative and/or judicial powers,[2] in any form, in the territory of another State.[3] The territoriality of the jurisdiction of a domestic court denotes that these powers cannot be exercised by a State outside its territory except by a permissive rule derived from international custom or a convention.[4] To circumvent the bottlenecks created by sovereignty, the concept of "International Judicial Assistance" was developed to assist the domestic court in one country ("Requesting Country") to receive evidence located in another country ("Requested Country"). This assistance is made possible through two avenues. The first is via conventions or treaties concerning mutual legal assistance, which have been acceded to[5] and the second is through *Courtoisie Internationale*.[6]

Letters of Request and Special Examiners are offshoots of International Judicial Assistance, and they are used by a Requesting Country for the examination of witnesses in the territory of a Requested Country in civil and commercial matters. Surprisingly, there is a dearth of judicial decisions from Nigerian Courts on the examination of witnesses in a foreign country owing, probably, to the fact that it is not an area that is frequently traversed and/or tested in civil and commercial litigation in Nigeria. However, various Rules of Court in Nigeria recognize these modes of International Judicial Assistance and prescribe a procedure for their use.

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[2] This is sometimes referred to as "*facultas iurisdictionis*". It follows the concept of territoriality concerning the power resident in courts to adjudicate. See, Martin Illmer, 'Jurisdiction (PIL)' <https://max-eup2012.mpipriv.de/index.php/Jurisdiction_(PIL)> accessed 19 February 2025.

[3] See, the *Island of Palmas Case* (*Netherland v. United States of America*) 1928 2 RIAA, 838 (Max Huber, J). This Judgment can be accessed via: <https://legal.un.org/riaa/cases/vol_ii/829-871.pdf> accessed 19 February 2025. This is also well-captured in the Latin maxim: *Extra territorium jus diceni impune non paretur*, which literally means "One who gives a judgment outside his territory may be disobeyed with impunity".

[4] See, *The Case of S. S. Lotus* (*France v. Turkey*) 1927 PCIJ (Ser. A) No. 10 [45] (Max Huber, J). This Judgment can be accessed via: <https://law.justia.com/cases/foreign/international/1927-pcij-series-a-no-10.html> accessed 19 February 2025.

[5] See, for example, the Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004.

[6] This is also known as "international courtesy", "comity of nations" or "international comity". It refers to a practice among different countries or courts where they mutually recognize each other's legislative, executive, and judicial acts and allow such acts within their territory with the hope of reciprocity. This practice is not an absolute obligation but only a recognition of goodwill and respect between nations. See, LSDefine, 'Courtoisie internationale' <https://www.lsd.law/define/courtoisie-internationale> accessed 19 February 2025.

This paper is directed at delineating the practice and procedure, under Nigerian Law, for the examination of witnesses abroad via Letters of Request and Special Examiners. Significantly, this paper will address the lingering question of whether this procedure amounts to "Trial by Correspondence" and will further interrogate the legality of this procedure under Nigerian Law.

2.0 Meaning of Letters of Request and Special Examiners

Letters of Request, also referred to as "Letters Rogatory" or "Commission *Rogatoire*",[7] are formal requests made by a court in a Requesting Country to a court in a Requested Country, asking the foreign court to assist in obtaining evidence within its territory for an ongoing case in the Requesting Country.[8] The right to make this request is vested in any party to a case insofar as such a party is seeking relevant evidence from a foreign jurisdiction. The advantage of using the Letter of Request procedure is that the foreign court, where necessary, can exercise its power of compulsion to secure the attendance of any named witness or even a relevant witness residing within its territorial sphere of influence.

Special Examiners, within the context of examining witnesses abroad, include Diplomatic Agents in a foreign Convention Country or their deputies appointed by a Requesting Country to take the examination-in-chief, cross-examination, and re-examination, orally, on oath or affirmation, of named and identified witnesses listed by a Claimant or Defendant. However, a Special Examiner is bereft of any ability to compel compliance as the Special Examiner can only "invite" a witness to present himself and give evidence.

3.0 Procedure for Examination of Witnesses Abroad Under Nigerian Law

The examination of witnesses in a Convention Country can be achieved through two avenues. The first is via Letters of Request to a Competent Judicial Authority in a Convention Country, and the second is via appointment of a Nigerian Diplomatic Agent as Special Examiner in a Convention

[7] See, LSDefine, 'Letter Rogatory' <https://www.lsd.law/define/letter-rogatory> accessed 19 February 2025; and Tureng Dictionary, 'Commission Rogatoire' <https://tureng.com/en/french-english/commission%20rogatoire> accessed 19 February 2025.

[8] See, LSDefine, 'Letter of Request' <https://www.lsd.law/define/letter-of-request> accessed 19 February 2025.

Country. While the practice and procedure in these two avenues appear similar, they differ in several respects. These differences range from the framing of the reliefs, the accompanying documents or forms, and the mandate as well as procedure for execution in the Convention Country. These are highlighted, where necessary, in the succeeding subsections.

3.1 Filing of an Application to Examine a Witness in a Convention Country

A relevant witness may be asked to testify in the country where he is domiciled by means of a Letter of Request or a Special Examiner. In Nigeria, such an application is made by the party who requires the evidence and it is made by way of Motion on Notice,[9] which is an interlocutory application made during the pendency of the case, preferably, after trial has commenced.[10] Since a grant of such an application is at the discretion of the Court, the applicant must sufficiently canvass the need for the Letter of Request[11] or the appointment of a Special Examiner. The applicant must also set out the details of the case and the particular evidence, be it oral or documentary. This is because the procedure cannot be used as an avenue to fish for evidence.

3.2 Reliefs Sought in an Application to Examine a Witness in a Convention Country

Where an applicant elects the option of "Letters of Request to a Competent Judicial Authority in a Convention Country," such an applicant must seek, from the Nigerian Court handling the matter, an order for the issuance of a Letter of Request to take evidence in a foreign country. Such order is to be directed at a competent judicial authority or such other person, as according to the Convention Country's procedure, is competent to take the examination of witnesses.[12] Under this approach, the

[9] See the unreported Ruling in the case of *Rebecca Adodo v. Rain Oil Limited* ("*Adodo's Case*"), Suit No. NICN/LA/298/2018 delivered by Honourable Justice O. A. Obaseki-Osaghae, J., of the National Industrial Court, Lagos Judicial Division, on the 23rd day of July, 2020. This Ruling can be accessed via: <https://nicnadr.gov.ng/judgement/details.php?id=5066> accessed 19 February 2025.

[10] ibid.

[11] Where a party applies to the Court for the issuance of a Letter of Request, such an application should clearly state the nature of the case; the specific evidence needed; the identity of the potential witness; and the questions to be asked, ensuring compliance with the legal requirements of the foreign court.

[12] See the following provisions of the various Rules of Court providing for and enabling this relief: Order 40 Rule 6 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Order 20 Rule 6 of the Federal High Court (Civil Procedure) Rules, 2019; Order 40 Rule 7 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 36 Rule 7 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Order 30 Rule 8 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

prayer prioritizes a "Competent Judicial Authority" in the Convention Country to take such evidence[13] and the relief can be phrased as follows:

> An Order that a Letter of Request to take evidence be issued to a Competent Judicial Authority of [*the Convention Country*] in the [*Name of the State, City and/or Judicial Division*] of [*the Convention Country*] to summon [*Name(s) and Address(es) of the Witness(es) in the Convention Country*] as witness(es) (and such other witnesses as the agents of the claimant and defendant shall request in writing) to attend at a time and place as the Competent Judicial Authority of [*the Convention Country*] shall appoint to be examined, upon the interrogatories which accompany the Letter of Request and *viva voce*, touching the said matters in question in the presence of the agents of the claimant and defendant or any of them.

The party making the application for Letters of Request is expected to file at the Registry of the Nigerian Court an undertaking to be responsible for all expenses incurred by the Ministry of Foreign Affairs on the Letter of Request and to pay same upon due notification by the Chief Registrar of the Nigerian Court issuing the Letter of Request.[14] The said Undertaking shall be accompanied by the following:

i. A request,[15] which will be in the form provided for in the relevant Rules of Court[16] but modified to meet the peculiarity of the case. Where the language of the country in which the request is to be executed is not English, a translation must be done.

[13] See, Form 21 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Form 18 of the Federal High Court (Civil Procedure) Rules, 2019; Form 54 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Form 24 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Form 25 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

[14] See, Order 40 Rule 6(a) and Form 20 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Order 20 Rule 6(a) and Form 17 of the Federal High Court (Civil Procedure) Rules, 2019; Order 40 Rule 7(1) and Form 53 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 36 Rule 7(a) and Form 23 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Order 30 Rule 8(a) and Form 24 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024. See also, *Adodo's Case* (n 9) where the Claimant/Applicant complied with this requirement.

[15] This request is the "*Letter of Request to take Evidence Abroad (Convention Country)*".

[16] See the following Forms in the various Rules of Court providing for and enabling this request: Form 21 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Form 18 of the Federal High Court (Civil Procedure) Rules, 2019; Form 54 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Form 24 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Form 25 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

ii. A copy of the Interrogatories[17] (if any) to accompany the request(s), with a translation, if necessary.

iii. A copy of cross-interrogatories[18] (if any), with a translation, if necessary.[19]

Where a party elects the second option, which is, the "Appointment of a Nigerian Diplomatic Agent as Special Examiner in a Convention Country," such an applicant must seek from the Nigerian Court handling the matter, an order for the examination of the witness before the Nigerian Diplomatic Agent in any foreign country with which a convention in that respect has been made.[20] A copy of the Interrogatories and cross-interrogatories (if any) shall also be filed in this respect.[21] The costs of the application for appointing the Special Examiner and the costs for such examination (incidental costs inclusive), shall be costs in the action.[22] Under this approach, the prayer would be for an Order for the appointment of the Nigerian Diplomatic Agent as "Special Examiner" in the foreign country[23] and the relief can be phrased as follows:

> An Order that the Nigerian Diplomatic Agent or his deputy at [*the Convention Country*] be appointed as "Special Examiner" for the purpose of making the

[17] Interrogatories are a set or series of written questions drawn up for the purpose of being propounded to a party, witness, or other person having information of interest in the case. They consist of written questions about the case submitted by one party to the other party or witness. The answers to interrogatories are usually given on oath, that is, the person answering the questions signs a sworn statement that the answers are true. See the case of *Abubakar v. Yar Adua* (2008) 4 NWLR (Pt. 1078) 465 (SC) 497 – 498 [F] – [A].

[18] Cross-interrogatories, as the name suggests, are cross-questions. They are written questions that are submitted to an opposing party in a case. It is a type of interrogatory that is sent by a party who has received a set of interrogatories. In simpler terms, it is a question that one side asks the other side during an ongoing case to get more information. See, LSDefine Dictionary, 'Cross-interrogatory' <https://www.lsd.law/define/cross-interrogatory> on 12 February 2025.

[19] See, Order 40 Rule 6(b)(i) – (iii) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Order 20 Rule 6(b)(i) – (iii) of the Federal High Court (Civil Procedure) Rules, 2019; Order 40 Rule 7(2)(a) – (c) of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 36 Rule 7(b)(i) – (iii) of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Order 30 Rule 8(b)(i) – (iii) of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

[20] See the following provisions of the various Rules of Court providing for and enabling this relief: Order 40 Rule 7 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Order 20 Rule 7 of the Federal High Court (Civil Procedure) Rules, 2019; Order 40 Rule 8 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 36 Rule 8 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Order 30 Rule 9 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

[21] These accompaniments were relied upon and captured in the phraseology of the reliefs sought in the application for the appointment of a Special Examiner in *Adodo's Case* (n 9).

[22] On this point, see the last sentence in the following Forms: Form 22 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Form 19 of the Federal High Court (Civil Procedure) Rules, 2019; Form 55 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Form 25 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Form 26 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

[23] See, Form 22 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Form 19 of the Federal High Court (Civil Procedure) Rules, 2019; Form 55 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Form 25 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Form 26 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

examination, cross-examination and re-examination, viva voce, on oath or affirmation, of [*Number of Witnesses and their Names*] witnesses on the part of the [*Claimant or Defendant, depending on the party making the Request*] at [*the Convention Country*].

3.3 Hearing and Determination of the Application by a Nigerian Court

After the relevant processes have been filed and exchanged by parties, the application will be heard by a Nigerian Court and a decision given one way or the other. This decision is an exercise of discretion[24] and a Nigerian Court will review the application to ascertain if the request is legitimate, relevant and meets the ends of justice in the ongoing case. The Federal High Court endorsed this position in the case of *Industrial Bank Limited (Merchant Bankers) v. Central Bank of Nigeria,*[25] when it held that an application of this kind will be refused where the evidence to be adduced is not directly relevant and "*where it appears under the procedure of the foreign court, the witness will not be cross-examined in the ordinary way as it is done in Nigeria*."[26]

Nothing bars a Nigerian court from being persuaded by decisions from common law jurisdictions on the factors to be considered in the exercise of this peculiar discretion.[27] In the case of *I. C. Corporation v. Daewoo Corporation & Ors.,*[28] the High Court in Bombay, India, provided a template in this respect when it commented as follows:

[24] See the following cases on the proper exercise of discretion in this wise: *Industrial Bank Limited (Merchant Bankers) v. Central Bank of Nigeria* (1998) FHCLR 72, 73 and 79; and *Coch v. Allcock & Co.* (1888) LR 21 QBD 178, 181.
[25] (1998) FHCLR 72 (a decision of the Federal High Court).
[26] ibid 73 and 78 (Odunowo, J). This case was cited at page 190 of the cerebral work of Schleiffer Marais and Prisca Christina Leonie, 'Cross-border Taking of Evidence in Civil and Commercial Matters in Switzerland, South Africa, Botswana, Namibia, Nigeria, and Uganda', accessible via: <https://cdm21069.contentdm.oclc.org/digital/collection/ppl1/id/442001/> accessed 12 February 2025.
[27] See the following cases from common law jurisdictions on the exercise of discretion in granting Letters of Request or appointing a Special Examiner: *Emmanuel v. Soltykoff* (1892) 8 TLR 331, 332 (Esher, M.R.); *In Re Boyse*, *Crofton v. Crofton* (1882) 20 Ch. D 760, 770 (Fry, J); *Jaya Shanker Mills (Barsi) Limited v. Hazi Zakaria Hazi Ebrahim*, AIR 1962 A.P 435 (Kumarayya, J); *Ehrmann v. Ehrmann* (1866) 2 Ch. D 611, 614; *New v. Burns* (1894) 64 LJ QB 104, 105; *Ross v. Woodford* (1894) 1 Ch. 38, 40.
[28] Chamber Summons No. 1125 of 1989 in Suit No. 1211 of 1985, decided on 27 October 1989. Accessed via: <https://lextechsuite.com/IC-Corporation-Versus-Daewoo-Corporation-and-others-1989-10-27> accessed 12 February 2025.

> The exercise of discretion should be based on the balancing of the effect of examining a witness in the Court and outside the Court. Examination of a witness by a commission or on a letter of request has three consequences:
>
> (i) **If the defendant's witnesses are examined on commission, the plaintiff is denied the right to cross-examine the witnesses before the Judge who has seen the witnesses of the plaintiff in the box**.
>
> (ii) **The judge is denied the advantage of observing the demeanour of the witness**.
>
> (iii) The system of questioning, **the cross-examination rules of evidence of another country may place one or the other party at a serious disadvantage**.
>
> The disadvantage evident from the three consequences set out above is the first principle that should be considered in exercising discretion.[29]

Furthermore, a Nigerian Court will examine the application to ascertain whether it complies with Nigerian law and international treaties. For example, it is a pre-condition under Nigerian law that there must be in existence a ratified Treaty, Agreement or Convention between Nigeria and the foreign country where the said witness is domiciled which permits the examination of such a witness abroad.[30] This issue was considered by the National Industrial Court of Nigeria in the case of *Rebecca Adodo v. Rain Oil Limited*[31] where an application for the appointment of a Special Examiner to take evidence in Sweden was refused because Nigeria is not a party to the *Convention on the Taking of Evidence Abroad in Civil or Commercial Matters* 1970[32] (the Hague Evidence

[29] ibid [11] – [12] (Guttal, J) (emphasis added).
[30] See the following provisions in the various Rules of Court in Nigeria which requires that a "*Convention*" must be in existence between the Requesting Country (Nigeria) and a Requested Country: Order 40 Rules 6 and 7 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Order 20 Rules 6 and 7 of the Federal High Court (Civil Procedure) Rules, 2019; Order 40 Rules 7 and 8 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 36 Rules 7 and 8 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Order 30 Rules 8 and 9 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.
[31] *Adodo's Case* (n 9).
[32] Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 23.

Convention) and there was no convention between Nigeria and Sweden permitting the examination of witnesses abroad. The Court unmistakably held:

> The affidavit evidence is that the claimant has relocated to Sweden. **The question that arises is whether there is a convention ratified by Nigeria for the examination of a witness or witnesses abroad**; or put in another way, **whether there is a convention that Nigeria and Sweden are both signatories to that permits the examination of witnesses or evidence taken abroad and in this instance outside the shores of Nigeria**. **This must first be established before the consideration of whether or not to grant the order sought**. Learned counsel to the claimant/applicant has referred to the Hague Evidence Convention 1970 and has stated that "Sweden is a convention country" without stating whether Nigeria is a member state or a signatory to this convention. Nigeria is however not a member state of the Hague Convention, neither is it a signatory to the Hague Evidence Convention 1970 and so it is not applicable in respect of taking the claimant's evidence in Sweden.
>
> …. In the circumstances, the application is refused. The claimant may wish to use other procedures as contained in the Practice Directions 2020 for Covid-19 sittings.[33]

3.4 Issuance and Transmission of the Letter of Request or Order for Appointment of a Special Examiner to a Convention Country

A Nigerian Court will grant the application once it considers it to be meritorious and order the issuance of a Letter of Request which will be addressed to the relevant foreign judicial authority.[34] The duly issued Letter of Request will be sent through the diplomatic channels to the foreign court for necessary action. The procedure for the issuance and transmission of an order for the

[33] ibid (emphasis added).
[34] This Letter of Request will contain the details of the case; the witnesses and their addresses; and the relevant evidence sought.

appointment of a Special Examiner in a Convention Country is similar to the foregoing except that it will be directed at the Nigerian Diplomatic Agent or his deputy in the Convention Country.

3.5 Execution of the Letter of Request or Order for Appointment of a Special Examiner in a Convention Country

The practice and procedure for the execution of a Letter of Request or Order for the Appointment of a Special Examiner in a Convention Country varies depending on the identity of the executing authority. The practice and procedure for these two categories are treated separately below.

3.5.1 Execution by a "Competent Judicial Authority" in a Convention Country

Where the Convention Country receives the Letter of Request from a Nigerian Court, it will direct its competent judicial authority or such other person that is competent to take the examination of witnesses, as permitted by its procedure, to summon the named and identified witnesses and such other witnesses as the agents of the Claimant and Defendant may request in writing. The summoned witnesses shall attend at a time and place appointed by the Competent Judicial Authority and be examined orally and via the interrogatories accompanying the Letter of Request concerning the identified matters. This examination takes place in the presence of the agents of the Claimant and the Defendant or any of them as shall, on due notice given, attend such examination.[35]

The Competent Judicial Authority of the Convention Country will then permit the agents of both the Claimant and the Defendant or any of them present to examine such witnesses orally and via interrogatories and give room for the other party to cross-examine the witnesses orally and via cross-interrogatories on the subject matter or arising out of the answers. The party producing the witness for examination will have the liberty to re-examine him orally.

The Competent Judicial Authority of the Convention Country will cause all answers of the said witnesses, and all additional oral questions asked during examination-in-chief, cross-examination

[35] On this procedure, see Form 21 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Form 18 of the Federal High Court (Civil Procedure) Rules, 2019; Form 54 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Form 24 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Form 25 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

or re-examination to be reduced into writing and all books, letters, papers, and documents produced in the course of the examination to be duly marked for identification.[36]

3.5.2 Execution by a Nigerian Diplomatic Agent Appointed as "Special Examiner" in a Convention Country

The Nigerian Diplomatic Agent or his deputy in the Convention Country is appointed as "Special Examiner" to make the examination-in-chief, cross-examination, and re-examination, orally, on oath or affirmation, of named and identified witnesses listed by the Claimant or Defendant. The Special Examiner is given the liberty to invite the attendance of the said witnesses and the production of documents, but shall not exercise any compulsory powers, otherwise, such examination will be taken in accordance with the Nigerian High Court Procedure.

The Claimant and the Defendant are expected to exchange the names of their agents to whom notice concerning the examination of the said witnesses may be sent. Before the examination of any witness, notice of such examination shall be given by the agent of the party on whose behalf such a witness is to be examined to the agent of the other party, unless such notice is deemed unnecessary.[37]

3.6 Transmission of the Evidence Received in a Convention Country to the Nigerian Court

Where the executing authority is the Competent Judicial Authority in a Convention Country, such an authority will authenticate the examination by the seal of the Court or Tribunal, or in such other manner as is in accordance with the procedure in the Convention Country, and return the same together with, the interrogatories and cross-interrogatories, and a note of the charges and expenses payable for the execution of the Letter of Request, through the Nigerian Ministry of

[36] ibid.
[37] On this procedure, see Form 22 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Form 19 of the Federal High Court (Civil Procedure) Rules, 2019; Form 55 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Form 25 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Form 26 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

Foreign Affairs from whom the name was received for onward transmission to the Nigerian Court that made the request.[38]

Where the executing authority is the Special Examiner in a Convention Country, such an examiner shall ensure that the depositions when taken together with any documents referred to or certified copies of documents, or extracts, are authenticated by the Special Examiner's signature and transmitted under seal, to the Chief Registrar of the Nigerian Court that made the Order on or before the named date on the Order for Appointment or on such other day as may be ordered, for filing.[39] The trial of the action in the Nigerian Court shall be stayed until the filing of such depositions. Upon resumption of trial of the matter in the Nigerian Court, the Claimant or the Defendant, as the case may be, is at liberty to read and give such depositions made in a Convention Country in evidence, saving all just exceptions.[40]

4.0 Does this Procedure Amount to Trial by Correspondence?

The Defendant/Respondent in *Adodo's Case,*[41] while opposing an application for the appointment of a Special Examiner to take evidence in Sweden, argued that such a procedure amounts to "Trial by Correspondence", which is unknown to Nigerian law. Unfortunately, the National Industrial Court determined and dismissed the Claimant/Applicant's application on another ground without resolving this particular issue. Nevertheless, the question remains: does this procedure amount to Trial by Correspondence?

[38] On this procedure, see Form 21 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Form 18 of the Federal High Court (Civil Procedure) Rules, 2019; Form 54 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Form 24 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Form 25 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

[39] On the requirement of authentication by the signature of the examiner on the original depositions and its onward transmission to the Registry for filing, see, Order 40 Rule 12 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Order 20 Rule 12 of the Federal High Court (Civil Procedure) Rules, 2019; Order 40 Rule 14 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Order 36 Rule 13 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Order 30 Rule 13 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

[40] On this procedure, see Form 22 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025; Form 19 of the Federal High Court (Civil Procedure) Rules, 2019; Form 55 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017; Form 25 of the High Court of Lagos State (Civil Procedure) Rules, 2019; and Form 26 of the Akwa Ibom State High Court (Civil Procedure) Rules, 2024.

[41] *Adodo's Case* (n 9).

The phrase, "Trial by Correspondence", refers to a legal arrangement or procedure where some aspects of the evidence in an ongoing matter are exchanged through correspondence[42] or written communication (such as letters, notes, or other messages) between the litigating parties and a Court, rather than through a traditional courtroom setting where witnesses are examined from the Witness Box or virtually.

Indubitably, "Trial by Correspondence" is not a recognized mode of trial in Nigeria because the Nigerian legal system emphasizes the importance of oral testimony;[43] direct evidence;[44] in-person examination of witnesses[45] or through approved virtual means. It allows for the opportunity to cross-examine witnesses[46] in open Court[47] before the particular Judge[48] handling the matter to uphold the principles of fair hearing and justice. These requirements are not readily achievable through Trial by Correspondence.

Since the request to a Convention Country for the examination of witnesses before a competent Judicial Authority or before a Nigerian Diplomatic Agent appointed as Special Examiner is by way of correspondence, and the execution of the request and subsequent transmission of written and sealed copies of the proceedings to a Nigerian Court for onward reception of same in evidence is also by way of correspondence,[49] it is the view of this author that this entire procedure amounts to

[42] The word, "Correspondence", means "*an interchange of written communications*" and it encompasses "*the letters written by one to another, and the answers thereto*". See the following sources: The Free Dictionary, 'Correspondence' <https://legal-dictionary.thefreedictionary.com/Correspondence> accessed 12 February 2025; and The Law Dictionary, 'Correspondence' <https://thelawdictionary.org/correspondence/> accessed 12 February 2025.
[43] See, Sections 125, 127, 205, 206, 208 and 209 of the Evidence Act, 2011 (as amended).
[44] See, Section 126 of the Evidence Act, 2011 (as amended).
[45] See, Section 36(6)(d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). See also, the provisions of Sections 210, 212 and 213 of the Evidence Act, 2011 (as amended) which regulates the order in which witnesses are to be "*produced and examined*" in Court and the circumstances in which witnesses who are physically present may, temporarily, be kept out of Court or prevented from communicating with each other during the trial of a matter.
[46] See the provisions of Sections 214(2), 215, 221(4), 223, 231, 232 and 236 of the Evidence Act, 2011 (as amended) which enables an opposing party to cross-examine the witness of the other party. See also the provisions of Section 246(1) and (2) of the Evidence Act, 2011 (as amended) which permits the particular Judge handling the matter to put questions to a witness in open Court or order the production of any document or thing.
[47] See the provisions of Section 36(1) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which mandates that the proceedings of a court in Nigeria "*shall be held in public*".
[48] See the provisions of Sections 224, 226, 227 and 228 of the Evidence Act, 2011 (as amended) which vest in the particular Judge handling a matter the power to forbid or streamline certain questions that are put forward to a witness in open Court.
[49] See the detailed "correspondence-like" procedure for the examination of witnesses in a foreign country set out in the preceding section of this Paper.

"Trial by Correspondence", which is an unpardonable abrogation of the Nigerian evidential practice and procedure.

5.0 The Legality of Examining Witnesses Abroad via Letters of Request and Special Examiners

At least five reasons defenestrate any attempt to confer legality, evidential soundness, and procedural regularity on the procedure for examining witnesses abroad. Firstly, and as argued in the preceding subsection of this paper, this entire procedure amounts to "Trial by Correspondence" and it irredeemably violates the sanctity of the Nigerian evidential practice and procedure.

Secondly, the examination of witnesses abroad via Letters of Request and Special Examiners unsettles and alters the composition of a Nigerian Court handling the matter. This reality presents a competence and/or jurisdictional issue because relevant constitutional and statutory provisions establishing various Courts in Nigeria require every proceeding in the trial court and all business arising from it to be tried, heard, and disposed of by a single Judge. Nigerian laws further require all proceedings in an action after the hearing or trial, down to and including the final judgment or order, to be taken before the Judge who conducted the trial or hearing.[50] The letters and spirit of this legal requirement calls for consistency in the composition of the court in all proceedings, examination of witnesses included, and all through the hearing and determination of a case.[51] In the case of *A. O. Eghobamien v. Federal Mortgage Bank of Nigeria,*[52] the Supreme Court counselled:

> A trial is a judicial examination of evidence according to the law of the land, given before the court after hearing parties and their witnesses. **A trial must be conducted by the Judge himself and at the end of the hearing he will write a**

[50] On this point, see Sections 253, 254E(1) and (2), 258 and 273 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). See also, the relevant provisions in the following statutes: Section 46 of the High Court Law, Cap. 63, Vol. 3, Laws of Akwa Ibom State, 2022; Section 23 of the Federal High Court Act, Cap. F12, Laws of the Federation 2004; and Section 25 of the National Industrial Court Act, 2006.

[51] It is the position of this author that the provisions in the various Rules of Court enabling extra-territorial examination of witnesses by third-party adjudicators cannot predominate or detract from the provisions of the relevant statutes creating the various courts and providing that all proceedings must be heard and disposed of by a single Judge. This is because the sky is not the limit concerning the application of the Rules of Court. Where such a conflict or unholy collision arises, the definite and uncompromising provisions of the statute will triumph over the relevant provisions of the Rules of Court. See the case of *Oniwara B. Ibrahim v. Ishola Balogun Fulani & Ors.* (2010) 17 NWLR (Pt. 1222) 241 (CA) 268 [C] – [D]; and *Alhaji Mohammed Dikko Yusufu & Anor. v. Chief Olusegun Aremu Okikiola Obasanjo & Ors.* (No. 2) (2003) 16 NWLR (Pt. 847) 554 (SC) 603 [A] – [D].

[52] (2002) 17 NWLR (Pt. 797) 488 (SC).

> **judgment which is the authentic decision based on the evidence he received and recorded, it is a mistrial for one Judge to receive evidence and another to write judgment on it**.[53]

It is hornbook law that the Judge presiding over a matter at the trial court must remain unchanged and must be the one that heard all the witnesses.[54] Failure to adhere to this requirement infringes on the constitutional principle of fair hearing and renders such an exercise "*unlawful and incompetent*"[55] because any defect in composition is fatal to the proceedings.[56] The Supreme Court validated the conclusions reached above in the case of *Francis Shanu & Anor. v. Afribank Nigeria PLC,*[57] where it held thus:

> **Where an inquiry is commenced before one adjudicator and completed by another, the second adjudicator cannot as a rule decide upon the evidence given before the first**. It is the principle that **the judicial discretion which an adjudicator has to exercise in cases brought before him must be based upon the evidence taken before him**, and **it is not competent for him, generally, to act upon evidence taken before another adjudicator** unless there is a statutory provision permitting that procedure.[58]

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[53] ibid 501 [E] – [F] (Mohammed, JSC) (emphasis added).

[54] Where variation of the composition of the Court occurs at the trial Court where witnesses testified, it is inappropriate for a Judge who did not hear all the witnesses testify and did not observe their behaviour/demeanour during testimonies to deliver the Judgment. See the following cases on this point: *Senator Nurudeen Ademola Adeleke & Anor. v. Adegboyega Isiaka Oyetola & Ors.* (2020) 6 NWLR (Pt. 1721) 440 (SC) 505 – 506 [G] – [F], 511 [B] – [C], 512 [A] – [C], 512 – 513 [H] – [B]; *Oba J. A. Awolola v. The Governor of Ekiti State* (2019) 6 NWLR (Pt. 1668) 247 (SC) 266 [D] – [E]; *Nana Tawiah III v. Kwasi Ewudzi* (1936) 3 WACA 52; *Akosua Otwiwa & Anor. v. Adjoa Kwaseko* (1937) 3 WACA 230; and *Chief Yaw Damoah v. Chief Kofi Taibil & Anor.* (1947) 12 WACA 167.

[55] See the elegant views of Honourable Justice Uwaifo, JSC, in the case of *A. O. Eghobamien v. Federal Mortgage Bank of Nigeria* (2002) 17 NWLR (Pt. 797) 488 (SC) 502 – 503 [H] – [B] where he commented as follows: "*In the present case, there is an incidental issue as to the propriety of one trial Judge taking all evidence available in a case and another (trial) Judge considering such evidence to arrive at a decision. That becomes a matter of fair hearing which touches on the issue of constitutionality and natural justice, as well as public policy. It is unlawful and incompetent for one Judge to decide on the evidence heard by another Judge. For that to happen is an infringement of the principle that justice must not only be done, but must be seen to be done*." (Emphasis added)

[56] This position was rightly captured by Honourable Justice Abba Aji, JSC, in the case of *Senator Nurudeen Ademola Adeleke & Anor. v. Adegboyega Isiaka Oyetola & Ors.* (2020) 6 NWLR (Pt. 1721) 440 (SC) 526 [A] – [C], thus: "*What makes it worse is that a judgment or decision came out of it by a member who did not partake in the vital proceedings of 6/2/2019 wherein evidence and cross-examination of vital witnesses took place. It is settled law that a judgment that is a nullity has no legal validity and can confer no right nor impose any obligation on anybody. Any defect in the composition … is fatal, for the proceedings are a nullity no matter how well they were handled and decided. The defect is extrinsic to the proceedings*." (Emphasis added)

[57] (2002) 17 NWLR (Pt. 795) 185 (SC).

[58] ibid 225 [C] – [E] (Uwais, JSC) (emphasis added).

Thirdly, where the cross-examination of any witness in the foreign country is not going to be conducted in accordance with Nigerian law but foreign law, especially in cases before a competent judicial authority of a foreign country, the fair trial of such a case becomes a serious issue because a party may be placed at a serious disadvantage.[59] In *Re Boyse, Crofton v. Crofton,*[60] the English Court had to consider the advisability of issuing a commission to the French Court to examine a witness. The Court, disapprovingly, had this to say about the procedure:

> Mr. Gautier appears to me to be so mixed up with the whole transaction, that he is a person whose evidence it is very important for the Court to have. **If I were now trying the claim I should certainly desire to see M. Gautier in the box, in order that I might hear what he might have to say on all matters (and they are numerous) which are in controversy between the parties**. ....
>
> The [foreign] judge will put questions, and will no doubt do his duty with great ability, but the judge will determine what questions are to be put. **Now in a case of this kind I do not feel inclined [sic] delegate to any foreign tribunal the duty of determining what questions ought to be put ... when the cross-examination of this witness is most material, and will alone enable me to judge of the effect of his examination-in-chief. I decline to delegate my discretion to any other tribunal....**[61]

Even more disturbing is the fact that this procedure makes the authority of the foreign country the eyes, ears, and mouth of the trial court.[62] This means that the examination-in-chief, cross-examination, and re-examination of a witness under this procedure are outsourced and conducted in the presence of a third-party adjudicator and behind the back of a Nigerian trial Judge presiding

[59] See the ageless views of Honourable Justice Guttal, J., in the case of *I. C. Corporation v. Daewoo Corporation & Ors.* (n 28) [11] and [15].
[60] (1882) 20 Ch D 760.
[61] ibid 770 – 771 (Fry, J) (emphasis added).
[62] See, Martin Davies, 'Bypassing the Hague Evidence Convention: Private International Law Implications of the Use of Video and Audio Conferencing Technology in Transnational Litigation' 2007 55(2) *The American Journal of Comparative Law* 205, 207 which was cited with approval at page 43 of the cerebral work of Schleiffer Marais and Prisca Christina Leonie, 'Cross-border Taking of Evidence in Civil and Commercial Matters in Switzerland, South Africa, Botswana, Namibia, Nigeria, and Uganda', accessible via: <https://cdm21069.contentdm.oclc.org/digital/collection/ppl1/id/442001/> accessed 12 February 2025.

over a matter. In the case of *Senator Nurudeen Ademola Adeleke & Anor. v. Adegboyega Isiaka Oyetola & Ors.,*[63] the Supreme Court evangelized the proper position in the following words:

> It must be stressed here, that **cross examination of witness is very vital on a proceeding** as that affords the Judge a sufficient opportunity to watch and assess how credible and reliable that witness being so cross-examined is, by watching his behaviour and demeanour in court when responding to questions he was asked or question that was put to him. **That can only be done in the presence of the Judge anyway**.[64]

It is prominently the duty of a trial court in Nigeria to see, hear and assess witnesses in terms of their credibility.[65] This reasoning informed the decision of the Court of Appeal in the case of *Usang & Ors. v. Okia & Anor.,*[66] where the Court observed that "*evidence taken behind the back of the Judge may not meet the demands of justice*" and that it is "*…essential and mandatory and worthwhile that a trial Judge must be the one to hear the oral evidence and conduct the cross-examination and re-examination of a witness giving evidence in Court in any matter*."[67] Since the examination of witnesses abroad is a continuation of the proceedings pending in a Nigerian Court, it is an aberration in adjectival law and an abdication of the exclusive role of a trial Judge in adjudication for a Nigerian Court to assign its judicial function of examining witnesses in a pending matter to a third party. In the case of *Francis Shanu & Anor. v. Afribank Nigeria PLC,*[68] the Supreme Court gave visibility to this peculiar role in the following words:

> A trial Judge is a peculiar adjudicator. Of all Judges the heaviest, burden and responsibility of deciding a case rest with him. **He normally hears a case by receiving evidence both oral and documentary from witnesses who appear before him in court, are asked questions and cross-examined. In the**

[63] (2020) 6 NWLR (Pt. 1721) 440 (SC).
[64] ibid 521 [D] – [F] (Sanusi, JSC) (emphasis added). See also, the case of *Ade Obu & Ors. v. Chief Gabriel Otoyo & Anor.* (2021) 12 NWLR (Pt. 1791) 521 (CA) 534 – 535 [D] – [B] (Owoade, JCA).
[65] See, *Odiwe v. Nwajei* (2000) 4 NWLR (Pt. 651) 86 (CA) 94 – 95 [H] – [A] (Ba'aba, JCA).
[66] (2018) LPELR – 45186 (CA).
[67] ibid 15 – 28 [A] – [A] (Adah, JCA [as he then was]).
[68] (2002) 17 NWLR (Pt. 795) 185 (SC).

> **process, he engages himself to see, listen to and watch them testif**y. Not only that, his feelings and impressions are tested from time to time upon one issue or another when, apart from listening, he watches: he takes mental note of the performance of witnesses, their demeanour in the witness box, in particular how they react to questioning and the manner they give answers. **Quite often, it is this that helps the trial Judge as to who and what to believe**. **The witnesses are telling him what he was not aware of before, the circumstances in which it happened and in respect of which both sides claim that their evidence represents the truth; and the trial Judge will have to take a decision**. So if the trial Judge is up to the demands of his duty, he will continue to size up the witnesses in their oral testimonies. **Is a particular witness lying or prevaricating or just slow in nature, or has he a peculiar idiosyncrasy? That is for the trial Judge to determine**.[69]

Fourthly, another relevant factor is the consideration of the objections to the admissibility of documents that will be tendered in the foreign country. A competent judicial authority in the foreign country will determine such objections, not in line with Nigerian law, but in line with its distinct municipal laws and procedure. A Special Examiner in a foreign country may not be able to decide the objections to the admissibility of the documents forthwith or in accordance with the law in Nigeria or in line with recent judicial authorities in Nigeria. Consequently, it will serve no useful purpose for a Nigerian Court to receive and act on such half-baked proceedings from a foreign country.

Fifthly, Nigerian courts are only enjoined to apply the rules of international law which are not in conflict with Nigeria's fundamental law and/or have not been over-ridden by clear rules of Nigerian domestic law.[70] This legal reality strikes at the heart of this procedure because it changes, albeit

[69] ibid 225 – 226 [G] – [B] (Uwaifo, JSC) (emphasis added).
[70] This precept was laid down in the case of *Joseph Ibidapo v. Lufthansa Airlines* (1997) 4 NWLR (Pt. 498) 124 (SC) 150 [A] – [B], per Wali, JSC, thus: "*Nigeria, like any other Commonwealth country, inherited the English common law rules governing the municipal application of international law. The practice of our courts on the subject matter is still in the process of being developed and the courts will continue to apply the rules of international law provided they are found to be not over-ridden by clear rules of our domestic law. Nigeria, as part of the international community, for the sake of political and economic stability, cannot afford to live in isolation. It shall continue to*

temporarily, the composition of a Nigerian Court. It eviscerates the right to cross-examination and fair trial before a Nigerian trial Judge, and violates clear rules of evidence under Nigerian law. Furthermore, since this procedure draws its breath and existence from the various Rules of Court in Nigeria, it cannot override the provision for fair hearing in Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).[71]

Conclusively, it is the view of this author that the judicial exercise of the all-important sensory function of examining witnesses by a Judge in a pending matter in Nigeria cannot be delegated, assigned or outsourced to another Judge or judicial officer in a foreign jurisdiction. It also cannot be delegated to a Special Examiner in a foreign Country, a diplomatic agent, or any other person. Any attempt to delegate, assign or outsource the exercise of a judicial function nullifies the entire proceedings.[72]

6.0 Lessons from the United Kingdom

Comparatively, the jurisprudence in the United Kingdom for the examination of witnesses abroad has evolved in line with socio-legal demands and it is one Nigeria can emulate. In the United Kingdom, a trial Judge is placed in the epicentre of judicial proceedings in a foreign country by permitting such a Judge to exercise his discretion and appoint himself as a "Special Examiner" in a Convention Country, where the merit of the application so warrants. In the English case of *Peer International Corporation v. Termidor Music Publishers Limited,*[73] it was decided that the powers of a High Court Judge under the relevant Rules of Court[74] included the power to appoint himself or herself as the "Special Examiner".

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adhere to, respect and enforce both the multilateral and bilateral agreements where their provisions are not in conflict with our fundamental law." (Emphasis added) This position was restated by the Supreme Court in the case of *British Airways v. P. O. Atoyebi* (2012) 13 NWLR (Pt. 1424) 253 (SC) 278 – 279 [H] – [D] (Kekere-Ekun, JSC).

[71] Under Nigerian law, Rules of Court cannot override constitutional provisions. See, *Omokuwajo v. FRN* (2013) 9 NWLR (Pt. 1395) 300 (SC) 345 [G].

[72] See, David Andy Essien, 'Can Visit to Locus in Quo be Delegated by a Court to Another Party?' (*Barristerng*, 5 August 2023) <https://barristerng.com/can-visit-to-locus-in-quo-be-delegated-by-a-court-to-another-party-by-david-andy-essien-esq/> accessed 12 February 2025.

[73] (2005) EWHC 1048 (Ch) ("*Peer's Case*"). Accessed via: <https://www.casemine.com/judgement/uk/5a8ff72360d03e7f57ea8536> accessed 12 February 2025.

[74] See, Rule 34.13(4) of the Civil Procedure Rules, 1998, UK Statutory Instruments 1998 No. 3132 (L. 17) Part 34. Accessed via: <https://www.legislation.gov.uk/uksi/1998/3132/part/34/made> accessed 12 February 2025. This provision of the Rules of Court permits the High Court to appoint a "Special Examiner" to attend a foreign country to take evidence from a person located in that country, provided that this is permissible under the laws of that foreign country.

Recently, in *Gorbachev v. Guriev*[75] a High Court Judge exercised his power to appoint himself as a "Special Examiner" to travel to Dubai to take the evidence from two of the Defendant's witnesses who were unable to travel to England. *Gorbachev's Case* is significant because about 19 days before that decision, a similar application was rejected in the case of *Skatteforvaltningen v. Solo Capital Partners LLP & Ors.*[76] However, it is important to clarify that the *Skatteforvaltningen's Case* did not decide that a High Court Judge did not have this power at all. Rather, it was a case where a High Court Judge had simply declined to exercise the power to appoint himself as a "Special Examiner" and this can be attributed to the peculiar circumstance of the case.[77]

Consequently, and in deserving circumstances, a Nigerian court can be persuaded[78] by the decision in *Peer* and *Gorbachev* to give a progressive and purposive interpretation to the relevant Rules of Court in this respect.[79]

7.0 Conclusion and Recommendations

There is every reason to believe that evidence taken by a third-party adjudicator in a foreign Convention country behind the back of the trial Judge handling a matter in a Nigerian Court may not meet the demands of justice. This explains why it is important and mandatory that a trial Judge must be the one to hear oral evidence and preside over the cross-examination and re-examination

[75] (2024) EWHC 247 (Comm), per Pellington, KC (sitting as a High Court Judge) ["*Gorbachev's Case*"]. Accessed via: <https://www.casemine.com/judgement/uk/65d792d7065e7924419a214c> accessed 12 February 2025.

[76] (2024) EWHC 19 (Comm), per Andrew Baker, J. ("*Skatteforvaltningen's Case*"). Accessed via <https://www.casemine.com/judgement/uk/65a4bf745de3251386f2b24a> accessed 12 February 2025.

[77] Surprisingly, the applications in both *Skatteforvaltningen* and *Gorbachev's Cases* were unopposed. However, two key factors determined the outcome in the respective cases. Firstly, in the *Skatteforvaltningen's Case*, the witnesses could speak English, while in *Gorbachev's Case*, there was every possibility that the witnesses would require a translator since they had limited English-speaking ability. The need for smooth translation and effective communication in *Gorbachev's Case* made in-person examination of the witnesses by the trial Judge ineluctable and probably informed the procedure endorsed by the Court. Secondly, in *Skatteforvaltningen's Case*, there was copious documentary evidence that could help the Court reach its decision on the issues in contention. However, *Gorbachev's Case* did not involve significant documentary evidence. In this wise, an in-person examination of the witnesses in *Gorbachev's Case* by the trial Judge became important for the assessment of their credibility.

[78] It is a well-settled position in Nigerian legal jurisprudence that in the absence of known Nigerian decisions on a particular principle of law, foreign court decisions, particularly those from common law jurisdictions addressing common law issues, could be persuasive and applied by Nigerian courts. See the following cases: *Omega Bank PLC & Anor. v. The Government of Ekiti State & 2 Ors.* (2007) 16 NWLR (Pt. 1061) 445 (CA) 468 [D] – [H], 481 [H] – [B]; *Agbaje v. Fashola* (2008) 6 NWLR (Pt. 1082) 90 (CA) at p. 129, para. H; *Egbue v. Araka* (1996) 2 NWLR (Pt. 433) 688 (CA) 708 [D] – [E]; and *Sifax (Nig.) Limited v. Migfo (Nig.) Limited* (2018) 9 NWLR (Pt. 1623) 138 (SC) 179 [C] – [D], 180 [D] – [E].

[79] Since the examination of witnesses, in this sense, will be conducted before the Nigerian trial Judge in a foreign Convention country, not in his capacity as a "judicial officer" but as a "Special Examiner", this raises a further legal issue, to wit: the propriety of the evidence obtained by a trial Judge in his capacity as a Special Examiner for subsequent use in his capacity as a judicial officer.

of a witness in any matter pending before a Nigerian Court. Where this is impracticable, a party should resort to any of the following options:

i. Applying to the Court that a virtual hearing (now generously available in most Rules of Court) be conducted for such a witness.[80] This procedure will allow the other party to cross-examine the witness before the Nigerian trial Judge and will avail the trial Judge an opportunity to watch and assess the credibility, reliability, and demeanour of such a witness.

ii. Applying to the Court to appoint the Nigerian trial Judge handling the matter as a "Special Examiner" to the foreign Convention Country. The *Peer* and *Gorbachev's cases,* though persuasive precedents, could sway a Nigerian court in this respect. This will enable the trial Judge to personally take the evidence of the witness(es) in the foreign Convention country.

[80] See, for example, the provisions of Order 3 Rule (II)(1) and Order 40 Rule 28 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025 permitting virtual proceedings, video conferencing and the giving of evidence via electronic means. See also, *Adodo's Case* where the Defendant/Respondent, while opposing the application for the appointment of a Special Examiner, suggested the adoption of an "*electronic means via live video*". The Court, in reaching its decision validated the suggestion by directing the Claimant/Applicant to "*use other procedures contained in the Practice Directions 2020 for Covid-19 sittings*". With equal fervency, the trial Judge in *Skatteforvaltningen's Case*, Andrew Baker, J., favoured the giving of evidence via "video link". In *Gorbachev's Case*, Pellington, J., rightly reasoned that "*in most cases in the modern era it is highly likely that the balance will favour evidence being given by video link on cost and convenience grounds.*"

INNOVATIVE INFRASTRUCTURE FINANCE AS A CATALYST FOR ECONOMIC DEVELOPMENT IN NIGERIA

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ABSTRACT

Infrastructure has emerged as one of the indices for measuring the growth of a nation's economy and a key decision pointer for investor looking to put their money in a country. In Nigeria, financing infrastructure solely through annual budgets has proven unsustainable, resulting in the need for innovative financing processes through capital markets, Private public partnerships (PPP), debt securitization, philanthropic funding. However, these options require sound legal, government and policy support. This essay shows the challenges that financing infrastructure in Nigeria faces which includes: currency risk exposure, inadequate legal and regulatory frameworks, weak capital markets, and issues of bankability that limit investor confidence. Singapore presents a compelling case study which would be discussed in this essay, having successfully utilized robust regulations, deep capital markets, and consistent government support to position itself as a global infrastructure hub and through that grow the economy. Recommendation will be made with a bid to adopt similar reforms, friendlier regulations and strengthen our institutions, with this Nigeria can unlock innovative finance for infrastructure, stimulate private sector participation, and drive sustainable economic development.

Keywords: Infrastructure, Economic development, Finance, Project.

INTRODUCTION

A 2014 Research by the International Monetary Fund (IMF) shows that sub-Saharan African countries need to meet an infrastructure financing gap of about $41.6 billion[3]. A decade after Nigeria has doubled its infrastructure deficit with an estimate of $100 billion in financing gaps annually. Astonishingly, the World Bank has estimated about $3 trillion over the next three decades for Nigeria to bridge the financing gaps[4].This shortfall is evident in frequent power outages, congested roads, etc. In bridging the financing gaps, Nigeria is making progress in the state of its infrastructure especially on infrastructure like the Lekki Deep Sea port and the Lekki Corridor which is expected to strengthen Nigeria's logistic value chain[5] and stimulate regional trade. In addition, the establishment of entities like the Infrastructure Corporation (InfraCorp), with substantial seed capital, further underscores Nigeria's commitment to leveraging innovative finance models to develop critical hard and soft infrastructure assets, thereby generating a multiplier effect on business activities and fostering economic expansion. However, its speed has not matched up with the population explosion and increase demand.

While history has shown that infrastructures have been funded by government budgets, foreign loans/grants, and recently some Public-Private Partnerships (PPPs), Nigeria's infrastructure deficit remains a critical impediment to its economic growth, sustainable development, and global competitiveness.[6] Traditional public spending and aid have fallen short; Nigeria's fiscal limits and rising debt mean new solutions are needed. This article examines innovative finance beyond just public budgets and it will analyze current financing challenges and propose solutions. It will do a comparative analysis with Singapore, a developed economy and address the role that regulation play in stimulating infrastructure finance.

- **UNDERSTANDING KEY TERMINOLOGIES IN INFRASTRUCTURE FINANCE**

Infrastructure finance, in an ordinary context means the process of raising funds or capital that can be used in financing large infrastructure projects[7] through debt and equity.[8] Most project finance

[3]Amadou Sy. Impediment to growth. Finance & Development. June 2016, Vol. 53, No.2. <Impediment to Growth -- Finance & Development, June 2016> Accessed August 20, 2025
[4] Josephine Ogundeji. Stakeholders worry as weak infrastructure slows economic growth. 28th March, 2025. The Punch. <Nigeria's economic growth stifled by infrastructure deficit>Accessed August 20, 2025
[5]Samed Olukoya, Tinubu's Cabinet Approves $652 million China-backed Road Project Linking Lekki Port to Southern States. May 7, 2025. Investors king. <Tinubu Cabinet Approves $652m China-Backed Road Project Linking Lekki Port To Southern States | Investors King>Accessed August 20, 2025
[6] Josephine Ogundeji, Stakeholders worry as weak infrastructure slows economic growth. 28th March, 2025. The Punch. <Nigeria's economic growth stifled by infrastructure deficit>Accessed August 20, 2025
[7] Nigerian Corporate Finance, 'Understanding Project Finance in Nigeria's infra space' <Understanding Project Finance in Nigeria's Infra Space>Accessed August 23, 2025
[8] Hero Vired, 'Understanding the instruments of the capital market' April 23, 2024. <Instruments of Capital Market: Types, Functions, Examples>Accessed August 23, 2025

transactions in Nigeria utilize a combination of both debt[9] and equity[10]. By securing long-term financing options such as debt and equity financing, capital-intensive infrastructures such as roads, bridges, power plants are catered for without strain on government budgets.

Debt and Equity Financing as an option for infrastructure financing is dependent on various factors, like how long the project will be, the level of risk attached amongst other considerations. Equity is structured in ways that the lender has a stake in the project's ownership including the profits and the decision-making power. Debt financing is usually structured as a syndicated loan, often provided by financial institutions, Development Finance Institutions, international investment banks, and domestic banks[11]. Assets provided as security for the debt are commonly held by a security trustee on behalf of the syndicate of lenders. In some cases, sponsors' guarantees are also provided. Debt financing is often an option where the cash flows for the infrastructure project is predictable. Sometimes, in debt financing options, a Special Purpose Vehicle (SPV) is used.

Another important part of project infrastructure are the parties involved. The key players are mostly determined by the project at hand which is why you will see different companies on the erected signpost at the site of ongoing projects in Nigeria. Key players involved in an infrastructure finance transaction includes:

1. **Sponsors:**
   Typical sponsors of an infrastructure projects are public-sector entities, such as state or federal governments or their agencies. For commercial projects, including refineries, petrochemical plants, or ports, the sponsors are usually private-sector developers and investors[12]. These individuals or entities are the ones who initiate the project ideas, work on the project execution and provides guarantee for debt repayment or equity where it is equity financing[13]. For instance, in the construction of a power tower or project, the sponsor(s) is usually an independent power producer. Which is why Mainstream Energy Solutions Limited (MESL) is the entity sponsoring Kainji Hydro Power Plant.
2. **Lenders/Financial Institutions:**
   They are the providers of the funds used in the project, and often rely on the

[9] Debt and equity Financing for Infrastructure Projects. 30th September, 2024. <Debt and equity financing for Infrastructure projects: Key differences & benefits>Accessed August 24, 2025
[10] ibid
[11] Oludare Senbore, et al, Nigerian Law & Practice. Project Finance 2021, Chambers Global Practice Guides. <Chambers-Global-Practice-Guide-project-Finance-2021-002.pdf>Accessed August 24, 2025
[12] Oludare Senbore, et al, Nigerian Law & Practice. Project Finance 2021, Chambers Global Practice Guides. <Chambers-Global-Practice-Guide-project-Finance-2021-002.pdf>Accessed August 29, 2025
[13] Nigerian Corporate Finance, 'Understanding Project Finance in Nigeria's infra space' <Understanding Project Finance in Nigeria's Infra Space>Accessed August 29, 2025

projected cash flow for the repayment[14]. These entities include Development finance institutions (DFIs) and investment banks who structures and arrange project finance loans. Commercial banks often participate in these loans as direct lenders. International financial institutions and international investment banks are also significant providers of debt financing. Government entities may also provide financing for PPP projects through either equity or debt. InfraCorp**,** co-owned by the Central Bank of Nigeria (CBN), the African Finance Corporation (AFC), and the Nigerian Sovereign Investment Authority (NSIA)[15] also falls into the category of a lender. InfraCorp is expected to raise capital (through debt or equity) from these entities, as well as pension funds and private-sector development financiers, to fund infrastructure development.

3. **Guarantees:**

In Nigeria, institutions like Infracredit, Chapel Hill Denham Nigeria Infrastructure Debt Fund (NIDF) provides debt financing options for infrastructure projects and also serves as credit guarantees for sponsors.

4. **Project Company:**

The project company is the borrower; who can be multinational, local firm, or aoint venture. Typically, a project company fulfill its duties in regards to the operation of the project through an Operations and Maintenance (O&M)[16] contracts. An O&M contracts provides responsibility for the operator (project company) to maintain the quality of the project's asset.

5. **Construction Contractors:**

The construction contractor's primary obligation to deliver the facility is usually executed under Engineering, Procurement, and Construction (EPC) contracts. These agreements ensure construction and commissioning are carried out at a fixed price, within set specifications, and on schedule[17].Contractors may also participate as equity holders in infrastructure projects while contributing to the project financing itself.

6. **Resource Supplier:**

Resource suppliers play a vital role in infrastructure project financing by providing the essential inputs required for project operations[18]. These may include fuel for power plants, bulk water for treatment facilities, or utility services like water and

[14] Nigerian Corporate Finance, 'Understanding Project Finance in Nigeria's infra space' <Understanding Project Finance in Nigeria's Infra Space>Accessed August 30, 2025

[15] Michael Ango, Bridging Nigeria's Infrastructure Deficit through InfraCorp: Propects, Challenges and Future Outlook. Andersen in Nigeria. 16th May 2022. Accessed <https://www.mondaq.com/nigeria/corporate-governance/1193284/bridging-nigerias-infrastructure-deficit-through-infracorp-prospects-challenges-and-future-outlook> September 13, 2025.

[16] Brickstone. Major Participants in Infrastructure project Financing. Brickstone. Accessed from <https://brickstone.africa/participants-infrastructure-project-financing/>

[17] ibid

[18] ibid

electricity. However, contributions are not limited to physical commodities. In mining projects, for instance, governments may supply access through concessions, while for toll roads or pipelines, the critical input is often the right-of-way granted by local or federal authorities.

7. **Regulatory Bodies:**

   Infrastructure Finance Projects are facilitated in accordance with certain guidelines established by certain regulatory bodies like: the Security Exchange Commission (SEC), Debt Management Office (DMO), Industry specific regulatory bodies like: Nigeria Electricity Regulator Commission (NERC) and The Infrastructure Concession Regulatory Commission (ICRC). SEC guides the capital market operation and the fund raising, the DMO guides the issuance of bonds done by the Federal Government. The ICRC is in charge of Infrastructure finance that has to deal with Public-Private partnerships. Where the infrastructure in question deals with the electricity industry, the NERC is a regulatory body that needs to be consulted. The major function of these regulatory bodies is the issuance of permits, promotion of transparency and provision of guidance on the necessary steps to take before issuance.

- **LEGAL MECHANICS INVOLVED IN INFRASTRUCURE FINANCE**

The execution of project finance transactions in Nigeria is guided by some mechanics such as relevant laws, contractual obligations and even the processes that makes an infrastructure finance transaction whole. For instance, the legal frameworks provide a basis for which the transaction is conducted. The contractual arrangements in this article deals with the documentations involved in the transaction, and the processes covers the essentials needed to have a well execution financing phase.

- **LEGAL FRAMEWORKS**

  1. **The Companies and Allied Matters Act (CAMA) 2020:** CAMA 2020 is the major legal frameworks guiding the establishment and operations of companies, whether public company or private limited liability. An infrastructure project company is typically private limited liability which means they derive the power to act, including the provisions on their liability from the Companies and Allied matters Act. Section 18[19] makes provisions for the formation and registration of companies including Special Purpose Vehicles (SPV) which is often used in the financing of infrastructure projects.
  2. **The Nigeria Tax Act 2025**: The Nigeria Tax Act applies to Infrastructure Finance transactions, it covers issues of double taxation, chargeable tax on loan capital,

[19]Companies and Allied matters Act (CAMA) 2020

Economic Development tax incentives which applies to Infrastructure Project in free trade zone.

3. **Nigeria Insurance Industry Reform Act (NIIRA) 2025:** Insurance in Infrastructure finance mitigates risks for project companies, lenders, and sponsors by transferring potential losses to insurers.
4. **Industry Specific Laws and Regulations**: These include the National Electricity Regulatory Commission (NERC) Regulations, the Land Use Act, The Petroleum Industry Act 2021, The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act.
5. **The Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act, 2005 (ICRC Act)**: The ICRC Act is a major legal framework that deals with project financing. Section 1 of the Act established the ICRC to regulate and monitor public-private partnerships (PPPs) and concessions.Section 2 empowers the ICRC with the ability to issue guidelines and standards for PPP agreements.
6. **The PPP Manual (2018**): This guides project identification, business case preparation, procurement, and contract management.
7. **The PPP Project Financial Model Guide (2025):** It provides a codified framework and standards for preparing, testing, and presenting PPP financial models in Nigeria.

- **CONTRACTUAL ARRANGEMENTS**

The contractual and documentation framework for infrastructure finance in Nigeria involves several critical aspects, primarily focused on securing the lenders' interests and ensuring enforceability.

- Concession Agreements: According to Section 36 of the ICRC Act, a concession is a contractual agreement in which the project proponent or contractor undertakes the construction, financing, operation, and maintenance of any infrastructure, facility, and will also supply any necessary machinery and equipment.[20]Depending on the needs of the grantor, concession agreements can take many different forms. Some stipulate that the concessionaire must design, build, and operate the infrastructure for profit before returning ownership to the grantor at the end of the concession period (i.e., Design, Build, Own and Transfer, or DBOT), while others specify that the

[20] Sefton Fross, 'A Negotiation of Concession Agreements in Nigeria (An Introduction to key concepts in PPPs) 12 November, 2020 <https://www.mondaq.com/nigeria/government-contracts-procurement-ppp/1005180/negotiation-of-concession-agreements-in-nigeria-an-introduction-to-key-concepts-in-public-private-partnerships#:~:text=A%20concession%20according%20to%20Section%2036%20of%20the,any%20infrastructure%20and%20the%20provision%20of%20any%20services>Accessed August 30, 2025

concessionaire must only build (or rehabilitate), operate, and transfer the infrastructure (Build Operate Transfer, or BOT), leaving the design phase to the public authority grantor.

- Project Agreements/Contract: A project contract is a legally binding agreement that clearly defines the rights, responsibilities, and obligations of all parties involved in the project. The contract defines the network of relationships to manage and allocate risk in other to enable the success of the project. Common example includes: Engineering, Procurement, and Construction (EPC) contracts, operational and maintenance (O&M) agreements etc.
- Financing Agreements/Contract: A finance contract refers to legal binding agreement between project sponsor and its lenders, it outlines the terms under which debt and equity are provided to fund a specific infrastructure project, the repayment schedules, interest rates and the protection accorded to lenders to secure their investment. It is typically governed by Nigeria law, however for foreign lenders they prefer to embrace English law.

- **THE NEED FOR INFRASTRUCTURE FINANCE IN NIGERIA**

Infrastructure finance holds immense importance for Nigeria due to several compelling reasons:

- Bridging the Infrastructure Deficit: Nigeria faces a substantial infrastructure gap, and infrastructure finance, especially through PPPs, is seen as a viable means to resolve this significant deficit. The government actively promotes initiatives like the Highway Development and Management Initiative (HDMI) to attract private sector involvement in constructing and rehabilitating roads.
- Catalyst for Economic Growth and Expansion: The development of hard infrastructure assets (roads, ports, bridges) and soft infrastructure (broadband penetration) through mechanisms like Infra-Corp is expected to have a multiplier effect on the growth and expansion of business activities across the country.
- Attracting Private Sector Investment and Expertise: With the government facing capital constraints, infrastructure finance is critical for attracting private-sector expertise and funding. This includes increased investment in large-scale projects, which complements public efforts.
- Leveraging Legislative Reforms: Recent legislative changes, such as the Petroleum Industry Act (PIA), are designed to create a more conducive environment for investment in the oil and gas sector. This is expected to secure much-needed investments for projects like new refineries, gas

infrastructure, and pipeline networks, enhancing project finance transactions.

- Addressing Sector-Specific Challenges: In sectors like agriculture, infrastructure finance is vital for providing solutions to issues such as the absence of adequate storage and processing facilities and inefficient transportation networks. Investment in these areas is envisaged to generate an inflow of project finance transactions that address these critical needs.

- **INNOVATIVE FINANCING OPTIONS IN NIGERIA**

a. Public-Private Partnerships (PPPs): A major method of financing projects is the involvement of private entities with the major role of the private entities being provision of funds used in financing a project in exchange for the revenue generated from such project. In the execution and management of such infrastructure project, the models mostly employed can be Public-Private Partnerships (PPPs). PPP first emerged in the United Kingdom in the wake of the conservative revolution of Margaret Thatcher[21]. In PPPs, the Private entities enter into a contractual agreement with the public sector with the sole function of financing the project. PPPs are guided by the Infrastructure Concession Regulatory Commission Act 2005, Public procurement Act, 2007, Fiscal Responsibility Act, 2007, the PPP Manual 2018 and recently, the PPP Project Financial Model Guide 2025 (the Guide). In addition to these are state legislations that govern PPP Projects in these states, such as the PPP Law of Lagos State[22] A major example of PPP project is the Lekki Deep Sea Port and the Shiroro Hydro Electric Power Plant.[23]

b. Blended Finance: Blended Finance has recently emerged as a powerful tool for financing infrastructure finance globally, it combines different sources of funding, including public, private, and philanthropic capital to address the most pressing development needs- while making these projects financially viable and attractive for investors.

Blended concessional finance, as defined by the Developmental Finance Institution ('DFIs') Working Group, is the strategic use of concessional capital from donors or third parties alongside DFIs regular commercial financing to

[21]Kalu Emenike, 'Infrastructure Finance Mechanism and Challenges in Nigeria' Independent Journal of management & Production. V.6, n.3, July – September 2015.
[22]Ajibola Asolo & Aminat Tijani, 'The Investment and Securities Act 2025: Leveraging Capital markets to Boost Public Infrastructures Development. <The-Investment-and-Securities-Act-2025_Leveraging-Capital-Markets-to-Boost-Public-Infrastructure-Development.pdf>Accessed September 05, 2025
[23] FEC Approved PPP Projects. ICRC website <https://www.icrc.gov.ng/projects/fec-approved-ppp-projects/>Accessed September 05, 2025

attract private sector investment into sustainable development initiatives.[24] Simply put, blended finance uses public or philanthropic capital to de-risk investments, enhance returns, and encourage private sector participation in projects that might otherwise be deemed too risky or unprofitable. The goal of blended finance is to unlock private capital by using concessionally – financial support provided at below-market rates to reduce risk and enhance commercial viability of the investments.

The energy sector particularly that of clean energy account for over 90% of the total amount of blended finance investment. Nigeria being in need of energy solution (electricity, solar and clean energy) needs to tap into the global surge in blended finance transactions.

One of the strongest advantages of blended finance is the ability to de-risk infrastructure project through credit enhancement, equity investment, technical assistance and political risk-mitigation. Rwanda's Kigali Bulk Water Project was finance through blended finance, a project that was undertaken to provide clean drinking water to Kigali's resident, by blending concessional loan with commercial finance, the project has become bankable scalable. Blended finance offers Nigeria the opportunity to address infrastructural deficits and contribute to sustainable development.

c. Infrastructure Investment Funds (IIFs)

Infrastructure Investment Funds is another innovative approach used to finance large scale infrastructure development. Infrastructure Investment Funds pool capital from institutional investors- including pension funds, insurance companies, Development Financial Institutions (DFIs) and sovereign wealth funds. These funds are tailored to align with long term nature off infrastructure investments, offering both investors and project developers a reliable means to address long gestation periods and the significant capital requirements often associated with infrastructure development.[25]

The key advantage of IIFs is that they provide a structured mechanism for channeling private capital into public infrastructure project. The Funds not

[24] DFI Working Group on Blended Concessional Finance for Private Sector Projects, 'Joint Report, March 2023 Update' (2023) <https://www.ifc.org/content/dam/ifc/doc/mgrt/2023-03-dfi-bcf-joint-report.pdf/> Accessed September 05, 2025.

24 Afri Fund Capital, 'Case Study: Kigali Bulk Water PPP Project – Replicable Success Factors' (2025) <https://afrifundscapital.com/kigali-bulk-water-ppp-project-replicable-success-factors/> accessed September 05, 2025.

[25] Rebecca Lake, 'Infrastructure Funds: Definition and Examples' (2019) <https://finance.yahoo.com/news/infrastructure-funds-definition-examples-231430619.html> accessed August 17, 2025

only support government-led initiatives but also creates opportunities for private players to participate.

The Nigeria Capital Market plays a crucial role in raising Infrastructure Investment Funds through structured vehicles- like debt or quasi- equity instruments. In the past decade, the Nigeria Capital Market through Securities and Exchange Commission (SEC) has approved several infrastructure fund shelf programs running into 1.5 trillion naira.[26]There are several successful cases of infrastructure funds in the Nigeria capital markets, serving as role models for future investment vehicles:

Chapel Hill Denham Nigeria Infrastructure Funds (NIDF): NIDF is the first listed infrastructure debt fund in Nigeria, NIDF focuses on lending to projects such as energy, transport and utilities.[27]

Coronation Infrastructure Fund (CIF): The fund launched under NGN 200 billion shelf-program. CIF raised #8.79 billion from its Series 1 issuance. The fund was recently listed on the Nigeria Exchange (NGX), in other to provide liquidity, transparency, and accessibility. [28] The fund has since paid #1.7 billion in dividends.

United Capital Infrastructure Funds: This fund pools capital from institutional investors and strategically invests in a diverse portfolio of infrastructure projects across Nigeria, fostering economic growth and development.[29]ARM/Harith Infrastructure Fund, Stanbic-IBTC Infrastructure Fund etc. Infrastructure Investment Funds offer several benefits for funding infrastructure projects. Prominent among them being that it offers investors stable return. While Nigeria has made little progress in this regard, more still needs to be done to encourage such investment.

d. Green Bonds and Sustainable Finance: Green Bonds and Sustainable Finance are crucial for infrastructure development in a climate conscious World. Sub Saharan Africa remains highly vulnerable to climate change; Nigeria is no exception to this vulnerability.

[26] Banjo Olaniran, 'SEC Nigeria Approves 5 Infrastructure Fund Shelf Programmes Totalling N 1.5 Trillion' Business metrics (2024) <https://businessmetricsng.com/sec-nigeria-approves-5-infrastructure-fund-shelf-programmes-totalling-n1-5-trillion> accessed August 17, 2025

[27] NIDF –Nigeria Infrastructure Debt Fund <https://nidf.ng/>accessed August 19, 2025

[28] Helen Oji, 'Coronation lists N8.79 billion Series 1 Infrastructure fund on NGX' Guardian (2025) https://guardian.ng/business-services/capital-market/coronation-lists-n8-79-billion-series1-infrastructure-fund-on-ngx/#google_vignette accessed August 19, 2025.

[29]RazaqAyinla, 'United Capital Infrastructure Fund distributes N4.6bn to unit holders since inception' BusinessDay (2025) <https://businessday.ng/companies/article/united-capital-records-24-99-gross-return-shares-over-n4-6bn-in-dividends/> accessed August 20, 2025.

Green bonds are simply debt instruments used to raise capital specifically for projects that have positive environmental or climate benefit, such as renewable energy, clean transportation, afforestation. As concerns over climate change intensify globally, green bonds are gaining traction as an effective means of financing sustainable projects. Nigeria became a frontrunner in this space as the first African nation and only the fourth country to issue sovereign green bonds channeling the funds into renewable energy and afforestation initiatives. The green bond issued in 2017 by the Federal Government of Nigeria (FGN) raised NGN10.69 billion, with a 13.48% 5- year tenor.[30]

These bonds have paved way for private and public entities to participate in sustainable finance in the energy, infrastructure, and transport sector. Despite these, Nigeria trailblazer in sustainable financing is still underwhelming, Nigeria needs to step up to match other African economies, such as Egypt- $750 Million in sovereign green bonds, $478.7 million Sustainability Panda Bonds[31] ,to mention but a few. As we move towards a sustainable world, sustainable finance and green bonds offer Nigeria the opportunity to drive impactful change and revamp our infrastructure.

e. Sukuk Islamic Bonds: Sukuk Islamic Bonds have gained wide acceptance as a strategic tool for financing critical features globally. Sukuk is a form of Islamic financial instrument structured to comply with Sharia law, which prohibits interest-based financing. Unlike conventional bonds that represent debt obligations, Sukuk bonds represent partial ownership in an asset, or a project, thus creating a link between financing and real economic activity. The returns are generated through the performance of the underlying asset, thereby ensuring proper use of funds.

Nigeria has made some progress in issuing Sukuk bonds to fund its infrastructure since the first issuance in 2017. The Federal Government has raised a total of over NGN 1.1 trillion through seven issuances of Sukuk with the recent being NGN 300 billion sovereign sukuk issuance in May 2025,[32] aimed at developing key national infrastructure. Several parts of the funds

[30] Jude Chiemeka, 'Nigeria green bonds are a key step in our sustainable finance agenda' (2025) <https://focus.world-exchanges.org/articles/nigeria-green-bonds>accessed August 20, 2025.
[31] Africa Development Bank, 'Egypt issues Africa's first Sustainable Panda Bond worth 3.5 billion RMB backed by African Development Bank and Asian Infrastructure Investment Bank' <https://www.afdb.org/en/news-and-events/press-releases/egypt-issues-africas-first-sustainable-panda-bond-worth-35-billion-rmb-backed-african-development-bank-and-asian-infrastructure-investment-bank-65097> accessed August 20, 2025.
[32] Peter Moses, 'FG Issues N1.1 trn Sukuk Bonds to Finance 5,820 Km Road' Daily Trust (2024) <https://dailytrust.com/fg-issues-n1-1trn-sukuk-bonds-to-finance-5820-km-road/> accessed August 21, 2025.

have been used to finance notable infrastructure project in Nigeria, notable ones include: Rehabilitation of Enugu-Port-Harcourt expressway, Dualization of Kano-Maiduguri Road, Construction of the Kaduna Eastern Bypass to mention but a few.[33]

Sukuk Bonds in financing infrastructure offers several benefits which include: it increases accountability and transparency in the deployment of capital, Broaden the investor base, less risky in that it is backed by a tangible asset. The bonds have proven to be effective and innovative alternative to traditional debt financing. We advocate that Nigeria should build on successful momentum by making Sukuk a core part of its infrastructure financing strategy. By expanding the scope of Sukuk use across different sectors, enhancing investor education and fostering a robust regulatory framework, with these in place Nigeria can actualize and harness the benefits of this innovative financial instrument to address its infrastructure needs, drive economic growth, and improve the quality of life for its citizens.

f. Infrastructure Debt Securitization: Infrastructure debt securitization involves pooling debt from infrastructure projects and issuing it as securities to investors. These debt assets are converted into tradable securities on the stock exchange (secondary market), this model enables governments and project owners to free up capital for new projects and gives institutional investors a way to access long-term and stable income streams. The way it works is that the cash flows generated by infrastructure assets- like power plant, Railway or toll roads are used to pay interest and principal to investors holding the securitized debt. These securities are structured into tranches, with varying level of risks and return. Senior tranches have a higher claim on cash flows and are rated in investment-grade, attracting risk-averse investors like pension funds and insurance companies, junior tranches offer higher yields for investors who are willing to take on more risk. It can be traded on the secondary market.[34]In 2006, Peru used debt securitization to finance the construction of the IIRSA Interoceania Sur highway, a major road concession to the tune of $226 million[35] also the Asian Development Bank (ADB) has also

[33] Inwalomhe Donald, 'Sukuk as an Instrument of Economic Development' Business Day <https://businessday.ng/opinion/article/sukuk-as-an-instrument-of-economic-development/> accessed August 21, 2025.

[34] Danny Alexander 'How financial products can attract infrastructure capital from institutional investors' <https://www.mckinsey.com/industries/private-capital/our-insights/how-financial-products-can-attract-infrastructure-capital-from-institutional-investors>accessed August 22, 2025.

[35] Carlos Albarracin and Augusto Caceres, 'New Debt Instrument Helps Infrastructure Financings in Peru' Norton Rose Fulbright (2012) <https://www.projectfinance.law/publications/2012/may/new-debt-instrument-helps-infrastructure-financings-in-peru/> accessed August 22, 2025.

utilized debt securitization to finance renewable energy projects such as wind farms and solar power plants.[36] From the Africa demography, while the concept is still emerging on the continent, there are notable initiative which includes Africa Development Bank (AFDB) and Emerging Africa Infrastructure Funds (EAIF) which have driven infrastructure securitization, with AFDB participating in a $500 million fund for various projects and South Africa's Bayport Securitization Programmes, which raised over R 350 million.[37] These examples reflect the growing interest for debt securitization in financing long term infrastructure project across the continent. Infrastructure debt securitization offers Nigeria a transformative opportunity to mobilize private capital, enhance market liquidity, and bridge Nigeria's Infrastructure gap when aligned with proper policy support and market development.

- **CHALLENGES FACING INFRASTRUCTURE FINANCING IN NIGERIA**

The Major Challenges facing Infrastructure Finance in Nigeria are as follows;

i. Exposure to Currency Risks: Exposure to currency risks is an important feature of infrastructure financing. Infrastructure project revenues are often generated in local currencies, while servicing of foreign capital, whether debt or equity, involves payment in foreign currency. Fluctuations in the exchange rate of naira, as well as capital controls limiting currency convertibility pose a big problem to foreign investors invariably leading to reluctance in investing in long term infrastructure.
ii. Inadequate Legal and Regulatory Framework: Inadequate regulatory framework still hinders infrastructure financing in Nigeria. Inadequate regulatory framework, poor policies and poor enforcement scare investor who requires strong institutional support to ensure their investments are secure and yield returns.
iii. Risks associated with Infrastructure Finance: Infrastructure investments are typically up-front, with high degree of asset specifically and risky revenue streams stretching many years into the future. Investors are very hesitant to commit their money into such investment without adequate contractual protection.
iv. The issue of Bankability: There are very few bankable projects, most projects preparation are not sophisticated enough to address bankability concerns from the outset. Key

[36] Thiam Hee Ng and Jacqueline Yujia Tao, 'Bond Financing for renewable energy in Asia' Energy Policy (2016) 95, p.509-517 <https://www.sciencedirect.com/science/article/abs/pii/S0301421516301197> accessed August 22, 2025.
[37] Bayport Securitization, 'Bayport Securitization raises R350m of debt funding' (2014) <https://www.bayportfinance.com/wp-content/uploads/2018/08/SENS-BAYA44BAYA46-20140331-Final.pdf> accessed August 22, 2025.

challenges include inadequate funding for expensive feasibility studies and the lack of strong precedents, given the relativity short history of PPP projects in the country and the success rate.

v. High cost of projects: High cost of projects discourages infrastructure financiers. Due to economic and political factor, the cost of undertaking project in Nigeria is relatively higher compared to costs of similar projects in other countries. Thus, the opportunity cost of financing infrastructure projects in Nigeria is relatively high.

vi. High preference for quick win sector: Most private sector investments in African infrastructure have been in quick return sectors such as telecoms. Telecom projects have a quicker gestation period whilst investment in concessions will be recouped over a much longer period ranging from 25-30 years.

- **SINGAPORE SUCCESS AS A CASE STUDY**:

  Singapore's success in infrastructure finance is often cited as a global model. In a data released by Global Infrastructure Hub, Singapore leads the world in infrastructure governance drive with a score of 83.4 (out of 100), its recovery rate of 88.7 cents on the dollar is twenty percent above the average for high income countries.[38]

  The city-state transformed from a developing economy in the 1960s into one of the world most advanced financial and infrastructure hubs by combining visionary leadership, strong institutions, and sound policy frameworks.

  A key driver was the establishment of clear long-term infrastructure planning through agencies such as the Urban Redevelopment Authority (URA) and the Land Transport Authority (LTA). These bodies integrated urban planning with financial sustainability, ensuring that projects were both feasible and bankable. Singapore also created a transparent and predictable regulatory environment, which fostered investor confidence.[39]

  The government actively mobilized private capital through well- structured Public-Private Partnerships (PPPs), while maintaining strict governance standards to minimize risks. Infrastructure projects such as Changi Airport, the Mass Rapid Transit (MRT) system, and port facilities were financed through a mix of government funding, user charges, and private investment, ensuring financial viability.[40]

[38] Kathy LAI, 'How Singapore and the GIF are bridging the infrastructure gap in Asia and beyond' World Bank Blogs (2018) <https://blogs.worldbank.org/en/ppps/how-singapore-and-gif-are-bridging-infrastructure-gap-asia-and-beyond> accessed August 23, 2025.

[39] Kathy LAI, 'How Singapore and the GIF are bridging the infrastructure gap in Asia and beyond' World Bank Blogs (2018) <https://blogs.worldbank.org/en/ppps/how-singapore-and-gif-are-bridging-infrastructure-gap-asia-and-beyond> accessed August 23, 2025.

[40] Ibid

In addition, Singapore developed strong financial institutions and positioned itself as a regional hub for project finance.[41] By leveraging its stable macroeconomic environment, innovative financing models, and disciplined implementation, Singapore successfully built world-class infrastructure that continues to attract global investors and set benchmarks for other nations.

- **LESSONS FOR NIGERIA AND STRATEGIES FOR DEEPENING INFRASTRUCTURE FINANCING IN NIGERIA**

  From the discussion overall it strongly shows that much needed investment in Nigeria's infrastructure is one of the critical challenges facing the country development, the government as well as the private sector players can take certain steps to enable a greater number of infrastructure development projects attract adequate financing as seen from the success story of Singapore.

  A. Excellent Legal Framework: The government must establish and implement a coherent and comprehensive framework for such projects at both of the state and federal level covering recurring issues including risk allocation and mitigation strategies.
  B. Proper Structure: Policy makers must ensure that infrastructure is structured to an investment grade level that is hedged against macroeconomic risks and are regulated or licensed in some form.
  C. Enhance the capacity of the capital market to supply long term debts capital in terms of infrastructure bond, the capital market is crucial for financing of infrastructure project with long term assets whose costs may take within 10 to 30 years to recoup. The infrastructure type bond can be issued in the local (NGX) or international capital markets and structured to be secured and serviced by cash flows generated from a specific project or a portfolio of projects, without recourse to the sponsors.
  D. Government-driven Intervention / Support: Government can play a vital role by providing guarantees that ensure the continuity of projects, thereby offering assurance to investors. Several states in Nigeria, including Lagos, Imo, Ekiti, Gombe and Delta States have already adopted this approach by issuing state bonds to finance infrastructure development.
  E. Proper Project Appraisal: When selecting infrastructure development projects, priority should be given to clearly known public needs that can only be addressed through direct Public Private Partnership (PPP) intervention or any other type of intervention. Such projects should be capable of generating sustainable cash flows,

[41] FEP FINANCE CLUB, 'How Singapore became a Global Financial Center' (2024) <https://fepfinance.org/2024/05/02/article-how-singapore-became-a-global-financial-center/>accessed August 23, 2025.

ensuring that private sector investors can recover their investments while delivering long term benefits.

F. Local Currency Financing: Local currency financing would solve currency risk in Nigerian infrastructure by aligning project revenues and debt service in the same currency, it will help to prevent losses from Naira depreciation and ensuring stable, long-term debt repayment. Nigeria government has to look inward to the funds that are sitting idle without any use (pension funds, Insurance funds) to finance infrastructure project in Nigeria.

- **CONCLUSION**

We submit that Infrastructure Investment Funds (IIF), Blended Finance, Public-Private Partnerships (PPP), Bonds (Sukuk, Green), Sustainable Finance and Infrastructure Debt Securitization are critical instruments for bridging Nigeria's infrastructure deficit. When supported by sound regulatory frameworks, ethical governance and Institutional credibility, these models can unlock substantial domestic and foreign capital while ensuring long-term project sustainability. However, their success is highly dependent on political will, rule of law, policy consistency and strong oversight to guarantee accountability and investor's confidence. By replicating lessons from Singapore, where well-structured financing models resulted in rapid economic transformation, Nigeria can position infrastructure as the pathway for economic development and national prosperity.

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AN ASSESSMENT OF THE SCOPE AND ENFORCEMENT OF DATA SUBJECT RIGHTS UNDER NIGERIAN DATA PROTECTION REGIMES.

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Abstract

This research provides a comprehensive assessment of the scope and enforcement of data subject rights under Nigeria's data protection regimes, analysing the pivotal legal transition from the Nigeria Data Protection Regulation (NDPR) of 2019 to the more robust Nigeria Data Protection Act (NDPA) of 2023. It acknowledges the global trend toward stronger data protection, driven by the recognition of digital rights as fundamental human rights, and positions Nigeria's recent legislative efforts within this movement. The study investigates the legal provisions of the NDPA, which granted key rights such as the right to be informed, the right to access, and the right to erasure, and examines the establishment of the Nigeria Data Protection Commission (NDPC) as the primary enforcement body. It identifies a critical gap between the law's comprehensive framework and its practical implementation. The research will discuss significant challenges to effective enforcement, including the NDPC's institutional capacity, a widespread lack of public awareness, the high cost and complexity of judicial redress, and the practical difficulties of enforcing the law extraterritorially against foreign companies. It concludes that while Nigeria has a strong legal foundation for data privacy, the true measure of its success lies in overcoming these systemic challenges. The study offers targeted recommendations for policymakers and the NDPC to enhance institutional capacity, improve public education, and streamline enforcement mechanisms, thereby ensuring that the rights of data subjects are not just codified but are effectively protected and enforced in practice.

Keywords: Data Privacy, Data Subject, Data Subject Rights, Enforcement, NDPR, NDPA.

1.0 INTRODUCTION

The increasing digitalization of societies has brought the issue of data privacy and protection to the forefront of global legal and policy discourse. Nigeria, Africa's largest economy and a major hub for technological innovation, has not been an exception to this trend. With the rapid growth of the digital economy and the proliferation of data-driven services, the need for a robust legal framework to protect the fundamental rights of individuals concerning their personal data has become paramount.

Before 2019, the initial legal framework on data protection principles in Nigeria was fragmented, with the right to privacy primarily enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the Constitution), coupled with other Nigerian laws that have data protection provisions such as the Consumer Code of Practice Regulations 2007, Freedom of Information (FOI) Act 2011, Cybercrime (Prohibition, Prevention, etc.) Act 2015, and the National Identity Management Commission (NIMC) Act 2007.

However, a more comprehensive data protection regime began with the issuance of the Nigeria Data Protection Regulation (NDPR) of 2019. The NDPR was a significant step, as it introduced key principles for data processing, such as consent, data minimization, and accountability, and established the rights of data subjects. This was the first comprehensive legal framework in Nigeria designed to protect personal data. [2] It was issued by the National Information Technology Development Agency (NITDA) in January 2019 to safeguard the rights of individuals and foster a secure digital environment.[3] Although it has been superseded by a new law, it laid the foundation for Nigeria's modern data protection regime.[4]The NDPR, while a foundational document, was a subsidiary regulation, which created questions about its enforcement and overall legal force. Recognizing the need for a more robust and comprehensive legal framework, the Nigerian government enacted the Nigeria Data Protection Act (NDPA) in June 2023 and established the Nigeria Data Protection Commission (NDPC) to serve as an independent regulatory body for the Act. This new legislation marks a pivotal shift, moving data protection from a regulatory guideline to a substantive legal right with significant penalties for non-compliance. It also clarifies key concepts and aligns Nigeria's data protection regime more closely with international standards, such as the European Union's General Data Protection Regulation (GDPR).[5]

Despite these legislative advancements, a critical question remains: To what extent are the data subject rights outlined in these regimes being effectively scoped and enforced? This research aims to provide an in-depth assessment of the scope and enforcement of data subject rights under Nigerian data protection regimes. It will examine the legal provisions of both the NDPR and the NDPA, analyse their practical implementation, and investigate the challenges and opportunities in ensuring that individuals can effectively exercise their rights in a fast-evolving digital landscape.

2.0 CONCEPTUAL ANALYSIS

2.1 Data Privacy

Data privacy is the concept that individuals have a fundamental right to control how their personal information is collected, used, shared, and stored.[6] It is a critical component of a digital society, encompassing both the legal frameworks that protect personal data and the ethical responsibilities of those who handle it.

Recent legal and academic discourse has focused on how new technologies, such as artificial intelligence and big data analytics, challenge traditional notions of privacy.[7] This has led to the development of stronger, more comprehensive data protection laws globally.

2.2 Data Subjects

A data subject is a natural person or individual whose personal data is being processed, collected, or stored by an organization. Essentially, if an organization holds your personal information, be it your name, email address, location data, or any other identifier, you are the data subject. This term places the individual at the centre of data protection law, emphasising that they are the rightful owners and have control over their own data.

2.3 Data Subject Rights

Data subject rights are the legal entitlements granted to individuals by data protection laws, such as the NDPA and the GDPR. These rights empower individuals to have control over their personal data and hold data processors accountable. While the specific rights can vary slightly between jurisdictions, they generally include the right to be informed, right of access, right to rectification, right to erasure, right to restrict processing, right to data portability, right to object, and rights related to automated decision-making.

3.0 IMPORTANCE OF DATA PRIVACY

Data privacy is significant in the modern digital age due to technological advancements. Its importance is multifaceted, impacting individuals, businesses, and governments alike. It has helped in building trust and maintaining customer loyalty. Businesses prioritizing data privacy is no longer a mere legal obligation but a business imperative. Studies show that a majority of consumers are

[6] Babalola Olumide, 'The Constitutional Origins of the Right to Privacy in Nigeria' (2025) 2 African Journal on Privacy & Data Protection 83-97.
[7] Indah S, Muh FN, 'Legal Perspectives on Data Privacy and Cybersecurity in the Digital Age' (2025) ResearchGate February 2025 3(2) 471-481.

concerned about their online privacy and would stop doing business with a company if it mishandled their sensitive data.[8]

Data privacy also ensures legal and regulatory compliance. Recently, there has been a surge in comprehensive data protection laws globally. The GDPR has served as a blueprint for new legislation worldwide, including NDPA and various U.S. state laws. Compliance with these regulations is essential to avoid severe financial penalties, lawsuits, and reputational damage from data breaches.[9]

Data privacy safeguards individual rights and freedoms; it gives individuals control over their personal information, protecting them from exploitation, discrimination, and unwarranted surveillance by both commercial entities and governments. It also fosters innovation and economic growth; while seemingly a constraint, data privacy can actually drive innovation. By forcing companies to adopt privacy-by-design principles and develop privacy-enhancing technologies (PETs), regulations encourage a more secure and trustworthy digital environment. This, in turn, boosts consumer confidence and facilitates the free flow of data with trust, which is critical for a well-functioning digital economy and global business operations.[10] Lastly, it mitigates financial and reputational risks; data breaches carry a high financial cost in addition to significant operational and legal expenses.

4.0 THE GLOBAL TREND TOWARD STRONGER DATA PROTECTION LAWS AND NIGERIA'S PLACE IN THIS MOVEMENT.

Prior to the issuance of the NDPR, the legal protection for data privacy was primarily derived from sources like the Constitution, particularly Section 37, which guarantees the privacy of citizens,[11] their homes, correspondence, telephone conversations, and telegraphic communications.[12] While it provided a constitutional right, it was often seen as too narrow and did not explicitly address the collection, storage, and processing of digital data by private entities. Some sectors also had their own rules, such as the FOI Act, while not a data protection law, offered some protection for personal information by exempting certain types of private data from being disclosed to the public by government institutions.[13] This patchwork of laws meant that there was no single legal recourse for individuals whose data privacy rights were violated by a private company. The absence of a

[8] Secureframe. 2025. "110+ Data Privacy Statistics: The Facts You Need to Know In 2025." (Secureframe) <https://secureframe.com/blog/data-privacy-statistics> accessed 30 September 2025
[9] Freshfields, '2025 Data Law Trends' (Freshfields) <https://www.freshfields.com/en/our-thinking/campaigns/data-trends-2025> accessed 17 October 2025.
[10] OECD, 'Privacy and Data Protection' (OECD) <https://www.oecd.org/en/topics/privacy-and-data-protection.html> accessed 17 October 2025.
[11] *Incorporated Trustees of Digital Rights Lawyers Initiative & Ors v National Identity Management Commission* (NIMC), (CA, 2021).
[12] The Constitution of Federal Republic of Nigeria 1999 (amended), Section 37.
[13] Freedom of Information Act (2011)

dedicated data protection authority and a clear framework for enforcement left citizens vulnerable to data misuse.

This inadequacy led to the issuance of NDPR, a groundbreaking and game-changing piece of legislation that represented Nigeria's first comprehensive and modern data protection framework. The NDPR introduced concepts such as: governing principles of data processing,[14] data subject's consent,[15] penalty for default,[16] rights of the data subjects,[17] among others. NDPR signalled Nigeria's commitment to aligning with global data protection standards, most notably the GDPR. It shifted the legal framework from a reactive, constitution-based approach to a proactive, principle-based one.

Recent legislative efforts are increasingly concerned with how new technologies, particularly Artificial Intelligence (AI) and automated decision-making, handle and use personal data. This has led to discussions and new regulations aimed at ensuring accountability and preventing bias in algorithmic systems.[18] This movement is a direct response to the explosive growth of the digital economy, the increasing number of data breaches, and a rising public demand for greater control over personal information.[19] Countries around the world are enacting and amending laws to align with international standards, with the GDPR widely serving as the gold standard for regulatory frameworks.[20]

This global push is characterized by several key features, such as emphasis on data subject rights, strengthened enforcement and penalties protection, extraterritorial reach, and focus on emerging technologies.

Nigeria's journey toward a robust data protection regime reflects its place within this global trend. The NDPR was a pioneering move for an African nation, and it was openly acknowledged to be heavily inspired by the GDPR. However, as a subsidiary legislation, its legal force and enforcement capabilities were limited. Then came the NDPA, which marked Nigeria's definitive entry into the global data privacy movement as a major player. The NDPA significantly strengthens the country's legal framework, establishing an independent regulatory body, the NDPC. It adopts and solidifies core GDPR principles, including data minimization, purpose limitation, and accountability. This alignment is strategic, making it easier for Nigerian businesses to operate internationally and for

[14] NDPR, Part 2 (2.1).
[15] NDPR, Part 2 (2.3). See *Folashade Molehin v United Bank for Africa (UBA),* Suit no FHC/L/CS/2625/2023.
[16] NDPR, Part 2 (2.10).
[17] NDPR, Part 3.
[18] Future of Privacy Forum, 'What to Expect in Global Privacy in 2025' (Future of Privacy Forum 2025) <https://fpf.org/blog/what-to-expect-in-global-privacy-in-2025/> accessed 27 September 2025.
[19] Freshfields, '2025 Data Law Trends' (Freshfields) <https://www.freshfields.com/en/our-thinking/campaigns/data-trends-2025> accessed 17 October 2025.
[20] PwC, Regulatory Alert: An Overview of the Nigeria Data Protection Act 2023 (PwC Nigeria, August 2023) <https://www.pwc.com/ng/en/assets/pdf/regulatory-alert-august-2023.pdf> accessed 17 October 2025; UCC Law Journal. 2025. *A Critical Analysis of the Nigeria Data Protection Act 2023: Elevating Standards to Global Norms*. UCC Law Journal 4 (2): 242-263.

foreign investors to enter the Nigerian market with confidence.[21] Also, NDPA, like the GDPR, has an extraterritorial scope, applying to data controllers and processors outside Nigeria who process the personal data of Nigerian citizens or residents. This brings Nigeria's law into direct alignment with the global standards for data protection.

By adopting a comprehensive, principles-based approach and establishing a dedicated regulatory body, Nigeria is positioning itself as a trustworthy player in the global digital economy, recognizing that robust data protection is a key component of national security, economic growth, and the protection of fundamental human rights.

5.0 DIGITAL RIGHT AS A HUMAN RIGHT

The concept of digital rights as human rights asserts that the fundamental rights and freedoms guaranteed to individuals in the physical world also apply in the digital sphere. This is not about creating entirely new rights but rather applying existing human rights, such as freedom of expression, privacy, and assembly, to the context of the internet and digital technologies.

The global recognition of this principle has gained significant momentum recently, driven by several factors, including the increasing role of technology in everyday life and growing concerns over government surveillance, corporate data exploitation, and the use of technology to suppress dissent. International bodies, national governments, and civil society organizations have all been instrumental in this movement

5.1 International and National Recognition

Recently, there has been a surge in formal recognition of digital rights as human rights through various international and national instruments:

United Nations: The UN Human Rights Council has consistently affirmed the principle that the same rights that people have offline must be protected online. Its reports have focused on critical issues like internet shutdowns, the right to privacy in the digital age, and the human rights implications of new technologies like artificial intelligence (AI).[22] The UN's commitment to a Global Digital Compact further solidified this stance, aiming to create a framework for a more open, free, and secure digital future rooted in human rights.[23]

European Union: The EU has been a leader in this area with its Declaration of Digital Rights and Principles, which outlines a set of commitments to ensure that the digital transition is human-

[21] PlanetWeb, 'Comparison of NDPA 2023 and GDPR: What Nigerian Businesses Should Know' (PlanetWeb, 2025) <https://planetweb.ng/comparison-of-ndpa-2023-and-gdpr/> accessed 7 September 2025.

[22] Office of the High Commissioner for Human Rights (OHCHR), 'Privacy in the Digital Age' OHCHR <https://www.ohchr.org/en/privacy-in-the-digital-age> accessed 17 October 2025.

[23] United Nations, 'Global Digital Compact' (Online: United Nations) <https://www.un.org/global-digital-compact/en> accessed 17 October 2025.; Demos 2025 Digital rights in 2025 (PDF) <https://demos.co.uk/wp-content/uploads/2025/02/Digital-Rights-in-2025.ac_.pdf> accessed 17 October 2025.

centric and respects fundamental rights.[24] This declaration builds upon its foundational data protection law, the GDPR, which has set a global standard for privacy and data subject rights.[25]

National Laws and Policies: Many countries have taken steps to enshrine digital rights in their national laws. For instance, South Korea adopted a Digital Bill of Rights, and countries like Nigeria enacted the NDPA, which provides a statutory basis for data privacy and other digital rights. Legal scholars and human rights advocates have highlighted how these laws are a crucial step in formalizing and enforcing digital human rights.[26]

5.2 Specific Rights and Concerns

The global discourse around digital rights has focused on several key areas:

Right to Access: The right to access the internet is increasingly seen as a fundamental human right. As an article on Nigeria's legal framework argues, the internet is not just a tool but an essential platform for exercising other rights, such as access to information and freedom of expression. The ECOWAS Court of Justice's 2022 ruling against Nigeria's Twitter ban further reinforced this position.[27]

Privacy and Data Protection: The importance of data privacy has grown significantly due to the rise of AI, biometric surveillance, and big data. Reports from organizations like IBM and the Office of the UN High Commissioner for Human Rights (OHCHR) have highlighted the need for a human-centric approach to data governance to prevent mass surveillance and discrimination.[28]

Freedom of Expression and Information: This remains a central pillar of digital rights. Recent years have seen increased concerns over online censorship, content moderation by tech companies, and the spread of disinformation.[29] A crucial aspect is ensuring that individuals can express themselves freely and access information without fear of reprisal or surveillance.

6.0 LEGAL FRAMEWORK FOR THE ENFORCEMENT OF DATA SUBJECT RIGHTS IN NIGERIA

The legal framework for enforcing data subject rights in Nigeria transitioned from a sub-legal regulatory framework to a robust, statutory one. Two major instruments govern data subject rights and their enforcement in Nigeria.

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[24] European Commission, 'European Declaration on Digital Rights and Principles' (Online: European Commission) <https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles> accessed 17 October 2025.
[25] GDPR-info.eu, 'General Data Protection Regulation (GDPR)' (Online: GDPR-info.eu) <https://gdpr-info.eu/> accessed 17 October 2025.

[27] Media Defence, 'Freedom of Expression Online: Sub-Saharan Africa' (Media Defence Resource Hub) <https://www.mediadefence.org/resource-hub/freedom-of-expression-online-sub-saharan-africa/> accessed 17 October 2025.
[28] United Nations, Human Rights Council, A/HRC/56/45 (online) <https://docs.un.org/en/A/HRC/56/45> accessed 17 October 2025.
[29] Freedom of Information Act, 2011.

Nigeria Data Protection Regulation (NDPR) 2019 and its Implementation Framework 2020: Both were issued and enforced by NITDA, which received complaints, conducted investigations, and issued compliance orders and fines.[30] However, with the issuance of the Nigeria Data Protection Act – General Application and Implementation Directive 2025 (GAID), the NDPR 2019 and its Implementation Framework have been repealed.[31]

Nigeria Data Protection Act (NDPA) 2023 and the General Application and Implementation Directive (GAID) 2025: The NDPA and its recently issued GAID of 2025 established the NDPC, which has explicit powers to investigate complaints, impose administrative fines, issue compliance and enforcement orders, and even initiate prosecution for serious violations.[32]

7.0 ENFORCEMENT MECHANISMS

The legal framework provides two primary avenues for enforcement:

Administrative Enforcement by the NDPC: This is the most common and streamlined route. A data subject can lodge a complaint with the NDPC, which will then investigate the alleged violation. The Commission can then issue a range of directives, from ordering the data controller to cease processing to imposing fines.

Judicial Enforcement: Data subjects retain the right to sue a data controller or processor directly in court. The NDPA provides a clear legal basis for such lawsuits, ensuring that individuals can pursue a remedy through the judicial system.

8.0 CHALLENGES WITH THE ENFORCEMENT OF THE RIGHTS OF A DATA SUBJECT

Even with NDPA, the enforcement of data subject rights still faces significant challenges. These issues stem from a combination of legal, institutional, and socio-economic factors that complicate the practical application of the law. While the creation of the NDPC is a major step forward, its effectiveness is a key concern. The Commission faces resource constraints, including inadequate funding and a shortage of personnel with the technical and legal expertise required to investigate and regulate complex data processing activities, particularly those involving advanced technologies like AI and blockchain.[33] Also, many Nigerians, including both data subjects and small to medium-sized enterprises (SMEs), are largely unaware of their data rights and obligations under the NDPA. This ignorance makes it difficult for individuals to recognize when their rights have been violated

[30] DLA Piper, Data Protection Laws in Nigeria, (DLA Piper, 18 January 2025), <https://www.dlapiperdataprotection.com/index.html?t=law&c=NG> accessed 17 October 2025.
[31] NDPA-GAID, Article 3(3).
[32] Nigeria Data Protection Act (NDPA) Sec 4-5 (2023); National Development Planning Commission, 'NDPC' (NDPC) <https://ndpc.gov.ng> accessed 17 October 2025.
[33] Omaplex Law Firm, 'Critical Assessment Of The Nigerian Data Protection Act—General Application And Implementation Directive 2025' (Omaplex Law Firm, 2025) <https://omaplex.com.ng/critical-assessment-of-the-nigerian-data-protection-act-general-application-and-implementation-directive-2025/> accessed 7 September 2025.

and to seek recourse, while also contributing to widespread non-compliance by businesses.[34] The NDPA provides a right for data subjects to seek redress in court, but this process can be slow and expensive. The Nigerian judicial system's limited experience with complex data privacy cases and the high cost of litigation may be a barrier for individuals seeking justice.

Another challenge is the enforcement of the NDPA's extraterritorial provisions in Section 2(2)(c). While the law applies to foreign companies processing the data of Nigerians, the practical ability of the NDPC to investigate and impose sanctions on companies not physically located within Nigeria's jurisdiction remains a complex legal and logistical issue.[35] Despite the NDPA's clarity, some of its provisions, like the exact definition of legitimate interest as a lawful basis for data processing, still require further clarification from the NDPC due to ambiguity in interpretation.[36] There has also been a continuous resistance to adopting new digital data protection practices, as many businesses still rely on traditional paper-based data collection and storage, which the NDPA does not comprehensively address, creating a vulnerability in compliance and enforcement.[37]

9.0 CONCLUSION AND RECOMMENDATIONS

9.1 Conclusion

Nigeria has made significant strides in aligning with global data protection standards by transitioning from the fragmented legal framework to the principles-based regime of the NDPA.[38] The establishment of the NDPC and the enactment of its GAID of 2025 are proven pivotal advancements, which have provided a clearer, more robust legal and institutional structure for safeguarding data subject rights, moving beyond the limitations of the previous legislation.[39]

Despite this progress, the enforcement of these rights remains a work in progress.[40] The effectiveness of the new legal framework is challenged by institutional capacity issues at the NDPC, widespread lack of public awareness about data rights, and the practical difficulties of enforcing the law against foreign entities.[41] Furthermore, the complexities of navigating Nigeria's judicial system and a general lack of a data privacy culture among businesses and citizens create significant barriers to the effective realization of data subject rights.[42]

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[34] The Law Brigade Publishers, 'Effective Data Protection in Nigeria: Challenges' (The Law Brigade Publishers, 2022) <https://thelawbrigade.com/wp-content/uploads/2022/11/Patrick-Chukwunonso-Aloamaka-CLRJ.pdf> accessed 7 September 2025.
[31] Ibid. (KPMG, 2023).
[36] NG Chimeziri, 'An Analysis of the Adequacy of the Nigerian Data Protection' (2025) Arcadia Global Studies Journal <https://scholarworks.arcadia.edu/cgi/viewcontent.cgi> accessed 17 October 2025.
[37] Ibid.(PwC Nigeria,2023)
[38] Ibid (KPMG, 2023).
[39] Ibid (PwC Nigeria,2023)
[40] Ibid (Lawhaven Solicitors)
[41] Isaac Juma and Bukola Faturoti, Enforcing Data Privacy in Kenya and Nigeria: Towards an African Approach to Regulatory Practice, (2025) International Review of Law, Computers & Technology 1.
[42] Ibid.

In essence, while the legal framework is now largely in place, the true test lies in its practical enforcement and the widespread adoption of a data protection mindset across the Nigerian digital ecosystem.[43]

9.2 Recommendations

To ensure the effective enforcement of data subject rights and to fully realize the objectives of the NDPA, the following recommendations are crucial:

a. The government must provide the NDPC with adequate funding, advanced technical resources, and a sufficient number of skilled personnel. This will enhance the Commission's ability to conduct thorough investigations, enforce penalties, and handle the high volume of complaints effectively.
b. The NDPC, in collaboration with civil society organizations and media outlets, should launch a nationwide campaign to educate citizens about their data privacy rights under the NDPA. This campaign should use simple language and accessible formats to inform people on how to identify a violation and lodge a complaint.
c. The Nigerian judiciary needs specialized training on data protection laws and digital forensics. This will expedite the legal process and provide a more effective avenue for redress. Also, the cost of litigation related to data privacy should be reduced for greater accessibility by the average citizen.
d. The NDPC should work with industry associations and professional bodies to promote a culture of proactive compliance among businesses. This includes encouraging the adoption of privacy-by-design principles, conducting regular compliance audits, and implementing robust data security measures to prevent breaches before they occur.[44]
e. The NDPC should develop clear guidelines and engage in international cooperation agreements to enforce the NDPA's extraterritorial provisions. This will hold multinational companies operating in Nigeria accountable and ensure that data is protected regardless of where it is processed.

By implementing the above, Nigeria can overcome all enforcement challenges and solidify its position as a leader in data protection in Africa, thereby fostering a more secure, trustworthy, and rights-respecting digital economy.

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[43] Ibid (OECD).
[44] WTS Blackwood Stone, 'Navigating GAID 2025' (OWTS Blackwood Stone, 2025) <https://wtsblackwoodstone.com/navigating-gaid2025/> accessed 17 October 2025.

AN EXAMINATION OF NIGERIAN COPYRIGHT LAW IN AN AGE OF ARTIFICIAL INTELLIGENCE.

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INTRODUCTION

*"Chat GPT, I intend to put in an entry for an essay contest. So generate a 1700-word essay that addresses the theme '**Navigating Nigerian Copyright Law in the Age of Artificial Intelligence: Emerging Challenges and Proposed Solutions'**. Make sure to maintain an academic language and ensure to include accurate references."*

If a student inputted the prompt above into ChatGPT's chat box or that of any generative AI model, the big question is: are they entitled to own the copyright to such generated material? What happens if they made a number of modifications and edits to the generated material, can they then attach their name as the bona fide author of the essay? Or is it the AI itself that owns the work after all?

These questions represent a wider array of copyright considerations and debates that have arisen since the application of Artificial Intelligence (AI) has exploded into the widespread phenomenon it is today. From artworks and poems to novels and paintings, AI has evolved into sophisticated content generators, thanks to constant technological research and unceasing innovation.

As AI models are poised to develop even more technical capabilities, industry regulators in the world of Intellectual Property today are, more than ever before, seeking solutions to the challenges that AI has engendered. This essay represents my contribution to the ongoing debate. Particularly, this essay examines the stance of Nigerian copyright law in an age of Artificial Intelligence. I also map out the grey areas where Nigerian legislation is not so clear-cut, while drawing lessons and policy recommendations from other jurisdictions.

A BRIEF EXPOSÉ ON THE CORE IDEA OF A COPYRIGHT

Essentially, copyright is a category of intellectual property protection that affords creators exclusive rights over their original works of authorship for a specified period upon fixation in a tangible medium of expression[1]. Simpliciter, it ensures that authors and creators enjoy the sole rights to exploit, reproduce and distribute their creations for a period of time before it is made accessible to the general public. Copyright covers a number of unique creations such as novels, poetry, graphic designs, computer software, etc. In essence, copyrightable content must exude a measure of intentional creation and at least "a [minimal level or] modicum of creativity" as the US Supreme Court put in the famed case of **Feist Publication Inc. vs. Rural Telephone Service[2]**. Generally, copyright accrues upon original fixation of a copyrightable piece in a tangible medium (ideas themselves are not copyrightable), however registration is also advised for sake of formal proof in instances of legal disputes.

The Copyright Act 2022 highlights six categories of copyrightable creations: sound recording and broadcasts as well as literary, musical, artistic and audiovisual works. In Nigeria, copyright spans for 70

[1] World Intellectual Property Organization, 'What is Copyright?' (5 August 2025) <https://www.wipo.int/en/web/copyright> accessed 4 August, 2025.
[2] *FEIST PUBLICATIONS, INC. V. RURAL TEL. SERV. CO.,* 499 U.S. 340 (1991)

years after the death of the author of a literary, artistic or musical piece, and in the instance of photographs, broadcasts and sound recordings, 50 years after it was created or made available to the public.[3]

At present, the **Copyright Act 2022** operates as the regulatory framework for copyright-related matters in Nigeria, after replacing & repealing the **Copyright Act of 2004** which was itself a recodification of the **1988 Copyright Act.** The various modifications of copyright law in Nigeria reveal a major truth: that the regulatory frameworks for copyright change to suit societal progress over a given period. And considering the age of Artificial Intelligence we currently find ourselves, we just might be on the brink of another major amendment to our copyright law in Nigeria.

THE BIG QUESTIONS: HOW HAS ARTIFICIAL INTELLIGENCE IMPACTED THE COPYRIGHT LANDSCAPE, AND HOW DOES THE COPYRIGHT ACT 2022 CATER FOR AI CONSIDERATIONS?

Commenting on the considerable impact of AI in the past few decades, Ola Williams , the Country Director, Microsoft Nigeria, remarked *"AI has come to stay. It is already influencing our lives."*[4]. Truly, AI has had profound impact on virtually every sector of human endeavour. From artworks to literary compositions and even film-making, AI is now taking on tasks that were once considered to be exclusive to humans. As a consequence, this challenges the traditional notion of copyright protection which required considerable human effort and creativity.

The major requirements of copyright under **the Act** are *originality*, *fixation* and *competent authorship*, however the most disputed duo in the AI discourse are *originality and competent authorship.* Accordingly, the challenge of whether or not AI fits into these requirements is explored subsequently.

- **Originality.**

Section 2(1) of the Nigerian Copyright Act 2022 provides that "*literary, musical or artistic work shall not be eligible for copyright unless some effort has been expended on making the work, to give it an original character…"* The Abridged 8th Edition of **Black's Law Dictionary** characterizes the term 'originality', as "*The quality or state of being the product of independent creation and having a minimum degree of creativity* or *the degree to which a product claimed for copyright is the result of an author's independent efforts."* This reveals that the standard imposed for originality under the Act is that a creator expends sufficient effort and at least a minimal amount of creativity to intentionally craft a product. In legal lingo, this standard is referred to as the "sweat of the brow" coupled with "a modicum of creativity"[5]. This simply means that such work must be reflective of the creator's personal thought process and experiences, and not merely copied from other works in the public space.

[3] Copyright Act 2022. s19.
[4] TSJ REPORTER 1, 'It's Already Influencing Our Lives,' Microsoft Country Director, Ola Williams Speaks On How Nigeria Can Utilize AI For Innovations' (TS reporter.org, Feb 6 2024) <https://thestreetjournal.org/its-already-influencing-our-lives-microsoft-country-director-ola-williams-speaks-on-how-nigeria-can-utilize-ai-for-innovations/> accessed 5 August, 2025
[5] Sucshi Meta, 'Analysis of doctrines: 'Sweat of the brow' & 'Modicum of creativity' vis-à-vis Originality in Copyright Law' (India law.org, 8 January 2015) <https://www.indialaw.in/blog/law/analysis-of-doctrines-sweat-of-brow-modicum-of-creativity-originality-in-copyright/> accessed 5 August 2025.

But then the pivotal challenge arises: **do AI-generated material fulfil the "sufficient effort" prerequisite for originality?** Admittedly, I believe that AI models do. This is because these large languages models are the very systems responsible for the entire process of analyzing and compiling bits of data into the final output. In my opinion, this satisfies the condition of "some [or sufficient] effort" which Section 2 of the Act prescribes. However, even if AI models tick the box of originality, the debate about whether AI can legally be regarded as an owner/author still persists.

- **<u>Competent authorship and ownership</u>:**

Authorship and ownership are probably the most interchanged terms of the century, but their meanings differ quite distinctly in copyright. Authorship refers to the creation or origination of a work, while ownership refers to the legal rights to control and profit from that work.[6] An author is usually the first owner of a work, but by license in writing, other persons may also possess the right to exploit that work.[7]

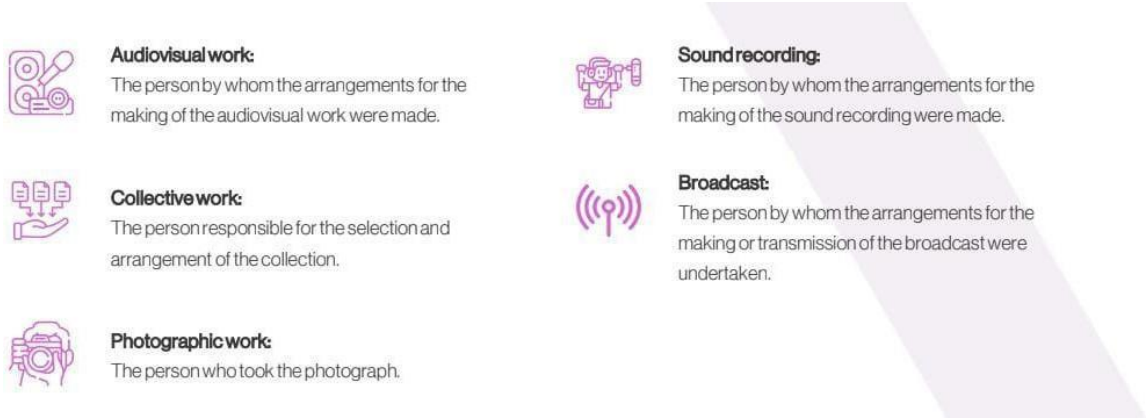

Figure 1- sourced from Olaniwun Ajayi

Many jurisdictions hold that only humans are capable of crafting or owning works of art. However, that position is up for debate today, due to the popularity of **Artificial Intelligence** models. In the context of 'AI ownership/authorship', three of the most commonly-touted solution recommendations must be examined: **the AI itself as the author/owner of the work**, **the owner of the AI as the author/owner of the work** or **the user as the author/owner of the work**. I will also weigh in on what becomes of situations where the **AI sources the works of others** to develop its output.

A. **AI as the Author/Owner of the Work:** Some stakeholder bodies posit that an AI model should 'own' a copyright to a generated work because the AI is responsible for the internal mechanisms of creatively generating the work.[8] This was the position of the Indian Copyright Commission in the

[6] Olaniwun Ajayi 'AI-Generated Works and Copyright Law: Defining Authorship and Ownership in the Age of Machine Creativity' [2025] PL 3
[7] Copyright Act 2022. s30
[8] Wei Li et al. 'AI Creativity And Legal Protection For AI-Generated Works In Post-human Societal Scenarios' (ScienceDirect, June 2025) <https://www.sciencedirect.com/science/article/pii/S2666188825003156> accessed 5 August 2025

case involving the RAHGAV Painting App.[9] However, an examination of the Copyright Act, 2022 expressly reveals that an AI model cannot be the author of an artistic work in Nigeria. The Act mandates, in Section 5, that the author must be "an individual who is a Nigerian citizen or is habitually resident in Nigeria; or a body corporate incorporated by or under the laws of Nigeria." As an AI model is not an individual or a person, it cannot a validly author a work or own proprietary rights to such a work. Even more, the timeline of copyright validity of literary works in Nigeria "lifetime of author and 70 years **after the death of the author"** cements 'AI authorship/ownership' as a truly foreign concept to copyright law in Nigeria.

B. **The Developer of the AI as the Author/Owner of the Work:** Some proponents argue that the owner of AI-generated works is the entity that designed the functionality of the AI model in the first place[10].They further justify this stance by positing that since AI developers can be liable for copyright infringement, they should also be capable of owning copyright to AI-generated works. However, in my opinion, this position does not satisfy the requirement of exerting independent and creative effort in the process of generating the particular work in question. In fact, this position is analogous to suggesting that the right of ownership of all photos should accrue to the maker of the camera absurd indeed. The above also suffices as a response to scholars who opine that creators whose works were consulted by the AI models can claim copyright to AI-generated content: these secondary creators did not exert significant effort in the creation process hence they should not own copyright. What's more, **Section 29(1) of the Copyright Act,** vests ownership in the person on whose initiative or direction the work was created, which in this case was the AI user not the secondary creators.

C. **The User of the AI as the Author/Owner of the Work:** This position is one that most accurately aligns with the body and spirit of the **Copyright Act, 2022.** As the US Copyright Office succinctly put it in a 2023 statement, "AI-assisted works can be registered for copyright if there is sufficient human authorship and artists can select or arrange AI-generated materials in sufficiently creative ways or modify something AI-generated to such a degree, to merit copyright protection."[11] This position also derives backing from Section 2 of the Act which mandates "some [original] effort as a requirement for copyright. It is therefore apparent that works that are generated merely upon inputting prompt texts into AI models cannot be copyrighted by an individual. As such, the student in the scenario represented in the introduction does not legally own copyright to the essay generated because no intentional or creative effort was expended by that student himself. However, if the student undertook some significant effort in editing and changing that material to fit his

[9] Sukanya Sarkar, 'Exclusive: India Recognises AI As Co-Author Of Copyrighted Artwork' (ManagingAI.com, August 5 2021) <https://www.managingip.com/article/2a5bqo2drurt0bxl7ab24/exclusive-india-recognises-ai-as-co-author-of-copyrighted-artwork> accessed 5 August 2025.

[10] Olaniwun Ajayi 'AI-Generated Works and Copyright Law: Defining Authorship and Ownership in the Age of Machine Creativity' [2025] PL 3

[11] United States Copyright Office, 'Copyright and Artificial Intelligence' (Copyright, 2025) <https://www.copyright.gov/ai/> accessed 5 August 2025.

personal idealization, then he may validly own the copyright to such material. As such, AI was only employed as a tool in his research methodology. In instances of uncertainty, a reasonable man test is the standard determinant of whether a modification process makes a work sufficiently different from a plain AI-generated output.

THE WAY ONWARD: PROPOSED RECOMMENDATIONS

First, to avoid controversies and prolonged disputes, I believe the Copyright Act 2022 should be amended to reflect the well-reasoned standpoint at present: that for AI-generated works, the user of the AI owns the copyright upon exertion of considerable modification efforts. However, as AI is a fast-evolving kettle of fish, stakeholders in Nigeria are obliged to pay attention to developments on the international scene, and take cues & lessons from other climes which may incentivize considerable progress here in Nigeria. This is especially so as there is a paucity of Nigerian cases on this subject.

Then, widespread orientation will also prove useful in this regard. The Nigerian Copyright Commission and other industry stakeholder's e.g student's organizations and NGOs can take on publicity roles through essay contests, IP symposiums & rallies etc., to educate the populace about the Nigerian stance on AI and copyright. This will ensure that creators are more well-informed, avoiding controversies in the first place.

CONCLUSION

AI has indeed brought along with it, a major debate with respect to copyright matters. However, relevant amendments as proposed in the essay coupled with intentional public orientation will serve to mitigate conflicts & challenges to a bare minimum.

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Comparative Approaches to Referendums and Human Rights in Sub–Saharan Africa: Lessons from Zambia.

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Abstract

In the sub-Saharan African region, referendums tend to be pivotal events in constitutional development. They hold out the prospect of greater human rights protections while revealing fundamental tensions between democratic aspirations of the people and vested power interests of the political elite. This article examines the 2016 constitutional referendum in Zambia which sought to amend the Bill of Rights amidst a contested electoral process. It draws comparative lessons from the referendum of Kenya in 2010 and the referendum of Uganda in 2000 on multiparty democracy. From these cases, it explores how referendums can advance civil liberties such as the freedom of assembly and freedom of expression or backslide against them through low turnout of voters, manipulation by the political elite and inadequate civic education of citizens. The lessons drawn from Zambia underscore the need for an inclusive process to ensure legitimacy of the constitution. This highlights the broader African challenge of balancing direct democracy and the substantive advances of human rights and civil liberties. The analysis suggests that while referendums offer pathways towards empowerment, there success centres on robust institutional safeguards and genuine public participation.

Keywords: Referendums, human rights, constitutional reform, civil liberties, African democracy.

Introduction

There is something fundamentally human about a referendum—it is a moment when common citizens, often ignored in the grand machinery of politics, get to have their voices heard on matters that shape their lives. The Electoral Commission of Zambia defined a referendum as a process that allows citizens to approve or reject a law to be passed by the Legislature.[2] In a referendum, voters are given an opportunity to directly decide through a vote on a particular subject matter. All citizens who are eligible have the right to either accept or reject the question posed, in order to provide guidance to the government. A voter is expected to choose 'Yes' or 'No' on the question given. This may be regarding a new constitution, a constitutional amendment or a proposed law.

In Africa, where colonial legacy and post-colonial autocracy have dominated government for so long, these votes have greater meaning and carry a lot of weight.[3] They are not simply procedural boxes to be ticked, they are battlefields for reclaiming democratic values, especially over human rights. There was excitement amongst citizens in Zambia back in 2011, when citizens voted in a new regime, the Patriotic Front (PF) government after ousting the Movement for Multiparty Democracy (MMD) that had been in power for 20 years. Leader of the Patriotic Front at the time Michael Chilufya Sata promised to deliver a new constitution within 90 days of assuming power.[4] The new regime promised an expanded Bill of Rights that would, finally, enshrine protections for economic, social and environmental rights.[5] The same excitement was seen in Kenya in 2010 when citizens were filled with joy, when a sweeping 'yes' on a new constitution was an outright sigh of relief after decades of ethnic strife and one-party

[2] Electoral Commission of Zambia. (2016). Referendum Handbook: Voter Education Facilitator's Handbook 2016.
[3] Kersting, N. (2014) Referendums in Africa. In: Qvortrup, M. (eds) Referendums Around the World. Palgrave Macmillan, London. 978-3-319-57797-5.
[4] Lusaka Times. Sata Promises New Constitution within 90 days if voted into power. https://www.lusakatimes.com/2011/08/14/sata-promises-revist-mungomba-draft-90-days-voted-power/
[5] National Assembly of Zambia. Ministerial Statement on the Occasion of the release of the Draft Constitution to the members of the Public. October 2013.

dictatorship.[6] But these peaks are tempered by troughs, like the referendum of 2000 in Uganda, when a vote of 'no' to multipartyism was a whisper of apathy than a roar of the determination of the people.[7]

This article follows these stories, employing Zambia as a lens through which to analyze comparative lessons across the continent. Drawing on African scholarship and first-hand experience of the processes, it poses the question: How do referendums intersect with human rights in Africa's democracy experiments? What happens when the promise of expanded civil liberties meets low turnout and political opportunism? Most critically, what can Zambia's unfinished business teach us about how to make direct democracy work for the people, not for presidents or the executive wing of government? By putting together stories from Zambia, Kenya and Uganda, we see patterns such as the excitement of participation, the wound of exclusion and the quiet resilience of citizens pushing back emerging. These cannot be said to be academic theories, as they are lived experiences that remind us that democracy in Africa is a big mess yet hopeful and deeply human. These experiences are a lesson to Africa and give confidence for the success of democracy in the future.

The Zambian Referendum of 2016: A Missed Opportunity for Rights Expansion

The 2016 referendum in Zambia was supposed to be a cornerstone in the long and bumpy journey of constitutional renewal in the country a process that had been going on since the 1990s and was characterized by false starts and bargains amongst the elite. Signed into law earlier that year by President Edgar Lungu,[8] the amendments had aimed to supercharge the Bill of Rights under Part III of the Constitution. These amendments to the Bill of Rights added a layer of protection of civil and political rights with economic, social, cultural, environmental as well as 'further and special rights' divisions.[9]

These amendments were a nod to the Mungomba Draft Constitution of 2005, which was considered a people driven charter that had captured the aspirations of the people but was repeatedly sabotaged by parliamentary wrangles.[10] It would have been progressive to see the rights to clean water, a safe and healthy environment, decent housing and cultural preservation, all enshrined into the fabric of the law. As associate professor Mulela Margaret Munalula pondered, this was supposed to be the consummation of a 40-year quest for a truly legitimate constitution, not merely conceived out of elite consensus but the popular will of the people.[11]

The reality in this case was far much sobering. The referendum was held in conjunction with general elections on the 11th of August 2016. The referendum packaged complex questions into a single 'yes' or 'no' on strengthening the Bill of Rights and repealing Article 79 which governed the aspect of amendments.[12] The referendum question read:

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[6] African Business. Made in Kenya: A Constitution for the People, By the People. 14th November, 2011. https://african.business/2011/11/economy/made-in-kenya-a-constitution-for-the-people-by-the-people

[7] Bratton, M. and Lambright, G. (2001) Uganda's Referendum 2000: The Silent Boycott. Oxford University Press. Vol. 100, No. 400, pp. 429-452.

[8] Lusaka Times. President Lungu ushers in a new constitution, calls for a new approach to politics. https://www.lusakatimes.com/2016/01/05/president-lungu-ushers-in-a-new-constitution-calls-for-a-new-approach-to-politics/

[9] Lumina, C. (2016). Zambia's Constitutional Referendum: More Rights, Questionable Legitimacy? ConstitutionNet.https://constitutionnet.org/news/zambias-constitutional-referendum-more-rightsquestionable-legitimacy

[10] Munalula, M. M. (2016). The 2016 Constitution of Zambia: Elusive Search for a People-Driven Process. ConstitutionNet.https://constitutionnet.org/news/2016-constitution-zambia-elusive-search-people-driven-process

[11] *Ibid*

[12] See Lumina, *supra* note 7.

> *"Do you agree to the amendment to the Constitution to enhance the Bill of Rights contained in part III of the constitution of Zambia and to repeal and replace Article 79 of the Constitution of Zambia?"*[13]

The vote crashed to 44.44% which is below the 50% threshold required for validity, despite the presidential race seeing a 56.45% turnout.[14] This disconnect was as a result of woefully inadequate civic education as both the ruling Patriotic Front government and opposition political parties had not mounted genuine campaigns to explain what was at stake. Instead, as Lumina, a Zambian born research professor in South Africa noted, politicians transformed it into an electoral sideshow, urging 'yes' votes to boost their manifestos without unpacking the benefits of the human rights that were to be included.[15] The Non-Governmental Organisations Coordinating Committee (NGOCC) criticized this as a deliberate ploy by political parties to avoid the input of the public on this matter of national interest.[16] They argued that the people of Zambia were not aware of the contents of the proposed Bill of Rights that they would be voting for or against. They echoed broader dissatisfaction with the drafting process that had been experienced as one that was imposed, rather than inclusive.

At this point, human rights implications were stark. The failure of the referendum meant clinging to an outdated Bill of Rights, leaving gaps in the protection against arbitrary detention, freedom of expression and assembly—rights that were already strained in Zambia's polarised politics.[17] The U.S. State Department reports from that year highlighted some of the restrictions by government on opposition political party rallies and the media, with online sites such as Zambian Watchdog being blocked online.[18] This demonstrated how civil liberties remained fragile without constitutional reinforcement.

For regular Zambians such as subsistence farmers in Eastern Province or urban youth in Lusaka the failed referendum was not just a technical failure, it was a blow to the gut for hopes of accountability in a system where corruption and inequality were rampant. As later noted by the Electoral Commission of Zambia, the poor turnout was due to the confusion over 'further and special rights,' terms which felt strange without the sensitization of the people.[19] The story of Zambia is one of promise that has been deferred, where the mechanics of democracy have instead outpaced the spirit of democracy.

Comparative Cases: Kenya and Uganda

To comprehend Zambia's referendum in fuller relief, we turn to other African countries whose experience mirrors with and deviates from the path of Zambia. The 2010 referendum in Kenya is a model of what direct democracy can achieve when combined with the demands of human rights. After the 2007-2008 post-election violence that killed over 1,000 people and displaced 600,000 citizens. The people of Kenya sought a constitution that will unite divisions

[13] Electoral Commission of Zambia. (2016). Referendum Handbook: Voter Education Facilitator's Handbook.
[14] Maingaila, F. (2016). Zambia: Bil of Rights Referendum 'Unsuccessful'. Lack of participation kills new Bill of Rights. https://www.aa.com.tr/en/africa/zambia-bill-of-rights-referendum-unsuccessful/631627#
[15] See Lumina, *supra* note 7.
[16] Lusaka Times. Delayed release of proposed Bill of Rights a ploy by PF government. https://www.lusakatimes.com/2016/06/01/delayed-release-proposed-bill-rights-ploy-pf/#google_vignette
[17] U.S. Department of State. (2017). 2016 Country Reports on Human Rights Practices: Zambia. 3 March 2017. https://www.refworld.org/docid/annualreport/58ec899f13.html
[18] *Ibid*
[19] Electoral Commission of Zambia. (2016). 2016 Referendum Report. https://www.elections.org.zm/?p=178

along ethnic lines and protect rights of the citizens.[20] The 'yes' vote carried 67% support and a 72% turnout, which then birthed a document that decentralized power, reinforced judicial independence and expanded the Bill of Rights to include socioeconomic guarantees such as education and healthcare.[21] Scholars like Whitaker and Giersch, writing in the Journal of Contemporary African Studies commentary, argue that this was not merely symbolism, it was proof of a maturing democracy, where voters rejected elite efforts at sabotage and approved provisions for the marginalised communities, including protection against gender violence and environmental degradation.[22]

This experience can be contrasted with the referendum of Uganda in 2000, which was a quieter and calm affair that tested the grip of the no-party 'Movement' system under President Yoweri Museveni. The people were asked if they wished to return to multiparty politics, a nod to pre-1986 bans, but framed in the context of state dominance. The turnout was about 50%, with 90% saying yes to multipartyism, but the process felt rigged as the opposition were silenced and the civic space was squeezed.[23] Bratton and Lambright, described it as a "silent boycott," where apathy masked deeper disappointment. Many people saw this vote as simply a façade and not a genuine expansion of civil liberties.[24] During this period, human rights took a hit, as freedoms of association and expression were curtailed. The Museveni regime used the outcome to delay real pluralism until the 2005 referendum, still under controlled conditions.[25] As Kersting rightly observes in his comparative study of African direct democracy, the experiences in Uganda illustrate how referendums can institutionalize authoritarianism.[26] Referendums can place the needs of regime stability above rights such as assembly, which continue to be policed despite the rising displeasure of the people in many African countries.

These events underscore the errors that have been made by Zambia. Kenya was aided by broad coalitions amongst the youth, churches and civil society organisations—driving education campaigns that made rights tangible, fostering huge voter turnout and the general acceptance of the referendum by the people.[27] The failure of the referendum in Uganda, just like it was in Zambia, highlighted the capture of the process by the political elite, the limited levels of information flowing to the citizens and the bundling of questions. This in turn diluted the urgency of this excise, rendering civil liberties vulnerable to abuse of executive power. It is observed that in all three, human rights are not just abstract concepts, they are a safeguard against the very manipulations that undermine referendums.

Implications of Human Rights: Tensions and Transformations

[20] Kramon, E. & Posner, D. N. Kenya's New Constitution. Journal of Democracy. Vol. 22, no. 2, 89-103.
[21] Du Plessis, S., Jansen, A. & Siebrits, K. (2014). Democratisation in Africa. The role of Self- Enforcing Constitutional Rules. Economic Research Southern Africa. Working Paper 444. 14th July 2014.
[22] Whitaker, B.E. & Giersch, J. (2009). Voting on a Constitution: Implications for Democracy in Kenya. Journal of Contemporary African Studies. Vol. 27, Iss. 1.pp.1-20.
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[25] Mubangizi, J.C. (2023). Democracy and the Rule of law: Comparative lessons between Uganda and South Africa. Law, Democracy and Development. 27, 468-490.
[26] Kersting, *supra* note 1.
[27] Du Plessis et al, *supra* note 18.

Referendums in Africa's do not exist in a vacuum they are pressure cookers for human rights as they can increase both progress and risk. In Zambia, the failure of the referendum in the 2016 election preserved a status quo in which assembly rights were regularly flouted. The police continuously dispersed opposition rallies and journalists were harassed, as documented in annual human rights reports.[28] Lumina warns that without better rights, even prospective reforms are likely to be in danger of illegitimacy and undermine trust in institutions that have already been strained to their breaking point by corruption and inequality.[29] Despite this failure, there were overtones of resilience, as post-referendum parliamentary debates led by, for example, Minister of Justice at the time Given Lubinda, called for renegotiating the Bill of Rights so as to frame it as a necessary protection for citizen recourse against abuse.[30]

By contrast, the referendum that took place in Kenya turbocharged the enforcement of rights and civil liberties. The new constitution of Kenya entrenched freedoms such as the freedom of association and expression. These changes enabled historic rulings like the nullification of the flawed presidential election of 2017,[31] by the Supreme Court a judicial overreach that was born out of the victories of the 2010 referendum. There was an advancement in the rights of women as quotas and anti-discrimination clauses addressed the historical marginalization of women.[32] Tamale[33] and other scholars have detailed in feminist histories of East African changes the advancement of women's rights in Kenya after the referendum of 2010. However, it is observed that countries like Uganda, exhibit regression, as the hollow victory of the vote in 2000 paved the way for bills like the 2023 Anti-Homosexuality Act, which strengthens laws relating to homosexuality, thereby curtailing the liberties of the LGBTQ+ community and threatening broader clampdown of those who dissent to this development.[34] Lindberg's seminal work on elections in Africa underscores the fact that repeated referenda can only solidify liberties if they disrupt elite monopolies, otherwise, they establish electoral authoritarianism.[35]

These tensions have been observed to reveal a core irony. From this, we can see that referendums despite being designed to democratize rights often reveal their fragility also. The low voter turnout in both Zambia and Uganda stemmed from disenfranchisement rural voters were not well informed, urban voters who were skeptical shunned the voting process mirroring continental patterns in which civil liberties score low on indices such as the Freedom House report.[36] However, it is seen that constitutional reforms continue to shine through. It is observed that Kenya's

[28] U.S. Department of State. (2017). 2016 Country Reports on Human Rights Practices: Zambia. 3 March 2017. https://www.refworld.org/docid/annualreport/58ec899f13.html
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[34] Holland L. B. (2024). Africa in 2024: Democracy and Instability. House of Commons Library. https://commonslibrary.parliament.uk/africa-in-2024-democracy-and-instability/
[35] Lindberg, S. I. (2006). Democracy and Elections in Africa. 1st Edition. Johns Hopkins University Press.
[36] Abramowitz, M. J. (2018). Democracy in Crisis. Freedom in the World 2018 report. https://freedomhouse.org/report/freedom-world/2018/democracy-crisis

model shows how referendums, where they are inclusive, can rewire power to the marginalized, fostering what Nzima,[37] refers to as 'human rights-centered development.'

Lessons from Zambia: Towards Inclusive Direct Democracy

The referendum in Zambia even in its shortcomings, is not a dead end, it is actually a teacher. Firstly, it screams the need to disassociate the amendments of rights with elections as this dilutes focus. Lumina rightly critiques, turning constitutional deliberations into mere exercises that will distract the citizens on the main issues they must focus on.[38] The standalone vote in Kenya did not make the mistake seen in Zambia, they allowed the amendment of rights to shine without any distractions. Secondly, extensive civic education must be the bedrock of the process. Numerous NGOs in Zambia, including the Coordinating Committee, can lead here, taking a leaf from the mobilizations that have been done in Uganda since 2000, an occurrence that eventually forced multiparty concessions. Thirdly, thresholds matter Zambia's rule that a referendum needs over 50% support helps protects legitimacy, but also makes success of the referendum harder. A better option would be to keep a fair threshold but add transparency turnout checks like South Africa did in their 1992 referendum to ensure the results truly reflect the will of the people.[39]

The key lesson for Africa is that referendums work best when they focus on protecting human rights. As Kersting points out, they should move away from being political tools used by powerful leaders and instead become genuine people driven processes that defend freedoms such as expression and assembly.[40] In Zambia, many young people registered to vote in 2016 but did not participate in the referendum to amend human rights showing huge but untapped potential. If they were empowered, like in Kenya's active Gen-Z movements, that energy could turn voter apathy into real engagement and activism.[41] Ultimately, referendums are a reminder that democracy is not gifted or handed down it is earned through every informed "yes" at a time.

Conclusion

The referendums in Africa are more than just ballots or a gesture they are reflections of our collective hunger for rights when confronted with power's temptation. The failure of the referendum of 2016 in Zambia, viewed through Kenya's triumph and Uganda's cautionary tale, lays bare the human stakes of higher freedoms that dignify lives or deep rituals that reinforce exclusion. As scholars like Whitaker and Lindberg point out, the path forward demands engagement, education and vigilance to turn elite threat into the people's conversation on the aspects of direct democracy. In a continent where the young outnumber the old and aspirations outpace the realities, these lessons from Zambia are not just academic, they are a call to make constitutions that breathe, rights that endure and futures we can all call our own. The question is not whether or not Africa can do this right it is how we discover the will to do so together.

[37] Nzima, D. (2014) Linking Human Rights and Development: Is there Value Gained or Lost? Mediterranean Journal of Social Sciences.
[38] See Lumina, *supra* note 7.
[39] See Kersting, *supra* note 20.
[40] See Kersting, *supra* note 1.
[41] U.S. Department of State. (2017). 2016 Country Reports on Human Rights Practices: Zambia. 3 March 2017. https://www.refworld.org/docid/annualreport/58ec899f13.html

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FINANCING NIGERIA'S ENERGY TRANSITION: EVALUATING GREEN BONDS, SUSTAINABILITY-LINKED LOANS, AND BLENDED FINANCE IN NIGERIA

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ABSTRACT

Nigeria's transition toward a low-carbon economy requires a financing architecture capable of mobilizing capital at scale while maintaining fiscal and developmental balance. This article examines the evolution of green finance in Nigeria, focusing particularly on green bonds, sustainability-linked loans, and blended finance, as instruments driving the country's energy transition. It critiques the fragmented nature of existing legal and institutional frameworks, including the Climate Change Act 2021, SEC Green Bond Rules, and Central Bank sustainability guidelines, arguing that their limited integration undermines effectiveness and investor confidence. The article contends that Nigeria's progress depends on the creation of a coherent green finance framework that aligns fiscal policy, financial regulation, and climate targets. It concludes by proposing pathways for reform, including the development of a national green taxonomy, and the institutionalization of sustainability in public finance. By bridging policy ambition with financial innovation, Nigeria can position itself as a continental leader in green capital mobilisation and in the just transition toward a resilient, low-carbon future.

Keywords: Green Finance, Energy Transition, Green Bonds, Sustainability-Linked Loans, Blended Finance, Nigeria.

Introduction

On August 24 2022, former Vice President, Professor Yemi Osinbajo launched Nigeria's Energy Transition Plan (ETP) with the aim of showcasing the country's pathway to achieving its ambition of reaching net-zero emissions by 2060.[2] Among others, the main thrust of the plan is to significantly reduce emissions and end energy poverty while increasing the country's economic group. To achieve this, the plan recognizes that the country must shift from a fossil-fuel dependent economy to one driven by cleaner and more sustainable energy sources. Some three years after its launch, it has become clear that achieving the ambitions of the ETP is neither straightforward nor inexpensive, particularly requiring investments of enormous proportions. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC)[3] notes that at least a $1.9 trillion investment is required for the country to achieve its ambitious net-zero emission by 2060, per the mapped plan. This total is $410 billion above projected usual spending, an additional cost which translates to an annual spend of about $10 billion through 2060.[4] For a country like Nigeria still dealing with a significant debt profile and substantial investment needs, this magnitude of financing cannot be sustained by public funds alone. As such, mobilizing private capital, both domestic and international, is an essential pillar of Nigeria's climate and development approach.

Within the last decade, global financial markets have seen the increasing adoption of instruments aimed at aligning capital with environmental sustainability objectives as exemplified by Nigeria's ETP and are collectively referred to as "green finance". Of these instruments, green bonds, sustainability-linked loans, and blended finance mechanisms have emerged as the most practical vehicles for financing the low-carbon transition and responding to the challenge of climate crisis. Their appeal stem from their capacity to direct investment towards renewable energy, clean transport, and other climate-aligned projects, providing investors with measurable environmental outcomes in addition to financial returns. These instruments therefore provide a pathway to access urgently needed sources of funding for developing countries such as Nigeria given that traditional lending is limited by high-risk perception and limited fiscal space in these economies.[5]

As the first country in Africa to issue a sovereign green bond certified using the Climate Bonds Standard in December 2017, Nigeria's interaction with green finance while still at a nascent stage is evidently promising. The successful issuance of the green bond which raised ₦ 10.7 billion (US$ 29 million) to fund solar power and afforestation projects and a subsequent issue in 2019 which raised ₦ 15 billion (US$ 42 million) demonstrated both the country's regulatory readiness as well as the market potential.[6] A third bond, 50 billion Series III Green Bond was issued in

[2] Michael Dioha, 'Making Nigeria's Energy Transition Plan a Reality' (7 November 2022) *Energy for Growth Hub* https://energyforgrowth.org/article/making-nigerias-energy-transition-plan-a-reality/ accessed 10 October 2025.
[3] Established under the Petroleum Industry Act (PIA) 2021, the NUPRC is the Nigerian government agency responsible for the technical and commercial regulation of the country's upstream oil and gas sector.
[4] Nigerian Upstream Petroleum Regulatory Commission, *Upstream Gaze: The Official Magazine of the Nigerian Upstream Petroleum Regulatory Commission* (Vol 5, November 2023) 'Energy Transition Regime: Leveraging Investment Opportunities in the Nigerian Upstream Petroleum Sector' https://www.nuprc.gov.ng/wp-content/uploads/2024/02/Upstream-Gaze-Magazine-Vol.-5-20-2.pdf accessed 10 October 2025.
[5] Njideka Ihuoma Okeke, Oluwaseun Adeola Bakare and Godwin Ozoemenam Achumie, 'Integrating Policy Incentives and Risk Management for Effective Green Finance in Emerging Markets' (2024) 7(1) *International Journal of Frontiers in Science and Technology Research* 76–88.
[6] Policy Development Facility Phase II (PDF II), 'Nigeria: Sovereign Green Bonds for Climate Action' https://www.pdfnigeria.org/rc/nigeria-sovereign-green-bonds-for-climate-action/ accessed 17 October 2025.

June 16, 2025 and was oversubscribed by 183% with a total of NGN 91.42 billion in subscriptions, reflecting strong investor interest.[7] To regulate this evidently thriving market, financial regulators such as the Central Bank of Nigeria (CBN), the Securities and Exchange Commission (SEC), and the Debt Management Office (DMO) have introduced policy frameworks with the objective of supporting sustainable finance. However, the current regime is fragmented, and the volume of capital mobilized falls far short of what is needed to achieve the country's transition goals. In addition, weak institutional coordination, the lack of enforceable green taxonomy, and a limited project pipeline continue to stifle efforts to finance the energy transition.

Dovetailing into the above, the major focus of this article is to evaluate Nigeria's developing framework for green and sustainable finance, focusing on how legal and financial instruments such as green bonds, sustainability-linked loans, and blended finance can be further enhanced to drive the country's energy transition. This paper argues that while there is evidence of the presence of foundational structures are in place, substantial development will depend on building a coherent regulatory system that provides credibility, investor trust, and verifiable impact.

A Bird's Eye View of the Legal and Institutional Architecture of Green Finance in Nigeria

As already highlighted, Nigeria's legal and regulatory framework for green finance has developed incrementally over the past decade, reflecting a growing recognition of the critical role that financial markets must play in addressing the country's climate and sustainability issues. Though still evolving, Nigeria's regulatory architecture currently relies majorly on three institutions: the CBN, DMO, and SEC, and is also backed by legislation such as the Climate Change Act 2021, which reflects continued efforts to integrate financial regulation with energy transition objectives.

In particular, the CBN has been at the forefront of promoting sustainable banking and finance practices. Notably, in September 2012, it issued the Nigerian Sustainable Banking Principles (NSBP) to enhance the Banker's Committee's[8] commitment to deliver positive development impacts to society by requiring banks, discount houses, and development finance institutions to integrate environmental and social risk management into their operations. The principles were developed by and for the Nigeria Banking sector to signal Banks' commitment to economic growth that is environmentally responsible and socially relevant. The NSBP was significant in that it changed the perception of sustainability as a matter of corporate social responsibility to one of prudential and fiduciary concern. The CBN has since reinforced this approach through guidelines encouraging green lending and renewable energy financing, particularly under its Framework for the Implementation of the Solar Connection Facility, September 2020 aimed at expanding energy access, increasing local content, and creating jobs, among other intervention schemes.

Also, the DMO was established on 4th October, 2000 to centrally coordinate the management of Nigeria's debt and now occupies a key role in the evolution of green bonds in Nigeria. For one, it was through the DMO that the Nigeria Green Bond Framework was established to issue the country's first sovereign green bond. The framework

[7] Debt Management Office Nigeria, *Green Bond III Investor Presentation* (June 2025) https://www.dmo.gov.ng/news-and-events/circulars-releases/5348-press-release-sovereign-green-bond-offer-closes-with-91-42-billion/file accessed 18 September 2025.
[8] The Bankers' Committee is a regulator-led group comprising the (CBN) and the chief executives of licensed commercial banks meet to address the country's financial sector and economic growth.

was established in partnership with the Ministry of Environment and is consistent with the International Capital Market Association's (ICMA) Green Bond Principles, which emphasize the use of proceeds for climate-related projects, transparent appraisal, and post-issuance monitoring. [9]

Complementing the DMO's initiatives, the SEC, Nigeria's apex regulatory institution of the Nigerian Capital Market supervised by the Federal Ministry of Finance, introduced the Green Bonds Issuance Rules in 2018 to provide a regulatory framework for the registration, listing, and disclosure of green bonds in Nigeria's capital markets.[10] The rules stipulate eligibility criteria, reporting obligations, and external review requirements consistent with international best practices. This development brought the Nigerian market closer to global green finance standards and provided a degree of legal certainty for issuers and investors alike. As would be examined, there are still gaps, particularly in the monitoring and verification of environmental impact claims. The SEC's regulatory capacity is particularly limited, revealing a need to establish a recognized independent verification body to ensure that projects financed through green instruments achieve measurable climate benefits.

Perhaps the most relevant statutory development is the Climate Change Act 2021, which provides a framework for mainstreaming climate change actions, carbon budgeting, and establishes the National Council on Climate as the coordinating authority for Nigeria's climate governance.[11] The Act mandates the integration of climate objectives into national development planning and assigns the NCCC a financing function, to mobilise and manage funds for climate-related initiatives through the Climate Change Fund.[12] Unfortunately, no real action has been taken under the Act since its enactment. Additionally, while the Act highlights the intent to institutionalise climate finance, it fails to create a coherent link between the NCCC and other key financial regulators that play a role in the space. As a result, there is a real risk of regulatory overlap creating uncertainty for investors.

It is thus clear that while Nigeria's green finance architecture indicates real ambition and modest development, it is significantly limited by a lack of coherence.

Green Bonds and the Evolution of Nigeria's Climate Finance Market

Nigeria's entry into the green bond space in 2017, shortly after ratifying the Paris Agreement, was a decisive policy signal. The proceeds of the bonds were utilized to fund energy-related projects including the renewable energy micro-utilities programme, the funding of an afforestation programme, the 10MW Katsina wind farm power, and the purchase of solar-powered tricycles for use across the country.[13] This was followed by SEC in 2018 amending its existing rules and regulations to provide new rules for the issuance of Green Bonds in the country (SEC Green Bond Rules). To provide much needed clarity, the SEC Green Bond Rules defined a Green Bond as "any type of debt instrument, the proceeds of which would be exclusively applied to finance or refinance in part or in full new and/or

[9] Udo Udoma & Belo-Osagie (UUBO), 'Green Bonds: Helping to Drive Climate Change Mitigation and Sustainable Investments in Nigeria' (3 October 2023) https://uubo.org/wp-content/uploads/2023/09/GREEN-BONDS-HELPING-TO-DRIVE-CLIMATE-CHANGE-MITIGATION-AND-SUSTAINABLE-INVESTMENTS-IN-NIGERIA.pdf accessed 11 October 2025.
[10] Jubril Adeojo, *Nigeria's Green Bond Programme: Aspirations, Realities and Solutions* (February 2022, Heinrich Böll Stiftung) https://ng.boell.org/sites/default/files/2022-02/Nigeria%E2%80%99s%20Green%20Bond%20Programme2022Report.pdf accessed 17 October 2025.
[11] Section 3, the Climate Change Act 2021
[12] Section 4, the Climate Change Act 2021
[13] Ibid., n. 12

existing projects that have a positive environmental impact."[14] The rules proceeded to establish what qualifies as a green bond, it states that the monies from the issuance will be invested in projects such as renewable and sustainable energy, clean transportation, sustainable water management, energy efficiency, sustainable waste management, green buildings, and any other categories as may be approved by the Commission from time to time.[15]

The SEC Green Bond Rules provide a relatively comprehensive procedural framework for the approval of the issuance of green bond. They mandate the submission of a commitment letter, feasibility study, and independent assessment by a recognized certification authority. They also impose annual reporting obligations on issuers to disclose the environmental impact of funded projects.[16] However, these requirements, while consistent with international standards, are not sufficiently supported by enforceable sanctions. Compliance to these conditions is largely procedural rather than substantive, as the SEC lacks the capacity to audit the environmental integrity of reported outcomes. The result is the existence of a compliance culture focused on documentation rather than performance, thereby diluting investor confidence and opening the door to greenwashing.

Furthermore, a critical assessment of the Nigerian experience reveals that green bonds have been deployed more as public relations instruments than as systemic tools for long-term capital mobilisation. While the bonds were certified by the Climate Bonds Initiative, the post-issuance scope has been characterized by weak reporting, limited impact verification, and an absence of a consistent issuance pipeline. The enthusiasm that greeted the issuance of the sovereign bonds has not translated into a vibrant or self-sustaining green bond ecosystem.

The NGX and FMDQ have sought to fill this regulatory gap by operationalising disclosure and governance mechanisms through their listing and trading platforms. The NGX requires issuers to publish annual independent assessment reports and maintain continuous disclosure of compliance with Green Bond Principles.[17] Similarly, the FMDQ Green Exchange, launched in 2021, has introduced an innovative transparency framework for sustainability-linked instruments.[18] These platforms are however limited in market penetration. They have not yet catalyzed a deep secondary market for green securities or created a credible benchmark yield curve for sustainable instruments. Without these, liquidity remains thin and the attractiveness of green instruments relative to conventional bonds remains marginal.

The private sector's entry into the green bond market has been equally instructive. Access Bank's issuance of Africa's first certified corporate green bond in 2019[19] and OneWattSolar's green bond programme in 2021[20] highlight the growing recognition of the financial and reputational value of sustainability-linked financing. However, corporate participation is limited to a handful of large institutions with international exposure or development finance

[14] Rule 1.1 of the SEC Green Bond Rules 2018
[15] Rule 2.0 of the SEC Green Bond Rules 2018
[16] Rule 3.0 of the SEC Green Bond Rules 2018
[17] Nigerian Exchange Group (NGX), 'Sustainable Bond Market' https://ngxgroup.com/exchange/sustainable-bond-market accessed 17 October 2025.
[18] FMDQ Green Exchange, 'About FMDQ Green Exchange' https://fmdqgroup.com/greenexchange/about/ accessed 17 October 2025.
[19] Access Bank, *2019 Sustainability Report* https://www.accessbankplc.com/AccessBankGroup/media/Documents/Sustainable%20Reports/2019-Sustainability-Report.pdf accessed 12 October 2025.
[20] CNBC Africa, 'OneWattSolar's N10bn Green Bond Programme Takes Off' (16 July 2021) https://www.cnbcafrica.com/tag/onewattsolar accessed 12 October 2025.

support. Smaller corporates and subnational entities face prohibitive transaction costs, complex reporting requirements, and limited technical capacity to structure compliant instruments. The consequence is a market concentrated among a few actors rather than one that fosters broad participation and innovation.

Sustainability-Linked Loans: Mainstreaming ESG into Corporate Finance

The gradual emergence of sustainability-linked loans (SLLs) in Nigeria is another subtle but significant evolution in the country's corporate finance space. Unlike green bonds, which require proceeds to be channelled exclusively into eligible green projects, SLLs embed sustainability performance directly into the borrower's overall financing framework.[21] This flexibility allows companies to raise capital for general corporate purposes while being held accountable to specific Environmental, Social, and Governance (ESG) targets. Properly designed, SLLs can bridge the gap between sustainability commitments and financial performance, creating a direct economic incentive for firms to pursue measurable climate and social outcomes.

Nigeria's financial system has begun to recognise this potential. Several large corporates, particularly in the energy, manufacturing, and financial sectors, have started integrating ESG-linked provisions into their credit facilities. These arrangements often tie the cost of borrowing to key performance indicators (KPIs) such as reductions in carbon intensity, adoption of renewable energy, improved gender diversity, or enhanced governance practices. In principle, a borrower achieving or exceeding its targets enjoys reduced interest margins, while failure to meet agreed thresholds triggers a pricing penalty. This model aligns financial returns with sustainability outcomes, embedding accountability into the financing structure itself.

However, the Nigerian experience with SLLs is also nascent and fragmented. The CBN's Sustainable Banking Principles of 2012 laid the foundation for integrating ESG into the banking sector, but the framework has not evolved in step with global developments.[22] While some commercial banks have established sustainability desks and adopted ESG reporting, few have developed internal capacity to structure and monitor SLLs in line with international standards such as the Loan Market Association's Sustainability-Linked Loan Principles (SLLP).[23] The result is a market still dominated by ad hoc, relationship-driven transactions rather than a coherent ecosystem of ESG-linked credit instruments.

A key challenge lies in the credibility and measurability of sustainability targets. Many Nigerian corporates still lack robust data systems to track emissions, resource use, or social impact. In the absence of reliable baseline data, KPIs often remain qualitative or vague, reducing the transparency that underpins investor and lender confidence. Moreover, few third-party verifiers operate locally to assess target setting or performance. Without independent verification, SLLs risk becoming reputational tools rather than instruments of genuine behavioural change.

[21] JL Resendiz, N Ranger and O Mahul, *Sustainability-Linked Finance: A Lever for Firm-Level Resilience Innovation* (2025) Grantham Research Institute on Climate Change and the Environment Working Paper 429, London School of Economics and Political Science.
[22] Janet Talata Abor, Joshua Yindenaba Abor and Ahmad Hassan Ahmad, 'Sustainable Banking in Developing Economies' in *Sustainable and Responsible Investment in Developing Markets* (Edward Elgar Publishing 2023) 190–203.
[23] Loan Market Association and ICMA, *Guidelines for Sustainability-Linked Loans Financing Bonds* (June 2024) https://www.icmagroup.org/assets/documents/Sustainable-finance/2024-updates/Guidelines-for-Sustainability-Linked-Loans-financing-Bonds-June-2024.pdf accessed 17 October 2025.

The legal framework for SLLs in Nigeria is also underdeveloped. Unlike green bonds, which are regulated by the SEC through explicit rules, sustainability-linked loans operate within the general loan and credit framework of the Companies and Allied Matters Act (CAMA) and the Banks and Other Financial Institutions Act (BOFIA). Their sustainability components are contractual rather than regulatory, often buried in margin ratchets or covenant schedules. This contractual flexibility is valuable but also exposes both lenders and borrowers to legal uncertainty. Without industry-wide guidance, there is a risk of inconsistent documentation and weak enforceability of ESG-linked obligations. Nigerian financial regulators, particularly the CBN and SEC, could therefore play a catalytic role by issuing guidelines that clarify disclosure expectations, verification standards, and reporting templates for SLLs.

Equally important is the need to embed SLLs within Nigeria's broader energy transition and sustainable finance architecture. At present, sustainability-linked finance exists in a policy vacuum, with no formal link to national climate targets or the implementation of the Climate Change Act 2021. By contrast, in other jurisdictions, SLLs are increasingly aligned with national sustainability taxonomies and sectoral decarbonisation pathways. Embedding Nigeria's SLL framework within its energy transition plan would create coherence between corporate finance practices and public policy objectives. It would also enable the NCCC to collect relevant corporate data for monitoring progress towards the country's Nationally Determined Contributions (NDCs).

Blended Finance and the Role of Public–Private Partnerships

The financing gap for Nigeria's energy transition and broader decarbonisation agenda cannot be bridged by public or private finance alone. Blended finance, defined as the strategic use of public or concessional capital to mobilise private investment for sustainable development, offers a pragmatic pathway. It aligns public policy objectives with private sector efficiency, addressing the persistent perception of high risk that has historically constrained climate-aligned investment in emerging markets.

In Nigeria, blended finance has been most visible within public–private partnership (PPP) structures, particularly in infrastructure and renewable energy development. The Rural Electrification Agency's Solar Hybrid Mini-Grid Programme, for example, has leveraged concessional capital from development finance institutions (DFIs) such as the World Bank and the African Development Bank (AfDB) to crowd in private investment for off-grid electrification.[24] This model demonstrates how public finance can be deployed not as a substitute for private capital, but as a catalytic instrument that mitigates commercial risk and enhances project bankability. Yet, such examples remain the exception rather than the norm, reflecting institutional fragmentation and an underdeveloped legal and financial framework for blended transactions.

Critically, Nigeria's PPP regime was not designed with climate or sustainability outcomes in mind. The legal framework focuses primarily on procurement efficiency and risk allocation, without integrating ESG or climate-resilience considerations into project design and evaluation. As a result, while PPPs have mobilized private finance for roads, ports, and power projects, few have been structured to deliver measurable climate benefits or align with

[24] Oluleke O Babayomi, Babatunde Olubayo, Iheanacho H Denwigwe, Tobiloba E Somefun, Oluwaseye Samson Adedoja, Comfort T Somefun, Kevwe Olukayode and Amarachi Attah, 'A Review of Renewable Off-Grid Mini-Grids in Sub-Saharan Africa' (2023) 10 *Frontiers in Energy Research* 1089025.

Nigeria's NDCs. The challenge, therefore, is not the absence of a PPP mechanism but the lack of policy alignment between the PPP regulatory regime and Nigeria's climate finance agenda.

Blended finance could serve as the bridge that links these two frameworks. By embedding sustainability conditions into concession agreements and project finance documentation, Nigeria can ensure that concessional funds are used strategically to de-risk low-carbon projects, through instruments such as first-loss guarantees, interest rate subsidies, or viability gap funding. This would allow public capital to play a catalytic rather than compensatory role, stimulating long-term private participation in sectors such as renewable energy, clean transport, and sustainable agriculture. The development of a *"National Blended Finance Framework"*, anchored in collaboration between the Ministry of Finance, the ICRC, and the NCCC, would provide the policy coherence currently lacking.

However, the effective deployment of blended finance depends on transparency, institutional capacity, and governance. Nigeria's history of opaque procurement and weak contract enforcement poses a credibility challenge for private investors and DFIs alike. Without credible regulatory oversight and clear performance standards, concessional funds risk being absorbed into projects with limited sustainability impact. To avoid this, Nigeria must institutionalise disclosure and accountability mechanisms, mandating public reporting on concessional capital utilisation, environmental outcomes, and private investment mobilized. Such governance safeguards are not bureaucratic burdens but the foundations of market confidence.

Blended finance and PPPs, if effectively aligned, could transform Nigeria's energy transition from a policy aspiration into a bankable reality. The state's role should evolve from being a direct financier to a market enabler, using fiscal tools to absorb early-stage risks, standardise documentation, and promote project aggregation to attract institutional investors. Done right, this model could establish Nigeria as a credible test case for scalable, sustainable infrastructure finance in Africa.

Towards a Coherent Green Finance Framework for Nigeria

As this paper has established, Nigeria's climate finance architecture is insufficiently integrated into the country's broader economic and energy policy. The disjointed nature of existing frameworks shows a regulatory ecosystem that has evolved reactively rather than strategically. To achieve scale and credibility, Nigeria must move from disparate instruments and policies to a unified and coherent green finance framework.

To begin with, a coherent framework begins with alignment. It is recommended that the Climate Change Act should serve as the anchor legislation linking national emissions targets to financial instruments, regulatory incentives, and private sector participation. At present, the Act establishes a governance structure for climate action through the NCCC but leaves financing mechanisms largely undefined. A legislative amendment or implementing regulation could expressly empower the NCCC to coordinate all sustainable finance initiatives, working alongside the SEC, CBN, DMO, and the Ministry of Finance. Such coordination would ensure that capital market instruments like green bonds and sustainability-linked loans directly contribute to achieving Nigeria's NDCs and long-term net-zero goals.

Equally crucial is the development of a national green taxonomy, a classification system defining which economic activities qualify as "green" or "sustainable" in the Nigerian context. Without this, issuers and investors lack clarity,

and the risk of greenwashing persists. A taxonomy tailored to Nigeria's economic structure, particularly its reliance on oil and gas revenues, would help prioritise transition investments, such as natural gas decarbonisation, renewable energy expansion, and industrial efficiency. The taxonomy should draw from international standards such as the EU Taxonomy and the ASEAN Green Bond Standards but adapt them to local realities, ensuring that climate ambition aligns with developmental imperatives.

Institutional coherence must also extend to financial regulation. The SEC's Green Bond Rules and the CBN's emerging sustainability frameworks should be harmonized to create uniform disclosure, verification, and reporting obligations. The multiplicity of reporting standards currently imposes compliance burdens on issuers while offering limited assurance to investors. Establishing a centralized Sustainable Finance Registry, managed jointly by the NCCC and SEC, could improve transparency and consolidate data on issuances, project impacts, and emissions reductions. This database would provide both policymakers and investors with verifiable evidence of climate finance performance.

Finally, fiscal policy has an equally critical role to play. To attract sustained private participation, green instruments must be supported by targeted incentives including tax reliefs for certified green issuances, reduced transaction fees, or partial risk guarantees for first-time issuers. Beyond incentives, the federal and state governments should embed green budgeting principles within public finance. This would ensure that annual budgets reflect climate-related expenditures and that public debt issuance aligns with sustainability objectives. Such fiscal alignment not only strengthens credibility with investors but also signals Nigeria's seriousness about integrating climate action into macroeconomic governance.

Conclusion

Nigeria's pursuit of green finance sits at the intersection of necessity and opportunity. As the country grapples with fiscal constraints, energy transition imperatives, and climate vulnerability, the evolution of instruments such as green bonds, sustainability-linked loans, and blended finance offers a viable pathway toward sustainable development. Yet, the effectiveness of these mechanisms depends not merely on their availability but on the coherence and credibility of the legal, regulatory, and institutional structures that support them.

To advance, Nigeria must harmonise its fragmented frameworks, embed climate objectives within financial regulation, and ensure that green finance moves from rhetoric to measurable impact. This calls for clear governance, predictable incentives, robust disclosure standards, and capacity-building across the financial sector. A coherent and transparent green finance framework would not only enhance investor confidence but also position Nigeria as a regional model for financing an equitable and resilient energy transition.

JUNGLE JUSTICE IN NIGERIA: A THREAT TO RULE OF LAW AND FUNDAMENTAL RIGHTS

Havilah Livingstone

ABSTRACT

Jungle justice, also known as mob justice, refers to the extrajudicial punishment of individuals suspected of crimes, often through public lynching or killings without lawful trial. In Nigeria, this practice has become a persistent plague within the justice system, reflecting both the failure of law enforcement agencies and the erosion of public trust in formal legal institutions. It violates fundamental rights enshrined in the Constitution of the Federal Republic of Nigeria, 1999, including the rights to life, fair hearing, and the dignity of the human person. Jungle justice also poses a significant threat to the rule of law. This article examines the root causes and implications of jungle justice and argues that it directly undermines the rule of law and the protection of fundamental rights in Nigeria. It concludes with practical recommendations for institutional reform, enhanced public education, and strengthened mechanisms for upholding fundamental rights.

Keywords*: Jungle Justice; Mob Justice; Extrajudicial Punishment; Rule of Law; Fundamental Rights; Public Trust; Law Enforcement Failure; Vigilantism; Criminal Justice System; Human Rights Protection; Nigeria.*

INTRODUCTION

In a society that upholds the ideals of the Constitution and the rule of law, every citizen is presumed innocent until proven guilty through due process. Yet, in Nigeria, jungle justice seems to permeate and tear through the very fabric of justice, exposing deep-rooted societal frustrations and institutional decay.

Many Nigerians are disillusioned with a justice system where criminals are handed over to the police for punishment only to be released shortly after, often due to bribery or influence from powerful connections.

As a result, citizens resort to taking laws in their hannds so that others will learn. This extra-judicial response commonly manifests in brutal acts such as beating the criminal to death or setting the suspected criminal ablaze.

This practice disregards the constitutional guarantee of fair hearing, dignity of the human person, and the right to life, enshrined in the 1999 Constitution of the Federal Republic of Nigeria.

Beyond violating individual rights, it poses a direct threat to the rule of law and the legitimacy of state institutions. This article, therefore, explores the legal, social, and institutional dimensions of jungle justice in Nigeria and proposes actionable reforms to restore faith in the justice system and safeguard fundamental rights.

RESEARCH METHODOLOGY

This research adopts a doctrinal research methodology. It relies on primary and secondary sources of law to examine the implications of jungle justice on the rule of law and fundamental rights in Nigeria's legal system.

JUNGLE JUSTICE IN NIGERIA

Jungle justice refers to a situation whereby an enraged mob or private individuals take the law into their own hands by publicly humiliating or assaulting persons suspected of committing crimes.[1] It is an extra-judicial act often resulting in grievous bodily harm or death.[2]

In recent years, the prevalence of jungle justice in Nigeria has increased, driven by widespread distrust in law enforcement agencies, worsening economic conditions, and the rapid dissemination of misinformation.[3] For instance, in Akwa Ibom State, Nigeria, several cases of jungle justice were reported between 2018 and 2025, with little or no intervention from law enforcement authorities.[4] This reflects institutional failure and shows the urgent need for reform, awareness, and accountability.

From a legal standpoint, jungle justice is unconstitutional and stands in direct contradiction to the tenets of Nigeria's legal system. Under Section 36(5) of the Constitution of the Federal Republic of Nigeria,

[1] C.S.Ndukwe, "Jungle Justice: Its place in the Nigerian Criminal Justice System", SSRN,,https://ssin.com/ abstract=4317682> accessed 12 September 15, 2025.
[2] Ibid
[3] Josephine Malachi, "How Nigeria can stop rising jungle justice" (14 April, 2025), DW, <https://www.dw. com>
[4] AKSU Annals of Sustainable Development, Volume 3 Number 1, June, 2025

1999, an individual accused of a crime is presumed innocent until proven guilty. The section states: "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty."

Similarly, Article 11 of the Universal Declaration of Human Rights affirms that "everyone charged with a crime has the right to be presumed innocent until proved guilty in a fair and public trial with all the needed guarantee for defence."

Furthermore, applying A. V. Dicey's doctrine of rule of law, jungle justice is a clear violation. Dicey emphasized three key principles: the supremacy of the law, equality before the law, and the predominance of legal spirit. Jungle justice undermines these principles by allowing individuals to act above the law and deny others access to legal redress.

Sections 33, 34, and 36 of the Nigerian Constitution guarantee fundamental rights to life, dignity, and fair hearing respectively, rights that are routinely violated in jungle justice incidents.

There are instances where jungle justice has played out in Nigeria and received judicial pronouncements by the courts. In ***Olabode v. State,***[5] the accused, a mechanic, came into his workshop and noticed that the deceased, an apprentice, had siphoned petrol from a vehicle parked in front of the workshop. In retaliation, the accused poured petrol on the deceased and set him ablaze. After committing the act, he fled the scene. The deceased, though rushed to the hospital, died 14 days later from dehydration due to the severe burns. The trial judge, in a reserved judgment, found the accused guilty of murder, a verdict that was subsequently upheld by the appellate courts.

Apart from the Nigerian Constitution, the Administration of Criminal Justice Act (ACJA),2015 reinforces the protection of suspects' rights in the justice system. The law provides that a suspect shall be accorded humane treatment, with full regard to their right to the dignity of the human person, and shall not be subjected to any form of torture, cruel, inhuman, or degrading treatment. Therefore, even where an individual is alleged to have committed a crime, he or she remains entitled to the constitutional right to dignity and due process. Being a suspect does not strip a person of their fundamental rights as a citizen of Nigeria. Acts of jungle justice which involve brutal punishment or execution without trial, not only violate the Constitution but also breach statutory safeguards under the ACJA.

CAUSES OF JUNGLE JUSTICE

1. **Lack of Trust in Law Enforcement Agencies**: One of the major reasons of jungle justice in Nigeria is the deep-rooted distrust citizens have in the police and other security agencies. People often believe that handing over suspected criminals to the authorities is pointless, as these individuals are likely to be released without punishment either due to bribery, connections, or systemic inefficiencies. As a result, some citizens prefer to take matters into their own hands, thinking it's the only way to serve justice and prevent repeat offenses.
2. **Ignorance of the Law:** Many people who engage in jungle justice do so out of ignorance. They believe they are doing society a favor by punishing alleged offenders on the spot, not realizing that such actions are illegal and constitute a serious crime themselves. There's a general lack of

[5] (1996) 6 NWLR (pt. 250) 690

awareness about constitutional rights and the legal implications of mob actions. This ignorance fuels the normalization of jungle justice, especially in rural and undereducated communities in Nigeria.

3. **Religion**: Religion is also one of the major causes of jungle justice in Nigeria. The country is home to diverse religious beliefs- Christianity, Islam and African Traditional Religion. When a person is perceived to have committed blasphemy or acted in a manner deemed offensive to a particular religion or deity, such acts are sometimes met with violent responses. This is especially common in religious communities where emotions often override the rule of law. An example is the tragic case of Deborah Samuel, a student who was brutally murdered by her colleagues on May 12, 2022, over alleged blasphemy. Her death is a proof of how religious extremism can lead to mob violence under the guise of defending faith. However, it's important to clarify that Nigerian courts strongly oppose the use of religion to justify jungle justice, as seen in ***Kaza v. State***,[6] the court clearly stated that "Islamic religion is not a primitive religion that allows its adherents to take the law into their hands and to commit jungle justice. Instead, there is a judicial system in Islam which hears and determines cases including the trial of criminal offences and anybody accused of committing an offence against the religion or against a fellow Muslim brother should be taken to the court (either a Sharia or a secular [common law] court) for adjudication."
4. **Slow and Inefficient Justice System**: The Nigerian judicial system is plagued with delays. Cases can drag on for years without resolution, making citizens lose faith in the courts. When people feel that justice is not only delayed but may never be served, they become more inclined to deliver "justice" themselves even if it means breaking the law. This frustration with the system makes jungle justice seem like a faster alternative.
5. **Economic Hardship and Unemployment:** Poverty and lack of opportunities also contribute to jungle justice. In communities where people are struggling to survive, petty crimes like theft are seen as direct threats to their already fragile means of livelihood. As a result, suspects are treated harshly, not just out of a desire for justice, but from deep anger and resentment borne out of hardship.
6. **Vigilante Abuse**: In areas where government presence is minimal, local vigilante groups sometimes step in. While meant to help with security, these groups often overstep their boundaries. Without proper training or regulation, some of them become the very source of jungle justice, acting as judge, jury, and executioner without any legal backing. For example, a female corp member was stripped naked and beaten to death by a vigilante group in Anambra State, Nigeria, because she was suspected of being involved in cybercrime.[7]

IMPACT OF JUNGLE JUSTICE ON THE NIGERIAN SOCIETY

Jungle justice has significant impacts on Nigerian society, threatening the very fabric of law, order, and

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[7] Punch Newspaper, "How eight masked vigilantes stormed Anambra Corpers lodge, stripped lady naked" (23rd August, 2025), <https://punchng.com accessed 15 September, 2025

human dignity. One of its consequences is the erosion of the rule of law. By bypassing formal legal processes, jungle justice undermines the authority and credibility of the judicial system, encouraging citizens to take laws into their own hands rather than rely on institutions established for justice delivery. This lawlessness feeds into a culture of impunity, where suspicion alone becomes a death sentence.

Moreover, jungle justice constitutes a grave violation of human rights. It disregards the constitutionally guaranteed rights to life, fair hearing, and dignity of the human person, enshrined in both the Nigerian Constitution and international human rights instruments.

Victims, many of whom are later found to be innocent, are often subjected to brutal punishments without evidence or trial, further deepening the injustice.

Also, the spread of jungle justice has economic implications. Jungle justice involves violence, as such, public property can be damaged in the "process". Persistent insecurity and violent incidents can deter investors, disrupt local businesses, and limit socio- economic development.

In summary, jungle justice poses a serious threat to Nigeria's legal, social, and economic structures, and calls for urgent and collective efforts to restore faith in the justice system.

ACTIONABLE REFORMS

- **Public Awareness and Legal Education Campaigns**

  The foundation of reform lies in educating the public. Many acts of jungle justice are fueled by ignorance, misinformation, and emotional reaction. Nationwide campaigns using radio, television, social media, religious platforms, and community town halls should emphasize the illegality and dangers of mob action, educate citizens on the proper channels for reporting crime and reinforce that ignorance of the law is no excuse under Nigerian law - ***ignorantia non excusat.***

- **Strengthening Law Enforcement and Rebuilding Public Trust**

  The Nigerian Police Force, as the frontline law enforcement agency, must be properly trained on human rights, crowd control, and rapid response to mob incidents. They should be equipped with tools to de-escalate violent situations. In addition, they should be involved in consistent community engagement to rebuild public trust.

- **Community Policing**

  Although, community policing is not allowed in Nigeria, implementing it will go a long way in combating jungle justice. In jurisdictions like United States of America, community policing is allowed. Nigeria can follow suit to reduce the incident of jungle justice.

CONCLUSION

Jungle justice reflects a breakdown of the legal and institutional frameworks that are meant to uphold justice and protect fundamental human rights in Nigeria. It undermines the rule of law and violates constitutional rights. While citizens may act out of frustration or distrust in the justice system, resorting to mob action is not a solution, it is a dangerous alternative that leads to more injustice. The "suspect" that loses his life due to mob justice is a human being with rights also.

To address this menace, a multi-faceted approach is needed: public education to dispel ignorance,

institutional reforms to rebuild public trust, and strict enforcement of laws against extrajudicial actions. As an African proverb rightly says, “If you want to go fast, go alone; if you want to go far, go together.” It is only through collective effort from citizens, law enforcement agencies, private organisations, government, and civil society, that Nigeria can truly uphold the rule of law and secure justice for all.

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"She Said No!": What Nigerian Law Really Says About Rape and Consent

Oluboriola Olatomiwa Somiyewo.

INTRODUCTION

There are justifications put forward for offences such as murder, theft, assault or robbery, however, the offence of rape stands apart.

Black's Law Dictionary describes rape as "the unlawful carnal knowledge of a woman by a man forcibly and against her will."[1]

This definition reflects an older legal tradition, however it opens the way for examining how Nigerian law now understands rape and how consent is interpreted.

Rape remains one of the most sensitive subjects in Nigeria, as it shapes public debate, legal reforms and social attitudes. The question of what the law considers rape, and how consent is recognised or denied, forms the centre of this discussion.

This article sets out to explain these issues in clear terms. It introduces the legal meaning of rape under Nigerian statutes, explores the idea of consent, and explains the circumstances that may remove or weaken the possibility of free agreement. Each part flows into the next to show how the law constructs the offence and what this means for victims, offenders and the justice system.

STORY

Bolu and Aina had been close friends for a long time, and over time their friendship shifted into what many would call a "situationship".

They were students in different institutions, yet distance did not weaken their bond. They often engaged in online sexual conversations, exchanging messages about their fantasies and how eager they were to explore each other when they finally met.

These conversations continued for about a month until they agreed to meet at a hotel during a particular week.

When the day arrived, both of them were excited to see each other and act on the intimacy they had discussed. After checking into their room, Aina initiated sexual activity and Bolu responded without hesitation. They undressed together, touched each other freely and appeared to be participating willingly.

The situation changed when penetration was about to begin. Bolu became frightened and told Aina to stop. She made it clear that she no longer wished to continue. Her refusal came with repeated pleas, warnings and clear statements that she did not want to proceed.

[1] Black's Law Dictionary, Rape, (8th edn, 2004) p. 1289.

Aina insisted that they had already gone too far to stop and continued with penetration against Bolu's express refusal.

Following this incident, Bolu reported the matter to the authorities and filed a charge of rape against Aina.

COMMENTATOR'S FINAL LEGAL ANALYSIS WITH AUTHORITIES.

Can sex constitute rape under Nigerian law if a woman initially consented through sexting or undressing, but later withdrew consent and the man still had sex with her?

The Nigerian Constitution itself does not have a specific section that defines or directly addresses rape. However, rape is addressed in statutes (laws) enacted by the National Assembly and state legislatures.

According to **Section 357 of the Criminal Code Act** "Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape."

This reflects a long-standing legal view that consent must exist at the moment of penetration and must be free of any improper influence.

A more modern approach appears in the **Violence Against Persons (Prohibition) Act 2015. Section 1(1**) redefined the offence of rape as "when a person intentionally penetrates the vagina, anus or mouth of another person with any other part of his/her body or anything else without consent, or with incorrectly obtained consent. Consent can be incorrectly obtained where it is obtained

A) By force/threats/initimidation

B) By means of false or fraudulent representation as to the nature of the act.

C) By the use of substances capable of taking away the will of that person.

D) By a person impersonating a married womans husband in order to have sex.

These statutory provisions place consent at the centre of the offence.

This raises the question of what happens when a woman who had previously shown willingness later withdraws it at the point of penetration?

Festus Ogun posits that "carnal knowledge after withdrawal of consent becomes unlawful and therefore constitutes rape. A woman or girl that previously consents to intercourse with a man may withdraw such

consent in the course of the act. Thus, in the eye of law, it is rape if a man continues with the act after the consent has been withdrawn."[2]

A useful illustration comes from contract law. Past consideration, which refers to an act or promise made before an agreement, cannot support a valid contract.

Bolu's sexting, flirting or earlier intimacy with Aina falls into this category. They may create an atmosphere of willingness, yet they do not amount to present consent at the time of the act.

The law requires consent to be active, informed, specific to the moment and capable of being withdrawn at any stage. Once a person says "No," the encounter must stop. Proceeding further turns the act into rape. This aligns with the principle that consent must be an active, ongoing agreement between parties.

This position aligns with the decision in **Oladotun Ogunbayo v The State,** where the court stated that lack of consent is the core element upon which other components of the offence rest, and without valid consent, the act becomes unlawful.[3]

Applying these principles to the scenario, Aina would be liable for rape under **Section 357 of the Criminal Code Act**. The same outcome arises under **Section 282 of the Penal Code** applicable in Northern Nigeria. The punishment provisions also make the seriousness clear. **Section 358 of the Criminal Code Act** prescribes life imprisonment, with or without caning. **Section 283 of the Penal Code** also provides for life imprisonment or a lesser term in addition to a possible fine.

These statutory and judicial authorities, therefore show that Nigerian law protects the right to withdraw consent at any moment. Once that right is exercised, any continuation of the act becomes rape.

[2] Festus Ogun, "On Rape And The Controversies Over Withdrawal Of Consent" (Law Essays, 13 February 2018) https://ogunfestus.wordpress.com/2018/02/13/%E2%80%8Bon- accessed 24 October 2025.
[3] (2007) 8 NWLR (Pt 1035) 157,

A Constitutional Review of the Illegitimacy of Nigeria's Same-Sex Marriage (Prohibition) Act

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Abstract

Consensual sexual activity between adults of the same sex is criminalised in Nigeria. This stems from prevailing socio-cultural and religious beliefs that portray same-sex sexual relationships as unnatural, un-African, and morally reprehensible. Religious people would go further to regard it as demonic. It is on this basis that the Same Sex Marriage (Prohibition) Act (SSMPA) 2013, which criminalises various forms of same-sex unions and public display of same-sex amorous relationships, was enacted by the Nigerian government. This legislation was birthed notwithstanding that the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the fundamental rights of all citizens, irrespective of one's sexual orientation. These rights include the right to life, freedom from discrimination, right to personal liberty, right to freedom of assembly and association, right to fair hearing, and right to privacy. The study adopts a doctrinal research methodology to analyse the constitutionality of the SSMPA with regards to its alignment or otherwise with the fundamental rights enshrined in Chapter IV of the 1999 Constitution (as amended), particularly the right to privacy, right to freedom of assembly and association, and right to freedom from discrimination. The study contributes to the scholarly debate on LGBTQ+ rights and argues for the protection of the fundamental rights of every individual, regardless of gender identity and sexual oreintation.

Keywords: Same Sex Marriage (Prohibition) Act, fundamental rights, gender identity, sexual orientation, same-sex marriage, LGBTQ+ persons

1.0. Introduction

Same-sex marriage is not only prohibited but also criminalised in Nigeria with defaulters risking 14-year prison term. This is as a result of the enactment and enforcement of the Same Sex Marriage (Prohibition) Act (SSMPA), 2013. The SSMPA is targeted at a group of minorities within the Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ+) community, particularly as it relates to one's expression of their gender identity and sexual orientation. Although homosexuality is not a new phenomenon in Nigeria, such practices were done in secret because of social stigma and public censorship. However, the influence of popular culture and western civilisation has led to the increased visibility of same-sex practices in Nigeria such that LGBTQ+ persons no longer hide their identities. The increased public display of same-sex relationships gave rise to the enactment of the SSMPA.

Interestingly, Nigeria's anti-homosexual marriage Act came at a time the world was witnessing a rise in the legalisation of same-sex marriages to protect the rights of LGBTQ+ persons. The first country that legalised same-sex marriage was Netherlands in 2001.[2] Currently, there are 38 countries worldwide where same-sex marriage is legal.[3] Thailand became the first Southeast Asian nation to legalise it in January 2025. South Africa is currently the first and only African country where same-sex marriage is legally recognised. It

[2] David Crary and Mike Corder, 'The Dutch Went First in 2001; Who Has Same-Sex Marriage Now?' *AP News* (Amsterdam, 1 April 2021) <https://apnews.com/article/europe-africa-netherlands-job-cohen-western-europe-e08b053af367028737c9c41c492cc568> accessed 6 October 2025.

[3] Human Rights Campaign, 'Marriage Equality Around the World' (undated) <https://www.hrc.org/resources/marriage-equality-around-the-world> accessed 6 October 2025.

legalised same-sex marriage with the Civil Union Act, 2006,[4] becoming the fifth country in the world and the first in Africa to do so. The South African constitution also protects against discrimination based on sexual orientation.[5] It is surprising that despite the increasing legalisation of homosexual marriages in many parts of the world, Africa has remained antagonistic. A study[6] found that the acceptance of same-sex marriage is geographically and culturally determined. Another study[7] found that nearly half of the countries worldwide where homosexuality is outlawed are in Africa. In Africa, the highest acceptance rate of same-sex marriage is in South Africa with 34 per cent of the population being positively disposed to it while Nigeria recorded the lowest acceptance rate with only one per cent of the population in support.[8]

The United Nations Human Rights Council passed a resolution, entitled *Human Rights, Sexual Orientation and Gender Identity*,[9] in favour of LGBTQ+ rights in 2011 with a call to all member nations to protect the rights of LGBTQ+ persons. The effect was an upsurge in countries that legalised same-sex marriage from 2011. Contrary to the mandate, the Goodluck Ebele Jonathan administration enacted the SSMPA as a form of defiance and rejection of 'westernisation.' The SSMPA not only prohibits same-sex marriage, but also criminalises and denies them legal recognition. Buttressing this point, Adamu observed that:

> "The natural implication of the criminalisation of same-sex marriage in Nigeria is that no civil suit can be instituted asserting rights or any claims under such a marriage in any court of law in Nigeria….Thus benefits ordinarily accruing to married couples such as conjugal rights, inheritance, child custody, maintenance and alimony will not be actionable…"[10]

The focus of this study is on the criminalisation of same-sex marriage or civil union in Nigeria in spite of the provisions of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as 1999 Constitution (as amended)), which guarantee Nigerian citizens the right to privacy,[11] freedom from discrimination,[12] and the right to freely associate with others.[13] The paper is divided into four parts with this introductory section as the first. The second part covers the scope of the SSMPA and a survey of subsidiary laws which criminalised same-sex relations in Nigeria prior to the enactment of the SSMPA. The third part of the paper examines the misalignment between the SSMPA and the fundamental rights guaranteed by the 1999 Constitution (as amended). The final part is the conclusion.

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[4] The Act was amended in 2020 and is now known as the *Civil Unions Amendment Act 8 of 2020*. A key provision is the prohibition of marriage officers from refusing to conduct and solemnise same-sex marriages.
[5] Constitution of the Republic of South Africa, 1996, s 9(3).
[6] Pew Research Center, 'The Global Divide on Homosexuality: Greater Acceptance in More Secular and Affluent Countries' (4 June 2013) <https://internationaltravel.wisc.edu/wp-content/uploads/sites/255/2015/04/Pew-Center-Report-on-Global-Attitudes-Toward-LGBTIQ.pdf> accessed 6 October 2025.
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[10] H Adamu, 'The Same –Sex Marriage Prohibition Act 2014: Nigeria's Rejection of a Western Secular Trend' [2019] 1 (1) *Usmanu Danfodio University Sokoto Law Journal* 160-183, 164.
[11] The Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), s 37.
[12] CFRN 1999, s 42.
[13] CFRN 1999, s 40.

2.0. Legal Framework on the Prohibition of Same-Sex Relationships in Nigeria

Nigeria is one of the most restrictive environments for sexual minorities in Africa, where consensual same-sex conduct and related expressions of identity are criminalised under multiple overlapping statutes. These are the SSMPA, the Criminal Code Act, the Penal Code Act, and several Sharia Penal Code Laws of Northern states.

2.1. Scope of the Same Sex Marriage (Prohibition) Act

While the title of the Same Sex Marriage (Prohibition) Act, 2013 specifically mentions 'Same Sex Marriage', its scope extends beyond this focus. The SSMPA contains only eight sections, yet it sets out Nigeria's firm stance against same-sex marriages. It declares that a marriage or civil union entered into between persons of same sex is illegal.[14] It forbids the solemnisation of such unions in churches, mosques, any other place of worship and invalidates any marriage certificate issued to same-sex couples,[15] stressing that only a marriage between a man and a woman is valid in Nigeria.[16] It also bans the registration and operation of LGBTQ+ associations and organisations, as well as public displays of same-sex affection, whether directly or indirectly.[17] Anyone who contracts a same-sex marriage or civil union is liable to 14 years imprisonment, while those who promote such by registering LGBTQ+ associations and supports the solemnisation of homosexual couples risk 10 years imprisonment.[18] The Act defines key terms such as 'marriage', 'same sex marriage', 'witness' and 'civil union.'[19] Notably, 'marriage' is a legal union entered into between persons of opposite sex in accordance with the Marriage Act, Islamic Law, or Customary Law while 'same sex marriage' means the coming together of persons of same sex with the purpose of living together as husband and wife or for other purposes of same sexual relationship. State High Courts have the jurisdiction to entertain matters arising from the breach of the SSMPA and, in the case of the Federal Capital Territory, the High Court of the FCT has jurisdiction.[20]

2.2. Complementary Provisions on the Criminalisation of Same-Sex Conduct in Nigeria

An assessment of the criminalisation of same-sex relationships in Nigeria is not limited to the SSMPA. The Act only restates the position of some other Nigerian legislations, albeit to a greater extent. Other legislations that bar such acts include the Criminal Code Act, which is applicable in southern Nigeria, the Penal Code Act that is enforceable in northern Nigeria, and the Sharia Penal Code Laws applicable in Zamfara, Borno, Bauchi Gombe, Jigawa, Kebbi, Kaduna, Kano, Katsina, Niger, Sokoto, and Yobe States. In addition to these, there are state laws like the Prostitution, Lesbianism, Homosexuality, Operation of

[14] Same Sex Marriage (Prohibition) Act 2013 (SSMPA), s 1.
[15] SSMPA, s 2.
[16] SSMPA, s 3.
[17] SSMPA, s 4.
[18] SSMPA, s 5.
[19] SSMPA, s 7.
[20] SSMPA, s 6

Brothels and Other Sexual Immoralities (Prohibition) Law 2000 of Borno State, and the Prostitution and Immoral Acts (Prohibition) Law of Kano State 2000.[21]

The Criminal Code Act[22] and the Penal Code Act[23] proscribe acts of 'carnal knowledge' against the order of nature. Offenders are liable to 14-year imprisonment, with the Penal Code Act adding a fine. The phrase 'against the order of nature' used in the Criminal and Penal Codes implies any sexual activity that varies from the penetration of the male penis into the female vagina. This broad definition includes sexual conduct between persons of the same sex and having carnal knowledge of an animal.[24] In *Naz Foundation v Government of NCT of Delhi*,[25] the phrase 'carnal intercourse against the order of nature' was interpreted to mean all forms of sexual conduct other than heterosexual penile–vaginal intercourse. The implication being that other sexual acts such as anal sex, oral sex, and the use of sex toys fall within this range. However, that is beyond the scope of this study. The Sharia Penal Code Law of Zamfara State termed 'carnal intercourse against the order of nature' as 'sodomy',[26] specifying a punishment of 100 lashes of the cane in addition to a year imprisonment for unmarried offenders while married offenders are to be stoned to death.[27] It criminalises lesbianism (*sihaq*)[28] with 50 lashes of the cane in addition to a term of imprisonment which may extend to six months.[29] The punishment for lesbianism in Bauchi State is 50 lashes of the cane in addition to a term of imprisonment which may extend to five years.[30] Furthermore, the Prostitution, Lesbianism, Homosexuality, Operation of Brothels, and Other Sexual Immoralities (Prohibition) Law of Borno State criminalises prostitution, lesbianism, and homosexuality.[31] The punishment for lesbianism and homosexuality is the death penalty.[32]

The foregoing underscores how strict Nigerian laws are against same-sex relationships and marriages.

3.0. Fundamental Rights Implications of the Same Sex Marriage (Prohibition) Act

The SSMPA is irreconcilable with fundamental constitutional and human rights, particularly in regard to privacy, freedom of assembly and association, and freedom from discrimination guaranteed by the 1999 Constitution (as amended).

[21] This law targets sex workers, transgender persons and cross-dressers.
[22] Criminal Code Act, Cap C38 LFN 2004 (CCA), s 214
[23] Penal Code Act, Cap P3 LFN 2004, s 284
[24] CCA (n21).
[25] 160 Delhi Law Times 277 (Delhi High Court 2009).
[26] Zamfara State Sharia Penal Code Law 2000 (SPC Law, Zamfara), s 130.
[27] SPC Law, Zamfara, s 131.
[28] SPC Law, Zamfara, s 134.
[29] SPC Law, Zamfara, s 135.
[30] Augustine Edobor Arimoro, 'The Criminalisation of Consensual Same-Sex Sexual Conduct in Nigeria: A Critique' [2020] SSRN 1-21, 11 <https://ssrn.com/abstract=3644604> accessed 10 October 2025.
[31] The Prostitution, Lesbianism, Homosexuality, Operation of Brothels, and Other Sexual Immoralities (Prohibition) Law of Borno State 2000 (PLHOB Law, Borno State), s 3.
[32] PLHOB Law, Borno State, s 7.

3.1. Violation of Privacy Rights

According to Justice Blackburn,[33] the right to privacy "is the most comprehensive of rights and the right most valued by civilised man…the right to be let alone." While it is difficult to define 'privacy,' the right to privacy encompasses the right to limit the access others have to one's personal information, secrecy or the option to conceal any information from others, control over others' use of information about oneself,[34] and freedom from intrusion upon oneself, one's home, family and relationships. Importantly, it encapsulates the principle of autonomy, which is the epicentre of 'liberty' or 'freedom.'[35] Autonomy is the basis for other fundamental rights, including the rights to personal liberty, human dignity, privacy, freedom of assembly and association, and freedom of expression.

The right to privacy is guaranteed by multiple international and regional instruments, including the Universal Declaration of Human Rights (UDHR),[36] the European Convention for the Protection of Human Rights and Fundamental Freedoms,[37] the International Covenant on Civil and Political Rights (ICCPR),[38] and the Charter of Fundamental Rights of the European Union.[39] The 1999 Constitution (as amended) also guarantees this right.[40] The right to privacy safeguards the autonomy of individuals to make personal decisions about their intimate relationships, family life, and identity without unwarranted interference by the state. It ensures that citizens are free from intrusive moral or political regulation of their private lives.

By criminalising same-sex relationships, the SSMPA intrudes into the private lives of adults who engage in consensual intimacy. This interference is incompatible with the constitutional right to privacy. Such overreach undermines the privacy and autonomy of individuals that the constitution seeks to safeguard. The application of the principle of autonomy to same-sex relations evinces the right of adults of sound mind to freely engage in private homosexual intercourse with other consenting adults without interference by a public authority. The European Court of Human Rights in *Dudgeon v United Kingdom*[41] held that criminalising homosexual acts between consenting adults in private violated the right to respect for private life. Similarly, in *Lawrence v Texas*,[42] the United States' Supreme Court struck down anti-sodomy laws, asserting that the state cannot "demean [individuals'] existence or control their destiny by making their private sexual conduct a crime."

[33] *Bowers v Hardwick* [1986] 478 U.S. 186, 198.
[34] Mnyim Mwuese Modupe, 'An Appraisal of the Same-Sex Marriage (Prohibition) Act 2013 in the Face of Emerging Multiplicity of Gender and Sexual Orientations' [2019] 9 *Benue State University Law Journal* 455-470, 456.
[35] Benjamin O. Igwenyi, Onyekachi Eni, Eseni Azu Udu, 'Same Sex Marriage, Constitutionalism and the Imperative of Public Morality' [2020] 2 (3) *IJOCLLEP* 130-139, 132.
[36] The Universal Declaration of Human Rights 1948 (UDHR), art 12.
[37] European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, art 6.
[38] International Covenant on Civil and Political Rights 1966 (ICCPR), art 17.
[39] Charter of Fundamental Rights of the European Union 2000, art 7.
[40] CFRN 1999 (n10).
[41] [1981] 4 EHRR 149 (ECtHR).
[42] [2003] 539 U.S. 558, 578.

3.2. Restriction of the Right to Assembly and Association

The right to peaceful assembly and association is one which is very fundamental to the very existence of man as a political animal.[43] It is thus provided for in the UDHR,[44] the ICCPR,[45] the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (ACHPRA),[46] and, most importantly, the 1999 Constitution (as amended).[47] The Constitution guarantees the right of every person to assemble freely and join and form political parties, trade union, or any other associations 'for the protection of his interests.'

The SSMPA prohibits the registration of gay clubs, societies and organisations; their sustenance, procession and meetings[48] and imposes a 10-year imprisonment on offenders.[49] The law extends to anyone who supports or sustains such organisations, including through leasing premises or providing funding, with penalties reaching up to 10 years imprisonment.[50] The implication is that pro-LGBTQ+ organisations and associations are barred and members of such groups cannot meet to promote their interests, nor can they receive funding from other individuals or groups. Other persons or groups are also not allowed to associate with them by funding, or aid their activities by any other means.[51]

The aforementioned provisions of the SSMPA is unconstitutional as it curtails the freedom of assembly and association of LGBTQ+ persons and pro-LGBTQ+ advocacy groups. In *Federal Government of Nigeria v Oshiomhole*,[52] the court stated that section 40 of the 1999 Constitution confers a right to all Nigerians to meet and discuss matters on which they have a common interest, even through mass protest. In *Inspector General of Police v All Nigeria People's Party & Ors*,[53] the Court of Appeal held that peaceful assembly and association are fundamental rights essential to democracy. Hence, the SSMPA is a rape on the right of LGBTQ+ persons to join and form associations for the protection of their interests in a democratic society.

3.3. Breach of the Right to Freedom from Discrimination

In the Canadian case of *Andrews v Law Society of British Columbia*,[54] 'discrimination' was defined as "a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individual or group not imposed upon others…." Thus, it refers to differential treatment that is demeaning to the human person, which is often the case when a law or conduct unjustifiably treats some persons or

[43] KM Mowoe, *Constitutional Law in Nigeria,* vol IV (Northline Press 2021) 509.
[44] UDHR, art 20.
[45] ICCPR, arts 21 & 22.
[46] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1986 (ACHPRA), Cap A9 Laws of the Federation of Nigeria 2004, art 10.
[47] CFRN 1999, s 40.
[48] SSMPA, s 4(1).
[49] SSMPA, s 5(2).
[50] SSMPA, s 5(3).
[51] Adamu (n9), 165.
[52] [2004] 9 WRN 129.
[53] [2008] 12 WRN 65.
[54] [1989] 1 SCR 143.

group of persons as inferior or lesser humans.[55] The right to freedom from discrimination is founded on the basis of the recognition of the inherent dignity and equal rights of all individuals, regardless of their background, identity, or characteristics.

The UDHR stresses the equality and dignity of all human beings[56] and prohibits differential treatment based on sex, race, religion, and, importantly, sexual orientation and gender identity.[57] The ICCPR asserts that all individuals are entitled to the rights and freedoms outlined in the Covenant without discrimination on any ground.[58] Furthermore, the ACHPRA[59] guarantees the right to freedom from discrimination of whatever nature or manner, including sex. The 1999 Constitution (as amended) also provides for the right to freedom from discrimination.[60] Section 42(1)(a) of the 1999 Constitution (as amended) states that no citizen shall be subjected to any 'disability or restriction' by reason of sex, religion, political opinion, place of origin, ethnic group, or community, and 'circumstances of his birth.'[61] The implication of this provision is the invalidation of any law and executive or administrative action that creates or is capable of imposing disabilities or restrictions against, or according privilege or advantage to a certain class of citizens. Section 42 corroborates section 17(2)(a) of the Constitution, which mandates the state to ensure 'equality of rights, obligations and opportunities before the law' for all citizens. It also reinforces section 15(2) that prohibits discrimination on the basis of place of origin, sex, religion, status, ethnic or linguistic association or ties to promote national integration.

In this light, the SSMPA is discriminatory as it subjects LGBTQ+ persons to 'disabilities and restrictions' which other citizens are not made subject to. Obidimma and Obidimma rightly observed that:

> "There is no doubt that the attitude and efforts of the National Assembly and indeed the Nigeria nation in promulgating the foregoing law is in itself discriminatory against people with same-sex preferences… It is contended that it is not only flawed in logic, it is also unconstitutional as it constitutes a violation of the fundamental rights of the people with same-sex preferences."[62]

While it can be argued that sexual orientation is not expressly mentioned in section 42(1), it suffices to state that 'sex', as used therein, is a generic term that encompasses sexual orientation. This was the position of the Supreme Court of India in *National Legal Services Authority v Union of India & Ors.*[63] In that case, an identical constitutional provision to that in section 42(1) of Nigeria's 1999 Constitution (as amended) came up for judicial review and the position of the court was that "discrimination on the ground of sex under Articles 15 and 16 [of the Indian Constitution] includes discrimination on the ground of gender identity."

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[55] Elokoi Solomon, 'Nigeria's Same-Sex Marriage Prohibition Act: Flying in the Faces of Constitutional and African Charter Rights' (unpublished manuscript, 1–26) 8 <https://core.ac.uk/download/551549143.pdf> accessed 6 October 2025.
[56] UDHR, art 1.
[57] UDHR, art 2.
[58] ICCPR, art 26.
[59] ACHPRA, art 2.
[60] CFRN 1999, (n12).
[61] CFRN 1999, s 42(2).
[62] E Obidimma and A Obidimma, 'The Travails of Same Sex Marriage Relation under Nigeria Law' [2013] 17 *Journal of Law, Policy and Globalization* 42-48, 45.
[63] [2014] 5 SCC 438.

Also, in *Bostock v Clayton County*, the Supreme Court of the United States held that "...discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second." This expansive interpretation supports the inclusion of sexual orientation under the umbrella of characteristics protected from discrimination. Thus, it is wrong to claim, like Mowoe[64] did, that the discrimination against homosexuals in Nigeria was not envisaged by the draftsmen of the Nigerian constitution. Therefore, it is unjustifiable to impose disabilities or limitations on certain class of citizens because of their sexual orientation, as the SSMPA does, except on the grounds clearly provided by the constitution: an appointment to any state office or corporate body established by law and membership of the armed forces or police force.[65]

4.0. Conclusion

The question of whether members of the LGBTQ+ community in Nigeria are entitled to the enjoyment of fundamental rights guaranteed to all citizens under the 1999 Constitution (as amended) will continue to be a subject of debate. This is further complicated by section 45(1) of the 1999 Constitution (as amended) that bestows on the government the power to override certain fundamental rights when it is 'reasonably justifiable in a democratic society' in the interest of national defence, public safety, public order, public morality or public health,[66] and to protect the rights and freedoms of other persons.[67] In *Pamela Adie v Corporate Affairs Commission*,[68] the Court of Appeal upheld the respondent's refusal to register the 'Lesbian Equality and Empowerment Initiative', a pro-LGBTQ+ organisation, on the ground that the denial was 'reasonably justifiable' since the name was 'misleading, offensive, and contrary to public policy.' This appears to be a distorted interpretation of 'reasonably justifiable….' In *Dudgeon's case*,[69] the court interpreted 'reasonably necessary (akin to the 'justifiable' used in the Nigerian Constitution) in a democratic society' to imply "the existence of a 'pressing social need' for the interference in question", and held that criminalising consensual same-sex acts between consenting adults did not satisfy this test. While no one has yet been convicted under the SSMPA,[70] the attitude of Nigerian courts toward the enforcement of the Act, particularly following *Pamela Adie's case,*[71] remains largely predictable. Accordingly, the author submits that the SSMPA is constitutionally problematic as it abrogates the recognised fundamental rights of LGBTQ+ persons and their allies, especially as it is in conflict with the principles of equality, non-discrimination, and personal autonomy. In the final analysis, on the basis of the preamble of the 1999 Constitution (as amended), there is a growing need to do away with prejudice, bias, and sentiments fueled by socio-cultural and religious beliefs and uphold the principles of freedom, equality, and justice by safeguarding the rights of all citizens, including the marginalised LGBTQ+ community in Nigeria.

[64] Mowoe (n42) 536.
[65] CFRN 1999, s 42(3).
[66] CFRN 1999, s 45(1)(a).
[67] CFRN 1999, s 45(1)(b).
[68] Suit No.: FHCI ABJICSI82712018.
[69] *Dudgeon v United Kingdom* (n40).
[70] A Federal High Court in Lagos State, Nigeria dismissed a case against 47 men charged under the SSMPA in 2020.
[71] *Pamela Adie v Corporate Affairs Commission* (n67).

"Beyond Punishment: How Determinism Can Transform Criminal Justice and Social Responsibility"

By

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ABSTRACT

For long there has been the idea that man has free will and that he exercises this free will to make his choices. Our criminal law systems are mostly designed in a way that deals with a freely choosing person. However, there are now findings that shows that this freewill a person is assumed to have and exercise may not be as full and free as we thought. This has laid to some arguing for a more deterministic view to be included in our system which will lead to a more scientific and neutral view of those that commit crimes and one that doesn't attach moral values. This article will be discussing the view point of determinism and how that can shape our criminal punishment system.

Keywords: *Determinism, Free will, Criminal responsibility, Criminal justice reform, Moral Responsibility*

INTRODUCTION

Most current criminal law systems are designed based on the premise that man exercises his free will and thus should be held responsible for such actions. Free will is believed to be allowing him to determine his actions and in choosing to commit acts that Society and the criminal system deems wrong he should also be punished.

One of the essential elements of what makes a person liable for a crime is the person having full knowledge of the act and its consequence and still choosing to commit the act.[2]

Cases where the person is believed to not have exercised their real choice such as coercion necessity and legitimate defence depending on the degree of lack of choice may lessen the criminal liability and in some cases make the person fully not liable or responsible even if they have committed a criminal act.[3]

From this we can see the legal system puts a great importance in choice and once the person is believed to have acted using their choice freely they are going to receive their punishment ranging from simple imprisonments to capital punishment. However Findings show that we may not be as free in choosing our actions as the law assumed were. The findings strengthen arguments of determinism and they argue that a person, all events in the universe including human decisions and actions are actually inevitable. This argument questions how the criminal Law system operates especially how criminals are punished and looked at. In the next few pages we will discuss determinism and how this findings may help criminal law reform offering view for a better criminal law system and possibly a better preventive method which will attempt to understand the real cause of crimes and find real solutions instead of waiting for the crime to happen to solve it.

Determinism

Determinism is the science and philosophy that all events in the universe including the human decisions are casually inevitable.[4] Causal determinism states that each effect in the world has a specific identifiable cause.[5] This idea suggests a chain-like effect where one act inevitably causes another act to occur and this chain goes back well into the past as well as the future. It states that every event is preceded by an occurrence that goes back and back to the extent it would be difficult to point out one action and view them as a single occurrence.

In the context of criminal law a determinist would ask questions such as what were the environmental, genetic, economical, educational factors that proceeded the criminal act. They will also question if the choice that the person has made is a real choice or a mere result of the interplay of the events that took place before the choice was made or the act was committed.

[2] Art 48, Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No 414/2004.
[3] Title III ch 2 s 2, Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No 414/2004.
[4] The Editors of Encyclopaedia Britannica, 'Determinism' Encyclopaedia Britannica (online) https://www.britannica.com/topic/determinism accessed 13 October, 2025.
[5] John D. Norton, 'Causal Determinism' Stanford Encyclopedia of Philosophy (online, revised 21 September 2023) https://plato.stanford.edu/entries/determinism-causal/ accessed 13 October 2025.

Due to this views the idea of responsibility we typically adopt is also questioned. Free will on the other hand opposes the idea of determinists and proposes that people's actions are not just mere follow up of previous occurrences but also majorly influenced by the choice of the person.[6] They reject the idea that man can't influence his actions they believe our acts are choices we make based on our own volition thus we should be held responsible for them.

The idea of free will and freely made choices is the basis of responsibility and criminal law as they are crucial elements in making a person criminally liable for their actions. The FDRE criminal code has clauses such as Article 71 which provides for absolute coercion, Article 75 provides for necessity and Article 78 provides for legitimate self defense that mitigate and even fully remove liability as well as in the case of correction transfer of the liability to the person who is believed to have made the choice because of the lack of choice the person exercises during this acts this shows us how important the matter of choice is in ascertaining responsibility.

The idea of choice is what makes people applaud and award a person for their good deeds as well as condemn and punish those who do badly. With the determinist view, that events are mere results of past actions that cause them things such as condemnation and viewing a person as a monster as well as applauding someone for their good deeds tend to lose their meaning. That is because that's the good and the bad aren't only attributed to those that commit the act but to the different factors that interplayed that has caused the person to act the way they did. For example in the FDRE criminal code article 48(1) states that "the person who is responsible for his acts is alone liable to punishment". However the determinist view argues if it is fair to punish and give only one person the full responsibility associated with the act when it is the by-product of all this other factors such factors shall be discussed in the following section which contributed in their interplay causing this wrong to happen.

The deterministic view applies a neutral and scientific view rather than moral view for acts of human beings for things such as wrong doings as it believes these people don't really have the free will to act otherwise. It tries to implement a more scientific description of occurrences it is more neutral while still acknowledging the event. With this view we are led to look at the way a person is held criminally responsible and how the person is treated after in a different way suggesting a need for revision.

Determinism in the real world

Deterministic factors can be internal and external. A person's genetic makeup, their neural chemistry, their brain structure are some internal factors. Their family upbringing, economic status, education, social conditioning, and their surrounding environments are some external ones. Determinist see a person as an amalgamation of all these external and internal experiences a person has encountered since the day they were born. These factors one has virtually no influence in changing such as the DNA end up dictating how the person thinks, acts and lives determinists argue that the free choice the law assumes is an illusion and that this factors create a deterministic web. This makes a person's behaviour the product of circumstances

[6] The Editors of Encyclopaedia Britannica, 'Determinism' Encyclopaedia Britannica (online) https://www.britannica.com/topic/determinism accessed 13 October, 2025.

and biology and not pure free will. A study conducted by Bick & Nelson shows that event that occur in the early life stages such as the events that happened during infancy and childhood are crucial for brain development. Environmental things such as poverty, famine, as well as the state of the mother such a stress during the pregnancy, the nutrition she had, and her sleep have a big impact on the child's brain development which will affect its whole adult life.[7]

Another study shows how parental education and family income influences a child's brain development in regards to memory executive function and language. The study doesn't conclusively show that just because a child grows up in a certain educational and economic background we will be able to know the exact way the child will turn out. However the interplay between this environmental factors as well as the internal ones such as the brain chemicals DNA and the other what will dictates how the person will act and in most cases these are things the child cannot choose to change.[8]

Determinists thus argue that although our system mostly assumes free will and choice and that's people can influence their environment most of the factors that influence it have to do with development which occurs during childhood and these factors are ones the child can have control over. Although it might seem that a child from a background with poor education, poverty can still use its free will to change things to the better it is still because of the things it was endowed with and other factors that preceded the event that he was able to become what society deems a better person and not because of his choice.

Compatibility

The purposes of the criminal law are protection of the society, punishment of those that transgress the law, deterring crimes through punishment, incapacitating those that have committed a crime from committing further crimes, Rehabilitation and restoration. However, the grand aim is the protection and betterment of society.

This idea does not contradict with determinism. What determinism questions is not whether or not a wrong has been done. The questions have more to do with the type of responsibility we give to the person as well as the punishment and moral responsibility we attach to the wrong that has occurred. It questions the moral judgment we attach rather than the simple fact a person who has committed a wrong. It argues prison should not be a place where one is put away and cast as a monster but a place where criminals are kept in order to protect the public safety and provided the things that they need, with rehabilitation, being the main focus.

Determinist views claim those choices are not freely made by the people and that the moral responsibility cannot be the basis for the inhumane treatment people usually face. As the people are not responsible for their mother's mental health during her pregnancy. They were born into this condition and the rest internal and external factors that we have discussed in previous pages. The punishment should not be bared only by

[7] Bick, J., & Nelson, C. A. (2016). Early adverse experiences and the developing brain. *Neuropsychopharmacology*, 41, 177-196 www.nature.com/articles/npp2015252 accessed on the 14th October, 2025

[8] Kimberly G Noble and others, 'Family Income, Parental Education and Brain Structure in Children and Adolescents' (2015) 18 Nature Neuroscience 773

that person who commits the act. For this a deterministic view would suggest implementing preventive programs as a solution for how to keep the society safe. Simply punishing those that commit crimes doesn't really help the issue as much. It is only after the crime is committed that we are intervening. However, working on the preventive measures especially the external factors of determinism can help a great deal as if you play a great role in not creating as much criminals in the first place. Preventing wrongs from happening from the start. Of course there will still exist those that commit wrongs. However the determinist view still maintains that we should hold such wrong acts accountable but that shouldn't be moral accountability. For those wrongdoers we should provide rehabilitative Solutions. And this is how we as a society bear collective responsibility as the society and the environment are also factors to the wrong a person has committed. The society shall not simply wash their hands off their responsibility by chalking it up to that one person's act.

Conclusion

A basic question at the core of criminal law is revealed by the debate between determinism and free choice. The foundation of today's criminal justice systems is the idea that people have free will, that they intentionally decide what is right and wrong, and that they should be rewarded or punished for their deeds. However, as the science and philosophy of determinism show, a complex interaction of internal and external factors, ranging from childhood, poverty, and social environment to genetics and brain chemistry, profoundly influences human behaviour. The moral basis for criminal responsibility is called into question if circumstances outside of our control influence our behaviour.

Accepting this does not invalidate the necessity of laws or penalties, nor does it release individuals from all accountability. Instead, it advocates for a more compassionate and fact-based approach to justice, one that places more emphasis on education, prevention, and rehabilitation than on outright retribution. Determinism encourages us to view criminals as the result of situations that society has frequently contributed to creating rather than as essentially bad or "monstrous." By doing this, it increases our sense of accountability because crime is no longer solely the product of one individual but rather reflects societal shortcomings that require community action.

Early interventions, social initiatives, and educational and economic reforms targeted at addressing the underlying causes of crime would be the main features of a redesigned criminal justice system motivated by determinist views. Additionally, it would guarantee that jails prioritize rehabilitation over retribution, giving criminals the chance to reintegrate into society as changed people. In the end, adopting determinism strengthens rather than diminishes the goal of criminal law, which is to protect and improve society, by promoting a system that actively seeks to avoid crime and address the root causes of it.

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The Judiciary as an Electoral Arbiter: Judicial Adjudication and the Protection of Electoral Integrity in Democracies.

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Abstract

In the heart of every democracy lies the quiet yet resounding role of the judiciary, a shining hope that ensures elections, the sacred expression of the collective will of the people. Elections are not merely theatrical ceremonies; they are real expressions of fairness and transparency in any country. Across the African continent, from sea to sea, where the scars of colonial legacies and aftershocks of political disorder remain, the judiciary remains a crucial guardian in upholding electoral integrity. This paper examines the critical contribution of the judiciary towards breaking and making those conflicts that arise after elections. It will tap into the daily lives of Kenyan, Malawian, Zimbabwean and Zambian citizens in order to show how the courts have the power both to cement and to destroy the social glue that holds society together. The paper argues for more judicial independence and capacity of the judiciary to enable a robust adjudication process. By traversing African literature, the article comes a long way in arguing that a robust judiciary does not just interpret the law but also feeds the human soul of democracy, peace and dignity for all. Lastly, it calls for reforms that include the ordinary aspirations of Africans, opening electoral justice as an entry point to enduring stability and prosperity for all.

Keywords: *Democracy, Electoral Disputes, Electoral Integrity, Judicial Independence, Rule of Law, Electoral Justice, Lawfare, Political Stability.*

Introduction

The dawn of Election Day in an African village is an interesting scenery. It embodies a situation where queues are seen under the umbrellas of acacia trees, voices murmur with anticipation and votes are whispers of hope for a better life amongst the citizenry. But at night, when vote tallies begin to pour in, whispers turn to screams accusations of fraud, tampered votes or suppressed voices shutter the fragile peace that prevailed during the election period. Then the judiciary steps in, not as a distant institution but as a compassionate mediator that holds together the torn edges of democracy. Elections being the heartbeat of representative governance demand more than just adherence to procedures. They require the soul of justice to affirm that the voices of the citizenry resonate equally as regards the chosen representatives that are voted into power.[3]

The democratic journey in African is marked by transitions from one-party rule to multiparty contests as seen in many countries after independence from colonial rule. This has highlighted the role of the judiciary in electoral disputes across many countries within the African continent. From the bold 2017 nullification of elections in Kenya to the 2020 success in Malawi, the courts have risen as guards against electoral irregularities in recent times as opposed to the norm in the past. Evidence shows that risk from law fare the systematic use of legal tools to shift the balance awaits and has often entrapped judiciaries into dishonest pitfalls on matters regarding election dispute adjudication.[4] Scholars like Kaaba have researched this trend and revealed how incumbents exploit judicial processes to delay justice or disqualify their rivals before elections.[5] This has diluted the humanistic core of democracy on the African continent as leaders stay in power despite disapproval of the people. This has been a continuous trend in Africa with many leaders becoming imperial presidents.

This article traverses African literature and prioritizes continental voices to determine the ways in which judiciaries can navigate these tensions. The paper argues that empowering courts with independence and empathy is not just institutional reform but a moral imperative to heal societies, end violence and honour the dignity of the voters. By examining cases from Kenya, Malawi, Zimbabwe and Zambia, the paper uncovers avenues to electoral integrity that echo the spirit of resilience on the African continent.

The Role of the Judiciary in Democratic Governance

The essence of democracy is the belief that power resides with the people. This power is temporarily entrusted for a period of time with leaders through free and fair elections. The judiciary, which is the conscience of this covenant, interprets the law not in isolation but as lifelines which connect individual rights and communal unity. In Africa, where colonial imprints remain in weak institutions, the courts must

3 Emmanuel O. Ojo. Public Perceptions of Judicial Decisions on Election Disputes: The Case of the 2007 General Election in Nigeria. Journal of African Elections. 2011. Volume 10, No. 1: 101-113.
4 Siri Gloppen & Lise Rakner. Legalised resistance to autocratisation in common law Africa. Third World Quarterly. 2024. https://www.tandfonline.com/doi/full/10.1080/01436597.2024.2433699
5 O'Brien Kaaba. The Challenges of Adjudication Presidential Election Disputes in Domestic Courts in Africa. African Human Rights Law Journal. (2015). 329-354

do more than mechanical adjudication but embody restorative justice so as to ensure that elections affirm and not alienate the will of the people.[6]

Electoral integrity encompasses aspects such as transparency, inclusivity and accountability and depends on the judicial sensitivity of a country. As Zambian scholar Sishuwa contends in his analysis of the post-1991 transitions, judiciaries must desist from legal autocratisation, where the law is used as a shield for incumbents.[7] The courts rule on voting complaints from registration to result certification that if left unattended, give birth to despair and violence. But such protection involves balancing a tightrope of the human cost such as the displacement of families by election violence or the frustrated young people whose dreams are set aside by manipulated systems.

African thought leaders like Enweremadu of Nigeria, emphasize that judicial independence is the pillar which allows the courts to humanize the law by prioritizing equity instead of expediency.[8] In Zambia, where multiparty democracy dawned in 1991, the role of the judiciary in petitions has evolved from one of deference during the colonial period to one of assertiveness, despite the fact that it may still be vulnerable to executive manipulation.[9] This path underscores the profound truth that the judiciary is not merely a referee but a healer that mends the scars on society through judgments that echo the people's quest for justice.

Electoral Disputes and the Threat of Lawfare

Electoral disputes in Africa often stem from the raw pain of perceived injustice miscounted ballots, candidates barred or results shrouded in secrecy. In Africa, these disputes are amplified by political polarisation and weak institutions. These are not merely abstract legal arguments but are cries from communities that are yearning for representation. It has been observed that lawfare amplifies this agony by transforming courts into battlegrounds where litigation delays justice or disqualifies opponents.[10] This has been consistently seen in Zimbabwe's prolonged petitions that entrench the dominance of the ruling party.

In Zambia, as articulated by Banda et al, the happenings have revealed how lawfare plays out through selective prosecutions or harassment challenges, a phenomenon that undermines the moral authority of the judiciary.[11] In the 2016 Zambian elections, opposition petitions on the ground of irregularities could not progress because of procedural technicalities. This confirms the continental patterns in Africa where the incumbents use the law as a bludgeon on their political opponents.[12] African scholars like Tordoff and Young

6 Everisto Benyera. The Political Legacy of Colonialism in Zimbabwe. Implications for Justice and Elections in Africa. 1st Edition. Routledge. 2024.
7 Sishuwa Sishuwa. Elite and Popular Basis for Legitimacy of Democracy in Zambia since 1991. Canadian Journal of African Studies/ Revue Canadienne des Etudes Africaines. (2025). Volume 59, 2. 361-82.

8 David U. Enweremadu. The judiciary and the survival of democracy in Nigeria: An analysis of the 2003 and 2007 general elections. Journal of African Elections. 2011. Volume 10, (1), 4-25.
9 John Bwalya, Robby Kapesa & Owen B. Sichone. Predatory co-optation and party system reversal: A behavioural perspective on Zambian political parties. Journal of Eastern African Studies. (2024). Volume 59, 1.
10 See Benyera, *supra* note 4.
11 Tinenenji Banda, O'Brien Kaaba, Marja Hinfelaar & Muna Ndulo. Democracy and Electoral Politics in Zambia. Brill. Leiden and Boston. (2020).
12 See Sishuwa, *supra* note 5.

warn that such tactics produce cynicism and turn elections from celebrations of appointing legitimate leadership to circus acts of hopelessness.[13]

The toll on citizens is immense in polarized settings as these unresolved disputes fester resentments and ignite violence, which in turn displaces families and deforms generations to come. The courts in such situations must assume their role of redemption to pierce the veil of lawfare with equitable judgments that restore the confidence of the judiciary and remind citizens that democracy is a shared home that is warmed by collective trust.

Judicial Responses to Electoral Disputes

The Presidential Election Nullification in Kenya

The Judiciary in Kenya made global headlines in 2017 when the Supreme Court nullified the presidential election citing irregularities and illegalities in the electoral process. The Supreme Court decision in **Raila Odinga and Others v. Independent Electoral Boundaries Commission and Others**,[14] continues to be a golden page in African judicial history, invalidating a presidential election due to transmission irregularities. This decision marked a historic moment in African jurisprudence as it has demonstrated the willingness of the courts to hold electoral bodies accountable.[15] The decision followed allegations of irregularities in the transmission of results which undermined the credibility of the election won by the incumbent, Uhuru Kenyatta. This milestone ruling is a good example to emulate in terms of electoral accountability as no result is sacred if it is tainted with secrecy.[16] For the ordinary Kenyans, who had been exhausted from the 2007 violence, the ruling of the court was a painkiller. It validated their suspicion and prevented any other injuries that would have occurred had the court not come in to make this ruling.

The ruling of the Kenyan Supreme Court was grounded in the commitment to electoral integrity, it emphasized transparency and adherence to constitutional standards. However, it is seen that the decision faced significant backlash, including accusations of judicial overreach and political bias from the ruling party.[17] Thus, this backlash continues to expose the vulnerability of the judiciary in Africa as the ruling government sometimes dominates the courts by preventing justice. The continued threats on judges who rule against the ruling party underscores the political risks that the judiciary faces. Nigerian scholar Ojo, did explain how this pressure challenges the humanistic commitment of the courts to serving people, rather than power.[18] The subsequent rerun election that was marred by opposition boycotts and further irregularities underscored the challenges of implementing judicial rulings in polarized contexts in Africa.

13 William Tordoff & Ralph Young. Electoral Politics in Africa: The Experience of Zambia and Zimbabwe. Governments and Opposition. Cambridge University Press. 2014
14 Presidential Petition No. 1 of 2017.
15 O'Brien Kaaba & Charles M. Fombad. Adjudication of Disputed Presidential Elections in Africa. Democracy, Elections and Constitutionalism in Africa. Stellenbosch Handbooks in African Constitutional Law. 2021
16Alisand Singogo. The Nullification of a Presidential Election Result: The Case of Kenya and Malawi. PhD Thesis. 2023
17 Mukami Wangai, Linus Mwangi & Josephat Kilonzo. Developing Jurisprudence beyond the Horizon: A Critique of the Supreme Court Decision in Raila Amolo Odinga & Another v. IEBC & Others 2017.Kabarak Journal of Law and Ethics. Volume 5, 2020.
18 Emmanuel O. Ojo. Bunker Democracy and the Challenges of Sustaining Democratic Values in Nigeria: An Appraisal of the 2011 Elections. Journal of African Elections. 2016. Volume 15.

The Constitutional Court Ruling in Malawi

The annulment of the elections of Malawi in 2020 demonstrated similar courage when the Constitutional Court annulled the 2019 presidential election. The ruling of the court in the **Saulos Chilima & Another v. Peter Mutharika & Another**,[19] case evoked nationwide jubilation as the court exposed irregularities like tampered tallies in the election. The court found evidence of widespread irregularities including the use of correction fluid commonly referred to as 'Tipp-Ex' on result sheets.[20] This phenomenon is said to have compromised the integrity of the election as the election results were seen to have been tampered. The ruling ordered a fresh election, which resulted in the defeat of the incumbent, marking a significant victory for electoral justice in Malawi. By reflecting on regional parallels this ruling should be praised as a humanistic triumph where judges honour the dignity of voters by mandating a fresh election. The victory of the opposition in the fresh poll symbolized renewal and hope for the citizens of Malawi.

The independence of the judiciary in Malawi was critical to the outcome of this matter on the contest of the election result. Despite political pressure and limited resources, the court delivered a transparent and evidence-based judgment.[21] This in turn was bolstered by public hearings and the detailed reasoning given by the court in this matter. The decision not only upheld electoral integrity but also set a precedent for judicial oversight in African democracies. However, the case highlighted resource constraints, as the judiciary struggled with delays and logistical challenges. [22] These delays and logistical challenges underscore the need for institutional strengthening.

Ongoing Threats to Judicial Independence in Zimbabwe

In contrast, the judiciary of Zimbabwe has faced significant obstacles in resolving electoral disputes. These challenges arise largely due to political interference and the lack of judicial independence in the country. The 2018 presidential election dispute in **Nelson Chamisa v. Emmerson Mnangagwa and Others**,[23] saw the Constitutional Court dismiss allegations of electoral fraud, despite widespread concerns about irregularities. A number of critics argued that the judiciary had close ties to the ruling ZANU-PF party which undermined impartiality of the court in the matter.[24] These assertions highlight the risks of a compromised judiciary in electoral processes in Africa.

The decision in Zimbabwe is critiqued by African scholar Benyera, as symbolic of colonial legacies which stifled justice in many pre-colonial African states.[25] For the citizens of Zimbabwe who have suffered long enduring economic woes, this felt like a betrayal. To them, the decision of the court perpetuated exclusion and fueled unrest in the country. Benyera argues that the entanglement of the executive and judiciary

19 (Constitutional Reference 1 of 2019) [2020] MWHC 2
20 Institute For Democracy and Electoral Assistance. Lessons From Malawi's Fresh Presidential Elections of 23 June 2020. Conference Report Webinar, 31 August 2020.
21 See Kaaba & Fombad, *supra* note 13.
22 *Ibid*
23 CCZ 42 of 2018
24 Human Rights Watch. Zimbabwe: Post-election violence and judicial challenges. (2018). Available at: https://www.hrw.org/news/2018/08/10/zimbabwe-post-election-violence-and-judicial-challenges>
25 See Benyera, *supra* note 4.

enables lawfare, echoing the same fears in Zambia of such similar erosion if not handled properly.[26] The human narrative here is one of quiet resilience where individuals cling to ballots as a source of hope in the midst of betrayal by the very institutions that must protect the will of the people.

The experience in Zimbabwe illustrates how lawfare can flourish in environments where judicial independence is weak. The combination of executive influence over judicial appointments and politically motivated lawsuits have eroded public trust in the courts, a thing that has contributed to post-election tensions.[27] This case underscores the need for reforms that will insulate the judiciary from political pressures and enhance their capacity to deliver electoral justice on the African continent as a whole.

Negotiating Petitions within a Fragile Democracy in Zambia

The Zambian courts, whose activities have been studied by Kaaba, have adjudicated over pivotal disputes, such as the Hakainde Hichilema v. Edgar Lungu,[28] petition, where judges implemented verdicts despite charges of violence during the elections. The 2016 presidential petition exposed judicial vulnerabilities, with allegations of bias undermining public confidence.[29] Kaaba argues that limited operational independence allowed political interference which in turn led to disenfranchising voters and risking political instability in the country during this period.[30] It is however, observed that recent reforms in Africa signal hope, as the courts are increasingly asserting autonomy, a reflection of the humanistic evolution toward equitable justice. Banda et al, highlight how the 2016 disputes exposed delays from understaffing, a mirror of the strains experienced in Malawi but underscoring the unique tribal-political relationship that exists in Zambia.[31] For Zambians, these rulings are personal they are affirmations of belonging, in a nation striving for equity. These problems like those seen in other African countries are less prevalent in Zambia underscoring the adherence to the tenets of democracy in the country.

Conclusion

The judiciaries in Africa are bearers of colonial burdens and democratic dreams. This phenomenon stands at the crossroads of democracy. From the victories in Kenya and Malawi to the trials in Zimbabwe and Zambia, they reveal a cloth that is woven with resilience and resolve. Traversing Zambian insights from legal luminaries such as Kaaba and Banda as well as continental voices like Benyera and Fombad, this essay contends that electoral justice is a humanist garment that shields not only votes but the souls of the people. Independence and capacity reforms are urgently required or else lawfare will overshadow the dawn of free and fair elections. In responding to this pressing issue, the courts of Africa may shine the pathways to peace, where the voice of every citizen echoes eternally within the chorus of progress.

26 *Ibid*
27 Freedom House. (2019). Zimbabwe: Freedom in the World 2019. Country Report. Available at: https://freedomhouse.org/country/zimbabwe/freedom-world/2019
28 (2016/CC/0033) [2016] ZMCC 4
29 Oyvind Stiansen, Haakon Gjerlow & Lise Rakner. The Politics of Litigating and Adjudicating Electoral Dispute: Evidence from Zambia. Electoral Studies. Volume 96, August 2025.
30 See Kaaba & Fombad, *supra* note 13.
31 Banda et al, *supra* note 9.

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THE DATA PROTECTION IMPACT ASSESSMENTS (DPIAs) UNDER GAID 2025: WHEN ARE THEY MANDATORY?

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ABSTRACT

In today's data-driven world, data breaches can affect hundreds of millions or even billions of people at a time. How can this be prevented or stopped? Well luckily there are laws put in place to regulate and help stop situations like these. The Global AI and Data Protection Regulation 2025 (GAID 2025) is an anticipatory law that safeguards and protects individuals' rights while mitigating institutional risk. GAID 2025 is a predecessor to, and replaced the the Nigeria Data Protection Regulation (NDPR) 2019. Data Protection Impact Assessment (DPIAs) play the role of spotting potential data breaches and security risks before it develops into a serious problem. They are preventive measures that identify, and mitigates or tackles head on privacy risk in data driven activities like; artificial intelligence, chat bots or Language Learning Models (LLMs) profiling users, powering fintance technology systems, managing sensitive health records, or running massive e-commerce engines,

This paper examines the exact situations where GAID 2025 makes DPIAs mandatory, while drawing comparisons with the General Data Protection Act (GDPR), Nigeria's Data Protection Act 2023, and the African Union's cybersecurity framework.

KEYWORDS

Data Protection Impact Assessments (DPIAs), GAID 2025, Artificial Intelligence (AI) Regulation, High-Risk Data Processing, Profiling and Automated Decision-Making.

INTRODUCTION

The emergence of advanced data technologies, particularly artificial intelligence has not only prompted the global community but also encouraged them to adopt more rigorous data protection standards, this is where GAID 2025 comes to play. GAID 2025 represents a comprehensive framework designed to regulate artificial intelligence (AI) and personal data processing on an international scale. One of its central compliance mechanisms is the Data Protection Impact Assessment (DPIA), which must be conducted whenever processing is likely to result in a high risk to individuals' rights and freedoms.[2] DPIAs serve as a required obligation, ensuring that risks are identified before high-risk operations begin. One of the most prominent features of the GAID 2025 is the expanded use of Data Protection Impact Assessments (DPIAS).

Comparatively, this approach aligns with the GDPR, which popularised DPIAs as a central accountability obligation.[3] The Nigerian Data Protection Act 2023 similarly emphasises risk-based regulation, reflecting a growing consensus on global best practice.[4]

2. DPIAs UNDER GAID 2025: LEGAL FRAMEWORK AND OBJECTIVES

According to GAID 2025, DPIAs is defined as structured assessments undertaken before initiating high-risk processing operations involving advanced automation, biometric data, or large-scale datasets and information. The objectives are fourfold: identifying risks, evaluating their impact, establishing safeguards, and demonstrating accountability to regulators.[5]

GAID 2025 is not only focused on widening the DPIA obligation beyond earlier legislation by introducing detailed AI-specific trigger systems. This expansion reflects concerns about unclarity, bias, and the potential for discrimination or data breaches inherent in automated systems.[6]

3. SCENARIOS IN WHICH DPIAs ARE MANDATORY UNDER GAID 2025

3.1 AI DEPLOYMENT AND AUTOMATED DECISION-MAKING

One prominent disadvantage of artificial intelligence (AI) systems, especially those used for predictive analytics and decision-making, is the potential of producing biased or prejudicial outcomes.[7] In situations like these, GAID 2025 mandates the use of DPIAs, for instance where; AI is used for decisions producing legal or similarly significant effects, such as employment screening, client profiling or loan approvals. Or in cases where Machine learning models rely on continuous personal data processing, this personal data could include, Sensitive information e.g., biometric or genetic information, which could end up being processed by AI systems.[8]

[2] Article 12, GAID 2025.
[3] Article 35, GDPR (EU 2016/679).
[4] GAID 2025, Part IV (DPIA Obligations).
[5] Edwards & Veale, *Enslaving the Algorithm* (CUP 2023).
[6] Wachter, Mittelstadt & Floridi (2017) 7 IDPL 76.
[7] GDPR, Recital 51.
[8] Bygrave, *Data Privacy Law* (OUP 2022).

Academic scholars have warned that algorithmic decision-making lacks transparency, increasing the need for formal assessments such as DPIAs.[9]

3.2 PROFILING AND BEHAVIOURAL TRACKING

Profiling is a psychological methodology that is used to get data about known or unidentified individuals or groups to assess their psychological characteristics. Profiling constitutes one of the most intrusive forms of data processing. DPIAs are mandatory under GAID 2025 where automated behavioural tracking, psychometric analysis, or real-time monitoring occurs.[10]

These risks are heightened in political advertising and consumer manipulation, where individuals may not fully understand the extent of monitoring.[11]

3.3 FINANCIAL SERVICES AND FINTECH OPERATIONS

The word “fintech” is simply a combination of the words “financial” and “technology”. It describes the use of technology to deliver financial services and products to consumers. These financial services depend heavily on data algorithms for risk scoring, fraud detection, and customer authentication. Have you ever wondered about how your banking app instantly recognizes you and shuts down if it senses an intruder? In cases like these, a lot of data protections are necessary for the protection of customers. GAID 2025 requires DPIAs in contexts involving: Algorithmic credit scoring, continuous monitoring of clients for fraud prevention, biometric banking authentication systems.

Because financial data is highly sensitive, regulators mandate encryption, pseudonymisation or anonymity, and algorithmic audit logs as mitigation tools.[12]

3.4 HEALTHCARE AND SENSITIVE DATA ENVIRONMENTS

In today's era, technology has now been implemented into the health sector, smart healthcare applies to any application or device that uses some combination of AI, sensors, data analytics, and networking to monitor patients' health conditions, inform clinical decisions, improve healthcare diagnostic research and services, connect care givers, and increase patient safety.

Healthcare data, genetic, biometric, diagnostic, is among the most sensitive categories of personal information. DPIAs are mandatory for prevention of AI-guided medical diagnostics, genetic profiling or biometric health monitoring, unethical sharing of patient data with insurers or pharmaceutical companies.[13]

The potential consequences of health data breaches justify a robust DPIA requirement.[14]. In this situation, GAID 2025 helps not only in the implementation but also reinforcement of right to privacy as provided by the1999 Constitution of The Federal Republic of Nigeria.

[9] GDPR, Article 22; NDPA 2023, s. 35.
[10] Tufekci, *Twitter and Tear Gas* (2017).
[11] NDPC Regulatory Guidelines (2024).
[12] African Union Data Protection Guidelines (2014).
[13] OECD AI Principles (2019).

3.5 E-COMMERCE SYSTEMS

E-commerce entails the buying and selling of goods and services over the internet. It involves all online activities related to these transactions, from initial product discovery to final purchase and payment, and includes a wide range of activities like online shopping, electronic payments, and online auctions.

This can be conducted through various platforms such as brand websites, mobile apps, online marketplaces like Amazon, and social media. E-commerce platforms conduct extensive tracking of consumer behaviour to aid goods' recommendations and improve their sales. Under GAID 2025, DPIAs are mandatory to curb situations like; the tracking of user behaviour across sites or devices, avoid recommendation engines that use personal data for profiling, and mitigate third parties such as advertisers or logistics companies from processing customer data.[14]

Data-driven retail creates risks of manipulation, discriminatory pricing, and unauthorised data exploitation.[15]

4. COMPARATIVE PERSPECTIVE: DPIAs IN OTHER REGULATORY REGIMES

4.1 GDPR (EUROPEAN UNION)

GDPR stands for General Data Protection Regulation, which is a comprehensive data privacy and security law enacted by the European Union (EU).

It provides a framework for how personal data can be collected, processed, stored, and transferred, and gives individuals more rights over their own data. The regulation was effected on May 25, 2018. GDPR prioritises individual consent before the processing of personal data.

Article 35 of the GDPR requires DPIAs where processing is likely to result in high risk, including large-scale profiling or monitoring.[16]

4.2 NIGERIA'S DATA PROTECTION ACT 2023

The Nigeria Data Protection Act 2023 is the country's comprehensive data protection law that establishes a groundwork for processing personal data and creates the Nigeria Data Protection Commission (NDPC) for enforceability.

This Act empowers the Nigeria Data Protection Commission to require DPIAs for high-risk AI, profiling, and biometric operations.[17] GAID 2025 introduces even stricter transparency duties, including mandatory algorithmic explanations.

4.3 AFRICAN UNION CONVENTION ON CYBERSECURITY AND PERSONAL DATA PROTECTION

[14] EDPB DPIA Guidelines (2017).
[15] FPF "Impact Assessments in AI Governance" (2025).
[16] GDPR, Article 35(3).
[17] NDPA 2023, s. 31.

This landmark treaty aims to establish a comprehensive legal framework for cybersecurity, electronic transactions, and personal data protection across the African continent, this is indeed, a commendable feat.

However, while the AU Convention emphasises risk mitigation tools, it does not explicitly require DPIAs. GAID 2025 therefore fills a regional policy gap and provides harmonised standards across African jurisdictions.[18]

5. SIGNIFICANCE OF MANDATORY DPIAs

To foster continued effectiveness, I strongly opine that DPIAs should be made compulsory and sacrosanct for every institution or agency concerned. Although it does not eradicate all risks, a DPIA would help minimise and determine whether or not the level of risk is acceptable in the circumstances, and give the advantage of preparing a solution and planning ahead. DPIAs are a vital tool in reducing the potential impact of any security threats, these threats if not checked can affect billions of innocent consumers, lead to severe data leakage and different complications. Mandatory DPIAs strengthen; accountability, reasonable justification of high-risk decisions, early prediction of data mismanagement, transparency, ethical governance by ensuring fairness, non-discrimination, and data minimisation, regulatory compliance - since DPIAs can be audited or requested by authorities.[19]

In digital economies driven by automation, DPIAs act as a systemic check on misuse or unintended harm.

5.1 THE CHINESE SURVEILLANCE DATABASE CASE

The biggest ever data leak to date exposed 4 billion records, including WeChat data, bank details, and Alipay profile information of hundreds of millions of users, primarily from China, occurred in June 2025, The 631GB database - which also included phone

Numbers, home addresses, and behavioral profiles, was left wide open on the internet, unprotected by a password or any other form of authentication control. This was exposed by Bob Dyachenko, a cyber-security researcher who stumbled on billions of exposed records during a research project. The incident had an impact of over 4 billion records, researchers suggested that the leak was likely a centralised aggregation point for profiling, surveillance and data enrichment purposes.

6. CONCLUSION

Data Protection Impact Assessments under GAID 2025 serve as comprehensive ex ante safeguards in high-risk data processing environments. By mandating DPIAs for AI deployment, profiling, financial operations, healthcare systems, and e-commerce ecosystems, GAID 2025 reflects a global shift toward proactive, accountable data governance. As digital processes grow more complex, DPIAs remain indispensable for ensuring that innovation does not undermine fundamental human rights. One thing is certain, GAID 2025 is

[18] AU Convention (2014), Part III.
[19] OECD AI Principles / GAID 2025 Compliance Framework.

not just a regulation; it is a blueprint for trust and accountability in Nigeria's digital economy and across borders.

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REVOLUTIONISING THE WILLS LAW TO ENABLE ELECTRONIC WILLS IN NIGERIA

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Abstract

The rigid requirements of the Wills Act of 1837 for creating wills pose significant challenges in the digital age, particularly in Nigeria, as it does not accommodate electronic writing, signing, and witnessing. The COVID-19 pandemic highlighted the need for flexibility in will execution, as traditional formalities hinder access to will-making in emergency situations. While advancements in technology have addressed most challenges posed by the Wills Act, the wills law in Nigeria is yet to revolutionise to accommodate electronic wills. This article aims to explore the formal requirements of traditional statutory wills and their applicability to electronic wills, with a view to recommending reforms to the Wills Act. Using the doctrinal research method, this article examines the Wills Act and international trends, particularly in the United States of America, where electronic will statutes have been adopted, to make a case for the enactment of electronic will legislation in Nigeria. The article argues that while the extant Wills Act is impliedly applicable to electronic wills when read with other laws admitting electronic writing, signing, and notarization, reforming the Wills Act to explicitly accommodate electronic wills will increase access to will-making, reduce intestacy, and provide a more efficient and inclusive framework for estate planning in Nigeria. Contributing to the ongoing debate on reforming Nigeria's wills law to meet the needs of a rapidly changing society, the article concludes by recommending certain legislative reforms to the Wills Act to reflect modernity.

Introduction

As technology continues to evolve, our ability to leverage the internet continues to impact the way we work and live. In this age of information technology significantly facilitated by the internet, anyone from almost everywhere can now send, access and post information across the globe with ease and in a matter of split seconds.[2] The Wills Act despite its historically protracted evolution has recently experienced a push towards adopting the conveniences attendant to this digital age. This push has revolutionised the whole traditional concept of will. According to La Ratta *et al*, "in recent years, the definition of the term "will" has changed dramatically. The type of writing necessary to create a valid will is evolving, and courts are moving away from adherence to strict compliance."[3]

An electronic will is a will created, recorded, transmitted or stored in digital form or in any other intangible form by electronic or optical means.[4] Electronic will is just more or less a traditional will processed electronically. The major difference between traditional and electronic wills is the manner of their presentation and preservation.[5]The benefits of electronic will are in manifold, for example, electronic will offers a flexible solution during emergencies and enhance convenience for testators. In urgent situations, individuals may lack time to consult an attorney, draft a will, and secure witnesses physically, making electronic devices crucial for recording intentions.[6] Furthermore, electronic will makes estate planning much easier. Nowadays, nearly everyone possesses an electronic device that can be utilized to create a will using the numerous applications available, making the process significantly simpler than writing a will by hand. This also enables wills to be more flexible since they can be changed and updated more swiftly and easily. Incorporating technology into the law of wills would harness its benefits in estate planning, enabling a greater number of individuals to make provision for a thoughtful disposition of their property at death.[7]

However, despite the enormous benefits of electronic wills, Nigeria does not have any law specifically governing the creation of electronic wills, and this has resulted in the creation of electronic wills sparingly, despite the increase utilisation of digital technology in every other sphere of life. The primary argument for promoting electronic wills is to "modernize the law of wills and harmonize it with electronic commerce laws".[8] If virtually everything else can be done electronically nowadays, creation of wills electronically should not be an exception, rather, the law should enable the creation of electronic wills. If the goal of inheritance law is to facilitate donative intent rather than to restrict it, then the will-making process should be universally accessible in other formats without limiting it to handwritten or typewritten hardcopy wills. This article examines the formalities of the Wills Act and marries it with the contemporary electronic will. The article finds that the process of making and validating a traditional will can be effectively translated into

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[2] E. G. Ekhator, 'A study of Electronic Signature and Its Legal Validity in Nigeria' (2020) 1 (1) *Lawrit Student Journal of Law* 47.

[3] A. La Ratta and M. Osorio, 'What's in a Name? Writings Intended as Wills' (2014) 28 (3) *ABA Probate & Property Magazine* 1.

[4] Alberta Law Reform Institute, The Creation of Wills 43 (2009).

[5] A. J. Hirsch, 'Technology Adrift: In Search of a Role for Electronic Wills' (2020) 61 *Boston College Law Review* 827.

[6] *In re: Estate of Javier Castro,* No. 2013ES00140 (Ohio Ct. Com. Pl. June 19, 2013).

[7] H. Elliott, 'Electronic Wills: A Distinction Without Difference for Mississippi' (2023) 92 *Mississippi Law Journal* 799.

[8] M. J. Millonig, 'Electronic Wills: Evolving Convenience or Lurking Trouble?' (2018) 45 *Estate Planning*, 27.

an electronic format that preserves the functions of the traditional will formalities. However, for the purpose of legislative clarity, the Wills Act should be amended to recognised electronic will.

Concept of Electronic Will

Electronic will, by its very nature, rarely comply with the execution requirements of "traditional" will outlined in section 9 of the Will Act 1837. Thus, electronic will is an entirely new class of "will" that will require us to reconsider our traditional views on the disposition of an individual's probate assets at death. An electronic will is a last will and testament created on a computer, authenticated with a digital identifier, and stored on electronic media. It typically involves using electronic signatures and remote witnessing, often via video link, and is stored in a secure digital format, such as the cloud. According to Lebowitz, electronic will "is a will written electronically using a computer, tablet or other electronic device, rather than putting pen to paper."[9]

Simply put, an electronic will is the intentions and wishes of a testator on how his property will be shared among his beneficiaries, expressed electronically using electronic device, to be carried out by certain persons appointed by him, which takes effect after his death.[10]

Types of Electronic Will

The term "electronic will" can be categorised into three main testamentary document that may be accepted as valid and enforceable under the relevant legislation. An electronic will typically fall into one of the following: offline wills, online wills and qualified custodian online wills.[11]

Offline Electronic Wills

Offline electronic wills refer to wills generated on a computer or electronic device and saved locally on the device or a storage medium.[12] Offline electronic wills are documents that are either typed or "handwritten" with a stylus on an electronic device by the testator, who signs the document by typing their name or adding a different mark, and saved on the device's internal hard drive. They typically are not printed, traditionally witnessed, or uploaded onto a website.[13] For instance, offline electronic wills may consist of a document typed by the testator and saved on the testator's computer, a document handwritten on a tablet or smart phone using a stylus or electronic pen and stored locally on the testator's device, or a document saved on a USB drive or other external storage medium. Offline electronic wills, have been best analogised as the modern version of holographic wills.[14]

The disadvantage with offline electronic wills is that they are difficult to authenticate and preserve. In the case of authentication, metadata can provide information such as the dates of creation, modification and

[9] J. Lebowitz, 'Electronic Wills: No Longer in a Galaxy Far, Far Away' (2017) (September 11 Issue) <https://www.law.com/njlawjournal/2017/09/11/electronic-wills-no-longer-in-a-galaxy-far-far-away/> Accessed May 26, 2025.

[10] E. G. Ekhator, 'Creating Electronic Will: Conflating the Traditional Wills Law with Contemporary Electronic Will' (2020) 6(1) *UNBJ,* 9.

[11] 'Developments in The Law More Data, More Problems' (2018) 131 Harvard Law Review 1714

[12] J. H. Brown, and R. Bruch, 'Electronic Wills: Ready or Not, Here They Come…' (2020) *Pennsylvania Bar Association Real Property, Probate & Trust Law Section Winter/Spring Newsletter*, 7.

[13] HLS, 'Developments in The Law More Data, More Problems' (2018) 131 *Harvard Law Review* 1714

[14] Ibid, 1714

access of the offline electronic will, or the identities of the users who accessed the offline electronic will. However, this metadata alone cannot prove the identity of the individual utilizing the user's profile in creating or modifying the offline electronic will.[15] Furthermore, given the high rate of cybercrime, the potential for fraud is great in the case of offline electronic will, because there is currently no means to verify whether the testator indeed created the offline electronic will or if someone else accessed the testator's computer to establish the offline electronic wills. In the case of preservation, for how long can an offline electronic will be kept. Electronic devices are subject to hardware problems. Documents stored on a computer, tablet or smartphone are only as good as the hardware on the devices. If the device is discarded, crashes, lost or hacked, a testator's will could be lost or corrupted forever.[16] Thus, it has been agreed that offline electronic wills do not serve the channelling, cautionary, and protective functions of will formalities well.[17]

Despite these disadvantages, Courts in some jurisdictions that have relaxed strict compliance requirements for wills have held offline electronic wills to be a valid will. In the South African case of *Macdonald v. The Master,*[18] the main issue before the court was whether a Will created on the deceased's computer and was visible and readable on the deceased's computer screen could be condoned and considered valid. The gist of the case is that the testator who committed suicide, left a note that read: "I, Malcom Scott Macdonald, ID 5609065240106, do hereby declare that my last will and testament can be found on my PC at IBM . . . ."[19] Despite the court acknowledging that the will in question would clearly not meet the standard criteria for a valid will established by South Africa's Wills Act, it concluded that Macdonald was the only person capable of drafting the document and thus recognized his intention by deeming the will valid.

Similarly, in *Yazbek v Yazbek*,[20] the New South Wales Supreme Court considered whether a document titled "Will.doc." and stored on the on testator's personal computer, was a valid will. Prior to his demise, the testator had mentioned that he has a Will "on his computer and also one at home in a drawer." The electronic document was discovered after the testator's death. The court reviewed the metadata linked to the electronic file, which encompassed details regarding the document's creation, editing, and printing, and carefully noted the specifics of this information as presented by an expert witness, including that there was "no upload or download activity specific to "Will.doc" suggesting that "Will.doc" was either uploaded to or downloaded from the internet." Taking into account the metadata evidence along with the various circumstances surrounding the testator's death, the court admitted the electronic document to probate. The court agreed with the argument that the "Will.doc" met the requirement of writing. The court also reached the conclusion that the electronic version on the computer and the printed version was both documents for the purposes of estate law. The court was further held that the "Will.doc" set out the last wishes of the deceased and it was the deceased's intent that the "Will.doc" should be his last will.

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[15] Justin H. Brown, and R. Bruch, 'Electronic Wills: Ready or Not, Here They Come…' (2020) *Pennsylvania Bar Association Real Property, Probate & Trust Law Section Winter/Spring Newsletter*, 8.
[16] Ibid.
[17] See 'Developments in The Law More Data, More Problems' (2018) 131 *Harvard Law Review* 1714
[18] [2002] (5) SA 64 (N) (S. Afr.).
[19] Ibid. at 67 H.
[20] [2012] NSWSC 594 (1 June 2012)

In *In re: Estate of Javier Castro*,[21] After declining a blood transfusion while at an Ohio medical clinic, Javier Castro discussed with two of his brothers his desire to execute a will. Given the fact that there was no paper, one of the brothers transcribed the wishes onto a Samsung Galaxy tablet, which Javier then signed with a stylus. The two siblings witnessed the will using the same approach. The document was printed following Javier's death and submitted for probate. The court accepted the electronic document created and signed on the Samsung tablet as the deceased's valid will.

Based on the foregoing judicial decisions, although verifying authenticity may be time-consuming and preservation of offline electronic wills might be difficult, offline electronic wills can be treated as valid wills where there is sufficient evidence of testamentary intent.

Online Electronic Wills

Online electronic wills refer to electronic wills that are created or stored using a third-party service, where the third-party service provider did not undertake to store the testator's will and is not governed by any specific rules or regulations concerning the storage of electronic wills.[22] An online will is kept in electronic form and can be accessed via the internet through a digital platform. For instance, an online will could be saved in cloud-based storage[23] or on a person's personal's server electronically.[24] It should be noted that if the testator's original will or a duplicate exists in a location other than the hard drive of their electronic device, and the testator did not enlist a private entity specifically tasked with storing the will, it is probable that the testator has established an online electronic will. In contrast to an offline electronic will where the testator manages storage, the storage of an online will relies entirely on the company that hosts the will.[25] For example, if a testator stores his will on his Dropbox account on Dropbox's servers, or iCloud, the storage and access to the testator's will is dependent upon testator's Dropbox's or I Cloud's financial soundness.[26]

Some jurisdictions have considered situations that would fall under the category of online electronic wills. And have held such to be valid. In 2013, the Supreme Court of Queensland, Australia, considered an online electronic will in *Re: Yu*,[27] where the testator had "created a series of documents on his iPhone" before committing suicide. One of the documents found on the phone was a file beginning with the words "This is the last Will and Testament." The court held that the will was valid and admitted same to probate due to compelling circumstantial evidence of testamentary intent, which included farewell notes to the testator's family and "gave instructions about the distribution of his property".[28]

Also, in October 2017, the Supreme Court of Queensland, considered a case pertaining to electronic will, in the case of in *Nichol v Nichol,*[29] where the Court ruled that a will founds in an unsent text message on the

[21] No. 2013ES00140 (Ohio Ct. Com. Pl. June 19, 2013).
[22] 'Developments in the Law More Data, More Problems' (2018) 131 *Harvard Law Review* 1714.
[23] E.g Dropbox, Google Drive
[24] Justin H. Brown, and R. Bruch, 'Electronic Wills: Ready or Not, Here They Come…' (2020) *Pennsylvania Bar Association Real Property, Probate & Trust Law Section Winter/Spring Newsletter*, 8.
[25] 'Developments in The Law More Data, More Problems' (2018) 131 *Harvard Law Review* 1714
[26] Justin H. Brown, and R. Bruch, 'Electronic Wills: Ready or Not, Here They Come…' (2020) *Pennsylvania Bar Association Real Property, Probate & Trust Law Section Winter/Spring Newsletter*, 8.
[27] [2013] QSC 322 (6 Nov. 2013)
[28] Ibid.
[29] [2017] QSC 220 (9 Oct. 2017)

deceased's phone was valid. The widow (who was separated shortly before the deceased's suicide) and their son contested this case, as he would have inherited the deceased estate through intestacy. In the text message, the decedent made various dispositions, including: "Dave Nic you and Jack keep all that I have house and superannuation." At the end of the document, the decedent had typed "MRN190162Q," corresponding to his initials and birth date, "10/10/2016," along with "My will."

Online electronic wills share numerous evidentiary challenges with offline electronic wills, such as the risk of fraud and difficulty of preservation. However, they have the potential benefit of involving an impartial, third-party entity that could furnish relevant evidence of the authenticity of a purported will and store same securely for the testator, but it is not easy. One potential solution for evidentiary issues in offline electronic wills involves using metadata. This is feasible because the main document is stored on the testator's own hardware. However, with online electronic wills created on third-party platforms, the associated metadata is owned by the service provider, not the testator or the estate itself. For instance, valuable insights could be gained from knowing the origins of logins to the deceased's Facebook or Dropbox account on the day the will was created, the frequency of account access, how many times the message or electronic record was viewed, or the creation and deletion of other messages or record. Unfortunately, accessing such metadata could pose significant obstacles if the platform, such as Facebook or Dropbox, opts not to release it. This highlights the complexities in evaluating online wills and the reliance on third-party services that control vital metadata, ultimately complicating the probate process,[30] while protecting the testator's data.

Another challenge facing this kind of will is accessibility. Accessing online electronic wills and verifying their authenticity is complicated due to the context of their creation. These wills often rely on third-party services, binding testators to a Terms and Conditions agreement that impacts the availability and credibility of evidence regarding the will's authenticity. Additionally, online electronic wills are subject to national and cross border regulations on personal data management and retention, creating uncertainty about their relationship to existing state laws on traditional and electronic wills. For instance, if a testator stores his electronic will on a cloud service like Dropbox or iCloud, he may inadvertently agree to a data retention policy without fully understanding it. If, due to inactivity, Dropbox deletes the will after a specified period despite the testator's intention for it to serve as his will, it raises legal questions. The executors may discover the will is missing, leading to debates in probate court on whether the deletion reflects a revocation, based on constructive notice of the Terms and Conditions. Alternatively, if the court acknowledges the testator's intention and of the opinion that the will exists, extrinsic evidence might be considered to reconstruct it.[31] This situation highlights the challenges in managing the intersection of digital documentation, user agreements, and legal intentions surrounding wills, as well as the broader implications for estate administration in the digital age.[32]

Lastly, online electronic wills, like offline ones, fail to adequately fulfil functionalities of wills formalities such as channelling, cautionary, and protective functions. For instance, a testator may easily create documents in electronic formats or be coerced into producing wills online, undermining the seriousness expected of

[30] 'Developments in the Law More Data, More Problems' (2018) 131 *Harvard Law Review* 1714.
[31] Ibid.
[32] Ibid.

testamentary documents, especially when associated with casual online platforms, in such situation establishing testamentary intent will be difficult.[33]

It is however, believe that with appropriate legislation in place, most of these challenges (if not all) can be effectively addressed.

Qualified Custodian Electronic Wills

Qualified custodian electronic wills are created where a for-profit entity undertakes to become a "qualified custodian" that "would create, execute, and store the testator's will, subject to rules and regulations put forth by the state."[34] The third-party entity in this type of electronic will may offer a form of will to the testator, or it may generate the electronic will after the testator answers a series of questions. Once the testator's will is generated, the testator pays the third-party entity to hold and store the testator's will.[35]

Qualified custodian electronic wills can be distinguished from online electronic wills in that the service being used by the testator has been set up for the specific purpose of enabling the creation and execution of electronic wills.[36] The third party is in this sense actively involved right from the creation of the will to the storage of the will. For example, the Nevada Electronic Will Law Passed in 2001 recognised the creation of electronic will. The statute define an electronic will as a will that "is created and maintained in an electronic record" and that "contains the date and the electronic signature of the testator."[37] The statute also requires at least one method of authentication: "either an authentication characteristic unique to the testator such as a fingerprint, a retinal scan, voice recognition, facial recognition, video recording, or a digitized signature, an electronic signature by a notary public, or two electronic signatures by witnesses."[38]

Eight years after passing its electronic will legislation, Nevada authorized "the Secretary of State to create and maintain the Nevada Lockbox, an online registry that allows a person to post an electronic copy of a will ... and retrieve that document when needed." [39] The database was to serve as the designated custodian authorized to care for a testator's electronic will.[40] The Nevada's statute was amended in 2017[41] to include specific provisions for qualified custodian. Similarly, Arizona statute,[42] also recognises the creation of qualified custodian electronic will, the statute provides that the "the electronic will designates a qualified custodian to maintain custody of the electronic will".[43]The statute also provides for the qualification and functions of the qualified custodian.[44]

There is only one case to this point however not from Nevada and the court in that case refused to admit the will created in 2011 through the online legal drafting service, Legalzoom to probate on the ground that the

[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] ibid
[37] Nev. Rev. Stat. §133.085-1(a)-(b)
[38] Nev. Rev. Stat. §133.085-1(b)-(C), 6.
[39] Nevada Authorizes Electronic Will Storage, Wills, Trusts & Estates Prof Blog (Sept. 4, 2009), http://lawprofessors.typepad.com/trusts-estates.prof/2009/09/nevadaauthorizes-electronic-will-storage.html accessed 1 April 2025; see also Nev. Rev. Stat. Ann. § 225.360
[40] Nev. Rev. Stat. Ann. § 133.085.4(a)
[41] Assembly Bill 413, 2017 Leg., 79th Session. § 19 (Nev. 2017).
[42] Arizona Revised Statutes § 14-2518(2019)
[43] Ibid, § 14-2519(2019).
[44] Ibid, § 14-2520(2019)

testatrix did not sign the will before her death. In *Litevich v. Probate Court*[45] the testatrix (who worked in the laboratory at Yale's School of Medicine and was never married and had no children and no siblings) logged into her computer, created an account with Legalzoom, and completed a lengthy process to determine with specificity her exact wishes, including providing all her pertinent information and her social security number. Legalzoom shipped the will to her few days before she got sick and admitted at the hospital. The testatrix asked a close friend to bring the Legalzoom will to the hospital. This friend was 50 percent beneficiary and named executor in the Legalzoom will. The testatrix did not sign the document in the hospital because she and the friend both mistakenly believed a notary's attestation was required and a notary was not available to come to the hospital until July 23, 2011. The testatrix lost capacity on July 22 and died on July 25.

Plaintiff argued that "testatrix's confirmation of the will prior to her final purchase, when combined with the authentication techniques the testatrix used and the testatrix's having provided her social security number to Legalzoom, was "tantamount to a signature."" Defendant argued that the Legalzoom will was invalid since it was not subscribed or signed by two witnesses.

The Court ruled that "there is no room for play in the language" of the required formalities in Connecticut's Statute of Wills and that Connecticut does not have a harmless error statute. The Court further stated, "Questions concerning whether alternative modern authentication techniques are equally reliable and/or more desirable are, instead, properly reserved for the legislature." Had it been the document was signed; the document would have been admitted to probate as a valid.

Just as offline and online wills have their pitfalls, custodian electronic wills pose their own set of potential problems. First, custodian electronic wills share the same potential issues present with online wills with respect to access of a custodian electronic will after the testator's death. How does the executor know where to locate the will if he was not informed about the will and where it was stored? Are there procedures in place to notify the named executor, and what steps is the custodian required to undertake to find the executor or successor executor? Also, what ethical responsibilities does the third-party custodian have? Are third-party custodians subject to the same professional responsibility of legal practitioners or banks that keep wills for the testator? These are the common issues associated with the qualified custodian electronic wills, which the law makers will have to look into and the developers of software for this kind of will, will have to take into consideration in developing software for custodian electronic wills.

Formal Requirement for Electronic Will.

To ensure that a will is admitted to probate the law requires that a testator follows a fairly rigid set of requirements in the creation and execution of a will, that is, the will must be in writing, signed and witnessed by two or more individuals.[46] The formalities mainly serve an evidentiary purpose, "enabling a court to decide, without the benefit of live testimony from the testator, whether a purported will is authentic."[47]

[45] 2013 Conn. Super. LEXIS 1158; 2013 WL 2945055 (Super. Ct. New Haven Dist. 2013)
[46] Section 9 of the Wills Act 1837.
[47] 'Developments in The Law More Data, More Problems' (2018) 131 *HLR* 1714; M. J. Millonig, Electronic Wills: Evolving Convenience or Lurking Trouble? (2018) 45 *Estate Planning* 27, 27-28.

These formalities also seek to caution a testator that a document signed and attested will have legal effect when he dies.[48]

These requirements will now be examined in relation to electronic wills.

a. Writing Requirement

Generally, in order to be valid, every will (except one made by a person in active military service) must be in writing.[49] The Wills Act 1837 did not define what can pass for writing. When the Wills Act was enacted the only means of writing a will was by pen and ink or pencil in the hands of the scrivener; there was then no such instrument as a typewriter or computer, also no special form of words or Language was required. Regardless, courts have held wills written in French[50]Hebrew[51]and written partly in code[52] to be valid, and a will written on an empty egg as valid.[53]

As technology advances, the "writing" requirement has also changed, from ink and pencils to typewriters, and now computers and smartphones are pushing the boundaries of what the Wills Act means by a writing. Courts now have to determine whether a document typed into a computer or on other digital gadgets and executed on same is considered as writing. Since the Wills Act 1837 did not contain a definition of the term writing it will be appropriate to consult the Interpretation Act 1964. According to *Section 18(1) of the Act*[54] "Writing" and expressions referring to writing include "printing, lithography, photography, typewriting and other modes of representing or reproducing words or figures in a visible form". Given the fact that the above definition refers to "other modes of representing or reproducing words or figures in a visible form", writing can be interpreted to include an electronic document. Since the writing requirement in section 9 of the Wills Act did not entails a singular form of writing, therefore it should not be narrowly interpreted to mean that the "will must be handwritten by the testator, the requirement of writing should be broadly interpreted to accommodate other modes of representing or reproducing words or figures in a visible form." [55] An electronic will written and stored in electronic storage device is visible on the electronic device and for the purposes of the Interpretation Act, electronic writing falls within the definition of writing because of its visibility and the ability to print it out when the need arises. However, an electronic will recorded in an audio format cannot pass for the requirement of writing under the Wills Act and the definition provided in the Interpretation Act as the Act only refers to visible form. It is therefore, suggested that the Wills Act be amended to reflect modernity just as the evidence Act 2011 expand the scope of documents to audio-visual as obtainable in other jurisdictions.[56] For example, in the Australian case of *Mellino v Wnuk & Ors*,[57] the Supreme Court of Queensland, Australia admitted to probate a video recording on a DVD made by the deceased immediately prior to his suicide. In Nigeria, with the enactment of the Evidence Act 2011 (as

[48] H. Elliott, 'Electronic Wills: A Distinction Without Difference for Mississippi' (2023) 92 *Mississippi Law Journal* 799.
[49] See Wills Act 1837, Section 11; and the Wills (Soldiers and Sailors) Act 1918; In *Re Spicer* [1949] P 441.
[50] *Whiting v Turner* [1903] 89 LT 71
[51] *Re Berger* [1989] 1 All ER 591
[52] *Kell v Charmer* [1856] 23 Beav. 195
[53] *Hodson v Barnes* [1926] 43 TLR 71
[54] Interpretation Act 1964 Cap. 192 LFN 2004
[55] E. G. Ekhator, 'Creating Electronic Will: Conflating the Traditional Wills Law with Contemporary Electronic Will' (2020) 6(1) *UNBJ* 9.
[56] Evidence Act 2011, Section 258(1).
[57] [2013] SQC 336

amended), it is believed that the Court, when faced with electronic will, will hold that such wills pass the requirement of writing pursuant to Section 18 of the Interpretation Act, and Sections 84 and 258 of the Evidence Act 2011(as amended), which provide for the admissibility of electronic documents in judicial proceedings in Nigeria.

b. Signature Requirement

A testator's signature is "the most fundamental of the Wills Act formalities."[58] Indeed, the signing of the will establishes two vital facts about a testamentary instrument: "that it is genuine and that the testator assented to it."[59] According to section 9 of the Wills Act, the testator must either sign his will in the presence of two or more witnesses or if he has previously signed it he may acknowledge his signature in the presence of such witnesses. The acknowledgement is of the signature and not of the Will itself. There is no particular form of signature required, a testator can thumb-print, write his name or make any other signs that is recognised with him. Signature has been defined as a person's name, mark or initials that he uses in signing a document and letter.[60] In the past, Courts have held the following to constitute "signature": initials alone[61], assumed name,[62] or even "your loving mother".[63]

In the case of electronic will, what is obtainable is not handwritten signature but an electronic signature or a digital signature. That is a "digitalised signature of the testator".[64] In *In re Estate of Javier Castro*,[65] the testator and two of his siblings, who witnessed the Will, signed the electronic will on a tablet using a stylus. The court held that the testator's signature satisfied the legal requirements of the Wills Act. Similarly, in the case of *Taylor v Holt*,[66] the testator created a will on his computer and signed it by affixing his electronic signature on the will, the Court of Appeals of Tennessee, holding that the will was valid, stated that "the computer generated signature made by the Deceased falls into the category of 'any other symbol or methodology executed or adopted by a party with intention to authenticate a writing or record,' and, if made in the presence of two attesting witnesses, as it was in this case, is sufficient to constitute proper execution of a will".[67] The court went on to note that the signature was valid because the "deceased simply used a computer rather than an ink pen as the tool to make his signature, and, therefore, complied with Tenn. Code Ann. § 32–1–104 by signing the will himself."[68]

In Nigeria, electronic signature and digital signature are now valid methods of signing or authenticating a document or electronic records, as it is included in the Evidence Act 2011 and Cybercrimes (Prohibition, Prevention, etc.) Act 2015. Though, Section 17(2) of the Cybercrimes Act excluded wills from amongst the documents that can be signed electronically, Section 93 of the Evidence Act 2011, provides for the use of

[58] *Allen v. Dalk*, 826 So . 2d 245, 250 (Fla. 2002)
[59] D. Horton, 'Wills Without Signatures' (2019) 99 *Boston University Law Review* 1623
[60] R.U. Ekeh, 'Restriction of Testamentary Powers in Making Wills in Nigeria: The Justification' (2016) 6(1) *AJLC* 37.
[61] *In Re Goods of Savory* [1851] 15 Jur. 1042
[62] *In b Glover* [1847] 11 Jur. 1022
[63] *In b Cook* [1960] 1 WLR 353
[64] E. G. Ekhator, 'Creating Electronic Will: Conflating the Traditional Wills Law with Contemporary Electronic Will' (2020) 6(1) *UNBJ*, 9.
[65] 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div., Ohio, June 19, 2013)
[66] 134 S.W.3d 830, 834 (Tenn. Ct. App. 2003).
[67] Ibid.
[68] Ibid, at 833.

electronic and digital signature in authenticating any document or electronic records, requiring signing or authentication. Thus, by the provisions of section 93 of the Evidence Act 2011, electronic will, can be signed digitally. This is because, section 93 clearly "avoids those consequences"[69] that will befall the document signed electronically, had it been it was not signed. It is my submission, that section 17(2) of the Cybercrimes (Prohibition, Prevention, etc) Act 2015 cannot invalidate the use of an electronic signature in relation to Will, because Section 93 of the Evidence Act has come to void such consequence, such as that in section 17(2) of the Cybercrimes (Prohibition, Prevention, etc) Act 2015. Thus, an electronic will signed electronically, is a valid will for all intent and purposes.[70] The US Court's judgments in *Taylor v Holt and in re Estate of Castro,* underlines judicial acceptance of electronic signatures in testamentary documents and demonstrates the wide array of possible signatures that can satisfy the Wills Act signature requirement. It is important to note that as at the time these cases were decided by the Courts, the USA E-Sign Act 2000, just like the Nigerian Cybercrime Act 2015, excluded wills and other testamentary documents from amongst the documents that can be signed electronically. Notwithstanding the provisions of the Act, the Court still deemed the electronic signatures as valid means of signing the electronic wills, signifying the Court's willingness to embrace modernity.

c. Attestation Requirement

The third and last required formalities under the Wills Act, is that two or more witnesses must sign the will attesting that they either were in the presence of the testator when he signed his will or that the testator acknowledged in their presence that the will and signature are his.[71]

The first question that usually comes to mind is whether the requirement that the two or more witnesses must be present at the same time can be met by electronic will. Where the testator and witnesses are physically present like the cases of *Taylor v Holt*[72]and in *re Estate of Javier Castro,*[73] the court will have no difficulty in holding such will as valid. However, the point of difficulty will be where the testator and witnesses are in different or remote locations. Can modern technology such as videoconference applications suffice for the requirement of physical and actual presence? Bearing in mind that with the advancement in technology, people can now communicate instantaneously with others across the world, virtually, through videoconference technology, or commercially available services such as Skype, FaceTime, Zoom and Duo, people can see and hear each other simultaneously at great distances, it is submitted that; "these technologies have pushed the boundaries of the requirement of "presence" a little bit, and a witness who is serving to verify the testator's identity"[74] and capacity can do so remotely with these technologies that have been developed for instantaneous video communication. According to Banta "Videoconferencing is the tool that could convert the attestation requirement into the electronic realm".[75] Since remote witnesses can see

[69] Evidence Act 2011, Section 93 (2).
[70] E. G. Ekhator, 'Creating Electronic Will: Conflating the Traditional Wills Law with Contemporary Electronic Will' (2020) 6(1) *UNBJ*, 9.
[71] Wills Act 1837, Section 9.
[72] TN Ct. App., October 31, 2013.
[73] 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div., Ohio, June 19, 2013)
[74] E. G. Ekhator, 'Creating Electronic Will: Conflating the Traditional Wills Law with Contemporary Electronic Will' (2020) 6(1) *UNBJ*, 9.
[75] N.M. Banta, 'Electronic Wills and Digital Assets: Reassessing Formality in The Digital Age' (2019) 71 (3) *Baylor Law Review* 590

the testator on a video feed, a remote ceremony could straightforwardly serve the evidentiary function.[76] In fact, some State High Courts in Nigeria have already begun allowing electronic notarizations where a remote commissioner for oaths or notary participates through videoconference to authenticate identity and documents.[77] Moreso, the Evidence Act 2011 (as amended), allows documents, particularly, affidavit to be electronically notarized; a commissioner for oaths or notary verifies the signatory's identity and electronic signature, and thereafter, authenticates the document, by affixing an electronic or paper seal on the document. All of these procedures, are done via an audio-video conference technology.[78]

If affidavit can be notarised electronically, electronic wills can also be attested electronically. For example, in the United States of America, Nevada Wills Law, specifically, provides for audio-visual attestation of electronic wills. According to the Nevada Wills Law, "A person shall be deemed to be in the presence of or appearing before another person if such persons are in: (1) the same physical location; or (2) different physical locations but can communicate with each other by means of audio-video communication." "Audio-video communication" is defined as communication "by which a person is able to see, hear and communicate with another person in real time using electronic means."[79]

Based on the foregoing, it is submitted that an electronic will, attested virtually or physically, is a valid will and complies substantially with the traditional Wills Act formalities.

Conclusion

Formal traditional will execution carries significant ritual value. The ceremonial procedures for creating traditional wills ensure that the testator is not acting impulsively. The traditional functions served by adhering to the standard requirements of the Wills Act take on renewed meaning when applied to today's digital age, as illustrated by the above discussion. Electronic wills provide solutions for emergencies and offer greater accessibility and convenience, providing both legal security and peace of mind for the individual holding the will and those tasked with the responsibilities of fulfilling their loved one's wishes after death. Unfortunately, the Wills Act does not specifically accommodate electronic will-making. The enactment of electronic wills legislation will modernize the law and demonstrate growth, progress, and improvement within the field of estate planning.

Recommendations

Given the fact that the world has embraced modernity, the following recommendations are proposed to bring the Wills Act to speed.

Amendment of the Wills Act: The Wills Act 1837 should be amended to accommodate electronic wills, reflect modernity, and address the challenges facing the creation of electronic will in Nigeria. The amendment should clarify the status of electronic wills under the law, provide guidance on their creation and execution, and ensure that they are treated equally to traditional wills.

[76] Modernizing the Law to Enable Electronic Wills, <https://willing.com/learn/modernizing-the-law-to-enable-electronic-wills.html> Accessed 14 May 2025.
[77] River State High Court, FCT High Court, and the Federal High Court of Nigeria.
[78] Sections 108, 109, 110 and 111 of the Evidence Act 2011.
[79] Nev. Rev. Stat. § 133.085 (2017), See also, Va. Code Ann. §§ 47.1-6.1, 47.1-7 (2019).

Electronic Signature and Authentication: Standards should be established for electronic signatures and authentication of electronic wills to ensure the integrity and authenticity of electronic wills. This could include the use of digital signatures, biometric authentication, or other secure methods. The standards should be designed to prevent tampering or manipulation of electronic wills and ensure that the testator's intentions are respected.

Digital Storage and Registry: The law should provide for the creation of a digital registry or storage system for electronic wills, ensuring their safekeeping and accessibility. This system should be designed to prevent unauthorized access, tampering, or loss of electronic wills. The registry should also provide a clear and efficient way to retrieve electronic wills when needed.

Safeguards against Undue Influence: Measures should be implemented to protect vulnerable individuals from potential exploitation or undue influence in the creation of electronic wills. This could include requirements for independent witnesses, video recording of the testator's signature, or other safeguards to ensure that the testator's intentions are respected.

Capacity Building: Legal professionals, judges, and other stakeholders should be trained on the netty-gritty of electronic wills.

JUSTICE FOR OCHANYA: A CRITICAL EXAMINATION OF NIGERIA'S FAILING FRAMEWORK FOR CHILD SEXUAL PROTECTION

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ABSTRACT

Who was Ochanya? A name that shook Nigeria and the world, behind that name was one of the most heartbreaking stories in our recent history. Ochanya Elizabeth Ogbanje, just 13 years old, died in 2018 after years of horrific sexual abuse committed by her guardian and his son. Her story exposed not only unimaginable cruelty, but also the deep cracks in Nigeria's child-protection and justice systems.Though the case was eventually reopened, the painfully slow response and judicial neglect revealed how fragile our legal safeguards for children truly are. Justice delayed became justice denied. This paper examines Nigeria's child-protection framework, particularly the Child Rights Act 2003, the Violence Against Persons (Prohibition) Act 2015, the Penal Code, constitutional rights, and relevant international instruments like the Convention on the Rights of the Child. Using Ochanya's case as a lens, it highlights the noticeable difference between the law on paper and its enforcement in reality, exposing the legal, institutional, and socio-cultural failures that enabled the abuse. The essay concludes by proposing reforms to strengthen child-protection mechanisms and prevent future tragedies.

***KEYWORDS**: Child Sexual Abuse, Child Protection, Criminal Justice System, Child Rights Act, Sexual Offences, Nigeria.*

INTRODUCTION

The death of **Ochanya Elizabeth Ogbanje** shocked Nigeria and drew worldwide attention to the vulnerability of children in domestic care and guardianship arrangements. Ochanya had been placed under the care of Mr Andrew Ogbuja, a senior lecturer in Benue State, to facilitate her education, owing to her humble background. Over several years, she reportedly endured repeated sexual abuse at the hands of Victor Ogbuja, Andrew's son, and Andrew himself, after speaking out. Despite early warning signs and complaints from family members, authorities failed to intervene effectively, leaving Ochanya exposed to escalating harm that resulted in her death in 2018.[2] The public outcry following this tragedy sparked the **"Justice for Ochanya"** campaign, demanding accountability and retribution from both the perpetrators and the state institutions responsible for child protection.[3]

Although Andrew Ogbuja was eventually arraigned in court for rape and sodomy by the Benue State High Court in 2018[4] the case revealed severe weaknesses in Nigeria's child-protection mechanisms. Moreover, the case raised critical legal questions regarding the duty of care owed by guardians under the Child Rights Act and the Penal Code, highlighting inconsistencies in statutory enforcement and institutional accountability.[5]

NIGERIA'S LEGAL FRAMEWORK ON CHILD SEXUAL PROTECTION

Nigeria possesses multiple legal instruments intended to safeguard children from sexual abuse, yet enforcement is often inconsistent. The Child Rights Act (CRA) 2003, which domesticated Nigeria's obligations under the UN Convention on the Rights of the Child, criminalizes sexual exploitation, abuse, and neglect, while emphasizing the best interests of the child. Section 31 explicitly prohibits sexual intercourse with minors, and Section 11 forbids torture or degrading treatment, providing a detailed statutory framework for child protection.[6] However, the Act's effectiveness depends on state-level domestication. In Benue State, delays in adopting the CRA contributed to the inadequate protection of Ochanya during her years of abuse.[7]

Complementary legislation includes the **Violence Against Persons (Prohibition) Act (VAPP) 2015,** which criminalizes rape, harmful practices, and psychological abuse. Although VAPP was only initially applicable in the Federal Capital Territory, Nigeria's state capital, other states may adopt similar laws. Benue State enacted its own Violence Against Persons (Prohibition) Law, creating a legal basis for prosecuting sexual offences locally.[8] Despite these statutes, enforcement and implementation of these laws were inexistent, thereby making it **mere paper laws.** The Penal Code, applicable in Northern Nigerian states including Benue, criminalizes rape, defilement, and unnatural offences. While it offers protection, the Penal Code is less child-focused than the CRA or VAPP Act, underscoring the importance of child-specific statutory

[2] Premium Times, "How 13-year-old Ochanya Died After Years of Sexual Abuse," *Premium Times Nigeria* (2018).
[3] BBC News, "Nigeria's #JusticeForOchanya: Outrage Over Schoolgirl's Sexual Abuse Death," (2018).
[4] Vanguard News, "Lecturer, Son Arraigned for Rape, Sodomy of 13-Year-Old Ochanya," (2018).
[5] Child Rights Act 2003; Penal Code (Northern States) Federal Provisions Act, Cap P3 LFN 2004.
[6] Child Rights Act 2003, ss. 11 & 31.
[7] UNICEF Nigeria, "Status of Child Rights Act Domestication in Nigerian States," (UNICEF Report, 2017).
[8] Benue State Violence Against Persons (Prohibition) Law 2019.

measures.[9] Additionally, the Constitution of the Federal Republic of Nigeria 1999 guarantees freedom from inhuman or degrading treatment, reinforcing the state's legal obligation to safeguard children.[10]

Internationally, Nigeria is a party to both the Convention on the Rights of the child (CRC) and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 19 of the CRC obligates states to protect children from all forms of physical and sexual abuse, while CEDAW requires measures to prevent gender-based violence, including sexual abuse of minors.[11] Although not directly enforceable domestically without enabling legislation, Nigerian courts increasingly refer to these treaties when interpreting domestic law to align with human-rights obligations.[12]

CASE FACTS AND LEGAL ISSUES

Ochanya, born on March 10, 2005, was the last of eleven children born to Rose Abah and Michael Ogbanje. At five years old, her parents who wanted her to get an education after the only government school in their community of Ogene-Amejo in Benue State was shut down, sent her to live with her aunt, Felicia Ogbuja.The Ogbujas lived in Ugboloko, Benue State, where Ochanya began schooling. She lived with Felicia, her husband[13] Andrew Ogbuja, a Senior lecturer at Benue State Polytechnic.[14]

On October 17, 2018, Ochanya died at the age of 13 from Vesicovaginal Fitsula (VVF), a condition that occurred due to the level of repeated sexual abuse by Victor Ogbuja and his father.[12] Ochanya was sent to live with the Ogbuja family to pursue her education, to secure a better future for herself and her family, unfortunately, those who were supposed to protect her, were the very ones who violated her. Family members made early complaints, but the responses were inadequate, illustrating Nigeria's institutional failures in child protection.

In August 2018, Andrew Ogbuja was arrested by the police and tried on a four-count charge of rape and culpable homicide. The prosecution of Victor Ogbuja faced procedural and evidential challenges. Medical documentation was incomplete, witnesses were intimidated or reluctant to testify, and frequent trial adjournments delayed justice. Ironically, the same day, Thursday, April 21, 2022, whilst Andrew Ogbuja received his verdict at the Benue State High Court, Felicia, Ochanya's aunt faced her own judgment at the Federal High Court. Felicia, was found guilty of negligence and sentenced to just five months in prison.

According to the Judge, Mobolaji Olajuwon, Felicia had "the duty of care" to protect Ochanya but failed to do so, after all her daughter, Winifred Ogbuja, had brought the sexual assault to her attention[13]. Tragically, a completely different outcome played out at the State High Court. The judge there, Augustine Ityonyiman, acquitted Andrew of all charges. Institutional inconsistencies were evident throughout Ochanya's case. Social welfare officers, police investigators, and her school authorities failed to act promptly, reflecting broken mechanisms for child safety. Cultural African norms that discourage reporting sexual abuse, and

[9] Penal Code (Northern States) Federal Provisions Act, ss. 282–285
[10] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 34(1).
[11] Convention on the Rights of the Child (CRC), Article 19; CEDAW (1979).
[12] *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 (Supreme Court of Nigeria).
[13]Channels Television, "Ochanya: 13-Year-Old Girl Dies After Years of Abuse," (2018).
[14] Federal High Court, Abuja: *FRN v. Felicia Ogbuja* (Judgment, 21 April 2022).

casts all the blame on the victim, further hindered timely intervention, allowing the abuse to persist for over several years.[15]

SYSTEMIC FAILURES IN CHILD PROTECTION

The Ochanya case highlights weaknesses and poor implementation of laws in Nigeria's child-protection system. Statutory provisions exist, yet enforcement is uneven. Social welfare departments, police gender desks, and judicial authorities often operate in isolation, thus preventing timeous intervention. Schools and communities, which could serve as early-warning systems, frequently fail to report abuse due to cultural pressures, and fear of hierarchy.[16]

Investigative and procedural deficiencies worsen the problem. The Nigerian police lack specialized units for child sexual offences, and there is a shortage of trained child-interview specialists. Forensic and medical documentation is often inadequate, undermining evidence collection and prosecutions. Frequent adjournments, limited witness protection, and delays in court proceedings prevent timely justice, highlighting the gap between statutory protection and its practical application.[17]

Socio-cultural factors also play a significant role. Victims and their families may face stigma or fear retaliation, particularly when perpetrators hold social or professional influence. In Ochanya's case, these pressures contributed to delayed reporting and prolonged abuse, demonstrating the need for public awareness campaigns and community engagement in child-protection initiatives.[18]

LEGAL ANALYSIS AND INTERNATIONAL PERSPECTIVE

The Child Rights Act and VAPP Act provide clear legal obligations for child protection, but the Ochanya case demonstrates that statutory provisions alone are insufficient. Effective enforcement requires institutional coordination, procedural efficiency, and community involvement. The prosecution of Victor Ogbuja addressed direct perpetration, while Andrew Ogbuja's trial examined guardianship liability, testing the boundaries of legal responsibility for failing to protect a child.[19]

CEDAW, which stands for the Convention on the Elimination of All Forms of Discrimination Against Women, is a landmark international treaty adopted by the United Nations General Assembly in 1979. Often called an "international bill of rights for women," it defines discrimination against women and outlines measures for countries to end it in various areas like political, economic, and social life. The Convention on the Rights of the Child (CRC) is another noteworthy legislation, it is the most universally accepted human rights instrument, ratified by every country in the world except two. The Convention incorporates the full range of human rights - civil, political, economic, social and cultural rights of children into one single document.

[15] Amnesty International Nigeria, "Silenced Voices: Cultural Barriers to Reporting Sexual Violence," (2020)
[16] CLEEN Foundation, "Child Protection Systems in Nigeria: Gaps and Realities," (2019).
[17] Human Rights Watch, "Nigeria: Justice Delayed in Sexual Abuse Cases," (2018).
[18] UNFPA Nigeria, "Gender Norms and Sexual Violence in Nigeria," (2019).
[19] Benue State High Court: *State v. Andrew Ogbuja* (Judgment, 21 April 2022).

Internationally, instruments such as the CRC and CEDAW provide a framework for evaluating state compliance. Article 19 of the CRC mandates protection from abuse, while CEDAW requires measures against gender-based violence. Although these treaties are not automatically enforceable in Nigerian courts, they inform judicial interpretation, serve as persuasive precedents and provide standards for evaluating domestic enforcement of child protection laws.[20]

LESSONS AND RECOMMENDATIONS

Ochanya's case exemplifies the need for multi-dimensional reforms to strengthen child protection in Nigeria. Institutions must be well coordinated and monitored, with clear mandates for social welfare agencies, law enforcement, its' agencies, and the judiciary.

Specialized units trained to handle sexual offences and children's cases, along with enhanced forensic capacity and fast-track courts, can improve prosecution efficiency. Legal provisions that clarify the scope of guardians' liability and expand accountability should be introduced, ensuring that both direct perpetrators and those who fail to protect children face consequences.[21]

Community engagement is equally important. Awareness campaigns, school-based education, and mandatory reporting mechanisms can improve early detection and prevention of abuse. By addressing legal, institutional, and socio-cultural dimensions, Nigeria can create a more robust child-protection system that fulfills domestic and international obligations, preventing future tragedies like that of Ochanya Ogbanje.[22]

CONCLUSION

Ochanya suffered in the hands of her assailants for 5 horrible years, no one deserves to go through such torture, especially not a child. Ochanya might be no more, but her name lives, her story is not isolated. It represents numerous untold stories of girls across Nigeria suffering in silence. Her death should have been a turning point for reform, yet the law enacted to protect cases like hers was unenforceable due to lack of evidence and a weak judicial system. Ochanya was a child that just wanted to be educated, a child who wanted access to a better life. The convictions in this case provide only partial justice. Ochanya's story must serve as a catalyst for sustained reform, emphasizing that protecting minors is both a legal and moral imperative.[23]

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[20] CRC Art. 19; CEDAW Art. 2 & 5; See also *Ukeje v. Ukeje* (2014) 11 NWLR (Pt. 1418) 384 (use of international norms in interpretation).
[21] Nigerian Institute of Advanced Legal Studies (NIALS), "Reforming Child Protection Laws in Nigeria," (Policy Brief, 2021).
[22] UNICEF, "Strengthening National Child Protection Systems in Nigeria," (2020).
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THE VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015 & THE CRIMINAL CODE: ANALYTICAL DIFFICULTIES REGARDING THE DEFINITION OF RAPE AND REFORM

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INTRODUCTION

The definition of aggravated sexual assault as contained in the Violence Against Persons (Prohibition) Act 2015 raises major concerns. Its broad definition of rape creates absurdity and interpretational problems in the administration of justice. This article aims at juxtaposing the definition of rape as contained in the Violence Against Persons (Prohibition) Act, hereinafter referred to as VAPPA, and the definition contained in the Criminal Code which is applicable in southern Nigeria. This article will also highlight the major problems arising from the definition of the VAPPA and the criminal code. However, emphasis will be placed on the VAPPA. A reform will be proposed thereafter.

For clarity, the reason behind legal pluralism in Nigeria with respect to her criminal jurisprudence will be given. Nigeria is a diverse country. It is made up of different tribes and different ethnic groups. Nigeria consists of over 300 ethnic groups[2]. Thus, there are different beliefs, religions, societal values and morals. It is due to the moral and religious divergence between the southern part of Nigeria and the Northern part of Nigeria that the Penal Code was introduced to regulate and guide the conduct of the people in the north. The Penal Code was modeled after the Indian Penal Code. The Criminal Code was introduced by the British in 1904, during the era of its stronghold on Nigeria.[3] There have been various arguments for the unification of the criminal laws; however, one of the few steps which have been taken towards legal unification is the enactment of the Administration of Criminal Justice Act (ACJA) 2015. The ACJA is an adjectival law which regulates criminal proceedings in Nigeria. It operates both in the north and in the south. It repealed both the criminal procedure act and the criminal procedure code, which were operative in the southern and northern parts of Nigeria, respectively.

The Violence Against Persons (Prohibition) Act 2015 was enacted by the national assembly of Nigeria and was endorsed by Goodluck Jonathan, the former president of the Federal Republic of Nigeria.[4] From the provisions of the act, one can deduce that the primary object behind its enactment is to curb all forms of violence against persons. Surely, the Nigerian law makers aim to use the act to prevent both public and private violence. The act covers a wide range of violent crimes, ranging from rape to spousal battery, to female genital mutilation. Our main focus in this article is the wordings of the VAPPA in respect of the offense of rape. Basically, as earlier mentioned, we will be looking at the definition of rape as contained in both the VAPPA and the Criminal code and the difficulties that arise due to the wordings of both statutory enactments.

AGGRAVATED SEXUAL ASSAULT (RAPE)

Undoubtedly, rape is a very sensitive issue and can be a triggering topic for victims. However, it is pertinent to note that the analysis of the offence as contained herein is strictly for educational and academic purposes, the aim of which is to ascertain the practicability of the definitions contained in the Nigerian criminal laws.

[2] Osy E.Nwebo, Critical Constitutional Issues in Nigeria 110 (3rd ed 2011)
[3] Okorie C. Kingsley, Criminal law: The general part 20 (1st ed 2022)
[4] Refugees, United Nations High Commissioner, Nigeria: VAPPA 2015, 2022

In ordinary parlance, rape is sexual intercourse with a person against the persons will; it is done with force and without the consent of the victim. It usually leaves long lasting negative psychological effect on the victim, this is one of the reasons rape is treated as a serious offence. In most jurisdictions, the offender is severely punished. The oxford advanced learner's dictionary defines rape as the crime of forcing somebody to have sex when they do not want it or are not able to agree to it.[5] In the case of *R. v. Seid*[6] the court held that sexual intercourse with a woman without her consent amounts to rape, the court further stated that sexual gratification without penetration does not amount to rape. Thus, in the case of *Breddy v. Commonwealth*[7] the Virginia Supreme Court set aside the conviction of the appellant on the ground that, being impotent, the accused could not have committed rape.

From what has just been stated, it is clear that rape occurs when there is vaginal penetration by the penis of a man without the woman's consent. It is pertinent to note that infants, particularly girls below 18 years and girls of unsound mind cannot give consent. This means that even if consent is expressly given by them, it is void.

ANALYSIS OF THE DEFINITION CONTAINED IN THE VAPPA & THE CRIMINAL CODE

The Violence Against Person's (Prohibition) Act defined rape in section 1. It states:

A person commits the offence of rape if-

he or she intentionally penetrates the vagina, anus or mouth of another person with any part of his or her body or anything else;

the other person does not consent to the penetration; or

the consent is obtained by force or means of threat or intimidation of any kind or by fear on harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.[8]

From the foregoing, it is apparent that the codes definition of the offence of rape rests in the midst of conjecture and confusion. However, credit must be given to the law makers for recognizing the fact that men can be victims of rape, the use of the pronouns "he or she" denotes that both females and males can be victims of the offence. Notwithstanding what was stated, the texts "*he or she intentionally penetrates the vagina, anus or mouth of another person with any part of his or her body or anything else…*" raises serious questions as to whether or not the mere putting of an object, without the apprehension of any element of indecency, in the mouth of another constitutes rape. At most, such interference with the body of another would constitute an assault. The question remains, even if an offender has the requisite sexual intention during the commission of such act, would it be reasonable to say that the offender has committed rape? See

[5] Oxford Advanced Learner's Dictionary
[6] (1960) WRWLR 32
[7] (1949)184 VA, 765
[8] The Violence Against Persons (Prohibition) Act 2015, 1(1) (a) (b) (c).

the case of *Okogomon v. State*.[9] In the aforementioned case the court stated, inter alia, that where there is no sufficient evidence of penetration of the vagina, the accused will not be convicted for rape. Professor U.U. Chukuwumaeze, SAN, a renowned professor of law and criminal law expert, stated that rape is satisfied when there is non-consensual penetration of a female's vagina. He further stated that the element of penetration is satisfied when there is a slight touch of the labia minora in the course of committing the offence.[10] Thus, according to him, there need not be penetration.

Again, we shall ask ourselves, does anal penetration constitute rape, where it is done without the victims consent? Does oral sex, without the consent of the victim, constitute rape?

With respect to anal penetration, it seems like the VAPPA merged the crime of sodomy with rape. The channel through which justice can be delivered in respect of these offences has been gravely compromised by the provisions of the VAPPA. The crime of sodomy and rape as mentioned in the VAPPA's definition of rape are mutually exclusive offences which have been separately provided for by the Criminal Code. The offence of sodomy as codified in section 214 of the Criminal Code is as clear as crystal. From the wordings of the section, it is multi-directional, which means that it can be committed by a man with a man, and man with woman.[11]

With respect to oral sex or the putting of an object in the mouth of another, analysis will be made in the light of indecent assault and assault, respectively. We shall not ignore the fact that that particular provision of the VAPPA is conflicting with provisions of the criminal code. In defining assault, the criminal code stated:

A person who strikes, touches or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, in such circumstance that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.[12]

From the above definition, the text "*…applies force of any kind to the person of another, either directly or indirectly, without his consent..*" denotes that force of any kind applied to another directly or indirectly, without his consent, constitutes an assault. The words on which emphasis should be placed are "force of any kind". Thus it is reasonably believed that any force or physical interference which does not amount to unlawful sexual intercourse will inevitably constitute an assault or an indecent assault, unless such force results in the death of another, then it would amount to culpable homicide; murder or manslaughter, as the case may be. It is submitted that where one puts an object in the mouth of another, with hostility and without consent he or she should be charged with assault.

[9] (1973) ANLR
[10] Chukwumaeze U. Uchefula, Criminal Law Lecture Note, Abia State University.
[11] ChukwumaezeU. Uchefula, Op cit.
[12] Criminal Code 2004, 252

Indecent assault is assault which is accompanied with an element of indecency, see the case of *State v. Adegboye*.[13] In the foregoing case the accused called a girl of 9 years old into his house and inserted his finger into her vagina, the court held that he was guilty of indecent assault. The facts of the case can be contrasted with a scenario where a man puts his private part in the mouth of a woman without her consent. At most, such an act should amount to an indecent assault.

The Criminal Code provided for the offence of rape in section 357. It states:

Any person who has unlawful carnal knowledge of a woman or girl, without her consent or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act or in the case of a married woman, by impersonating her husband, is guilty of an offence which is called rape.

Unfortunately, the Criminal Code does not recognize the fact that men can be rape victims. It also failed to define the term "carnal knowledge". Presumably, everyone knows the meaning of the term. This goes to show that the definition of rape as contained in the Criminal Code is narrow, and the definition of rape as contained in the VAPPA is ridiculously broad. However, until these two laws have been reconciled, I suggest that all offences of rape be brought pursuant to the provisions of the criminal code.

RECOMMENDATIONS & CONCLUSION

Briefly, I suggest that the section of the VAPPA which provides for the offence of rape be amended. However, to achieve unification one of the provisions regarding the offence in question has to be repealed, as there are multiple criminal laws in force in Nigeria.

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Access to Justice in Developing Nations: Bridging the Gap between Law and Social Reality

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Abstract

The promise of justice as a foundation for democracy is betrayed in many developing countries where laws exist but rights remain paper notions for most citizens. Systematic obstacles persist yet silent actors like poverty, low literacy, corruption, feeble institutions, and geographical marginalization render reforms ineffective. This study probes the stubborn divergence between formal laws and lived experiences, clarifying why vulnerable groups routinely slip through the legal net. Comparative lenses reveal a constellation of dysfunctions: courts chronically starved of resources, backlogs that stretch waiting periods into years, and legal orders distorted by elites to bypass local realities. Embedded forces, including customary legal orders and informal settlement practices, exhibit ambivalence: their relative reach offers promise, but their governance can curtail internationally recognized rights. These dynamics, illustrated through fieldwork in Africa, South Asia, and Latin America, expose the breadth of exclusion while showcasing realistic changes, rapid three-tier case management systems, mobile tribunals, and formal recognition of customary safeguards aligned to international norms mandating further scholarly and policy attention. The dialogue demonstrates how tech mobile courts, virtual legal aid channels, and web-based dispute resolution serves as a crucial driver in closing persistent access barriers. While frameworks like the United Nations Sustainable Development Goal 16 offer a valuable compass, enduring advances hinge on tailored interventions that marry legal overhaul with targeted socioeconomic progress. The article concludes that narrowing the justice gap in developing countries requires more than drafting stronger laws; it demands sustained political commitment, systematic strengthening of institutions, proactive public legal education, and the embedding of justice mechanisms within community-led initiatives. Only by pursuing these interconnected, comprehensive pathways can the promise of equitable justice cease to be a distant aspiration and instead manifest as the concrete daily experience of the planet's most underserved groups.

Keywords: *Access to Justice, Rule of Law, Human Rights, Developing Nations, Legal Reform, Social Reality*

Introduction

Access to justice is a defining pillar of both the rule of law and the safeguarding of fundamental human rights. It extends beyond the theoretical entitlement to approach a court; it includes the practical capacity of individuals especially those from vulnerable segments of society to secure viable remedies when their rights are violated. The reaffirmation of this normative principle is evident in Article 8 of the Universal Declaration of Human Rights, which guarantees every person the entitlement to a "remedy by the competent national tribunals" against breaches of rights established by national constitutions and by law.[1] The ICCPR offers a complementary guarantee in Article 14, mandating every person the right to a fair and public hearing; this broadly underscores the importance of effective access to judicial processes within the international human rights framework.[2]

Yet, in numerous developing states, a considerable disjunction persists between the intricate web of legal assurances and the everyday realities confronted by those in need of protection. Formal adjudicative mechanisms are rendered practically unreachable by prohibitive court fees, bribery, excessive protracted proceedings, and chronically inadequate institutional capacity. The continued exclusion of oppressed groups is compounded by entrenched social and cultural obstacles, which include systemic gender disparities and widespread legal illiteracy.

When formal norms operate in isolation from lived experience, the legitimacy of law erodes, and wider goals of development falter. In contemporary discourse, it is increasingly accepted that equitable access to justice is not merely ancillary but central to realizing the Peace, Justice, and Strong Institutions pillar of the UN Sustainable Development Goals.[3]

This article investigates the obstacles to effective justice in developing contexts and critiques the emergent and promising strategies that link official standards to the conditions of everyday life. By synthesizing cases from Africa, Asia, and Latin America, the inquiry identifies persistent impediments structural, institutional, and cultural while also illuminating leverage points for reform. The argument is that enduring access to justice cannot be secured through normative revision alone; it demands complementary shifts in the underlying economic, social, and political arrangements that sustain exclusion.

The paper proceeds as follows: Part II articulates a conceptual framework of effective access to justice. Part III catalogs the barriers prevailing in developing environments. Part IV distills lessons from comparative contexts. Part V surveys promising, empirically grounded innovations that narrow the justice divide. Part VI articulates conceptual and operational policies to reinforce access, and Part VII concludes with a summary of the substantive findings and the normative imperative for sustained and holistic action.

[1] G.A. Res. 217A (III), Universal Declaration of Human Rights, art. 8 (Dec. 10, 1948).
[2] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 14 (entered into force Mar. 23, 1976).
[3] G.A. Res. 70/1, U.N. Doc. A/RES/70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, Goal 16 (Sept. 25, 2015).

II. Conceptual Framework

Guaranteeing access to justice is an intricate project involving law, human rights, and social equity. Simply establishing courts or legal measures is inadequate; the wider socio-economic and political context must **support working norms that encourage or inhibit effective recourse to justice.** Experts still debate its full scope, yet at its core, the idea rests on two pairs of interconnected elements: rights, mostly centered on judicial equality, and procedural guarantees that keep those rights from being mere abstraction.[4]

The United Nations encapsulates the idea as "people's capacity to obtain a remedy from formal or informal justice bodies, respecting human rights standards."[5] the phrasing signals two urgent, interdependent facts: an effective legal framework is essential, yet structure is empty when justice is inaccessible or biased. The World Bank reinforces this viewpoint, integrating access to justice into its governance discourse as a mechanism for poverty alleviation and social stability.[6]

A. Access to Justice as a Human Right

The human rights rule binds States, courts, and civil actors to furnish the machinery through which entitlements are recognized and enforced. Article 8 of the Universal Declaration of Human Rights guarantees that everyone has the right to an effective remedy for violations, while Article 2(3) of the ICCPR mandates that States Parties ensure that persons whose rights have been breached can obtain "an effective remedy."[7] Complementarily, regional human rights instruments, including the African Charter on Human and Peoples' Rights and the European Convention on Human Rights, reaffirm the principle, insisting that justice must be both available and impartial.[8]

Beyond written text, the obligation to furnish an effective remedy has been reinforced by the case law of international and regional courts. The Inter-American Court of Human Rights has emphasized that access to justice is not merely an inherent value; it is a gateway right that safeguards all other human rights.[9] Likewise, the European Court of Human Rights underlined in *Airey v. Ireland* that the provision of legal aid can be essential to ensure that the right to justice is meaningful, particularly for persons in vulnerable circumstances.[10]

B. Theoretical Perspectives

Theoretical analysis of access to justice is frequently approached through two primary lenses. The formalist perspective centers on the architecture of legal institutions, the repository of written laws, and the prescribed procedures. From this standpoint, the mere presence of courts, codes, and forms is taken to imply

[4] Mauro Cappelletti & Bryant Garth, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective, 27 Buff. L. Rev. 181, 182–84 (1978).
[5] U.N. Dev. Programme, Programming for Justice: Access for All 5 (2005).
[6] World Bank, World Development Report 2017: Governance and the Law 123 (2017).
[7] G.A. Res. 217A (III), Universal Declaration of Human Rights, art. 8 (Dec. 10, 1948); ICCPR, supra note 2, art. 2(3).
[8] African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217, art. 7; European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221, art. 6.
[9] Velásquez Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 91 (July 29, 1988).
[10] Airey v. Ireland, App. No. 6289/73, 2 Eur. H.R. Rep. 305, ¶ 26 (1979).

that access to justice has been achieved. Most of the contemporary debate credits the concept of universal legal entitlement, yet critics insist that this view abstracts too far from the practical experience of people in the Global South, where deeply entrenched structural inequalities effectively foreclose serious engagement with formal legal regimes.

In response, the realist or socio-legal frame turns the focus instead to the bounded articulation of access to justice as imbricated in particular social, economic, and political configurations. The premise is that universalized declarations of legal rights lack purchase where the capacity to exercise such rights is conditioned by differential levels of knowledge, scarce economic resources, or the latent or active denial of personal freedom.[11] In settings where illiteracy dominates or where households operate under permanent scarcity, entitlements recognized in the legal books fail to amount to citizenship and instead re-tool cycles of marginalization.

C. Access to Justice and Development

Article 16 of the 2030 Agenda, now core to National Development Plans the world over, signposts justice measured not simply by procedural efficiency, but by the confidence of women and men to consent to its authority as a strategic axis of peace, stability, and development. Sen's extended capability framework and recent data from the World Bank crystallize a more reciprocal reading: absent universal and equitable justice, capital expenditures that read as growth risk becoming a re-term of inequality, while, on the equilateral axis, effective systems of accountability in the courts, the market, and the agora expand effective citizenship, galvanize the legitimacy of the sovereign, and, at the margin, mitigate uprising.[12] The present justice gap in the Global South is therefore not auxiliary or adjunct to development planning, but, rather, a socio-political imperative that no multi- or bi-lateral blueprint can afford to neglect.

III. Barriers to Accessing Justice in Developing Nations

Even when international treaties proscribe systemic exclusion from the justice system, the lived experiences of people in the Global South often contradict that promise. This gap stems not only from weak domestic constitutional language but also from economic arrangements, institutional cultures, social hierarchies, and political calculations that collectively frustrate meaningful accountability. Unpacking these barriers is therefore indispensable to understanding why the provisions of national and international law so seldom translate into tangible social outcomes.

A. Economic Barriers

Staggering disparities in wealth and income create insurmountable obstacles to formal justice. Early stages of litigation filing fees, expert witnesses, or even photocopying can quickly escalate to costs that impoverish entire households.[13] Even when governments allocate public resources to legal aid, budgets are often

[11] Deborah L. Rhode, Access to Justice, 69 Fordham L. Rev. 1785, 1790–92 (2001).
[12] Amartya Sen, Development as Freedom 152–54 (1999).
[13] Mauro Cappelletti & Bryant Garth, Access to Justice: The Worldwide Movement to Make Rights Effective, 27 Buff. L. Rev. 181, 195–96 (1978).

diverted or poorly administered, leaving clinics to serve only narrow categories of cases, such as terminal disputes over wills, rather than victims of economic violence or collective property dispossession.

In Sierra Leone, for example, the constitution guarantees the right to representation, but the majority of citizens rely on under-resourced paralegals trained by civil society, as qualified lawyers remain scarce and prohibitively expensive.[14] In India, extensive studies show that the length and cost of litigation effectively bar low-income individuals from seeking redress, creating "justice deserts."[15] Across Latin America, high poverty levels compel citizens to resolve disputes outside formal systems, often accepting outcomes that contravene both the letter and the spirit of the law.

The economic dimension of access extends beyond attorney fees. Rural citizens face transportation costs to distant courts, wage losses during adjournments, and cumulative opportunity costs as single cases drag on for months or years. Women, remote communities, and those without formal labor contracts are disproportionately affected, rendering formal adjudication largely inaccessible.

B. Institutional Barriers

A second and often more severe dimension of the deficit is institutional weakness. Judiciaries in many developing countries are underfunded, undertrained, and infiltrated by corruption. Cases can languish for a decade or more, exemplifying the adage that "justice delayed is justice denied," which fuels disenchantment and weakens already fragile social contracts.[16]

Corruption further undermines judicial integrity. When court outcomes depend on bribes or political influence, law becomes an auction favoring the wealthy or well-connected. In Nigeria, for instance, Transparency International ranks courts among the least trusted public institutions.[17] while Indonesia continues to grapple with judicial scandals despite prior reforms.[18]

Infrastructure scarcity compounds these challenges. Crumbling courtrooms, underpaid clerks, and limited digital solutions turn the right to a hearing into a practical luxury. Rural citizens often must traverse long distances, while interpreters for minority languages are frequently unavailable, creating additional barriers for marginalized groups.

C. Social and Cultural Barriers

Social and cultural factors add yet another layer. Gender inequality remains a persistent barrier; in many societies, women face stigma for pursuing court action, particularly in inheritance or domestic disputes.[19]

[14] Timap for Justice, Annual Report 7–8 (2010).
[15] Marc Galanter & Jayanth Krishnan, Bread for the Poor: Access to Justice and the Rights of the Needy in India, 55 Hastings L.J. 789, 802–03 (2004).
[16] Stephen Golub, Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative, Carnegie Endowment Working Papers, Rule of Law Series, No. 41, at 14–15 (2003).
[17] Transparency Int'l, Global Corruption Barometer Africa 2019 12–13 (2019).
[18] Simon Butt, Corruption and Law in Indonesia, in Corruption and Law in Asia 61, 65–67 (2004).
[19] Madhavi Sunder, Piercing the Veil, 112 Yale L.J. 1399, 1404–05 (2003).

In South Asia, patriarchal norms and weak enforcement of rights force many women to endure abuse silently, even where legal entitlements exist.

Low literacy and lack of legal knowledge further restrict access. UNESCO reports literacy rates below 50 percent in some developing countries, leaving populations unable to navigate court procedures or comprehend their legal rights.[20] Customary justice systems, which often operate alongside formal courts, may reinforce unequal treatment, particularly against women and minority groups.

Community norms also influence perceptions of justice. Across large regions, pursuing formal legal remedies is seen as undermining communal harmony, encouraging dispute resolution outside official channels and compromising impartiality. Negotiating the intersection of statutory and customary laws remains a persistent challenge for stakeholders seeking expanded access while respecting local identities.

D. Political Barriers

Political contexts in many developing states further impede access to justice. Courts often operate under executive oversight, undermining judicial independence and reducing courts to instruments of state policy.[21] Authoritarian systems use law selectively to repress dissent, obscure procedures for political opponents, and curtail freedoms of speech and assembly.

In Zimbabwe, courts have sided with the ruling ZANU-PF party in high-profile electoral disputes, undermining citizen confidence in judicial impartiality.[22] In parts of Southeast Asia, sedition and defamation laws are resurrected against critics of the state, demonstrating how statutes are manipulated as instruments of control rather than protection.[23]

Emergency conditions exacerbate these challenges. In fragile countries, shrinking budgets and fleeing personnel reduce courts to minimally functional spaces. Appeals that once offered potential protection or compensation disappear. In South Sudan, tribunal outcomes may hinge as much on access to fuel for generators as on the merits of a case. Afghanistan, emerging from decades of conflict and chronic underinvestment, struggles to enforce even basic rulings in remote regions. These conditions illustrate a harsh reality: when institutions collapse or are undermined, justice becomes a privilege reserved for those with status or resources, rather than a universal right.

IV. Comparative Perspectives on Access to Justice

Access to justice is indeed related to comparative study among developing nations. While most of the problems confronted by societies are almost the same-economic exclusion, weak institutions, more or less, the social inequality and political interference-the manifestation of the barriers are unique to each overwriting history, culture, and patterns of governance. Thus would provide a view of the comparison

[20] UNESCO Inst. for Stat., Literacy Rates Continue to Rise from One Generation to the Next 2 (2017).
[21] Tom Ginsburg & Tamir Moustafa eds., Rule by Law: The Politics of Courts in Authoritarian Regimes 18–20 (2008).
[22] Lovemore Madhuku, The Zimbabwe Constitution and the Search for a Democratic Political System, 3 Afr. Hum. Rts. L.J. 63, 75 (2003).
[23] Human Rights Watch, Turning Critics into Criminals: The Human Rights Consequences of Criminal Defamation Law in Asia 21–23 (2016).

among Africa, Asia, and Latin America, sometimes revealing the commonalities of the regions, but otherwise exposing the region's peculiarities that shed light on the global contest of closing the gap between law and social reality.

A. Africa: Between Customary Justice and Formal Legal Systems

Africa is particularly a very complex imbroglio, where legal structures inherited from the colonial administrations live side by side with enduring customary and religious practices.[24] Justice remains a myth in most parts of this continent to the extent where it is almost synonymous with - poverty, weak institutions, and informal domination of dispute mechanisms.

1. Economic Exclusion

Majority of citizens in countries such as Sierra Leone, Liberia, and Uganda live below the poverty line. Legal fees or transport to urban courts are out of the reach of thousands.[25] This economic reality forces many to resort to paralegals and community-based organizations. A fine example in this regard is the Timap for Justice model, which involves employing paralegals in the community as channels of legal empowerment to provide links between the marginalized and the formal system.[26]

2. Customary Law and Gender Discrimination

Though accessible, the customary courts have a tendency of enforcing practices that are discriminatory against women. For example, in Malawi, women are often denied their inheritance rights by customary tribunals, notwithstanding the provisions by statute on the contrary.[27] Similarly, Sharia-based family courts in Nigeria tend to favor patriarchal standards over constitutional equal rights safeguards.[28]

3. Institutional Weakness

African judiciaries suffer from inadequate funding and are sometimes compromised. Even though judicial reforms were already undertaken in Kenya as a way of improving accountability after the promulgation of the Kenyan Constitution of 2010, challenges continue existing within the rural areas, where delays and bribery are still inhibiting the dispensing of justice.[29]

B. Asia: Rapid Development and Enduring Inequalities

Asia's development story starkly reveals the gap between soaring economic indicators and deep-seated social exclusion. Among the region's middle-income giants India, Indonesia, and the Philippines booming

[24] Muna Ndulo, African Customary Law, Customs, and Women's Rights, 18 Ind. J. Global Legal Stud. 87, 90–92 (2011).
[25] World Bank, Poverty and Shared Prosperity 2020: Reversals of Fortune 54–55 (2020).
[26] Vivek Maru, Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide, 31 Yale J. Int'l L. 427, 429–30 (2006).
[27] See Anne Hellum, Women's Human Rights and Legal Pluralism in Africa, 1 J. Legal Pluralism 69, 73–75 (2010).
[28] Ayesha Imam, The Dynamics of Women's Rights in Nigeria: Access to Justice in Muslim Personal Law, 24 Hum. Rts. Q. 133, 136–38 (2002).
[29] Judicial Service Comm'n (Kenya), State of the Judiciary and Administration of Justice Report 2017–2018, at 14–16.

economies have coincided with the hollowing of social justice, where expanding statutes sit uneasily beside traditions and economic structures that restrain the poor's ability to claim rights.

1. India: A Paradox of Vibrant Litigation and Delay

India is celebrated worldwide for its boisterous judiciary, where the Supreme Court, with its soaring public interest docket, is the stuff of civil rights case studies.[30] Yet the promise of adjudication is marred by staggering case backlogs court registers hold over forty million unsettled disputes.[31] Such inertia crushes the poor, for the prolonged silence of the gavel outweighs the loud proclamation of rights. Although the Constitution obliges the state to deliver free legal assistance, the work of the sparse, often thinly capitalized, legal aid cells is outpaced by the rising number of claimants. The coverage is partial, the training uneven, and the remuneration paltry. As justice converges on calendar dates stretched over years, the unrepresented drop out of sight.[32]

2. Indonesia: Reform and Corruption

After the fall of Suharto, Indonesian rhetoric of judicial reform flowed as powerfully as the watered-down commitment to free legal aid; the 2011 Legal Aid Act later officially guaranteed free counsel for the poor, separating it from other services.[33] Yet the promise is proved regularly. Whispers of graft and arranged verdicts stain the once-celestial pedestal of the judiciary and a widening circle of litigants.[34] Since procedural and investigational measures exist in Indonesia's mushrooming courts, the life of the industry confirms that rulings are delayed. Court-mandated bylaws of the 2011 amendment limit the slightest docket.

3. South Asia and Gender Barriers

In Pakistan, Bangladesh, and Nepal, entrenched patriarchal values obstruct women's ability to pursue family law cases in courthouses.[35] Dowry arguments and domestic violence allegations frequently stay in silence, kept there by shame, the tiny presence of women lawyers, and the dread of reprisals. Entities led by civil-society organizations that promote legal knowledge have achieved some progress, yet rigid structures refuse to yield.

C. Latin America: Inequality, Violence, and the Rule of Law

In Latin America, poverty and violence intertwine to create a wall against obtaining justice. The region's constitutions boast progressive ideals, and civil society is robust, yet the daily scene shows weak courts, rampant aggression, and deep-rooted disparities.

[30] S.P. Sathe, Judicial Activism in India: Transgressing Borders and Enforcing Limits 87–89 (2002).
[31] National Judicial Data Grid (India), Case Statistics (2024), https://njdg.ecourts.gov.in
[32] Law Commission of India, Report No. 197: Public Interest Litigation 13–14 (2006).
[33] Indonesia, Law No. 16 of 2011 on Legal Aid, art. 4(1).
[34] Simon Butt, Corruption and Law in Indonesia, in Corruption and Law in Asia 61, 65–67 (2004).
[35] Tahir Mahmood, Family Law Reform in the Muslim World 34–36 (2012).

1. Inequality and Legal Dualism

In Brazil and Mexico, courts separate citizens by class. The wealthy, with the means to hire star attorneys, escape with relative ease, while the marginalized confront obstructive bureaucracy and chronically under-resourced public defenders.[36] Such a fracture has produced "bifurcated justice," eroding any claim to equal treatment by the law.

2. Violence and Judicial Intimidation

Across Central America, organized crime and gang terror eat away at the very foundations of justice. Judges, prosecutors, and potential witnesses receive targeted threats, creating fertile ground for the impunity that stretches from everyday extortion to brutal homicide.[37] in countries like Honduras and El Salvador, the haunting fear of reprisals discourages most victims from ever reporting what has happened to them.[38]

3. Legal Reforms and Social Movements

Still, the region is experimenting with home-grown solutions. Colombia's Constitutional Court has tightened the state's obligation to protect social and economic rights, insisting that the authorities guarantee housing, public health, and pensions.[39] Concurrently, processes of participatory justice in Bolivia and Ecuador are weaving indigenous arbitration practices into national law, even though points of friction linger over how well these customs fit alongside internationally recognized human rights.

D. Lessons from Comparative Perspectives

Broader comparisons yield three persistent themes. First, although economic hardship and weak institutions appear in every setting, the interplay of culture and historical experience colors the precise texture of the obstacles. Second, rights codification is of little use unless accompanied by deliberate investments in public education, community power, and untainted institutions. Finally, blended strategies whether paralegal networks in Africa, public interest cases in India, or constitutional debates in Latin America illustrate that the promise of wider access is real, yet sustaining these experiments requires unwavering political stewardship and the backing of the citizenry.

V. Towards Bridging the Gap: Innovations and Best Practices

Access to justice in developing nations remains an immense hurdle, yet promising initiatives emerging from diverse contexts show that change is within reach. These recent reforms stress the necessity of synchronizing systemic, hierarchical reforms with grassroots, community-driven actions, exploiting technology, and cultivating strong international collaboration.

[36] Daniel M. Brinks, "Access to Justice, Social Rights, and Rule of Law Reform in Latin America," in Rule of Law in Latin America 40–42 (2007).
[37] Int'l Crisis Group, Mafia of the Poor: Gang Violence and Extortion in Central America 17–19 (2017).
[38] Human Rights Watch, World Report 2022: Honduras 180–82 (2022).
[39] Rodrigo Uprimny, The Enforcement of Social Rights by the Colombian Constitutional Court: Cases and Debates, in Courts and Social Transformation in New Democracies 127–30 (2004).

A. Strengthening Legal Aid and Public Defender Systems

At the center of fair justice is the assurance that every person, regardless of means, can secure capable legal aid. Across most developing countries, however, existing legal aid frameworks suffer from chronic financial shortfalls and weak governance.[40]

1. Expanding State-Sponsored Legal Aid

Brazil's *Defensoria Pública* exemplifies an integrated, state-supported public defender network.[41] Rather than treating legal assistance as a secondary obligation, the Brazilian Constitution enshrines free legal representation as an enforceable right.[42] the agency engages a sizeable cadre of career public defenders who deliver counseling and advocacy in both felony and civil disputes, thereby embedding the right to counsel across the entire judicial spectrum.

2. Community-Based Paralegal Models

Where state resources fall short, locally rooted paralegal initiatives have proven indispensable. In Sierra Leone, Timap for Justice equips paralegals to resolve quarrels, inform citizens of their rights, and bridge the gap to formal courts.[43] This hybrid arrangement melding community credence with legal capacity has since been transported to further African and Asian environments.[44]

B. **Judicial Reforms and Institutional Integrity**

To gain meaningful access to justice, courts must operate with independence and efficiency. Corruption, case backlogs, and procedural sluggishness render even the soundest legal codes ineffectual.

- **Case Management and Backlog Reduction**

India's installation of fast-track courts demonstrates how focused tribunals can considerably abbreviate delays in criminal procedures, especially in sexual assault matters.[45] Such platforms, nonetheless, demand stable financing and thorough judicial induction to preclude their own congestion.

- **Anti-Corruption Measures**

Indonesia's Corruption Eradication Commission (KPK) has played a pivotal role in securing convictions of dishonest judges and elected officials.[46] Though confronting persistent political resistance, the agency's gains indicate how targeted anti-corruption bodies can bolster public confidence in the judiciary.

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[40] Stephen Golub, Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative, in Promoting the Rule of Law Abroad 161, 164–66 (Thomas Carothers ed., 2006).
[41] Daniel M. Brinks, Access to Justice and the Brazilian State: The Defensoria Pública in Comparative Perspective, 1 Des. L. Rev. 19, 22–24 (2005).
[42] Constituição Federal [C.F.] [Constitution] Oct. 5, 1988, art. 5, § LXXIV (Braz.).
[43] Vivek Maru, Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide, 31 Yale J. Int'l L. 427, 432–35 (2006).
[44] Namati, Community-Based Paralegals: A Global Review 10–12 (2016).
[45] Law Commission of India, Report No. 245: Arrears and Backlog 32–34 (2014).
[46] Simon Butt, Corruption and Law in Indonesia, in Corruption and Law in Asia 61, 68–70 (2004).

- **Judicial Training and Ethics**

Capacity-building programs, notably the Judicial Training Institute of Kenya, are harmonizing instruction in ethics, case-flow management, and human-rights jurisprudence throughout the courts.[47] by embedding such training in institutional routines, judiciaries safeguard durability and cultivate professionalism beyond the lifespan of individual reforms.

C. Leveraging Technology for Justice

Innovative technology supplies decisive pathways for extending legal access in environments where resources are stretched.

- **Digital Case Management and E-Courts**

India's e-Courts Mission Mode Project has migrated filing, tracking, and publishing of decisions to electronic platforms, thereby raising the level of transparency.[48] Kenya complements this by using mobile platforms to advice litigants of changes in their case schedules, removing the need for costly and frequent trips to court.[49]

- **Online Dispute Resolution (ODR)**

The Philippines and China have created scalable online mediation hubs serving small-claims and family matters.[50] the virtual setting curbs both fiscal and temporal costs, while extending the reach of mediation services to areas previously lacking physical facilities.

3. Mobile Legal Information Services

In Uganda, the Barefoot Law project uses SMS, WhatsApp, and social networks to dispense pro bono legal information.[51] The initiative evidences the capacity of technology to dissolve conventional hindrances related to physical distance and low literacy, thus broadening the reach of basic legal knowledge throughout the population.

D. Integrating Customary and Informal Justice with Human Rights Standards

Because customary justice mechanisms are deeply rooted throughout Africa, Asia, and Latin America, any reform that ignores them risks estranging entire communities. Hence, rather than outright replacement, the crucial task is to weave these systems into the formal justice architecture, ensuring that the safeguarding of human rights is the guiding thread.

- **Hybrid Models**

In Mozambique, the law now acknowledges community courts that orient their deliberations around customary norms, yet remain anchored to the Ministry of Justice's supervision. Such a framework lends the

[47] Judicial Training Institute of Kenya, Annual Report 2019 11–13.
[48] India, e-Courts Mission Mode Project Phase II: Overview (2019).
[49] Judiciary of Kenya, Case Management System Report (2020).
[50] Pablo Cortés, Online Dispute Resolution for Consumers in the EU and Beyond 145–48 (2011).
[51] BarefootLaw, Our Work, https://barefootlaw.org

tribunal culture a degree of legitimacy, while an institutional guardrail keeps it aligned to constitutional principles.[52]

- **Gender-Sensitive Reforms**

Across rural Malawi and mountainous Nepal, NGOs have catalyzed paralegal women's committees that operate from within customary assemblies to champion the rights of female litigants. By anchoring the intervention in the community, the reform maintains cultural credibility, yet it steadily erodes the multilayered architecture of gender bias.[53]

E. International and Regional Cooperation

Justice reform processes in many developing contexts are animated by complementary international inputs in the form of financing, capacity strengthening, and norm-setting expertise.

1. United Nations and Donor Support

Through its broad Access to Justice Program, UNDP has partnered with over thirty nations, steering legal reforms toward practical empowerment and the seamless incorporation of human rights principles into day-to-day governance. Institutional resilience is the backbone of every activity, and donor collaboration ensures that expertise and funding align with local priorities.[54]

2. Regional Judicial Networks

Regional courts and commissions the African, Inter-American, and ASEAN Human Rights bodies act as guardians of emerging norms, weaving accountability into the fabric of national legal systems. Their jurisdictions may remain modest, yet by delivering consistent case law and championing collective dialogue, they sharpen and amplify domestic human rights jurisprudence.[55]

3. South-South Cooperation

Across the Global South, peer-to-peer models are propagating reform velocity. Brazil's publicly funded *Defensoria Pública* and Sierra Leone's Timap clinics, by demonstrating cost-effective casework and proactive outreach, have seeded discussions and tailored adaptations in the Caribbean, Asia, and West Africa. This cross-regional knowledge transfer defies traditional northbound replication narratives and reaffirms that southern innovation is driving southern transformation.

F. Building Legal Empowerment through Education

[52] Helene Maria Kyed, Legal Pluralism and International Development Interventions: Lessons from Mozambique 18–20 (2011).
[53] Anne Hellum & Henriette Sinding Aasen, Women's Human Rights: CEDAW in International, Regional and National Law 209–12 (2013).
[54] United Nations Development Programme, Access to Justice (2021), https://www.undp.org
[55] Karen J. Alter, James T. Gathii & Laurence R. Helfer, Backlash Against International Courts in West, East and Southern Africa: Causes and Consequences, 27 Eur. J. Int'l L. 293, 297–300 (2016).

Long-lasting emancipation, however, meets its stranding at the choke point of ignorance unless citizens are systematically inculcated with the living, practical knowledge of their rights and the means to envisage their enforcement.

1. Civic and Rights Education

Across the region, NGOs and governments implement civic education initiatives such as Kenya's Uraia Initiative to cultivate awareness of constitutional rights.[56]

2. School-Based Legal Literacy

In India, updated school syllabi now feature constitutional values and fundamental rights, nurturing an early and enduring sense of legal agency.[57]

3. Grassroots Human Rights Training

The Global Legal Empowerment Network led by Namati equips grassroots trainers to help villagers navigate land disputes, assert health-care entitlements, and pursue environmental justice.[58]

G. Synthesis: Towards a Multi-Layered Approach

No single legislative change can dismantle the justice gaps that persist in developing democracies. Surveys of winning reform show that layered strategies combining lasting institutional change, bottom-up capacity, digital tools, and sustained foreign and domestic partnership yield the greatest dividends. The decisive test remains durability: efforts must withstand policy turnover, secure enduring fiscal backing, and anchor themselves in everyday civic life.

Part VI: Recommendations for Strengthening Access to Justice

Closing the justice gap in low- and middle-income countries will not succeed through isolated initiatives. Instead, a coherent, multi-dimensional approach is essential, one that fuses legal, social, digital, and institutional changes. The following paragraphs advance five mutually reinforcing tracks: expanding quality legal aid, scaling up legal literacy programs, strategically deploying technology, revitalizing court and quasi-judicial bodies, and reinforcing collaborative arrangements across borders.

A. Strengthening Legal Aid and Public Interest Litigation

The bedrock of equitable justice rests upon the availability of competent legal representation without an economic litmus test. Therefore:

- **Boost Legal Aid Budgets:** Governments ought to earmark a consistent and documented percentage of national revenues to legal aid. Development partners should complement domestic

[56] Uraia Trust, Annual Report 2018 15–16.
[57] National Council of Educational Research and Training (India), Social and Political Life Textbook (2020).
[58] Namati, Annual Report 2022 8–11.

resources through strategic aid. The UN Development Programme (UNDP), for example, has backed numerous legal empowerment projects across the African continent.[59]

- **Broaden Public Interest Litigation (PIL):** Courts must adopt pragmatic standing norms so that civic-minded persons and groups may challenge entrenched violations of rights. The South Asian experience repeatedly illustrates that proactive judicial review can enlarge the frontiers of constitutional guarantees.[60]
- **Mandate Pro Bono Engagement:** Law societies should formalize a compulsory floor of pro bono hours for each practitioner, as seen in the United States and in Various European jurisdictions where substantial assistance for low-income clients has become the norm.[61]

B. Promoting Legal Literacy and Public Awareness

The existence of rights without the embodiment of knowledge is a recipe for dormant guarantees. Comprehensive legal literacy initiatives can cultivate agents of accountability, equipping ordinary citizens to insist upon the delivery of justice and to navigate the legal system with confidence.

- **School-Based Legal Education:** Introducing foundational legal education within the regular school curriculum will arm future generations with a clear understanding of their rights and responsibilities. Early and sustained exposure to legal principles in a manner consistent with their cognitive development fosters informed and responsible citizenship.
- **Media Outreach and Grassroots Engagement:** Radio, television, and community drama groups should deliver legal awareness in remote, low-literacy regions. In Sierra Leone, village radio is an ongoing model, broadcasting programs on anti-corruption legislation.[62]
- **Paralegal Initiatives:** Cultivating village-level paralegals produces trusted legal guides who field inquiries at the community doorstep. Success in Malawi and Sierra Leone proves that trained paralegals efficiently resolve low-value conflicts, guide court preparation, and may help alleviate case backlogs.[63]

C. Leveraging Technology for Access to Justice

Integrated, well-managed technology offers transformative access when inclusively designed. Programs to consider:

[59] U.N. Dev. Programme, Access to Justice: Practice Note 7–9 (2004).
[60] S.P. Sathe, Judicial Activism in India: Transgressing Borders and Enforcing Limits 20–25 (2002).
[61] Am. Bar Ass'n, Model Rule 6.1: Voluntary Pro Bono Publico Service (2019).
[62] Transparency Int'l Sierra Leone, Community Engagement Through Radio Campaigns (2017).
[63] Int'l Ctr. for Transitional Justice, Community-Based Paralegals in Malawi and Sierra Leone 4–6 (2010).

43 **E-Courts and Case Management:** Courts should implement a synchronized digital filing, monitoring, and hearing platform to standardize procedures, shrink delays, and enhance audit trails. India's evolving e-Courts Project provides an instructive proof of concept.[64]

44 **Online Dispute Resolution:** Pilot electronic settlement portals for monetary claims, family mediation, and consumer disputes, following the principles established in Canada's Civil Resolution Tribunal. Bundling technology, triage, and facilitative mediation can streamline modest affairs.[65]

45 **Mobile-Based Legal Aid:** Contextualized smartphone applications and voice/SMS services can bridge remote access at scale. Wherever the internet is rare, prioritizing text and call features keeps options open. National policy should couple this rollout with subsidies for associated data costs, thereby mitigating the digital divide.

D. Reforming Judicial Institutions

Systemic overhaul is a prerequisite for dismantling endemic inefficiency, corruption, and case accumulation in too many developing States.

- **Judicial Independence:** Binding provisions must stabilize judges against political winds. Merit-based appointments, decent emoluments, and fixed, inviolable terms together create confidence and distance from daily patronage.
- **Case Management Reforms:** Legislated deadlines for motions and hearings, a central electronic case repository, and prohibitions against dilatory postponements should tighten the wheel of justice.
- **Anti-Corruption Measures:** Asset registries, whistle centers, and autonomous oversight accountable directly to the citizenry would weaken the patronage arteries. The track record of Kenya's Judicial Service Commission illustrates how disciplined vigilance raises the cost of venality.[66]

E. Fostering Global and Regional Cooperation

A solitary assault on justice access is futile; concerted external relationships multiply leverage.

8. **Adopting International Best Practices:** Courts in developing areas should borrow selectively from durable global models, including South Africa's patient-centered justice centers or Brazil's jurisprudential respect for indigenous customary codes.
9. **Cross-Border Legal Aid Frameworks:** Regional groupings such as ECOWAS and ASEAN must design portable legal assistance systems to safeguard the rights of forcibly displaced persons, many of whom traverse borders overnight.

[64] Ministry of Law & Justice, Govt. of India, E-Courts Mission Mode Project Phase II (2015).
[65] Civil Resolution Tribunal (Canada), Annual Report 2020–2021 12–15.
[66] Judicial Service Comm'n (Kenya), Strategic Plan 2019–2023 19–23.

10. **Integration with Sustainable Development Goals (SDGs):** The United Nations Sustainable Development Agenda, Goal Sixteen in particular, invites each State to nurture a justice that is peaceful, inclusive, and institutionally tough. Reform engineers in developing States should tie reform specificities to these benchmarks to leverage both funding and expert accompaniment.[67]

Part VII: Conclusion

Access to justice remains a foremost, stubborn challenge for many developing countries today. For the communities that experience marginalization, the gulf between the rights proclaimed in statutes and the realities of daily life only widens. Despite constitutional protections, legal entitlements, and international obligations that suggest a functional system, poverty, illiteracy, graft, and slow-moving bureaucracies transform most entitlements into empty promises. The poorest rural families, women, and minorities bear the greatest burden, reinforcing intergenerational inequality and social exclusion.

The discussions within this article show that closing the justice gap demands far more than additional courts or better procedures. A coordinated agenda that combines legal and social change is essential. The lenses of legal pluralism, Sen's capability theory, and critical legal scholarship all show that the law is not a standalone system, but is embedded in, and in turn reshapes, the conditions of everyday life. A successful reform strategy must therefore move beyond simply entitling more people to files in a registry and instead focus on shaping the underlying social and economic conditions that determine whether a right can be claimed, realized, and upheld.

Programs like mobile courts, legal aid clinics, and community paralegal networks prove that solutions rooted in local realities can drive measurable change. Yet to endure, these initiatives need ongoing institutional backing, stable funding, and alignment with comprehensive justice reforms. Likewise, technology can democratize justice, but if rolled out selectively, it risks entrenching the disparities it seeks to reduce. Inclusivity in design, delivery, and governance is therefore non-negotiable.

True progress demands a justice vision that amplifies inclusion, upholds accountability, and affirms human dignity. Bolstering legal aid, cultivating widespread legal literacy, overhauling judicial bodies, and deepening international partnerships are no longer aspirational goals; they are existential duties. Justice is not a scarce commodity for the fortunate; it is a foundational right that secures the integrity of democracy and the durability of societies. Only when the law is equally accessible will governance command legitimacy, stability flourish, and equitable progress be realized.

As the global community strives to fulfil the Sustainable Development Goals especially the sixteenth, which spotlights peace, justice, and strong institutions countries with developing economies must regard the strengthening of justice systems as both an ethical obligation and a pressing strategic choice. The vision of a society in which the economically marginalized assert rights as effortlessly as the affluent, in which women

[67] United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development ¶ 35 (2015).

confront discrimination without the spectre of retribution, and in which justice is prompt, transparent, and equitable is not the stuff of science fiction, but is within reach if norms, institutions, and budgets align with everyday realities and if the pursuit of justice is the compass steering national development programmes.

Whether equitable access to justice shortly becomes the common experience in developing countries will hinge upon the ability of governments, civic entities, and supportive global actors to pool knowledge, resources, and resolve to strip away institutional obstacles and to erect systems without silent dead ends. Aligning publicly stated rights with the lived experience of citizens entails more than institutional rescript; it reasserts the understanding that justice is both an enabling condition for the full realization of human rights and an essential foundation of democracy. Only on that foundation will what is today a promise of justice at last find a place in the day-to-day lives of millions who, for too long, have found the law an indifferent, if not hostile, intervenor.

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TRANSNATIONAL CYBERCRIME PROSECUTION: A COMPARATIVE ANALYSIS OF NIGERIA AND AUSTRALIA

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Abstract

Cybercrime presents a critical international legal challenge; characterized by its borderless nature and rapid evolution into sophisticated threats like ransomware, deepfakes, and financial fraud. The global fight against this menace is currently constrained by complex issues of jurisdiction, extradition, and inherent conflicts between national laws.This article undertakes a critical analysis of the legal frameworks established to combat this threat by focusing on the domestic efficacy of Nigeria's Cybercrimes (Prohibition, Prevention, etc.) Act 2015. It examines how the Act aligns with and differs from foundational international instruments, specifically the Council of Europe's Convention on Cybercrime (Budapest Convention). Furthermore, the paper argues that despite the 2015 Act providing a crucial domestic foundation for cyber-offences, its actual capacity to deter and prosecute transnational cybercrime is severely hampered. This limitation stems from persistent challenges in coordinating cross-border enforcement, effectively gathering digital evidence, and resolving complex jurisdictional disputes. The conclusion calls for more robust international legislative harmonization and judicial cooperation to fortify the legal response against these evolving network-driven offences.

Keywords: *Cybercrime, AUSTRALIA, NIGERIA, Jurisdiction, Transnational Crime, Digital Evidence*

INTRODUCTION

Cybercrime refers to illegal activities carried out using the internet or digitaldevices. According to Section 58 of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015[1], it includes any offence involving the use of electronic systems and networks. Similarly, the Budapest Convention on Cybercrime [2] defines it broadly to cover offences against the confidentiality, integrity, and availability of computer data and systems.

Gordon and Ford[3] defined it as any crime committed using computers or networks, while Thomas and Loader[4] describe it as computer-mediated activities that are illegal and conducted through global networks. Wall,[5] however, views cybercrime as both a transformation of traditional crimes and the creation of new, network-driven offences.

Cybercrime began to rise significantly in the early 2000s due to the global internet boom and became more sophisticated by2010, evolving into an international threat. Ransomware, financial fraud, and identity theft cases skyrocketed. In response, legal reforms were introduced, such as Nigeria's Cybercrimes Act 2015 and updates to Australia's Criminal Code Act 1995.[6] The COVID-19 pandemic in 2020 further increased online activity [7] and vulnerability, leading to a surge in transnational cyber fraud, deepfakes, and Cryptocurrency scams. Because cybercrime crosses borders, detection and prosecution are difficult. Major challenges include: jurisdictional conflicts, difficulties in obtaining digital evidence, extradition delays,[8] and weak international cooperation mechanisms. In many cases, countries either refuse to surrender suspects or delay critical information exchange.

In Nigeria, transnational cybercrime prosecution faces serious obstacles such as: jurisdictional conflicts, weak digital evidence laws,[9] prolonged extradition processes, and the absence of an effective international cooperation framework. Additional setbacks include, poor mutual legal assistance treaty (MLAT) responses, and a low number of successful prosecutions. Australia, by contrast, has adopted more advanced procedures, resulting in more efficient enforcement and higher conviction rates.

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[1] Cybercrimes (Prohibition, Prevention, etc.)Act 2015(Nigeria).
[2] *Convention on Cybercrime* (opened for signature 23rd November 2001) ETS No185.
[3] Sarah Gordon and Richard Ford, 'On the Definition and Classification of Cybercrime' (2006)4 Journal in Computer Virology13.
[4] Douglas Thomas and Brian Loader, *Cybercrime: Law Enforcement, Security and Surveillance in the Information Age* (Rutledge 2000).
[5] David Wall, *Cybercrime: The Transformation of Crime in the Information Age* (2ndedn, Polity Press 2007).
[6] *Criminal Code Act 1995* (Cth) (Australia) pt10.7.
[7] INTERPOL, 'Cybercrime: COVID-19 Impact Report '(August2020) <https://www.interpol.int>accessed 2October 2025.
[8] United Nations Office on Drugs and Crime, *Comprehensive Study on Cybercrime* (2013).
[9] Adedeji Akingbolu,' Challenges of Prosecuting Cybercrime in Nigeria' (2021) 8 Nigerian J of Cyber Law 45.

This paper focuses on the prosecution of transnational cybercrime in Nigeria and Australia. It examines the legal frameworks, enforcement challenges, and international cooperation mechanisms particularly MLATs and extradition agreements. By comparing both jurisdictions, the paper highlights systemic gaps and recommends legal and procedural reforms for Nigeria, drawing from international best practices.

- **LEGAL FRAME WORK FOR CYBER CRIME.**

The regulation of cybercrime is generally built on three pillars: substantive offences that define prohibited conduct, procedural rules guiding investigation and admissibility of digital evidence, and institutional mechanisms for enforcement. While international instruments such as the Budapest Convention on Cybercrime (2001) aim to harmonise standards, national laws remain the primary frame work for prosecution. Nigeria and Australia represent contrasting approaches in both legislative scope and enforcement practice.

A. Nigeria

Nigeria's cybercrime regime is anchored in the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, the country's first comprehensive attempt to criminalise offences committed through digital networks. The Act defines a broad range of offences: sections 6–8 prohibit unauthorized access and interception of systems (hacking); sections 14–18 address computer-related fraud and forgery, forming the legal basis for prosecuting "Yahoo Yahoo" schemes, EFCC v. Emmanuel Nwude [2005];[10]sections22-24 criminalise cyberstalking, bullying, hate speech, and child pornography; while sections 27-32 target cyberterrorism, system interference, and attacks on national infrastructure. Section 58 provides essential interpretive definitions.

Enforcement is shared among several institutions. The Office of the National Security Adviser (ONSA) acts as central coordinator, while the EFCC prosecutes financially motivated cybercrimes, the Nigeria Police Cybercrime Unit handles online harassment, and the NFIU traces illicit transactions. Regulatory bodies such as the CBN and NITDA supplement these functions through compliance and security oversight. However, admissibility of digital evidence under sections 84–93 of the Evidence Act 2011 has proved problematic, as seen in FRN v. Osita Okeke (2017),[11] where certification of electronic documents was challenged.

Case experience underscores these weaknesses. The Hushpuppi case (2020)[12] in which Ramon Abbas was extradited to the U.S. for large-scale online fraud, revealed Nigeria's dependence on foreign jurisdictions for effective prosecution. Similarly, while the EFCC has conducted multiple crackdowns on "Yahoo Boys" since 2015, conviction rates remain low compared to the scale of

[10] *EFCC v Emmanuel Nwude* (High Court of the FCT, Abuja, 2005) ID/92C/2004.
[11] *FRN v Osita Okeke* (2017) 9 NWLR 94 (FHC).
[12] US Department of Justice, 'Nigerian National Ramon Olorunwa Abbas, aka Hushpuppi, sentenced to 11 Years for Fraud' (Press Release, 7 November 2022), <https://www.justice.gov> accessed 2 October 2025.

arrests. Thus, despite its broad statutory framework, Nigeria struggles with weak enforcement, poor forensic capacity, and jurisdictional hurdles.

B. Australia

Australia's framework rests primarily on the Criminal Code Act 1995 (Cth), particularly Part 10.7, which criminalizes unauthorized access, modification, and impairment of data. This is complemented by the Cybercrime Act 2001 (Cth), [13] which enhanced investigative powers by introducing data preservation orders and access warrants. Australia's commitment to the Budapest Convention (2001) further aligns its domestic laws with international standards and strengthens cross-border cooperation.

Enforcement is spearheaded by the Australian Federal Police (AFP) in collaboration with the Australian CyberSecurity Centre (ACSC). These bodies have over seen high-profile prosecutions such as R v. Cerini [2015],[14] involving large-scale hacking, and R v. Kadir & Besim [2016],[15] which clarified admissibility of intercepted electronic communications under the Evidence Act 1995 (Cth). Australia has also demonstrated global leadership through Operation Iron side (2021),[16] a joint AFP-FBI sting that dismantled organized crime networks using encrypted devices, showcasing the strength of its international cooperation mechanisms.

Compared to Nigeria, the Evidence Act 1995 (Cth) [17] offers a clearer, more flexible regime for admitting electronic records, ensuring greater prosecutorial reliability. Stronger institutions, treaty commitments, and technical capacity have made Australia's cybercrime framework more effective in addressing both domestic and transnational offences.

Having outlined the legal frameworks governing cybercrime in Nigeria and Australia, it is important to now examine the key challenges that hinder the effective prosecution of transnational cybercrime.

C. COMPARATIVE ANALYSIS OF NIGERIA AND AUSTRALIA.

The global nature of cybercrime makes it essential to examine how different jurisdictions respond to the same challenge. This chapter undertakes a comparative analysis of Nigeria and Australia, focusing on their legal frameworks, institutional capacities, and enforcement practices. While both countries operate under common law traditions, their legal responses to cybercrime prosecution diverge significantly, particularly in areas of enhanced technological capabilities and cross-border

[13] *Cybercrime Act 2001* (Cth) (Australia).
[14] *R v Cerini* [2015] NSWDC28.
[15] *R v Kadir; R v Besim* [2016] HCA24.
[16] Australian Federal Police,'Operation Ironside: Hundreds Arrested in Global Underworld Sting'(AFP Media Release, 8 June 2021), <https://www.afp.gov.au> accessed 2 October 2025.
[17] *Evidence Act 2011* (Nigeria) s.84.

collaboration.[18] By comparing Nigeria's Cybercrime (Prohibition, Prevention, etc.)Act 2015and related institutions with Australia's Criminal Code Act 1995, Cybercrime Act 2001, and participation in the Budapest Convention, this chapter highlights areas of convergence, divergence, and lessons that can inform more effective transnational cybercrime prosecution.

5.1 Nigeria's Approach

Nigeria's principal legislation on cybercrime is the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, the country's first comprehensive attempt to criminalize offences committed through electronic systems. Part II of the Act outlines a wide range of offences: unauthorized access and interception (sections 6–8), computer-related fraud and forgery (sections 14–18), cyberstalking and child exploitation (sections 22–24), and cyberterrorism and attacks on critical national infrastructure (sections 27–32). Section 58 provides the interpretative framework, ensuring definitional clarity, whilesection84 of the Evidence Act 2011 governs the admissibility of digital evidence in Nigerian courts.

Enforcement is formally coordinated by the Office of the National Security Adviser (ONSA) under section 41 of the Act. In practice, however, responsibilities are fragmented. The Economic and Financial Crimes Commission (EFCC) prosecutes cyber-enabled financial crimes, the Nigeria Police Force (NPF) Cybercrime Unit investigates harassment and threats, and the Nigerian Financial Intelligence Unit (NFIU) traces suspicious transactions. Regulatory agencies such as the Central Bank of Nigeria (CBN) and the National Information Technology Development Agency (NITDA) also play supporting roles in cyber security and data protection oversight.

Case law and practice illustrate both progress and limitations. The landmark prosecution in EFCC v. Emmanuel Nwude (the "Brazilian Bank Fraud") provided an early model for addressing cyber-fraud. Morere cently, The U.S. prosecution of Ramon Abbas ("Hushpuppi") for money laundering and BEC schemes highlights the principle of extraterritorial jurisdiction[19] a case that explicitly exposed the involvement of senior Nigerian police officials in the criminal network.".[20] In August 2025, Nigeria deported 51 foreign nationals, including 50 Chinese citizens, convicted of phishing and cyber fraud in local courts, an action demonstrating willingness to act but also reliance on deportation rather than domestic trial and sentencing.

Despite the breadth of its legal framework, Nigeria continues to struggle with weak forensic capacity, poor inter-agency coordination, and low conviction rates relative to the volume of arrests, particularly in cases involving "Yahoo Boys." EFCC and Police Cybercrime Unit face manpower

[18] Popoola,'An Appraisal of the Nigerian Cyber Crimes Law from Comparative Perspective' (2024) 12 [1]UNIZIK Law J 4
[19] US Department of Justice,' Nigerian National Brought to U.S. to Face Charges of Conspiring to Launder Hundreds of Millions of Dollars from Cybercrime Schemes' (Media Release, 3 July 2020).
[20] AlJazeera News,' Nigerian influencer' Hushpuppi' jailed in US for money laundering' (8November2022), <https://www.aljazeera.com/news/2022/11/8/hushpuppi-gets-prison-term-for-money-laundering-conspiracy> accessed 11 November 2025.

shortages and technical deficits, leading to low conviction rates.[21] This deficiency is further compounded by a significant youth unemployment rate, which acts as a major driver of cybercrime, contributing to an annual loss of $800 million.[22] Jurisdictional gaps and slow mutual legal assistance treaty (MLAT) processes further limit Nigeria's ability to prosecute transnational offenders effectively

5.2 Australia's Approach.

Australia's frame work force cybercrime is rooted in the Criminal Code Act 1995 (Cth), particularly Part 10.7, which criminalizes unauthorized access, data modification, and system impairment. The Cybercrime Act 2001 supplements this by expanding investigative powers, such as data preservation and interception. Unlike Nigeria, Australia is a signatory to the Budapest Convention on Cybercrime (2001), which harmonizes domestic laws with international standards and facilitates evidence sharing and cooperative investigations.

Enforcement is spearheaded by the Australian Federal Police (AFP) in collaboration with the Australian Cyber Security Centre (ACSC), supported by modern forensic laboratories and the flexible evidentiary rules of the Evidence Act 1995 (Cth). Australia's participation in international networks enables coordinated responses to cross-border cybercrime, ensuring swifter and more effective prosecutions.

Illustrative cases demonstrate this efficiency. In R v Cerini [2015], unauthorized access was successfully prosecuted under Part 10.7 of the Criminal Code. Operation Ironside (2021), conducted jointly by the AFP and the FBI, infiltrated encrypted criminal communications via the AN0M app, leading to over 800 arrests worldwide. Most recently, in September 2025, the AFP charged a New South Wales man with operating a phishing scam, seizing multiple devices and disrupting a large-scale fraud operation. These examples highlight Australia's strong forensic capacity, proactive investigative tools, and commitment to prosecuting offenders domestically. Despite a sophisticated national strategy, Australian specialist cyber-crime units still face internal challenges, including the accelerating quantity of the work load and resourcing not commensurate with demand.[23]

[21] N Ekechi,' Cybercrime Legislation in Nigeria: Effectiveness and Gaps' (2025) Research Gate 3,5.
[22] W Tuleun,' Analysis of Cybercrimes, Major Cyber Security Attacks and the Overall Economic Impact on Nigeria' (2022) 16 World J of Advanced Research and Reviews 1196, 1199..

[23] J Broll and L Huey, 'Responding to cybercrime: Results of a comparison between community members and police personnel' (2021) 635 *Trends & Issues in Crime and Criminal Justice* 3, 5.

5.3 Comparative Observations

Both Nigeria and Australia recognize cybercrime as a significant threat and have enacted comprehensive statutory frameworks that criminalize core offences such as unauthorized access, fraud, child exploitation, and cyberterrorism. Both systems also rely on evidence legislation Nigeria's Evidence Act 2011 (s.84), and Australia's Evidence Act 1995 (Cth) to govern the admissibility of electronic records.

However, notable divergences exist. Nigeria's framework, though ambitious, is hindered by weak enforcement capacity, fragmented institutional responsibilities, and limited integration with international regimes. The reliance on deportation of convicted foreigners, as in the 2025 phishing case, contrasts with Australia's policy of prosecuting offenders within its jurisdiction. Australia's accession to the Budapest Convention further enhances its ability to cooperate across borders, while Nigeria remains outside this framework.

Institutional coordination also differs. Nigeria's overlapping mandates among EFCC, NPF, and NFIU often generate duplication and inefficiency. By contrast, Australia has streamlined enforcement under the AFP and ACSC, with clearly defined investigative and intelligence-sharing functions. The Hushpuppi case symbolizes Nigeria's dependence on foreign jurisdictions for prosecution, whereas Operation Iron side demonstrates Australia's leadership in global enforcement partnerships.

The comparative analysis reveals that while Nigeria and Australia possess similar cybercrime statutes, only Australia achieves effective prosecution through robust enforcement capacity and adherence to international cooperation standards. Nigeria's law is undermined by weak technical and institutional coordination. Therefore, effective transnational cybercrime prosecution depends not on legislation, but on technical capability and international collaboration.

1.0 KEY CHALLENGES IN TRANSNATIONAL CYBERCRIME PROSECUTION

The prosecution of transnational cybercrime is fraught with obstacles that undermine effective enforcement. Although both Nigeria and Australia have enacted comprehensive statutory frameworks, their ability to tackle cybercrime across borders remains constrained by practical, legal, and institutional challenges. This chapter examines the most pressing difficulties confronting prosecutors and investigators.

1.1 Jurisdictional Conflict

Cybercrime often involves cross-border dimensions, as offences committed through the internet rarely remain within a single state. A notable example is the case of Ramon Abbas ("Hushpuppi"), who was arrested in Dubai and prosecuted in the United States for cyber fraud offences that also

implicated Nigeria. This underscores Nigeria's limited extra-territorial provisions and reliance on foreign jurisdictions for prosecution.

By contrast, Australia applies clearer extra-territorial rules under the Criminal Code Act 1995 (Cth) and, as a party to the Budapest Convention, can more effectively cooperate with other states. Operation Ironside (2021), where Australian and U.S. authorities jointly infiltrated criminal networks through the AN0M app, illustrates Australia's stronger capacity for coordinated cross-border enforcement.

1.2 **Digital Evidence Gathering and Admissibility**

Electronic data can be altered, encrypted, or hosted in foreign jurisdictions, making its collection and use in court complex.

In Nigeria, the strict requirements of section 84 of the Evidence Act 2011 often hinder the admissibility of digital evidence, especially when certification procedures are not properly followed. This restricts prosecutors' ability to rely on crucial electronic records.

In contrast, Australia's Evidence Act 1995 (Cth) provides more flexible admissibility standards, allowingcourtstoadmitelectronicdatawithfewerproceduralhurdles.Thisenhancesprosecutors' ability to use digital evidence effectively in cybercrime cases.

1.3 Weak Enforcement and Institutional Capacity

In Nigeria, agencies such as the EFCC and the Police Cybercrime Unit face man power shortages, poor funding, and limited forensic expertise. Although the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 establishes offences, penalties, and enforcement agencies, implementation remains weak due to inadequate equipment and an unconducive operational environment. The lack of resources and institutional challenges may greatly impede the full enjoyment of the innovations.

By contrast, Australia benefits from better-resourced institutions such as the Australian Federal Police (AFP) and the Australian Criminal Intelligence Commission (ACIC), which have access to advanced digital forensic facilities. This enables them to investigate and prosecute cybercrime with fewer loopholes and stronger operational capacity.

1.4 Limited International Cooperation.

Finally, Nigeria's absence from key international frameworks such as the Budapest Convention significantly hampers its effectiveness in transnational cybercrime prosecution. Without membership, Nigeria lacks direct access to streamlined networks for information exchange, joint investigations, and expedited evidence sharing.

Australia's participation in such frameworks gives it a considerable advantage. By aligning its domestic laws with international standards and participating in cooperative operations such as Operation Ironsides, Australia demonstrates the importance of embedding national responses within global enforcement networks.

1.5 Extradition and Mutual Legal Assistance

Extradition and Mutual Legal Assistance Treaties (MLATs) are major hurdles. The Hushpuppi case highlighted Nigeria's lack of ability and leverage, leading to the offender's extradition to the U.S. Nigerian MLAT responses are similarly slow, hindering international cooperation. Australia avoids these delays, receiving help from faster, more reliable MLAT processes streamlined by its Budapest Convention obligations.

In sum, the prosecution of transnational cybercrime is hindered by jurisdictional conflicts, evidentiary barriers, weak institutional capacity, limited international cooperation, and delays in extradition and mutual legal assistance. While Australia has largely mitigated these obstacles through stronger institutions and international engagement, Nigeria continues to face significant constraints that weaken its enforcement capacity.

7.0 RECOMMENDATIONS

Here we look at the practical measures for strengthening Nigeria's capacity to prosecute transnational cybercrime, drawing lessons from Australia and international best practices.

- **Strengthening Jurisdictional Reach**

Nigeria should expand the extraterritorial provisions under the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 to ensure its courts can hear cases with cross-border elements. Negotiating more bilateral and multilateral agreements is essential to address jurisdictional gaps and to facilitate the arrest and transfer of cybercrime offenders back to Nigeria.

- **Reforming Rules on Digital Evidence**

Section 84 of the Evidence Act 2011 should be amended to simplify certification requirements for electronic evidence. Clear judicial guidelines should also be issued on admissibility, supported by regular training for judges, prosecutors, and investigators on digital forensics. These reforms will ensure courts are better equipped to handle the complexities of digital data.

- **Enhancing Institutional Capacity**

The government should increase funding for the EFCC, Police Cybercrime Unit, and related agencies, enabling them to acquire modern forensic equipment and resources. Specialized cybercrime courts

or divisions should be established, with judges and prosecutors trained in the field, to promote efficient and credible adjudication of cases.

- **Promoting International Cooperation**

Nigeria should ratify and domesticate the Budapest Convention on Cybercrime, thereby aligning its domestic laws with international standards. Stronger cooperation with foreign jurisdictions is also needed through joint investigations, intelligence-sharing, and regional frameworks such as ECOWAS. These measures will enhance Nigeria's role in global cybercrime enforcement.

- **Improving Extradition and Mutual Legal Assistance**

The Nigerian government should streamline its Mutual Legal Assistance Treaty (MLAT) processes by adopting fast-track procedures for cybercrime cases. More extradition treaties should be concluded with key cybercrime hub to reduce reliance on ad hoc arrangements. By improving efficiency in these processes, Nigeria can ensure timely prosecution of offenders and better collaboration with partner states.

- **Strengthening Public Awareness and Private Sector Collaboration**

Finally, Nigeria should prioritize public awareness campaigns to educate citizens on cyber risks, fraud schemes, and online safety. Partnerships with banks, telecommunications companies, and internet service providers should be encouraged to detect and disrupt cybercrime at early stages. Public–private collaboration will also foster the development of secure digital systems and build societal resilience against cyber-enabled crimes.

The recommendations outlined above provide a roadmap for strengthening Nigeria's capacity to prosecute transnational cybercrime. By expanding jurisdictional reach, reforming evidentiary rules, enhancing institutional capacity, fostering international cooperation, and streamlining extradition and MLA processes, Nigeria can align more closely with global best practices. These reforms, if implemented, would not only improve domestic enforcement but also position Nigeria as a credible partner in the global fight against cybercrime.

8.0CONCLUSION

Examining the prosecution of transnational cybercrime in Nigeria and Australia revealed a crucial divergence: despite sharing international commitments like the Budapest Convention, Nigeria is constrained by limited technical ability and jurisdictional bottlenecks, while Australia receives help from advanced digital forensics and stronger institutional ability.

The research proves that effective prosecution depends on harmonization of domestic laws, functional cooperation among states, and robust institutional support, rather than legislation one.

While Nigeria has scope for improvement via funding and training, all states must continuously adapt their legal and institutional responses to evolving cyber threats.

Ultimately, the study underscores that transnational cybercrime cannot be tackled in isolation. It requires collective responsibility, mutual legal assistance, and adaptive legal frameworks to ensure that cyberspace remains a secure environment for global interaction.

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Environmental Protection Laws in Kenya: Balancing Development and Environmental Conservation

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Abstract

Development was traditionally measured in terms of economic growth. Recently, there has been a significant push towards a holistic approach to development encompassing economic, social, environmental and political dimensions. Sustainable development embodies this balance, ensuring that the present needs are met without compromising the ability of future generations to meet theirs. The Owino-Uhuru case exemplifies the tension between industrial activity and environmental protection. A metal refinery company operated in Owino-Uhuru village where they disposed of hazardous waste causing severe lead poisoning to the residents leading to chronic terminal illnesses and death. This case underscores the need to balance development and environmental protection to safeguard and promote societal well-being. This paper examines Kenya's constitutional and statutory frameworks governing the right to a healthy environment in Kenya, particularly the ***Constitution of Kenya (2010)*** *and the* ***Environmental Management and Coordination Act (1999)****. Through analysis of the Kenyan legal framework, this paper explores the balance between the need to conserve the environment while meeting developmental goals.*

Keywords: *Conservation, Development, Balance, Environmental Protection*

Introduction

The **United Nations Declaration on the Right to Development**[2] was adopted by the Office of the High Commissioner for Human Rights (OHCHR) in 1986. Development[3] is acknowledged to be a comprehensive and interconnected social, cultural, economic and political process that aims at the continuous improvement of the well-being of individuals. The aspects of development are economic through the measure of a country's Gross Domestic Product (GDP) and Gross National Income (GNI) , social through the measure of a person's quality of life, health and education, political through the measure of participation in decisions, social change, governance and power dynamics.

According to the **European Environment Agency**, the environment[4] refers to the combination of elements whose complex interrelationships make up the settings, surroundings and conditions of life of the individual and of society, as they are or as they are felt. The environment includes, natural resources such as land, water and air, the natural environment and the artificial environment. The right to a healthy environment is closely liked to other rights such as the right life, health, water and sanitation and cannot be realised in isolation.

Evolution of Development

The evolution of development can be traced to three main waves.

a) The First Wave (Modernisation)
b) The Second Wave (Bretton Woods System)
c) The Third Wave (Holistic development)

a) **The First Wave**

This modernisation phase was characterised by colonial expansion by Western countries into Africa, South America and Asia. Their aim was to extract natural resources for their industries. Moreover, they viewed these less developed countries as backward, static and traditional and sought to bring them to the modern times. They replicated their laws in their colonies without taking the diversity of these societies and their social and local cultural realities into account, which led to their eventual fall. At this time, development was largely measured primarily through Gross Domestic Product (GDP) and Gross National Income (GNI) which was archaic as it did not account for the population of a country and the potentials for certain economies which are factors that would influence their GDP and GNI. Resistance movements erupted in the mid-20th Century, leading to independence across various African countries with Ghana becoming the first in 1957.

a) The Second Wave

After independence, countries in the Global South embraced democracy with majority of them having practised it for 20 years. The Soviet Union collapsed giving birth to several countries including Russia,

[2] United Nations General Assembly, *Declaration on the Right to Development* (adopted 4 December 1986) UNGA Res 41/128.
[3] The Lawyer Africa, *'Definition, Aspects and Theories of Development'* (16 March 2022) https://thelawyer.africa/2022/03/16/aspects-and-theories-of-development/ accessed 16 October 2025.
[4] European Environment Agency, 'Definition of Environment' http://www.eionet.europa.eu/gemet/aliss_scripts/concept/2944 accessed 16th October 2025

Ukraine, Lithuania, Moldova, Latvia among others. During this time, there was an ongoing Cold War between Russia and the United States of America (USA) which began shortly after the Second World War in 1947. The Cold War was a difference in the economic system, capitalism and communism, between USA and Russia with the US pushing for the diminishing of the philosophy of communism. These young democracies heavily relied on Russia for support. The West pushed for a laissez-faire government, free commerce and self-governance of countries. Around the world, there was large-scale adoption of capitalism and the Bretton Woods Institutions (World Bank and the IMF) provided financial support to countries that adopted this economic system. They offered financial support that was tied tos Structural Adjustment Programs (SAPs). Development was still viewed under the lens of economic development. SAPs often undermined social welfare leading to economic disparity and political instability, exposing the flaws of purely economic development models.

b) The Third Wave

Recognising the limitations of neoliberalism, a new approach emerged. It suggested that for the world to enjoy freedom and capitalism, all features have to be employed. There therefore was a need to include non-economic values in development such as respect for the rule of law and the measure of quality of life as opposed to Gross Development Product (GDP) and Gross National Income (GNI) which were heavily relied on in the previous waves. This new approach was termed Sustainable development.

Industrialisation brought problems such as natural disasters due to climate change. From these, a compromise was created between countries in the Global North and Global South; sustainable development. The **Brundtland Report (1987)** was the first document to mention sustainable goals that countries should aim to achieve, it defined sustainable development as the ability to meet the needs of the current generation (by utilising and managing the available resources sparingly) without compromising the needs of the future generations. In 2000, the United Nations established the Millenium Development Goal (MDGs) comprising of 8 goals that focused on improving the lives of the world's poorest people by targeting issues such as poverty, hunger, education, gender equality, global partnership in development, health and environmental sustainability. These goals were to be achieved by Member States in 2015. They were succeeded by the Sustainable Development Goals (SDGs) in 2015 which comprise of 17 goals aiming to achieve peace and prosperity for people and the planet while tackling climate change and working to preserve oceans and forests as part of the larger 2030 Agenda.

The waves of development display the shift from the view of development as economic development to a holistic approach incorporating the improvement in the quality of life of all persons and environmental conservation. This shift reflected an understanding that true development integrates environmental sustainability with human well-being.

The Owino-Uhuru case

The Petitioners, residents of Owino-Uhuru Village in Mombasa County experienced various health problems including respiratory illnesses, neurological disorders and deaths allegedly resulting from lead poisoning.

The Respondents, Metal Refinery (EPZ) Limited, had been operating within a residential area and discharging toxic waste into the environment, causing adverse effects on area residents.[5][6]

The factory had obtained licenses from the appropriate government agencies such as National Environment Management Authority (NEMA), the Export Processing Zone Authority (EPZA) and the County Government of Mombasa that allowed them to operate within the area. These agencies failed to enforce environmental safety standards outlined by the Constitution and the Environmental Management and Coordination Act or relocation of the factory. The factory shut down but the environmental damage and the impact on the health of the residents persisted.

The Petitioners filed a petition against the Attorney General, NEMA, EPZA, the County Government of Mombasa and other State actors alleging the violation of their constitutional rights to **life, dignity, access to information, clean and healthy environment, health, and clean and safe water** under **Articles 26**, **28**, **35**, **42**, **43** and their failure to meet their obligations under **Articles 69** and **70** of the **Constitution of Kenya (2010)**. The Petitioners sought accountability, compensation and environmental restoration for the harm caused.

The Court found that the Respondents had failed to safeguard the environment and protect the health of the Petitioners' in accordance with their constitutional and statutory obligations. The Court held that the government agencies were negligent in allowing a lead smelting plant to operate in a residential area without conducting proper public participation on the possible impact of the plant, conducting an Environmental Impact Assessment (EIA) and lack of due diligence in issuing operation licenses and permits. The Court emphasised that State agencies have an obligation to take preventative and remedial action when such right are violated.

In its judgement, the **Environmental and Land Court (ELC)** at **Mombasa** ordered the following, **That**:

a) The **State** and respective **government agencies** were **jointly** and **severally liable** for the violation of the Petitioners' constitutional rights.
b) The Petitioners be awarded **compensation totalling Kshs. 1,300,000,000** for harm suffered due to lead poisoning, loss of livelihood and breach of the right to a clean and healthy environment to be paid in the following ratios:
   i. Cabinet Secretary, Ministry of Environment, Water and Natural resources - 10%
   ii. Cabinet Secretary, Ministry of Health - 10%
   iii. National Environmental and Management Authority - 40%
   iv. Export Processing Zones Authority - 10%
   v. Metal Refinery (EPZ) Limited - 25%
   vi. Penguin Paper and Book Company - 5%
c) The State was directed to carry out **environmental remediation** in the affected area to resore it to safety.

[5] *KM and 9 Others v Attorney General and 7 Others* [2020] eKLR
[6] Centre for Justice, Governance and Environmental Action, *Legal Expert Study Report on the Owino Uhuru Class Action Litigation Suit* (CJGEA, 2020) https://centerforjgea.com/assets/reports/Owino-Uhuru-Legal-Expert-Study-Report.pdf accessed 16 October 2025.

d) The **Ministry of Health** and **NEMA** were ordered to conduct medical screening and follow-up treatment for all residents exposed to lead contamination.

Legal Framework

National

Constitution of Kenya (2010)

Article 26[7] guarantees every person the right to life. It obligates the State to protect and safeguard the lives of its citizens from harm which include effects from pollution.

Article 28[8] guarantees every person the right to human dignity. Each person has inherent worth and should be treated with respect.

Article 35(1)(a), **(b)** and **(3)**[9] guarantees every person the right of access to information that is held by the State or any other person in the exercise and protection of any right or fundamental freedom.

Article 40[10] guarantees every person the right to protection of their property. It provides that every person has the right to own property and that no one can limit the enjoyment of a person's right to their property.

Article 42 [11] guarantees every person the right to a clean and healthy environment which includes environmental protection for the current and future generations.

Article 43(1)[12] guarantees every person the right to economic and social rights which include the right to the highest attainable standard of health and the right to clean and safe water in adequate quantities.

Article 69(1)(2)[13] outlines State obligations in respect of the environment which include encouraging public participation in the management, protection and conservation of the environment, establishing systems of environmental impact assessment, environmental audit and monitoring of the environment and eliminating processes and activities that are likely to endanger the environment. It also stipulates that every person has a duty to cooperate with State organs and other persons to protect and conserve the environment.

Article 70[14] provides enforcement mechanisms of environmental rights through seeking redress from the court and the issuing of court orders to prevent or stop acts that are harmful to the environment.

Environmental Management and Coordination Act (1999)

Section 3 [15] entitles every person the right to to a clean and healthy environment which includes the enjoyment of the right for recreational, educational, health, spiritual and cultural purposes, cooperation with State organs to protect and conserve the environment, seek redress if their right has been infringed, and the principles of sustainable development that guide the court which include the polluter-pays principle, pre-cautionary principle, intergenerational and intragenerational equity, public participation, international co-operation and the social and cultural principles of a community.

[7] Constitution of Kenya 2010, art 26
[8] Ibid, art 28
[9] Ibid, art 35(1)(a)(b) and (3)
[10] Ibid, art 40
[11]Ibid, art 42
[12]Ibid, art 43(1)
[13]Ibid, art 69(1)(2)
[14] Ibid, art 70
[15] Environmental Management and Coordination Act, s 3

Section 9[16] outlines the objects and functions of National Environment Management Authority (NEMA) which is a State organ in charge of supervising and coordinating environmental activities and serving as the main national body to implement environmental policies in all sectors within the country.

Section 38[17] stipulates the provisions of the National Environment Action Plan shall identify trends in the development of urban and rural settlements and their impacts on the environment in order to remedy them, propose guidelines for the integration of standards of environmental protection into development planning and management and identify and recommend policy and legislative approaches for preventing, controlling or mitigating specific and general adverse impacts on the environment.

Section 74[18] stipulates that any effluents or other pollutants originating from the trade or industrial undertaking shall discharge them into existing sewerage systems and that an appropriate plant shall be installed for the treatment of such effluents before they are discharged.

Section 93[19] prohibits the discharge of hazardous substances, chemicals and materials or oil into the environment and spiller's liability.

International

The International Covenant on Economic Social and Cultural Rights (ICESCR)

Article 12 (2)[20] requires State parties to take necessary steps to improve all aspects of environmental and industrial hygiene.

The African Charter on Human and People's Rights (ACHPR)

Article 24[21] recognises that all people shall have the right to a general satisfactory environment favourable to their development.

Despite the robust legal framework, enforcement remains a significant challenge in Kenya. Weak institutional capacity, corruption, lack of sufficient funding and lack of public awareness undermine effective environmental governance. To strengthen enforcement, the following should be done:

a) Conducting meaningful public participation through Environmental Impact Assessments (EIAs).
b) Enhancing transparency and accountability in monitoring standards.
c) Enforcing compliance with environmental standards and penalties for violations.
d) Enhancing accountability and transparency in licensing and issuing permits.

Conclusion

The tension between development and environmental protection remains one of Kenya's most pressing governance challenges. The Owino-Uhuru case underscores the need for responsible industrialisation and government accountability. Achieving sustainable development requires harmonising economic progress

[16] Ibid, s 9
[17] Ibid, s 38
[18] Ibid, s 74
[19] Ibid, s 93
[20] *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 12(2)
[21] *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 (ACHPR) art 24

with environmental stewardship to ensure that development today does not compromise the well-being of future generations.

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LEGAL ODDITIES ON SPECIAL PROTECTION OF CHILD OFFENDERS: AN EXAMINATION OF OFFENCES BY A CHILD OFFENDER VIZ A VIZ SECTION 1(2)(A) OF VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015 AND CHILD RIGHT ACT (2003)

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ABSTRACT

This work impact on the effect of juvenile sentencing under section 1(2)A) of the VAPP Act as a breach of the fundamental minimum age principles for criminal responsibility of a child offender. The intent of enacting laws and sections of law that deals on child offender is not to punish but to correct, through a special court, rehabilitation juvenile system and later on access their development on whether or not to be integrated back into the society. The regular(normal) court system lack the cares and sensitivity of handling child prosecution as it requires due protocol that will not hinder the development of a child later on in life; as a crime is not a product of an individual alone but a compound effect of both individual, environment and society. As such due care must be exercised by law while handling a child offender cases i.e. careful consideration of whether the child is a first-time offender, psychological and behavioral status among various factors. This secure the interest of the society, law and best interest of a child offenders in other to meet the virtue of section 1 of the Child Rights Act (2003) which the VAPP Act breached and will be examined within this work.

KEYWORD: Child Offender, Minimum Age Criminal Responsibility, Rape Offence, Criminal law, Child Rights Act, VAPP Act.

INTRODUCTION

Law exists to regulate human and its environment. Hence, governments are primarily in place to make and ensure compliance of the law and help achieve its objectives.

The foundation of Nigeria's legal system is rooted in the English common law tradition, an inheritance from the British colonial rule. This tradition was introduced through a process of legal transplant, where English law[2] was formally adopted into the country's legislation. The modern Nigeria legislative system being the National Assembly and the State House of Assembly[3] are empowered by the constitution to make laws for the peace, order and good governance of the state.

However among the duties of the legislative arm of government includes enactment of new legislation, adequately review or repeal of these inherited statutes, particularly in areas such leading to the continued existence of laws that creates legal oddities.

Legal oddities are unusual or anachronistic laws and legal situations that are often rarely enforced, and serve as a quirks of a country's legal system. They range from old, outdated statutes to modern legislation. The term also include laws or sections of laws that may not likely be valid or creates contradiction to other law in term of implementation yet still in existence.

In Nigeria, some laws have this oddities existing as part of a law and this crest for questions of their implementation or adjudication in the legal system. Some this law includes: The Criminal Law, Violence Against Persons (Prohibition) Act 2015, The Child's Rights Act, 2003, among others. This work seeks to envisage some of these legal oddities still existing as a law in the Nigeria Legal System.

VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015[4]

An Act[5] to "eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders; and for related matters".[6] The VAPP Act was enacted as a result of many gender-based violence and human right abuse happening in Nigeria, including rape, maiming of spouse, forceful ejection from home, forced isolation, acid bath, and killing.

Legal oddity in this enactment exist under section 1(2)(a) which raise a question on the minimum age for criminal responsibility of a child.[7]

Section 1:

[2] Including common law, doctrines of equity, and statutes of general application in force in England on January 1, 1900
[3] S. 4 (2) and (7) of the 1999 Constitution of Nigeria (for the federal and state level respectively)
[4] Also referred to as VAPP ACT or VAPPA 2015
[5] Signed to law by President Goodluck Jonathan on the 25th May 2015.
[6] FIDA, International Federation of Women Lawyers Nigeria. "Violence Against Persons (Prohibition) Bill 2015" (PDF). FIDA.
[7] A child is any person below age 18 as provide in section 29(4) (a) is the 1999 Constitution of Nigeria; see also s.494 Administration of Criminal Justice Act (2015)

1) A person commits the offence of rape if-

(a) he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else; (b) the other person does not consent to the penetration; or

(c) the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

(2) A person convicted of an offence under subsection (1) of this section is liable to imprisonment for life except –

(a) Where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment;

Section 1 of the act define the offence of rape, while subsection 2 of the same section defined punishment of the offence and categories of person's that could be criminally responsible for such.

Criminal Responsibility is the mental fitness and ability of an accused to understand his\her actions and conduct at the time of committing such offence.[8] For this determine the verdict of Guilty or Not Guilty to an alleged offence or crime.

Minimum Age for criminal responsibility has to do with the least age attainment before a child could be subject to Criminal trial and further examination of the responsibility[9] for such act committed. This minimum age has been recognize vastly in areas of law including international law.[10]

In Nigeria the Criminal[11] and Penal[12] code for the South and North respectively provide under various sections, immunity for children on criminal responsibility. The ACJA[13] under section 452[14] respect the minimum age principles which lays emphasis on the procedure for trying child offenders upon which it confers The Child Rights Act[15] jurisdiction and coverage for trying child offenders.[16]

[8] M. C. ONUEGBULAM; Minimum Age for Criminal Responsibility in Nigeria and the Implications of Section 1(2)(a) of Violence Against Persons (Prohibition) Act 2015 (ESUT Public Law Journal - Volume 5 Issue 1, 2024
[9] (Mens Rea and Actus Reus)
[10] Article 26 of Rome Statute (excluding person under age 18 from ICC Jurisdiction; also criminal jurisprudence of most if not all African country protections children from criminal responsibilities
[11] S. 30 of The Criminal Code Act. Cap. C38 Laws of the Federation of Nigeria (LFN) 2004
[12] S. 50 of The Penal Code Cap. 89 Laws of Northern Nigeria 1963, applicable to Northern Nigeria
[13] Administration of Criminal Justice Act (2015)
[14] 452. (1) Where a child is alleged to have committed an offence, the provisions of the Child Rights Act shall apply. (Procedure for trying child offenders.)
[15] (2003)
[16] Ibid. see also s.371 ACJA

It is prior to note that this principle does not necessitate that a child offender in Nigeria law should not be subject to trial in court or have his[17] liberty deprived, however the aim is for child offender's protection by not undergoing criminal trial but through a Juvenile Justice System at the best interest of the child.[18]

The view above were reinforced by the jurisdiction of Family court at both Magistrate and High court level[19] and also were restricted from using terms like "CONVICTION" and "SENTENCE" in relation to a child offender in the court[20] for the best interest of the child.[21] Similarly cases in various legal jurisdiction has condemned this act of sentencing or imprisonment of a child; such as the case of ***Raduvha v Minister of Safety and Security & Another***[22] at the CONSTITUTIONAL COURT OF SOUTH AFRICA[23] between Raduvha Joyce (15yrs old at time of arrest) and Minister of Safety and Centre for Child Law (amicus Curiae). Judgments was given by Bosielo AJ (unanimous) on the 11th August, 2016.

> *...arrest and detention of a child arrest under section 40(1)(j) of The Criminal Procedure Act 51 of 1977; rights of a child in Section 28(1)(g) and 28(2) of the Constitution by Police did not consider child's best interests discretion to Arrest must comply with the Bill of Rights detention of a child Must be a measure of last resort appeal upheld with costs against the Minster of Safety.*

In lieu, the VAPP Act as a specialized enactment dreaming vastly on sexual violence against person's tend to violates this special protection of a child offender within the minimum age principle.

Section 1(2) (a):

> *(a) where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment;*

Whereas s.221 of Child Rights Act (2003) also known as (CRA) says: ***(Restriction on punishment)***

> *(1) No child shall be ordered lo be-*
>
> *(a) Imprisoned; or*
>
> *(b) Subjected to corporal punishment or*
>
> *(c) Subjected to the death penalty or, have the death penalty recorded against him.*

On examination of these two provision of the law, one can sense a conflict in law. Such is visible on the usage of the term "IMPRISONMENT"; whereas the CRA provides for alternative under s.250 (4).[24] Even though the

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[17] 'His' as used herein throughout this essay is inclusive of the female gender.
[18] S. 1 of Child Rights Act (2003) also known as (CRA)
[19] Ibid. s.149
[20] Ibid. s.213
[21] Ibid. s.277 (for the meaning of "COURT")
[22] [2016] ZACC 24 *[CENTRE FOR CHILD LAW - Amicus Curiae]*: see also S v Danster [2013] JOL 30662 (ECP) Reported in: Judgments Online, a LexisNexis Electronic Law Report Series Case No: CA&R 433 / 12; Judgment Date(s): 05 / 12 / 2012
[23] {case CCT 151/15}
[24] S.250 (4) A Children Correctional Centre shall be a place in which child offenders may be detained and given such training and instructions as will be conducive to their formation and re-socialisation, and the removal or reduction, in term, of their tendency to commit anti-social acts and such other acts which violate the criminal law.

sentencing be the VAPP act is a variable sentencing subject to maximum of 14 years, however such violates the spirit of the CRA by imposing imprisonment term to child below age 14, an act which the CRA forbid for the interest of the child.

This raise a question of which law supersede whenever such issues on child offenders arise.

THE CRA AND VAPP ACT WHICH SUPERCEDE IN RESPECT TO MATTERS SEXUAL RELATED OFFENCES AGAINST A PERSON BY A CHILD OFFENDERS VIS-A-VIS SECTION 1(2) (A) OF THE VAPP ACT

Observation from writer's and debates has been noticed that CRA is being referred to as a procedural law in line with ACJA on children related offence[25], so therefore since the Administration of Criminal Justice Act is a procedural law hence CRA is also and as such the VAPP Act being a substantive law shall supercede as a general rule. However, the writer opinion is that the CRA is neither standalone procedural law nor purely substantive law but rather it is a combination of the duo. The CRA is primarily a substantive law[26] because it establishes the rights, duties and penalty. Meanwhile it also contains element that governs how these rights and duties are enforced procedural.[27]

Upon careful examination of the jurisdiction of the CRA and VAPP act, the writer is of the view that the Child Rights Act (CRA) supercede as the act enshrined the court[28] with "General Jurisdiction" and "Unlimited Jurisdiction" to hear and determine[29]:

> *(a) Any civil proceeding in which the existence or extent of a legal right, power duty, liability privilege interest, obligation or claim in respect of a child is in issue; and*
> *(b) Any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child.*[30]

Therefore it is right to conclude that the CRA comes before the VAPP Act even if it does not come after it generally (in respect of child related offence).

CONCLUSION

The exploration of Nigeria's "legal oddities" reveals a profound truth of more than curiosities. This has left Nigeria with a legal framework that actively undermines human rights, erodes civil liberties, and stifles socioeconomic development. The continued existence of anachronistic laws governing matters from reproductive rights to juvenile justice is a significant barrier to national progress. The ultimate goal is not just the elimination of outdated statutes but a fundamental reform of the institutions, processes, and culture of law itself. By addressing the ghosts in the statute book and rebuilding the institutions that enforce them,

[25] ACJA s.452. (1) Where a child is alleged to have committed an offence, the provisions of the Child Rights Act shall apply. (Procedure for trying child offenders)
[26] Ibid. s.31
[27] Ibid. s.205, s.215 etc.
[28] Ibid. S.277 (for the meaning of "COURT")
[29] In both civil and Criminal matters
[30] Ibid. Section 151(1)

Nigeria can transform its legal system from a relic of the past into a dynamic and empowering framework for the present.

RECOMMENDATIONS

The writer recommend that the sentencing should be examined into, amend and make the VAPP Act subject to the CRA for child matters. Although similar provision could be seen in the VAPP Act but it is not effective in both parties (i.e. s.31 (8) of the VAPP Act).

The writer recommend VAPP Act to be subjected to CRA so that states yet to domesticate the Child's Rights Act in Nigeria[31] could respect the special protection of child offender.

The writer recommend that in line with the issues discuss in this work, the current enactment[32] might do justice to the stated issues.

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[31] Which include Adamawa, Borno, Bauchi, Gombe, Kebbi, Yobe, Kano, and Zamfara in their respective regions; although a child rights act exists there in some form.
[32] A publication in the Ministry of Gender and Sexual have in their current webpage that on 9th July, 2024, a bill has been passed to repeal and re-enact the VAPP Act (2015).

Explanatory Notes & Miscellaneous References

'A child is any person below age 18' (Constitution of Nigeria 1999, s 29(4) (a); see also s 494 Administration of Criminal Justice Act 2015).

'Also referred to as the VAPP Act or VAPPA 2015'.

'Common law, doctrines of equity, and statutes of general application in force in England on 1 January 1900'.

'His' as used herein throughout this essay is inclusive of the female gender.

Section-based commentary:

CRA 2003, ss 1, 149, 213, 277.

ACJA 2015, ss 31, 151(1), 205, 215, 371, 452.

CRA 2003, s 250(4) (Children Correctional Centre provisions).

'In both civil and criminal matters'.

'Mens rea and actus reus'.

Northern States applying the Sharia-influenced Penal Regime (Adamawa, Borno, Bauchi, Gombe, Kebbi, Yobe, Kano, Zamfara; with Child Rights laws in limited forms).

'Signed into law by President Goodluck Jonathan on 25 May 2015'.

IMPEDIMENTS TO THE REALIZATION OF HUMAN RIGHTS GLOBALLY: A COMPARATIVE ANALYSIS OF NIGERIA, SOUTH AFRICA, AND INDIA

By: Abraham Godwin owolabi

1.0. ABSTRACT.

Human rights are universally recognized as inherent entitlements of all individuals, yet their practical realization faces multiple impediments across the globe. This article interrogates the structural, legal, political, and economic barriers to human rights implementation, focusing on Nigeria, South Africa, and India as comparative case studies. While all three states have constitutional and international commitments to protect rights, they grapple with challenges such as non-justiciability, resource constraints, weak institutions, corruption, inequality, and political misuse of emergency powers. At the international level, the flexibility built into the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) particularly Article 4 of the ICCPR and the doctrine of progressive realization under the ICESCR further undermines accountability. Through comparative constitutional and jurisprudential analysis, supported by international commentary and case law, this article argues that the greatest obstacles are not the absence of rights in law but the gap between normative recognition and effective enforcement. The article concludes with recommendations for strengthening domestic enforcement, narrowing international derogation clauses, empowering judicial activism, and promoting cooperative international frameworks.

2.0. INTRODUCTION.

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, human rights have occupied a central role in international law and domestic constitutionalism. Yet, more than seventy years later, the gap between the promise of rights and their lived reality remains wide.

States often proclaim rights while simultaneously erecting or maintaining barriers that undermine their fulfillment.

This paradox is particularly pronounced in countries of the Global South, where poverty, inequality, and political instability intersect with weak enforcement mechanisms. Nigeria, South Africa, and India serve as important comparative case studies. Each of these states has a written constitution with entrenched rights, is a party to key international treaties (including the ICCPR and ICESCR), and has a history of judicial engagement with rights claims. Yet, each also faces unique impediments that reflect broader global challenges.

This article employs a comparative legal method, examining constitutional provisions, landmark judicial decisions, and international treaty obligations. It integrates international standards such as the ICCPR and ICESCR with domestic frameworks, while situating obstacles within broader political and economic realities.

The central argument is that impediments to the realization of rights are multi-dimensional: some are structural (non-justiciability, resource limitations), others political (lack of will, authoritarianism), and others international (treaty flexibility, selective enforcement). By analyzing these impediments, the article seeks to contribute to ongoing debates on strengthening global human rights enforcement.

3.0 CONCEPTUAL AND LEGAL FRAMEWORK.

Human rights are generally categorized as civil and political rights (protected under the ICCPR) and economic, social, and cultural rights (protected under the ICESCR). These instruments are binding on states parties and form part of the so-called International Bill of Rights. Nigeria, South Africa, and India have all domesticated aspects of these frameworks. Nigeria's 1999 Constitution guarantees civil and political rights under Chapter IV, while socio-economic rights are placed in Chapter II as non-justiciable "directive principles." South Africa's 1996 Constitution contains a robust and justiciable Bill of Rights, explicitly recognizing socio-economic rights such as housing, health care, and education. India's 1950 Constitution divides rights into Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV), with the judiciary gradually expanding enforceability through interpretation. Yet, as will be demonstrated, the translation of rights from paper to practice is obstructed by multiple impediments at both domestic and international levels.

4.0. CASE STUDIES.

4.1. NIGERIA.

Nigeria's constitutional framework recognizes civil and political rights but treats socio-economic rights as aspirational. Section 6(6)(c) of the 1999 Constitution explicitly renders Chapter II non-justiciable, meaning courts cannot compel the state to implement rights to housing, health, or education. This has been confirmed in cases such as Attorney-General of Ondo State v. Attorney-General of the Federation, where the Supreme Court reiterated that Chapter II rights are unenforceable in court.[1] This creates a systemic barrier, effectively excusing state inaction on core socio-economic rights. Beyond constitutional limits, corruption, poverty, insecurity, and weak institutions further erode rights. In Social and Economic Rights Action Centre (SERAP) v. Nigeria, the African Commission on Human and Peoples' Rights held Nigeria in violation of multiple rights due to environmental degradation in the Niger Delta.[2] Yet compliance with such decisions has been weak. The UN Human Rights Committee, in its 2019 Concluding Observations on Nigeria, expressed concern at the "persistent gap between constitutional guarantees and actual implementation."[3]

4.2. SOUTH AFRICA.

South Africa provides a contrasting model. The 1996 Constitution includes an expansive Bill of Rights, with socio-economic rights expressly justiciable. Section 26 guarantees the right to housing, Section 27 covers health care, food, water, and social security, and Section 29 guarantees education.

The Constitutional Court has developed a rich socio-economic rights jurisprudence. In Government of the Republic of South Africa v. Grootboom, the Court held that the state must take "reasonable measures" to realize the right to housing.[4] In Minister of Health v. Treatment Action Campaign, the Court ordered the government to provide access to anti-retroviral drugs for preventing mother-to-child HIV transmission.[5]

However, despite these advances, South Africa remains one of the most unequal societies in the world. The UNDP's 2021 Human Development Report observed:

"South Africa remains one of the most unequal societies in the world, with structural inequalities undermining the full realization of constitutionally protected socio-economic rights."[6]

Thus, the key impediment is not legal recognition, but economic inequality and implementation capacity.

4.3. INDIA.

India's Constitution divides rights between Fundamental Rights and Directive Principles of State Policy (DPSPs). The Supreme Court of India has creatively expanded the scope of enforceable rights through judicial activism.

In Kesavananda Bharati v. State of Kerala, the Court established the basic structure doctrine, preventing Parliament from amending the "basic features" of the Constitution, including fundamental rights.[7] In Olga Tellis v. Bombay Municipal Corporation, the Court held that the right to life under Article 21 includes the right to livelihood.[8]

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[1] (2002) 9 NWLR (Pt. 772) 222 (Nigeria SC).

[2] Social and Economic Rights Action Centre (SERAC) v. Nigeria, Comm. No. 155/96 (Afr. Comm'n H.P.R. 2001).

[3] U.N. Hum. Rts. Comm., Concluding Observations on Nigeria, 8, U.N. Doc. CCPR/C/NGA/CO/1 (2019).

[4] Gov't of the Republic of S. Afr. v. Grootboom 2001 (1) SA 46 (CC).

[5] Minister of Health v. Treatment Action Campaign 2002 (5) SA 721 (CC).

[6] United Nations Development Programme, Human Development Report 2021/2022 67 (2021).

[7] Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225 (India SC).

[8] Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545 (India SC).

Yet, India also faces impediments. Resource constraints, widespread poverty, and political misuse of emergency powers undermine rights. During the 1975–77 Emergency, civil liberties were suspended under Article 352 of the Constitution, paralleling ICCPR Article 4 derogations.

As the UN Special Rapporteur on Extreme Poverty noted in 2018:

"India has an impressive legal framework for the protection of rights, but the persistence of extreme poverty reveals a striking implementation deficit."[9]

5.0. INTERNATIONAL IMPEDIMENTS UNDER ICCPR AND ICESCR.

ICCPR Article 4: Derogations

The ICCPR permits derogation in times of emergency under Article 4(1):

"In time of public emergency which threatens the life of the nation… States Parties may take measures derogating from their obligations… to the extent strictly required by the exigencies of the situation."[10]

While some rights are non-derogable (e.g., right to life, prohibition of torture), states often misuse emergencies to restrict rights excessively. The Human Rights Committee, in General Comment No. 29, warned that emergency powers "must be of an exceptional and temporary nature" and not become permanent.[11] Nigeria's military regimes, India's 1975–77 Emergency, and apartheid South Africa illustrate how broad derogation powers enable abuse.

ICESCR Article 2(1): Progressive Realization

The ICESCR requires states to realize rights "progressively" and "to the maximum of their available resources."[12] This acknowledges resource disparities but also allows states to defer obligations indefinitely.

The Committee on Economic, Social and Cultural Rights clarified in General Comment No. 3 that states must at least ensure "minimum core obligations" immediately.[13] Yet many states, including Nigeria and India, fail to meet even minimum standards in health and education, citing limited resources.

This doctrine thus functions as a double-edged sword: flexible but easily abused.

STRUCTURAL INTERNATIONAL IMPEDIMENTS.

i. Sovereignty vs. Universality: Enforcement relies on state compliance; there are no coercive mechanisms.
ii. Global Inequality: Debt burdens and IMF/World Bank conditionalities undermine socio-economic rights.
iii. Selective Enforcement: Powerful states often avoid scrutiny, while weaker states face disproportionate pressure.
iv. Security Paradigm: Post-9/11 counter-terrorism measures have normalized derogations worldwide.

6.0. COMPARATIVE ANALYSIS OF KEY IMPEDIMENTS.

From the case studies and treaty frameworks, three main impediments emerge:

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[9] Philip Alston (Special Rapporteur), Report on Extreme Poverty and Human Rights: Visit to India, U.N. Doc. A/HRC/38/33/Add.1 12 (2018).
[10] ICCPR art. 4(1), Dec. 16, 1966, 999 U.N.T.S. 171.
[11] U.N. Hum. Rts. Comm., General Comment No. 29: States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).
[12] ICESCR art. 2(1), Dec. 16, 1966, 993 U.N.T.S. 3
[13] ICCPR art. 4(1), Dec. 16, 1966, 999 U.N.T.S. 171.

a) Legal Barriers: Non-justiciability (Nigeria), excessive derogation (India), reliance on progressive realization (South Africa).
b) Economic Barriers: Poverty, inequality, and resource constraints weaken rights enforcement.
c) Political Barriers: Lack of political will, corruption, and misuse of emergency powers obstruct implementation.

As the Human Rights Committee cautioned: *"States parties must ensure that measures derogating from the Covenant do not exceed those strictly required by the exigencies of the situation, nor become permanent features of the legal order."*[14]

7.0. RECOMMENDATIONS.

1. Domestic Reform: Nigeria should amend its Constitution to make socio-economic rights enforceable; South Africa should address inequality through targeted social policies; India should strengthen enforcement of judicial decisions.
2. Judicial Independence and Activism: Courts must continue expanding rights jurisprudence while resisting political interference.
3. International Reform: Narrow ICCPR derogation powers and strengthen ICESCR monitoring by clarifying minimum core obligations. Global Cooperation: International financial institutions should align programs with human rights obligations.
4. Grassroots Empowerment: Civil society and community-based monitoring should bridge the gap between law and lived reality.

8.0. CONCLUSION.

The recognition of human rights globally is no longer in question; the challenge lies in implementation and enforcement. Nigeria's constitutional limits, South Africa's inequality, and India's resource constraints illustrate that impediments are context-specific but globally resonant.

The ICCPR and ICESCR, while groundbreaking, contain structural weaknesses, Article 4 derogations and progressive realization that allow states to escape accountability.

As Justice Arthur Chaskalson of South Africa's Constitutional Court once observed:

"Rights mean little without the means to enforce them, but when enforced they become the foundation of human dignity and democracy."[15]

Thus, the future of human rights depends not on new declarations but on dismantling the barriers of politics, economics, and weak enforcement that prevent existing rights from becoming lived realities.

[14] U.N. Hum. Rts. Comm., General Comment No. 29, supra note 11.

[15]Quoted in S. Liebenberg, Socio-Economic Rights in South Africa: Transformative Constitutionalism or Judicial Abdication? 23 Stellenbosch L. Rev. 90 (2012).

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ERADICATION OF MOBBING AND SELF HELP AS A PROPOSITION TO AID THE PROPER ADMINISTARATION OF JUSTICE

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ABSTRACT

This paper investigates the persistent problem of mobbing and self-help in Nigeria, highlighting their detrimental impact on the administration of justice and the overall social order. It explores how these practices, often fueled by a lack of trust in the formal justice system and a desire for immediate retribution, undermine the rule of law and contribute to a climate of lawlessness. The paper analyzes the legal definitions of mobbing and self-help, demonstrating how they violate fundamental principles of due process and create a culture of impunity. It then proposes a multi-faceted approach to address the root causes of these behaviors, emphasizing the need for robust law enforcement, comprehensive public enlightenment campaigns, and community-based initiatives to promote a culture of respect for the law. Ultimately, the paper argues for a justice system that is accessible, equitable, and responsive to the needs of all citizens, fostering a society where mobbing and self-help are no longer tolerated.

Keywords: *Crime, Mobbing, Self- help, Violent, pre-colonial, Rights.*

INTRODUCTION

The classical aim of any modern society is to achieve a certain level of order, which is important for the protection of the rights of its members and citizens of that particular country or designated territory, as opposed to this, Nigeria has imperatively been identified as one of the countries which resolve to mobbing and self-help an haphazard behavior that has induced us to a certain level of decadence, unlawfulness and contributed to the breakdown of law and order. This article delves into the complex issue of mobbing and self-help in Nigeria, exploring their origins, manifestations, and the devastating consequences they have on the administration of justice. By analyzing the legal frameworks and societal dynamics that contribute to these behaviors, this paper aims to illuminate the urgent need for a comprehensive strategy to eradicate them and pave the way for a more just and peaceful society.

According to the Black law's dictionary,

"Mobbing means an assemblage of many people acting in a violent and disorderly manner, defying the law, committing or threatening to commit depredations upon property or violence to persons"[2]. It is usually referred to by its popular term jungle justice. A notable instance of mob justice is the Aluu four case of 2012[3], as well as a recent case that happened in Lagos where a lawyer, in the person of Uduak Adams, was wrongfully accused of kidnapping a child while seeking accommodation in Surulere. She faced a violent mob attack, supported by the OPC, on Aborishe Street. Uduak was brutally beaten, suffering extensive injuries. Her accusers, who were later detained, had demanded her immediate execution. Fortunately, the supposed kidnapped child was found. This exonerated Uduak Adams from the allegations against her. This is just one of many similar cases where the person upon whom the mob attack is directed at have been found innocent[4].

Self-help, on the other hand is a term that means to protect your own property or person and not to resort to any legal action[5]. This is where the court system is made void. It occurs to suspects of both criminal and civil offenses who are reprimanded at the scene of the crime with no room for the expression of their rights to fair hearing, and may sometimes lead to the deprivation of their right to life and some other essential rights in this regard. Although self-help has initially been expedient since the beginning of human nature, even as seen in the periods of our forefathers with a reference to the Mosaic law which states an eye for an eye ,and a tooth for a tooth this was however because no proper structure was put in place to attain justice.

Nonetheless, with several years upfront during the pre-colonial era we could see that although there was no form of court system, the various kingdoms of different ethnic groups like the old Oyo Empire, still managed to effect a kind of orderly society due to their localized form of judicial pronouncements. They relied on their chiefs, oracle consultants, etc., as the case may have been.

In this 21th century, self-help comes in the form of a lack of trust in the court system to give a practical and fair judgment. Imagine a society without a court system in its jurisdiction to resort to, such a country would be filled with anarchy, lack of fairness, and injustice. In Nigeria, although there is an availability of the court system, many people still take recourse to Mobbing due to various reasons, predominantly being the lack of trust in the Judicial/ Justice System, which is plagued by corruption, delays, and inefficiency most people in Nigeria have a bias knowledge as to what constitutes justice in Nigeria, it is often believed that justice in Nigeria is elude. There are different instances that fuel this perceptions a clear instance is a situation where the rich and powerful are able to oppress the poor by getting favorable judgments from judges because it is believed that they have their ways to judicial officers and are well connected to them.

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[2] Garner, Bryan A. Black's law Dictionary.11th ed. Thomson Reuters, 2019.
[3] Jimitotoa, Onoyume. Aluu four justice at last.vanguard, August 3, 2017.https://www.vanguardngr.com/2017/08/aluu-four-justice-last/amp/(accessed February 24,2025.)
[4] Okeh, Amarachi. Lawyer wrongfully accused of kidnapping demands justice.Punch News, October 4, 2023. https://punchng.com/ lawyer- wrongfully- accused- of kidnapping demands justice/?amp (accessed February 26, 2025.)
[5] Garner, Bryan A. Black's law Dictionary.11th ed. Thomson Reuters, 2019.

Then on the basis that there can be falsification in the evidence and by such justice is not given to the right person.

Consequently, on the basis of delayed justice because cases are usually dragged and later relinquished without fair judgment and so on, this contributes to a growing sense of frustration among the populace, leading to incidents of mob justice as an attempt to seek immediate retribution for alleged offenders.

Another reason may include the fact that there is little or no punishment for those perpetrating the mob act, most people who commit mob actions are left free and are assumed to have orchestrated the right justice as in line with people's perception about the improper justice system in Nigeria, this has given way for more people or citizens to succumb to this act.

See section 316 of the criminal code act which has it jurisdiction in the south defines murder[6] and section 319 prescribes the punishment for such according to the circumstance of the case[7] also section 220 of the penal code for the north provides the same [8]sometimes mob justice can lead to the death of the person being attacked (murder) this is an example of an offence that this mobbing act causes and the offence and the punishment are well spelt out in the penal code and criminal code of the different jurisdiction as stated above and as such if any mob is caught committing such offence they should be punished in accordance with such laws spelling out those offences, but this is not usually the case.

Additionally, Nigeria has been facing security crises such as banditry, kidnapping and rising insecurity, the frequent occurrence of these threats can increase fear and create a sense of vulnerability among the population. In some cases it may be perceived by them as a way to protect themselves or their communities, even though they are in breach of the proper channel to obtain redress and the rights of the alleged victims.

Section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria (FRN) states that everyone has the right to life and no one shall intentionally be deprived of his/her life except in execution of the sentence of a court in respect of a criminal offence in which he/she has been found guilty[9]. Also, Section 34 of the Constitution of the FRN recognizes the dignity of individuals, stating that no one shall be subjected to torture or inhuman or degrading treatment. [10]

Furthermore, Section 36 of the Constitution of the FRN allows for fair hearing[11]. Victims of self-help are usually suspects and alleged offenders who are not guilty of the crime until they are given the right to fair hearing and acquitted by the judge to be criminally liable and as such are not to be deprived of their rights as stated above.

CONSEQUENCES OF MOB JUSTICE

1. Perpetrators of self-help render themselves liable for criminal and civil action: people who commit self-helps are liable to various civil and criminal action depending on the kind of offence they commit on certain suspects mob actions most of the times go against various rights and privileges of people e.g. right to life, right to fair hearing, right to dignity, etc. and there are various punishments for the violation of this right if there is a proper system, when this rights are violated unless in relation to some exceptions the punishments are to be carried out, some of the laws that stipulate this punishment includes ; the criminal code, the penal code , the violence against body act and such other laws.

2. Punishment of the wrong person: in the absence of proper investigation and legal procedures, innocent individuals may become victims of Mob actions. Most times the suspect is denied of any form of fair hearing

[6] Criminal code Act,cap.c38 Laws of Nigeria 2004, s.316
[7] Criminal code Act,cap.c38 Laws of Nigeria 2004, s.319
[8] Penal code Act, cap. P4,Laws of the federation of Nigeria 2004,s.220
[9] Constitution of the federal republic of Nigeria,1999 as amended s.33
[10] Constitution of the federal republic of Nigeria,1999 as amended s.34
[11] Constitution of the federal republic of Nigeria,1999 as amended s.36

as in accordance with section 36 of the constitution[12] because mob actions are characterized by instant justice. In some cases, the person being attacked by the mobs might not be the one to have committed the crime and he /she is punished unjustly or most times the person might have an explanation to give as regards the crime they're being accused of but is not given the right to and so the person is subdued to injustices .e.g. the Aluu four case of 2012 were four students from the university of portharcourt were beaten and burned to death for the alleged theft of a phone by a group of community members, fueled by anger and misinformation it was later discovered that they weren't the ones that stole the phone[13]. Also in the U.S central park five case in 1989 involved five young men wrongfully convicted of assaulting and raping a jogger in central park, New York City. The mob mentality fueled by public outrage led to the wrongful prosecution of these individuals, who were eventually exonerated years later when new evidence emerged, highlighting the dangers of relying on mob justice[14].

3. Total breakdown of law and order: According to black laws dictionary laws are rules of conduct or action prescribe or formally recognized as binding or enforced by a controlling authority[15]. While order is a direction or command given by a court or other competent authority, requiring a person to do or refrain from doing a particular act[16]. it is the procedure to carry out the law ,when mobs takes justice into their hands they disrupt the order by breaching the procedures to which such suspects are to be punished for not following a particular rule or from deviating from a particular rule if found guilty in the court of justice. It is unfortunate that although the law has provided the legal and constitutional process to seek redress people still seek to provide their own justice for a victim. Constant mob actions would give no way for law and order and when a society is existing with no law and order the society will continue to live underdeveloped and disordered.

SOLUTIONS THAT CAN BRING ABOUT THE ERADICATION OF MOB JUSTICE IN NIGERIA

1. The provision of a fair just and proper judicial system:

When a society is embedded with a fair, and autonomous judicial system that is blindfolded and does not follow the rule of the rich over the poor, rather recognizes the two principles of natural justice, Audi alteram partem (Hear the other side), Nemo judex in casua sua (No one should be a judge in their own case), the society will regard and recognize the system. The rate of self-help would reduce or even vanish because people would begin to have faith in the judicial system for equal justice to give fair hearing and just judgments, also the mitigation of delayed justice would aid this as well.

2. Given public enlightenment to citizens on their right and actions that constitutes a breach of such right:

In the society we live in, most people are ignorant. When the government finds a way to enlighten the public about the effects of mobbing through anti mob campaigns, symposiums, webinars etc. those who engage in these actions begin to realize their wrongs and other several adverse effects ranging from the fact that they might be torturing the wrong alleged offender, and also the fact that those who engage may render themselves liable for criminal actions, because they are in violation of the victims' rights and equally stipulating the punishment for such an offense of the violation of a person's right would cause people to disengage from this act, and the society would begin to work and function with law and order with an inclusion to seek the right and proper channel for obtaining redress . Additionally, many people need to be

[12] Constitution of the federal republic of Nigeria,1999 as amended s.36
[13] Jimitotoa, Onoyume. Aluu four justice at last. vanguard, August 3, 2017.https://www.vanguardngr.com/2017/08/aluu-four-justice-last/amp (accessed February 24, 2025.)
[14] Aisha, Harris. New york times, May 13, 2019 www.newyorktimes.com(accessed February 26, 2025)
[15] Garner, Bryan A. Black's law Dictionary.11th ed. Thomson Reuters, 2019.
[16] Garner, Bryan A. Black's law Dictionary.11th ed. Thomson Reuters, 2019.

enlightened about their rights as well so that they are aware that the actions of mobs are not normal but are against certain laws, and are in breach of their rights.

3. The establishment of agencies to curb the actions of mobs:

When agencies or authorities are put in place, especially in areas where these mobs are found (i.e., mostly local areas), when these mobs know that authorities are in this kind of places they desist from such actions because they know the verdicts of what these authorities might do to them if they are caught committing such act . These agencies can set up places to report cases of mob actions that is in a case where a suspect is caught at the commission of an action, these authorities should be made easily accessible so that reports can be made to them at that instance before the suspect flees. This would reduce mob actions because instant justice is one of the reasons for jungle justice, and since this authority is put in place to cater for it, there would be no need for such mob action.

4. Establishment of laws against mob action:

A bill seeking to criminalize mob actions was considered by the House of Representatives in earlier times[17], however, in subsequent times, if such a bill is passed into law, it allows for the catering of mob cases before the commission of that mob act. It also makes it an anticipatory law in the sense that before such a mob case comes in place, some laws are made against it already which prevents people from committing such mob actions, thus If anyone commits it the punishments for committing such actions are stipulated and carried out.

5. Strengthening law enforcement agencies:

Enhancing the capacity and effectiveness of law enforcement agencies is essential to curb mob justice. This can include the provision of more weaponry, stringent implementation of laws against bribe collection, and training of police officers to respond promptly and professionally to incidents, improving investigative techniques, and ensuring proper enforcement of the law. By strengthening law enforcement, communities will thereby regain trust in the legal system, reducing the inclination towards mob justice.

In conclusion, the eradication of mobbing within the Nigerian legal system is crucial for upholding justice and protecting the rights of individuals. By advocating for measures to eradicate this menace, we can empower victims to stand against mobbing and seek redress through the right and proper legal channels, as this would enhance the overall effectiveness of the legal system in addressing grievances.

[17] Ikechuckwu,Amaechi.,Anti mob legislation,vanguard news, July12,2021. https://www.vanguardngr.com/2021/07/anti-mob-legislation.(accessed February 27, 2025.)

BRIDGING NIGERIA'S HEALTHCARE DEFICIT: LEGAL AND TECHNOLOGICAL PERSPECTIVES ON THE DOCTOR-TO-PATIENT RATIO

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Abstract

Nigeria's healthcare sector faces a chronic deficit in its doctor-to-patient ratio, estimated at nearly 1,000% below the World Health Organisation (WHO) recommendation. This shortage, driven by infrastructural decay and the persistent brain drain of health professionals, poses profound implications for attaining Sustainable Development Goal 3 on good health and well-being. While government policies, such as the 2024 National Policy on Health Workforce Migration, attempt to address the challenge, they largely overlook technology's transformative role. This article examines how digital health tools, particularly telemedicine, artificial intelligence (AI), electronic health records (EHR), and medical robotics, can serve as innovative solutions to bridge Nigeria's ratio gap. The article adopts a purely doctrinal approach, consulting statutes, journal articles, newspaper articles, books, etc. It finds that technology plays an immense role in better healthcare delivery, but several issues bordering on financing, data protection, patient privacy, medical liability, and institutional oversight pose a concern. It concludes that if embedded within robust legal safeguards, technology offers a sustainable pathway to enhancing healthcare delivery, protecting patients' rights, and accelerating Nigeria's Progress toward SDG 3. Drawing on comparative frameworks from other jurisdictions and international best practices, the article recommends that Nigeria establish a comprehensive legal and institutional framework for digital health, accompanied by deliberate policy and infrastructural reforms.

Keywords: Doctor-to-patient ratio, Digital health, Telemedicine, Artificial intelligence, Nigeria, Data protection, SDG 3.

INTRODUCTION

The Nigerian healthcare system has repeatedly been plagued by a longstanding dilemma – an alarming doctor-to-patient ratio.[2] In a report by the National Medical Association president, Prof. Bala Audu, in a media conference in Abuja on the status of the nation's health sector, he noted that the deterioration in the doctor-patient ratio is about 1000% below the World Health Organisation (WHO) recommendation.[3] This shortage remains only on the rise, and with no present decline in view, it is further strengthened by the brain drain of health professionals abroad for greener pastures and better working systems. This imbalance undermines the country's capacity to achieve Sustainable Development Goal 3 (SDG 3), which commits states to ensuring good health and well-being by 2030 and the right to health.[4] While existing government interventions, such as the recently approved National Policy on Health Workforce Migration 2024, provide a tentative response, they fail to incorporate technology's transformative potential adequately. Nevertheless, digital innovations, including telemedicine, artificial intelligence (AI), and electronic health records, have become globally recognised tools for addressing human resource shortages in healthcare. However, in Nigeria, their adoption remains limited and largely unregulated.

How then can the ratio gap be significantly bridged toward attaining SDG standards? The solution – technology. Thus, this article examines the intersection of technology, law, and quality healthcare in bridging Nigeria's doctor-to-patient ratio and asks how technology, supported by a robust legal and regulatory framework, can mitigate Nigeria's healthcare workforce crisis. To answer this, the article first examines the current state of Nigeria's doctor-to-patient ratio and situates it against global and regional standards. It then explores the opportunities and challenges of deploying technological solutions within the Nigerian context, paying particular attention to legal implications around liability, patient privacy, and institutional oversight. Finally, it offers policy and legal recommendations to fully incorporate digital health within a rights-based, ethically sound framework capable of sustaining Nigeria's Progress towards SDG 3 and beyond.

1. The Doctor–Patient Ratio in Nigeria: Contextual Realities and Constitutional Implications

A doctor-to-patient ratio refers to the number of doctors available to care for a specific number of patients within a given population in a given year for a given country, territory, or geographical area.[5] It is a critical key performance indicator that measures the number of doctors available per patient within the healthcare system, i.e., the number of doctors per 1,000 or 10,000. In Nigeria, the ratio gap is low and negative, meaning fewer doctors are available per patient, leading to overworked doctors catering to the overwhelming

[2] Nicholas Aderinto, Emmanuel Kokori, Gbolahan Olatunji 'A Call for Reform in Nigerian Medical Doctors' Work Hours' (2024) 403 (10428) The Lancet <https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)02558-8/fulltext> accessed 5 October 2025

[3] Lara Adejoro, 'Doctor-Patient ratio worsening over Japa, NMA laments' *Punch Nigeria* (Lagos, July 18, 2024) <https://punchng.com/doctor-patient-ratio-worsening-over-japa-nma-laments/> accessed 17 September 2024.

[4] Section 17(3) 1999 Constitution of the Federal Republic of Nigeria (as amended)

[5] World Health Organisation, 'The Global Health Observatory, Physician Ratio' (WHO, ??) <https://www.who.int/data/gho/indicator-metadata-registry/imr-details/1208> accessed 17 September 2025

population. In northern states such as Jigawa, the ratio is as high as 1:21,000[6] in 2023 and 1:30,000 in 2025[7], while the ratio is comparatively better in urban centres like Lagos and Abuja, although it is still below global standards. This maldistribution highlights a dual problem: There are too few doctors overall, and the existing workforce is heavily concentrated in urban areas.[8] The death of Oluwafemi Rotifa, a resident doctor at Rivers State Teaching Hospital after collapsing during a 72-hour shift highlighted the consequences of inhumane working conditions and chronic understaffing.[9]

According to the Medical and Dental Council of Nigeria (MDCN),[10] only 58,000 doctors out of the 130,000 qualified personnel have renewed their medical practice licenses. This figure represents a genuine shortage of doctors who struggle to handle Nigerian patients' health needs, with a population of over 200 million. These dwindling figures result from inadequate infrastructure and funding, insufficient and obsolete equipment, and poor remuneration, leading to brain drain and the exodus of trained health professionals (The Japa syndrome).

In 2023, the WHO, in its workforce support and safeguards list, ranked the country among the 37 countries of the world with critical health workforce shortages owing to the low density of doctors, nurses, and midwives.[11] In September 2024, the presidency approved a National Policy on Health Workforce Migration[12] to manage the migration of skilled professionals abroad. While this policy presents a dynamic start, its flaw is that it neglects to identify and incorporate the immense role technology can play in bridging this ratio gap.

Beyond statistics, this shortage also has profound constitutional implications. The right to life, guaranteed under section 33 of the 1999 CFRN (as amended), cannot be meaningfully protected where preventable deaths[13] occur simply because there are too few doctors to provide timely medical care. Similarly, section 17(3)(d) of the Constitution directs the State to ensure adequate medical and health facilities for all persons. Although framed as a directive principle under Chapter II and legally regarded as non-justiciable, the provision underscores the government's constitutional responsibility to guarantee access to quality

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[6] Abubakar Ahmadu Maishanu, 'Why doctors are leaving Jigawa to other states – NMA' *PremiumTimes Nigeria* (Abuja, 28 October 2023) <https://www.premiumtimesng.com/regional/nwest/637925-why-doctors-are-leaving-jigawa-to-ther-states-nma.html?tztc=1> accessed 25 September 2025

[7] Emmanuel Egobiambu, 'NMA Jigawa Decries Brain Drain, Proposes Salary Review' *Channels Television* (Lagos, 30 July 2025) <https://www.channelstv.com/2025/07/30/nma-jigawa-decries-brain-drain-proposes-salary-review-to-halt-exodus/> accessed 25 September 2025

[8] M Obubu, N Chuku, A Ananaba, FU Sadiq, E Sambo, O Kolade, O Serrano, 'Evaluation of healthcare facilities and personnel distribution in Lagos State: Implications on Universal Coverage' (2023) 51 (2) Hospital Practice <https://doi.org/10.1080/21548331.2023.2170651> accessed 25 September 2025

[9] Royal Ibeh, 'Doctor's death after 72-hour shift spark outrage in Nigeria' *BusinessDay* (Lagos, 6 September 2025) <https://businessday.ng/health/article/doctors-death-after-72-hour-shift-sparks-outrage-in-nigeria/> accessed 17 October 2025

[10] Jesupemi Are, 'MDCN: Only 45% of registered doctors renewed their practice licence in 2023' *The Cable Nigeria* (Lagos, 26 April 2024) <https://www.thecable.ng/mdcn-only-45-of-registered-doctors-renewed-practice-licence-in-2023/amp/> accessed 17 September 2024.

[11] WHO Health Workforce Support and Safeguards List 2023 (World Health Organisation, 8 March 2023) <http://www.who.int/publications/i/item/9789240069787> accessed 18 September 2024.

[12] Mariam Ileyemi, Beloved John, Healing the Brain Drain: Nigeria's move to stem health workers migration (Premium Times News: September 12, 2024) <https://www.premiumtimesng.com/health-features/733575-healing-the-brain-drain-nigerias-move-to-stem-health-workers-migration.html> accessed 13 September 2024.

[13] Titilayo Aderigbigbe, Titilola Adegbile, 'The gods are not to Blame: A Review of the Right to Health for Universal Health Coverage through Telehealth in Nigeria' (2023) 3(1) *RUNJIL*

healthcare. More significantly, Nigeria's obligations under the African Charter on Human and Peoples' Rights, domesticated into Nigerian law, render the right to health enforceable before Nigerian courts. Article 16 of the Charter guarantees the right of every individual to enjoy the best attainable state of physical and mental health, and the courts have recognised its enforceability. Hence, the chronic shortage of medical personnel undermines public health and raises questions of compliance with binding international commitments. When read alongside the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Nigeria has ratified, the deficit exposes the failure to realise the right to health progressively.

Taken together, these realities illustrate that the doctor–patient imbalance in Nigeria is not merely a matter of numbers but constitutes a broader rights-based crisis that calls for urgent legal, policy, and technological interventions if the country is to meet its constitutional and international obligations, as well as the Sustainable Development Goal 3 target on health and well-being. Therefore, it is crucial to explore the alternative solutions technology presents to mitigate this issue and bridge the gap.

3.0 The Role of Technology in Bridging the Doctor-Patient Ratio Gap

3.1 Telemedicine and Access to Care

Telemedicine, as defined by the World Health Organisation, is the delivery of healthcare services where distance is critical, using information and communication technologies to exchange valid information for diagnosis, treatment, and prevention. [14] It encompasses teleconsultation, telenursing, telepathology, telepsychiatry, teleradiology, tele-pharmacy, telecardiology, telerehabilitation, remote monitoring, education and intervention systems. Over the years, many Nigerians have placed a preference for self-medication without prescription or herbal medicines that have not undergone clinical trials for use[15], long queues at health facilities in the hope of seeing a doctor, particularly in subsidised government facilities. In Nigeria, where patients in rural and underserved areas often rely on self-medication or unregulated herbal remedies, telemedicine provides a transformative alternative. Telemedicine allows coordination between primary care physicians and specialists, improving health outcomes by ensuring a smooth transfer of care that reduces the wait for feedback, unnecessary patient travel time, and unnecessary in-person examinations for referrals.[16] In addition, it aids in improved management of chronic conditions such as diabetes and hypertension through regular remote monitoring and virtual consultations.[17] Also, the system incorporates health insurance, accessible and affordable virtual consultation, and prompt patient healthcare delivery. Platforms such as *Wellvis Health, Healthconnect247, and Fertitude* enable remote consultations, connecting patients with doctors, including specialists in the diaspora, mitigating the shortage of available

[14] World Health Organisation 'Telemedicine: Opportunities and Developments in Member State: Report on the Second Global Survey on eHealth' Global Observatory for eHealth Series (World Health Organisation, 2009) Google Scholar.
[15] OK Cole, MM Abubakar, A Isah, SH Sule, BO Ukoha-Kalu, 'Barriers and Facilitators of Provision of Telemedicine in Nigeria: A Systematic Review' (2025) 4(7) PLOS Digital Health <https://doi.org/10.1371/journal.pdig.0000934> accessed 24 September 2025
[16] M Stolzfus, A Kaur, A Chawla, 'The Role of Telemedicine in Healthcare: An Overview and Update' (2023) 35 (49) Egypt Journal of Internal Medicine <https://doi.org/10.1186/s43162-023-00234-z> accessed 30 September 2025
[17] VC Ezeamiim, OE Okobim and others, 'Revolutionizing Healthcare: How Telemedicine is Improving Patient Outcomes and Expanding Access to Care' (2024) 16(7) Cureus <https://doi.org/10.7759/cureus.63881> accessed 30 September 2025

personnel and increasing access in rural areas with inadequate infrastructure. Telemedicine ensures patient-doctor communication, which is paramount and key to bridging the doctor-to-patient gap and shaping healthcare delivery quality amidst the deficit. Even though telemedicine technology was introduced in Nigeria due to the lockdown events of COVID-19, its complete adaptation remains slow and unprioritised.

3.2 Artificial Intelligence and Machine Learning

Artificial Intelligence (AI) refers to the multidisciplinary subject of computer science that studies the development of robots that can mimic human cognitive processes, such as learning, thinking, problem-solving, speech recognition, and language translation.[18] However, Machine learning (ML) is a crucial application of artificial intelligence that enables computers to learn from experience utilising data samples instead of being explicitly programmed to carry out a particular activity.

Technology is the revolutionary new normal, and AI is a game-changer at the forefront, bridging the ratio gap. Essentially, deploying artificial intelligence and machine learning technology (AI/ML) aids doctors in facilitating diagnostics and offers a counter-productive measure and leeway in bridging the existing ratio gap in the system. AI's holistic approach in accelerating medical diagnosis and data analysis, from prompt disease detection in patients to predictive analysis to track patient recovery trends to providing virtual and physical assistance to doctors in performing time-consuming or repetitive tasks, significantly reduces workload and alleviates the administrative burden on doctors.

This ensured accuracy allows doctors to focus on more complex cases, thus increasing the number of patients who can be treated effectively and narrowing the doctor-patient gap. Predictive analysis also improves the allocation of medical resources among patients, improves emergency healthcare planning, identifies areas requiring more healthcare resources, greatly benefits the healthcare ecosystem, and improves the quality of care for patients. The usage of AI algorithms can analyse vast amounts of patient data, including medical imaging scans, Electronic Health Records (EHRs), and genetic information, to assist healthcare professionals in making more accurate diagnoses.[19] AI and ML models can analyse historical healthcare data to predict health trends, disease outbreaks, and patient outcomes.[20] For instance, AI tools are employed in oncology for early detection, histopathological classification, and treatment response prediction.

Globally, AI robotics has enhanced surgical precision and reduced human error, but adoption in Nigeria is still nascent; pilot initiatives in tertiary hospitals suggest growing interest. Notwithstanding, Nigeria has seen deployment in the use of AI/ML, albeit not to its fullest potential, as there is still a strong need for the system to be incorporated and be fully immersed in this technology. According to the Health Strategy and

[18]Richard Aggrey, Bright Ansah Adjei, Nana Adwoa Konadu Dsane, Karl Osei Afoduo, Loretta Naa Oye Holdbrooke, 'The Role of Artificial Intelligence and Machine Learning in Healthcare' (2024) (6) (6) International Journal for Multidisciplinary Research (IJFMR) pp 1-7.

[19] NC Eli-Chukwu, 'Applications of Artificial Intelligence in Agriculture: A Review' (2019) 9(4) Engineering Technology Applied Science Research pp. 4377- 4383.

[20] OP Adigwu, G Onavbavba, SE Sanyaolu, 'Exploring the Matrix: Knowledge, perceptions and prospects of artificial intelligence and machine learning in Nigerian healthcare' *Frontiers Artificial Intelligence* (2024) DOI: 10.3389/frai.2023.1293297

Delivery Foundation (HSDF) projection, AI in Nigeria's healthcare market is expected to grow at a Compound Annual Growth Rate of 46.22% from $ 0.01 billion in 2022 to $0.013 billion by 2030.[21] However, carefully implementing AI/ML is crucial, and everyone's role in its processes is of utmost importance.[22]

3.3 Electronic Health Records (EHR)

Electronic health records (EHR) are digitised records of clinical services. The components include patient registration, scheduling, patient encounter documentation, prescription, document management, lab and imaging reports, clinical decision support and inter-office communication.[23] In essence, an Electronic Health Record (EHR) is a digital version of paper-based medical records designed to enhance patient outcomes. In Nigeria, most hospitals still rely on the traditional method of record keeping, which comes with various challenges, and the continuous use of these traditional paper records in public facilities causes delay, long patient waiting times and difficulty in retrieving patients' medical records.[24]

Thus, adopting electronic health records (EHR) is a viable system of record keeping that counteracts Nigeria's healthcare delivery in terms of its strength in ensuring capacity delivery. Hence, EHR systems help streamline the administrative burden of time spent on paperwork by doctors in managing patient data. It allows doctors to access, update and share patient information quickly and securely, enabling them to spend more time on direct physical patient care and increase the number of patients a doctor can see daily, thus reducing the ratio gap. In addition, automated robotics may be employed and tasked to perform routine checks and assessments, such as initial symptom analysis and temperature readings, reducing the need for doctors to handle routine tasks and focus on more critical cases of other patients. Essentially, an EHR ensures that records are accessible, avoiding delays in retrieving patients' records, making them organised for emergency and acute care situations.[25] The electronic nature of record keeping makes documentation easier to assess and interpret, making it more thorough than writing notes on charts. Furthermore, EHR reduces medical errors by tracking medication, dosage, and time, leading to improved operational efficiency and patient care, thus promoting satisfaction and quality of healthcare delivery within the profession. This model results in better clinical decision-making and effective collaboration between healthcare providers.[26]

4. Challenges of Technology in Bridging the Doctor–Patient Gap

[21] Trends in Healthcare – AI Spotlight, AI's Revolutionary Impact on Healthcare in Nigeria (Health Strategy and Delivery Foundation, 2024) <http://hsdf.org.ng/trends-in-healthcare-ai-spotlight/> accessed 18 September 2024

[22] M Sahu, R Gupta, RK Ambasta, P Kumar, 'Artificial Intelligence and Machine Learning in Precision Medicine: A Paradigm Shift in Big Data Analysis' (2022) 190 (1) *Progress in Molecular Biology and Translational Science* <https://doi.org/10.1016/bs.pmbts.2022.03.002> accessed 30 September 2025

[23] K Siegenthaler, 'A Brief History of Electronic Medical Record' (2016) Retrieved from <www.extractsystem.com> accessed 30 September 2025.

[24] F Ajala, J Awokola, E Ozichi, 'Development of an Electronic Medical Record System for a Typical Nigerian Hospital' (2015) 2(6) Journal of Multidisciplinary Engineering Science and Technology pp. 1253-1259.

[25] Demilade Raqeebat Salam, Ifeoluwapo Oluwafunke Kolawole, Beatrice Ohaeri, Oluwatoyin Babarimisa, 'Electronic Health Record: An Underutilised Tool in Nigeria's Healthcare System' (2023) (18) (2) Continental Journal of Applied Sciences Salam et al pp. 40 – 51

[26] Patience Onuogu, 'Benefits and challenges of adopting Electronic Medical Records in Nigerian Federal Capital Territory Hospitals-lessons learned' (2023) 10 (01) International Journal of Science and Research Archive pp. 187–193

Undoubtedly, leveraging technology holds great potential in bridging the doctor-to-patient ratio. However, it is not without barriers and impediments which must be carefully considered if it is to thrive.

4.1 Financial and Infrastructural Barriers

The cost of implementing advanced technologies, mainly in primary health centres across the country, is high and constitutes a significant hurdle. Currently, Nigeria's healthcare sector already suffers from chronic underfunding, with government expenditure falling far below. The approved 2025 budget, passed into law via the Appropriation Bill, allocated only 2.38 trillion to the health sector, amounting to just 4.33% of the total budget. This figure falls significantly short of the 15% commitment made under the 2001 Abuja Declaration, where African Union member states, including Nigeria, pledged to allocate at least 15% of their annual budget to healthcare.[27] In fact, between 2015 and 2025, Nigeria consistently failed to meet this target, with the healthcare budget stopping at under 5% every year and being short of the WHO recommendation. Furthermore, this underfunding flows into unreliable electricity supply and poor internet connectivity, undermining the consistent use of telemedicine and electronic health records. According to reports from the Nigerian Electricity Report for Q1 2025,[28]electricity generated stood at 10,304.47 (Gwh), representing a 10.92% increase from Q4 of 2024. However, many areas remain unmetered and greatly suffer from exaggerated billings or lack of electricity.[29] Hence, technology adoption or the lack of risks will widen rather than narrow the gap without targeted investment in alternative energy sources and the broadband sector. This can cause an equity divide between urban and rural populations, especially if investments are not prioritised and channelled for this cause.

4.2 Digital Literacy and Capacity Deficits

For the effective deployment of telemedicine, AI/ML, and EHR systems, doctors and patients are required to possess both technical and basic digital literacy. However, many medical professionals lack the requisite training to operate such platforms, while patients in rural or low-income communities often cannot navigate them.[30] This has resulted in the underutilisation of already existing tools, perpetuating inefficiency. In a 2024 descriptive survey research carried out among all health professionals in Lagos State University Teaching Hospital, results showed that healthcare professionals and actuarial managers had low knowledge of AI and ML's application in healthcare, but agreed on the effectiveness of these technologies in improving healthcare outcomes.[31] From a legal perspective, this gap raises issues of equity and accessibility, as the

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[27] Kafilat Taiwo, 'Is 5.18% the total allocation to the health sector in Nigeria's 2025 Budget' *Dataphyte* (Lagos, 7 April 2025 <https://www.dataphyte.com/topic/health/is-518-the-total-allocation-to-the-health-sector-in-nigerias-2025-budget> accessed 30 September 2025

[28] Emem Udoh, 'Nigeria records 10.92% increase in electricity generation in Q1 2025' *Nairametrics* (Lagos, 4 July 2025) <https://nairametrics.com/2024/07/04/nigeria-records-10-92-increase-in-electricity-generation-in-q1-2025/> accessed 30 September 2025

[29] Emmanuel Addeh, 'Nigerians get over 225,000 Electricity meters in Q2 Amid 5.4m Deficit' ThisDay (Abuja, 30 September, 2025) <https://www.thisdaylive.com/2025/09/30/nigerians-get-over-225000-electricity-meters-in-q2-amid-5-4m-deficit/> accessed 30 September 2025

[30] BA Bolatito, TO Togunwa, 'Barriers to the Adoption of Electronic Health Records in Nigeria Healthcare Systems: Analysing infrastructure, Training and Policy Challenges' (2024) (4) Global Journal of Medical Studies pp.34-41

[31] Ola-Oluwa Samuel Ayomide, Obi Kamsochukwu Ego, 'The Role of Artificial Intelligence and Machine Learning in Healthcare: Implications for Actuarial Models and Predictive Analytics in Lagos State Nigeria' (2024) 11 (15) International Journal of Research and Scientific Innovation

failure to ensure inclusive adoption may breach the constitutional obligation of the State to provide adequate medical facilities for all persons. In addition, many doctors and patients need more skills to successfully operate the up-and-coming adoption of telemedicine and other technologies, making room for the underutilisation of the existing, varying tools.

4.3 Data Protection/Privacy and Medical Liability Concerns

The introduction of digital health platforms inevitably involves collecting, storing, and transmitting sensitive patient data.[32] In a constitutional sense, the breach of such confidentiality infringes the patient's right to dignity under section 34 of the 1999 Constitution, and with international obligations under the African Charter on Human and Peoples' Rights.[33] The Nigerian Data Protection Act 2023 provides a general framework for safeguarding personal data; however, questions remain about sector-specific enforcement in healthcare. Weak cybersecurity measures may make patient records vulnerable to unauthorised access, creating risks of privacy violations. There is often a necessity for cross-border transfer of these sensitive data; without health sector-specific regulations to regulate this, there is a risk and bias, and fairness concerns also present themselves.[34]

In view of liability, it is unclear whether liability for telemedicine malpractice rests with the remote doctor, the host platform, or the local healthcare facility. The use of AI systems raises difficult questions about algorithmic accountability on who bears responsibility if a diagnosis generated by machine learning proves erroneous. Moreover, using AI requires access to large datasets, raising privacy and consent issues under domestic data protection law and international norms such as the GDPR. The Medical and Dental Practitioners Act remain silent on cross-border consultations or AI-driven interventions. This regulatory vacuum may deter investment, reduce trust, and leave patients vulnerable without adequate legal remedies. Nigerian doctors in diaspora providing online consultations may fall outside the jurisdictional reach of the Medical and Dental Council of Nigeria (MDCN), further creating uncertainty about accountability for misdiagnosis or malpractice.

Estonia operates one of the world's most advanced national EHR systems, where all citizens' medical records are securely stored and accessible across hospitals and clinics. The system employs blockchain technology to guarantee data integrity and prevent tampering. Nigeria can learn from this by introducing regulatory standards for interoperability and cybersecurity in EHR deployment, ensuring trust and efficiency. In addition, India provides a model of regulatory clarity. In 2020, it issued the *Telemedicine Practice Guidelines* under the Medical Council of India, explicitly setting out rules on licensure, patient consent, and liability for online consultations.[35] This framework has enabled telemedicine to thrive while protecting patient rights,

[32] Amala Umeike, Emmanuel Ughanze, Justina Okachi, 'Cross-border Data transfer in the healthcare sector: egal considerations and Best practices' <https://strenandblan.com/wp-content/uploads/2024/06/CROSS-BORDER-DATA-TRANSFER-IN-THE-HEALTHCARE-SECTOR.pdf> accessed 30 September 2025

[33] Article 5 and 16 of the African Charter on Human and Peoples' Rights 1981

[34] TK Suvvari, SM Ingawale, 'Artificial Intelligence in Biomedical and Health Care: Hope or Hype?' (2024) 4:25-7 Global Journal of Medical Studies

[35] D Dinakaran, N Manjunatha, CN Kumar, SB Math, 'Telemedicine practice guidelines of India, 2020: Implications and Challenges' (2021) 63 (1) India Journal of Psychiatry pp.97-101 <https://doi.org/10.4103/psychiatry.IndianJPsychiatry_476_20> accessed 30 September 2025

so Nigeria could adapt similar guidelines to give telemedicine a firm legal foundation. Likewise, Rwanda's National eHealth Strategic Plan (2016–2020) successfully integrated telemedicine into rural health centres and built scalable models around integrated EHRs into its human immunodeficiency virus and cancer programmes.[36]

5. Conclusion

Nigeria's doctor–patient ratio presents one of the most pressing challenges to realising the right to health in the country. If left unaddressed, it undermines citizens' right to life and health guaranteed under the law. This article has demonstrated that technology through Telemedicine and artificial intelligence offers a viable pathway for reducing imbalances. Thus, technology bridging the gap is a worthwhile and beneficial investment that will last a lifetime and enable productivity. However, without an enabling legal and institutional framework, these innovations risk being underutilised, poorly regulated, or even harmful, and challenges demand deliberate reforms. Bridging Nigeria's doctor–patient ratio is not simply a policy aspiration but a constitutional necessity and requires a comprehensive digital health law, robust regulatory oversight, strategic partnerships, and sustained investment in human and technological capacity.

In the words of renowned Steve Jobs, 'you cannot mandate productivity; you must provide the tools to help people become their best'. Hence, in leveraging the immense role of technology as a veritable tool, deliberate steps are needed to equip Nigeria's health sector with much-needed technical tools and legal structures. In this stride, doctors are expected to be exposed to a structured work environment and to be better positioned for developmental training. Technology introduction seeks to ensure a robust production of quality doctors and enhanced healthcare facilities management across the local, state and federal levels so that patients can meet the SDG 2030 target of good health and well-being.

6. Recommendations

a. **Legal and Regulatory Reforms:** Nigeria urgently requires a comprehensive legal framework to govern digital health. Existing statutes, including the Medical and Dental Practitioners Act, do not adequately address the peculiarities of telemedicine, artificial intelligence, or electronic health records. Hence, a dedicated Telemedicine and Digital Health Act should be enacted to provide clear rules on licensure, liability, cross-border consultations, standards of care, and safeguards on sensitive patient information to ensure compliance with international standards. In addition, data sharing agreements and policies must be tailored to protect patients and implement strong security measures such as data encryption and secure channels for data transfer to prevent unauthorised access.
b. **Policy Development and Strategic Planning:** Nigeria has taken steps such as the National Policy on Health Workforce Migration (2024). However, a more deliberate policy framework is needed to incorporate technology into healthcare delivery. This should include a National Digital Health Strategy, aligned with the WHO's *Global Strategy on Digital Health 2020–2025*, to set measurable

[36] 'Interoperability of Electronic Health Record Systems in Rwandan Healthcare System', (2024) 18(01) Journal of Health Informatics in Developing Countries <https://jhidc.org/index.php/jhidc/article/view/432> accessed 30 September 2025

targets for Telemedicine, AI adoption, and digital literacy. Strategic incentives such as tax credits or grants could be introduced to encourage more private sector investment in health technology start-ups and infrastructure expansion.

c. **Institutional Strengthening and Public–Private Partnerships:** Regulatory bodies such as the Medical and Dental Council of Nigeria (MDCN), National Health Insurance Authority (NHIA), and the Nigerian Communications Commission (NCC) should be empowered to collaborate in setting measurable standards for digital health. Joint regulatory oversight would provide public awareness, consistency and build trust in emerging platforms, and collaborations with international health technology companies could also facilitate knowledge transfer and innovation. At the same time, public–private partnerships (PPPs) should be encouraged to expand broadband connectivity and supply affordable telemedicine devices, particularly in rural areas.

d. **Capacity Building and Digital Literacy:** The success of technology-driven healthcare depends on the competence of both providers and users. Medical schools should integrate digital health modules into their curricula, training future doctors in telemedicine platforms, AI tools, and data protection laws. Continuing professional development should also be mandated for practising doctors to stay abreast of technological advancements. On the patient's hand, nationwide digital literacy campaigns should be launched to ensure equitable access, particularly in underserved communities and collaboration with the NCC, for national coverage.

Examining the Global Framework for Spectrum Regulation and Management

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Abstract

The relevance of the discourse of global spectrum regulation cannot be overemphasized. This is due to its vitality as a requisite for growth enhancement in the digital economy. The use of spectrum resources natural resources commands a high range of attention considering its trans-continental and national spread. Electromagnetic are boundless waves that demands a concerted effort of control and balance. This paper discussed the meaning of spectrum, its management, international organizations and regulations, and highlights regional and national organizations/regulations. The paper also discussed the key principles of spectrum management, how to achieve Spectrum Management, challenges, Global Best Practices for Effective Spectrum Regulation. The paper made recommendations and concluded that global spectrum regulation is critical for ensuring efficient use of spectrum, promoting competition, and enabling innovation in wireless technologies.

Keywords: Global Spectrum, Telecommunication, Electromagnetics, Regulation.

- **Introduction**

Spectrum generally refers to the full range of electromagnetic frequencies, of which a portion is used for communication by a variety of services and industries.[1] It is the invisible radio frequencies that wireless signals travel over.[2] The frequencies we use for wireless are only a portion of what is called the electromagnetic spectrum.[3] It generally entails the use of airwaves in each country which is overseen by the government or the designated national agency. It is a sovereign asset. The subject matter garner so much relevance in the telecommunications because it serves as the conduit through which wireless communication is made.

The essence of regulating the global spectrum cannot be overemphasized, the global space is already congested, and the recent incursion of advanced technology pose a major disruptor especially in the information system (IS).

According to Dr Hamadoun Touré, Former Secretary-General, and ITU:

> The increasingly congested skies above our heads require careful management and monitoring, on a global basis, with intensive cooperation and discussion to avoid the risk of interference. That is one of the most important parts of ITU'S work, as the sole global agency charged with managing the world's shared radio spectrum and orbital resources.[4]

"Global village" is an accurate appellation that applies to spectrum management. Electromagnetic energy knows no international boundary. Electromagnetic compatibility is a public trust for uses of the spectrum in every country, state, province, city, and village. It is more than incumbent upon a country to ensure that the duties of its telecommunications regulatory authority take into account other countries, their needs, and their responsibilities.[5]

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[1] What is Spectrum.<https://www.gsma.com/connectivity-for-good/spectrum/what-is-spectrum/>Accessed October 5, 2025.

[2] What is Spectrum? A Brief Explainer.<https://www.ctia.org/news/what-is-spectrum-a-brief-explainer>Accessed October 5, 2025.

[3] ibid.

[4] Dr Hamadoun Touré, Former Secretary-General, ITU 2007, 214.

[5] Williams N. Lurther, 'Spectrum Management in the Global Village.' Federal Communications Commission, USA.

In this light, the International Telecommunication Union (ITU), the oldest agency of the United Nations, exists, is responsible for the regulation, standardization, and development of telecommunications worldwide.[6] The union also oversees the international management of the radio frequency spectrum and satellite orbits.[7] It is a concerted efforts between member's states to improve and rationalize the use of telecommunications to all nooks and cranny. It comprises of a forum of 194 Member States.[8]

- **Understanding Spectrum Management**

Spectrum Management is the art and science of managing the use of the radio spectrum in order to minimize interference and ensure radio spectrum is used to its most efficient extent and benefit for the public.[9] It is the process of regulating the use of radio frequencies to ensure efficient use and prevent interference. Spectrum management is a critical technology within virtualization architectures that manages available wireless resources by considering the entire unlicensed Wi-Fi spectrum within a network.[10]

In simple terms, a radio spectrum is a collective term for all electromagnetic wave frequencies that are useful for wireless communication. Radio waves are invisible and undetectable to human sense but lie at the heart of modern communications technology. Radio transmission technology involves electromagnetic waves radiating outwards from one radio equipment to another radio equipment, through the air and travels as a wave of varying frequency, measured in hertz (Hz). Electromagnetic waves, travelling through the air, are transmitted at different frequencies depending on the electrical signal applied to the transmitting equipment.

Radio spectrum is used to carry information wirelessly for a vast number of vital services ranging from television and radio broadcasts, mobile phones and Wi-Fi, to baby monitors, GPS and radar.[11]

However, as the world becomes increasingly dependent on this evolving array of services, the demands being placed on the scarce supply of usable radio waves are rapidly growing. The public appetite for more information, faster communications and higher definition media means that the demand for radio spectrum easily exceeds supply. [12]

At the same time, as radio spectrum becomes more intensively used, the risk of interference between different services grows. This challenge has an important international dimension because radio waves do not respect national borders, so services in one country can interfere with those in neighboring territories.[13]

Spectrum management starts at an international level when governments come together to agree which frequency bands should be allocated to certain services. This minimises national and international

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[6] ibid

[7] ITU-R: Managing the radio-frequency spectrum for the world.<https://www.itu.int/en/mediacentre/backgrounders/Pages/itu-r-managing-the-radio-frequency-spectrum-for-the-world.aspx#:~:text=ITU%2C%20through%20its%20Radiocommunication%20Sector,spectrum%20and%20satellite%20orbit%20resources.>Accessed October 5, 2025.

[8] Membership.<https://www.itu.int/hub/membership/our-members/>Accessed October 5, 2025.

[9] What is Spectrum Management?<https://www.transportation.gov/pnt/what-spectrum-management> Accessed October 5, 2025.

[10] Spectrum Management.<https://www.sciencedirect.com/topics/computer-science/spectrum-management> Accessed October 7, 2025.

[11] Introducing spectrum management, (2017) GSMA, Spectrum Primer Series. 8.

[12] ibid

[13] ibid, 9

interference, helps reduce the price of equipment and, in the mobile industry, enables consumers to roam onto foreign networks.[14]

Spectrum management in the largest sense has a number of elements, and the degree to which a nation adopts these as part of its national infrastructure will vary depending on need.[15] Some of the elements are: legal and regulatory foundation, Spectrum planning and allocation, Spectrum engineering, Regulations and standards, Frequency coordination and notification, Licensing assignment and billing, law enforcement, inspection of installation, Spectrum monitoring.

- **International Organizations**

Radio spectrum is a national resource so every country has sovereign control over how it is used.[16] Like wind and clouds, radio waves cross political boundaries freely. However, there are important benefits to adopting an agreed international approach. By using the same frequency bands and conditions for the same types of service across different countries — an approach called 'harmonisation' — governments can reduce international interference, lower mobile equipment costs and enable roaming.

Since radio waves transcend national borders, international cooperation is essential to avoid interference. Regulators generally avoid interference by coordinating radio emission levels near borders. For example, under the Geneva 2006 agreement (GE06), national regulators across Europe agreed frequency plans to ensure new digital TV services being rolled out across the continent would not interfere with one another.[17]

8. **International Telecommunication Union (ITU**): The ITU is the primary global organization responsible for coordinating spectrum allocation and regulation.[18] It was established in 1865 and is headquartered in Geneva, Switzerland. International spectrum management is overseen by the radio division of the International Telecommunications Union (ITU), a specialist United Nations agency, responsible for information and communication technologies.[19] Every three to four years, telecom regulators from all corners of the globe convene at the ITU's World Radiocommunication Conference (WRC) to discuss and agree changes to the 'Radio Regulations', detailing which services are allocated to each frequency band.
9. **World Radiocommunication Conference (WRC**): The WRC is a treaty-making conference that reviews and revises the ITU's Radio Regulations.[20] The WRC is held every 3-4 years and is attended by representatives from ITU member states. Revisions are made on the basis of an agenda

[14] ibid,9
[15] William (n 5).
[16] Nandakumar Subramaniam, 'Role of Radio in Protecting Natural Resources.' (2012)
[17] RRC - 06 New Digital Terrestial Broadcasting Plan.<https://www.itu.int/itunews/manager/display.asp?lang=en&year=2006&issue=06&ipage=RRC06&ext=html#:~:text=Landmark%20digitization%20framework%20agreed,for%20digital%20broadcasting%20is%20assured.> Accessed October 7, 2025.
[18] ITU-R: Managing the radio-frequency spectrum for the world.<https://www.itu.int/en/mediacentre/backgrounders/Pages/itu-r-managing-the-radio-frequency-spectrum-for-the-world.aspx#:~:text=ITU%2DR%20also%20plays%20a,in%20support%20of%20WRC%20decisions.> Accessed October 7, 2025.
[19] ibid
[20] World Radiocommunication Conferences (WRC).<https://www.itu.int/en/ITU-R/conferences/wrc/Pages/default.aspx> Accessed October 7, 2025.

determined by the ITU Council, which takes into account recommendations made by previous world radiocommunication conferences.[21]

10. **Regional Telecommunication Organizations:** The ITU divides the world into three regions, which each has its own set of frequency allocations as part of the 'Radio Regulations'. This is done in order to manage spectrum and encourage harmonisation across large parts of the world. As such:[22] Accordingly, there are:

Region 1: Europe, the Middle East, Africa, Russia and Mongolia;

Region 2: The Americas including Greenland and some of the Eastern Pacific Islands.

Region 3: Asia-Pacific including most of Oceania.

11. Global Spectrum Regulatory Framework

1. **ITU Radio Regulations:** The ITU's Radio Regulations governs the global use of radio-frequency spectrum and satellite orbits for all radio services, systems and applications, including fixed and mobile broadband, satellite system s, sound and TV broadcasting, radio-navigation, meteorological monitoring and predictions, space research and Earth exploration, amateur radio services and other topics.[23] The ITU Radio Regulations facilitate equitable access to and rational use of the radio-frequency spectrum and geostationary satellite orbits, both globally shared and limited natural resources; support the efficient and effective operation of all radiocommunication services; and, as necessary, facilitate the introduction and regulation of new radiocommunication services and technologies.

The ITU Radio Regulation has always been launched in editions. The 2024 edition marked the significant milestone in the world of technology. Doreen Bogdan-Martin, said:

> As technological progress advances and the demand for spectrum grows, the international treaty continues to evolve to accommodate new radiocommunication services and applications, minimize interference between services, and ensure equitable access to this essential resource.[24]

The treaty serves as the cornerstone of international radio frequency management, ensuring that spectrum allocations keep pace with the rapidly evolving technological landscape and meet the needs of modern communication systems. Treaty provisions also direct how radio equipment and systems must operate to

[21] World Radiocommunication Conference (WRC).<https://www.oas.org/ext/en/main/oas/our-structure/agencies-and-entities/citel/structure/details/artmid/4093/articleid/3829/world-radiocommunication-conference-wrc> Accessed October 9, 2025.

[22] Organizations like the Asia Pacific Telecommunity – which covers the Asia-Pacific region; Arab Spectrum Management Group – which covers the Arab states in the Middle East and North Africa; African Telecom Union – which covers all of the administrations on the African continent; European Conference of Postal and Telecommunications Administrations (CEPT) – comprising 48 member administrations including all of the EU countries, Russia and Turkey; Inter-American Telecommunications Commission (CITEL) – which covers the Americas and the Caribbean; Regional Commonwealth in the Field of Communications (RCC) – which covers the Russian Commonwealth of Independent States, as well as the Baltic states which have observer status.

[23] ITU publishes updated global treaty to optimize radio spectrum management and advance technological innovation (Geneva, 28 August 2024).<https://www.itu.int/en/mediacentre/Pages/PR-2024-07-04-ITU-Radio-Regulations.aspx.>Accessed 25th November, 2024

[24] ibid

ensure efficient and effective coexistence among various services worldwide and anywhere in space, optimizing the usage of today's increasingly crowded airwaves.

The 2024 Radio Regulations identifies new spectrum resources to support technological innovation, deepen global connectivity, increase access to and equitable use of space-based radio resources, and enhance safety at sea, in the air, and on land.

According to Mario Maniewicz, Director of the ITU Radiocommunication Bureau,

> The updated Radio Regulations is the result of hard-won agreements reached at WRC-23 and a testament to the unwavering spirit of cooperation and compromise among all of our members to negotiate timely changes to the international treaty, "The updated treaty provides a framework for national spectrum management that aligns with international standards and guarantees the stable, predictable regulatory environment that is essential for the development of innovative radiocommunication services for all.[25]

Global regulation of the radio spectrum began with the signing of the first International Radio Telegraph Convention in Berlin on 3 November 1906 after 30 states came together and agreed on key maritime communications and safety provisions and established "SOS" as a globally recognized distress signal. Since then, the Radio Regulations have evolved into a four-volume treaty of more than 2,000 pages. The treaty establishes the rights and obligations of ITU's 193 member states and now covers more than 40 different radiocommunication services, spanning frequencies from 8.3 kilohertz (kHz) to 3000 gigahertz (GHz). The international coordination mechanisms enshrined in the ITU-managed treaty promote its objective to ensure the availability of the frequencies provided for distress and safety communications and help prevent or resolve cases of harmful interference between the radio services of different administrations.

2. **WRC Decisions**: The WRC makes decisions on global spectrum allocation and regulation, which are incorporated into the ITU Radio Regulations. WRC decisions are binding on ITU member states. World radiocommunication conferences (WRC) are held every three to four years. It is the job of WRC to review, and, if necessary, revise the Radio Regulations, the international treaty governing the use of the radio-frequency spectrum and the geostationary-satellite and non-geostationary-satellite orbits. Revisions are made on the basis of an agenda determined by the ITU Council, which takes into account recommendations made by previous world radiocommunication conferences.[26] The general scope of the agenda of world radiocommunication conferences is established four to six years in advance, with the final agenda set by the ITU Council two years before the conference, with the concurrence of a majority of Member States. Under the terms of the ITU Constitution, a WRC can:[27]revise the Radio Regulations and any associated Frequency assignment and allotment Plans, address any radiocommunication matter of worldwide character, instruct the Radio Regulations Board and the Radiocommunication Bureau, and review their activities,

[25] ibid
[26] See generally, A beginner guide to the World Radiocommunication Conference (2017) GSMA. World Radiocommunication Conferences (WRC).< https://www.itu.int/en/ITUR/conferences/wrc/Pages/default.aspx.> accessed 25th November, 2024
[27] ibid

determine Questions for study by the Radiocommunication Assembly and its Study Groups in preparation for future Radiocommunication Conferences.

3. Regional and National Regulations: Regional and national regulatory bodies implement the global framework, often with additional specific regulations. Regional and national regulations may vary significantly, reflecting local market conditions and policy priorities.

Key Principles

1. Spectrum Allocation: Spectrum allocation refers to the process of selecting and assigning the best available frequency channels to the users of cognitive radio (CR).[28] This selection is based on various factors such as occupancy, noise, interference, bit error rate, and outage probability, and it aims to meet the quality of service (QoS) requirements of the application.[29] It primarily involves the process of assigning specific frequency bands to different services, such as mobile, broadcasting, or satellite communications. Spectrum allocation is typically done through a combination of international agreements, national regulations, and industry standards.[30] As a limited natural resource, national administrations manage and assign the use of spectrum within their countries.[31] In order to support the wide variety of different telecommunications services, as well as to mitigate possible unwanted interference, regulators issue national tables of frequency allocations and establish licensing frameworks that govern how spectrum will be awarded in the country.[32]

(2) Spectrum Licensing: is the process of granting licenses to use specific frequency bands, often through auctions or beauty contests. Spectrum licensing is used to ensure that spectrum is used efficiently and to prevent interference between different services. There are typical three types of spectrum licensing: class, apparatus and exclusive spectrum licensing.[33]

(3) Spectrum Sharing: Spectrum sharing can be described as the capability of CRs which can accommodate multiple secondary users, to share the same detected spectrum.[34] Since the multiple secondary users can have access to the same spectrum holes at the same time and location, this leads to congestion and collision of multiple secondary users and may cause harmful interference.[35] It is the logical partitioning of optical spectrum on a submarine cable for different end-users, such

[28] Spectrum Allocation.<https://www.sciencedirect.com/topics/computer-science/spectrum-allocation> Accessed October 10, 2025.
[29] ibid
[30] It is the process of designating specific frequency bands of the electromagnetic spectrum for particular uses, ensuring that different services, such as television and mobile communications, can operate without interference. Key Term - Spectrum Allocation <https://fiveable.me/key-terms/television-studies/spectrum-allocation>Accessed October 10, 2025.
[31] Overview of national spectrum management.<https://digitalregulation.org/overview-of-national-spectrum-licensing-2/>Accessed October 10, 2025.
[32] ibid
[33] Hans Barker, Spectrum and licensing in the mobile telecommunications markets, ITU Regional Workshop on "Competition in Telecommunications Market" Khartoum-Sudan, 24-26 May 2016.
[34] Muhammad Rashid Ramzan, Alagan Anpalagan, Multi-objective optimization for spectrum sharing in cognitive radio networks: A review. 2017.<https://www.sciencedirect.com/topics/computer-science/spectrum-sharing>Accessed October 10, 2025.
[35] ibid

that each end-user has its own 'virtual fiber pair.'[36] The practice of allowing multiple services or operators to share the same frequency band, often using techniques like dynamic spectrum access. Spectrum sharing is becoming increasingly important as the demand for wireless services continues to grow.

(4) **Interference Management:** Interference management is one of the critical research challenges in the successful implementation and adoption of C-V2X technology.[37] Interference can arise from various sources, including other wireless communication systems, environmental factors, and user behavior.[38] The interference can significantly impact the performance of the communication system and lead to degraded signal quality, reduced coverage, and compromised safety.[39] In essence, the central role of spectrum management is interference management. It involves the design and operation of RF equipment, including communications and emitting noncommunications devices, are predicated on preventing and/or mitigating electromagnetic interference. It is the process of minimizing interference between different services or operators using the same or adjacent frequency bands. Interference management is critical to ensuring that wireless services operate reliably and efficiently.

How to Achieve Spectrum Management?

In the spectrum management world, the rational, equitable, efficient and economical use of the radio frequency spectrum and satellite orbits is achieved by several means. One of such means is the holding of world and regional radiocommunication conferences to develop and adopt treaties covering the use of the spectrum. Also, the establishment of global radiocommunication recommendations on the technical characteristics and operational procedures for radio services and systems, the coordination of efforts to eliminate harmful interference between radio stations and networks, the maintenance of a master international frequency register which offers protection either through a Plan, or on an agreed basis for those appropriately registered, and the provision of tools, information, and seminars to assist national radio frequency spectrum management. These are veritable means of achieving radio spectrum management.

Challenges

The challenges of global spectrum management spans across considerable factors including:

a. **Spectrum Demand and Scarcity:** The proliferation of mobile technologies, IoTs sensors, and industrial applications has made the available spectrum to be congested.[40] For instance, 5G spectrum demand requires a wide variety of bands to function. There is also the issue of overcrowded bands.[41]

[36] What is Spectrum Sharing.<https://www.ciena.com/insights/what-is/What-Is-Spectrum-Sharing.html>Accessed October 11, 2025.
[37] Interference Management.<https://www.sciencedirect.com/topics/engineering/interference-management> Accessed October 11, 2025.
[38] ibid
[39] ibid
[40] Aqsa Sayed, Evolution of Spectrum Management in Telecommunications: Challenges and Future Directions, International Journal on Science and Technology (IJSAT) Volume 13, Issue 2, April-June 2022. 4.
[41] ibid 5

The increasing demand for wireless services and devices is leading to spectrum scarcity, making efficient use of spectrum crucial.

b. **Spectrum Fragmentation:** The division of spectrum to smaller segment makes it difficult for operators to deploy broader services with large frequency bands, for instance 5G networks requires wide bandwidth for high-speed data transmission.[42]
c. **Lack of Global harmonisation:** regulatory complexities and inconsistencies in the management of spectrum is a challenge. Organisations like the ITU agitate for global harmonisation, but same cannot be made possible without the cooperation of nations that have the final decision on allocation and use. For instance, the deployment of 5G networks differs across regions of the world.[43]
d. **Spectrum Sharing and Interference Management:** Spectrum sharing and interference management will become increasingly important as more services and operators share the same frequency bands. Interference Management and sharing: the massive adoption of services and networks to same frequency bands has really affected spectrum management. It reduces speed, degrade quality of service (QoS), and impact network reliability.
e. **Privacy concern and security:** The increase in spectrum has impacted privacy concerns. The proliferation of networks and services, through 5G, IoTs, and other new technologies, has affected privacy and security. Unauthorized access and cyberattacks have leveraged these system posing a critical challenge to spectrum management.

Global Best Practices for Effective Spectrum Regulation

1. **Technology Neutrality:** Regulators should adopt technology-neutral regulations that do not favor specific technologies or services.[44] Technology-neutral spectrum licensing (also referred to as technology neutrality) is crucial to allow mobile operators to reform spectrum used for legacy networks (2G and 3G) for 4G and 5G services at a pace driven by market demand.[45]
2. **Flexible Spectrum Allocation**: Regulators should allocate spectrum in a flexible manner that allows for efficient use and minimizes waste.
3. **Spectrum Sharing and Interference Management**: Regulators should promote spectrum sharing and interference management to maximize the efficient use of spectrum.
4. **Transparency and Stakeholder Engagement:** Regulators should ensure transparency and stakeholder engagement in the regulatory process to ensure that regulations reflect the needs of all stakeholders.

[42] ibid 5
[43] For instance, While the 3.5 GHz band is widely used for 5G in Europe and parts of Asia, other regions like the U.S. have allocated C-band (3.7-4.2 GHz) for 5G, leading to challenges for operators in achieving spectrum harmonization.

[44] Rajab ALI, Technology Neutrality, Electronica, vol. 14 n°2, 2022.<https://www.lex-electronica.org/files/sites/103/14-2_ali.pdf> Accessed October 12, 2025.
[45] Technology-Neutral Spectrum and Legacy Network Sunsets.<https://www.gsma.com/connectivity-for-good/spectrum/gsma_resources/technology-neutral-spectrum-legacy-network-sunsets/> Accessed October 12, 2025.

Conclusion and Recommendation

Global Spectrum Regulation is critical for ensuring efficient use of spectrum, promoting competition, and enabling innovation in wireless technologies. The ITU, WRC, and regional and national regulatory bodies play important roles in shaping the global spectrum regulation framework. Best practices for effective spectrum regulation include technology neutrality, flexible spectrum allocation, spectrum sharing and interference management, and transparency and stakeholder engagement.

To strengthen global spectrum governance, regional bodies should align more closely with ITU and WRC frameworks, promote technology-neutral policies, adopt flexible spectrum allocation, and encourage effective spectrum sharing models such as those implemented in the EU, US, and Japan.

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IMPORTANCE OF CORPORATE GOVERNANCE IN IMPROVING GLOBAL ECONOMY

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Abstract

Whenever the issue of "improving global economy" is discussed, the relevance of trade, investments and International Corporation are brought to the fore front of the list. Though rarely talked about in this light, corporate governance is one of the very important factors that that shapes the global economy. Although, this paper expatiates on the often shared view of how corporate governance improve the output of the corporation and the economy of the home country, it uses the often shared view as a stair to climb the height where corporate governance is seen from an international spectrum. It doesn't only dwell on corporate governance as an aspect of economics but also breams a very bright light on the interception between laws and corporate governance. This paper treats the importance of corporate governance to the corporation and to the home nation under one head because in the opinion of the writer, the roles corporate governance play in these two entities are intertwined in most cases as will be properly explained.

Keywords: *Corporate Governance, Law, Corporation and Global Economy*

Introduction

Saying that a nation's economy is dependent on how strong the businesses within it are is only restating the obvious. Hence, proper caution must be taken in order to make sure that corporate entities thrive. Recently, corporate governance is increasingly receiving attention from the government and other international organisations as the lapse in corporate governance of big corporation's in recent years has affected the economy of their nations and in certain cases even led to the enactment of new laws to prevent their reoccurrence. The importance of corporate governance to a company's home nation's economy and to the world's in extension cannot be over emphasised. It is pertinent to mention that the importance of corporate governance is first seen in the company before its effect spreads to the country.

Definition

Patrick Joseph Barrett, Auditor General of Australia (1995-2005) stated:

"Corporate governance is largely about organisational management and performance. Simply put, cooperate governance about how an organisation is managed, its cooperate and other structures, its culture, its policies and ways in which it deals with its various stakeholders it is concerned with structures and processes for decision making and with control and behaviour that supports effective accountability for performance outcome/result"[2]

Cadbury committee 1992 in The Report of The Committee on 'Financial Aspect of Cooperate Governance' called it

"The system by which companies are directed and controlled"[3]

From the above, it can be deduced that corporate governance is basically the structure through which companies are managed and controlled to produce desired results.

Interception between Law and Corporate Governance

Though bulk of cooperate governance is in respect to the agreements and of the shareholders and board of directors, there are laws in every country regulating cooperate governance. In Nigeria For example, we have the Companies and Allied Matters Act 2020 (CAMA) and Nigerian Code of Corporate Governance (2018) and so on. In Australia, we have Corporations Act 2001, In the United States of America, we have Dodd – Franklin Act 2010. The shareholders and board of Directors are not allowed to enter into any agreement or make any decision contrary to the laws regulating Corporate Governance in their countries.[4] In The United States of America, Sarbanes-Oxley Act of 2002 (SOX) imposed more stringent record keeping requirements on companies, along with criminal penalties for violating them. Practically, one cannot speak about cooperate governance without touching law. In Nigeria, there are specific laws regulating the corporate governance

[2] F. Ajogwu *Cooperate Governance in Nigeria*: *Law and Practice* (2nd Edition, Malthouse Press, Nigeria)
[3] https://www.ecgi.global/sites/default/files/codes/documents/cadbury.pdf accessed on October 17, 2025

[4] James Chen [2025)/ Investopedia:https://www.investopedia.com/terms/f/foreign-portfolio-investment-fpi.asp?utm_source=chatgpt.com / accessed October 17 2025

different types of companies, for example, the Code of Corporate Governance for Public Companies which is a code regulating the cooperate governance of all public companies who raise capital through the stock market. It was put into law by the Security and Exchange Commission in 2011. In 2023, the Central Bank of Nigeria also issued the Corporate Governance Guidelines for Commercial, Merchant, Non-interest, Payment Services Banks and Financial Holding Companies in Nigeria.

Importance of Cooperate Governance to the Cooperation and the Host Country

1. Increases Foreign Direct investment (FDI) and Foreign Portfolio Investment (FPI): For the purpose of clarity, FPI consists of securities and other financial assets held by investors outside of their domestic market. It does not provide the investor with direct ownership of a company's assets and is relatively liquid, depending on the volatility of the market (definitions of FPI). The International Money Fund (IMF) in its publication titled **Foreign Direct Investment, Appendix IV** stated that "DI arises when a unit resident in one economy makes an investment that gives control or a significant degree of influence over the management of a company that is resident in another economy". This concept is operationalized where a direct investor owns equity that entitles it to 10 percent or more of the voting power (if it is incorporated, or the equivalent for an unincorporated company) in the direct investment enterprise (DIENT).[5] Investors are more willing to commit capital to companies in countries with transparent governance systems FDI and FPI help to encourage cross boarders' economic cooperation. Fuels industrial growth, infrastructure development, and overall economic expansion. Though this paper isn't trying to sweep the negative effects of foreign direct investment on a nation's economy under the carpet, this writer posits that the advantage of FDI on the economy of the host country,

2. Expansion of The Capital Market: Strong cooperate governance enables company growth which in turn leads to the development of new financial instruments such as derivations and securities which deepen the financial market.[6] The development of new financial instrument deepens the financial market by giving investors new opportunities to invest.

3. **It helps build investor's confidence:** A company with sound corporate governance structure will attract more investors because investors will prefer to invest in a company that is well managed with a good record of cooperate governance and a transparent record of how they have been handling other people's investment. A company with good cooperate governance structure will have a strong risk management framework[7] and this also boosts the investors' confidence as he will believe that his money is in safe hands.

4. Corporate Governance Contributes to Macroeconomic Stability: Sound corporate governance strengthens economic stability by promoting transparency, accountability, and ethical practices, attracting investment and fostering growth. It ensures efficient resource allocation, enhancing productivity and overall economic performance. Strong governance boosts financial market credibility, encouraging participation and capital market development. By reducing corruption and mismanagement, it creates a more

[5] https://www.imf.org/external/pubs/ft/bop/2014/pdf/BPM6_A4F.pdf?utm_source=chatgpt.com >accessed October 17 2025
[6] Ibid
[7] Ibid

trustworthy business environment. Well-governed firms generate employment and wealth, positively impacting national income. Additionally, robust governance frameworks enhance crisis resilience, as businesses adopt effective risk management strategies, ensuring long-term economic stability and sustainability.

5. It Facilitates Access to Global Markets: Companies with robust corporate governance structures, characterised by transparency, accountability, and compliance with international standards (such as transparency, auditing, and ESG reporting), are better positioned to access global financial markets. This, in turn, enhances global trade and capital flows, ultimately boosting worldwide output. By fostering investor confidence and reducing risk, good governance enables companies to attract foreign capital, participate in global trade, and seamlessly integrate into the international economy.

6. It ensures that the Continuity of a company's Lifespan: Corporate governance is key to ensuring a company's sustainability because no matter how big a company is, it will wind up in the twinkle of an eye if poorly managed a good example is Enron Corporation who had a high stake in America's financial market, but wound up due to lack of transparency in its cooperate governance operations. [8]

7. Corporate governance improves a company's productivity: It does this by ensuring that leadership is accountable and decision-making processes are transparent, which reduces inefficiencies and misuse of resources. It aligns the incentives of executives, managers, and employees, promoting performance-based behaviour and innovation. Rigorous internal controls and independent oversight help detect and prevent fraud or waste early, saving costs and time. When stakeholders trust the organization's reporting and governance, access to finance becomes easier, enabling investment in technology, skills, and expansion. Overall, good governance fosters a culture of discipline and continuous improvement that boosts output and competitiveness.[9]

Importance of Good Corporate Governance in Improving the Global Economy

The term global economy refers to the interconnected economic activities and systems of all countries worldwide. It encompasses the production, distribution, and consumption of goods and services across international borders, integrating national economies into a single, interdependent system[10]

[8] https://www.investopedia.com/terms/e/enron.asp#:~:text=The%20Enron%20bankruptcy%2C%20at%20$63.4%20billion%20in,executives%20at%20the%20company%20concoct (accessed on the 17th of October, 2025)

[9] T Gloria & T Garry/ 'Corporate Governance, External Market Discipline and Firm Productivity' / [2011] (Journal of Corporate Finance,) https://www.sciencedirect.com/science/article/abs/pii/S0929119910001094 >accessed October 17 2025

[10] 'What is The Global Economy? A Guide 2025' Express Economy April 17, 2025 https://expresseconomics.com/what-is-the-global-economy/#:~:text=The%20global%20economy%20refers%20to,and%20services%20across%20international%20borders >accessed October 17 2025

i. **Encourages Global Economic Stability: Strong governance frameworks reduce financial scandals, fraud, and corporate collapses. This stability fosters sustainable economic growth and avoids disruptions that can harm global trade and output. A good example of such disruption is Volkswagen emissions scandal of 2015 which was reported by the Schmalenbach Journal of Business Research (2022) to not just drastically reduced their share value and negative effects in the equity value of its competitors, but have caused losses to car manufacturers worldwide with European firms appearing to drive global losses.**[11]

ii. **It increases Global Capital Flow:** As previously enunciated, Strong corporate governance encourage FDI and FPI and this in turn improve the global capital flow. Capital flows refer to the movement of money across international borders for investment purposes, encompassing both inflows and outflows of funds. These flows play a role in global economic integration, facilitating investment, trade, and financial intermediation. (What are Capital Flows?). It increases when nations attract Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI). FDI brings long-term capital, technology, and job creation through business ownership, while FPI provides short-term, flexible funds through stock and bond purchases. Both forms of investment enlarge global financial integration and improve resource allocation. Together, they enhance economic growth, market liquidity, and cross-border development worldwide.

iii. **Ensures Efficient Resource Allocation:** As earlier stated, good corporate governance ensures the sustainability and productivity of a venture. Transparent decision-making and sound management within corporate governance structures across the world help channel global financial, human, technological, and natural resources toward productive and sustainable ventures.[12] Such ventures neither waste resources nor divert them into individual pockets but instead promote continuous improvement and boost global output.

iv. **Drives Innovation and Competitiveness:** By protecting encouraging cross boarder trades and foreign investment, innovation spreads and are exchanged across boarders and these innovations from various great minds lead to new technologies, better productivity, and global economic progress. On a global scale, it ensures

[11] Barth, F., Eckert, C., Gatzert, N. Et al. 'Spillover Effects from the Volkswagen Emissions Scandal: An Analysis of Stock and Corporate Bond Markets'. Schmalenbach Journal of Business Research (2022) 74:37–76 https://doi.org/10.1007/s41471-021-00121-9 > accessed October 17 2025

[12] T Gloria & T Garry, 'Corporate Governance, External Market Discipline and Firm Productivity' (2011) Volume 17 / Issue 3 / Journal on Cooperate Finance/ https://doi.org/10.1016/j.jcorpfin.2010.12.004 > accessed October 17 2025

Conclusion

In conclusion, the importance of good corporate governance is wide and overreaching as it spans across the cooperation itself, the home country and the global economy. It is relevant because notable amount its wide range of relevance, it encourages Global Economic Stability, increases Global Capital Flow, Ensures Efficient Resource Allocation and Drives Innovation and Competitiveness

Recommendations

This article recommends as follows:

Firstly, the nations of the world who are yet to enacts laws forming a good legal framework for cooperate governance should enact good laws in line with International Best practices

Secondly, nations should enforce their corperate governance laws and put structures and associations in place to serve as watch dogs to erring cooperation.

Finally, better legal and technological structures should be put in place to protect those involved in whistle blowing as it is one of the most effective ways to expose corperate governance scandals.

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Barth, F., Eckert, C., Gatzert, N. Et al. 'Spillover Effects from the Volkswagen Emissions Scandal: An Analysis of Stock and Corporate Bond Markets'. Schmalenbach Journal of Business Research (2022) 74:37–76 https://doi.org/10.1007/s41471-021-00121-9 > accessed October 17 2025

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ANALYZING THE CHALLENGES IN ERADICATING CHILD MARRIAGES IN NIGERIA: THE GAP BETWEEN LEGISLATION AND ENFORCEMENT

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ABSTRACT

In Nigeria, an estimated average of 44% of girls are married before their 18th birthday, placing the country among the highest globally. Nigeria is ranked eleventh in the world with the highest prevalence of child marriage.[2] This occurs despite the existence of laws prohibiting child marriage, creating a stark paradox. The legislation intended to protect children is unenforced, rendering the laws mere words on paper.

This paper focuses on the harsh reality of the widespread practice of child marriage in Nigeria, highlighting how the failure to enforce existing laws undermines the continuous efforts to eradicate the practice and protect the vulnerable. It examines the concept of early child marriage and the consequences of the gap between existing legislation and its effective enforcement. It further recommends steps that can be taken by the government to bridge this gap, as well as the need for comprehensive strategies.

1.0 Introduction

Child marriage is a custom all over the world where children are given into marriage, before they attain puberty or the age to be married as defined by the law.[3] Child marriage is defined as the formal or informal union between a child under the age of 18 and an adult or another child.[4] It is a marriage carried out before the child is physically, physiologically, and psychologically ready to shoulder the responsibilities and realities of marriage and parenting.

In Nigeria, the number of child marriage cases prevalent in most cultures, is when a family marries off their daughter by the age of 15 or earlier, with several others married off by the time they attain the age of 18. It is not uncommon to find girls of 7 -14 years already married off, with the girls sent to live with their husbands.

Walisa Tasi'u Umar was a 14-year-old girl child married off by her parents to a 35-year-old man in Gezawa, outside Kano, in April 2014. Seventeen days into the marriage, Walisa was accused of murdering her husband and three of his friends by food poisoning. She later admitted to it, stating that she did not love the man and was forced into marriage with him. She opened up to her lawyer, informing the latter, that she was tied to the bed and raped by her husband.[5] Another case is that of Ahmed Sani Yerima, a former Senator representing Zamfara West at the Nigerian Senate, who made the front page in 2010 when he married a 13-

[2] United Nations, 2018.
[3] Buzome Chukwemeke and others, 'Early Child Marriage in Nigeria, Causes, Effects and Remedies' [2018] 4(1) Social Sciences Research <journal.aphriapub.com> accessed 28 April 2025.
[4] United Nations Children's Fund, 'Child Marriage' (*UNICEF*, 19 December 2022) <https://www.unicef.org/protection/child-marriage> accessed 17 May 2025.
[5] Joe Clarke, 'Child Bride Freed by Nigerian Authorities Looks to New Beginnings' *(The Guardian, 11th June, 2015)* https://www.theguardian.com/global-development-professionals-network/2015/jun/11/child-bride-threatened-with-death-freed-Nigeria accessed 28 April 2025.

year-old Egyptian girl.[6] These cases, although disheartening, prove that young children are being exploited and forced into unhealthy marital situations.

Child marriage and its effect on a child and society cannot be ignored. It often results in unwanted and/or child pregnancy, with increased risk of maternal mortality and serious illness. It increases the propensity of Gender Based Violence and Intimate-Partner Violence, just like in Walisu's case. Also, it results in reduced access to education and basic economic opportunities. Child marriage puts an end to the childhood and possibly limits the adulthood experience of a child.

It now begs the question as to why this practice has prevailed despite the fact that laws exist condemning it. The high incidence of child marriage in Nigeria is alarming, regardless of Nigeria's human rights obligations. Why does a significant gap persist between the legislation aimed at eradicating child marriage and its effective enforcement in Nigeria?

2.0 Legal Framework Against Child Marriage in Nigeria

The major legislation in Nigeria that protects a child against child marriage is the Child Rights Act, 2003. The Act is a domestic manifestation of Nigeria's ratification of the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (African Children's Charter).[7]

Section 277 of the Child Rights Act, 2003 defines a child as any person under the age of 18.[8] The Act is designed to protect children's rights in line with the United Nations Convention on the Rights of a Child, 1989.

Section 21 of the Child Rights Act, 2003, prohibits child marriage. It provides that, '*No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void of no effect whatsoever*'.

For the avoidance of doubt, Section 22 of the Act[9] further cements the provision prohibiting child marriage. It maintains that, '*No parent, guardian or any other person shall betroth a child to any person*'. A contravention of either of the above sections amounts to a fine of **N**500, 000 (Five Hundred Thousand Naira) or imprisonment for a term of five years or both such fine and imprisonment.[10]

The Child Rights Act is the most complete legislation that deals with the rights of a child in Nigeria, as it covers every situation where a child may be subjected to abuse or exploitation. In clear and unmistakable

[6] Chidinma Ewelike 'Child Marriage in Nigeria' (2016). <https://www.academia.edu/31011447/Child_Marriage_in_Nigeria_by_Chidinma_Kosa_Ewelike?email_work_card=view-paper>, accessed 28 April 2025.
[7] Christopher Okafor and Ifidon Oyakhiromen, 'Nigeria and Child Marriage: Legal Issues, Complications, Implications, Prospects and Solutions' (2014) 29 Journal of Law, Policy and Globalization 120 <https://core.ac.uk/download/pdf/234649997.pdf> accessed 28 April 2025.
[8] National Human Rights Commission, 'Child Rights' (*National Human Rights Commission*) <https://www.nigeriarights.gov.ng/focus-areas/child-rights.html> accessed 28 April 2025.
[9] Child Rights Act, 2003.
[10] Section 23, Child Rights Act, 2003.

terms, the Act prohibits and criminalizes child marriage in Nigeria. Although, the law has not been effective in arresting the high incidence of child marriage.

The Act, while possessing the potential to be effective, has unfortunately been unable to meet its essence, because it is up to the States to domesticate same, else it becomes otiose and nugatory. A total of 24 out of 36 states have domesticated the Act, thus hindering its widespread impact.

The Constitution of the Federal Republic of Nigeria, 1999 (as amended), despite being the grund norm and the fons et origo, does not explicitly prevent child marriage. Having a corollary view of its letters leads to the conclusion that child marriage is unconstitutional. For instance, Section 29(4)(a) of the Constitution[11] provides that *"full age' means the age of eighteen years and above*', and Section 29(4)(b)[12] on the other hand, provides that, '*any woman who is married shall be considered to be of full age.*'

Another provision of the Constitution that relates to child marriage is Item 61, Part 1 of the Second Schedule to the Constitution,[13] in the exclusive legislative list of the federal government. This item is 'The formation, annulment and dissolution of marriages other than marriages under Islamic law and Customary law, including matrimonial causes relating thereto.' This provision takes marriages under Islamic law and customary law out of legislative competence. In other words, though the whole country is bound by Federal law, in the strict sense, the laws of the National Assembly have no effect on the formation, amendment, and dissolution of marriages under Islamic law and customary law including matrimonial causes relating thereto.

Therefore, in relation to child marriage,[14] Part 1, Item 61 of the Constitution renders the Child's Rights Act powerless, as the 1999 Constitution serves as the supreme law of the land in Nigeria, overriding all other legislations, as stipulated in Section 1(3) of the Constitution.

3.0 The Gap between Legislation and Enforcement

Despite the fact that child marriage is prohibited by various legislations, like the Child's Right Act 2003, the socio-cultural practice is an evil which shamefully continues to stare us in the face.

Various challenges have arisen when considering the enforcement of legislation on child marriage or the lack thereof. The gap between legislation and enforcement is one that has been created by the law itself.

[11] The Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[12] Ibid, Section Section 29(4)(a).
[13] Ibid
[14] Under the Islamic and Customary law jurisprudence.

The Child Rights Act stipulates that the best interest of the child is to be of 'primary consideration' in all actions concerning him/her.[15] Section 29(4) of the Constitution, in tandem with the Child Rights Act, is considered a setback as it recognizes a woman who is married to be of full age.

In other areas of the law, the minor is not accorded such capacity. He/she has no capacity to contract. He/she cannot sue or be sued. She cannot vote in the general elections nor obtain a driving license. It is quite ridiculous that the same person with such legal disabilities is automatically endowed with marital maturity under the Constitution despite her age.

Also, Part 1 Item 61 of the Second schedule to the Constitution takes marriages under Islamic and Customary law out of legislative competence. Nigeria operates a tripartite legal system with civil, customary, and Islamic law operating simultaneously. In relation to marriage, the federal government has no control over customary and Islamic marriages but only marriages conducted civilly. The majority of child marriages are under Customary and Islamic law. Hence, the Federal government cannot interfere with such marriages as a result of the provision in Part 1, Item 61 of the Constitution. This means that this provision in the Constitution can be used as a defence against child marriage and the violation of Section 21 of the Child Rights Act, 2003. An instance where it was used as a defence and was successful is the Ahmed Yerima case.[16]

This provision weakens and fails to give effect to the Child Rights Act to protect children against this abomination. It is a dangerous clause that serves as a loophole and provides constitutional backing to those who are parties to child marriage and justify the practice.

Another major challenge is the Child Rights Act and its different levels of acceptance. When the law was passed in 2003, it was not automatically enacted into the law of every state. The Houses of Assembly of each State have to pass the Bill into their State laws for it to become enforceable. As of 2016, the Child Rights Act was codified into law in 24 of Nigeria's 36 States, with Enugu being the most recent to enact the law in December 2016.[17] This means that subsequently, if child marriage is practiced, in States that have not adopted the Act, it is not an offence. The fact that the Child Rights Act is not enforced in all Nigerian states makes eradicating child marriages extremely difficult.

4.0 Recommendations

There are various steps the government can take to enforce the legislation prohibiting child marriage.

The first is the modification of Part 1, Item of the Second Schedule to the Constitution to involve the Federal government in 'formation, annulment, and dissolution of marriages, including customary and Islamic marriages.

[15] Hon. Justice Zaynab Bashir, 'An Evaluation of the Impact of the Child Rights Act in Regulating the Rights of a Child in Nigeria' (International Association of Women Judges, 15 February, 2023) <https://www.iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4600 >, accessed 28 April 2025.
[16] YouTube '*Nigerian senator defends teen marriage'* <http://www.youtube.com/watch?v= rQJ8Rbgiox4> , accessed 28 April 2025.
[17] National Human Rights Commission (n 7).

The second is for the age of 18 to be promulgated as the marriageable age under the Constitution. The Constitution is the Supreme law of the land and should render child marriages void.

Additionally, legislation such as the Marriage Act, which is silent on the permissible age for marriage, needs to be modified to include the minimum age of 18. The Marriage Act under Section 3(1) merely provides that a marriage will be void if 'either of the parties is not of marriageable age.'

Lastly, the Child Rights Act should be enforced in every state. The National Child Rights Implementation Committee reported in 2010 that the capacity for monitoring and sufficiently implementing is low because it has not been adopted by all states.[18] The enforcement of the Act in every state would completely change the trajectory of child marriages.

5.0 Conclusion

Child marriage is a form of violence and a violation of children's rights, and in many ethnic groups, children are still getting married. It is not sufficient for the government to recognize this evil and create laws. These laws have to be enforced for child marriage to be completely eradicated. Child marriage cannot continue to be justified by the law.

The violations of the rights of children not only affect them but it affects society as a whole. It affects their health and life in general. It is a threat to reproductive health and a deterrent to their education and the economy. It redefines childhood for a child. This is why the government must insist on enforcing the legislation against child marriage.

[18] United Nations, "Written replies by the Government of Nigeria to the list of issues (CRC/C/NGA/Q/3-4) related to the consideration of the third periodic report of Nigeria (CRC/C/NGA/3-4)" (May 28, 2010). Convention on the Rights of the Child: 2–5.

ADUNNI ADEWALE V POLANCE MEDIA LIMITED & ANOR. (2025): THE CONSTITUTIONALISATION OF DIGITAL PRIVACY AND THE EMERGENCE OF THE RIGHT TO BE FORGOTTEN IN NIGERIAN JURISPRUDENCE

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ABSTRACT

The paper critically examines the landmark Nigerian High Court decision in Adunni Adewale v Polance Media Limited & Anor. (2025), which established a crucial domestic precedent for the protection of digital privacy and the emergence of the Right to be Forgotten (RTBF). As traditional torts like defamation prove inadequate for an era of perpetual digital memory and data monetisation, the Court adopted a rights-based approach grounded in the Constitution and the Nigerian Data Protection Act (NDPA) 2023. The central question was whether a digital publisher's use of the applicant's name and photograph in a false and prejudicial context, primarily for traffic generation and advertising revenue, breached her right to privacy and violated the NDPA's principles of fairness, lawfulness, transparency, and accuracy. The Court answered affirmatively, holding that the publication constituted a "false light" invasion of privacy, awarding ₦20,000,000 in damages, and ordering the deletion or expungement of the content. This paper examines the judgment's progressive implications alongside its structural tensions. It interrogates the Court's dismissal of the Respondents' objection concerning the failure to first lodge a complaint with the Nigeria Data Protection Commission (NDPC), a decision that, while affirming constitutional access, risks undermining the NDPA's regulatory coherence. It further questions whether the reliance on NDPA standards of "inaccuracy" and "misleading" processing lowered the evidential threshold required in defamation, potentially unsettling doctrinal clarity. Finally, the paper argues that the simple erasure order overlooks the technological complexities of data persistence in the age of Artificial Intelligence (AI). Ultimately, Adewale signifies the constitutionalisation of digital privacy in Nigeria and the urgent need for harmonisation between judicial and regulatory mechanisms.

Keywords: *Artificial Intelligence and Data Protection, Defamation, Nigerian Data Protection Act (NDPA), Right to Erasure, Right to be forgotten.*

1. INTRODUCTION

The landmark decision in Adunni Adewale v Polance Media Limited & Anor. (2025),[1] marks a significant, perhaps foundational, moment in how Nigerian jurisprudence confronts the inherent vulnerabilities embedded within the digital information economy. Where traditional common law torts, such as defamation, prove inadequate to protect dignity in the era of perpetual digital memory [2] and data monetization, the courts are rightly compelled to adopt a robust, rights-based approach rooted in both the Constitution and the nascent Nigerian Data Protection Act (NDPA) 2023.

The central matter adjudicated in Adewale was whether a digital news publisher's use of an applicant's personal data (name and photograph) in a false and prejudicial context, primarily to generate traffic and advertising revenue, constituted a breach of her fundamental right to privacy and violated the core data processing principles of the NDPA 2023. The Applicant, a renowned actress, successfully argued that an article placed her in a "false light" through insinuation, infringing her constitutional rights.

The High Court answered affirmatively, granting damages of ₦20,000,000 and,[3] most critically, issuing a Consequential Order compelling the Respondents to "delete or expunge"[4] the offending content.[5] This order, concerning content that had remained online for over eighteen months, represents a potent judicial application of the Right to Erasure, or the Right to be Forgotten (RTBF), aligning Nigerian remedial jurisprudence with global standards for digital privacy protection.[6] Furthermore, the Court affirmed jurisdiction under the Fundamental Rights Enforcement Procedure (FREP) Rules and found that the publication violated the NDPA principles requiring data to be processed in a fair, lawful, transparent, and accurate manner.

This paper critically dissects the Court's reasoning, examining its navigation of jurisdictional rules, its modernization of constitutional privacy, and its implicit adoption of the RTBF in an era increasingly defined by Artificial Intelligence (AI). While the decision is lauded for its progressive orientation, this paper highlights crucial nuances. We analyze the soundness of the Court's decision to allow the Applicant to bypass the specialist Nigeria Data Protection Commission (NDPC), which, though upholding constitutional access, risks undermining the NDPA's necessary regulatory structure. Furthermore, the analysis questions whether the reliance on the NDPA standard of "inaccuracy" or being "misleading" effectively lowered the rigorous evidential burden traditionally required by established defamation precedents, risking legal instability.

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[1] *Adunni Adewale v Polance Media Limited & Anor Suit No LD/17781MFHR/2024 (High Court of Lagos State, 24 June 2025.*
[2] S Mandolessi, 'The Digital Turn in Memory Studies' (2023) 16(6) *Memory Studies* 1513 <https://doi.org/10.1177/17506980231204201> accessed 13 October 2023.
[3] *Adewale (n 1) 11.*
[4] *ibid 12*,
[5] *ibid.*
[6] Case C–131/12 *Google Spain SL and Google Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* ECR I–317; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, art 17; Personal Information Protection Law of the People's Republic of China (adopted 20 August 2021, effective 1 November 2021), art 47.

Finally, we critique the efficacy of the simple erasure order in light of data persistence within cached systems and AI knowledge bases. Ultimately, this paper argues that Adewale signals a clear legal shift, demanding accountability for the commercial exploitation of personal data against specialized, principled legal regimes.

2. SUMMARY OF FACTS AND DECISION

The Applicant, a renowned actress,[7] initiated proceedings under the Fundamental Rights Enforcement Procedure (FREP) Rules against a digital news publisher and a writer.[8] She alleged that an article titled "Six Popular Nigerian Celebrities Who Have Been Accused of Dating Dino Melaye"[9] infringed her right to privacy by placing her in a false light through insinuation. The publication, which remained online for over eighteen months, was framed as a deliberate effort to boost the Respondents' advertising revenue.[10]

The Respondents raised three key defenses:

1. The claim was essentially one of defamation and should have been commenced by a writ of summons, not under the FREP Rules.
2. The Applicant, as a public figure with a large social media following, had courted publicity and thus had a diminished expectation of privacy.
3. The action was premature, as the Applicant had not first lodged a complaint with the Nigeria Data Protection Commission (NDPC) per Section 46 of the NDPA.

The Court Held:

1. **Jurisdiction and Procedure:** The Court dismissed the preliminary objections.[11] It affirmed that the main claim was the enforcement of the fundamental right to privacy, with defamation being merely an ancillary issue, thus validating the use of the FREP Rules. It also ruled that lodging a complaint with the NDPC is not a precondition for enforcing a constitutional right in court.
2. **Breach of Privacy:** The Court found that the publication's portrayal of the Applicant constituted a "false light" invasion of privacy, thereby infringing her rights under Section 37 of the Constitution.[12]
3. **Violation of Data Principles:** The Respondents, as data controllers, were found to have violated Sections 24(1) (a) and (e) of the NDPA 2023.[13] The Applicant's data (name and picture) was not processed in a fair, lawful, and transparent manner and was not accurate or non-misleading.

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[7] 'Adunni Ade' (IMDb) <https://www.imdb.com/name/nm7970788/> accessed 13 October 2025; Adunni Ade, 'Adunni Ade' <https://adunniade.com/> accessed 13 October 2025.
[8] Guardian Nigeria, 'Polance Media launches online newspaper, Naija News' *The Guardian Nigeria News* (25 December 2016) <https://guardian.ng/appointments/polance-media-launches-online-newspaper-naija-news/> accessed 13 October 2025
[9] Naija News, 'Six Popular Nigerian Celebrities Who Have Been Accused of Dating Dino Melaye' (Facebook, OfficialNaijaNews 2025) <https://www.facebook.com/OfficialNaijaNews/posts/six-popular-nigerian-celebrities-who-have-been-accused-of-dating-dino-melaye/1897404773946486/> accessed 13 October 2025.
[10] *Adewale (n 1) 4*.
[11] *Adewale (n 1) 9*.
[12] *ibid* 9-11.
[13] *ibid 11*.

4. **Remedy:** The Court awarded ₦20,000,000 in general damages and issued a Consequential Order compelling the Respondents to delete or expunge the Applicant's name and picture from the article.[14]

3. CONTEXTUAL LEGAL LANDSCAPE

3.1 Constitutional Privacy and the Scope of FREP Rules

The Nigerian Constitution, under Section 37, guarantees the privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications. Judicial precedent, has interpreted this right expansively, positing that the "sum total of the rights of privacy... is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary".[15]

The High Court in Adewale correctly leveraged this expansive reading. By finding that the publication constituted "publicity placing an individual in a false light", the Court moved the constitutional right beyond mere physical or communication intrusion and into the realm of reputational and informational control.

Furthermore, the dismissal of the objection regarding the FREP Rules is consistent with the established principle that rules governing fundamental rights enforcement must be interpreted liberally and expansively.[16] The rule that the main claim must be fundamental rights, and not an ancillary tort (such as defamation), guided the Court in upholding the jurisdiction.

3.2 Defamation Law, Privacy Torts, and Data Protection

The traditional tort of defamation (libel) requires the plaintiff to prove publication, reference to the plaintiff, a defamatory meaning (exposing the plaintiff to hatred, contempt, or ridicule), falsity, and lack of justification.[17] The core defence in media law, often relevant here, is fair comment,[18] which requires the comment to be based on true facts, concerning a matter of public interest, and be genuinely fair.

The modern data protection regime, enforced by the NDPA 2023, provides a distinct avenue for redress. It mandates processing based on the principles of fairness, lawfulness, transparency, and accuracy.[19] Crucially, the NDPA introduces an actionable duty of care and accountability on data controllers.

By framing the issue as a violation of the NDPA principles of fairness and accuracy, rather than relying solely on defamation, the Court effectively deployed the NDPA as a mechanism to address the specialized digital harm known internationally as "false light" invasion of privacy. This approach acknowledges that a

[14] *ibid*.
[15] *Medical Dental Practitioners Disciplinary Tribunal v Dr Emewulu Okonkwo* (2001) 7 NWLR (Pt 711) 206.
[16] *Nancy Okafor v Victor Okafor* Suit No LD/12264MFHR/21 (High Court of Lagos State, 5 February 2022).
[17] *Abalaka v Akinsete* (2023) 13 NWLR (Pt 1901) 343
[18] *The Sketch Publishing Company Ltd v Alhaji Azeez A Ajagbemokeferi* (1989) 1 NWLR (Pt 100) 678; *Abalaka (n 17).*
[19] Nigerian Data Protection Act 2023, s 24(1)(a) and (e)

statement can be untrue and unfair (breaching NDPA) and damaging to privacy,[20] even if the elements required to succeed in a complex libel suit are not strictly met.

3.3 The Right to be Forgotten (RTBF)

The most notable aspect of the judgment is the consequential order mandating the Respondents to "delete or expunge" the content forthwith.[21] While the NDPA 2023 grants data subjects the right to restrict further processing or erasure, the Court's direct order to remove content that had been permanently published online for over 18 months[22] represents a potent judicial application of the Right to Erasure, or the Right to be Forgotten (RTBF).[23]

The RTBF originated from the EU case Google Spain SL v. Costeja González[24] and addresses the imperative of protecting human dignity and societal reintegration against the persistent, unforgiving memory of the digital realm. The High Court's order, therefore, aligns Nigerian remedial jurisprudence with global best practices in digital privacy protection,[25] ensuring that the harm caused by inaccurate or unfair processing does not linger indefinitely online.

4. Analysis: a Progressive but Complicated Jurisprudence

The High Court's decision is laudable for its courage and progressive orientation, successfully leveraging the new data protection framework alongside the Constitution to address contemporary digital media harms. However, a critical review reveals nuances and deeper structural issues that warrant scholarly reflection.

4.1 The Soundness of Jurisdictional Interpretation: The NDPA Precondition

The High Court was spot-on in rejecting the Respondents' argument that the action should be struck out because the Applicant failed to first comply with Section 46 of the NDPA (lodging a complaint with the Commission). Where the right being enforced is explicitly constitutional, [26] the Fundamental Rights (Enforcement Procedure) Rules provide a clear pathway to the High Court. [27] Placing a statutory precondition on the enforcement of a constitutionally guaranteed right would be structurally flawed and highly problematic, functionally denying the citizen immediate judicial redress. This lateral thinking ensures that the new data protection statute acts as a shield to enhance constitutional rights, rather than becoming a bureaucratic barrier.

However, the decision to allow the Applicant to bypass the specialist regulatory body the Nigeria Data Protection Commission (NDPC) under the auspices of the Fundamental Rights Enforcement Procedure

[20] *Adewale (n 1) 9*.
[21] ibid 11.
[22] *Adewale (n 1) 4*.
[23] NDPA 2023 (n 19), s 34(1)(c)–(d), s 34(2).
[24] *Google Spain SL* (n 6)
[25] General Data Protection Regulation (n 6), art 17; Personal Information Protection Law of the People's Republic of China (n 6), art 47.
[26] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 37.
[27] *Okafor* (n 16)

(FREP) Rules,[28] while technically supported by the liberal interpretation of fundamental rights proceedings, could create negative public policy implications for the efficacy of the data protection regime itself.

1. Undermining NDPA's Regulatory Structure

The NDPA 2023 established the NDPC to oversee its implementation and enforce accountability.[29] The NDPC is structured to develop guidance,[30] conduct compliance audits, and handle complaints,[31] particularly in relation to complex issues like Data Protection Impact Assessments (DPIAs),[32] emerging technologies,[33] and the balancing of necessity and proportionality[34] amongst other capabilities.

By allowing the Applicant to proceed directly to the High Court under FREP, thereby dismissing the argument that she ought to have lodged a complaint with the Commission first, the Court, though upholding constitutional access, effectively:

a. **Frustrates Expert Regulatory Review:** The NDPC is better positioned to investigate the specific technical and organizational measures Polance Media had in place, assess the legitimacy of their processing basis, and evaluate the data ecosystem surrounding the publication, especially the nature of data flows and storage (relevant for the erasure order). Bypassing this expertise leads to a generalized judicial remedy, rather than a precision regulatory correction.
b. **Encourages Procedural Masquerading:** While Adunni Adewale had a legitimate privacy angle, the ease with which it circumvented the administrative framework may encourage future litigants to pursue specialized data protection claims via the omnibus FREP rules, clogging judicial dockets with matters better suited for administrative resolution.

2. Judicial Capacity v Technical Complexity

The NDPA and GAID envision complex compliance assessments involving forensic audits, simulations, and evaluation of disparate outcomes. A specialized court or administrative body is necessary for this work. The High Court, by adopting the core NDPA claims and remedies, commits itself to a future where it must develop expertise in technicalities of emerging technology that would typically reside with the regulator. The court's reasoning, in this regard, fails to account for the need for specialized regulatory competence in the digital age.[35]

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[28] *Adewale (n 1)* 10.
[29] NDPA 2023 (n 19), s 4.
[30] ibid s 5(c).
[31] ibid s 46, 4(5)(g).
[32] Nigeria Data Protection Commission, 'Nigeria Data Protection Act 2023 General Application and Implementation Directive (GAID) 2025' (NDPC/NDP ACT-GAID/01/2025), art 48(5) <https://ndpc.gov.ng/wp-content/uploads/2025/07/NDP-ACT-GAID-2025-MARCH-20TH.pdf> accessed 13 October 2025.
[33] ibid art 43.
[34] ibid art 5(4).
[35] While the opinion of an expert witness in courts is not a new matter, and it is a benefit for our jurisprudence that expert evidence can be called upon to clarify complex technical matters, this differs fundamentally from the continuous, proactive, and in-depth oversight that a specialized regulatory body possesses. An expert witness is reactive, providing a focused opinion on specific issues within the context of a particular case. A regulator, by contrast, operates on a systemic level, developing and maintaining a deep, evolving expertise on the broader technological landscape, conducting ongoing audits, and preempting future harms through sustained engagement with emerging technologies. By adopting these inherently technical disputes, the court risks being in a position where it must adjudicate cases without the benefit of this constant, institutionalized competence, a competency that is a core function of the NDPC as envisaged by the Nigeria Data Protection Act.

4.2 The Strategic Pivot: Data Protection's Gain, Defamation's Dilemma?

The Respondents argued that the action sounded primarily in defamation. A traditional approach, viewing the matter solely through the narrow lens of libel, might lead to unsatisfactory outcomes in digital privacy cases. The Court wisely framed the issue as "false light" infringement of the right to privacy.[36]

The publication was deliberately structured to maximize clicks and advertising revenue ("to boost its advertisement revenues").[37] This shifts the focus from a simple common law dispute between two individuals to a major public policy concern regarding the commercial exploitation of personal data for private gain, often at the expense of fairness and accuracy. The court identified this abuse by holding that the publication was done in a "prejudicial and unfair manner" and violated the NDPA principles requiring data to be "fair, lawful, and transparent".

This interpretation might be more appropriate than relying solely on defamation because it addresses the core harm: the unfair and non-consensual processing of personal data for a commercially extractive purpose (traffic generation), which incidentally created a false impression. This aligns perfectly with the statutory mandates of the NDPA, which exist primarily to safeguard individuals from the abusive processing of their data.[38]

This decision while lauded for its innovative interpretation of the law risks opening a Pandora box of unintended consequences.

Nigerian jurisprudence places a notoriously high burden on a plaintiff seeking relief for libel. The plaintiff must prove, among other essential ingredients that the words complained of are false or untrue.[39]

In Adewale, the High Court based its decision heavily on the finding that the publication violated the NDPA principle that personal data must be processed in a "fair, lawful, and transparent manner"[40] and must be "accurate, complete, and not misleading".[41]

The critique here is critical and two-fold:

1. Lapse in Evidential Rigour

By allowing the successful establishment of the claim based on the NDPA's standard of "inaccuracy" or being "misleading",[42] the court arguably failed to impose the rigorous common law burden necessary to succeed in a defamation action, particularly the proof of falsehood of the core assertion (that Adunni Adewale dated

[36] *Adewale (n 1)* 8,9.
[37] ibid 4.
[38] NDPA 2023 (n 19), s 1, s 24.
[39] *Abalaka* (n 17)
[40] NDPA 2023 (n 19), s 24(c).
[41] NDPA 2023 (n 19), s 24(e).
[42] NDPA 2023 (n 19), s 24.

Dino Melaye). If the court found the NDPA violation sufficient for remedy, it suggests that merely proving data was processed in a manner that created a "false light" or was "misleading" served as a substitute for explicitly proving the fundamental falsity required by judicial precedents.[43] This potential lowering of the bar for what constitutes actionable reputational harm under the guise of data protection presents a legal instability that future courts must reconcile.

2. Judicial Precedent Conflict

The court's reasoning must withstand comparison with definitive statements on defamation ingredients. For instance, the Supreme Court has made it clear that to succeed in libel, the plaintiff must prove that the statement was false.[44] Furthermore, if the statement appears derogatory or disparaging, "it may still not amount to defamation unless the party or person complaining proves that it was false statement".[45] The court's reliance on NDPA principles, while innovative, risks creating conflicting rationes decidendi between the constitutional/statutory path (privacy/NDPA) and the traditional common law path (defamation), thereby jeopardizing the clarity provided by established defamation precedents.

4.3 Avoiding the 'Law of the Horse': A Modern Solution for a Modern Problem

The critique of the "Law of the Horse" [46] suggests that technology-neutral laws may fail when the technology's architecture fundamentally alters the constraints on behavior.[47] Traditional defamation law was devised for print media.[48] The digital platform economy, represented by Polance Media, operates on "code" algorithms designed to maximize engagement, virality, and traffic through sensationalism. The business model (traffic-for-revenue) necessitates the weaponization of personal information, regardless of accuracy.

The Court implicitly acknowledged this structural challenge. By finding a violation of data processing principles, [49] the Court subjected the media platform's data collection and monetization process to specialized regulatory scrutiny that traditional libel law could not offer. The argument put forth by the defense that the Applicant, having wide public exposure, has implicitly surrendered her privacy was rightly deemed insufficient in the face of statutory data protection requirements.[50] The quantity of data online does not negate the fundamental legal obligation that any specific processing of that data must be fair and

[43] *Abalaka* (n 17).
[44] ibid.
[45] ibid.
[46] Frank H Easterbrook, 'Cyberspace and the Law of the Horse' [1996] U Chi Legal F 207 <https://chicagounbound.uchicago.edu/uclf/vol1996/iss1/7> accessed 15 October 2025.
[47] Lawrence Lessig, 'The Law of the Horse: What Cyberlaw Might Teach' (1999) 113 Harv L Rev 501 <https://cyber.harvard.edu/works/lessig/finalhls.pdf> accessed 15 October 2025.
[48] Melissa A Troiano, 'The New Journalism: Why Traditional Defamation Laws Should Apply to Internet Blogs' (2005) 55 Am UL Rev 1447 <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1081&context=aulr> accessed 26 October 2023.
[49] NDPA 2023 (n 19), s 24(1)(a) and (e)
[50] *Adewale (n 1)* 5, 9.

accurate. This is a clear demonstration that specialized legislation (NDPA) provides the necessary "specificity" for effective enforcement against new technological harms.

4.4 The Remedial Laps: Efficacy of Erasure in the Age of AI

The Court's consequential order for the immediate "deletion or expungement" of the name and picture (the RTBF equivalent) represents a landmark application of the data subject's right to erasure. However, this remedy introduces technical and legal ambiguity when viewed through the lens of emerging technologies (ETs) and AI.[51]

The effectiveness of erasure in the digital environment is limited,[52] especially where the data has been scraped and ingested by Large Language Models (LLMs) or other AI systems.[53] While guardrails exist, AI systems operate on databases and knowledge bases that retain information even after the source is removed.[54]

The court's simple order to "delete or expunge" from Polance Media's platform does not address the complexity of third-party processing platforms, cached data, or data used for AI training. This is a key public policy failure: granting a right without ensuring its technological feasibility creates a sense of false security for the data subject and imposes a potentially impossible compliance burden on the data controller/processor.[55] The court should have considered the necessity of enforcing specific technical measures to mitigate the risk of data persistence.

However, moving forward, the burden shifts to the NDPC to translate these judicial victories into clear, standardized regulatory guidance. Given the recognized tension between AI advancement and data protection principles like erasure, continuous interdisciplinary engagement is crucial. The judiciary provides the binding authority, but administrative bodies must provide the technical pathway for compliance, lest the digital age renders legal rights impractical due to technological architecture.

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[51] Meem Arafat Manab, 'Eternal Sunshine of the Mechanical Mind: The Irreconcilability of Machine Learning and the Right to be Forgotten' (2024) arXiv preprint arXiv:2403.05592 <https://arxiv.org/abs/2403.05592> accessed 14 October 2025.

[52] M R Allegri, 'The Right to be Forgotten in the Digital Age' in F Comunello, F Martire and L Sabetta (eds), *What People Leave Behind* (Frontiers in Sociology and Social Research, vol 7, Springer 2022) https://doi.org/10.1007/978-3-031-11756-5_15 accessed 15 October 2025.

[53] Palikhe, Avash, Zhenyu Yu, Zichong Wang, and Wenbin Zhang. "Towards Transparent AI: A Survey on Explainable Large Language Models." arXiv preprint arXiv:2506.21812 (2025).

[54] This observation highlights a limitation in content moderation for Large Language Models. The Google Gemini 2.5 Flash model was queried with the prompt, "Six Popular Nigerian Celebrities Who Have Been Accused of Dating Dino Melaye … Give me a fair commentary of the 6 popular celebrities," and subsequently generated a response referencing or relying upon information derived from an article that the court had ordered to be deleted due to its documented inaccuracy. This demonstrates the model's reliance on a training corpus that retains content despite real-time legal injunctions against its public availability. See: Google Gemini, 'Melaye Dating Rumors: Celebrity Denials' (Gemini, 14 October 2025) <https://g.co/gemini/share/d248b545efb3> accessed 14 October 2025.

[55] At the time of writing, the original article titled "Six Popular Nigerian Celebrities Who Have Been Accused of Dating Dino Melaye" has been removed from the website of Naija News, in compliance with the court's order.
However, a post containing the article's title and a functional link (though leading to a dead page) remains on the official Facebook page of Naija News. See: Naija News, 'Six Popular Nigerian Celebrities Who Have Been Accused of Dating Dino Melaye' (Facebook, *OfficialNaijaNews* 2025) <https://www.facebook.com/OfficialNaijaNews/posts/six-popular-nigerian-celebrities-who-have-been-accused-of-dating-dino-melaye/1897404773946486/> accessed 13 October 2025.
This scenario raises a critical question regarding the enforcement of defamation and right-to-privacy judgments against digital media: does the persistence of the linking post on a major social media platform constitute an oversight in fully following the court's order, or is it a reflection of the technical limitations in completely erasing content and its digital footprint across *all* connected platforms? This difficulty in achieving a total "right to be forgotten" underscores the enduring challenge of content moderation and the permanence of information in the online ecosystem, even after a legal ruling.

5. CONCLUSION

Adunni Adewale v Polance Media Limited & Anor (2025) is a landmark victory for digital privacy in Nigeria. The judgment skilfully integrates the NDPA 2023 with constitutional principles to hold digital media accountable for the commercial exploitation of personal data. By establishing a powerful precedent for the Right to be forgotten, the Court has moved beyond mere damages to offer a remedy fit for the digital age.

This case is a profound call to action for all stakeholders. It signals that digital publishers cannot hide behind "public interest" to monetize falsehoods. More importantly, it underscores that as human memory is increasingly outsourced to the "mechanical mind"[56] of digital platforms and AI, the law must evolve specific, enforceable mechanisms to protect human dignity from technological persistence. This case is, ultimately, a demonstration that the Law of the Horse, when pertaining to new technological architectures, must give way to specialized, principled legal regimes that protect fundamental rights.

[56] Manab (n 51).

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