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Table of Contents

EDITORIAL NOTE 8

MEMBERS OF THE EDITORIAL BOARD 9

DIRECTORIAL BOARD MEMBERS 10

THE ROLE OF THE ZAMBIAN COURTS IN ALTERNATIVE DISPUTE RESOLUTION: A COMMENTARY ON THE RULING OF VITIMA LUNGU AND OTHERS VS ITWI LIKANDO LIWENA 2026/HPC/0063 DATED 30th MARCH, 2026. 11

By.. 11

Collins Nkumbwa, Esq 11

CIP (NIPA), LLB (UNZA), LLM (UNZA), AHCZ, ASCZ, PhD Cand. 11

Advocate, Lecturer of law and Commissioner of Oaths 11

THE ROLE OF ENVIRONMENTAL IMPACT ASSESSMENTS IN URBAN PLANNING PROCESSES IN ZAMBIA: AN EVALUATION OF REGULATORY EFFECTIVENESS IN LUSAKA PROVINCE 25

By.. 25

Ulrich Kauert 25

LL.B, LL.M.: M.Sc. Urbanism, PhD Candidate 25

The Copperbelt University, School of Humanities and Social Sciences, Faculty of Law, Kitwe, Zambia. 25

& 25

Clement Ngoma 25

LL.B, LL.M -Tax Law, PGDTM, LL.M- Constitutional Law, PhD Candidate 25

The Copperbelt University, School of Humanities and Social Sciences, Faculty of Law, Kitwe, Zambia. 25

TECHNOLOGICAL INNOVATIONS IN COMBATING SHIP-SOURCE MARINE POLLUTION IN NIGERIA 41

By.. 41

Tamunoipirinye Royal BANIGO 41

ipirinyeroyalbanigo@gmail.com || LL.B Redeemer's University, AICMC 41

ORCID ID: 0009-0009-9524-9266 41

THE ROLE OF INTELLECTUAL PROPERTY LAW IN ACHIEVING THE SUSTAINABLE DEVELOPMENT GOALS 56

By.. 56

Ekhorutomwen Gabriel Ekhator 56

LLB(Hons) Uniben, BL, AICMC, DCP, a Corporate Attorney at Solola & Akpana (Law Firm), ekhatorgabriel@gmail.com 56

& 56

Grace Aduragbemi Ikudaisi 56

LLB(Hons), BL, a Senior Associate at Solola & Akpana (Law Firm), ikudaisiaduragbemi@gmail.com 56

STRUCTURING ALL-STOCK DEALS IN NIGERIA 78

By 78

Susanna Tomilayo Abimbola (LL.B, First-Class Honours, Ekiti State University) 78

Graduate of Ekiti State University || susannaabimbola@gmail.com 78

SECURING INTRA-AFRICAN COMMERCIAL TRANSACTIONS THROUGH BLOCKCHAIN: THE CASE OF OCP GROUP 94

By 94

Hadil Dadssi 94

PhD Candidate and Teaching Assistant in Law Sultan Moulay Slimane University, Morocco Hadil.dadssi48@gmail.com 94

International Instruments / Institutional Publications 104

BALANCING JUDICIAL AUTONOMY IN UAE FREE ZONES WITH FEDERAL JUDICIAL AUTHORITY 106

By 106

Frank Sumani Umar 106

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S0000005215@ud.ac.ae || frank.umar@outlook.com 106

NAVIGATING NIGERIAN COPYRIGHT LAW IN THE AGE OF ARTIFICIAL INTELLIGENCE: EMERGING CHALLENGES AND PROPOSED SOLUTIONS .. 117

By 117

Victoria Ebimoboere Edward 117

Afe Babalola University || VIKIEDWARD@GMAIL.COM 117

CODE, CRIME AND CREATIVITY: THE SURPRISING LINK BETWEEN LAWBREAKING AND SOCIAL EVOLUTION 124

By 124

Agbude Odafe (LL.B in view) 124

Delta State University || odafeagbude01@gmail.com 124

AN APPRAISAL OF THE RIGHTS OF THE NETWORK USERS IN NIGERIA: CHALLENGES AND COMPENSATION 136

By 136

Tochukwu Anthony Ogbu 136

Final Year Law Student @ Enugu State University of Science and Technology (ESUT) || *miguelantho10@gmail.com* 136

THE ENFORCEABILITY OF STATUTORY AGE LIMITS FOR MARRIAGE IN NIGERIA: LEGAL CHALLENGES AND PROSPECTS FOR REFORM. 150

By.. 150

Uroegbulam Amanda Esomchi 150

Law Student @ COLAW, CALEB UNIVERSITY || amisomchi@gmail.com 150

RETHINKING THE BURDEN OF PROOF IN MEDICAL NEGLIGENCE IN ZAMBIA: A CONSTITUTIONAL AND HUMAN RIGHTS ANALYSIS 160

By.. 160

Musonda Chimba.. 160

LL.B, LL.M ||The Copperbelt University, School of Humanities and Social Sciences, Faculty of Law-Kitwe, Zambia. 160

& 160

Clement Ngoma 160

LL.B, LL.M -Tax Law, PGDTM, LL.M- Constitutional Law, PhD Candidate || The Copperbelt University, School of Humanities and Social Sciences, Faculty of Law-Kitwe, Zambia || clementngoma11@gmail.com 160

THE RIGHTS OF REFUGEES: THE INFLUENCE OF REGIONAL AND INTERNATIONAL TREATIES IN AFRICAN COUNTRIES 173

By.. 173

Ms. Chimuka Mukonka 173

LLB (University of Surrey), LLM (University of Law), Lecturer 173

& 173

Collins Nkumbwa, Esq 173

CIP (NIPA), LLB (UNZA), LLM (UNZA), AHCZ, ASCZ, PhD Cand. 173

Advocate, Lecturer of law and Commissioner of Oaths... 173

EVALUATING NIGERIA'S DATA PROTECTION ACT AND ITS EFFECTIVENESS IN THE DIGITAL AGE 187

By.. 187

Amarachi Aaron Anyanwu 187

300 Level Law Student @ COLLEGE OF LAW, AFE BABALOLA UNIVERSITY || AANYANWUWHILLZ@GMAIL.COM 187

AN ANALYSIS OF THE NON- JUSTICIABILITY OF CHAPTER II OF THE NIGERIAN CONSTITUTION: ENFORCEMENT, EXCEPTIONS AND RECOMMENDATIONS201

By.. 201

Joshua Chukwuka German 201

Law Student @ The Faculty of Law, Rivers State University, Port Harcourt, Nigeria || germanjoshua94@gmail.com 201

RIGHTS OF REFUGEES IN HOST COUNTRIES: A CASE STUDY OF ZAMBIA, CONGO AND ANGOLA 212

By........ 212

Ms. Chimuka Mukonka 212

LLB (University of Surrey), LLM (University of Law), Lecturer 212

& 212

Collins Nkumbwa, Esq. 212

CIP (NIPA), LLB (UNZA), LLM (UNZA), AHCZ, ASCZ, PhD Cand. 212

Advocate, Lecturer of law and Commissioner of Oaths........ 212

SICK AND FORGOTTEN: EXAMINING THE RIGHT TO HEALTHCARE FOR MENTALLY ILL INMATES IN NIGERIAN PRISONS........ 229

By........ 229

Faith Oluwadarasimi Fakuade 229

SOCIAL MEDIA'S ROLE IN HUMAN RIGHTS ADVOCACY: CATALYST FOR CHANGE OR INSTRUMENT OF HARM 238

By........ 238

Babatunde-Atobatele Nicholas 238

Law Student @ OBAFEMI AWOLOWO UNIVERSITY || nicholasbabatunde97@gmail.com .. 238

ANALYZING THE ONGOING TRANSITIONAL JUSTICE PROCESS IN ETHIOPIA: CHALLENGES AND PROSPECTS 246

By........ 246

Abrham Seife Muluneh........ 246

School of Law, Bahir Dar University || abrhamseife94@gmail.com 246

JUSTICE BEYOND REACH: RURAL WOMEN AND THE STRUGGLE FOR LEGAL PROTECTION IN NIGERIA 254

By........ 254

Adegoroye Adebimpe Oluwafeyikemi ||Law Student @ Redeemer's University || oluwafeyikemiv@gmail.com 254

& 254

Oluwanifemi Sarat Akinyemi || Law Student @ Lagos State University akinyeminifemi008@gmail.com 254

Omavua Elohor Christabel || Law Student @ Redeemers University omavuachristabel@gmail.com 254

Precious Chioma Uzondu || Law Student @ Ahmadu Bello University, Zaria || preciousuzondu45@gmail.com 254

Orlumeni Ogechi || Law Student || Orlumeniogechi@gmail.com 254

ISREAL, IRAN: INTERROGATING LIMITS OF ARTICLE 51 OF THE UN CHARTER IN SHADOWS OF NUCLEAR THREATS 265

By 265

Negracious Justin 265

LLB Student (4th Year) @ Cavendish University, Zambia 265

nj83587@students.cavendish.co.zm || negracious@gmail.com 265

THE CHALLENGES FACED BY FEMALE JOURNALISTS IN THE MEDIA WORK PLACE 276

By 276

CHOLA MUSONDA MUSATWE 276

LLB (UNZA), LLM (ZCAS UNIVERSITY), PGD (POSTGRADUATE DIPLOMA IN TEACHING METHODOLOGY) (NIPA) 276

Lecturer in Law and Business Studies 276

& 276

COLLINS NKUMBWA, Esq. 276

CIP (NIPA), LLB (UNZA), LLM (UNZA), AHCZ, ASCZ, PhD Cand. 276

Lecturer of law and Commissioner of Oaths 276

INTELLECTUAL PROPERTY INFRINGEMENT OF ARCHITECTURAL WORKS IN ZAMBIA 290

By 290

CHOLA MUSONDA MUSATWE 290

LLB (UNZA), LLM (ZCAS UNIVERSITY), PGD (POSTGRADUATE DIPLOMA IN TEACHING METHODOLOGY) (NIPA) 290

Lecturer in Law and Business Studies 290

& 290

COLLINS NKUMBWA, Esq. 290

CIP (NIPA), LLB (UNZA), LLM (UNZA), AHCZ, ASCZ, PhD Cand. 290

Lecturer of law and Commissioner of Oaths 290

AN ANALYSIS OF THE GENDER EQUALITY LAWS IN ZAMBIA 302

By 302

CHOLA MUSONDA MUSATWE 302

LLB (UNZA), LLM (ZCAS UNIVERSITY), PGD (POSTGRADUATE DIPLOMA IN TEACHING METHODOLOGY) (NIPA) 302

Lecturer in Law and Business Studies 302

& 302

COLLINS NKUMBWA, Esq. 302

CIP (NIPA), LLB (UNZA), LLM (UNZA), AHCZ, ASCZ, PhD Cand. 302
Lecturer of law and Commissioner of Oaths 302
A COMPARATIVE ANALYSIS OF THE COPYRIGHT LAW BETWEEN THE UNITED KINDGDOM AND ZAMBIA 318
By 318
CHOLA MUSONDA MUSATWE 318
LLB (UNZA), LLM (ZCAS UNIVERSITY), PGD (POSTGRADUATE DIPLOMA IN TEACHING METHODOLOGY) (NIPA) 318
Lecturer in Law and Business Studies 318
& 318
COLLINS NKUMBWA, Esq. 318
CIP (NIPA), LLB (UNZA), LLM (UNZA), AHCZ, ASCZ, PhD Cand. 318
Lecturer of law and Commissioner of Oaths 318

EDITORIAL NOTE

It is with great pleasure that we present Volume VI, Issue I of the Lawrit Journal of Law. This edition reaffirms our unwavering commitment to publishing scholarly, impactful, and intellectually rigorous legal research while sustaining a vibrant platform for meaningful academic discourse within the legal community.

For this issue, the Journal received 41 submissions. Notably, we received a highly tremendous and commendable number of submissions from Zambia, reflecting the growing visibility, influence, and academic footprint of the Lawrit Journal of Law within the Zambian legal community and beyond. This strong engagement demonstrates the Journal's expanding international presence and its resonance with scholars across jurisdictions.

Following a thorough peer-review and editorial process, 5 articles were declined for not meeting our publication standards, while 36 were advanced for further consideration. Out of these, 25 articles satisfied our editorial and publication requirements and have been published in this issue. We deeply appreciate the scholarly depth, originality, and dedication demonstrated by all contributors.

This volume features diverse and contemporary legal scholarship from authors across multiple jurisdictions, including Zambia, Morocco, the United Arab Emirates (UAE), Ethiopia, and Nigeria, among others. These contributions highlight the Journal's global relevance and underscore the importance of cross-jurisdictional engagement in shaping progressive legal thought.

We extend our sincere appreciation to our reviewers, editors, authors, and readers for their continued trust and support. Your commitment enables us to maintain the standards of excellence, integrity, and academic distinction that define the Lawrit Journal of Law.

We invite you to engage with the rich insights contained in this issue as we continue to advance meaningful conversations in the field of law.

Yours sincerely,
Tomisin Farinola
Editor-in-Chief

For: The Editorial Board
Lawrit Journal of Law

THE ROLE OF THE ZAMBIAN COURTS IN ALTERNATIVE DISPUTE RESOLUTION: A COMMENTARY ON THE RULING OF VITIMA LUNGU AND OTHERS VS ITWI LIKANDO LIWENA 2026/HPC/0063 DATED 30th MARCH, 2026.

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ABSTRACT

This research gives a detailed discussion on the role of the Zambian courts in Alternative Dispute Resolution (ADR). The paper comments on the recent ruling of the Zambian High Court in Vitima Lungu and Others v Itwi Likando Liwena 2026/HPC/0063 in which the court stayed proceedings (litigation) and referred the matter to ADR. This paper has established that the decision is sound as it reinforces the constitutional mandate of the courts in the role of ADR and promotes prompt settlement of matters in the conveyancing process. The demerit of the decision is that it leaves provision for parties to re-apply to court to re-litigate the matter if ADR fails, a route that may lead to delayed disposal of cases. The paper analyses the Court's reasoning in light of Article 118(2)(d) of the Constitution of Zambia, the Arbitration Act No. 19 of 2000, and the High Court Rules, which collectively mandate the promotion of alternative dispute resolution. It examines the enforceability of arbitration clauses and the court's prima facie duty to stay proceedings where a valid arbitration agreement exists, unless shown to be null, void, inoperative, or incapable of performance. The study situates the decision within Zambia's broader constitutional and statutory framework that encourages negotiation, mediation, and arbitration as mechanisms for enhancing access to justice and reducing court congestion. Overall, the judgment affirms judicial support for ADR while revealing procedural concerns where unsuccessful ADR may prolong dispute resolution.

Keywords: *Litigation, Alternative Dispute Resolution, Arbitration, Mediation, Negotiation*

INTRODUCTION

Litigation is the primary means of resolving disputes in Zambia (process of adjudication in the courts). This power is vested in the courts.[1] However, the Constitution also provides for Alternative Dispute Resolution (ADR) mechanisms (means of resolving disputes *ex curia*).[2] It provides for resolution of disputes using traditional dispute resolution mechanisms provided it is in line with the Constitution.[3] To reinforce the ADR mechanisms, lawyers are now mandated to advise clients to resolve disputes amicably outside court rather than pursuing litigation, for matters which are capable of being resolved through ADR. This is pursuant to the *Legal Practitioners Rules*.[4]

This paper comments on the recent High Court of Zambia decision (hereinafter "Vitima case) in light of its decision to stay proceedings and refer the matter to ADR. The paper progresses as follows:

BRIEF FACTS OF THE CASE

The brief facts of the case are the Plaintiffs were the personal representatives of a deceased vendor who contracted with the Defendant as purchaser of a leasehold property in the Kabulonga area of Lusaka. The court found as a fact that special condition 1 of the contract of sale imported the LAZ General Conditions of Sale, 2018 (the "LAZ General Conditions"), subject to variations which did not include the dispute resolution provisions. The court further established that the Defendant reacted to the originating process with an application filed on 11th February 2026 seeking that the dispute be referred to arbitration and proceedings stayed. The application was supported by an affidavit and arguments dated 11th February 2026 and opposed through an affidavit and arguments of 13th March 2026.

DECISION AND REASONING OF THE COURT

The court quoted the *High Court Rules*[5] (the "HCR") which provides:

> <u>If the parties to a suit are desirous that the matters in difference between them in the suit, or any of such matters, should be referred to the final decision of one or more arbitrator or arbitrators</u>, they may apply to the Court or a Judge, at any time before final judgment, for an order of reference; and the Court or a Judge may, on such application, make an order of reference accordingly. (Emphasis mine)

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[1] *Constitution of Zambia*, Amendment Act No. 2 of 2016, Chapter 1 of the laws of Zambia, Article 118
[2] *Constitution of Zambia*, Amendment Act No. 2 of 2016, Chapter 1 of the laws of Zambia, Article 118(2)
[3] *Constitution of Zambia*, Amendment Act No. 2 of 2016, Chapter 1 of the laws of Zambia, Article 118(2)
[4] *Legal Practitioners Rules* SI No. 50 of 2025 Rule 39
[5] *High Court Rules* Chapter 27 of the Laws of Zambia, Order 45 Rule 1

The court further cited the *Arbitration Act*[6] which confers a statutory power on the Court to re-direct a matter to arbitration at the instance of a litigant before it. It provides:

> A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so requests at any stage of the proceedings and notwithstanding any written law, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed. " (Emphasis added by the court)

The court further quoted an English case of *Home and Overseas Insurance Co ltd v Mentor Insurance co* (UK) Ltd[7] in which Parker J stated:

> In cases where there is an arbitration clause it is in my judgement the more necessary that full-scale argument should not be permitted. The parties have agreed on their chosen tribunal and a defendant is entitled prima facie to have the dispute decided by that tribunal in the first instance, to be free from the intervention qf the courts until it has been so decided and thereafter, if it is in his favour, to hold it unless the plaintiff obtains leave to appeal and successfully appeals. " (Emphasis added by court)

The High Court further quoted the decision of the Zambian Supreme Court in *Audrey Nyambe v Total Zambia Limited*[8] in which it was stated:

> Quite clearly, the law is settled as far as the jurisdiction of the High Court is concerned in matters where a contract embodies an arbitration clause. Section 10 of the Act provides as follows---—
>
> Counsel for the respondent is right that we have passed a number of decisions where we have given effect to section 10 of the Act. However, in determining whether a matter is amenable to arbitration or not, it is imperative that the wording in the arbitration clause itself is closely studied. " (Emphasis added by the court)

In determining the matter, the court considered the LAZ General Conditions (applicable to the contract of sale in issue) which provided as follows in clause 27 (d):

> d) Resolution of dispute by arbitration

[6] *Arbitration Act* No. 19 of 2000, Section 10
[7] *Home and Overseas Insurance Co ltd v Mentor Insurance co* (UK) Ltd (1989) 3 All ER 74 at p.78
[8] *Audrey Nyambe v Total Zambia Limited* Vol. 1 (2015) Z.R 1 at p. 7

In default of_ resolution of_ a dispute by negotiation au disputes, controversies or claims arising from the interpretation, performance or non-performance or enforcement of the Contract between the parties or any and all transactions related to these General Conditions of Sale (including; but not limited to, the validity, scope and enforceability of this provision, or disputes under rights granted pursuant to law) shaZZ be finaZZu and completely resolved bu arbitration before a single arbitrator in accordance with the provisions of the Arbitration Act No. 19 of 2000 of the Republic of Zambia (or any statutory modification thereof applicable at the time of the issuance of the Dispute Notice).

The place and seat of arbitration shall be Lusaka, Zambia. The language to be used in the arbitral proceedings shall be English. " (Emphasis added by the court)

The High Court adopted the ordinary and natural meaning of the words used in clause 27(d) of the LAZ General Conditions and held that the blanket wide forum for ultimate resolution of disputes under the contract is arbitration. The court found that the Plaintiff's cause of action was one for breach of the contract. It was further established that the differences between the Plaintiff and Defendant are therefore wholly captured by the arbitration clause applicable to the contract. It was held that the Plaintiff and Defendant must thus be taken to be bound by the contract, the provisions of which ought to be enforced by this Court.

The court held that there is a prima facie duty on this Court to uphold the arbitration clause in LAZ General Conditions 27 (d) unless satisfied that it is invalid, inapplicable or inoperative. The court was guided by the decision of CJ, Malila in *ZCCM Investments Holding Plc. v Vedanta Resources Holding Ltd. & Anr*[9].

The court was found that there was no material on record to show that the arbitration clause is invalid, inapplicable or inoperative and I have already determined that the Plaintiff's grievances are captured by the clause. It held that the dispute resolution mechanism in clause 27 of the LAZ General Conditions was applicable and consequently, the application was granted.

The court noted that there was a multi-tiered mechanism with the first stage being dialogue and negotiations (see 27b) and c)) while arbitration is reserved as the escalation point. (Emphasis mine). Accordingly, it was ordered that the proceedings are stayed and the matter is referred to arbitration on

[9] *ZCCM Investments Holding Plc. v Vedanta Resources Holding Ltd. & Anr* Ruling dated 22nd March 2022 in Appeal No. 14/2021 at p. R51-53.

condition that the parties follow through with the graduated approach under clause 27 of the LAZ General Conditions. (Emphasis mine)

It was further ordered that if the said clause was not invoked within 45 days thereof (or any other period agreed upon in writing), any of the parties was at liberty to file an affidavit verifying the facts of such inactivity and to request that the matter be re-listed for litigation. (Emphasis mine)

ANALYSIS AND COMMENTARY ON THE DECISION

Zambia's legal system is based on the English legal system. The legacy of English law has its roots in the British colonial era when Northern Rhodesia, now present-day Zambia, was a protected territory of Britain.[10] The basic tenet of the Zambian legal system is the adversarial system of adjudication for both criminal and civil proceedings.[11] The jury system is not provided for under Zambian legislation. The Constitution of Zambia creates the three arms of government, namely the Executive, Legislature and Judiciary. Separate pieces of legislation provide for the establishment of the various courts, while the procedure for each court is promulgated by way of statutory instruments usually issued under the hand of the Chief Justice.

The cardinal pieces of legislation, with respect to the Constitution and jurisdiction of the courts, are the Local Courts Act, the Small Claims Court Act, the Subordinate Court Act, the High Court Act, the Industrial and Labour Relations Act, the Court of Appeal Act, the Constitutional Court Act, and the Supreme Court of Zambia Act. It is important to note that the Zambian Constitution enjoys supremacy over all legislation and the provision of Article 120[12] of the Constitution of Zambia provides for the establishment of courts.[13]

In the Zambian civil court system, the Supreme Court determines all appeals from the Court of Appeal. The Supreme Court is the highest court of the land and the final court of appeal. It is not bound by its judgments. The Supreme Court and the Constitutional Court rank *pari passu*[14], and it is important to state that the Constitutional Court's jurisdiction is limited to cases arising out of the Constitution.

[10] Erick, Silwamba, Lubinda, Liyanda, Milesi Undi and Mwape, Chileshe 'Litigation and Dispute Resolution Laws and Regulations Zambia 2024." Retrieved from. <iclg.com/practice>.
[11] Ibid.
[12] Article 120 of the Zambian Constitution (Amendment) No. 2 of 2016.
[13] Erick, Silwamba, Lubinda, Liyanda, Milesi Undi and Mwape, Chileshe 'Litigation and Dispute Resolution Laws and Regulations Zambia 2024." Retrieved from. <iclg.com/practice>.
[14] Article 121 of the Zambian Constitution (Amendment) No. 2 of 2016.

The Constitutional Court has both original and final jurisdiction.[15] The Constitutional Court has original and final jurisdiction to hear a matter relating to the interpretation of the Republican Constitution and matters relating to the violation of the Republican Constitution. Where a question relating to the Constitution arises before any court, the presiding judge may refer the question to the Constitutional Court for determination.[16]

The Court of Appeal has an appellant jurisdiction.[17] Its appellate jurisdiction is to hear appeals from the High Court and quasi-judicial bodies, for example tribunals or arbitrators. An appeal from the Court of Appeal lies to the Supreme Court with leave of the Court of Appeal.[18]

The High Court has both original and appellant jurisdiction.[19] Its original jurisdiction is to the extent that any civil claim exceeding an amount set by the High Court Rules of the High Court Act (the "High Court Rules") has to be commenced in the High Court. On the other hand, its jurisdiction is appellate to the extent that decisions from the subordinate courts are appealable to the High Court. Currently, it also determines matters relating to the Bill of Rights as enshrined in the Constitution. It is worth noting that, administratively, the High Court has been segmented into specialised jurisdictions, i.e., the Family Division, Labour and Industrial Relations, Commercial List and General List. It is also important to note that the High Court has time limitations for delivery of rulings and judgments of 90 days and 100 days, respectively.

The Subordinate Court has an original and appellate jurisdiction similar to the High Court; however, its jurisdiction is limited according to the quantum of the claim and the nature of the relief being sought by a party to litigation. The Subordinate Court exercises its appellate jurisdiction when it hears appeals from the Local Court. The appeal for the local courts takes the form of a rehearing on the record and matters are heard afresh (*de novo*).[20] The Subordinate Court has its own rules of court procedure, and recourse to the County Court Rules ("CCR") is to be had in the event of any default on account of a lack of provision to deal with any procedural aspect. The Local Courts are courts that administer customary law, usually restricted to traditional disputes.

[15] Article 128, ibid
[16] Ibid.
[17] Ibid.
[18] Moira, Mukuka and Sharon, Sakuwaha, 'Legal system in Zambia', 2023. Accessed at:<mondaq.com/trial>.
[19] Article 134, ibid.
[20]Moira, Mukuka and Sharon, Sakuwaha, 'Legal system in Zambia', 2023. Accessed at:<mondaq.com/trial>.

All the respective courts have Rules of Procedure for Civil Matters in terms of Supreme Court Rules, Constitutional Court Rules, Court of Appeal Rules, High Court Rules, Subordinate Court Rules and Local Court Rules.

Worthy of mention are the Small Claims Courts, which are presided over by part-time judicial officers called Commissioners, who are in fact practising advocates. These courts are informal and determine minor disputes by way of a fast-track procedure.

With respect to ADR, the Zambian courts are constitutionally mandated in exercising judicial authority, to be guided by principles which include, promotion of alternative forms of dispute resolution, including traditional dispute resolution mechanisms provided they are in line with the bill of rights, among others.[21]

The Zambian High Court decision in Vatima is sound as it fulfils the constitutional mandate to promote ADR mechanisms. Zambia has increasingly adopted the use of alternative dispute resolution (ADR) in its legal system as a means of resolving dispute between parties.[22] In doing so Zambia introduced court annexed mediation in both the Subordinate Courts and the High court. A judge is at liberty to refer a matter to mediation in appropriate cases.[23] There is however, no current framework for non-court annexed mediation. Parties can, nonetheless, contractually agree to resolve their dispute by mediation or other form of ADR.

The Zambia constitution serves as a vital instrument for Alternative Dispute Resolution (ADR). One key aspect of the Zambian Constitution that promotes ADR is its recognition of the importance of traditional and customary dispute resolution mechanisms. Zambia is a country with a rich diversity of cultures and traditions, each with its own ways of resolving conflicts. The constitution acknowledges the value of these traditional methods and encourages their use alongside formal legal process. Article 118 (2) (d)[24] provides that alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted, subject to clause (3) of the constitution. Furthermore, the Zambian constitution shrines the principles of fairness, justice and equality before the law.[25] These principles are essential for the successful implementation of ADR, as they ensure that all parties involved in the dispute are treated fairly and have equal access to the process. Upholding these

[21] Constitution of Zambia, Act No. 2 of 2016, Article 118(2)(e)
[22] Ibid
[23] Ibid.
[24] Constitution (Amendment) Act No. 2 of 2016.
[25] Article 18 of the Constitution (Amendment) No. 18 of 2016.

principles, the constitution sets the stage for the successful use of ADR methods such as mediation and arbitration in resolving disputes in Zambia.

The Arbitration Act No 19 of 2000.

One of the key laws that governs ADR in Zambia is the Arbitration Act of 2000. This Act provides a legal framework for the resolution of disputes through arbitration, which is a form of ADR where an independent third, known as an arbitrator, hears the parties' argument and makes a binding decision. The Act sets out the procedures for conducting arbitration proceedings, the qualifications and powers of arbitrators and the enforcement of arbitral awards.

Section 10 (1)[26] of the Zambian Arbitration Act stipulates as follows;

"A court before which legal proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so request at any stage of the proceedings and notwithstanding any written law, stay those proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed. Where proceeding referred to in subsection (1) have been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before court"

Section 10 (1) of the Arbitration Act is couched in language which suggests that it is mandatory to refer a matter to Arbitration which is the subject of an arbitration agreement. The question that then arises is how do you determine whether an arbitration agreement is null, void, inoperative or incapable of being performed as demanded by Section 10(1) of the Zambian Arbitration Act

To be considered valid, an arbitration agreement should be both formally and materially valid. An arbitration agreement fulfils formal validity if it meets the requirements set out by national and international rules that determine arbitration validity in the jurisdiction where the validity of such an agreement is being contested[27]. However, it must be noted from the onset that not all matters can be referred to arbitration. Section 6(2)[28] of the Arbitrations Act list certain matters that cannot be resolved or referred to Arbitration for resolution. The aforesaid section provides that, "Criminal matters (unless the courts allow), Matters contrary to public policy, Matrimonial causes and matters incidental thereto, matters against public policy, Maternity and paternity disputes and Matters affecting the interest of a minor cannot be sent to arbitration for resolution."

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[26] No. 19 of 2000.
[27] Tibor Varady, John J Barcelo III & Arthur T.Von Mehran "*International Commercial Arbitration: A Transnational Perspective"* P89.
[28] Section 6(2) of the Arbitrations Act of 2000.

The Arbitration Act[29] has no explicit provision which states what an agreement entails and should contain, but makes a provision of this via the first Schedule read with s8 (1) of the act.

S8 (1)[30] reads as follows;

"Where the place of arbitration is in Zambia, the first schedule shall, subject to other provisions of this act, apply to the arbitration."

The first schedule contains the United Nations Commission on International Trade Law (UNCITRAL) Model Law[31]. In terms of Article 7 of the aforementioned;

> ***(1) "An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in form of an arbitration clause in a contract or in the form of a separate agreement.***
>
> ***(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement...***

The Zambian Arbitration act[32] also considers an arbitration agreement which is in the form of an arbitration clause in a contract or in the form of a separate agreement as being valid[33]. The act also requires that such an agreement be in writing for it to be valid, the act considers an agreement to be in writing if is contained in a document signed by the parties in writing or in an exchange of letter, telex or telegrams or other means of communication[34]. An arbitration agreement can only be valid on a material basis where there is a common intention by the parties to refer a possible dispute to arbitration. No common intent exists on arbitration unless the 'final' arbitration clause has manifest and certain meaning. This common intent of the parties can be deduced from their expressions.

The High Court Rules Chapter 27 of the laws of Zambia

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[29] Supra.
[30] No. 19 of 2000.
[31] United Nations Document A/40/17 Annex 1
[32] Supra
[33] Supra s9(1)
[34] Ibid s9(2)

The High Court Rules play a significant role in governing ADR processes and ensuring the efficient resolution of disputes. The High Court rules of Zambia provide a framework for the implementation of ADR mechanisms such as mediation, arbitration and negotiation. These rules establish guide lines and procedures that parties can use to resolve their disputes in a more informal and cost effective. Furthermore, the High Cout Rules of Zambia promote the use of ADR by creating incentives for parties to explore alternative dispute resolution methods. Order XXXI Rule 4[35] of the High Court Rules provides that:

"Except for cases involving constitutional issues or the liberty of an individual or an injunction or where the trial Judge considers the case to be unsuitable for referral, every action may, upon being set down for trial, be referred by the trial Judge for mediation and where mediation fails the trial Judge shall summon the parties to fix a hearing date."

Industrial Relations (Arbitration and Mediation) Rules 2002.

The Industrial Relations (Arbitration and Mediation) Rules of 2002 in Zambia governs Alternative Dispute Resolution (ADR). The rules provide guidelines for conducting arbitration and mediation proceedings, including the appointment of arbitrators and mediators, conduct of hearings and making awards. Mediation under the Industrial Relations Court used to be provided for under S.I no. 26 of Industrial Relations (Arbitration and Mediation) Rules 2002. It was provided in section 12 (1)[36] that, the Court or Judge may refer any action to mediation at any stage of proceedings except where: (a) the case involves an injunction; or (b) the Court or Judge considers a case unsuitable for reference to mediation. Section 13 (1)[37] provided, that a mediation officer shall keep a list of mediators who have been trained and certified to act in this capacity. Rule 14 (1)[38] stated that, where a mediator who was appointed in respect of a matter, the mediation officer would handover the record of the suit, action or legal proceedings.

However, the Industrial Relations Court under the amended 2016 Constitution has now been annexed as a Division of the High court under Article 133 (2)[39] of the Constitution Act No. 2 of 2016. The industrial Relations Division of the High Court may refer the dispute to arbitration or mediation pursuant to Rule 6 and 12 of the Industrial Relations Court (Arbitration and Mediation) Sectio of 2002 respectively. Rule 6 underscores that, "the Court or Judge shall, by an order under the seal of the Court,

[35] The High Court Rules Chapter 27 of the Laws of Zambia.
[36] S.I No. 26 of Industrial Relations (Arbitration and Mediation) Rules of 2002.
[37] Rule 13 (1), Supra.
[38] Rule 14 (1), Supra.
[39] The Zambian Constitution (Amendment) No. 2 of 2016.

refer to the arbitrators, the matter in issue in the suit which requires determination."[40] Rule12 (1)[41] provides that, "the Court or a Judge may refer any action to mediation at any stage of proceedings except where: (a) the case involves an injunction; or (b) the Court or a Judge considers a case unsuitable for reference to mediation." The mediator soon after collecting record contact parties to the action state time, date and place of the mediation.[42]

Rule 16[43] provides that, "a party to mediation shall appear in person and where represented, with their legal practitioner. At the commencement of mediation, the mediator shall read out to the parties, and their advocates the statement of understanding which the mediator shall request the parties to sign.[44] The mediator shall not keep a record of the mediation.[45] Where the mediator prepares any document during proceedings and the mediation fails, the mediator shall destroy such document in the presence of both parties at the end of the mediation.[46] Any statement made during mediation is confidential and privileged and may not be used as evidence in any matter.[47]

A mediator may not communicate with any trial Judge in relation to any matter which is subject of mediation.[48] Rule 21 provides that, "where mediation fails, the mediator shall within ten days after the close of mediation proceedings return the record." Where the Court or Judge receives a report, the Court or a Judge shall, within fourteen days of such receipt, summon the parties for purposes of fixing the date of hearing for the pending action or application.[49] However, where mediation ends in a settlement, it shall be registered and sealed by the Court.[50] Rule 22 (3) underscores that, "a mediation settlement sealed and registered by the Court shall have the force and effect of a judgment, order or any decision of the Court or Judge and shall be enforced in the like manner."There shall be no appeal against a mediated settlement.[51]

The Legal Aid Act No. 3 of 2021

The Legal Aid Act in Zambia governs and regulate Alternative Dispute Resolution (ADR). The Legal Aid Act in Section 2[52] provides the types of ADR. The section states that alternative methods of dispute

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[40] Rule 6 of the Industrial Relation (Arbitration and Mediation) Rules of 2002.
[41] Rule 12, Supra.
[42] Section 15, supra.
[43] Section 16,Supra.
[44] Section 17 Supra.
[45] Section 18, Supra.
[46] Section 18 (2), Supra.
[47] Section 19, Supra.
[48] Rule 20, Supra.
[49] Rule 21 (3), Supra.
[50] Rule 22(2), Supra.
[51] Rule 27, Supra.
[52] The Legal Aid Act of 2021.

resolution will include negotiation, mediation, conciliation and arbitration. Furthermore, section 37[53] allows the director of the legal aid board to recommend a party to ADR as a condition for a party to get legal aid.

Overall, the laws and regulations that govern ADR in Zambia plays a crucial role in ensuring that the process is transparent, fair and effective. By providing a legal framework for ADR, these laws help to promote access to justice, reduce the backlog of cases in the court system, and encourage parties to resolve their disputes amicably.

CONCLUSION

ADR has become an increasingly popular way to resolve disputes in Zambia due to its cost-effectiveness, efficiency, and flexibility. ADR refers to any method of resolving disputes outside the traditional court system, such as mediation, Arbitration, and negotiation. In Zambia, there laws and regulations that governs ADR to ensure that the process is fair and effective.

Zambia legal system is based on common law and customary law, with hierarchical court structure headed by the Supreme Court and Constitutional Court as they are equivalently ranked. The Constitution is the supreme law, followed by statutes, judicial precedents and customary law. The judiciary is independent and the legal profession is self-regulated. The system recognizes traditional courts and alternative dispute resolution mechanisms, aiming to uphold justice, rule of law and human rights while promoting access to justice and dispute resolution.

The decision *in casu* reinforces the country's legal landscape, sharping the application of justice and dispute resolution in Zambia. Additionally, the legal framework for ADR in Zamba is established through a range of laws and regulations, including the Arbitration Act (2000) the High Court Act Chapter 27 of the laws of Zambia, the Industrial Relation (Arbitration and Mediation) Rules of 2002 and Constitution of Zambia (Amendment) No. 2 of 2016. These laws provide for various ADR mechanisms, including; arbitration, mediation, and reconciliation, and establish institutions to oversee and facilitate ADR processes, creating a robust framework for resolving disputes efficiently and effectively.

[53] Section 37, Supra.

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United Nations Document A/40/17 Annex 1

THE ROLE OF ENVIRONMENTAL IMPACT ASSESSMENTS IN URBAN PLANNING PROCESSES IN ZAMBIA: AN EVALUATION OF REGULATORY EFFECTIVENESS IN LUSAKA PROVINCE

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ABSTRACT

The Environmental Impact Assessment (EIA) is a crucial tool for balancing urban growth with environmental protection in Zambia. This article assesses the effectiveness of EIA within urban planning processes, with particular focus on the Environmental Management Act No. 12 of 2011 and the Urban and Regional Planning Act No. 3 of 2015. It examines how EIAs are integrated into urban development to mitigate risks such as pollution, habitat loss, and resource depletion, especially in rapidly expanding cities like Lusaka. The study adopts case studies and scholarly analysis to evaluate both the strengths and limitations of the framework. The findings highlight notable strengths, including mandatory EIA approvals for environmentally significant projects and provisions for public participation, which promote sustainable decision-making. However, persistent challenges undermine effectiveness. These include weak enforcement mechanisms, limited institutional capacity, data gaps, and overlapping mandates between the Zambia Environmental Management Agency (ZEMA) and local planning authorities. Such shortcomings often result in incomplete assessments and unaddressed environmental impacts. The study concludes that while EIAs have improved the integration of environmental considerations into urban planning, regulatory and institutional deficiencies restrict their full potential. It recommends stronger inter-agency coordination, capacity building for ZEMA, and clearer guidelines for harmonising EIA requirements with planning procedures under the Urban and Regional Planning Act. Ultimately, reforms are necessary to enhance the role of EIAs in fostering ecologically sustainable and resilient urban development in Zambia.

Keywords: *Environmental Impact Assessment, Urban Planning, Regulatory Effectiveness and Sustainable Development*

Introduction

In Zambia, it has been observed that urbanization is accelerating at an unprecedented rate as seen from the transformation of bare land in cities such as Lusaka, Kitwe and Ndola. These cities are transforming into bustling hubs of economic activities as seen from the growth of the business that is happening in these places. There is an increase in population as well as huge development of infrastructure in these cities in the last few years. Currently, more than 45 percent of the total population in the country live in urban areas and projections show that this figure might increase to 50 percent by the year 2050.[1] This rapid expansion presents opportunities as well as significant environmental challenges in many societies. As a result of this expansion, new residential estates, commercial buildings, roads and industrial zones are coming up to meet the demands of a rising middle class in the country. It is observed that foreign investments have emerged as a result of these developments despite coming at the cost of natural resources, air quality and community health. In Lusaka City alone, about 70% of the city is covered by informal settlement areas by the many people flocking to the city for better opportunities.[2] This has led to challenges such as uncontrolled waste disposal and water contamination due to improper drainage systems. There is a growing problem of the loss of biodiversity within the peri-urban green spaces as most of the land has been occupied by informal settlers.[3] These challenges are further worsened by the problem of climate change, a factor that has been seen to increase flooding and heatwaves. The growing problem of climate change has made sustainable urban planning more critical than ever as the country continues to grapple with its caning effects.

The Environmental Impact Assessment (EIA) is a systemic process that is intended to foresee, evaluate and mitigate the environmental impacts of development projects before they begin.[4] In many countries around the world, EIAs have been one of the cornerstones of environmental policy since the 1970s. They first originated within the United States' National Environmental

[1] Ephraim K. Munshifwa, Chota M. Mwenya and Anthony Mushinge. Urban Development, Land Use Changes and Environmental Impacts in Zambia's Major Cities: A Case Study of Ndola. March 2021. In book: *Sustainable Real Estate in the Developing World*, (pp.63-81). Chapter 5. Emerald Publishing Limited.
[2] Chanda Musenga, & Clinton Aigbavboa. Environmental Impacts of Construction Activities: A Case of Lusaka, Zambia. In book: Advances in Human Factors, Sustainable Urban Planning and Infrastructure. *Advances in Intelligent Systems and Computing*. January 2019.
[3] *Ibid*
[4] Aurelian M. Mhagama, Agabu Shane and Jhonnah Mundike. Role of Environmental and Social Impact Assessments in Advancing Sustainable Development under Mining Activities: A case study of Zambia's mining sector. *Next Research*, Volume 2, Issue 4. December, 2025.

Policy Act and later spread to over 120 countries including many African countries.[5] In developing countries like Zambia, the EIAs are not only a regulatory mechanism but also one of the ways for realizing the Sustainable Development Goals (SDGs) in general. In particular, SDG 11 which aims for sustainable cities and communities and SDG 13 which aims to achieve the goal of climate action.[6] This ensures that urban growth is in line with the principles of sustainability, equity and resilience. This will prevent irreversible environmental destruction such as soil erosion, deforestation and pollution aspects that could affect the long-term prosperity of the nation.

The EIA process in Zambia is set within a legal framework that includes the Environmental Management Act, which provides for the establishment of the Zambia Environmental Management Agency (ZEMA), as the focal agency for EIAs.[7] The Urban and Regional Planning Act calls for integrated planning that coordinates the environmental, social and economic factors.[8] Under the Environmental Management Act (EMA), every project that "may" have an adverse effect on the environment, for example, large-scale housing developments or infrastructure in urban areas-must undergo a mandatory EIA involving public consultations, predictions of impacts and mitigation plans of any possible effects.[9] The Urban and Regional Planning Act supplements this with the requirement for planning permissions to also provide EIA approvals to foster a devolved governance system where the local authorities shall work together with ZEMA to ensure multi-sectoral collaboration.[10] This integration strives to attain cities that are not only economically vibrant but also environmentally sound. The importance of this collaboration is not only to ensure development that will respect ecological limits but also respects the needs of the community.

However, notwithstanding these frameworks, questions persist about the effectiveness of EIA in the real-world urban context of Zambia. For example, although studies indicate that EIAs have sometimes improved project design such as reducing emissions in industrial expansions, the actual implementation of these measures is often weak due to resource constraints or gaps

[5] Makweti Sishekanu and Morgan Katati. 'Subjectivity in the Logic of Zambia's Environmental Impact Assessments (EIA) Process. The Bedrock of Controversial EIA Approvals.' *Law and Development Journal*. August 2022.
[6] United Nations- The 17 Goals- Sustainable Development Goals. https://sdgs.un.org/goals
[7] No. 12 of 2011.
[8] No. 3 of 2015.
[9] Section 62 (J), Environmental Management Act.
[10] Section 52 (d), Urban and Regional Planning Act.

in enforcement.[11] For instance, in rapidly expanding urban areas such as the outskirts of Lusaka, projects may be approved when EIAs are incomplete, with adverse ongoing impacts related to air pollution from construction dust and the destruction of homes, among others.[12] This article evaluates the regulatory effectiveness of EIAs in the urban planning laws of Zambia through an analysis of the legal doctrines, case studies and scholarly literature to show strengths, weaknesses and avenues for improvement of the legal framework.

The study explores how well EIAs fit into urban decision-making, hence pointing toward the need for reforms to make regulations robust and actionable. In a country where the growth of the urban population surpasses infrastructure development at 4.3% per annum,[13] among other contributing factors, effective EIA will prevent environmental degradation and support inclusive development. After all, this evaluation is not an academic exercise but a call to action for the policymakers, planners and communities to create cities that thrive and do not harm the planet.

Background to the Problem

Environmental governance in Zambia has undergone great transformations since independence in 1964. It has moved from an initial focus on resource extraction, such as mining, which created widespread pollution in urban-adjacent areas, especially on towns of the Copperbelt province.[14] The first important step in legislation was the Environment Protection and Pollution Control Act (EPPCA) of 1990, which established the Environmental Council of Zambia (ECZ) and made EIAs compulsory for projects that are considered to be of high-risk.[15] The main objective of this act was to reduce industrial impacts, but during increased urbanization in the 2000s—whereby cities like Lusaka grew from 1 million to over 3 million residents and then it was realized that urban-specific issues required stronger regulations.[16] It is observed that specific issues that clearly pointed out the weaknesses of these early laws have been the sprawling of informal housing and inadequate municipal waste management. The problem of

[11] Patricia Mwelwa. An Evaluation of the Effectiveness of the Environmental Impact Assessment (EIA) Process in Zambia: A Case of the Chilanga Cement Plant. University of Zambia. 2024.
[12] *See* Chanda et al, *supra* note 2.
[13] Ephraim Munshifwa, et al, *supra* note 1.
[14] Joanna Lindahl. Environmental Impacts of Mining in Zambia. Towards a better environmental management and sustainable exploitation of mineral resources. *SGU Rapport*. Geological Survey of Sweden. July, 2014.
[15] Ministry of Finance and National Planning—Draft Environmental and Social Management Framework (ESMF). Zambia Green Resilient and Transformational Tourism Development Project (GREAT -TDP). April, 2023.
[16] *See* Chanda et al, *supra* note 2.

water scarcity due to unregulated development is another challenge that many growing cities continue to be grappled with.

In 2011, the EPPCA was replaced by the Environmental Management Act (EMA), which renamed the Environmental Council of Zambia (ECZ) to the Zambia Environmental Management Agency (ZEMA). The mandate of this new institution was expanded to include proactive environmental protection.[17] The key provisions of the EMA on EIAs are found in sections 29-30, which calls for developers to submit project briefs for screening.[18] This is followed by full Environmental Impact Statements (EIS) for projects that are likely to have significant impacts on the community, such as urban developments in the form of housing estates or roads that will interrupt air and water quality or biodiversity.[19] Principles such as polluter pays, precautionary principle and public participation are underscored in the Act through Sections 6 and 91 to 94, which provide for consultations and hearings to be held to allow the views of the community to be taken into account.[20] It is observed that, for urban areas, the EMA works in conjunction with other laws such as the Town and Country Planning Act, despite the fact that it is now repealed but it was influential in the development of the EMA and the Water Resources Management Act to ensure that EIAs are undertaken before any permit is issued and that cumulative impacts are considered for densely populated areas.

In complementing the EMA, the Urban and Regional Planning Act, moved away from centralized to devolved planning through various provincial and district planning authorities that are responsible for preparing IDPs with environmental safeguards.[21] Section 49 of the URPA requires that planning permissions should be compatible with EIA approvals as allowed by ZEMA, while Section 35-37 details public consultation in town planning schemes.[22] This will prevent a situation where there is disjointed development and ensure that urban development projects take into account environmental hazards and also align these with socio-economic factors.

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[17] United Nations Environment Programme—Report on the Environmental Management Act, 2011, Zambia. 19 August, 2011.
[18] Environmental Management Act No. 12 of 2011.
[19] Zambia Environmental Management Agency (ZEMA). Environmental Impact Assessment Guidelines. (2016). Lusaka: ZEMA.
[20] The Environmental Management Act
[21] Bowen Banda, Dewald Van Niekerk, Livhuwani Nemakonde & Charley Granvorka. 'Integrated Development Planning in Zambia: Ideological Lens, Theoretical Underpinnings, Current Practices and Views of Planners.' Development Southern Africa, *Taylor and Francis Journals*, Vol 39(3), 338-353. May 2022.
[22] *See* Urban and Regional Planning Act.

Despite these advances, there are a number of practical challenges that remain in many cities. In Lusaka, for instance, construction activities continue to cause environmental degradation through dust, noise and waste, this results into a compromise of both the quality of air and the health of the community.[23] Case studies such as the Chilanga Cement plant expansion illustrate this as it needed an EIA that highlighted the probability for air pollution. This would have led to the adoption of mitigations like dust suppression, but its implementation was faced by funding shortfalls and weak monitoring. This development in itself has seen sustained complaints from the community as they have been affected by the expansion of this plant. Similarly, a case study of the Lions Hill Estate, located in Lusaka's Chongwe District, had an EIA that incorporated the loss of homes and water contamination concerns by creating green spaces and methods for wastewater treatment, yet indicated weaknesses in public participation and cumulative impact assessment.[24]

It is seen that wider issues involve subjective EIA approvals, where terms such as "may" allow discretionary decisions based on economic pressures and not science. This leads to controversial urban projects that in the end take a big toll on the community where such project is located. Overlaps in institutional roles between ZEMA and the local councils create delays in processing, while capacity constraints such as understaffing and budgets deficits contribute to the poor enforcement of the law.[25] The gaps in information that exist such as outdated environmental baselines weaken the assessments in rapidly changing urban areas.[26] These problems are compounded by rapid foreign investments, often at the expense of sustainability, thus turning what might have been green growth into environmental liabilities. While the law in Zambia provides a solid foundation for EIAs in urban planning, the background showcases an existing tension between policy ambition and the realities of the ground and therefore sets the stage for evaluating the effectiveness of regulation.

Statement of the Problem

Zambia is urbanising at 4.3% annually and will be majority-urban by 2050. The Environmental Management Act No. 12 of 2011 and the Urban and Regional Planning Act No. 3 of 2015

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[23] See Banda, et al, *supra* note 20.
[24] Environmental and Social Impact Assessment (EIS) for the Proposed Mixed Use of Development on Sub No. 12 and 31 of farm 28A in State Lodge Area, Chongwe, Lusaka, Zambia. Afritec Asset management Company Limited, Final Report, November 2022.
[25] Sishekanu and Katati, *supra* note 5.
[26] Ephraim Zulu, Sambo Zulu, Mwansa Chabala, Innocent Musonda, Neema Kavishe & Nicholas Chileshe. Challenges and advocated solutions for environmental protection legislation for building infrastructure projects in developing countries: Evidence from Zambia. Project Leadership and Society, Volume 3. December, 2022.

together create an EIA regime that is modern and mandatory. This regime on paper, requires ZEMA approval and full integration of EIA outcomes into every significant urban planning decision. This legal framework is comprehensive and internationally aligned. However, in practice, EIA is routinely bypassed or ignored in urban projects and those mitigation measures that are approved are almost never monitored or enforced.

This research addresses the persistent systemic failure of the EMA–URPA linkage to deliver effective environmental prevention in Zambia's rapidly growing cities, despite a strong statutory mandate. We still do not adequately understand the exact breakdown points in the legal-institutional chain, the relative weight of design flaws versus capacity, coordination and enforcement deficits or the feasible reforms that could make EIA genuinely operative in the urban context.

Without resolving this regulatory failure, Zambia's urbanisation will continue to generate irreversible ecological damage, heightened flood and pollution risks and deepening inequality and direct contradiction of SDG 11 and national development commitments. The study therefore maps and analyses the legal integration of EIA into urban planning law, evaluates its real-world effectiveness through doctrinal and case-study analysis, identifies the critical regulatory and institutional gaps and proposes targeted, evidence-based reforms that will restore EIA as an effective preventive instrument for sustainable urban development in Zambia.

Discussion

The discussion section critically assesses the integration as well as effectiveness of EIAs within the urban planning system of Zambia. This will be done by engaging legal frameworks, empirical case studies, stakeholder insights and recent regulatory developments. The discussion examines the interplay between the Environmental Management Act (EMA) No. 12 of 2011 and Urban and the Regional Planning Act (URPA) No. 3 of 2015 while identifying systemic barriers to successful implementation as a guide in managing environmental concerns in rapidly urbanizing contexts like Lusaka.

Legal and Institutional Integration of EIAs in Urban Planning

The Environmental Impact Assessment regime in Zambia is anchored in the Environmental Management Act, which mandates assessments for projects likely to cause significant environmental harm environment.[27] This includes urban infrastructure like housing estates,

[27] Section 29, Environmental Management Act, 2011.

roads and any commercial developments.[28] The Act emphasizes principles such as the precautionary principle, the polluter pays principle and public participation in the management of the environment.[29] The URPA reinforces this by requiring integrated development planning, where local authorities must ensure that planning permissions align with the EIAs that are approved by ZEMA.[30] This linkage promotes multi-sectoral collaboration that aims to balance economic growth with environmental safeguards in line with Sustainable Development Goal number 11 (SDG 1).[31]

The whole idea behind the Environment Impact Assessment framework in Zambia is to serve as a proactive preventive tool that is designed to integrate environmental sustainability into development projects.[32] This is the case especially in rapidly urbanizing cities such as Lusaka The framework provides a structured approach to identifying and mitigating adverse impacts of infrastructure and urban development.[33] It covers things like screening projects, figuring out the scope, predicting impacts, planning ways to fix problems, talking to the public and keeping an eye on things after. In urban settings like Lusaka, the EIA framework tackles acute environmental and social issues such as losing habitats, dirty water, air getting polluted from dust during building and floods that get worse because informal settlements take up around 70 percent of Lusaka.[34]

A critical issue in Lusaka is that there is a huge population that reside in informal settlements and these places generally lack basic sanitation and waste management services.[35] There is an increased chance of environmental risks in such kind of settlements. The expansion of such areas when combined with industrial growth places severe pressure on local water resources especially in shallow wells and boreholes which get contaminated easily.[36] The EIA system is crucial in mitigating these risks by regulating construction and infrastructure development.

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[28] *Ibid*
[29] Section 6, Environmental Management Act, 2011.
[30] Section 49, Urban and Regional Planning Act, 2015.
[31] United Nations, 'Sustainable Cities and Communities (SDG 11)' https://unsdg.un.org/sdgs/sustainable-cities-and-communities accessed 27 February 2026.
[32] United Nations Environment Programme. Environmental Impact Assessment Process in Zambia. UN Annual Report, 25 January 2013
[33] *Ibid*
[34] UN—Habitat. Country Brief-Zambia, 2023. A better quality of life for all in an urbanizing world. Briefing Note | Zambia.
[35] *Ibid*
[36] Future Resilience for African Cities and Lands (FRACTAL). Lusaka Groundwater Pollution: Key Threat to Water Security & Health Policy Brief. Lusaka, Zambia | November 2018.

The recent changes in 2026 through Statutory Instrument No. 3[37] have made the process more modern by introducing fees based on risk so that those projects that are considered to have low impact on the environment pay less. Also introduced are reviews that take only 20 to 30 for certain assessments, exemptions for minimal impact activities and formal integration of social impact assessments from ZEMA. These reforms are aimed at reducing delays and lower costs for developers. These reforms will also enhance efficiency in many fast growing urban sectors like Lusaka, Ndola and others.

Despite these strengths, this integration is not all perfect because there are overlaps between ZEMA which handles the national environment regulations and the local planning authorities. This in itself causes confusion about who does what and decisions end up all over the place. The discretionary language in the EMA such as projects that “may” have significant impacts allows economic priorities to influence approvals over scientific evidence.[38] In urban contexts where foreign investments and demand for housing drive rapid development, this subjectivity often results in approvals despite the assessments being incomplete.

Strengths of the EIA Process in Urban Contexts

EIAs have demonstrated increased environmental awareness in urban planning in Zambia. The mandatory requirements ensure that major projects are observed closely, which leads to design changes so as to include green spaces or water waste treatment and sometimes even dust control. The provisions that speak to public participation helps to get input from the community as they too add their voices in the process. This aligns with the principles of equity and resilience which are of utmost importance in such a process. For example, in some infrastructure projects in Lusaka, EIAs have identified risks such as deforestation and water pollution.[39] This has prompted mitigation measures that stakeholders view as partially effective. The new regulations of 2026 show good progress towards achieving greater accessibility and enforcement. By shifting to impact based fees and faster reviews, this will encourage compliance among urban developers that are faced with resource constraints. Scholars are of the view that the system has improved in terms of the procedures compared to

[37] Statutory Instrument No. 3 of 2026 – The Environmental Management (Environmental Impact Assessment) Regulations, 2026.
[38] Kambili Chilufya. ‘Environmental Impact Assessment and Environmental Management in Zambia.’ (Presentation, 1 October 2018, EHC Lusaka).
[39] ‘Understanding Public Input in Local Decisions’ (Think Lawfully) https://www.thinklawfully.com/understanding-public-input-in-local-decisions/ accessed 13 March 2026.

the previous frameworks, which then is contributing to better consideration of cumulative impacts in densely populated areas.[40]

Persistent Challenges and Implementation Gaps

The problem of enforcement continues to persist as the primary barrier to regulatory effectiveness. There are a number of challenges that are faced by ZEMA such as chronic understaffing and limited budgets which hinder their operations. The fact that their operations are mainly centralized in Lusaka makes it difficult to monitor peri-urban and other expanding districts.[41] After approval, the follow ups are weak which makes it impossible to implement mitigation measures to due inadequate funding or the lack of audits. There is also a problem of gaps in the available data and the insufficient monitoring of cumulative effect of urban growth. This undermines assessments in dynamic environments where urbanization rates exceed 4% annually.

The problem of institutional coordination makes these challenges even bigger. The local authorities under the URPA sometimes approve developments without the full integration of ZEMA which then leads to superficial EIAs that are driven by economic pressures instead. There is empirical evidence to show that high density areas like the informal settlements in Lusaka, continue to faces the challenges of poor waste management, flooding as well as continuous pollution despite having regulatory mandates.[42] The subjectivity in approvals of the projects that should commence is also a big challenge. There are reports of allowing controversial decisions that prioritize short term goals over long term sustainability as a results of having vague thresholds. It is observed also that the lack of capacity at ZEMA makes rigorous enforcement a challenge and the rapid urban projects that are foreign driven usually bypass the thorough scrutiny of the agency.

Case Study Analysis: Chilanga Cement Plant Expansion

The expansion of the Chilanga Cement plant provides a clear illustration of the limitations of Environmental Impact Assessments (EIAs) when they operate as mere administrative hurdles rather than proactive management tools. The EIA identified the obvious risks of air pollution

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[40] 'Zambia's 2026 Budget: New Tax and Business Reforms Strengthen Transparency and Compliance' (Africa Tax Review, 30 October 2025) https://africataxreview.com/2025/10/30/zambias-2026-budget-new-tax-and-business-reforms-strengthen-transparency-and-compliance/ accessed 20 March 2026

[41] 'ZEMA Accused of Frustrating Zambia's Development' *Zambian Business Times* (Lusaka, 23 March 2026) https://zambianbusinesstimes.com/zema-accused-of-frustrating-zambias-development/ accessed 23 March 2026

[42] Joy Sambo Mazuba Muchindu, Sikopo Nyambe and Taro Yamauchi, 'Sustainable Solid Waste Management: An Assessment of Solid Waste Treatment in Lusaka, Zambia' (2020) 4(2) Sanitation Value Chain 39

from dust emissions and recommended mitigations measures such as suppression systems, the subsequent operational failures demonstrated significant gaps between planning and reality.[43] However, using the Lee and Colley review package, evaluations revealed that there were deficiencies in predicting impacts, alternative analyses, public participation and monitoring.[44] After the approval, the community in Chilanga continued to complain about the dust as it was affecting their health, plants, vegetation and local air quality over distances up to 1.6 km away.[45] Enforcement actions, such as reduced license validity and increased monitoring by the predecessor agency Environmental Council of Zambia (ECZ) highlighted non-compliance and sustained implementation failures underscore weak follow ups.[46] This case demonstrates how EIAs can prompt initial mitigations but fail in practice when there is the absence of robust enforcement. In those urban areas that are near industrial zones such as Chilanga and surrounding areas, the economic side of things, like cement for building often overshadow damage to the environment which then reflects broader tensions in the development model of Zambia.

Case Study Analysis: Lions Hill Estate Development

The Lions Hill Estate development in the Chongwe district of Lusaka, presents a compelling case study on the intersection of urban growth and the practical challenges of Environmental Impact Assessments (EIAs). While the project aims to address housing needs through an "eco-estate" approach, it highlights a common friction point that exists in developing areas balancing development with conservation of the environment.[47] The EIA dealt with losing habitats, water contamination, clearing vegetation by recommending green spaces, wastewater management, tree preservation (mapping trees over 20 cm diameter) and progressive rehabilitation.[48] The project incorporated eco-friendly features such as revamping a dry gulley into a park and

[43] Camnet News. 'ECZ acts against Chilanga pollution.' *Tradeship Publications Ltd*. 16 March 2009. https://www.cemnet.com/News/story/134603/ecz-acts-against-chilanga-pollution.html#:~:text=16%20March%202009,within%2021%20days%20for%20approval.
[44] Patricia Mwelwa, 'An Evaluation of the Effectiveness of the Environmental Impact Assessment (EIA) Process in Zambia: A Case of the Chilanga Cement Plant' (Dissertation, University of Zambia 2024)
[45] CamNet News. 'ECZ acts against Chilanga pollution.' *Tradeship Publications Ltd*. 16 March 2009. https://www.cemnet.com/News/story/134603/ecz-acts-against-chilanga.pollution.html#:~:text=16%20March%202009,within%2021%20days%20for%20approval
[46] Business Regulatory Review Agency, *Regulatory Impact Assessment Handbook* (2019) 15
[47] Sydney Kamara. 'The Changing Face of Lusaka: Introducing Lions Hill Estate.' June 2026. *The Nkwazi Magazine.* https://interactive.nkwazimagazine.com/the-changing-face-of-lusakaintroducing-lions-hill-estate/#:~:text=Lions%20Hill%20Estate:%20The%20Next,the%20estate%20against%20such%20risks.
[48] Preeti Maurya and Anamika Akarsh, 'Environmental Impact Assessments: Ensuring Sustainability' [2020] Faculty of Fishery Sciences, Kolkata, West Bengal (700 094), India.

limited the clearing of land. However, critiques highlight gaps in cumulative impact assessment (considering surrounding developments) and meaningful public engagement.

While the EIA promoted sustainability, for instance, limiting the disturbance of habitats and the introduction of alien species, implementation challenges persists in peri urban settings where broader urban sprawl fragments eco-systems. This case shows EIAs' potential to guide better design but limited influence when monitoring is inadequate or cumulative effects that are unaddressed. The case study of the Lions Hill Estate illustrates that EIAs can effectively influence better site-specific planning and may push developers towards sustainable practices. However, without addressing the cumulative, regional effects of urban sprawl and implementing robust independent monitoring, such developments may fail to achieve long-term ecological goals.[49] The project highlights the need for sustainable development to be in tune with the surrounding landscape, rather than merely as an island of green spaces surrounded by destruction.

Broader Implications for Sustainable Urban Development

These case and literature indicate that EIAs enhance environmental consideration in urban planning but fall short in preventing irreversible degradation. In Lusaka, rapid growth leads to land use transitions and increased vulnerability to climate risks like flooding. Without stronger enforcement urbanization contradicts SDG commitments deepening inequality and ecological damage. The link between the EMA and URPA provides a foundation but effectiveness hinges on bridging policy practice gaps. Recent 2026 reforms offer optimism by promoting risk based approaches and stricter penalties but its success will depend on sustained development.

Conclusion

Overall, Zambia's EIA setup has moved forward on mixing environment into city planning, but issues with enforcing, skills, and teaming up hold it back. Getting past those with specific changes is key to make fast city growth fit with lasting good, so places like Lusaka can grow without wrecking nature or hurting people.

Recommendations for Reform

[49] Zhenfeng Shao, Neema S. Sumari, Aleksei Portnov, Fanan Ujoh, Walter Musakwa and Paulo J. Mandela. 'Urban sprawl and its impact on sustainable urban development: a combination of remote sensing and social media data', *Geo-Spatial Information Science*. 2021. Vol. 24, no. 2, pp. 241-255. https://doi.org/10.1080/10095020.2020.1787800

To improve the efficacy of regulations:

(3) **Improve Inter-Agency Coordination**: Develop joint protocols and urban-specific EIA guidelines under URPA with dedicated liaison units between ZEMA and local authorities.

(4) **Build Institutional Capacity**: Increase ZEMA funding by decentralizing offices to provincial levels and provide training in urban impact monitoring and cumulative assessment.

(5) **Strengthen Monitoring and Enforcement**: Mandate regular audits, digital tracking of mitigation and stricter penalties including suspensions for non-compliance.

(6) **Enhance Data and Participation**: Increase public participation through easily available consultations, mandate updated environmental baselines and use GIS and remote sensing for urban monitoring.

(7) **Address Subjectivity**: Revise discretionary language with clearer, science based thresholds and independent review panels for controversial projects..

By putting these changes into practice, EIAs could become powerful instruments for resilient urban settings.

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TECHNOLOGICAL INNOVATIONS IN COMBATING SHIP-SOURCE MARINE POLLUTION IN NIGERIA

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ABSTRACT

Shipping constitutes the backbone of global commerce, facilitating the movement of approximately 90% of the world's goods, yet it remains a significant contributor to marine pollution through oil spills, ballast water discharge, and harmful emissions. This paper examines the role of technological innovations such as emission control systems, oil spill monitoring and response technologies, and ballast water treatment systems in addressing ship-source marine pollution. It argues that while these technologies are vital for environmental protection, their effectiveness depends largely on robust regulatory enforcement and institutional capacity. The study analyses the regulatory role of the International Maritime Organization and evaluates the domestic implementation of international standards in Nigeria through agencies such as the Nigerian Maritime Administration and Safety Agency (NIMASA) and the National Oil Spill Detection and Response Agency (NOSDRA). Adopting a doctrinal research methodology, the paper relies on primary legal sources, including international conventions particularly the MARPOL Convention relevant national legislation, and institutional frameworks, alongside secondary materials subjected to content analysis. The findings reveal that despite comprehensive legal and regulatory regimes, weak enforcement, inadequate technical expertise, and limited infrastructure significantly undermine compliance. These shortcomings reflect broader challenges of environmental governance and regulatory accountability in developing jurisdictions. The paper recommends strengthening institutional capacity, improving technological integration, and enhancing enforcement mechanisms to ensure more effective control of ship-source marine pollution in Nigeria and beyond.

Keywords: *Environment, Marine pollution, ship-source, technological innovation*

1.0 Introduction

Marine pollution remains a significant global concern, with far-reaching impacts on marine ecosystems, human health, and key economic sectors such as fisheries and tourism. Although a substantial proportion of marine pollution originates from land-based sources, ship-source pollution poses a serious threat, particularly in coastal nations engaged in extensive maritime commerce.[50] This form of pollution arises from both operational and accidental discharges from vessels, including oil and oily mixtures, noxious liquid substances, sewage, garbage, and harmful anti-fouling coatings. Ship-source pollution not only degrades marine environments but also contributes to the introduction of invasive aquatic species through ballast water discharge and undermines the economic sustainability of fishing industries. For instance, fisheries in the West African region generate over €500 million annually and support more than 600,000 livelihoods, underscoring the economic significance of preserving marine ecosystems. In Nigeria, the impact of marine pollution is particularly evident in the Niger Delta region, where intensive oil exploration and maritime activities have contributed to environmental degradation.[51] In response to these challenges, technological innovations have increasingly assumed a central role in efforts to prevent, detect, and mitigate pollution from ships. Technologies such as ballast water treatment systems, oil spill detection and response mechanisms, are transforming environmental management within the maritime sector. However, the effectiveness of these technologies is largely dependent on the strength of the regulatory frameworks governing their adoption and implementation.[52]

At the international level, the International Maritime Organization has established a comprehensive legal regime through instruments such as the MARPOL Convention[53], which sets out detailed rules for preventing pollution from ships. Its various annexes regulate pollutants including oil, chemicals, sewage, garbage, and air emissions, while also mandating the use of pollution-control technologies and requiring port authorities to provide adequate waste reception facilities. Compliance is enforced through flag State, coastal State, and port State control mechanisms, thereby promoting international uniformity. Notwithstanding these

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[50] Umezurike Ezugwu, 'Marine Environmental Pollution In Nigeria and its Possible Implication' https://www.researchgate.net/publication/397446993_MARINE_ENVIRONMENTAL_POLLUTION_IN_NIGERIA_AND_ITS_POSSIBLE_IMPLICATION_AND_SOLUTION accesssed March 13, 2026
[51] Ibid
[52] Ibid
[53] International Convention for the Prevention of Pollution from Ships (adopted 2 November 1973, as modified by the protocol of 1978, entered into force 2 October 1983)

regulatory efforts, the effectiveness of such frameworks in developing maritime states like Nigeria, remains limited. Challenges such as weak enforcement, inadequate port reception facilities, limited technological capacity, and insufficient monitoring systems continue to undermine compliance. As a result, pollution from operational discharges persists, raising concerns about the long-term sustainability of marine environments in key port areas such as Lagos, Onne, and Calabar.[54]

The principal aim of this study is to examine the role of technological innovations in mitigating ship-source marine pollution within Nigeria's maritime environment while the specific objectives include:

1. To examine the major sources of ship-source marine pollution within Nigeria's maritime environment
2. To analyse the existing international and legal frameworks governing ship-source marine pollution in Nigeria
3. To identify the challenges and gaps in the adoption and implementation of technological innovations for mitigating ship-source marine pollution in Nigeria

2.0 Overview of Ship-source Marine Pollution in Nigeria

The international maritime community has become increasingly aware of the persistence of ship-generated marine pollution, particularly regarding the challenges posed by ineffective port waste management systems. Within Nigerian ports and terminals, infractions frequently occur due to the inadequate supply and management of waste reception facilities intended for the disposal of oil residues, refuse, and hazardous materials generated on ships.[55] Between 2008 and 2011, Tin Can Island Port recorded increases of approximately 32% in garbage and 18% in oily waste, indicating growing pressure on already insufficient facilities.[56] The absence of modern, technology-driven waste processing systems further intensifies this issue, limiting the efficiency and ecological safety of waste management operations.

The Nigerian Ports Authority (NPA), tasked with the responsibility for the administration of Nigeria's ports, does not operate a waste disposal and reception facility; rather, it delegates these services to private pollution control firms. While this approach aims to improve service

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[54] A.Essien, 'An Analysis of Ship-Source Marine Pollution in Nigeria' (2017) 5(3) Journal of Marine Science and Engineering' < https://www.researchgate.net/publication/355087293_An_Analysis_of_Ship-Source_Marine_Pollution_in_Nigeria_Seaports>

[55] Ibid

[56] Ibid

delivery, it raises concerns regarding accountability and transparency.[57] The lack of independent oversight and technological auditing systems creates opportunities for regulatory lapses and cost-cutting practices that may compromise environmental standards.

Consequently, the inadequacy of waste reception facilities, along with ineffective monitoring systems, encourages vessels to unlawfully discharge waste at sea before arriving at the port.[58] These practices exacerbate marine pollution and adversely affect coastal communities dependent on fishing and marine resources. This highlights a significant gap in infrastructure as well as in the implementation of modern technologies for waste tracking, monitoring, and enforcement.

3.0 Types and Causes of Ship-source Marine Pollution in Nigeria

The MARPOL Convention classifies ship-source pollution into distinct categories through its annexes, each addressing a specific type of pollutant. They include:

3.1 <u>Oil Pollution</u>: This occurs when oil or oily mixtures are released into the marine environment, either through operational discharges or accidental spills.[59] Operational sources include bilge water from engine rooms, lubricants, and cleaning agents. Bilge water accumulates in the lowest section of the ship from various sources, including main and auxiliary engines, boilers, and evaporators. Despite filtration systems, minute concentrations of oil often remain, endangering marine life. Some shipping companies bypass regulations by releasing untreated bilge water and thereby causing environmental damage.

3.2 <u>Pollution by Noxious Liquid Substances</u>: This refers to the discharge of hazardous chemicals transported in bulk. These substances are extremely toxic, posing long-term risks to both human health and marine ecosystems.[60]

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[57] **Onder Canbulat, 'Ship-Generated Waste Management in İstanbul Ports: An Analytical Methodology to Evaluate Waste Reception Performance (WRP)' (2023) 11(4) Journal of ETA marine Science 259-269<** https://www.researchgate.net/publication/375116841_Ship-Generated_Waste_Management_in_Istanbul_Ports_An_Analytical_Methodology_to_Evaluate_Waste_Reception_Performance_WRP**> accessed 20 March 2026**

[58] Abhijit Arvind, 'Ship Generated Waste Management Practices, challenges and innovations on board and at Ports: A Systematic Review < https://www.academia.edu/145419800/Ship_generated_waste_management_practices_challenges_and_innovations_onboard_and_at_ports_a_systematic_review> accessed 20 March 2026

[59] MARPOL 73/78, Annex I

[60] MARPOL 73/78, Annex II.

3.3 Pollution by Harmful Substances in Packaged Form: Pollution can also arise from dangerous goods carried in containers, drums, or other packaged forms.[61] Leakage or accidental loss overboard can introduce hazardous materials into the marine environment.

3.4 Sewage Pollution (Blackwater and Greywater): Sewage from ships includes wastewater from toilets, medical facilities, and sinks. Cruise ships, carrying thousands of passengers, generate substantial amounts of sewage. MARPOL Annex IV[62] regulates sewage discharge standards, equipment, and port reception facilities. Greywater, though not explicitly regulated, often contains harmful bacteria, detergents, and oils.

3.5 Garbage Pollution: Ship-generated solid waste includes plastics, food waste, and cargo residues.[63] Plastic pollution is particularly concerning because it persists in the marine environment and harms marine species.[64]

4.0 **Legal and Regulatory Framework for Combatting Ship-Source Marine Pollution**

The existence of well-developed legal instruments and institutional mechanisms that regulate maritime activities is essential for a successful response to ship-source marine pollution.

4.1 International Framework

4.1.1 The International Maritime Organization

The United Nations specialised agency responsible for regulating international shipping and promoting maritime security, safety, and environmental preservation is the International Maritime Organization. Nigeria is a member of the International Maritime Organization (IMO) and has adopted key conventions such as the International Convention for the Prevention of Pollution from Ships and the International Convention for the Control and Management of Ships' Ballast Water and Sediments. These are implemented domestically through the Nigerian Maritime Administration and Safety Agency (NIMASA). The IMO in relation to technological innovations for combatting ship-source marine pollution, provides the legal and technical

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[61] MARPOL 73/78, Annex III.

[62] International Convention for the Prevention of Pollution from Ships (adopted 2 November 1973, as modified by the protocol of 1978, entered into force 2 October 1983).

[63] MARPOL 73/78, Annex V

[64] J.A Akanli, E.I Elelenwo, 'Sources of Marine Pollution on Nigerian Coastal Resources: An Overview' (2015) 5(2) Open Journal of Marine Science https://www.scirp.org/journal/paperinformation?paperid=55413 accessed 23 March 2026.

framework for developing, implementing, and standardizing anti-pollution technologies.[65] The use of technologies such as ballast water treatment systems, bilge water treatment systems, oil spill containment and recovery equipment, and green shipping technologies is mandated by key conventions under the IMO.

4.1.2 The International Convention for the Prevention of Pollution from Ships (MARPOL)

MARPOL is the primary international convention established to mitigate pollution from ships. It was ratified by the International Maritime Organization (IMO) in 1973.[66] MARPOL establishes extensive regulations aimed at mitigating marine pollution from ships, arising mainly from operational and unintentional sources. MARPOL is comprised of six Annexes, each addressing a distinct category of pollution: oil (Annex I), noxious liquid substances (Annex II), harmful substances in packaged form (Annex III), sewage (Annex IV), garbage (Annex V) and air pollution (Annex VI). Although these provisions are regulatory, they are heavily dependent on technical innovations. For example, MARPOL mandates the implementation of technologies such as double hulls in oil tankers to mitigate the risk of oil spillage during collisions under Annex I.[67] Similarly, MARPOL Annex IV and Annex V encourage the implementation of sophisticated onboard treatment systems, such as sewage treatment facilities and waste management technologies, to guarantee that discharges comply with the established environmental standards.[68]

4.2 National Framework

4.2.1 National Oil Spill Detection and Response Agency

The National Oil Spill Detection and Response organization (NOSDRA) is Nigeria's principal organization responsible for monitoring, detecting, and responding to oil spills, especially in its territorial waters and offshore oil operations. Established pursuant to the NOSDRA Act of

[65] Bruce G, Eyres J, 'International Maritime Organization' (2012)< https://www.researchgate.net/publication/301075900_International_Maritime_Organization> accessed 23 March 2026
[66] International Convention for the Prevention of Pollution from Ships (adopted 2 November 1973, as modified by the protocol of 1978, entered into force 2 October 1983)
[67] Ibid
[68] Amran Al-Kamzari, 'The problem of small-scale marine oil spills discharged by unattributable vessels: A review' (2025) https://www.ea.gov.om/media/fivawfud/the-problem-of-small-scale-marine-oil-spills-discharged-by-unattributable-vessels.pdf accessed 23 March 2026

2006,[69] the body plays a crucial role in enforcing environmental regulations and advocating for the adoption of technology solutions to mitigate marine pollution. NOSDRA utilizes modern technologies, including satellite and drone surveillance for early spill detection, Geographic Information Systems (GIS) for tracking and mapping affected regions, and oil spill modelling software for predicting spill movements and consequences. It also promotes the deployment of advanced response apparatus, including automated oil skimmers and containment booms, to guarantee early containment and cleanup. NOSDRA enforces adherence to national legislation and aligns its operations with international standards, thereby promoting the implementation of preventive technologies such as double-hull vessel designs and onboard containment systems.[70] Additionally, NOSDRA promotes the effectiveness and timeliness of oil spill response through technology-driven and regulatory measures.[71]

4.2.2 Nigerian Maritime Administration and Safety Agency (NIMASA)

The Nigerian Maritime Administration and Safety Agency (NIMASA) is the primary regulatory body responsible for ensuring environmental compliance, maritime safety, and security. The agency was established under the NIMASA Act of 2007[72] and is responsible for the implementation and enforcement of international maritime conventions. It serves as Nigeria's flag state administration. NIMASA is instrumental in the promotion and enforcement of technological innovations that are consistent with the Ballast Water Management Convention and the MARPOL Convention. These include onboard pollution control technologies, such as oil filtering equipment, sewage treatment systems, ballast water treatment systems to prevent the introduction of invasive species, and double-hull vessel designs to reduce the risk of oil accidents. In addition to conducting ship inspections, certification, and compliance monitoring, the agency also ensures that environmental standards are met.[73]

5.0 Technological Innovations in Combating Ship-source marine Pollution

[69] National Oil Spill Detection and Response Agency (Establishment) Act 2006.

[70] **Matilda A, Femi A, 'Role of the National Oil Spill Detection and Response Agency (NOSDRA) in Resolving Oil Spill Disputes in Nigeria Introduction and Problem Statement' (2025)** https://www.researchgate.net/publication/396310577_Role_of_the_National_Oil_Spill_Detection_and_Response_Agency_NOSDRA_in_Resolving_Oil_Spill_Disputes_in_Nigeria_Introduction_and_Problem_Statement **accessed 23 March 2026.**

[71] Ibid

[72] Nigerian Maritime Administration and Safety Agency Act 2007.

[73] Elezuo k, Bello M, Aladetohun NF, 'Harnessing the fisheries sector of the blue economy for sustainable economic growth and development in Nigeria: Opportunities, challenges, and strategies' (2024) 12(5) International Journal of Fisheries and Aquatic Studies 15-23 <https://www.fisheriesjournal.com/archives/2024/vol12issue5/PartA/12-4-12-922.pdf> accessed 22 March 2026

Through instruments like MARPOL, modern technologies have been developed to minimise operational discharges, enhance monitoring systems, and advocate for ecologically sustainable shipping operations.[74] They include:

5.1 Monitoring and surveillance technologies

Monitoring and surveillance technologies are crucial in mitigating ship-source pollution because they allow for early identification, accurate tracking, and timely reaction to maritime contamination.[75]

5.1.1 Satellite remote sensing: is one of the most effective methods for monitoring ship-source pollution. Satellites provide continuous, wide-area coverage of oceans, making it possible to detect oil spills even in remote offshore regions.[76] Technologies such as the Synthetic Aperture Radar (SAR) identify oil slicks by detecting changes in sea surface roughness, while optical and infrared sensors detect variations in colour and temperature caused by oil layers. Ships can benefit from satellite systems by subscribing to maritime monitoring services that provide real-time alerts about nearby spills or suspicious discharges. Shipping companies can also integrate satellite data into their navigation and environmental management systems, allowing crews to avoid contaminated areas and report incidents promptly.

5.1.2 Aerial surveillance: complements satellite monitoring by offering real-time observation of pollution incidents.[77] Aircraft equipped with advanced tools such as ultraviolet and infrared cameras, laser fluoro sensors, and multi-spectral scanners can confirm the presence of oil, map its extent, and estimate its thickness. Ships can collaborate with aerial surveillance operations by maintaining open communication channels with maritime authorities and response teams. For instance, when a ship reports a suspected spill, aerial units can be deployed to verify and assess the situation. Ships involved in offshore operations can also contract aerial monitoring services as part of their environmental protection plans.

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[74] Micromarin, 'The Future of Ship Management: How Digital Platforms Are Transforming the Maritime Industry' (2026) <https://micromarin.com/blog/how-digital-platforms-are-transforming-the-maritime-industry> accessed 13 March 2026

[75] Chiemezie A, Chinonso L, Ebi F, 'Economic Impacts of Marine Pollution in Nigeria and the Need for Sustainable Policy Interventions' (2024) 3(4) International Journal of Social Science Humanity & Management Research 441-449 https://ijsshmr.com/v3i4/Doc/5.pdf accessed 22 March 2026

[76] **Carl E, Kim P, 'Aerial Surveillance, Monitoring, and Remote Sensing of Maritime Oil Spills: A Global Survey of Current Capabilities' (2026) <** https://www.researchgate.net/publication/400442703_Aerial_Surveillance_Monitoring_and_Remote_Sensing_of_Maritime_Oil_Spills_A_Global_Survey_of_Current_Capabilities **> accessed 24 March 2026**

[77] Ibid

5.1.3 Surface and subsurface sensors: provide localised, real-time monitoring of water conditions and are particularly effective for detecting pollution that cannot be seen from the surface. These sensors can be mounted on buoys, autonomous underwater vehicles (AUVs), or directly on ships.[78] They help measure oil concentration continuously and sound an alarm when pollution levels exceed safe thresholds. Ships can also facilitate the implementation of sensor networks in ports and along important shipping lanes by sharing data with authorities.[79] This proactive monitoring assists ships in the early detection of leaks, the prevention of accidental discharges, and the demonstration of compliance with environmental standards.

6.1.4 Artificial intelligence and data integration enhance the effectiveness of all other monitoring technologies by enabling faster analysis and smarter decision-making. AI systems can automatically process satellite imagery to detect oil spills, predict their movement based on environmental conditions such as wind and currents, and recommend optimal response strategies.[80] For example, AI-powered software can analyse sensor data to identify abnormal discharge patterns, predict equipment failures that could lead to leaks, and optimize waste management processes.

6.2 Oil Pollution Prevention and Response Technologies

These technologies are particularly important in combating ship-source pollution, which arises from tanker accidents, illegal discharges, bunkering operations, and routine vessel activities.

6.2.1 Oil Containment Boom: One of the most frequently used methods in oil spill response is the oil containment boom. These are floating barriers used to confine and concentrate oil on the water's surface, preventing it from spreading to vulnerable areas including shorelines, ports, and mangrove habitats.[81] In Nigeria, oil containment booms are frequently employed in spill response operations, notably in coastal regions and major ports such as Port Harcourt Port and Lagos Port Complex.[82]

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[78] **Giovanni B, Vincenzo C, 'Review on Sensors for Sustainable and Safe Maritime Mobility'(2024)<** https://www.researchgate.net/publication/378331300_Review_on_Sensors_for_Sustainable_and_Safe_Maritime_Mobility> **accessed 24 March 2026**
[79] Ibid
[80] Ibid
[81] Virginia O, Ekunke G, 'A Review of Modern Technologies and Best Practices for Oil Spill Containment and Response' (2025) < https://www.researchgate.net/publication/390419131_A_review_of_modern_technologies_and_best_practices_for_oil_spill_containment_and_response> accessed 24 March 2026
[82] Ibid

6.2.2 Skimmers: Skimmers are mechanical devices that remove oil from the water's surface. Skimmers use various mechanisms, such as revolving drums, discs, or suction systems. They play an important role in preventing ship-source pollution because they allow for the recovery of spilt oil, particularly in port regions where spills are frequently localised.

6.2.3 Chemical Dispersants: In addition to mechanical methods, chemical dispersants are commonly utilised to control oil spills. Dispersants are chemical agents that split up oil into smaller droplets, allowing marine microbes to naturally degrade it. This approach helps reduce the visibility and spread of oil slicks on the water's surface, thereby minimising the risk of shoreline pollution.[83]

6.2.4 Oil Spill Modelling and Forecasting System: Oil spill modelling and forecasting system is a more sophisticated method of managing oil spills. These computer-based tools simulate the movement, behaviour, and fate of oil spills in marine environments. These systems can anticipate the route of oil slicks and assess their potential impact on coastal and marine resources by using data such as ocean currents, wind patterns, and water temperature.[84]

6.3 Ballast Water Treatment Systems

Ballast Water Treatment Systems (BWTS) are critical technology used on ships to treat ballast water, which is required to keep the vessel stable during voyages. While ballast water aids safe navigation, it also transports dangerous microbes, bacteria, and invasive species from one location to another. When these organisms are discharged, they may disrupt local ecosystems, making ballast water a major source of ship-sourced pollution, particularly in the form of biological contamination. BWTS are designed to solve this problem by treating ballast water before discharge, thereby eliminating or neutralising hazardous organisms.[85] In so doing they play a crucial role in protecting marine biodiversity, preserving fisheries, and ensuring ecological equilibrium in coastal areas.[86]

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[83] Umezurike Ezugwu, 'Marine Environmental Pollution In Nigeria and its Possible Implication' https://www.researchgate.net/publication/397446993_MARINE_ENVIRONMENTAL_POLLUTION_IN_NIGERIA_AND_ITS_POSSIBLE_IMPLICATION_AND_SOLUTION accesssed March 13, 2026

[84] **Onder Canbulat, 'Ship-Generated Waste Management in İstanbul Ports: An Analytical Methodology to Evaluate Waste Reception Performance (WRP)' (2023) 11(4) Journal of ETA marine Science 259-269< https://www.researchgate.net/publication/375116841_Ship-Generated_Waste_Management_in_Istanbul_Ports_An_Analytical_Methodology_to_Evaluate_Waste_Reception_Performance_WRP> accessed 20 March 2026**

[85] **Carl E, Kim P, 'Aerial Surveillance, Monitoring, and Remote Sensing of Maritime Oil Spills: A Global Survey of Current Capabilities' (2026) < https://www.researchgate.net/publication/400442703_Aerial_Surveillance_Monitoring_and_Remote_Sensing_of_Maritime_Oil_Spills_A_Global_Survey_of_Current_Capabilities> accessed 24 March 2026**

6.4 Sewage treatment systems

MARPOL defines sewage as waste from toilets, urinals and medical facilities. The waste content of ships affects the environment, organisms, and waste treatment procedures. A waste discharge monitoring mechanism is therefore required to optimise monitoring. MARPOL Annex IV strives to ensure that sewage disposal from ships is handled first, and that port authorities ensure safety management systems to comply with marine protection rules. MARPOL regulations govern the disposal of sewage from ships, requiring maintenance before it is disposed of in approved regions.

6.5 Green Sheep Technologies

Green ship technologies represent a critical technological innovation in combating ship-source marine pollution, especially as the global maritime industry transitions towards sustainable practices. These technologies seek to reduce hazardous emissions, increase fuel economy, and minimise pollutant discharge into maritime habitats. In response to mounting environmental concerns, the International Maritime Organization has set ambitious goals, including a 40% decrease in shipping carbon intensity by 2030 compared to 2008 levels.[87] This has led to a widespread adoption of cleaner and more efficient shipping technology throughout the sector. One significant area of innovation is the retrofitting of existing vessels with fuel-efficiency upgrades. Some companies have implemented steps including improved hull coatings and propeller improvements to boost engine performance. These upgrades have resulted in measurable fuel savings of approximately 6% per vessel, lowering greenhouse gas emissions and limiting the release of oil residues and other pollutants into the water.

7.0 Challenges and gaps in the adoption of technological innovations in Nigeria

Despite the growing importance of technological innovations in mitigating ship-source marine pollution, several challenges hinder their effective adoption and implementation in Nigeria.

7.1.1 Weak Enforcement of Regulations: although regulatory frameworks exist, enforcement remains inconsistent and often ineffective.[88] Regulatory agencies frequently lack the capacity and resources to ensure compliance, allowing some vessels to bypass pollution-control

[87] Ibid

[88] Acceleron, 'Our Oceans and Technology: how Digital innovation can help Marine Sustainability' (2021) <https://accelleron.com/charge-magazine/how-digital-innovation-can-help-marine-sustainability > accessed 12 March 2026.

technologies such as oily water separators and emission control systems without facing significant consequences.

7.1.2 High Cost of Technological Systems: the acquisition, installation and maintenance of modern pollution-control technologies, including ballast water treatment systems and monitoring equipment, require substantial financial investment.[89] This creates a barrier for ship operators and port authorities particularly in a developing country like Nigeria where cost considerations often take precedence over environmental compliance.

7.1.3 Inadequate Infrastructure

Many Nigerian ports lack the necessary infrastructure to support technological solutions, particularly modern waste reception and treatment facilities.[90] The absence of such infrastructure limits the effectiveness of pollution-control measures and discourages compliance by vessels operating within Nigerian Waters.

7.1.5 Limited Technical Capacity

The effective operation of advanced technologies depends on skilled personnel, which remains a challenge in Nigeria. There is a shortage of adequately trained professionals within both the maritime industry and regulatory agencies, leading to improper use, poor maintenance, or complete underutilization of available technologies.

8.0 Conclusion

Ship-source marine pollution remains a significant threat to the marine environment, human health and global economic activities. Despite the existence of regulatory frameworks, challenges such as weak enforcement, technological limitations and operational negligence continue to undermine efforts to curb pollution. However technological innovations have emerged as effective tools in addressing these challenges. From advanced monitoring systems to cleaner ship designs and automated waste management technologies these innovations provide practical and sustainable solutions to reduce marine pollution.

[89] **Micromarin, 'The Future of Ship Management: How Digital Platforms Are Transforming the Maritime Industry' (2026)** <https://micromarin.com/blog/how-digital-platforms-are-transforming-the-maritime industry> **accessed 13 March 2026**

[90] Ibid

Nevertheless, the effectiveness of these technologies depends largely on proper implementation, adequate funding and strong institution support. Therefore, a combined effort involving governments, international organizations and private stakeholders is essential.

9.0 Recommendation

The following recommendations are therefore proposed:

<u>Adoption of Advanced Monitoring Technologies</u>: Governments and maritime agencies should invest in modern technologies such as satellite surveillance, remote sensing systems and automatic identification systems (AIS). These tools are essential in detecting illegal discharges and track vessels in real time

<u>Strengthening Regulatory Enforcement</u>: There should be stricter enforcement of existing laws like MARPOL regulations, National Environmental Laws. Moreso agencies such as NIMASA and NOSDRA should be better funded and equipped with modern tools to ensure compliance.

<u>Promotion of Green Ship Technologies</u>: Ship owners should be encouraged to adopt cleaner fuels, ballast water treatment systems and oil water separators to help reduce pollution at the source.

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THE ROLE OF INTELLECTUAL PROPERTY LAW IN ACHIEVING THE SUSTAINABLE DEVELOPMENT GOALS

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ABSTRACT

The world is longing for sustainable development, a development that meets the needs of the present without frustrating future generations in meeting their own needs. This led the United Nations Organisation to adopt the 2030 Agenda for Sustainable Development. There is no doubt that intellectual property and its protection play a pivotal role in achieving sustainable development, because innovation is one of the primary means of achieving sustainable development, and intellectual property law rewards innovation, thereby fostering development. Utilising doctrinal and analytical research methodologies, this paper seeks to appraise the importance of intellectual property law in achieving sustainable development. The article examines the concept of sustainable development, intellectual property law, and the role of the World Intellectual Property Organisation in the protection of intellectual property and the attainment of the Sustainable Development Goals. The article argues that intellectual property is relevant to the attainment of sustainable development goals if well managed. Lastly, the article proffers recommendations on how to best integrate intellectual property law with sustainable development.

Keywords: *Intellectual Property Rights, Sustainable Development Goals (SDGs), Innovation and Development, World Intellectual Property Organization (WIPO), Intellectual Property Law.*

1.0 Introduction.

The importance of innovation to society is obvious, and society must provide sufficient rewards to incentivise creators to innovate, by rewarding their investment in time and resources as well as allowing for some profit.[1] Intellectual Property Rights (IPRs) provide inventors with their reward: a period of proprietary exclusivity that imposes legal barriers around the creation, protecting it and preventing competitors from taking, adopting, or adapting it.

Intellectual property rights are often presented as a contentious issue in the development discourse. Some critics see strong intellectual property rights protection as an obstacle to development, as it creates barriers to the use of intangible resources on favourable terms.[2] Others perceive intellectual property rights as a means to foster growth in domestic industries, encourage innovation, and protect foreign firms in high-infringement jurisdictions.[3] These differing global perspectives on whether, and if so how, intellectual property rights promote development in domestic and global economies often result in policies that are either conducive or challenging to development.[4] On the one hand, Intellectual Property (IP) promotes development by incentivising innovation; on the other hand, it also hinders development by limiting access to inventions, particularly in the pharmaceutical and agricultural industries, by granting exclusive rights to proprietors.[5] It is however true in support of the first argument, that a well-balanced intellectual property rights framework that takes the interest of the creator and the public into consideration is necessary for the promotion of sustainable development. It is worthy of note that the rights themselves are designed to "preserve a public domain, through limits to their duration, qualifying criteria that must be met before protection is gained, and exceptions to infringement".[6] In support of the argument that a well-structured intellectual property protection is not a hindrance to innovative development, Colston and Galloway opined thus:

> Intellectual property rights do not confer monopolies outright. Subsistence of each of the rights is carefully structured by the criteria for grant or subsistence, and the nature of the right then conferred. The rights are also limited in duration: compulsory licences are available for patents and competition law provides a

[1] C Colston and J Galloway, *Modern Intellectual Property Law* (3rd edition, Routledge 2010) 21

[2] C Correa, 'The Current System of Trade and Intellectual Property' (2016) 7 (1) *EYIEL* 175

[3] K E Maskus, 'The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer' (1998) 9 (1) *Duke J Comp & Intl L* 109

[4] C B Ncube, *Science, Technology & Innovation and Intellectual Property: Leveraging Openness for Sustainable Development in Africa* (Juta 2021) 16

[5] ibid

[6] ibid (n1) 37

> balancing factor, as does accountability to the Copyright Tribunal. Additionally, alternative products are often available on the market. It is adjustments such as these that seek to provide both the objectives that intellectual property rights are designed to achieve and answer the arguments of intellectual property's critics. The balances needed are delicate and often specific to the nature of the particular type of creation.[7]

Arguing from the natural law approach, McFarland argues that the rights of ownership and control bestowed by intellectual property can be balanced against the common good by resorting to natural law theory going back to Aristotle.[8] If natural law "recognises both the individual right and the common good, a conceptual basis can be found for achieving a balanced application of intellectual property protection".[9] However, it is the case that the emphasis appears to have shifted from circumscribed rights granted in specific circumstances in order to serve the public good, to an emphasis on private reward, substantially eroding the "limiting factors."[10] Rather, the emphasis should be on how best intellectual property law can be used in attaining development.

The United Nations (UN) General Assembly adopted the Sustainable Development Goals (SDGs) in 2015, which set out broader goals. The SDGs indirectly emphasise the connection between intellectual property and development by establishing various goals. The SDGs are strongly political in nature, ranging from no poverty to justice, peace, strong institutions, and partnerships for the goals.[11] Intellectual property law, as a tool for rewarding creators, does not appear to play a direct role in achieving sustainability goals, as the SDGs make no explicit reference to intellectual property. However, intellectual property is implicit in either the achievement of the SDGs as a whole or as an aspect of specific goals, such as innovation. If we analyse the technological innovation required to fulfil some of the SDGs, such as "cheap and clean energy, clean water and sanitation, and climate action, we can see an indirect correlation".[12] It should be noted that the economic growth, creation of employment, social, technical, commercial and cultural progress,[13] all depend, to a large extent, on the genesis, and then the exploitation, of new ideas, techniques, products, and processes. Protecting the creation

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[7] ibid (n1) 36
[8] M McFarland, 'Intellectual Property, Information, and the Common Good' (1999) *BC Intell Prop & Tech F* 060503
[9] ibid n6
[10] ibid
[11] P Jain, *Sustainable Development and IPR* (All India Legal Forum 2021)
[12] ibid
[13] W Van Caenegem, 'Intellectual Property Law and the Idea of Progress' [2003] *IPQ* 237

and development of ideas lies at the heart of intellectual property law. The reason for doing so is to "stimulate and increase the production, development, and dissemination of the ideas necessary for progress."[14] This can be achieved by preventing the value of an idea from being misappropriated by others. Intellectual property law protects the results created when ideas are usefully exploited in products. "Without any protection at all, ideas are subject to being 'stolen' by competitors as soon as a product becomes publicly available."[15] While such "imitation might well be flattering, to lose all (or virtually all) one's market advantage to copyists could render exploitation so fruitless as to be abandoned, depriving the public of the innovation in the first place".[16]

Intellectual property indeed influences sustainable development goals, and when not properly managed, will limit development. This article deals with the relevance of intellectual property rights in the creation, use, protection, and management of innovation in achieving the SDGs. It discusses how the SDGs can be integrated with intellectual property law and innovative strategies to create clarity in perspectives and sustainable synergies with diverse aspects of the economy. The article argues that a well-structured integration of Intellectual property rights with SDGs will go a long way in fostering innovation, which is one of the hallmarks of achieving the SDGs.

2.0 Definition of Concepts.

2.1 Sustainable Development Goals.

To better understand the concept of "Sustainable Development," it is pertinent to look at the meaning of "development." To develop is to "cause something to expand, or bring out the potentialities, capabilities, or cause to come to completeness."[17] In conjunction with "sustain," which means to endure without yielding, to withstand,[18] sustainable development would ordinarily be construed to mean "an expansion or coming to completeness which endures without yielding."[19] It is a growth that is self-subsisting, maintained, and capable of being kept going. It has also been defined as "development that meets the needs of the present without

[14] ibid (n1) 44
[15] ibid
[16] ibid 44
[17] F A Anyogu and M V C Ozioko, 'Intellectual Property and Sustainability of Global Development Processes in Nigeria' (2022) 4 (1) *International Review of Law and Jurisprudence* 125
[18] ibid
[19] ibid 127

compromising the ability of future generations to meet their own needs,"[20] such as stable development, taking into account processes of change in which the "exploitation of resources, major divisions of investment, directions of technical development, progress, and institutional changes remain in harmonious relations, making it possible to satisfy both current needs and aspirations for the future".[21]

Development has been a global priority since the end of the Second World War.[22] The United Nations and its agencies have given it considerable attention. After initially being addressed in a fragmented way by multiple agencies, a coherent approach was provided by the Millennium Development Goals (MDGs) in 2000.[23] Commentary on the success of the MDGs varies, with some writers critiquing their limited success[24] while others laud their significant accomplishments, particularly in relation to hunger reduction, health, and education goals.[25] Either way, "the Millennium Declaration did usher in a coherent and consolidated approach to global development."[26] At the end of the timeframe for the MDGs, they were superseded by the SDGs in 2015. The opportunity was taken to enhance and strengthen the global development agenda in the transition.

In its further quest to promote development globally, the United Nations General Assembly, on 25 September 2015, issued the Resolution (A/70/L.1) – Transforming Our World: the 2030 Agenda for Sustainable Development.[27] The document is divided into five main parts: Preamble and Definitions, Declaration, Sustainable Development Goals and Targets, Means of Implementation and the Global Partnership, and Follow-up and Review. The 2030 Agenda is a comprehensive framework that builds upon the previous work of the UN while framing the

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[20] UN,Report of the World Commission on Environment and Development: Our Common Future (Transmitted to the General Assembly as an Annex to Document A/42/427 - Development and International Cooperation: Environment).<https://sswm.info/sites/default/files/reference_attachments/UN%20WCED%201987%20Brundtland%20Report.pdf> Accessed March 30 2026

[21] A M Deren, J Skonieczny, 'Green Intellectual Property as a Strategic Resource in the Sustainable Development of an Organization' (2022) 14 *Sustainability* 4758

[22]C B Ncube, *Science, Technology & Innovation and Intellectual Property: Leveraging Openness for Sustainable Development in Africa* (Juta 2021)

[23] United Nations Millennium Declaration General Assembly Resolution 55/2 of 8 September 2000; S. Kumar *et al*, 'Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs): Addressing Unfinished Agenda and Strengthening Sustainable Development and Partnership' (2016) 41(1) *Indian Journal of Community Medicine* 1

[24] M Fehling, and others, 'Limitations of the Millennium Development Goals: A Literature Review' (2013) 8(10) *Global Public Health* 1109

[25] M Lomazzi, and others, 'Millennium Development Goals: How Public Health Professionals Perceive the Achievement of MDGs' (2014) 7(1) *Global Health Action* 1; M Lomazzi, B Borisch & U Laaser 'The Millennium Development Goals: Experiences, Achievements and What's Next' (2014) 7(1) *Global Health Action* 23695

[26] ibid (n4)

[27] G Antošová and J C Valenzuela, 'Intellectual Property and Innovation Process under Goal 17 of Sustainable Development' (2019) 19(37) *Civilizar: Ciencias Sociales y Humanas* 117

relevant issues as 17 Sustainable Development Goals (SDGs) accompanied with 169 specific targets.[28] Compared to previous UN instruments in the field, the 2030 Agenda is more ambitious. The scope of the SDGs, with 17 goals and 169 indicators, is considerably broader than the MDGs, which had 8 goals and 63 indicators.[29] Unlike the MDGs, which focused only on social development, the SDGs also address economic and environmental aspects of development. Two other distinguishing attributes of the SDGs are complexity and universalism.[30] By contrast, the MDGs were relatively simple and applied only to developing countries, while the SDGs set out a robust network of transformative goals and targets universal to both developed and developing countries.[31] The 2030 Agenda embeds an interdisciplinary approach to achieving the SDGs. To achieve the SDGs in scope and within the planned timeframe, "diverse stakeholders must contribute their share.[32] Each SDG requires relevant stakeholder groups to work within their field, or ideally, foster collaboration leading to governmental regulation. The 2030 Agenda emphasizes each country's role to define and implement cohesive, sustainable development strategies.[33]

The SDGs are encapsulated in the '5 Ps': People, Planet, Prosperity, Peace and Partnerships. The goals can be grouped under the various Ps as follows:

> The people/social category consists of the first five SDGs: no poverty, zero hunger, good health and well-being, quality education and gender equality. It also consists of SDG 10, reduced inequalities, which is common to all three spheres, as depicted above. Other cross-cutting SDGs are clean water and sanitation (SDG 6), which straddles people and planet; affordable and clean energy (SDG 7), which features in both planet and prosperity; and no poverty (SDG 1), which falls under both people and prosperity.
>
> The planet/environmental category consists of clean water and sanitation (SDG 6), climate action (SDG 13), life below water (SDG 14), and life on land (SDG 15).
>
> The prosperity/economic category consists of decent work and economic growth (SDG 8), industry, innovation and infrastructure (SDG 9), sustainable cities and

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[28] Z Meskic, and others, 'Digitalization and Innovation in Achieving SDGs – Impacts on Legislation and Practice' (2022) 1026 *IOP Conf. Series: Earth and Environmental Science* 1

[29] S Fukuda-Parr, 'From the Millennium Development Goals to the Sustainable Development Goals: Shifts in Purpose, Concept, and Politics of Global Goal Setting for Development' (2016) 24(1) *Gender & Development* 43

[30] G Long, 'The Idea of Universality in the Sustainable Development Goals' (2015) 29(2) *Ethics & International Affairs* 203

[31] ibid (n4) 18

[32] ibid n30

[33] ibid

communities (SDG 11), and responsible consumption and production (SDG 12).

The final two categories are peace (SDG 16) and partnerships (SDG 17).[34]

The concept of sustainable development, understood in this way, meets global problems related to human activity, the functioning of economies, and societies in both developed and developing countries. It is important to acknowledge that, attaining all these goals comes down to human endeavours, innovations, creativity, and ideas which must be deliberate enough and tailored towards achieving the set goals and the exact role IP plays in this. No nation in the world has developed to its current level without the intellectual property rights (IPRs) inherent in its citizens, these IPRs have been nurtured and exploited to bring about economic growth and development.[35]

2.2 Intellectual Property Law.

According to the World Intellectual Property Organization (WIPO),[36] intellectual property refers to intangible creations of the human intellect and the rights granted to persons over such creations, giving the creator an exclusive right over the use of his or her creation for a certain period of time.[37] The term "intellectual property" gained ground in the 19th century but became popular in global legal systems in only the 20th century.[38] Intellectual property is an asset, a creation of the mind, a unique ingenuity belonging to its owner. There are two broad classes of intellectual property: copyright, which is concerned with the protection of literary, musical, and artistic creations; and industrial property, which is concerned with the protection of trademarks, industrial designs, patents, models, plants, and animal varieties.[39]

Intellectual property law protects intellectual property rights, which are granted by statutory provisions, for instance, for patents, trademarks, and copyrights, and, in some jurisdictions, by common law, for instance, for trade secrets and passing off,[40] to grant economic exclusivity over inventions in all fields of technology and a variety of works including art and literature.[41]

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[34] ibid (n4) 18

[35] T Olowoyo and A K Opeyemi, 'IP as a Critical Incentive for SDGs in Africa'< https://dnllegalandstyle.com/dnl/ip-as-a-critical-incentive-for-sdgs-in-africa/> Accessed March 30 2026

[36] World Intellectual Property Organization (WIPO) (2016) Understanding Industrial Property <https://www.wipo.int/publications/en/details.j5p?id=4080> Accessed March 30 2026

[37] World Trade Organization, TRIPS: WHAT ARE IPRS <https://www.wto.org/english/tratop-e/trips-e/intel1-e.htm> Accessed March 30 2026

[38] F A Anyogu and M.V.C. Ozioko, 'Intellectual Property and Sustainability of Global Development Processes in Nigeria' (2022) 4 (1) *International Review of Law and Jurisprudence* 125

[39] Ibid

[40] United Kingdom and Nigeria

[41] C B Ncube, 'Harnessing Intellectual Property for Development: Some Thoughts on an Appropriate Theoretical Framework' (2013) 16(4) *Potchefstroom Electronic Law Journal* 370

The exclusive economic rights are the mechanism through which the right holder controls reproduction, adaptation, and distribution, among other types of economic exploitation.

The protection of intellectual property rights is considered to encourage further technological research and innovation, as intellectual property rights motivate the creators to produce new works or improve the existing ones.[42] A "well-functioning set of international IP rules and norms enhances the return on investment that encourages new discoveries and creations."[43] These in turn accelerate growth, development, and progress.[44] At the same time, there are opinions claiming that intellectual property rights limit economic development, as "innovation is hampered in areas where a given entity cannot count on exclusive rights and thus on protection".[45] Therefore, the principle has been adopted that intellectual property rights should balance the interests of the creator with the interests of the rest of society. They should, on the one hand, provide a certain financial benefit to the creator, and on the other hand, they must not foreclose access to new technologies. The solutions that serve this purpose include the temporality of economic rights, the institution of permitted use, and compulsory licenses.[46]

It is worth noting that there exist several international legal instruments on intellectual property protection which provide guidelines and models for national legislations, such as the Universal Copyright Convention (UCC), the Berne Convention for the protection of Literary and Artistic works 1886; the Paris Convention for the protection of Industrial Property 1883; the Patent Cooperation Treaty, 1970, which provides for a unified procedure for filing patent applications; the African Regional Intellectual Property Organisation (ARIPO), 1976, and the Harare and Banjul Protocols, established to foster co-operation amongst African states in patent and other intellectual property matters; the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), 1996; as well as Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement) 1994.

There is a consensus that the most significant multilateral intellectual property law treaty is the World Trade Organisation (WTO) TRIPS Agreement.[47] It forms part of the Marrakesh Agreement Establishing the WTO, as Annex 1C, and is therefore, binding on all WTO member

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[42] A M Deren, J Skonieczny, 'Green Intellectual Property as a Strategic Resource in the Sustainable Development of an Organization' (2022) 14 *Sustainability* 4758.

[43] ibid

[44] ibid

[45] ibid

[46] ibid; See also C. Colston and J. Galloway, *Modern Intellectual Property Law* (3rd edition, Routledge 2010)

[47] H G Ruse-Khan, 'Protecting intellectual property rights under BITs, FTAs and TRIPS: Conflicting Regimes or Mutual Coherence?' in C Brown & K Miles (eds), *Evolution in Investment Treaty Law and Arbitration* (Cambridge University Press, 2011) 485; M. El Said, 'The Road from TRIPS-Minus, to TRIPS, to TRIPS-Plus' (2005) 8(1) *Journal of World Intellectual Property* 53.

states.[48] The TRIPS provisions apply to (1) copyright and related rights including the rights of performers, producers of sound recordings, and broadcasting organizations;[49] (2) trademarks;[50] (3) geographical indications, including appellations of origin;[51] (4) industrial designs;[52] (5) patents including the protection of new plant varieties ;[53] (6) the layout designs of integrated circuits;[54] and (7) confidential information.[55] The TRIPS Agreement sets minimum standards of protection for the intellectual property rights it addresses, and provides standards for the enforcement of these rights.[56] However, it is important to note that, although minimum standards are prescribed, WTO member states have the flexibility to (1) attach specific meanings to some concepts; (2) decide on appropriate protection in specific cases; and (3) set their implementation agenda within the transition periods provided for in the agreement.[57]
The core areas of Intellectual property law are patent, copyright, trademark, and industrial design.[58]

2.2.1 Patent.

According to the World Intellectual Property Organization, a patent is a legal authorisation that grants its owner the exclusive right to control the use of an invention, as defined in its claims, within a geographical area and for a limited period of twenty years, preventing third parties from manufacturing, using, selling or offering the invention for sale without authorisation.[59]

2.2.2 Copyright.

Copyright subsists automatically upon the creation of a work; no application is needed, nor do any formalities apply. Copyright works comprise original literary, dramatic, musical, and artistic works, as well as sound recordings, films, broadcasts, and the typographical layout of published editions. It is a long-lasting right, enduring, in the case of the original works, for the life of the author plus 70 years.[60] Copyright is fundamentally linked to the goal of education

[48] C B Ncube, *Science, Technology & Innovation and Intellectual Property: Leveraging Openness for Sustainable Development in Africa* (Juta 2021) 32.
[49] Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, PART II, Section 1.
[50] ibid s 2
[51] ibid s 3
[52] ibid s 4
[53] ibid s 5
[54] ibid s 6
[55] ibid s 7
[56] ibid PART III
[57] ibid (n4) 32
[58] This article does not address registration processes, costs, their timelines and enforcement mechanism as such practical matters are not within the scope of this article
[59] WIPO - World Intellectual Property Organization (2018). <http://www.wipo.int/portal/en/index.html> Accessed March 30 2026
[60] D. O. Oriakhogba and A. I. Fenemigho, 'Development, Concept and Scope of Copyright Protection in Nigeria: An Overview' (2014) *NAUJILJ* 179

(SDG 4) by encouraging the production and dissemination of educational materials and works of the mind.

2.2.3 Trademarks.

Trademarks relate to any mark, name, or logo under which trade is conducted for any product or service, and by which the manufacturer or the service provider is identified. Trademarks can be bought, sold, and licensed but have no existence apart from the goodwill of the product or service it symbolises.[61] Trademarks are signs capable of distinguishing the goods and services produced or provided by one enterprise from those of other enterprises.[62] Essentially, a trademark protects the name of a product rather than the idea behind it.[63]

2.2.4 Industrial Design.

Industrial designs are arrangements of lines or colours, or any three-dimensional forms, which give a special appearance to a product. Heskett defines industrial design as "a process of creation, invention, and definition separated from the means of production, involving an eventual synthesis of contributory and often conflicting factors into a concept of three-dimensional form, and its material reality, capable of multiple reproduction by mechanical means".[64] Industrial designs protect the decorative or aesthetic aspect of a useful article, which generally appeals on the sense of sight or touch and can be reproduced in significant quantities.[65]

3.0 The Role of Intellectual Property Law in Achieving SDGs.

The SDGs, which are built on the principle of "leaving no one behind," indicates the interlink between intellectual property law and development by providing for a goal to "build resilient infrastructure, promote sustainable industrialisation and foster innovation". The role of intellectual property law in sustainable development can never be overemphasised. It is "important therefore to extend intellectual property protection to every endeavour that requires sustainability."[66] According to Taylor "IPRs foster innovation by enhancing investor

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[61] C N Saha and S. Bhattacharya, 'Intellectual Property Rights: An Overview and Implications in Pharmaceutical Industry' (2011) 2 *J Adv Pharm Tech Res* 88-93

[62] 'Intellectual Property Rights for SMEs in the Pharmaceutical Industry' WIPO, <http://www.wipo.int/sme/en/documents/ip_pharma_fulltext.html> Accessed March 30 2026

[63] Makati Business Club, 'Exploitation of Intellectual Property Rights by Pharmaceutical Companies in the Philippines' (2017) *MBC Research Report* 11

[64] J Heskett, *Industrial Design* (1st Edition, Thames & Hudson, 1980)10

[65] L Nyagahene and K L Wairimu, 'Analysis of Influence of Intellectual Property Strategy on Sustainable Competitive Advantage of Pharmaceutical Manufacturing Companies in Nairobi City County, Kenya' (2019) 3 (12) *International Journal of Economics, Business and Management Research* 35

[66] F A Anyogu and M V C Ozioko, 'Intellectual Property and Sustainability of Global Development Processes in Nigeria' (2022) 4 (1) *International Review of Law and Jurisprudence* 125

confidence, continuing to grant them will contribute to achieving the Sustainable Development Goals identified by the United Nations in 2015."[67] In practical terms, enhanced global well-being and development are critically dependent on the existence of intellectual property law which protects innovation necessary for the achievement of sustainable development.

Intellectual property is, "theoretically, centrally linked to fostering innovation and industry".[68] Some have raised doubts about the effectiveness of intellectual property in fostering innovation, noting that intellectual property can equally lock up innovation, thereby preventing follow-on innovation.[69] However, there is no doubt that, in policy discourse, a central goal of intellectual property is to foster innovation, as is evident in the preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement), which provides that intellectual property serves developmental objectives by recognizing "the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives". At the same time, it recognises that member states may "adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development".[70]

In Nigeria for instance, the Nigerian Start Up Act 2022, recognising the importance of intellectual property law to development, provided that:

> (1) The Council[71] acknowledges the importance of intellectual property rights towards the growth and development of a start-up.
>
> (2) As part of its objectives, the Secretariat shall ensure that holders of intellectual property rights are encouraged to exploit these rights and shall take steps towards assisting them in internationalising and commercialising their rights.
>
> (3) The Secretariat[72] shall further collaborate with the Nigerian Copyright Commission and the Trademarks, Patent, and Design Registries to ensure that registration and protection of intellectual property of labelled start-ups are seamless, expedited, and in accordance with the provisions of this Act.[73]

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[67] D Taylor, 'The Role of Intellectual Property in Achieving the Health Sustainable Development Goal'(2022)
[68] S Bannerman, 'The World Intellectual Property Organization and the Sustainable Development Agenda' (2020) 122 *Futures* 102586
[69] M Boldrin, & D K Levine, *Against Intellectual Monopoly* (Cambridge University Press 2010)
[70] Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 8
[71] National Council for Digital Innovation and Entrepreneurship established by Nigerian Start Up Act 2022, s 3
[72] National Information Technology Development Agency, see the Nigerian Start up Act 2022, s 9
[73] Nigerian Start up Act 2022, s 31

It is therefore, beyond doubt that "innovation and human ingenuity are key to the attainment of the Sustainable Development Goals. Intellectual property, as a key driver of innovation, fosters the kinds of inclusive economic, social, and cultural growth that are needed to allow us to overcome our greatest common challenges."[74]

We shall now examine how intellectual property can be used in achieving the SDGs in no particular order.

a. **SDG 2: End Hunger, Achieve Food Security and Improved Nutrition and Promote Sustainable Agriculture**: As its first two targets, SDG 2.1 pledges to "end hunger and ensure access by all people ... to safe, nutritious and sufficient food all year round" by 2030, and SDG 2.2 commits countries, also by 2030, "to end all forms of malnutrition". Additionally, the targets under Goal 2 promise to reach internationally agreed targets on stunting and wasting in children under five years of age and include the commitment to "address the nutritional needs of adolescent girls, pregnant and lactating women, and older persons." Intellectual property rights play a critical role in promoting agricultural research and development and ensuring food security. It was primarily the advancement of new biotechnology, based on genetic engineering that propelled IP into the food security arena. A classic example of a deliberate approach to help solve this problem is the Costa Rican company, SIBO B.V, which has invested in insect-based food in order to supplement the shortage of food, the intellectual property behind this project lies in its trade secret of the first water-soluble insect-based protein.[75] By incentivising research on agricultural productivity and nutritional innovation, intellectual property law will foster innovation in agricultural technologies that will help in achieving Goal 2.

b. **SDG 3: Ensure Healthy Lives and Promote Well-Being for All at All Ages:** The IP system supports innovation in health care by encouraging investment in new drugs and technologies. Medical research and development often involve significant upfront costs; products can take years to develop and reach the market, and many fail in testing. Companies rely on IP rights to help them secure a return on investment. The utilisation of the flexibilities contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is important in achieving this goal. This is a treaty agreed in 1994 and administrated by the World Trade Organization. The treaty provides

[74] Daren Tang quoted in WIPO, *Innovation driving human progress: WIPO and the Sustainable Development Goals* (WIPO 2021) 3

[75] 'Sibo Unlocks the potential of insect based food with entowise' <http://www.wipo.int/ipadvantage/en/details.jsp?id=12309> accessed March 30 2026

that intellectual property, especially patents, should not be used to hinder the provision of medicines for all. The 2001 Doha Declaration on TRIPS and Public Health reaffirmed the treaty's principles. The exceptions and flexibilities in the TRIPS Agreement are important public interest mechanisms that enable states to tailor their patent regimes to achieve certain developmental ends. These mechanisms include transition periods, parallel importation, exceptions to patent rights, exclusions from patentability, and provisions on compulsory licenses and government use. Article 31 provides for "other use without authorisation of the right holder", including by the government or third parties, and sets out conditions applicable to such use in paras (a)–(l). These compulsory license and government use provisions have raised some concerns, particularly the limitation to supplying domestic markets by Article 31(f), because most developing countries do not yet have pharmaceutical manufacturing capacity. This has led to modification of the position through a waiver of the domestic market restriction by the "paragraph 6 solution" of the 2003 Waiver Decision,[76] which was subsequently incorporated into TRIPS as Article 31bis by the 2005 amendment of the Agreement. The significance of the modification is that WTO members may export pharmaceuticals produced under compulsory license to other member states with limited manufacturing capacity[77] thereby enhancing the availability of pharmaceutical products in those countries.

c. **SDG 4 Ensure Inclusive and Equitable Quality Education and Promote Lifelong Learning Opportunities for All**: The international and national copyright system supports education by encouraging the creation and sharing of new knowledge and information. However, education is not always accessible to all. For example, people with visual impairments and print disabilities often struggle to access study materials, hindering their ability to contribute to society. This can be addressed through the appropriate Implementation of "treaty-based adjustments to the IP system so that books for visually impaired and print-disabled readers can be more easily sourced and shared across national borders".[78][79] WIPO has been instrumental in enhancing access to information and academic material for the visually impaired and print-disabled. For

[76] Doha Decision on the implementation of para 6 of the Doha Declaration (2003). Doc. WT/L/540 and Corr.1.0
[77] 'WTO Analytical Index: TRIPS Agreement – Article 31bis (Practice)' <https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art31_bis_oth.pdf.> Accessed March 30 2026
[78] WIPO, *Innovation driving human progress: WIPO and the Sustainable Development Goals* (WIPO 2021) 21
[79] In United Kingdom, the Copyright (Visually Impaired Persons) Act 2002 allows an exception to the reproduction and communication rights for the benefit of those with disabilities and added new permitted acts to the CDPA 1988 for the visually impaired

example, there is the WIPO-led Accessible Books Consortium (ABC) is a public-private partnership that works to harness the latest technologies to meet the needs of visually impaired people around the globe. ABC members collaborate to promote "born accessible" publishing so that books are designed from the earliest stages to be fully accessible. They also provide training and other capacity-building initiatives and establish international standards for inclusive publishing.

Another international effort is the Marrakesh Treaty of 2013.[80] The Treaty addresses the needs of visually impaired people by facilitating greater access to information and educational resources that are specially adapted for their use. It establishes the basis for exceptions and limitations in copyright law, enabling collaborative efforts by diverse stakeholders to meet this group's needs. The Treaty's provisions innovatively apply copyright law to enable the cross-border transfer of specially adapted materials for use by the blind, visually impaired, and print disabled.

It has been argued that, "both the Marrakesh Treaty and the ABC indirectly contribute towards Goal 4 of the SDGs, in which the international community aspires to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all".[81]

d. **SDG 5: Achieve Gender Equality and Empower All Women and Girls**. The most relevant target to intellectual property law is SDG5.b, which provides for enhancing the use of technology, in particular, information and communications technology, in promoting the empowerment of women.[82] Creators will be more willing to develop enabling technologies that promote women's empowerment if their innovation are protected by intellectual property law.

e. **SDG 6: Ensure Availability and Sustainable Management of Water and Sanitation for All**: Access to patented innovations can play a key role in securing access to clean and potable water, either by purifying water or by preventing water pollution. Intellectual

[80] 51 countries signed the Treaty at the close of the 2013 negotiations. The Treaty entered into force on September 30, 2016 with 20 contracting countries

[81] S I Štrba, 'The Marrakesh Treaty, Public-Private Partnerships, and Access to Copyrighted Works by Visually Impaired Persons' in Margaret Chon et al. (eds), *The Cambridge Handbook on Public-Private Partnerships, Intellectual Property Governance, And Sustainable Development* (2018) 177

[82] United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development* (United Nations 2015) 20

property law will protect innovations, such as clean technology innovations, whose spread into developing countries can help address multiple issues under SDG6.[83]

f. **SDG 7: Ensure Access to Affordable, Reliable, Sustainable, and Modern Energy for All**:

   Target 7.b provides for the expansion of energy infrastructure and upgrading of technology for supplying modern and sustainable energy services for all in developing countries, in particular, least developed countries, small island developing states, and landlocked developing countries, in accordance with their respective programmes of support. The relevance of intellectual property law in achieving this goal cannot be overemphasised, as intellectual property rights-protected technology is useful in achieving it.

g. **SDG 8: Promote Inclusive and Sustainable Economic Growth, Full and Productive Employment, and Decent Work for All**. In regards to economic growth, the world has gone digital as the mode of economic activity is increasingly being transferred into the digital space. As a result, innovators across different sectors are contributing to the creation of sustainable economic growth, beyond the traditional mode of economic activity, and at the very heart of this process is intellectual property. Additionally, SDG8.3 requires creativity and innovation, both incentivised by the existence of protected intellectual property rights, as exclusive rights protect costly investments made to innovate. This is the utilitarian justification of intellectual property rights, which has been used as to justification for strong exclusivity, it can also be used as a justification for incorporating sustainable development concerns.[84]

h. **SDG 9: Industry, innovation, and infrastructure:** Innovation is central to the achievement of the SDGs, and the central goal of intellectual property is to foster innovation. Given the fact that the protection of intellectual property rights fosters innovation by enhancing investor confidence, continuous protection will contribute to achieving the Sustainable Development Goals identified by the United Nations in 2015.[85]

i. **SDG 13: Take urgent action to combat climate change and its impacts**: To achieve this goal, environmentally sustainable technologies must be designed or adapted to function in particular local contexts.[86] This has led to the discussion on green technology

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[83] J Mattsson, *Sustainable Development Goals in the Light of Intellectual Property Rights and Competition Law* (Unpublished LLM Thesis, University of Helsinki 2022)
[84] ibid
[85] P Jain, *Sustainable Development and IPR* (All India Legal Forum 2021)
[86] WIPO, *Innovation driving human progress: WIPO and the Sustainable Development Goals* (WIPO 2021) 22

and green intellectual property. The term green technology refers to "devices and items used in environmental science, environmental monitoring, green chemistry, and environmental conservation."[87] The term "green intellectual property" refers to the protection of green technologies or, more broadly, the protection of green innovations, a concept in which innovations that are helpful to the environment in one way or the other are legally protected through intellectual property law. In a research study carried out by Chu,[88] the importance of intellectual property rights in shaping the development and dissemination of green technologies is well recognised. The findings identify two types of strategies: on the one hand, are the positive strategies that encourage the development of green technologies; on the other hand, are the negative strategies that focus on counteracting the development of environmentally unfriendly technologies.[89] Given the enormous benefits of green intellectual property, countries must develop and access their intellectual property system, as well as actively accelerate the process of granting green IP protection.

j. **SDG 17: Global partnerships for sustainable development**: There is no doubt that successful research and innovation, undertaken responsibly, is a prerequisite for implementing the SDGs. The necessity for cooperative efforts in research and innovation for successful implementation of the goals is clear since the SDGs seek to address complex global problems that cannot be solved by single actors,[90] multiple stakeholders, including the World Intellectual Property Organisation and other regional and local intellectual property organisations, must work together to find solutions and ensure that actions are taken. Through SDG 17, partnerships are explicitly linked to the promise of greater innovation for sustainable development.[91]

It must be noted that beyond these specific goals mentioned above, intellectual property protection also benefits other goals indirectly. For example, Bannerman has argued that the intellectual property system would contribute to ending poverty if the proceeds realised from intellectual property protections were distributed widely across boundaries of class, gender, and race. This would include equality targets for equalising the flow of royalties and access to

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87 ibid n85

88 J M W W Chu, 'Developing and Diffusing Green Technologies: The Impact of Intellectual Property Rights and their Justification' (2012) 4 *Wash. Lee J. Energy Clim. Environ*. 53

89 ibid 53

90 C Voegtlin and A. G. Scherer, 'Responsible Innovation and the Innovation of Responsibility: Governing Sustainable Development in a Globalized World' (2017) 143(2) *Journal of Business Ethics* 227

91 M Chon, 'Recasting Intellectual Property in Light of the U.N. Sustainable Development Goals: Toward Knowledge Governance' (2019) 34 *Am. U. Int'l L. Rev.* 763

knowledge across those same boundaries and would track the sustainability of culture and cultural practices.[92] Furthermore, as a set of national and international legal institutions, the intellectual property systems theoretically serve Goal 16, "Peace, Justice, and Strong Institutions," by establishing and expanding a system of international law.[93] Intellectual property rights protection is thus an essential and a pervasive element throughout all of the SDGs and critical to their success.[94]

4.0 WIPO – The Innovation Organization and SDGs.

WIPO is one of the oldest multilateral organizations.[95] Its origins date back more than 130 years to the first international treaty on intellectual property rights, the Paris Convention for the Protection of Industrial Property of 1883, which helped protect intellectual works across national borders.[96] WIPO has "functioned at the core of the international intellectual property system since the late nineteenth century when its institutional predecessor, the United International Bureaux for the Protection of Intellectual Property (BIRPI) was established".[97] WIPO continues to serve as the forum where political, business, individual, and civil society stakeholders broker agreements that propel worldwide progress.[98] It is a neutral forum where governments and other stakeholders forge consensus on the rules and norms that make up the international intellectual property system. WIPO's work helps countries to conclude new treaties on intellectual property and to update and administer existing ones, in order to keep pace with the needs of the modern world. WIPO offers intellectual property registration and management services to applicants seeking international protection for their inventions, designs, marks, and other forms of intellectual property. These globally competitive services "generate more than 90 percent of WIPO's budget, financing its varied operations."[99] As the world's innovative capacity evolves, WIPO's focus and activities continually adapt to meet emerging intellectual property-related needs and challenges in an increasingly complex landscape.[100]

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92 S Bannerman, 'The World Intellectual Property Organization and the Sustainable Development Agenda' (2020) 122 *Futures* 102586
93 ibid
94 M Chon, 'Recasting Intellectual Property in Light of the U.N. Sustainable Development Goals: Toward Knowledge Governance' (2019) 34 *Am. U. Int'l L. Rev.* 763.
95 WIPO, *Innovation driving human progress: WIPO and the Sustainable Development Goals* (WIPO 2021)
96 ibid
97 ibid n92
98 WIPO, *Innovation driving human progress: WIPO and the Sustainable Development Goals* (WIPO 2021) 10
99 ibid
100 ibid

As the specialised United Nations agency for innovation and intellectual property, "WIPO has a unique role to play in achieving SDG 9: Build resilient infrastructure, promote sustainable industrialization and foster innovation".[101] By leading multilateral efforts to create a balanced and effective global intellectual property system at the heart of innovation, WIPO actively supports the inventiveness and creativity required to achieve each of the SDGs.[102] For WIPO, the SDGs can be fully achieved with the aid of innovation, and for the people to be innovative, there must be a guarantee that whatever is invented is protected under intellectual property law. The protection of innovation thus serves as an incentive for the achievement of the SDGs.

WIPO's approach to development has shown few signs of broadening to match the larger mandate of sustainable development. In assessing its potential and actual contributions to the SDGs, WIPO views its role primarily as relating to SDG 9: Industry, Innovation and Infrastructure, and specifically to fostering innovation, declaring, "Innovation is at the heart of WIPO's mission. In other words, SDG 9 is the most central to WIPO's mandate".[103] In 2019, it noted:

> Of all the SDGs, Goal 9 is most closely aligned with WIPO's mission, which is to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all. Innovation is also essential in achieving SDG 2 (zero hunger), SDG 3 (good health and wellbeing), SDG 6 (clean water and sanitation), SDG 7 (affordable and clean energy), SDG 8 (decent work and economic growth), SDG 11 (sustainable cities and communities), and SDG 13 (climate change). In a wider policy setting, innovation can also assist in achieving SDG 1 (no poverty), SDG 8 (decent work and economic growth), SDG 14 (life below water), and SDG 15 (life on land). Other SDGs are also achievable within an innovation policy framework, notably SDG 5 (gender equality), SDG 8 (decent work and economic growth), SDG 10 (reduced inequalities), and SDG 12 (responsible consumption and production).[104]

The Director General of WIPO, while stating the relationship between intellectual property and the SDGs, said that "IP exists to create an enabling environment for and to stimulate investment

[101] ibid
[102] ibid
[103] World Intellectual Property Organization, *Report on WIPO's Contribution to the Implementation of the Sustainable Development Goals and Its Associated Targets (CDIP/21/10)* (WIPO, 2018) 2
[104] World Intellectual Property Organization (2019). Report on WIPO's Contribution to the Implementation of the Sustainable Development Goals and Its Associated Targets (CDIP/23/10) 2 <https://wipo.int/meetings/en/doc_details.jsp?doc_id=431319> Accessed March 30 2026

and innovation." "That's why WIPO is working for a world where innovation and creativity from anywhere are supported by intellectual property for the good of everyone – the core of the SDGs".[105] Also, in a joint publication of WIPO and UNCHR, 'IP and Human Rights', they concluded that appropriate intellectual property can contribute to the economic, social, and cultural progress of the world.[106]

Some activities of WIPO's activities point to the fact that it is contributing directly to the SDGs that relate to education, hunger, protection of biodiversity, climate change, or human health[107] while retaining SDG 9 as its central goal.[108] For example, WIPO promotes SDG 6 (Clean Water and Sanitation)and SDG 3 (Good Health and Well Being) by highlighting intellectual property's connection to innovation in water desalination or vaccine production,[109] by aiding the development of green technology specifically Zero Mass Water's Source Hydro panel in South Bali, Indonesia that is used to supply Green School's Bali Campus's drinking water,[110] and by creating the WIPO Re:Search platform, which contributes to the SDG 3 by encouraging the sharing of intellectual property-protected health assets and know-how. In promoting SDG 4, WIPO established WIPO's Accessible Books Consortium (ABC) to help increase the number of books worldwide in accessible formats and make them available to the visually impaired. In the case of SDG 17, there is the WIPO Match, a free online tool used to connect those with specific intellectual property-related development needs to potential providers offering resources. There is also the WIPO Technology Innovation and Support Centres, which seek to contribute to SDG 9 by providing on-the-ground intellectual property information and support to innovators where they need it most.[111]

5.0 Conclusion.

This article presented a conceptualisation of Intellectual Property and sustainable development. It also outlined what is required for sustainable development and how Intellectual property is important to the sustainability of the global development agenda. Sustainable development is

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[105] Daren Tang quoted in WIPO, *Innovation driving human progress: WIPO and the Sustainable Development Goals* (WIPO 2021) 3

[106] WIPO and UNCHR, *Intellectual Property and Human Rights* (WIPO, 1999)

[107] World Intellectual Property Organization, *Mapping of WIPO Activities Related to the Sustainable Development Goals (SDGs) Implementation* (CDIP/17/8) (WIPO, 2016)

[108] ibid

[109] World Intellectual Property Organization, *Report on WIPO's Contribution to the Implementation of the Sustainable Development Goals and Its Associated Targets (CDIP/21/10)* (WIPO, 2018) 7

[110] 'SDGs Spotlight: Encouraging Green Tech Innovation'<www.wipo.int/wipogreen/en/new/2019/news_0008.html> accessed March 30 2026

[111] 'Sustainable Development Goals and Intellectual Property' <www.wipo.int/sdgs/en/> accessed March 30 2026

an important concept today, confronting global problems related to human activities, the functioning of economies, and societies in both developed and developing countries. It was argued that sustainable development requires the appropriate use of the existing intellectual property rights system, and that the choices made in this regard must take into account not only profit maximisation or market share, but also social, economic, and environmental impacts. The article concludes that the World Intellectual Property Organization (WIPO) contributes to the SDGs by providing concrete services to its member states, enabling them to use intellectual property systems to drive innovation, competitiveness, and creativity. This achievement encompasses the realisation of the three components of sustainable development; and forms the impetus for the achievement of sustainability in social, economic, and political spaces.

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STRUCTURING ALL-STOCK DEALS IN NIGERIA

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ABSTRACT

The recent acquisition of Mono by Flutterwave with only stocks and without any cash is historic and monumental because it is the first of its kind in Nigeria's Mergers and Acquisitions landscape. Etched against this background, this article examines the steps to structuring all-stock deals in Nigeria, which are preliminary negotiations and confidentiality agreements, conducting due diligence, determination of valuation methodologies and exchange ratio, approval by shareholders, approval by regulatory bodies, and post-merger integration. While all-stock deals bear similarities with all-cash deals or deals which are a mixture of stocks and cash, their particular nuances must be paid attention to, especially within Nigeria's complex legal and regulatory frameworks. For instance, while the Investments and Securities Act of 2025 only provides for all-stock acquisition by public companies, the Companies and Allied Matters Act of 2020 makes this provision for all companies without drawing any line of distinction. The article employs the doctrinal method of research, and relevant laws, regulatory guidelines and global best practices in M&A deals in Nigeria are all well-analysed and examined. All-stock deals directly affect the stakes of shareholders within a company and may, given the precedent laid down by Flutterwave, become more popular within Nigeria. This article, therefore, seeks to make up for the knowledge gap in this area through the analysis conducted.

Keywords: *All-stock deals, merger and acquisition, Investment and Securities Act of 2025, Company and Allied Matters Act of 2020, Federal Competitions and Consumers' Protection Act of 2019.*

I. INTRODUCTION.

All-stock deals are types of Merger and Acquisition (M&A) transaction in which a target company is acquired entirely through shares (otherwise known as stocks) rather than cash. In this type of transaction, the acquiring company acquires the target company by issuing its own shares to the shareholders of the target company; and in exchange, the target company gives up its shares to the acquiring company, which then becomes the owner of the merged entity.

According to B.P. Bijay Sankar, "in equity share financing, equity shares are given to shareholders of the target company by the acquiring company. It results in shareholders of the target company becoming the shareholders of the acquiring company."[1]

It is important to note, before moving forward, the difference between all-stock deals and all-cash deals. All-stock deals have already been explained. All-cash deals simply refer to the acquisition of a target company through payment in cash. Apart from these two, a company can also be acquired through a mix of both stocks and cash, Leveraged buyout (LBO), or other methods.

Having explained what an all-stock deal is, this article seeks to examine the steps through which all-stock deals are structured in Nigeria. This is because all-stock deals are gradually becoming a part of the M&A landscape in Nigeria, as evidenced by the recent acquisition of Mono by Flutterwave through an all-stocks deal.[2]

II. STEPS TO STRUCTURING ALL-STOCK DEALS IN NIGERIA.

As with all M&A transactions, the process of structuring an all-stock deal is made up of several steps. In this work, seven steps derived from global best practices and the provisions of the Nigerian law will be examined under distinct sub-headings. They are: preliminary negotiations and confidentiality agreement; determination of valuation methodology and exchange ratio; conducting due diligence; approval by shareholders; drafting and execution of contractual agreement; approval by regulatory bodies; and post-merger integration.

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[1] B P Bijay Sankar, 'Payment Method in Mergers and Acquisition: A Theoretical Framework' (2018) 8 International Journal of Accounting and Financial Reporting <https://www.macrothink.org/journal/index.php/ijafr/article/view/12354> accessed 19 January 2026

[2] Royal Ibeh, 'Flutterwave Acquires Nigeria's Mono in Deal Worth up to $40m' Business Day NG (5 January 2026) https://businessday.ng/technology/article/flutterwave-acquires-nigerias-mono-in-deal-worth-up-to-40m/ accessed 19 January 19 2026

A. Preliminary Negotiations and Confidentiality Agreement.

All-stock deals commence with communications and negotiations between the acquiring company and the target company, in which the proposed terms and conditions of the proposed deal are delineated. If both parties are willing to proceed, a confidentiality agreement, otherwise known as non-disclosure agreement (NDA), must be agreed upon and signed.

A confidentiality agreement always precedes due diligence because it is only when the leadership of a company is confident that no information it discloses will be used against it outside of the proposed deal that it will be willing to share such information. Irrespective of whether a deal is concluded or not, the confidentiality agreement helps to protect the information that determines the level of risk connected to a deal.

A confidentiality agreement serves the purpose of preventing a party from leaking documents or using them for purposes other than those for which they were obtained.[3] Once signed, this agreement becomes binding on both parties.

After signing a non-disclosure agreement, more formal, written, and non-binding documents such as the memorandum of understanding (MOU), letter of intent (LOI), and term sheet, which consist of the terms that will guide the transaction, including valuation methodologies, timeline, and conditions for proceeding with the deal, will be exchanged between the parties.

Although parties are generally expected to act in good faith, the Investment and Securities Act of 2025 (hereinafter referred to as ISA 2025) specifically provides under Section 147(1)(d)(i-iii) that during an M&A process, every party and expert involved must not submit false or misleading documents, documents containing material deception, or documents likely to cause deception. Otherwise, the person involved in the act will be liable upon conviction to either a term of five years' imprisonment, a fine of five million naira, or both.[4]

Therefore, great care must be taken at this stage to prevent costly omissions, falsification of documents, and deception to avoid voiding the deal and risking a criminal prosecution.

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[3] Morgan McCombe, *'Locked Lips and Sealed Deals: Confidentiality Agreement in M&A Transactions'* (*RUTANS*, 11 April, 2023) https://www.rutan.com/locked-lips-sealed-deals-confidentiality-agreements-in-ma-transactions/ accessed 21 January 2026

[4] Investment Securities Act 2025, s 147(1)(d)(i-iii)

It is important to note that an investment committee(IC) document is usually prepared by an investment banker at this point to highlight the projected risks and returns of the deal and help investors make informed decisions.

B. DETERMINATION OF VALUATION METHODOLOGY AND EXCHANGE RATIO

While these are typically agreed upon during preliminary negotiations (either under LOI or term sheet), the author of this work finds it necessary to analyse what valuation methodologies and exchange ratios are to enlighten readers, particularly those whose discipline falls outside the scope of core finance, such as students and graduates of law.

In M&A, the valuation of the target and acquiring companies is one of the key pillars of a deal. Additionally, in all-stock deals, it is of pivotal importance to determine the exchange ratio of the shares that will be transacted between both companies, as well as the premium that will be paid to the shareholders of the target company.

Simply put, valuation methodology refers to the methods or means of determining the value of a company. There are various types of valuation methodologies employed in M&A deals, and they include: discounted cash flow, comparable company analysis, precedent transaction,[5] and asset-based valuation.[6]

In the **discounted cash flow** valuation technique, the valuation of a company is done by discounting its projected future cash flow to their present value. According to Ronen Joshua, the discounted cash flow model is "an attempt to measure the wealth of a firm at a particular point in time and the changes in wealth over time, that is, economic income."[7]

The **comparable company analysis** simply compares the value of a particular company to that of similar companies within the same industry using accounting metrics such as price to earnings ratio (P/E ratio) and enterprise value to earnings before interest, taxes, depreciation and amortisation, popularly referred to as EV/EBITDA. It is a valuation method that assesses a company's financial standing relative to industry its counterparts to determine its value.[8]

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[5] Aaron H Stulman, 'EMERGE-ing Comparable Companies Valuation Analysis' (2020) 39(5) American Bankruptcy Institute Journal 38, 45

[6] Coulon, 'Asset-Based Approach to Valuation' in Small Business Valuation Methods (Palgrave Macmillan 2022) https://doi.org/10.1007/978-3-030-89719-2_2 accessed 23 January 2026

[7] Ronen, Joshua. 'Discounted cash flow accounting' (1974)1

[8] Jiayan Lou, 'Comparable Analysis in Company Valuation: A Case' in Proceedings of the 2025 5th International Conference on Enterprise Management and Economic Development (ICEMED 2025) (Springer Nature 2025)

The **precedent transaction** technique, as its name implies, draws from previous M&A transactions by examining how much acquiring companies in a given industry paid to acquire their target companies. According to the Corporate Finance Institute, precedent transaction methodology may be defined as, "a method of company valuation where past M&A transactions are used to value a comparable business today."[9]

In **asset-based valuation** analysis, finance professionals value a company based on the asset it holds. It is described as "a valuation method based on the value of a company's assets or the fair market value of its total assets after deducting liabilities."[10]

Having explained each of the aforementioned valuation methodologies, it bears noting that the method through which a company will be valued is often determined by the type of industry it operates in, the opinion of experts and the preference of the companies seeking to enter a deal. For instance, in the automobile industry, the comparable company analysis is often used when valuing a company.[11]

While valuation techniques are an undeniably crucial part of all M&A deals, exchange ratios are particularly important in all-stock deals. An exchange ratio indicates the number of shares an acquiring company issues in exchange for each share of the target company.[12] Simply put, it refers to the exchange of shares on a pre-determined ratio that factor in relevant considerations such as the terms of the deal and the premium to be received by the shareholders of the target company. For instance, an acquiring company may offer five of its own shares in exchange for one of the target company (5:1).

After determining the valuation methodology and exchange ratio, both of which must be accurately calculated, due diligence must be carried out before the companies proceed further with the deal. As noted earlier, a non-disclosure agreement must be signed before due diligence commences, in order to protect the information that will be exchanged during this period.

C. Conducting Due Diligence.

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[9] Tim Vipond, 'Precedent Transactions Analysis' (Corporate Finance Institute) < https://corporatefinanceinstitute.com/resources/valuation/precedent-transaction-analysis/> accessed 23 January 2026

[10] CFI Team, 'Asset-based Transaction' (Corporate Finance Institute) <https://corporatefinanceinstitute.com/resources/valuation/asset-based-valuation/> accessed 23 January 2026

[11] ibid n5

[12] Kazi Majif and Collin Victoria, 'Title, Exchange Ratio' (Financial Edge Blog, 2 September 2021) < https://www.fe.training/free-resources/financial-markets/exchange-ratio/> accessed 23 January 2026

Another critical aspect of an all-stock deal, and indeed of all M&A deals, is conducting due diligence, and it must be all-encompassing to prevent costly oversights. According to Wangerin D., due diligence presents a prospective acquiring company "with a more informed assessment of the expected costs, benefits, and risks of an acquisition and offers one last opportunity to renegotiate or terminate an M&A transaction."[13] This underscores the sheer importance of the due diligence process.

During the due diligence stage, various aspects of the target company are keenly examined, such as its financial standing (including how diligently and promptly tax obligations are met, the presence or absence of debts, profit margins, income statements, among others), the strength of its human resources and the quality of its management team, assets, technology and intellectual property, legal standing, corporate social responsibility (CSR), Environmental, Social and Governance (ESG) framework, and any other matter that may that may be of interest to the acquiring company, such as the target company's consumer base.

Due diligence is mostly conducted by law firms and consulting companies.

D. APPROVAL BY SHAREHOLDERS.

The Companies and Allied Matters Act of 2020 (hereinafter referred to as CAMA 2020) provides in Section 711(1) that during a proposed merger or reconstruction, "on application by any of the affected companies," the court is to order separate meetings between the shareholders of the companies involved.[14]

Section 711(2) further provides that the court can only sanction such an intended scheme if amajority, "representing at least three-quarters in value of share of members," voting either in person or by proxy agree to it.[15]

These provisions underscore the elevated position of shareholders and protect them against sidelined during a merger and acquisition scheme. This is especially important in all-stock deals, since these deals bear directly on shares and affect their holders. Without the approval of an overwhelming majority, three-quarters, a proposed merger and acquisition scheme cannot be sanctioned by the court and the Corporate Affairs Commission.

[13] Wangerin D., 'M&A Due Diligence, Post-acquisition Performance, and Financial Reporting for Business Combinations' (2019) 36(4) Contemporary Accounting Research 2344-2378
[14] Company and Allied Matters Act 2020, s 711(1)
[15] ibid s 711 (2)

Additionally, Section 140(3) of ISA 2025 provides that before a proposed merger and acquisition scheme can be granted approval by the Securities and Exchange Commission, "the Commission shall consider whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the transaction."[16]

That provision unequivocally makes it clear that the approval of shareholders is an integral part of M&A deals in Nigeria. In the context of all-stock deals specifically, shareholders must be constantly kept informed by being provided with sufficient information about the deal and what it means for them and their stake in the company.

E. Drafting and Execution of Contractual Agreement.

This is where structuring of a deal reaches its climax. All the hard work that goes into preliminary agreements, determining a valuation methodology and exchange ratio, conducting thorough due diligence and holding shareholders' meeting is consolidated here.

At this point, a team of qualified and experienced lawyers comes together to draft a contract that reflects the agreement and compromises of both parties. There must be no loose end or uncertainty, for even a punctuation mark or a modal auxiliary verb, such as "shall," "will," or "must," can fundamentally alter the meaning of a clause.

It is important to note that arbitration is fast becoming a prominent dispute resolution mechanism in M&A deals, and where so desire parties, it is included in the contractual agreement. According to Jonathan M. Moses, "the reasons for choosing arbitration in a cross-border context may include the perception that an arbitral tribunal will be more neutral than a national court, the confidentiality of arbitration, the greater ease of enforcing an arbitral award in the relevant jurisdictions, the ability to select arbitrators with the relevant technical or financial expertise and the greater control that the parties will have over procedural matters, including discovery and the course of the proceedings."[17]

Once drafted, a contractual agreement must be duly signed, sealed, and delivered because it will not be valid otherwise.

[16] ibid (n4) s 140(3)
[17] Jonathan M Moses, 'Drafting M&A Deals to minimize the Risk of Disputes' (Global Arbitration Review, 14 May 2024) https://globalarbitrationreview.com/guide/the-guide-ma-arbitration/5th-edition/article/drafting-ma-contracts-minimise-the-risk-of-disputes accessed 11 February 2026.

In M&A transactions, the contractual agreement is commonly referred to as a share purchase agreement (SPA) and it is regarded as final and binding on all parties. In Nigeria, the Securities and Exchange Commission (SEC) has stipulated the required contents of SPAs through a form known as 'Form of Share Purchase Agreement.'[18]

The SEC's sample share purchase agreement, after which M&A deals in Nigeria are to be modelled, consists of eight articles covering matters such as, recitals, definitions of key terms, purchase and sale, representations and warranties, covenants and agreements, conditions to closing, termination, indemnification, and general provisions.[19]

The sample also contains three exhibits. Exhibit A concerns the schedule of purchase, Exhibit B the form of instrument of transfer and Exhibit C the form of instruction letter.[20] Unlike investment committee (IC) document and other preliminary documents, a share purchase agreement is final and binding on both parties once it is duly signed and executed.

F. Approval by Regulatory Bodies.

In Nigeria, various industries are overseen by different regulatory bodies, for instance, the pharmaceutical and food industry is overseen by the National Agency for Food and Drugs Adminstration and Control (NAFDAC).

However, regulatory bodies such as the Corporate Affairs Commission (CAC), the Security and Exchange Commission (SEC), and the Federal Competition and Consumer Protection Commission (FCCPC) regulate companies and corporations across the country, regardless of their specific industry.

Under three sub-headings, each of these three major regulatory bodies will be discussed below.

G. Corporate Affairs Commission.

The Corporate Affairs Commission (CAC) was established by Section 1 of the CAMA 2020, and further provisions were made for it in subsequent sections of the Act.[21] One of the core functions of the Commission is to ensure that the provisions of the Act are complied with by all relevant actors.[22]

[18] SEC, Form of Share Purchase Agreement
https://www.sec.gov/Archives/edgar/data/1499781/000119312512480728/d443768dex99f.htm
[19] ibid
[20] ibid
[21] ibid n14, s 1
[22] ibid n14, s 4(g)

Section 711(6) provides that when an M&A order is made by the court after shareholders have granted approval, the order must be submitted to the Commission no later than seven days after it was made, otherwise the company concerned will be liable to a fine as may be prescribed by the Commission.[23] This regulatory framework must therefore be adhered to.

H. The Security and Exchange Commission.

The Securities and Exchange Commission oversees Nigeria's investment landscape and regulates the activities of the Nigerian capital market.[24] It was established by Section 1 of ISA 2025, although in reality, the Commission has been in existence prior to the most recent enactment, which repealed the previous laws.[25]

Section 140 of ISA 2025 provides very clearly that mergers, acquisitions, and amalgamations cannot occur within Nigeria without the approval of the Securities and Exchange Commission.[26]

It is important to note here that some of the provisions of ISA 2025 regarding regulatory approval are very similar to those of CAMA 2020. For instance, ISA 2025 provides that for a proposed M&A deal to be approved, at least three-quarters of the shareholders of the companies involved must consent to it,[27] the same requirements prescribed under CAMA 2020, as discussed earlier.

ISA 2025 also makes provision for penalty in the case of default, just like CAMA 2020 does, although unlike CAMA 2020, it specifically stipulates the amount defaulters are liable to pay,#10,000,000 and #25,000 for everyday that the violation continues.[28]

Additionally, while ISA 2025 also provides for the sanctioning of an M&A deal by the court, it differs slightly from the provisions of CAMA 2020 in that under ISA 2025, approval must first be obtained from the Securities and Exchange Commission before the deal is sanctioned by the court,[29] whereas under CAMA 2020, as earlier discussed, the court order comes before final approval by the Corporate Affairs Commission.

[23] ibid n14, s 711(6)
[24] ibid n4, s 3
[25] ibid n4, s 1
[26] ibid n4, s 140
[27] ibid n4, s 141(1)(b)
[28] ibid n4, s 143(4)
[29] ibid n4, s 141(2)

Furthermore, the Securities and Exchange Commission also regulates the conduct of persons involved by determining how many shares they can purchase, and by ensuring that M&A deals are carried out in good faith and without undue disadvantage to shareholders.[30]

ISA 2025 also makes provision for the purchase of a company using securities or equities, thereby creating a pathway for all-stock deals in Nigeria's M&A landscape, and the approval of such deals by the Securities and Exchange Commission, provided that all other pre-requisite conditions are met.[31]

It is important to examine the recent acquisition of Mono by Flutterwave in the light of the above provision.[32] Section 145(b) clearly provides that only stocks or equities of a public, not private, company can function as consideration in M&A deals as an alternative to cash.[33] This raises questions as to how all-stock transactions involving the acquisition of a company by a private company, such as Flutterwave, can be structured under Nigerian law.

Section 59 of CAMA 2020 answers this question. Section 59(6) of the Act provides that in a proposed merger, acquisition may take place through the issuance of shares and other securities, and unlike the provision under ISA 2025, this is not limited to public companies alone.[34] Therefore, relying on this provision, registered private companies can acquire another using only stocks.

I. Federal Competition and Consumer Protection Commission.

The Federal Competition and Consumer Protection Commission (hereinafter referred to as the FCCPC) was established by Section 3 of the Federal Competition and Consumer Protection Act of 2019.[35]

In pursuance of Section 94 of the Act, which makes provision for the approval of M&A deals by the Commission,[36] the Commission released a regulation in 2020 titled, "The Merger Review Guidelines."[37] The aim of this Guideline is to ensure that M&A deals are not carried out in ways that are adverse to competition within a particular industry.[38] Accordingly, all

[30] ibid n4, s 142
[31] ibid n4, s 145(b)
[32] ibid n4, s 145(b)
[33] ibid n31
[34] ibid n4, s 59(6)
[35] Federal Competition and Consumer Protection Commission Act of 2019, s 3.
[36] ibid s 9
[37] The Merger Review Guidelines by FCCPC, 2020
[38] ibid

mergers are reviewed to ensure that only those which meet the requisite requirements are allowed to proceed, thus promoting the Nigerian market's competitiveness and protecting the interests of consumers.[39]

The Guideline has a total of nine parts, each with expository sub-headings, which will be examined in the subsequent paragraphs.[40] The first part simply lays out the purpose of the Guidelines and supplies definitions of key terms.[41]

Part Two addresses mergers that are covered by the Guideline.[42] M&A deals involving the acquisition of shares, property, domestic businesses, local intellectual property and local plants and equipment are all within the scope of the Guideline, while arrangements such as internal restructuring are not.[43] Additionally, it provides that a transaction will be governed by the Guideline if the acquirer is incorporated in Nigeria, or if the persons involved carry on business in Nigeria or are citizens of the country.[44]

The third part delves into the procedure for merger review.[45] The procedure involves pre-notification contacts, which constitute the first phase of the initial detailed review, consisting of a request for information from third parties such as consumers, competitors, and suppliers within three days of notice for a small merger and seven days for a large merger; a review of the first phase; and a second phase involving a more detailed inquiry conducted through means such as witness interviews, site visits, and other sources of information gathering.[46]

After this, the second phase is reviewed and an issue and state-of-play meeting is conducted. If there are no issues, the timing of approval alongside the drafting of clearance will be discussed at the meeting. If, however, the proposed transaction is found to substantially prevent or lessen competition (SPLC), an issues meeting will be convened to discuss counterarguments in writing and offer a remedy proposal, after which oral hearings will be conducted.[47] Companies are expected to "standstill" and refrain from "gun jumping" until they have received the Commission's approval to proceed with the deal.[48]

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[39] ibid n37
[40] ibid
[41] ibid n37, Part One
[42] ibid n37, Part Two
[43] ibid
[44] ibid n42
[45] ibid n37, Part Three
[46] ibid
[47] ibid
[48] ibid

Part Four concerns the standard of review for M&A deals, specifically, whether the proposed deal substantially prevents or lessens competition (SPLC).[49] To satisfy this test, the deal must not prevent or lessen future competition in a manner that is substantial.[50]

Part Five centres on market competition review. Here, the relevant market is defined and the nature of competition between firms within that market highlighted.[51] Part Six takes into account the strength of competition test by considering other merger factors such as actual and potential import competition, qualitative information and evidence for import competition, ease of entry and expansion, timeliness, likelihood, sufficiency, barriers, issues of integration, among others.[52]

Part Seven considers anti-competitive effects and theories of harm, such as unilateral, coordinated and non-horizontal effects and the harms they may cause.[53] Part Eight examines trade-off exemptions as provided for under Section 94(1)(b), (3),(4) of the FCCPC Act.[54] Where efficiency gains and public interest considerations outweigh anti-competitive effects, exceptions can be made in favour of such a trade-off. For instance, if the SPLC test is not positively satisfied, but the M&A deal will foster Nigeria's competitiveness in the international market, boost key sectors such as the energy sector, substantially increase employment, improve the competitiveness of a small and medium-sized enterprise, or serve other public interest ends, a trade-off exception may be granted at the discretion of the Commission.[55]

The ninth part provides remedies for arrangements that do not meet the FCCPC's standards.[56] In such case, the parties may remedy the situation by effectively addressing the competition concerns raised by the Commission.[57]

Owing to its mandate to foster competitiveness and protect consumers, this Guideline is holistic and stringent in its requirements for M&A deals, including all-stock deals.

J. Post-Mergers Integration.

[49] ibid n37, Part Four
[50] ibid
[51] ibid n37, Part Five
[52] ibid n37, Part Six
[53] ibid n37, Part Seven
[54] ibid n37, Part Eight
[55] ibid
[56] ibid n37, Part Nine
[57] ibid

Even though it is the last stage of every M&A deal, it is nonetheless a critically important part of every transaction. Whether the merger involves companies from different sectors (conglomerate), companies from the same industry offering different services (horizontal), or companies from the same industry at different levels of supply chain (vertical), an M&A deal will only generate the right value, synergy, and profit if companies are properly integrated.

In Nigeria, licensed investment banks and consulting agencies typically help facilitate this process. According to Ansarada, there are different types of post-merger integration methods, namely: (a) absorption, which refers to a situation where the target company is absorbed into the operations of the acquiring company; (b) preservation, which involves an arrangement in which the target company continues to operate independently except in the area of finances; (c) holding, which entails a complete absence of integration, as the acquired company is simply held by the holding company; and (d) symbiosis, which involves a partial integration that focused on how best the mergers can benefit both companies.[58]

Further, depending on the type of post-merger integration employed, there are different aspects of the target company that will be integrated into the acquiring company, such as finances, human resources, branding, technology, and operational processes, among others.

In all-stock deals, post-merger integration requires careful and meticulous attention to ensure synergy between teams, build trust, and optimise for overall growth and profitablity, especially for shareholders.

III. CONCLUSION

In conclusion, all-stock deals are novel in Nigeria, they remain a rarity. However, the acquisition of Mono by Flutterwave is proof that this mode of structuring an M&A deal is possible within the Nigeria's legal landscape, even where both the acquiring and acquired companies are private.

In this article, the various steps necessary for structuring all-stock deals in Nigeria have been broken down in turn. Ranging from preliminary negotiations, determination of valuation methodologies, and conducting due diligence, to approval by shareholders, drafting and execution of contractual agreements, approval by regulatory bodies, and post-merger

[58] Ansarada, Types of Post-Merger Integration(PMI) https://www.ansarada.com/article/mergers-acquisitions-integration-types accessed on 8th March 2026

integration, each of these processes is crucial, requires painstaking attention to detail and excellent execution.

With greater awareness of the the possibility of structuring all-stock deals within Nigeria's complex legal and regulatory ecosystem, particularly given the meaningful precedent set by Flutterwave, there will hopefully be more all-stock deals in Nigeria in the years to come.

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SECURING INTRA-AFRICAN COMMERCIAL TRANSACTIONS THROUGH BLOCKCHAIN: THE CASE OF OCP GROUP

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ABSTRACT

Block Chain technology has increasingly been recognized as a transformative tool for trade finance, offering enhanced transparency, security, and efficiency. In the context of intra-African commerce, traditional transactions often face delays, complex documentation, and heightened risks of errors or fraud. This case comment examines the innovative use of block chain by the Moroccan multinational, OCP Group, in collaboration with the Trade and Development Bank (TDB), to execute a $400 million fertilizer transaction between Morocco and Ethiopia. The block chain-enabled platform allowed for faster processing, real-time tracking, and improved trust among stakeholders, demonstrating the potential of distributed ledger technologies to streamline cross-border trade. While this project did not explicitly employ smart contracts, the case provides a foundation to discuss their potential role in automating contractual obligations, ensuring conditional payments, and further enhancing transaction security and efficiency. By analysing this example, the article highlights both the practical benefits of block chain adoption in African trade and the prospective integration of smart contracts to support more sophisticated and self-executing commercial agreements in the future.

Keywords: *Block Chain - Intra-African Trade - OCP Group - Trade Finance - Smart Contracts*

INTRODUCTION

Intra-African trade has long faced structural challenges that slow commercial exchanges, including lengthy documentation processes, manual verification practices, and elevated risks of errors or fraud due to fragmented supply chains and traditional paper-based systems. These limitations often result in transactions taking several weeks or even months to complete, undermining efficiency and economic integration on the continent. Block chain technology has emerged as a promising solution to these issues by enabling secure, transparent, and real-time sharing of transactional data among multiple parties.

The Moroccan multinational OCP Group, a global leader in phosphate mining and fertilizer production, recently partnered with the Eastern and Southern African Trade and Development Bank (TDB) to pioneer the use of block chain in intra-African trade. Through this collaboration, OCP executed nearly USD 400 million worth of fertilizer trade finance transactions between Morocco and Ethiopia using a block chain platform, marking the first large-scale intra-African commercial transaction conducted via block chain. The initiative aimed to streamline import-export documentation, reduce processing times from weeks to a matter of hours, and enhance trust among stakeholders by facilitating simultaneous access to secure and immutable transaction records.[1]

This case comment examines how block chain technology was applied to secure these commercial transactions and analyses its implications on trade finance in Africa. It also explores the future potential role of smart contracts in automating contractual conditions, further improving efficiency and reducing transactional risk in similar cross-border deals.

BACKGROUND

Block chain technology has emerged as a transformative digital infrastructure capable of enhancing transparency, security, and efficiency in commercial transactions. As a decentralized distributed ledger system, block chain enables multiple participants to access and verify

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[1] Trade and Development Bank, 'OCP Group and dltledgers Drive Intra-African Trade via Block chain Amidst the COVID-19 Pandemic, OCP Group & TDB press release' (2021) <https://www.ocpgroup.ma/sites/default/files/media/2025-01/CP_OCP_OCP-TDB-DLT_29032021_vUK.pdf> accessed 26 march 2026.

transaction data simultaneously without relying on a central intermediary. Once recorded, information stored on a block chain becomes immutable and traceable, thereby reducing the risks of manipulation, fraud, or duplication of records. These characteristics make block chain particularly suitable for trade finance operations that traditionally depend on complex documentation and multiple verification stages[2].

Closely related to block chain technology are smart contracts, which consist of self-executing digital protocols designed to automatically perform contractual obligations once predefined conditions are satisfied. By enabling automated verification and execution mechanisms, smart contracts can reduce transaction costs, limit reliance on intermediaries, and improve contractual certainty in cross-border commercial exchanges. Their integration into block chain-based trade platforms is increasingly considered a promising development for international trade finance systems[3].

In the African context, cross-border trade transactions continue to face structural constraints linked to documentation requirements, limited digital infrastructure in certain regions, and coordination challenges between financial institutions and commercial actors. These factors often contribute to delays, increased operational costs, and reduced efficiency in intra-African trade flows. As a result, digital trade solutions such as block chain technologies are increasingly explored as mechanisms to facilitate regional economic integration and support the objectives of the African Continental Free Trade Area (AfCFTA)[4].

Within this evolving landscape, the Moroccan multinational OCP Group plays a strategic role as a leading global exporter of phosphate-based fertilizers and a major contributor to agricultural development across the African continent. Through its partnerships with regional financial institutions and digital trade platforms, OCP has actively participated in initiatives aimed at modernizing trade finance mechanisms and strengthening intra-African commercial exchanges through the adoption of block chain-based solutions.

1. Case Description

[2] UNCITRAL, 'UNCITRAL Model Law on Electronic Transferable Records with Guide to Enactment' (United Nations 2017).
[3] Nick Szabo, 'Smart Contracts: Building Blocks for Digital Markets' (1996) <https://www.truevaluemetrics.org/DBpdfs/BlockChain/Nick-Szabo-Smart-Contracts-Building-Blocks-for- Digital-Markets-1996-14591.pdf > accessed 26 March 2026.
[4] African Export-Import Bank (Afreximbank), African Trade Report, 2020 (Afreximbank 2020).

A significant illustration of the practical application of block chain technology in intra- African trade finance can be observed in the landmark transaction conducted between OCP Group and Ethiopian commercial stakeholders with the financial support of the Trade and Development Bank through the enterprise block chain platform developed by dltledgers. This transaction involved the financing and shipment of several thousand tons of phosphate-based fertilizers from Morocco to Ethiopia and represented approximately USD 400 million in trade finance operations executed through distributed ledger technology[5].

The transaction formed part of a broader digitalization strategy adopted by OCP Group to modernize its commercial operations across the African continent and to contribute to reducing the persistent trade finance gap affecting regional markets. In practical terms, the block chain platform enabled all participating stakeholders, including exporters, banks, and importers, to access and validate trade documentation simultaneously within a shared digital environment. This represented a significant departure from traditional paper-based trade finance mechanisms, which typically require sequential verification procedures involving multiple intermediaries and extended processing timelines[6].

A central feature of the transaction was the replacement of conventional document circulation processes with real-time digital verification supported by distributed ledger infrastructure. Under traditional trade finance procedures, the exchange of shipping documents between exporters, financial institutions, and importers may take several weeks due to reliance on physical transmission through banking channels. By contrast, the block chain-based platform enabled the completion of documentation procedures in less than two hours, thereby significantly accelerating the execution of cross-border commercial operations.

The involvement of the Trade and Development Bank was particularly important in structuring and facilitating the financing component of the transaction. As a regional development finance institution supporting economic integration across Eastern and Southern Africa, the bank ensured liquidity support while coordinating with participating stakeholders through the block chain

[5] Trade and Development Bank and OCP Group, 'Trade and Development Bank, OCP Group and dltledgers Drive Intra-African Trade via Block chain Amidst the COVID-19 Pandemic' (Press Release, 30 March 2021) <https://www.tdbgroup.org/trade-and-development-bank-ocp-group-and-dltledgers-drive-intra-african-trade-via-blockchain-amidst-the-covid-19-pandemic/ > accessed 23 March 2026.

[6] African Business, 'OCP Group Executes Ground-Breaking Intra-African Trade Transaction Through Block chain', (31 March 2021) <https://african.business/2021/03/resources/ocp-group-executes-groundbreaking-intra-african-trade-transaction-through-blockchain> accessed 26 March 2026.

platform. This cooperation contributed to improving transactional certainty and strengthening institutional trust between commercial partners operating in different jurisdictions[7].

Another important outcome of the initiative concerned the enhancement of transparency and traceability in trade documentation. Through the shared block chain environment, stakeholders were able to upload, review, modify, and validate contractual and shipping records simultaneously in real time. This reduced the risks traditionally associated with document duplication, administrative errors, or fraudulent alterations of trade documentation. In addition, the encryption mechanisms embedded within the distributed ledger system contributed to strengthening the security of sensitive commercial information exchanged during the transaction process[8].

Beyond operational efficiency gains, the transaction also carried broader economic implications for intra-African agricultural cooperation. Ethiopia remains heavily dependent on fertilizer imports to support agricultural productivity and food security, and OCP Group has historically played a central role in supplying phosphate-based fertilizers to the Ethiopian market. The adoption of block chain-supported trade finance mechanisms therefore contributed not only to accelerating a single commercial operation but also to strengthening long-term supply chain reliability between African partners engaged in strategic agricultural sectors[9].

Taken together, these developments illustrate how distributed ledger technologies can enhance coordination among financial institutions, exporters, and importing partners while reducing transaction delays and improving trust in cross-border trade environments. The case therefore provides a concrete example of how block chain-based infrastructure may support the broader objectives of digital trade facilitation and regional economic integration within the African continent[10].

2. Analysis and Discussion

[7] Morocco World News, 'OCP Group, TDB Complete First Intra-African Block chain-Based Transaction' (1 April 2021) <https://www.moroccoworldnews.com/2021/04/60347/ocp-group-tdb-complete-first-intra-african-blockchain-based-transaction/> accessed 26 March 2026.

[8] Gerhardt DR and Thaw D, *'Bot Contracts'* (2020) 62(4) Arizona Law Review 877, 887–888.

[9] African Business, 'OCP Group Executes Ground-Breaking Intra-African Trade Transaction through Block chain' (30 March 2021).

[10] Primavera De Filippi and Aaron Wright*, 'Block chain et cryptomonnaies'* (2e édn, Presses Universitaires de France 2022) 66.

The OCP–Trade and Development Bank block chain-based transaction illustrates the growing potential of distributed ledger technologies to transform trade finance mechanisms within the African continent. One of the most significant advantages observed in this case concerns the substantial reduction in transaction processing time. By replacing sequential paper-based verification procedures with real-time digital validation through a shared platform, the block chain infrastructure enabled documentation workflows to be completed within hours rather than weeks. Such improvements demonstrate how distributed ledger technologies may address persistent inefficiencies affecting cross-border commercial transactions in intra-African trade environments[11].

Another important benefit relates to enhanced transparency and traceability throughout the transaction lifecycle. Block chain-based platforms allow authorized participants to access synchronized documentation records in real time, thereby reducing information asymmetry between contractual parties and financial intermediaries. This feature contributes to strengthening institutional trust while limiting risks associated with document duplication, administrative error, or unauthorized modification of trade documentation. In regions where cross-border trade operations frequently involve multiple intermediaries operating across different legal systems, such transparency improvements may significantly enhance transactional reliability[12].

In addition, the use of distributed ledger infrastructure has reduced counterparty risk by ensuring that transaction records remain tamper-resistant and verifiable throughout the execution process. The ability to maintain a shared and immutable record of contractual documentation strengthens confidence between exporters, importers, and financial institutions and may facilitate access to trade finance services for African commercial actors operating in markets traditionally characterized by higher perceived risk levels[13].

Despite these advantages, several structural challenges continue to limit the broader adoption of block chain technologies across African trade finance ecosystems. One major

[11] Trade and Development Bank and OCP Group, 'Trade and Development Bank, OCP Group and dltledgers Drive Intra-African Trade via Block chain Amidst the COVID-19 Pandemic' (Press Release, 30 March 2021) <https://www.tdbgroup.org/trade-and-development-bank-ocp-group-and-dltledgers-drive-intra-african-trade-via-blockchain-amidst-the-covid-19-pandemic/> accessed 23 March 2026
[12] Simone Rigazio, *'Lost in the Web: The Dark Sides of Smart Contracts. Except There Is Still Hope'* (2023) 1(1) Opinio Juris in Comparatione 698.
[13] Aurélien Favreau (dir), *'Smart Contracts – La première librairie européenne et ouverte de smart contracts à destination des professionnels du droit et de la justice'* (Larcier 2023) 12.

obstacle is the regulatory uncertainty surrounding the legal recognition of block chain-based documentation and digitally executed trade instruments in several African jurisdictions. The absence of harmonized regulatory frameworks governing electronic transferable records and digital trade documentation may create legal uncertainty for financial institutions seeking to rely on distributed ledger technologies in cross-border transactions.

Technical constraints are also relevant in certain contexts, particularly with respect to digital infrastructure gaps, interoperability challenges between trade platforms, and limited access to specialized technological expertise among commercial actors. These factors may slow the large-scale deployment of block chain-based trade finance solutions despite their demonstrated efficiency advantages[14].

From a forward-looking perspective, the integration of smart contracts into block chain-supported trade finance systems could further enhance the efficiency of intra-African commercial transactions. Smart contracts may enable the automatic execution of payment obligations once predefined contractual conditions, such as shipment confirmation or document verification, are satisfied. Such automation mechanisms could reduce reliance on intermediaries while strengthening contractual certainty and accelerating transaction settlement processes. However, the adoption of smart contracts also raises legal questions concerning enforceability, liability allocation, and the compatibility of automated execution mechanisms with existing contract law frameworks across African jurisdictions[15].

Taken together, these observations suggest that while block chain technology already demonstrates significant potential for improving trade finance coordination within Africa, the effective integration of smart contracts into regional commercial ecosystems will depend on parallel regulatory development, institutional cooperation, and technological capacity-building initiatives.

The successful execution of the OCP–TDB block chain transaction offers several lessons for Morocco and other African countries seeking to modernize intra-continental trade finance. First, it demonstrates the potential of distributed ledger technologies to reduce transaction times, enhance transparency, and strengthen trust among commercial and financial stakeholders. By replacing sequential, paper-based procedures with a shared digital platform,

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[14] Hannes Treiblmaier, *'What's Next in Block chain Research? – An Identification of Key Topics Using a Multidisciplinary Perspective'* (2021) 52(1) *ACM SIGMIS Database: The DATABASE for Advances in Information Systems* 5–6.

[15] Arno Janssen, *'The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Emergence of Smart Contracts and Cryptocurrencies: Should We Try to Teach an Old Dog Some New Tricks?'* (2022) 14 Tsinghua China Law Review 7.

Morocco has provided a practical example of how block chain can improve efficiency and reliability in cross-border trade[16].

Second, the case illustrates the scalability of block chain-based trade solutions across African markets. Similar frameworks could be applied to other strategic sectors, including agricultural exports, manufacturing, and regional logistics networks. Widespread adoption would require coordination among regional financial institutions, exporters, and importers, as well as the development of interoperable digital infrastructures that allow real-time validation and verification of trade documents.

Third, the transaction highlights the need for harmonized policy and regulatory frameworks to support digital trade initiatives. Legal recognition of electronic trade documentation, digital signatures, and smart contracts is essential to provide certainty to financial institutions and commercial actors. African countries may benefit from adopting model laws and guidelines such as the UNCITRAL Model Law on Electronic Transferable Records, which establishes principles for the legal enforceability of block chain-based trade instruments[17].

Finally, capacity-building initiatives are critical to ensure that stakeholders understand and can effectively interact with digital trade platforms. Training programs, awareness campaigns, and public-private partnerships can enhance the skills required to operate block chain solutions and foster trust in emerging technologies. Collectively, these lessons suggest that with supportive policies, robust infrastructure, and targeted capacity-building, block chain-enabled trade finance solutions could contribute substantially to regional economic integration and the modernization of intra-African trade[18].

Conclusion

The OCP Group's block chain-enabled transaction between Morocco and Ethiopia

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[16] Trade and Development Bank and OCP Group, 'Trade and Development Bank, OCP Group and dltledgers Drive Intra-African Trade via Block chain Amidst the COVID-19 Pandemic, (Press Release, 30 March 2021), <https://www.tdbgroup.org/trade-and-development-bank-ocp-group-and-dltledgers-drive-intra-african-trade-via-blockchain-amidst-the-covid-19-pandemic/> accessed 23 March 2026.

[17] UNCITRAL, 'Model Law on Electronic Transferable Records with Guide to Enactment' (United Nations 2017).

[18] Commission économique pour l'Afrique (ECA), 'ECA and Partners to Strengthen Digital Trade Capacity for Governments and the Private Sector, Including Women-Led MSMEs under the AfCFTA' (18 November 2025) <https://www.uneca.org/stories/eca-and-partners-to-strengthen-digital-trade-capacity-for-governments-and-the-private-sector > accessed 26 March 2026.

demonstrates the practical benefits of digitalizing intra-African trade. By streamlining documentation, reducing processing times, and increasing transparency, the initiative illustrates how block chain can enhance trust and efficiency in cross-border commerce.

The case also highlights the potential for scaling similar solutions across Africa, particularly in strategic sectors such as agriculture and logistics. Moving forward, the integration of smart contracts could further automate payments, enforce contractual conditions, and strengthen trade security.

Overall, the OCP experience provides a clear example of how emerging technologies can support regional economic integration and modernize trade finance, offering valuable lessons for policymakers, financial institutions, and commercial actors across the continent.

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BALANCING JUDICIAL AUTONOMY IN UAE FREE ZONES WITH FEDERAL JUDICIAL AUTHORITY

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ABSTRACT

The legal system in the United Arab Emirates (UAE) is pluralistic, including civil law courts at both the federal and emirate levels, as well as free zone courts that enforce civil law. The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are two of the most well-known of them. They both operate under common law, which is different from the civil law traditions of other legal systems in the country. This essay critically examines the UAE's balance between the autonomy of free zones and the authority of the federal judiciary, analysing the legal frameworks, jurisdictional limitations, collaborative processes, and the problems and advantages of this distinctive system. The report ends with suggestions for how to keep the courts consistent even as the economy and the law change.

Keywords: *Judicial Pluralism; UAE Free Zones; DIFC Courts; ADGM Courts; Legal Autonomy.*

1.0 Introduction

There is a legal system in the United Arab Emirates (UAE) that is distinguished by the fact that it is pluralistic in nature. In this system, civil law courts are present at both the federal and emirate levels, in addition to free zone courts that are especially intended for the purpose of enforcing civil law. The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are two of the most well-known venues for these courts, which are located in free zones that are established specifically for financial transactions. In contrast to the civil law traditions that are upheld by the federal and municipal judicial systems, these free zone courts conform to the legal framework of common law. This is a substantial departure from the norms of civil law. The common law is the legal framework that serves as the basis for various jurisdictions' judicial systems. It is the subject of the critical evaluation that will be offered in this essay that the United Arab Emirates (UAE) is able to strike a balance between the legal autonomy that is granted to these free zones and the overriding power that is held by the federal judiciary. Within the scope of this research, the legal foundations, jurisdictional constraints, practical processes of cooperation, benefits, and challenges of this pluralistic system are investigated. The report concludes with some suggestions for maintaining judicial consistency in the face of shifting economic and legal requirements.

2.0 Historical and Legal Underpinnings of the UAE's Judicial Pluralism

When the UAE was formed in 1971, its Constitution delineated a federal judicial system coexisting with local courts in certain emirates.[1] The federal courts handle most civil, criminal, and administrative cases in the emirates. However, Dubai and Ras Al Khaimah have their own courts that are apart from the federal courts. The introduction of financial free zones was a big change. Under Article 121 of the UAE Constitution, as amended, the federal government enacted Federal Law No 8 of 2004 permitting the establishment of financial free zones exempt from federal civil and commercial laws, but not from federal criminal law. Dubai Law No 9 of 2004 and Law No 12 of 2004 established the DIFC and its independent judicial authority.[2] Similarly, Abu Dhabi Law No 4 of 2013 created the ADGM courts.[3] This pluralistic approach lets the UAE meet the legal needs of a wide range of businesses in a global economy. It has helped bring in foreign investment and improve the country's reputation as a regional legal hub, all while keeping the federal Constitution at the top of the list. Judicial pluralism refers to the coexistence and interaction of

[1] UAE Constitution, art 121 (as amended).
[2] Dubai Law No 12 of 2004 Concerning the Judicial Authority at the DIFC, issued 6 September 2004.
[3] Abu Dhabi Law No 4 of 2013 Concerning the ADGM.

several legal systems or courts within a single jurisdiction, as demonstrated by the interaction of customary, religious, and formal state courts.

3.0 Structure and Jurisdiction of Courts

The Federal Supreme Court, courts of first instance, appellate courts, and courts of cassation are all part of the United Arab Emirates' federal courts. They all follow civil law rules. Even though the courts in Dubai and Ras Al Khaimah are in charge of making sure that justice is done in their own areas, both systems are still based on civil law. The courts of the DIFC and ADGM, on the other hand, follow English common law and hold their hearings in English. When the DIFC courts were first founded in 2004, its jurisdiction was limited to the DIFC. However, with the passage of Law No. 16 of 2011, they now have the ability to hear matters in which the parties' opt-in by agreement.[4] Additionally, opt-in jurisdiction is available through the ADGM courts, which were established by Abu Dhabi Law No. 4 of 2013 and have been operating since 2015.[5] A comprehensive judicial hierarchy, including first instance and appellate levels, is provided by both free zone courts. These courts also use procedural norms that are comparable to English common law, including the obligation to rely on precedent (stare decisis).

3.0 Judicial Autonomy in Free Zones

Legislation from both the federal government and the emirates gives free zone courts their independence. The Dubai International Financial Center (DIFC) is able to maintain its legal autonomy thanks to Federal Law No. 8 of 2004, as well as Dubai Laws Nos. 9 and 12 of 2004.[6] The Dubai International Financial Center (DIFC) is able to function according to its own civil and commercial laws, with a court system that is funded by Dubai but is administratively independent. There are eleven ADGM courts that are open for business under Abu Dhabi Law No. 4 of 2013 and the rules of the ADGM.[7] It is common to choose judges from common law jurisdictions because this ensures that they are knowledgeable about business matters. The courts employ digital platforms and virtual hearings more and more, especially since Dubai Law No. 2 of 2022 changed things.[8] These traits help to build investor trust by making things more predictable, efficient, and in line with international legal standards.

[4] Dubai Law No 16 of 2011 Amending Some Provisions of Law No 12 of 2004.
[5] Abu Dhabi Law No 4 of 2013.
[6] Federal Law No 8 of 2004; Dubai Laws Nos 9 and 12 of 2004.
[7] Abu Dhabi Law No 4 of 2013.
[8] Dubai Law No 2 of 2022 on the Amendment of Certain Provisions of Law No 12 of 2004.

IV. **Federal Judicial Authority and Supervision**

The UAE Constitution establishes five federal authorities that form the Government and these include "(i) the Federal Supreme Council; (ii) the President and Vice President; (iii) the Council of Ministers; (iv) the Federal National Council; and (v) the Federal Judiciary"[9]. The Federal Judiciary enjoys full autonomy to exercise its powers independent of any of the other authorities, strictly guided and influenced by the rule of law and its own conscience[10]. The exclusion of all other authorities in the exercise of powers and duties of the UAE Federal Judiciary contributes to the well-being of the justice system in ensuring that cases are handled by the courts fairly and without interference from any power whatsoever. Thus, all defendants, whether indigenous or aliens, enjoy the right to a fair trial, and this right is clearly protected under Article 28 of the Constitution.

Article 121 of the UAE Constitution permits the establishment of free zones, yet it simultaneously preserves federal jurisdiction over criminal law, national security, and constitutional compliance. Thus, while the UAE has embraced the autonomy of its free zone courts, particularly in commercial matters, the primacy of federal judicial authority remains firmly anchored in constitutional safeguards. This dual structure reflects a deliberate balance of enabling innovation within designated zones while maintaining national coherence in core legal domains. The Federal Judicial Authority, established under Federal Law No. 32 of 2022, reinforces this balance by guaranteeing judicial independence and allocating a dedicated budget to the courts. Mechanisms for resolving jurisdictional tensions have evolved accordingly. Dubai's Decree No. 29 of 2024, for instance, formalized the creation of a Judicial Committee to mediate between the Dubai International Financial Centre (DIFC) courts and federal courts. Similarly, memoranda of understanding between the Abu Dhabi Global Market (ADGM) and federal courts facilitate mutual recognition and enforcement of judgments.

Nonetheless, federal boundaries remain constitutionally entrenched as, for example, the Supreme Court of the United Arab Emirates (UAE) said in 2025 that courts in the UAE cannot hear cases between people from other countries who have no ties to the UAE, even if the parties agree to do so in a contract.[11] In a landmark 2025 ruling, the UAE Supreme Court clarified that domestic courts

[9] *Supra* n.1, art. 45.
[10] Ibid, art. 94
[11] *Supra* n.1, art.104; E Daye and M Al-Mashehadani, 'UAE Supreme Court: foreign parties cannot confer jurisdiction on onshore courts' (Charles Russell Speechlys, 21 August 2025)

lack jurisdiction over disputes between foreign parties with no substantive connection to the UAE, even where contractual consent exists. This decision highlights the enduring relevance of Article 104, which restricts municipal courts to territorially defined jurisdiction and affirms the principle that legal authority must be grounded in physical presence or legitimate nexus. This, arguably, makes the Federal Judicial mechanism one of the unique and effective innovations for the administration of justice.

K. Benefits and Challenges of Judicial Pluralism

Judicial pluralism offers a detailed and inclusive framework that strengthens both State institutions and community cohesion[12]. By accommodating cultural and religious diversity, pluralistic courts affirm the identities of distinct social groups, fostering mutual respect and peaceful coexistence. Further, this arrangement also expand access to justice, particularly in rural or marginalized areas, where customary and religious tribunals often serve as more approachable and contextually relevant forums. Essentially, this system introduces flexibility into dispute resolution, allowing individuals to choose mechanisms that align with their values and lived experiences[13]. In doing so, it preserves indigenous and religious legal traditions that might otherwise be eclipsed by formal state systems[14]. Moreover, by distributing caseloads across civil, religious, and customary courts, judicial pluralism alleviates pressure on State courts, enabling them to focus on complex legal matters. Importantly, courts rooted in community norms tend to enjoy greater legitimacy and public trust[15]. This could be attributed to the general understanding that their decisions resonate more deeply with local populations, enhancing compliance and reinforcing the perception of justice as fair and accessible. Tailored remedies that reflect local customs further underscore the value of pluralistic systems in delivering meaningful and sustainable outcomes.

5.1 Challenges of Judicial Pluralism

<https://www.charlesrussellspeechlys.com/en/insights/expert-insights/dispute-resolution/2025/uae-supreme-court-foreign-parties-cannot-confer-jurisdiction-on-onshore-courts/> accessed 10 April 2026.

[12] Gordon R. Woodman, 'The Idea of Legal Pluralism', in Badouin Dupret, Maurits Berger, and Laila Al-Zwaini, *Legal Pluralism in the Arab World* (Brill, 1999) pp. 3–19.

[13] Pirie Fernanda, 'Order, Disputes, and Legal Pluralism', *The Anthropology of Law, Clarendon Law Series* (Oxford, 2013; online edn, Oxford Academic, 23 Jan. 2014).

[14] Kirsty Gover, 'Legal Pluralism and Indigenous Legal Traditions',in Paul Schiff Berman, *The Oxford Handbook of Global Legal Pluralism* (New York: Oxford University Press, 2020).

[15] Anne Wallace and Jane Goodman-Delahunty, 'Measuring Trust and Confidence in Courts' (23 December 2021), 12(3) *International Journal for Court Administration*.

The United Arab Emirates, Qatar, Singapore, Malaysia, and Thailand are all countries that use this type of system. Each of these countries faces eight obstacles linked to judicial diversity. These states are examples of states that employ this type of system.[16]

i. **Legal Uncertainty and Inconsistency**: Different legal systems may come to different conclusions about the same things, which can make things hard for people and businesses to understand. Overlapping jurisdiction can sometimes lead to "forum shopping," where people strive to get their case heard in the judicial system that is most beneficial to them.

ii. **Inequality and Discrimination**: Some systems, like religious or customary law, may not give all citizens the same legal rights, notably women, children, and minority groups. People's faith, ethnicity, or locality might affect how the law is implemented to them, which goes against the idea that everyone is equal before the law.

iii. **Administrative Complexity**: Running more than one court system needs more money, staff, and knowledge, which makes the justice system more expensive and complicated. It can be hard to coordinate between systems, and there may be arguments about which court has the power to decide a matter.

iv. **Lack of Access to Justice**: It can be hard for regular people to figure out which court to go to and how to follow the rules of the law, which can make it hard for them to get justice. In rural or marginalised communities, customary or religious courts may be the only ones that matter, and civil rights and safeguards may not be respected.

v. **Trouble with Reform and Modernisation**: Trying to change one system might not work for others, which makes it impossible to bring laws up to date or make sure that all standards are the same. It can be hard to make the legal system more in line with international human rights standards when traditional or religious leaders are against it.

vi. **Possible Political Manipulation**: Governments or powerful parties may use the fact that there are many different legal systems to manipulate results, silence opposition, or favour specific groups.

vii. **Risks to worldwide perception and investment**: Unclear and inconsistent laws might make it harder for businesses to do business internationally and make foreign investment less likely.

6.0 Comparative and Practical Perspectives

[16] J Griffiths, 'What is Legal Pluralism?' in Sally Falk Moore (ed), *Law and Anthropology: A Reader* (Blackwell 2005) 289–310.

Still, Qatar, Bahrain, Malaysia, Singapore, and Singapore all have the same legal system, which includes speciality commercial courts. The United Arab Emirates, on the other hand, has a model of numerous jurisdictions that is unlike any other model or system. *Goel v. Credit Suisse (Switzerland) Limited* [2021] ADGMCFI 0001 is an example of how several jurisdictions can work together. This case is a good example of cross-jurisdictional collaboration because the ADGM courts had the power to hear an onshore arbitration.[17] This is also an example of the case *DNB Bank ASA v. Gulf Eyadah Corporation & Gulf Navigation Holding PJSC* [2015] DIFC CA 007, in which the DIFC Court of Appeal acknowledged and enforced a foreign arbitral ruling. This made it possible for the decision to be carried out in Dubai courts later on.[18] This case illustrates the DIFC's role as a "conduit jurisdiction" for enforcing cross-jurisdictional awards.

7.0 Future Prospects and Recommendations of Judicial Pluralism

7.1. Future Prospects of Judicial Pluralism

Judicial pluralism is when several legal systems work together in the same place. It can cause tremendous issues and big advantages. Countries will require more courts that can handle many types of law, like civil, common, religious, and customary law, as they become more varied and connected to the rest of the globe. As trade and people flow between countries, more kinds of people will dwell here. This means we need legal systems that are easier to adapt and cover greater ground. Over time, it's feasible that legal ideas and practices will grow more stable. This will help stop these kinds of fights and disagreements. One method to do this is to set up hybrid courts and specialised courts, such commercial courts that apply common law in countries that have civil law. Digital transformation and online dispute resolution are two emerging technologies that will be highly vital to make sure that everyone has the same access to justice and that all legal systems follow the same standards. At the same time, other countries will put increased pressure on all legal systems, even religious and traditional ones, to protect human rights. This will make the rights of women and minorities more visible. Judges, lawyers, and court workers would have to continuously learn about diverse legal systems to make the courts interesting and useful. When there is more than one judge, more people can usually receive what they want. But this also implies that intricate problems need to be carefully planned for, and rules are continuously changing to keep things fair.

[17] *Goel v Credit Suisse (Switzerland) Limited* [2021] ADGMCFI 0001.

[18] *DNB Bank ASA v Gulf Eyadah Corporation & Gulf Navigation Holding PJSC* [2015] DIFC CA 007.

7.2. Recommendations for Effective Judicial Pluralism

Policies that promote judicial pluralism try to make it easier for different types of courts, like religious, customary, and formal state courts, to work together and share information. Every court system needs to have clear rules on what is and isn't allowed. There will be no more things that are the same or different. Using the same databases and ways to refer cases throughout legal systems makes it easier for courts to work together and talk to each other. Different groups should be in charge of the courts to make sure that the law is followed and people's rights are preserved. Awareness programs are very important because they teach individuals about their rights and other ways to solve problems. If all judges follow the same rules for evidence and appeals, things will be clearer and fairer. To make sure that courts work correctly, that new problems are dealt with, and that the legal system is ready for new situations, they need to be checked and updated often. These tactics work together to protect basic rights, make sure everyone has equal access to justice, and set up a fair court system that helps everyone.

8.0 Conclusion

The UAE has passed a variety of legislation. This is an excellent technique for giving federal courts more power while also giving expert free zone courts more autonomy. The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are two excellent instances of free-zone courts. This carefully prepared structure is a deliberate compromise that allows the United Arab Emirates (UAE) to meet the traditional needs of its federal legal system while also responding to the demands of a more globalised economy. To function efficiently, the UAE's many courts must collaborate, be open about what they do, and be adaptable to changing laws and economies. These factors are critical for maintaining the constitution's consistency and making the court a place where new ideas might arise.

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NAVIGATING NIGERIAN COPYRIGHT LAW IN THE AGE OF ARTIFICIAL INTELLIGENCE: EMERGING CHALLENGES AND PROPOSED SOLUTIONS

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ABSTRACT

From the integration of Artificial Intelligence (AI) into the already addictive social media applications to asking AI for a summary of a chapter of a test coming up the next morning, to self-driving cars, and even to asking an AI like Siri what to eat, it is evident that this is the age of artificial intelligence. Laws ought not to be static but instead reflect their time. In the age of artificial intelligence, Nigeria must have laws that adapt and reflect this reality. Artificial intelligence is fast evolving, and copyright law in Nigeria can become an effective tool for harnessing the benefits of AI while also limiting the challenges it brings. Since AI is still relatively new, new discoveries and challenges are emerging that require solutions and regulations. This article will examine how Nigerian copyright law can be navigated to address the challenges posed by AI use, providing solutions to the inevitability of AI in the age of artificial intelligence.

Keywords: Artificial Intelligence (AI), Copyright, and Ethical Artificial Intelligence

Defining Artificial Intelligence

Artificial intelligence (AI) is a technology that enables computers and machines to simulate human creativity, autonomy, learning, comprehension, and problem-solving.[1] Its use has elicited a wide range of opinions, from vehement rejection to staunch support, and every opinion in between.[2] Still, it remains clear that AI is not going anywhere. It has brought numerous benefits but has also introduced novel challenges that need to be addressed. Some of these challenges can be addressed by the Nigerian copyright law. This is particularly important as the age of artificial intelligence aligns with the rise of Nigeria's entertainment and fashion industries on the global market; for that reason, navigating copyright law in Nigeria is crucial.

Rationale for Copyright Laws in the Age of Artificial Intelligence

The rationale behind copyright is that it seeks to reward and incentivise creativity, innovation, and entrepreneurial spirit by granting creatives and innovators rights that prevent others from unjustly copying their work and benefiting from their goodwill.[3] The World Intellectual Property Organization (WIPO) defined copyright generally to be the exclusive right granted by law to an author of a work to disclose their work as their own, reproduce it, and distribute or disseminate it to the public in any manner he or she deems fit and authorise others to use the work in a specified way.[4]

Nigerian Legal Framework on Copyright on Artificial Intelligence

Currently, the Copyright Act of 2022, the primary legal instrument on copyright in Nigeria, contains no express provisions on artificial intelligence, making it difficult for the Act to truly influence it.[5] Of course, there are different ways one can apply the existing provisions, but the Act will continue to lack full power over AI as long as it lacks an express provision on AI. This is a major challenge in using copyright law to navigate the use of artificial intelligence in Nigeria. There is an urgent need to amend the current Copyrights Act of 2022 and ensure it provides provisions regarding artificial intelligence. This way, the Copyright Act can, in fact, expressly have

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[1] Cole Stryker and Eda Kavlakoglu, "Artificial Intelligence" (IBM) <https://www.ibm.com/think/topics/artificial-intelligence> accessed August 5, 2025.
[2] Courtney Johnson and Alec Tyson, "How Do Opinions on Artificial Intelligence Vary by Country?" World Economic Forum (December 18, 2020) <https://www.weforum.org/stories/2020/12/mixed-views-of-the-impact-of-artificial-intelligence/> accessed August 5, 2025.
[3] WIPO, "Copyright" (*wipo*) <https://www.wipo.int/en/web/copyright> accessed March 28, 2026.
[4] John Asein, Nigerian Copyright Law & Practice (2nd edn, Books & Gavel 2012) p 3-4.
[5] Eniola Ogunlaja, "Generative Artificial Intelligence and the Nigerian Copyright Act 2023" (Dentons ACAS- LAW) <https://www.dentonsacaslaw.com/en/insights/articles/2024/june/10/generative-artificial-intelligence-and-the-nigerian-copyright-act-2023> accessed August 5, 2025.

the power to navigate artificial intelligence in Nigeria. Having this amendment is a crucial step in ensuring that Nigerian copyright law can navigate artificial intelligence.

Solutions to the Current Lacuna of the Copyright Act 2022 as it Relates to Artificial Intelligence

Laws on copyright must also be quickly amended as needed to keep pace with the rapid development of artificial intelligence. The Act must be positioned to address artificial intelligence and its very nature. Artificial intelligence is rapidly advancing, and copyright laws need to adapt. One of the main issues is that artificial intelligence is rapidly evolving; new creations are continually produced, making it difficult for the laws to keep up. A prescribed solution is for the Nigerian Copyright Commission (NCC) to quickly and efficiently draft bylaws and regulations that keep pace with the rapid evolution of artificial intelligence.

The Alarming Issue of Deep Fakes and Proposed Solutions

Another challenge that has become rampant and fast-paced with AI is deepfakes. There is an unsettling trend of deepfakes currently occurring, which involves perverted persons who wish to sexualise women on social media X using its Artificial Intelligence (AI) Grok to undress women and request women to be put in sexual positions.[6] This is a harsh reality of what can occur when AI is poorly regulated and its developers are not held liable for violations arising from the use of their AI. Some of these perverted X users see such acts of deepfake as simple ridicule when, really, it is a violation of one's dignity and right to privacy. Similarly, AI can use a musician's voice to create music they never sang in deceptively realistic videos without their permission. The use of AI to manipulate and use the voice of musicians to create music is still theft of the identity of the musician's vocal identity and the training of their voice.

To address the malicious use of AI through deepfakes, a radical yet essential solution is to expand the scope of copyright. Building on the issue of deepfakes, Denmark has created a blueprint bill that Nigeria can adopt to ensure the ethical use of AI and protect the autonomy of all Nigerian citizens.

Denmark currently has a bill that could pass, which would give its citizens more control over deepfakes by expanding its copyright law to allow them to demand the takedown of digital

[6] USA TODAY, "Their Selfies Are Being Turned into Sexually Explicit Content with AI. They Want the World to Know." USA TODAY (July 22, 2025) <https://www.usatoday.com/story/life/health-wellness/2025/07/22/grok-ai-deepfake-images-women/85307237007/> accessed August 5, 2025.

forgeries from social media.[7] The Danish culture minister, Jakob Engel-Schmidt, has hoped the bill would send an “unequivocal message” that every person has the right to look and sound as they please. It would give a person the right to their image so that it cannot be copied without consent. While copyright law traditionally protects creative works, expanding its scope may be necessary to address the challenges posed by generative AI and deepfakes.

Ethical Artificial Intelligence (AI)

While copyright law has a role to play in navigating artificial intelligence, it is important to note that it must be just and inclusive; such a law cannot repress AI to the point where the benefits of artificial intelligence are lost, since it has, in fact, provided many benefits to humans. So, another challenge is balancing the need for copyright with the need to use artificial intelligence.

The idea is that copyright should be used to navigate artificial intelligence in a manner that does not violate authors’ rights, yet still ensures it does not repress AI, and that it works in an ethical manner to ensure a win-win outcome for both stakeholders and developers of this AI. Striking a balance is important and comes into focus in the yet-to-be-decided case of ***The New York Times Company v. Microsoft Corporation***[8] between The New York Times (NYT) and OpenAI, in which NYT alleges that OpenAI has infringed its copyright by using NYT’s copyrighted works to train its AI models, and then there is OpenAI and Microsoft using the defence of fair use.

Lack of Technical Knowledge and Skills in Artificial Intelligence

Another challenge in using copyright to navigate the use of artificial intelligence in Nigeria is the lack of technical knowledge and skills in AI.[9] The shortage of AI experts in Nigeria makes it more difficult to find Nigerian experts who truly understand AI, which in turn makes it difficult to draft laws that can regulate AI for the benefit of Nigeria. The investment in training more AI experts who look out for the best interests of Nigeria will, in turn, ensure that the laws created are truly those that help navigate the use of AI in a manner beneficial to the needs of Nigerians and Nigeria.

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[7] Miranda Bryant, “Denmark to Tackle Deepfakes by Giving People Copyright to Their Own Features” The Guardian (June 27, 2025) <https://www.theguardian.com/technology/2025/jun/27/deepfakes-denmark-copyright-law-artificial-intelligence> accessed August 5, 2025.
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[9] Lagos Business School, “AI IN Nigeria: Opportunities, Challenges and Strategic Pathways” (Lagos Business School) <https://www.lbs.edu.ng/wp-content/uploads/2025/05/ai-in-nigeria-whitepaper.pdf> accessed August 5, 2025.

Conclusion

In Tim Cook's words, "The future of AI is in our hands." One way to determine the future of AI in Nigeria is by examining how the Nigerian Copyright Law is navigated. By navigating Nigerian copyright law to harness AI's benefits while also ensuring that the harm AI can cause is contained, Nigeria can position itself to benefit substantially. However, to achieve such laws would require great dedication of stakeholders like users of AI, policy experts, and AI developers to work to ensure that the novel challenges that come with the development of AI are swiftly contained and curbed; the Nigerian Copyright Law must be navigated to reflect the age of artificial intelligence by providing prompt regulations that are sensitive to the fast-paced development of artificial intelligence.

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CODE, CRIME AND CREATIVITY: THE SURPRISING LINK BETWEEN LAWBREAKING AND SOCIAL EVOLUTION

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ABSTRACT

"Crime develops society and every society needs some element of crime in order to grow". This statement is hinged on the subject of Sociology of law. Crime as a factor of society's growth has different branches which stems from it and one of which is the part of innovation. From the early times, crimes have been 'committed' and on the other hand 'stopped' using different innovations, technologies, techniques. Some secrets have kept different kingdoms, nations and businesses strong and competitive over the years and these have in turn helped them survive the harsh attack of other kingdoms, nations, economic factors and pressures. This article seeks to explore the topic sentence from a perspective of intellectual property with recourse to the fact that a lot of crimes and crime fighting have stemmed from the element of Intellectual Property. The exploration takes into cognizance different areas and examples from both local and international plains.

Keywords: *Code, Crime, Creativity, Innovation, Evolution, Intellectual Property*

INTRODUCTION

Codes are rules of conduct that are generally acceptable by a particular people, made by people of a certain location, profession, that are made with the aim of governing behavior.[1] Codes can also be ethical conduct which an organization, association or firm adheres to which guides their actions and activities. These codes may also prescribe sanctions for different acts which are considered unacceptable and impede the well being of the society.

Crime, the intentional commission of an act usually deemed socially harmful or dangerous and specifically defined, prohibited, and punishable under criminal law.[2] According to **Black's Law Dictionary**, a crime is defined as a positive or negative act in violation of penal law, or a breach of a legal duty, which is punishable by the state. It represents a public wrong, as opposed to a private injury, that threatens society and often involves two key components: a voluntary act and criminal intent. The **Nigerian Criminal Code[3]** and Penal Code[4] as an act or omission that violates public law, is forbidden by statute, and is punishable by the state upon conviction.

Creativity is the process of putting the mind to work to come up with ideas that are novel. It includes doing old things in a new way, or ideas for the advancement of an already existing product or service.[5] Creativity is idea generation, using the mind to access workable solutions to the everyday challenges of man. Creativity can be from an individual, a team or an organization/firm and it is very important to keep competitive edge and advantage in businesses.

Innovation, on the other side, is idea implementation - putting ideas into action. The achievement of this responsibility lies with the individual or organization to pursue such to a satisfying conclusion.

Some sociologists posit that crime is necessary for every society to grow and develop. The development of society springs the need for structure and shaping of the life of its members. This shaping is done by culture, norms and especially by law. Èmile Durkheim observes that crime is normal because it defines a society's moral boundaries.[6] Crime is not merely a social 'ill' to be suppressed; it is a high-pressure "shadow laboratory." When laws create barriers, human ingenuity (creativity) finds "workarounds" (innovation) that eventually become the standard for legitimate society (IP). This is the focus of intellectual property in this discourse: how many of these illegal ideas which became creations have framed society and its advancement by being the standard for modern technologies today. Intellectual Property is also concerned with the protection of the ideas and innovation which have been brought up as counter measures.

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[1] Science Direct, 'Codes of law' <https://www.sciencedirect.com/topics/social-sciences/code-of-laws#:~:text=In%20subject%20area%3A%20Social%20Sciences,On%20this%20page > accessed 31 January 2026
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[3] section 2, Cap. C38, Laws of the Federation of Nigeria (LFN), 2010.
[4] Cap 53, Laws of the Federation of Nigeria (LFN) 2004.
[5] Mahdieh F and Anders PN, 'The association between creativity and innovation: A literature review' (2018) *Research Gate* <https://www.researchgate.net/publication/326318197_The_association_between_creativity_and_innovation_A_literature_review> accessed 31 January 2026
[6] Vejar, Cynthia, 'Durkheim and the Normalization of Deviance' (2023) *EBSCO* <https://www.ebsco.com/research-starters/history/durkheim-and-normalization-deviance> accessed 29 January 2026.

I. Sociology: The "Strain" of Success

Society shapes law and law in turn shapes society. Every society has a picture of what is ideal and lawful, what is expected of its members and how they should go about their lives and businesses. For example, every adult is expected to earn a living so as to guard against stealing and other criminal acts. The society also proscribes certain behaviors or actions that are harmful to the individuals and their central interest. These behaviours and acts are however increasing in terms of scope and magnitude especially with the emergence of the internet and its complexities. They include the issues of cyber bullying, data piracy, hacking, plagiarism, fraud, OTP scams, ATM card hackers, etc. The society has risen up to match up with these crimes through laws, policies, better supervision, and even more innovative solutions like the plagiarism checkers, data protection laws and compliance, etc.

The Strain Theory

Every individual in society has a role to play in the growth of society, but what if these people are crippled in a certain way? Society a lot of times, gives vague promises and leaves no workable ways for these promises to be actualized.[7] Robert K. Merton in the 1930s proposed this theory in assessing the cause of crime in society. He posited in his theory that society sets goals (wealth, success) but often blocks the means to get there.[8] This creates 'innovators'—individuals who accept the goals but reject the legal means. Growing up, people are promised a lot of things- fame, success, good homes, good standards of living, good primary healthcare, etc. They are led to believe these promises, told they can be anything they want, shown a picture of 'a successful life'. These goals/ideas are often given to them by institutions such as the media, schools, and government policies. They are shown that if they work hard, they can achieve what they want and some legitimate processes are promoted such as education, hard work, employment, savings, career advancement and fulfillment.[9]

Merton predicts that there is an inequality between these lofty ideals and the opportunities or means of achieving them. This imbalance called 'strain' is what is presumably responsible for the acts of deviance by people. This theory shifts the focus from the individual to assessing what social conditions are present that are making breaking the rules more likely:

- A talented person cannot afford the tuition or the popular schools required for high-paying jobs. To bridge the gap, someone might be tempted to cheat on exams or fake their credentials.
- You get to work hard and long for 40+ hours a week to survive financially, but the paycheck still doesn't cover feeding and rent. You begin to feel at loss playing by the rules, which might lead to theft or fraud just to survive.

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[7] NU Editorial Contributors, 'Sociological Theories of Crime & Deviance' (2021) <https://www.nu.edu/blog/sociological-theories-of-crime/> accessed 28 January 2026.

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[9] Charlotte Nickerson, 'Merton's Strain Theory of Deviance in Sociology' (2025) *Simply Psychology* <https://www.simplypsychology.org/mertons-strain-theory-deviance.html?hl=en-US#:~:text=Merton's%20Strain%20Theory%20says%20people,can%20lead%20to%20rule%2Dbreaking.> accessed 31 January 2026

- Socially, you feel like an odd person or are treated that way because of where you're from or your social class. If you are rejected by normal society, you might look for respect in gangs or underground groups instead.
- You would like to climb up the ladder as you are due for a promotion, but discrimination or 'office politics' keeps you stagnant. This unfairness creates resentment, some begin to lie on their resumes or sabotage others to get ahead.[10]

Strained people react by either conforming, innovating, ritualism, retreat, or rebellion; each reflecting different attitudes toward goals and means.[11]

Conformists accept the views of the society about success and strong achievements. They pursue this by legal means available, they go to school, work hard, develop their mind and perseverance. They register their intellectual property ideas and follow the laws and policies that are available to get protected the right way.

Some innovators still look to the aim for the ideals of society but they sometimes take the illegal way to achieve this. Where they feel the channel is insufficient or blocked, they may turn to the unapproved means. An unemployed person becomes susceptible to internet fraud to get monetary wealth.

The theory has been criticized for focusing mainly on lower-class crime and overlooking the roles of power, privilege, race, and gender in shaping deviance.

I. The Innovation Engine: Case Studies in "Illicit" Engineering

Law and Crime are in a co-evolutionary arms race. Law prescribes and proscribes certain behaviors or actions of crime which are considered harmful by society. Crime in turn as it evolves widens in scope due to different new areas. Every "lock" of law; invites a "pick" (crime). This leads to a better "lock" - innovation. In the following case studies we will see that crime has improved society in different ways at different times. Some crimes have led to the questioning of security methods and measures and have helped to show loop holes even still in modern day technologies:

1. The Great Lock picking Wars[12]

The high standard of British security- the "unpickable" Bramah and Chubb locks was publicly unpicked in 1851 during the London Great Exhibition by an American - A.C. Hobbs. It was not to steal in the traditional sense, but was a scandalous breach of 'perfect security'. The industry pushed from simple mechanical 'wards' to pin-tumbler and magnetic-coded locking mechanisms. The Yale Lock patents and modern security engineering was a product of this. The lockpicker 'threat' created the multi-billion dollar physical security IP industry we have today.

2. Radar Detectors & Automotive "Electronic Warfare"[13]

'Superheterodyne' receivers which were illegal in many U.S jurisdictions were used by drivers to detect police radar frequencies and evade speeding tickets. To counter "Radar Detector-Detectors" used by police, engineers developed 'stealth' detectors that emit zero detectable signals and use frequency hopping. This high-stakes game of hide-and-seek perfected Low-Probability of

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[10] ibid

[11] ibid

[12] Lars Buchwald, 'The Art of Opening' (2025) *Multipick* <https://multipick.com/us/blog/the-art-of-opening/?hl=en-US#:~:text=It%20wasn't%20until%201851,all%20attempts%20for%2067%20years.> accessed 3 February 2026.

[13] Wikipedia, 'Radar Detector' <https://en.wikipedia.org/wiki/Radar_detector?hl=en-US#:~:text=Using%20or%20possessing%20a%20radar,a%20driver%20who%20does%20not.> accessed 3 February 2026.

Intercept (LPI) radar. This engineering is now a massive IP asset in Autonomous Vehicle (AV) sensors, allowing multiple self-driving cars to use radar simultaneously without interfering with each other.

3. **Digital Rights Management (DRM) & "Fair Use" Reverse Engineering**

In the early 1990s, the video game industry was a 'walled garden'. Companies like Sega used the right of ownership to prevent anyone else from making games for their consoles.[14]

The Accolade Company wanted to make games for the Sega Genesis, avoiding licensing fees. To understand the security handshake, they reverse engineered Sega's code. Sega sued, claiming this was digital 'breaking and entering'. The court case[15] established that reverse engineering for the purpose of 'interoperability' was legal. This forced hardware engineers to develop more sophisticated, encrypted authentication methods. This battle created the legal and technical blueprint for modern Trusted Execution Environments (TEEs) and modern API licensing. The prohibited act of taking apart a competitor's code actually redefined the IP boundaries for the entire modern software ecosystem.

4. **The "Silk Road" & The Maturation of Cryptocurrency**

While Bitcoin was an academic concept first, it was the prohibited engineering of the Silk Road (an underground marketplace) that forced the rapid evolution of the technology. To stay ahead of international law enforcement, underground developers had to solve massive engineering hurdles in anonymity, decentralized escrow, and multi-signature wallets. No legitimate lab could have 'stress-tested' blockchain technology like they did. This forced legitimate fintech companies and law enforcement - like Chainalysis, to develop sophisticated blockchain analytics, know your customer (KYC) protocols, and high-speed settlement layers. Major Banks today hold thousands of patents for Private Blockchains and Secure Ledger Technology. These legitimate IP portfolios were built on the lessons learned from the failures and successes of the darknet's prohibited research and development (R&D).

Nigerian Case Studies

1. **Counterfeit Drugs and Pharmaceuticals**

There are reports suggesting that 15% or more of drugs in Nigeria are fake or substandard. This is a major area of illicit activity as there is a lot of lapses between law enforcement and individual consumer protection. This sophisticated counterfeiting of antibiotics, anti-malarials, and vaccines is done often by using fake labels. These drugs are harmful to consumers and are responsible for a lot of deaths. The act also causes loss of revenue to both the authentic producers and the government. NAFDAC in partnership with companies like Sproxil and mPedigre has developed Mobile Authentication Service (MAS) and introduced a system where consumers scratch a panel to reveal a code and send it via SMS to verify authenticity.[16] There is also leveraging the 'GreenBook' digital platform for real-time tracking of drugs along the supply chain. The innovation of handheld devices for on-the-spot detection of counterfeit medicines has also been

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[14] Sega Enterprises Ltd. vs Accolade, Inc. 977 F.2d 1510 (9th Cir. 1992) *Wikipedia* <https://en.wikipedia.org/wiki/Sega_v._Accolade?hl=en-US#:~:text=The%20case%20was%20filed%20in,games%20they%20had%20for%20sale.> accessed 2 February 2026.

[15] ibid

[16] European Innovation Council and SMEs Executive Agency, 'Challenges of Counterfeiting in Nigeria' (2024) <https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/challenges-counterfeiting-nigeria-2024-11-11_en#:~:text=Counterfeiting%20is%20a%20pervasive%20global,meet%20safety%20or%20quality%20standards.> accessed 3 February 2026

introduced.[17] Special task forces have also been set up by NAFDAC to focus on seizing and destroying counterfeit products[18].

2. **High-Level Counterfeiting in Consumer Goods**[19]

The Nigerian market is saturated with a lot of substandard goods. This is as a result of counterfeiters in Nigeria who imitate branding and use substandard materials for products ranging from alcohol to clothing. The process of creating, distributing, and selling counterfeit consumer goods infringe on a lot of trademarks. 'Blockchain Technology' has been introduced to create immutable, transparent, and traceable records for products to ensure authenticity from production to sale.[20] A lot of companies are adopting quick response (QR) codes - when scanned, provide detailed information about the product's origin. Product genuineness is now being checked with hidden codes and Radio Frequency Identification (RFID) tags.

3. **Music and Film Piracy (Digital Piracy)**[21]

The Nigerian creative industry, despite being one of the largest in Africa, loses approximately USD 3 billion annually to piracy. This is due to unauthorized digital distribution of music and movies via file sharing, websites, and social media platforms. Technological measures have been innovated to control the use and distribution of digital content. The **Copyright Act**[22] has been updated to provide for dealing with online infringement, such as ordering Internet Service Providers (ISPs) to take down or block access to copyrighted content.[23] Also, improved modern online copyright registration systems now help creators secure their works faster. A new copyright policy has been introduced to help tackle these challenges.

4. **Theft of Traditional Knowledge and Genetic Resources**

This is where foreign entities sometimes patent genetic resources and plant-based medicinal knowledge derived from local communities without authorization. There is an increased push to document traditional knowledge and use geographical indicators to protect locally sourced materials to counter this issue.

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[17] NAFDAC, 'Anti-counterfeiting Strategies' (2024) <https://nafdac.gov.ng/about-nafdac/nafdac-anti-counterfeiting-strategies/#:~:text=Capacity%20Building,US%20EMMY%20Award%20of%20Excellence> accessed 3 February 2026

[18] Zillex Terpase Gbaeren, 'Addressing Counterfeiting and Piracy Challenges in Nigeria: The role of Intellectual Property Law' (2025) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5451634#:~:text=Counterfeiting%20and%20piracy%20remain%20one,protect%20the%20lives%20of%20citizens.> accessed 3 February 2026

[19] Pharma West Africa, 'ACPN Raises Alarm Over Surge in Counterfeit Medicines Across Nigeria' (2026) https://www.pharma-westafrica.com/acpn-raises-alarm-over-surge-in-counterfeit-medicines-across-nigeria#:~:text=Ezeh%20also%20highlighted%20the%20alarming%20growth%20of,implications%20for%20national%20security%20and%20public%20health.> accessed 3 February 2026

[20] Benchmac and Ince, 'Innovative Strategies to Combat Counterfeiting: The Role of Technology' <https://share.google/vKmGRGi7GjoOaxyNx> accessed 3 February 2026

[21] Musa Alkali Lawan and others, 'Copyright and the Protection of Innovation: The Importance of Intellectual Property Rights in Nigeria' *JASR* <https://share.google/omRRpqFPu6UptZFbh> accessed 28 January 2026

[22] 2022, No 8, Laws of the Federation of Nigeria. See also Aaron Ologe, An Analysis of Piracy Provisions under Nigeria's 2019 Suppression of Piracy Act (2024) *JRLICJ* Vol 2 No 1. Accessed 5th, May 2026.

[23] Mondaq, 'Intellectual Property in Nigeria: An Overview of Recent Developments' <https://www.mondaq.com/nigeria/trademark/1365282/intellectual-property-in-nigeria-an-overview-of-recent-developments#:~:text=The%20NCC%20has%20also%20been,the%20same%20infringement%20under%20it.> accessed 28 January 2026

5. **Emerging Challenges: Artificial Intelligence (AI)[24]**

This is where AI is trained on protected datasets and AI-generated content infringes on existing copyrights. To counter this, regulators and brand owners are beginning to use AI to detect counterfeit patterns and track infringing products in real-time.[25] The Nigerian Copyright Commission (NCC) is also adapting laws to address AI-driven intellectual property infringement.

The IP Transition: From Piracy to Patent

When the 'means' are too restrictive, talented individuals begin to 'create'.They accept the goal but bypass the rules. Most IP law is designed to protect the systemic means. When a criminal finds a shortcut, they aren't just breaking a law; they are demonstrating a technical inefficiency in the current system. Émile Durkheim famously argued that crime is 'functional' for society. Crime pushes against the limits of what is possible. Without the prohibited engineering of the Blue Box or the P2P network, the legal system would have no reason to evolve its definitions of 'security' or 'ownership'. As these crimes occur, society reacts by creating new laws. These laws eventually crystallize into intellectual property frameworks that allow the 'innovation' to be commercialized safely.

Furthermore, these surreptitious innovations have helped to also generate counter measures both in law and technology, like the innovation of radar jammers, leading to the invention of radio jammer detection. This in turn grows awareness and advancement in the society.

The Legitimization of the Illicit

The transition from a criminal act to an intellectual property asset is rarely a straight line; it is a process of 'standardization'. When a disruptive technology (like P2P file sharing) breaks the existing legal framework, the industry initially reacts with litigation. However, once the breakthrough proves more efficient than the entrenched means, the market moves to capture and codify it. There have also been the incorporation of these illegal engineers into the mainstream institutions as a means of achieving balance and reducing the crimes. Patents are bought by the company that seeks to explore that particular hack and these illegal engineers are brought in for their knowledge on how the system already worked and the disruptive loop holes they were able to create in it; showing the need for more work to be done.

The Case of Spotify: Refining the Pirate's Architecture

The most famous example of this harvest of pioneer ideas is the evolution of the music industry. In the late 1990s, Napster and subsequent Gnutella networks - like Limewire, introduced the world to decentralized data distribution. Pirates perfected 'sharding' - breaking files into tiny pieces and peer-to-peer indexing, allowing users to download content from each other rather than a central, easily-blocked server. While brilliant, pirate networks were plagued by high latency, inconsistent speeds and security risks (malware). Daniel Ek (Spotify's founder) realized that the P2P model was technically superior to traditional server-client downloads, but it lacked legal and technical standardization.

Spotify's early engineering team took the 'illegal' P2P architecture and refined it into a high-performance, proprietary system. They added layers of Digital Rights Management (DRM) and Quality of Service (QoS) protocols. By standardizing the 'pirate' method, they created a product

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[24] ibid (n20)

[25] Esther Gbenro and others, 'Intellectual Property Outlook for 2025: What Nigerian and Global Brand Owners Need to Know' (2025) <https://www.aluko-oyebode.com/attorneys/ayokunle-adetula/> accessed 28 January 2026

that was faster and more reliable than piracy itself.[26] Today, Spotify holds a massive portfolio of patents related to Predictive Caching and Adaptive Bitrate Streaming. These IP assets are essentially the 'civilized' versions of the engineering hacks used by 19-year-old hackers in the 2000s.[27]

The law did not just stop the pirate; it waited for the pirate to prove the technology worked, then it built a fence (IP law) around the technology to tax it.

Section V: The Ethical & Critical Appraisal

Who Owns Evolution?

The ultimate irony of the Sociology of Law is that while society benefits from the 'deviant idea' the original 'pioneer' (the criminal) is often punished, while the 'standardizer' (the corporation) is granted the intellectual property rights.

In IP law, the doctrine of clean hands posits that you generally cannot claim a patent if your invention was derived from illegal acts. However, 'technological laundering' is often performed by large scale industries. A criminal identifies a flaw and builds a 'hack'; the corporation studies the hack and then patents the 'fix'. This raises the question: doesn't the current IP system exploit the 'free research and development' of the underground? If a hacker exposes a vulnerability, they are prosecuted; yet the cybersecurity firm that patents the patch makes millions.

In Nigeria, primary legislation that regulates patents and designs is the **Patents and Designs Act(PDA)**[28] administered by Trademarks, Patents and Designs Registry, Commercial Law Department, Federal Ministry of Industry, Trade And Investment. Under the PDA, an invention is strictly unpatentable if its publication or exploitation would be contrary to public order or morality.[29] Importantly, the law states that just because an act is prohibited- like bypassing a network, the invention itself isn't necessarily 'immoral'. While specific 'prohibited engineering' patent cases are rare in public records, the Nigerian courts have always emphasized this in cases like ***Uwemedimo v. Mobil Producing Nigeria***[30] that for a patent to be valid, it must adhere strictly to the formalities of the Act.[31] If an invention's primary purpose is illegal, like a device designed specifically to bypass the Nigerian Cybercrimes Act, the Registrar can reject it on the grounds of 'Public Order'.

Furthermore, there is still another legal hurdle to be passed by illicitly derived work in Nigeria. The law grants the patent to the 'Statutory Inventor' who is the first to file. However, a patent can be nullified if the essential elements were obtained from another person's invention without their

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[26] Aditi Mishra, 'Spotify's P2P Architecture: The Story of Music Streaming Revolution' (2025) *Medium* <https://medium.com/@aditimishra_541/spotifys-p2p-architecture-the-story-of-music-streaming-revolution-0b92cca9609d> accessed 3 February 2026

[27] Bao Tran, 'How Spotify's Patents Are Reshaping Personalized Music Algorithms' (2026) *PatentPC* <https://patentpc.com/blog/how-spotifys-patents-are-reshaping-personalized-music-algorithms?hl=en-US> accessed 3 February 2026

[28] Cap P2 LFN 2004.

[29] PDA section 1(4)(b); O. M. Atoyebi, 'An Examination of Patent and Design Protection in Nigeria: Prospects and Problems' (2024) <https://omaplex.com.ng/an-examination-of-patent-and-design-protection-in-nigeria-prospects-and-problems/?hl=en-US#post-3458-footnote-ref-4> accessed 3 February 2026

[30] (2019) 12 NWLR (Pt. 1685)

[31] Udo Ibuot, 'Appeal court affirms Commandclem, inventor of QIT special paints' *The Vanguard* (Nigeria, 2 Jan2010) <https://www.vanguardngr.com/2010/01/appeal-court-affirms-commandclem-inventor-of-qit-special-paints/> accessed 3rd February 2026

consent.[32] Per Merton's theory, a Nigerian creator who hacks into a corporate database, finds an unfinished algorithm, refines it, and tries to patent it can face a lawsuit by the corporation to invalidate the patent under this section, arguing the invention was stolen, not created.

CONCLUSION

Society is a living organism. Crime is the 'mutation' in the social DNA. Most mutations are harmful, but some provide the necessary evolution to survive a changing environment. Intellectual property is merely the 'fossil record' of which mutations we chose to keep. The law needs to evolve as much as crime is also evolving. Worthy of note is also to look at the new ideas we lose when the law is too rigid. If the music industry had successfully killed P2P technology entirely rather than standardizing it, we might still be buying physical CDs. It can be seen that excessive IP enforcement can act as a 'straitjacket' on social evolution. If we treat every 'deviant' act as a threat rather than a signal, we risk technological stagnation.

In the Nigerian landscape, the law acts as a laundromat. It doesn't necessarily care if the engineer was a 'rebel', but it provides the tools for established institutions to 'reclaim' inventions that were birthed in the shadows.

It is recommended that the Nigerian laws be updated to match the growing spectrum of criminal acts in the country. Regulatory bodies should also be strengthened in areas of equipment, funding and personnel to be able to tackle both old and new methods of intellectual property crimes and crimes in general. Also innovative platforms should be created and people should be encouraged to use them in the furtherance of the growth of the society.

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[32] PDA section 2(3)

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AN APPRAISAL OF THE RIGHTS OF THE NETWORK USERS IN NIGERIA: CHALLENGES AND COMPENSATION

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ABSTRACT

Nigeria being a late entrant in the telecommunications industry has not affected it economic growth, but despite that, the country's growth in telecommunications industry has been a subject of diverse debate. In October 2023 the telecommunications industry experienced a 0.19% growth in Active Voice subscriptions while telecom-density stood at 102.49% with internet subscriptions increasing by 0.60% compared to September 2023. In November of the same year, the industry also experienced a 0.46% growth in Active Voice subscriptions. Also telecommunication operators activated 1.57 million mobile subscribers, as active mobile users in Nigeria in February rose to 219.7 million from 218.1 million in January; however a recent report from March to April 2024 shows a great decline to the number of Subscribers. Moreover, it is not the growth of the industry at the disposal of the subscribers that should be celebrated, but the growth of the industry at the rate in which it serves the best interest of the consumers as stated under the various international and local regulation or legislation to which the work has come to critically analyse and provide a solution where necessary for the best interest of all who is engaged in telecommunications industry.

Keywords: *Telecommunications industry; Nigeria; subscriber growth; consumer protection*

THE CRITICAL LEGAL CHALLENGES AND COMPENSATION

The primary legislations that guides and regulate the telecommunications industry in Nigeria is the Nigerian Communication Act 2003 (NCA) and its Commission the NCC and the Federal Competition and Consumer Protection Act 2018 (FCCPA) and it's Commission the FCCPC and other regulations. For the purpose of this work, the term "*Licensee, service operators and service providers*" are referred to the sole body that grant the services to the consumers, service subscribers or network users, as it may be used interchangeable for easy communication.

Telecommunication means any transmission, emission, or reception of signs, signal writings, images, sounds or intelligence of any nature by wire, radio, visual or other electromagnetic systems, and transmission means to cause any emission of unguided electromagnetic energy in any part of the spectrum.[33] Thus, this means that not only the **SIM (*Subscriber Identification Module (SIM)*)** users are covered under this meaning of telecommunication, but it also reaches visual subscribers that subscribes to any electromagnetic transmission and other forms of transmission. Consumer or a subscriber is defines as any person who subscribes to and uses a communication service. This narrows the definition of a consumer, as opposed to the meaning of telecommunication under the act that widens it's trajectory to include any form of transmission on electromagnetic system, by depriving a consumer its traditional sense of a consumer that extend to any person who is affected by the product or service, to only a contractual consumers. But, with the emerging trend in technology it will be obnoxious if a telecommunication consumer means only contractual consumers, because it is the rate at which a service reaches to the other person in which a subscriber tends to communicate with, that the obligation created by the service operators and the consumer can be measured, not subscription per se by service providers. In that sense a consumer under the *NCA 2003* should also equates to person that is affected by the services of the service operators. Take for instance if **A**, a subscriber to a service operator, gifts out the service granted to him, to **B.** Therefore **B** is not covered under the meaning of consumer under *NCA* because there was no privity of contract between **B** and **A** service operators. Also in a situation where a subscriber sent a message to another service subscriber **D**, who does not have the same service operator with **C**, but due to the fact of the poor network by the service operator of **C**, before the message reaches to other service subscriber he has suffered lost as a result of the delay, **D** the other service subscriber will not have any cause of actions, because he is not covered within the meaning of consumer under the *NCA*, for he is not a contractual consumer, rather he will undergo

[33] See section 157 of the Nigerian Communication Act 2003.

a rigorous task of acting as an ostrich by complaining to his contractual operator, instead of having a debt with the service operators that caused the damage to him.

There is need to review the meaning of consumer under the *NCA*, in other to accommodate the extant trend in technology in protecting the interest of consumers and curbing the intellectual imbalance between the consumers and the service operators over their services. Regardless that the claim is only founded on contract, a consumer that is affected by such, can assert that there is an assignment of service to him whether or not he has a contractual obligation with the service operators.

With the enormous power vested on the *NCC* under *section 70 and 106* of the *NCA* to protect consumers from unfair practices of Licensee and other persons in supply of telecommunication services and facilities, the commission has make regulations and guidelines in other to complement, supplement the general provision of the act and other salient matters necessary to give effect to the provision of the act. Notwithstanding the clear provision of *paragraph 6(1) of the Consumer Code of Practice Regulation 2007;* which stated that Licensee shall provide the consumers with the necessary information about their service, before a subscriber can have a contract with them. The question is, how have these provisions been complied to, and how has it help the network users? What is obtainable in practice and generally accepted by many subscribers, whom has enjoy sleeping on their rights at their own peril, is that terms and conditions of the contract always accompanied the *SIM* cards, decoder or antenna in case of a visual telecommunication after payment, making it difficult for the consumers to read the pre-contractual terms and conditions which might also bear the statement *"no refund of money after payment"* before making a choice whether to buy or not, which in effect promote competition in the telecommunication industry as opposed to monopolizing of the market by one licensee. However such practice of no refund of money after payment or not showing the information of the contractual terms and conditions before payment is against the law and it should be disregarded at it distorts the mechanism used for combating the unfair practices of some Licensee at the detriment of the consumers.

The question is what rights is left for a network user, while the *SIM* cards or visual transmission antenna is always sealed and packaged with the terms and conditions making it difficult for a network user to read the terms and conditions of the contract before payments? Another question is these terms and conditions binding?

Thus surprisingly it was an issue in the case of **HON. JUSTICE PATRICK I. AMAIZU v MTN NIGERIA COMMUNICATIONS LIMITED**[34] the Appellant, a retired Justice of the Court of Appeal, travelled to the United States sometime in 2007 with his wife and stayed for six months, and loaded his said phone line with ₦9,000 (Nine Thousand Naira) before travelling. On his return, the Appellant discovered that the Respondent had disconnected his phone line and that of his wife. On 3rd December 2007, the Appellant lodged a complaint at the Respondent's Regional Office at Enugu. The Appellant claimed that the Respondent's conduct had caused him to lose all his contacts and had to purchase a new telephone line. The Respondent replied to the Appellant's letter by explaining that any inactive line for a continuous period of 90 (ninety) days is recovered by the Respondent and that this policy or regulation was not communicated to the Appellant when he contracted with the Respondent and up to the disconnection moment. The issues that came for determination was: Whether the Appellant was aware of the terms and conditions in the sealed starter pack? Before resolving the issue, the court spelt out the rules regarding notice in such circumstances, viz:

1. If the person receiving the document did not know that there was writing or printing on it, he is not bound.
2. If he knew that the writing or printing contained or referred to conditions, he is bound.
3. If the party tendering the document did what was reasonably sufficient to give the other party notice of the conditions, then such conditions will be binding and enforceable between the parties.

After analysis, the court held that even though the Appellant did not read the terms, the terms were binding. The instruction on the SIM Pack directing the purchaser to see the Terms and Conditions of Purchase contained therein suffices as notice of the terms and conditions of the service agreement regarding the use of the SIM card by the Appellant under the Respondent's services. The Appellant's failure to read the terms & conditions of purchase is a matter of personal choice but he is bound those terms and conditions. The court held *"I am unable to see any reason for disturbing the lower Court's finding that the appellant was given reasonably sufficient notice of the terms and conditions of purchase of his SIM card in the Service Guide"*.

It is submitted with due respect that the reasoning of the court cannot be accepted within the provision of the law, as the process for obtaining such service prove detrimental to the interest of the consumers. Process for subscribing to these services begins with prospective subscriber obtaining a service provider's *Subscriber Identification Module (SIM)* pack alone, in the case of

[34] (2017) LPELR-43947(CA)

mobile phone, and Internet modem and a *SIM* pack in the case of computer-based mobile Internet services or a manual antenna in case of a visual transmission service provider. This is a step of obtaining service in Nigeria whether visual or *SIM* cards users, but for cursory look, we will consider *SIM* cards process, which is also in pari-material with visual subscriber. Next, the subscriber registers the *SIM* which presently cannot be used until it is registered, to register the line, the subscriber does not necessarily have to open the *SIM* pack which usually comes sealed, so long as he or she has information as to the Personal Idennfication Number (PIN) of the line which may be contained in the receipt issued to him or her on purchase and sometimes on the cover of the pack. It is only after the line has been registered that the consumer can use the *SIM* card to access the particular subscriber's network for telephone or Internet service. Most consumers do not bother to unseal the SIM pack until this time. Generally, the *SIM pack* contains the *SIM* card and a leaflet. The subscriber's PIN which is the phone number and Personal Unlocking Key (PUK) are usually printed on the *SIM* card carrier. A perusal of the leaflets accompanying the SIM pack of all the service providers currently in the country reveals that they contain mainly instructions on how to activate the line and access services available on the particular network. There is little or no description in the leaflets of the services provided. In fact, they are more like advertising materials than description of the services offered. The consumer is then referred to the website of the service provider for the "*terms and conditions*" or simply "*for more information*" and in some cases asked to regularly visit the website for updates on the terms and conditions.

In this manner the service provider's effectively shifts the obligation to the consumer to chase after the necessary information which by right ought to have been made available freely to him or her. It is submitted that the court should review such judgement, in other to avoid muzzling consumer's rights, but however the court revisited such law and give a sagacious conclusion to it. In **PATRICK CHUKWUMA v PEACE MASS TRANSIT**[35] **t**ransport company *Peace Mass Transit* has lost its legal battle in a matter bordering on refund of money to passengers for trips not undertaken. The incident that led to the suit occurred on the 10th of February, 2021, when the Plaintiff, Patrick C. Chukwuma purchased a ticket from the Obollor-Afor branch of Peace Mass Transit Limited to convey him to Enugu. Following a two hours delay occasioned by the absence of passengers, the Plaintiff returned to the ticketing office and asked for a refund of the ₦500 he paid as the transportation fare. However, staff of the Defendant refused to refund the money, insisting that their company policy was that money paid for transport fare cannot be returned to the passenger and citing the statement written on their ticket to that effect as conclusive proof of their position.

[35] Suit No: E/514/2021 (unreported)

When the Plaintiff tried to explain to them that their policy was unlawful as the law mandates them to refund fares for services that have not been provided, they retorted in a rude manner, prompting the learned counsel to leave their park and seek alternative means of traveling back to Enugu. A letter written by the lawyer to the Peace Mass Group of companies demanding an apology and refund was neglected, prompting the lawyers law firm to institute the action.

Delivering its judgement, the Court through Hon. Justice C.O. Ajah declared the no refund policy as illegal, null and void in light of the provisions of *Sections 120, 104, 129 (1) (a) and (b) (iii) of the Federal Competition and Consumer Protection Act, 2018.* The court further ordered the Defendant to pay the sum of ₦500,000 as damages to the Plaintiff. Justice ***C. O. Ajah*** in interpreting the provision of the *FCCPA* held, that the policy of no refund of money after payment and the policy of unfair contract terms and conditions by any manufacturers, producers is illegal and void.

Therefore the network users of telecommunication industry in Nigeria has the right to reject any services offered by a service operators after or before entering into contract with such service operators, whether on the ground of unfair contract terms and conditions or the policy of no refund of money after payment, in promoting and sustaining competition in telecommunication industry. Thus what is tenable within the provision of the code is that, it is only when network users or potential network users has the relevant information about Licensee product or services at their disposal and then willing whether to make a choice to subscribe to or not that the interest and rights of the consumer within that provision will be given effect to. The problem facing Nigeria telecommunication industry is not poor legislation, but poor enforcement of these provisions coupled with lack of consumer awareness to these regulations. Thus under paragraph 6(2) of the Consumer Code of Practice Regulation it states that ***"All services provided by a particular licensee shall be provided free of charge in print or electronic format (including on each licensee website)."*** What the service providers do in practice, which is a total contravention of this provision is withholding some important/palatable offers from the *USSD* code putting them on their Apps, leaving the network users with no option rather than going into the service provider app to locate the most suitable offer, which cannot be opened without a charge of data or other charges contrary to the provision of paragraph *6(2)* of the Consumer Code of Practice Regulation which suppose to be shown free of charge, also the collection of charges from each banking services operated through *USSD* code in Nigeria, is one of the grave abusive practice perpetuated on network users in Nigeria. The right afforded to consumers under this provision, is that the services of accessing thus offers should be free from any charge whatsoever. It is hardly in Nigeria telecommunications industry to see where the offer showcase in *USSD* code, is more palatable than the one shown on mobile App due to charges of data accompanying the services under the App. It is submitted that this shows the height of incompetency in the Nigeria telecommunication industry, because once there is healthy competition in the industry, the consumers will not hold back but to savage the service providers in place of those that provide them with palatable offers on *USSD* code service and mobile App. One can ask, which service providers in Nigeria do not charge for *USSD* code for banking services or which service providers in Nigeria has better offer in their *USSD* Code to compare their offers in mobile App?

However the rights of network users in Nigeria, has subjected itself to abuse and muzzling of these rights guaranteed to networks users. Under paragraph 21 of the Consumer Code of Practice Regulation 2007; it mandates any service provider to send End of Operation Notification **(EON)** to prepaid consumers to show how much they have been charged for every operation in order to enable consumers ascertain how much they have been charged for each call or text including data or any electromagnetic transmission subscription. There is no network users of DSTV, GO-TV, SIM cards service providers[36] or any other visual transmission in Nigeria that stick to this provision of sending their *End Of Operation Notification* to their users immediately after each viewing session for the user to ascertain what is remaining in the prepaid subscription. Therefore the practice of monthly, weekly, daily, or yearly subscription by networks users without their service providers showing the remaining balance at each end of viewing session of such prepaid subscription is against the law guiding telecommunications industry in Nigeria. What the law recognizes is that the service providers are mandated under the law to provide the networks users at any end of each viewing or data session the remaining unit of the prepaid subscription.[37] This is a practice that is detrimental to the rights of the network users, thereby subjecting the network users to be at the disposal of the service providers by whom due to information imbalance between them and the network user knows the greediness behind not showing the network users the *EON* after each usage at their own interest and benefit. It is humbly submitted that any Telecommunication service in Nigeria that does not provide the networks users with the necessary *EON* after each usage or shows the prepaid unit but do not send each *EON*, violates the provision of this regulation and infringes on such network users rights.

On the issue of faulty repair, service interruption and any compensation, refund, for such interruption, the service providers are enjoin to provide the network users with information regarding any compensation, refund or other arrangement, which may apply if contracted quality

[36] With exception of airtime EON which most service providers do comply with; (they hardly comply to data usage EON except on direct "*airtime-2-data*" usage in some cases).
[37] End of each viewing session can be from one channel to another, and in case of mobile data, any end of the data usage at the instance turning the data off.

service level are not meet, along with the procedure and method for resolving dispute in respect of the service contract, and a provision for consumer to report fault for 24 hours a day as provided under *paragraph 9-14* of the Consumer Code of Practice Regulation 2007. That is to say, the issue of total disruption of service by service providers thereby leaving the consumer *incommunicadium* with the *Customer Care or Call centre* of any service operator facilities is against the law guiding consumers, what the law tends to balance is an ad-hoc communication between the consumer and customer care that in due time, that the consumer service will be restored immediately, and not total disruption of the service. Thus the total disruption of network by service providers in Nigeria, leaving the networks users with no option to call the service centre, is a breach of *section 13* of the *CCPR.*[38] However the practice of not refunding the network users about non-use services due to interruption of service is also a beach of this provision. Take for instance, in case of *SIM* cards users that subscribe to night browsing, but due to network upgrade or network issue the network users may not be able to use such service because by the time network will be restored the subscription has expired, thus enriching themselves at the expense of the network users who will be eager to subscribe again notwithstanding that the other subscription was totally disrupted due to bad network or other reasons, and also these applies to visual service provider who also enrich at the expenses of network users by not providing compensation to the network user whom due to bad network, raining season, and harmattan season their service was disrupted but were not provided with any compensation to cushion such effect, one must commend some network providers who do provide their consumers with rollover of service due to bad network. This support the view that the law guiding telecommunications Industry in Nigeria flown at daily, monthly, weekly and yearly subscription without roll over service. As the roll over is a subscription unit that was not used up which will be incurred into the latter subscription to be purchased subsequently.

The right of networks users in telecommunication industry in Nigeria is not, a jealous right but an abusive rights and a mockery rights, devoid of enforcing and stricto senso to the letters of any telecommunication legislation. Part IV of the *Consumer Code Of Practice Regulation 2007* makes enormous provision on the protection of individual privacy, and their confidentiality against a third party, except under a permissible limitation by law i.e. any licensee that collects information on individual consumers shall adopt and implement a policy regarding the proper collection, uses and protection of that information. These provision places too much burden on the service providers, because a relative or any other person who has a subscriber number can send a scam message to the subscriber thereby intruding on the right to privacy of the subscriber.

[38] *the Consumer Code of Practice Regulation 2007*

Can a service provider be held responsible on this ground? In **GODFREY NYA ENEYE v MTN NIGERIA COMMUNICATION LTD**[39] delivered on 2 November 2016 by the Hon. Justice Jude Okeke, High Court of the Federal Capital Territory, Abuja, Mr Eneye, a lawyer, alleged that without his consent, MTN disclosed his mobile phone number to unknown third parties who sent unsolicited text messages to him. This action, he alleged, violated his fundamental right to privacy guaranteed under **section 37** of the Nigerian Constitution. He also claimed, on the same facts, that his right of freedom of association under **section 40** and right to liberty under **section 35** of same Constitution were violated, and asked for an injunction compelling MTN to cease further unauthorised access of his private mobile phone to unknown third parties as well as the resultant unsolicited text messages. He also demanded various damages for the violations of his rights. **Justice Emmanuel Agim**, who prepared the lead judgment of the Court of Appeal, held that innumerable text messages sent without the consent of the subscriber was a violation of the subscriber's fundamental right to privacy of his telephone conversations, correspondence, his person, telephone line and telephone message inbox. Justice Agim held, "*By giving those unknown persons and organisations access to the respondent's MTN GSM phone number, to send text messages into it, the appellant violated the respondent's fundamental right to privacy guaranteed by section 37 of the Constitution which includes the right to the privacy of a person's telephone line. The said section 37 of the 1999 Constitution provides that, 'The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic conversations is hereby guaranteed and protected. The innumerable text messages without his consent at all times is a violation of his fundamental right to the privacy of his telephone conversations, correspondence and his person and telephone line and telephone message inbox."*

The court appreciated the reasoning above, that the service provider shall be held liable for any solicited or unsolicited message sent to a networks user by a third party or not a third party without his consent, but with due respect that is not the position of the law. Deducing from the court judgement, does it mean that other calls, text messages or any message on visual transmission sent to or received by a network user has his consent? That is not so because, it is a trite experience that one can receive calls or message without a notice by the service providers for the assent of the subscriber, before such call or text will be received by the network users. A humble submission, is that not all text messages or calls from a third party will make a service provider liable, there are some unsolicited messages that is sent by a service provider which is not within the auspice of the privacy that is subjected to the service provider on the purchase of the service from them such as **50017**, texting a network user for **a chance to win a bet**, or a gamble on condition of texting

[39] Unreported) Suit No FCT/HC/CV/545/2015

something to them, also **3532** another service provider number sending a text message saying ***"you are Hot to chase, will I date you, send number to us."*** These are unsolicited messages which are violations of right to privacy on the ground that such privacy is not within the permissible submission of privacy submitted upon purchase of such services, and not within the permissible exception by law.

However in a similar case the court also make the same error but show a little departure. In **EZUGWU EMMANUEL ANENE v AIRTEL NIGERIA LTD**, a lawyer, Mr Ezugwu Emmanuel Anene sued Airtel, his service provider, at the FCT High Court in 2015, alleging that countless unsolicited calls and text messages by Airtel and third parties access to his number breached his constitutional right to privacy, among other claims. The trial court awarded the sum of Five Million Naira (₦5,000,000.00) damages to him for violation of his privacy right. The case of **MTN Nig. Ltd v. Anene**[40] is also relevant on this point because MTN subjected Anene to illegal and unholy deductions from his airtime, for caller tunes services which he never subscribed to. MTN also resumed deducting his airtime for caller tunes services when he did not subscribe to it, and notwithstanding the earlier assertion that it had de-activated same. The court was therefore correct in awarding 5 Million Naira in favour of the Plaintiff.

The court understands the above submission but, still make an error by insisting, on the ground of access granted by Airtel to all third parties is a violation of plaintiff right to privacy, thereby not balancing the right of networks users and the right to privacy not submitted on purchase of the service at the peril of the service providers. It is recommended that court in future time should reconsider this provision in other to curb unnecessary burden place on the shoulder of service providers which is bound to be abuse by a recidivist network users. Also on the rights of network users relating to their directory of privacy not to be disclosed to any same service subscriber is covered under *paragraph 14(1}(2) of The Consumer Code of Practice 2007*[41], except where the service provider has opt to remove or suppressed his directory information from the directory list of the service provider. The question is, how many service providers has compile list of directory Information on a geographical area containing the list of all the same network user in that same area sent to their customer?

[40] (2018) LPELR-44447(CA)

[41] 14.—(1) The Licensee shall ensure that any Consumer can access:
(a) operator assistance services; and
(b) a directory enquiry facility containing directory information on all subscribers in Nigeria, except for those subscribers who have exercised their right to have their directory information suppressed or removed.
(2) Where the Licensee assigns telephone numbers to subscribers, it shall ensure that each of those subscribers is, on request, supplied free of charge, with a directory containing directory information on all subscribers who have been assigned telephone numbers in the subscriber's local area.

Notwithstanding the rights for quality of service afforded to network users under *Regulation 3 of Quality of Service Regulations*, the end of it in practice is against the network user's rights as contrary to the *Regulation 3 of the Quality of Service Regulation*. This is a far reaching provision that should be a guidepost in measuring how the consumer interest under the influence of a licensee has been protected, safeguard and achieved, but in any case the reverse is the case. Experience has shown that no viewing communication service communication service in Nigeria serves for 24 hours uninterrupted service during raining season or winter season, but there is a regulation that obliges the service providers not to do so. *Part Vii of the NCA {sections 104 to 106)* provides for consumer protection and quality of services. *NCC* has made and published the *Quality of Services Regulations 2013 (QSR)* to ensure the protection and promotion of the interests of consumers against unfair practices including matters relating to tariffs and charges, the availability and quality of communications services, equipment and facilities; improve and maintain high level service quality, and provide services that will help customers make an informed choice of services and service provider. All service providers are required to meet such minimum standards of quality of service as the Commission may from time to time specify and publish. The *QSR* stipulates the minimum quality standards for different telecommunications services and the associated measurements, reporting and record keeping tasks of service providers; it is also empowered to direct service providers to compensate subscribers for poor quality of service and to impose fines on offending service providers. Regrettably, notwithstanding the *QSR*, poor quality telecommunications services has persisted in the country. Common examples of the poor quality of telecommunications services in the country include sudden loss of audio in the middle of a call, unsuccessful and high rates of call attempts, long delay and non delivery of text messages, difficulties or inability to get assistance from Operator's customer care or support line, among others. The practice often adopted by the Commission is to impose fines on the operators under the *QSR*. It is commendable that over the year's courts have been playing tremendous roles in protecting the interest of consumers.

In the case of **MTN NIG. LTD v AMADI**[42] and **MTN NIG. LTD v CHINEDU**[43]**;** Amadi, a legal practitioner, loaded his phone line with ₦1, 500.00 (One Thousand, Five Hundred Naira) only. MTN unilaterally blocked his phone line from 14th – 18th October, 2005 in breach of her terms and conditions for use of Starter Pack. The implication is that Amadi was arbitrarily deprived from; calling or receiving calls from his family, clients and forced to pay extra money to public phone vendors and discussed clients private matters in the open. The use of ₦1, 500.00 (One Thousand,

[42] (2012) LPELR-21276(CA)
[43] (2018) LPELR-44621(CA)

five Hundred Naira) only, card recharged on his phone was reason of the blockage of his phone. He filed an action against MTN and the Court awarded ₦1 Million in his favour. Also, in **MTN NIG LTD v CHINEDU**[44] the court held; it is an establishment which is expected to be on its toes at all times to render its services to the public based on trust and good services. Failure to fulfil this duty would attract disastrous consequences to its customers, as it did to the Respondent. *"In these days of use of mobile phones as prime means of communication, disruption of lines and/or lack of use of them due to the negligence of another can cause untold hardship, and loss of trade and customers."*

Recommendation:

Despite the *NCC* commission having the authority to resolve dispute under *section 76 of the NCA, 2003* there should also be other mechanism in place to help the networks users fight to their rights, because a justice delayed is a justice denied and it will be difficult for a network user to meet the commission whom does not have offices across the State, even if it do, is it at the disposal of all service subscribers in that State? To this end the Commission has made and published the ***Dispute Resolution Guidelines (DRG) 2004***. The *DRG 2004* is principally intended for small claims involving amounts not exceeding One Million Naira. The procedure is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means of resolving consumer related disputes in the telecommunications sector. By applying for arbitration the parties agree to the nondisclosure of the proceedings, award and reasons for the award to any stranger to the proceedings unless it is necessary to do so in order to enforce the award. The procedure is not designed to deal with complicated disputes, which should be dealt with by more formal oral hearing and evidence to ensure their proper resolution. A decision on the applicability of this procedure shall not be at the discretion of the Commission. The Commission appoints the arbitrator, and the decision of the arbitrator shall be final and binding on the parties. Complaints handling, shall be mandatory for licensees to provide, and from time to time review and update, their consumer complaints handling procedures, easily understood information about their complaints processes in various media and formats should be made available to consumers, including as may from time to time be specifically directed by the Commission. These are to ensure that consumers can easily identify how a complaint may be lodged, either at a licensee's premises or using identified forms of telecommunications. The Code also provides for consumer complaints handling. It is also recommend, that there is need to enlighten the network users about their rights and obligation having a consumerism movement across the country geared towards educating and

[44] Supra

sensitizing the networks users about their right. It is also recommended that *DRG* Claim should be review in other to hear claims exceeding One Million Naira.

Conclusion:

There is need, in Nigeria telecommunication industry to bring this legislation to the door step of network user by consumer lawyers, because one sleeping on his right is like there is no legislation guiding telecommunications industry in Nigeria, which is at the detriment of any type of network user in Nigeria.

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THE ENFORCEABILITY OF STATUTORY AGE LIMITS FOR MARRIAGE IN NIGERIA: LEGAL CHALLENGES AND PROSPECTS FOR REFORM.

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ABSTRACT

This research examines the enforceability of statutory age limits for marriage in Nigeria, with particular focus on the legal and structural challenges undermining effective implementation. It analyses relevant constitutional and statutory provisions, including the Child Rights Act, the Marriage Act and the Matrimonial Causes Act, highlighting areas of ambiguity and inconsistency. The work further explores the impact of Nigeria's federal structure and plural legal system, which allows statutory, customary, and religious laws to operate concurrently, thereby weakening uniform enforcement. It finds that while the legal framework provides formal protection against underage marriage, enforcement remains limited in practice due to constitutional uncertainty, uneven domestication of child protection laws, and weak judicial intervention. The paper concludes by proposing legal and institutional reforms aimed at strengthening the enforceability of statutory age limits for marriage in Nigeria. It further examines the social, cultural, and legal consequences of child marriage on the protection and development of minors within Nigerian society.

Keywords: *Marriage, Child Marriage, Child Right's Act, Plural Legal System, Federalism.*

INTRODUCTION

Marriage occupies an important place in Nigerian society, not only as a social institution but also as legally regulated relationship. In recognition of the need to protect children from premature marital obligations, statutory laws in Nigeria prescribe minimum age limits for marriage. Child marriage is tied to a number of factors including religion, traditions and customs[1]. These provisions are intended to safeguard the physical, emotional, and educational development of minors, while also promoting broader societal welfare. Despite the existence of these statutory age limits, child marriages continue to occur in various parts of the country, raising questions about the effectiveness and enforceability of the law.

The Nigerian Constitution does not specify a minimum age for marriage, but T*he Child's Rights Act (2003)*, set the minimum at 18.[2] However, only 23 of the 36 States in Nigeria enforce the Act.[3] The legal regulation of marital age in Nigeria presents a complex interaction between statutory law, customary law, and religious practices. While legislation such as the Child Rights Act seeks to establish a uniform standard for the protection of children, its practical enforcement is often undermined by cultural norms, religious beliefs, and the federal structure of Nigeria's governance, which allows states discretion in adopting certain laws. In 2016, Nigeria Ministry of Women Affairs and Social Development launched a strategy to reduce child marriage by 40% before 2020, and to end it entirely by 2030.[4] The plural legal system practiced has resulted in inconsistencies in the application of age-limit provisions, thereby weakening their intended protective effect.

This article examines the enforceability of statutory age limits for marriage in Nigeria. It analyses the existing legal framework, evaluates the extent to which these laws are enforced in practice, and identifies the major challenges hindering effective implementation. The study adopts a doctrinal research approach, relying on statutes, judicial decisions, and relevant international instruments. It argues that while Nigeria possesses a legal framework capable of addressing underage marriage, enforcement gaps significantly reduce its effectiveness. The article evaluates the effectiveness of the existing legal framework and highlight of challenges affecting the enforcement of statutory age limits for marriage in Nigeria.

[1] researchclue.com
[2] Child Rights Act 2003, s 21.
[3] Globalcitizen.org
[4] Ibid. (n 3).

LEGAL FRAMEWORK ON THE AGE OF MARRIAGE IN NIGERIA

Section 29(4)(b) of the *1999 Constitution of the Federal Republic of Nigeria (as amended)* has generated significant legal controversy in relation to the regulation of the age of marriage. While section 29(4)(a) explicitly defines "full age" as eighteen years, paragraph (b) provides that any woman who is married shall be deemed to be of full age.[5] This provision has been widely criticized for its ambiguity and its potential to undermine statutory age limits for marriage.

The Committee recommended to the Senate that section 29(4)(b) be deleted from the Constitution. In an initial vote majority of senators voted in favour of deleting the section. This vote, however, was challenged by Senator Ahmed Yerima on the grounds that the deletion of the section 29(4)(b) discriminated against Muslim women, who are considered "of age" once they are married. The Committee's recommendation was put to vote for a second time and on this occasion, it did not receive two thirds of the votes required by the Constitution to make a change to the same. This does not mean that senators voted to legalize child marriage in Nigeria. The contentious clause has been part of the Constitution since 1979, and its scope has always been limited to the question of renunciation of citizenship. However, the senators' decision to retain the clause, particularly in view of the arguments that convinced them to do so, has been considered by many as an implicit legitimization of child marriage.[6]

This interpretation has been used to justify early marriages despite the existence of statutory protections under laws such as the *Child Rights Act*.

However, a purposive reading of the *Constitution* suggests that section 29(4)(b)[7] was not intended to lower the minimum age of marriage, but rather to address issues of citizenship and renunciation of nationality. Interpreting the provision as permitting child marriage therefore conflicts with both the spirit of the constitution and Nigeria's domestic and international obligations to protect children.

The *Child Rights Act* constitutes the principal statutory framework governing the protection of children in Nigeria, including the regulation of the age of marriage. The Act defines a child as a person below the age of eighteen years and expressly prohibits the marriage of a child. Section 21 provides that, 'No person under the age of 18 years is capable of contracting a valid marriage',[8] while section 22 criminalizes child marriage and betrothal, prescribing penalties for offenders.[9]

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[5] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 29(4)(a)-(b).
[6] https://www.girlsnotbrides.org/articles/controversy-in-nigeria-over-minimum-age-of-marriage/
[7] (n 5).
[8] (n 2).
[9] Ibid, s 22.

By fixing eighteen years as the minimum age for marriage, the *Child Rights Act* seeks to establish a uniform legal standard aimed at protecting children from early marital obligations and their associated social and developmental consequences. The Act represents a clear legislative intention to align Nigeria's domestic law with international child protection standards and to promote the welfare and best interests of the child.

However, the effectiveness of the *Child Rights Act* in regulating the age of marriage is significantly affected by Nigeria's federal structure. Although the Act applies directly in the Federal Capital Territory, its operation in the states depends on domestication by individual State Houses of Assembly. As a result, uneven adoption and implementation across states have weakened the Act's capacity to function as a nationwide safeguard against child marriage. This fragmented application poses a major challenge to the enforceability of statutory age limits for marriage in Nigeria.

Under the *Marriage Act*, parental consent is required where either of the parties intending to marry is below the age of twenty-one years.[10] This requirement suggests a legislative intention to protect young persons from entering marriage without adequate maturity or family oversight. However, the absence of an explicit minimum age threshold creates uncertainty, particularly when compared with the clear prohibition of child marriage under the *Child Rights Act*.

The limited scope of the Marriage Act further affects its effectiveness in regulating the age of marriage. The Act applies strictly to statutory marriages conducted under its provisions and does not extend to customary or religious marriages. Consequently, its relevance in addressing underage marriage is significantly restricted, as many marriages in Nigeria are conducted outside the statutory framework. This limitation weakens the role of the *Marriage Act* in ensuring the enforceability of statutory age limits for marriage.

In addition, section 3(1)(e) of the *Matrimonial Causes Act* provides that a marriage shall be void where either of the parties is not of marriageable age.[11] While this provision recognizes age as a fundamental element of a valid marriage, the Act fails to define what constitutes "marriageable age". This omission has generated uncertainty, particularly within Nigeria's plural legal system, where customary and religious norms may permit marriage at ages lower than those contemplated by statutory child protection laws.

The absence of a statutory definition allows for inconsistent interpretations and undermines uniform enforcement. Although the Child Rights Act clearly fixes eighteen years as the minimum age for marriage, the lack of harmony between the Matrimonial Causes Act and other marriage-

[10] Marriage Act (Cap M6 Laws of the Federation of Nigeria) 2004, s 18
[11](n 10) s 3(1)(e).

related statutes weakens the legal framework regulating underage marriage. This legislative inconsistency contributes to the broader challenges affecting the enforceability of statutory age limits for marriage in Nigeria.

ANALYSIS

Although Nigeria possesses a range of statutory provisions aimed at regulating the age of marriage, the enforceability of these provisions remains weak in practice. The *Child Rights Act* clearly establishes eighteen years as the minimum age for marriage and criminalizes child marriage, reflecting strong legislative intent to protect children. However, this statutory clarity is diluted when viewed alongside other marriage-related laws that either fail to specify a minimum age or employ vague terminology.

For instance, the Marriage Act does not expressly prescribe a minimum age for marriage, instead relying on parental consent for persons below twenty-one years. Similarly, the *Matrimonial Causes Act* renders a marriage void where a party is "not of marriageable age," without defining what constitutes such age. These omissions create interpretive gaps that undermine the uniform application of statutory age limits and weaken enforcement mechanisms.

The ambiguity surrounding section 29(4)(b) of the *Constitution* further complicates the enforcement of statutory age limits for marriage. While section 29(4)(a) of the Act defines "full age" as eighteen years of age, paragraph (b)[12] has been interpreted by some as recognizing marriage as a basis for attaining full age, regardless of chronological age. This interpretation, though contested, has been relied upon by certain religious and cultural groups to justify underage marriage.

A purposive interpretation of the *Constitution* suggests that section 29(4)(b) was intended to address issues relating to citizenship and renunciation rather than to create an exception to age-based child protection laws. Nevertheless, the continued existence of this ambiguity provides normative cover for practices that conflict with statutory protections, thereby weakening the enforceability of age limits for marriage The continued reliance on section 29(4)(b) to legitimize underage marriage illustrates one of the key constitutional challenges affecting the enforceability of statutory age limits for marriage in Nigeria.

The challenge of enforceability is further reflected in the limited judicial engagement with child marriage as a justiciable issue. Nigerian courts have not produced a substantial body of reported decisions directly addressing the validity of underage marriages under the *Child Rights Act.* This

[12](n 5) s 29(4)(a) -(b).

judicial silence contributes to uncertainty regarding the practical consequences of violating statutory age limits.

However, judicial reasoning in related contexts demonstrates recognition of age-based legal capacity. In *Natasha v State,*[13] the Supreme Court affirmed that age is a critical determinant of legal capacity and consent, underscoring the principle that minors lack the legal competence required for binding legal acts. Although not a marriage case, this reasoning supports the broader proposition that age limits serve a legitimate protective function within Nigerian law.

Nigeria's federal structure and plural legal system further undermine the enforceability of statutory age limits for marriage. While the *Child Rights Act* applies directly within the Federal Capital Territory, its effectiveness nationwide depends on adoption by individual states. The uneven domestication of the Act has resulted in varying levels of protection across the federation. Only 25 of the 36 states in Nigeria have localized the *Child's Rights Acts*.[14] Currently, 11 states all in northern Nigeria have yet to domesticate the *Childs Right's Act*.[15]

In addition, the coexistence of statutory, customary, and religious marriage systems allows underage marriages to occur outside the scope of statutory regulation. This pluralism, combined with weak institutional enforcement, ensures that statutory age limits often remain normative ideals rather than enforceable legal standards. This federal arrangement interacts with Nigeria's plural legal system, in which statutory, customary, and Islamic legal norms coexist. While statutory law prohibits child marriage, many customary systems do not prescribe a fixed minimum age, often recognizing puberty or social maturity as a sufficient indicator for marriage eligibility. In some communities governed by Sharia law, marriage at puberty is seen as valid, resulting in age thresholds far below the statutory norm. These divergent legal norms operate concurrently within the same national legal framework, creating contradictory legal obligations that undermine uniform enforcement of age limits.[16]

The confluence of federalism and legal pluralism means that, even where statutory protections exist on paper, their application depends heavily on local political will, cultural acceptance, and the specific legal regime in force in a given state. As a result, the protection offered by the *Child Right's Act* often remains inspirational rather than enforceable in practice, particularly in areas where customary or religious authorities exercise significant influence over marriages.[17]

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[13] (2017) LPELR-42359(SC)
[14] https://theafricanmirror.africa/education/why-the-childs-rights-act-still-doesnt-apply-throughout-nigeria/
[15] (n 14).
[16] https://ecmcoalitionnigeria.org/wp-content/uploads/2025/02/POLICY_ANALYSIS_REPORT.pdf?
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SUMMARY OF FINDINGS

First, the research finds that statutory inconsistency and ambiguity significantly undermine enforcement. Although the *Child Rights Act* clearly fixes eighteen years as the minimum age for marriage, other relevant statutes, such as the *Marriage Act and the Matrimonial Causes Act,* fail to prescribe or clearly define a minimum age. This lack of harmony within the statutory framework creates interpretive gaps that weaken uniform application.

Secondly, the study observes that constitutional ambiguity, particularly in relation to section 29(4)(b) of the *Constitution*, continues to generate conflicting interpretations. Despite the definition of "full age" as eighteen years, the contested reading of this provision has been used to justify practices that contradict statutory child protection norms, thereby weakening the normative force of age-based regulations.

Thirdly, the findings highlight a limited judicial role in enforcing statutory age limits for marriage. Nigerian courts have produced few reported decisions directly addressing the validity of underage marriages under existing child protection laws. While judicial reasoning in related cases affirms the importance of age and legal capacity, the absence of direct precedent contributes to uncertainty and weak deterrence.

Finally, the research finds that Nigeria's federal structure and plural legal system play a major role in limiting enforceability. The uneven domestication of the Child Rights Act across states, combined with the coexistence of statutory, customary, and religious marriage systems, allows underage marriages to persist outside the reach of statutory regulation. These structural factors ensure that statutory age limits often function more as normative ideals than as enforceable legal standards.

CONCLUSION AND RECOMMENDATIONS

This research has examined the enforceability of statutory age limits for marriage in Nigeria and finds that, despite the existence of a relatively robust legal framework, effective enforcement remains significantly constrained.[18] The Child Rights Act establishes eighteen years as the minimum age for marriage, aligning Nigeria with international and regional child protection standards. However, constitutional ambiguity, statutory inconsistencies, weak judicial engagement, and Nigeria's federal and plural legal system continue to undermine the practical realization of these protections. As a result, child marriage persists in many parts of the country, not due to the absence of law, but due to deficiencies in implementation and coordination.

[18] https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/nigeria/

The study further observes that national and international stakeholders increasingly recognize these shortcomings and have proposed various reform-oriented responses. Initiatives led by UNICEF and UNFPA, including Nigeria's commitment to ending child marriage by 2030, demonstrate growing political and institutional acknowledgment of the need for stronger legal and policy interventions.[19] Similarly, recommendations by international human rights bodies, particularly under CEDAW and the African Children's Charter, consistently emphasize the need for legal harmonization, effective enforcement, and the removal of normative ambiguities that permit underage marriage.

In light of these findings, several recommendations are advanced. First, constitutional reform or authoritative judicial clarification should be pursued to resolve the ambiguity surrounding section 29(4)(b) of the Constitution, ensuring that constitutional interpretation unequivocally supports statutory age limits for marriage. Secondly, there is an urgent need for the full domestication and effective implementation of the Child Rights Act in all states of the federation,[20] supported by federal incentives, monitoring mechanisms, and intergovernmental cooperation. Thirdly, existing marriage-related statutes, including the Marriage Act and the Matrimonial Causes Act, should be reviewed and amended to expressly reflect a uniform minimum marriageable age consistent with child protection standards.

In addition, institutional reforms aimed at strengthening enforcement mechanism such as improved birth registration systems, specialized family courts, and community-level sensitization should be prioritized,[21] as recommended by child protection agencies and civil society organizations. Finally, Nigerian courts should adopt a more proactive interpretive approach, drawing on international obligations and established principles of legal capacity to reinforce the protection of minors.

If effectively implemented, these reforms would significantly enhance the enforceability of statutory age limits for marriage in Nigeria and contribute meaningfully to the protection of children's rights and welfare.

[19] https://www.unicef.org/nigeria/press-releases/nigeria-takes-bold-steps-end-child-marriage-and-protect-rights-children

[20] https://www.unicef.org/nigeria/press-releases/unicef-and-nigerian-bar-association-join-forces-reform-justice-system-children

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RETHINKING THE BURDEN OF PROOF IN MEDICAL NEGLIGENCE IN ZAMBIA: A CONSTITUTIONAL AND HUMAN RIGHTS ANALYSIS

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ABSTRACT

The framework of medical negligence claims in Zambia remains heavily influenced by inherited common law doctrines, placing a demanding burden on plaintiffs to prove duty of care, breach, causation, and damage on a balance of probabilities. Although this structure seeks to shield healthcare professionals operating within resource-constrained environments, it often produces unjust outcomes for patients, particularly within the overstretched public health sector marked by understaffing, inadequate equipment, and poor recordkeeping.This article re-examines that burden through a critical analysis of *Kopa v University Teaching Hospital Board of Management*, arguing that strict evidentiary requirements disadvantage vulnerable patients facing systemic institutional failures. It situates this critique within Zambia's constitutional framework, especially Articles 8 (human dignity), 12 (right to life), and 15 (protection from inhuman treatment), as well as the African Charter on Human and Peoples' Rights, notably Articles 4 (integrity of the person), 5 (dignity), and 16 (right to health). Drawing comparative insight from South African jurisprudence, particularly the application of *res ipsa loquitur* in *Goliath v MEC for Health, Eastern Cape* and *Ntsele v MEC for Health, Gauteng*, the article demonstrates how doctrinal flexibility can address evidentiary asymmetries without undermining professional safeguards. Ultimately, it proposes recalibrating the burden of proof to harmonize medical professional protection with patient rights, fostering a fairer and more humane healthcare accountability framework in Zambia while avoiding defensive medicine or systemic strain.

Keywords: *Medical negligence, burden of proof, human rights, right to health, Res Ipsa Loquitur, African Charter.*

Introduction

There has been quiet desperation by many families in different parts of the country watching their loved ones slip away in the crowded wards of hospitals who wonder if a missed diagnosis or delayed intervention of health practitioners could have changed everything. This is not only in urban settings as even rural mothers in far flung areas travel miles for prenatal care, only to be confronted with complications from what feels like avoidable errors. Despite these occurrences, these families find the doors of justice firmly shut by the need to prove complicated medical faults with resources they do not have. These scenarios are not abstract, they are actually drawn from the fabric of real cases such as the tragic story in **Kopa v University Teaching Hospital Board of Management**,[1] where the death of an eight-year-old boy after repeated failed procedures to remove a swallowed bottle cap left his family not just bereaved but defeated in court due to overwhelming evidentiary hurdles. In Zambia, over 80% of the population depends on public healthcare and there are chronic shortages that persist in this sector as less than 2,000 doctors serve nearly 21 million people.[2] These stories point to a deeper issue, they point to a legal system that burdens patients, many of whom are among the most vulnerable, with the full weight of proving negligence in a field that is masked with extensive expertise that an average person may not contend with.

This article delves into the heart of this issue by asking the question, whether the traditional burden of proof in a medical negligence claim actually delivers justice in present-day Zambia? It addresses this question through an empathetic analysis of healthcare providers that are overworked and the patients that are underserved. The article explores the common law foundations of medical negligence while unpacking practical problems in the way these matters are resolved in Zambia currently. It reframes the debate by using the lens of constitutional protections and the regional human rights obligations that are applicable to Zambia as well. The jurisprudence of Zambia that relates to medical negligence is limited in nature as it numbers only a handful of reported cases since independence, but that in itself speaks volumes about access to justice barriers by those affected by medical negligence actions.[3] This article draws on African scholarship and comparative experiences, particularly those from South Africa, where legacies of the same colonial

[1] (SCZ No. 8 of 2007).
[2] Christopher Mbewe. The Prevalence and Reporting of Medical Errors among Medical Personnel at Kitwe Teaching Hospital. Journal of Clinical Research. Vol. 5, Issue 5: 30853, 2021.
[3] Benny Kangwa. Medical Negligence in Zambia: A Critical Analysis of the Case of Kopa v University Teaching Hospital Board of Management. Semantic Scholar, 2015.

legal heritage have evolved toward the use of inferential tools like the *res ipsa loquitur* principle, with the aim of proposing humane reforms that bridge these legal gaps without blame.[4]

This matters because health is not just a service, it is the bedrock of human dignity and is inseparably linked to survival and flourishing. In a nation still struggling to contain the alarming rates of maternal mortality that is estimated at about 213 deaths per 100,000 live births and preventable child deaths, unchecked medical lapses will result in the erosion of trust in the health care system.[5] Nnamuchi and Ortuanya, are of the view that the health crises in Africa have always originated from systemic failures that amount to the violation of human rights.[6] Therefore, this paper is an appeal and not a confrontation as it calls for compassionate evolution so as to ensure that the law reflects the realities of Zambian life.

The Legal Framework for Medical Negligence in Zambia

The law on medical negligence in Zambia when looked at can be said to be a fabric of the English common law principles that were adapted to local contexts but have not been changed since colonial times. At the core of this principle, a plaintiff must prove four elements on the balance of probabilities: a duty of care arising from the health personnel-patient relationship; there was breach of that duty by falling below the standard expected of a reasonable professional; that there was causation where the breach directly and foreseeably caused harm to the victim; actual damage was suffered.[7] On the other hand, the standard of care is determined by the Bolam test,[8] which was derived from Bolam v Friern Hospital Management Committee.[9] The principles enunciated in this case are also applied in the Zambian context.

The seminal case of Kopa v University Teaching Hospital Board of Management,[10] illustrates this point. In this matter, a bottle cap was swallowed by an eight-year-old boy and he had to undergo multiple esophagoscopies at the University Teaching Hospital. This caused complications such as the perforation of the esophagus and eventual sepsis which ultimately led to the death of the young boy. The Supreme Court in this case held that there was no breach because the testimony of the expert witness stated that all procedures performed were within the standard of practice. The

[4] Pieter Carstens and Debbie Pearmain. Foundational Principles of South African Medical Law. 1st Edition. LexisNexis, South Africa, 2011.
[5] Gabriel Yali and Selestine H. Nzala. Health Care Providers' Perspective on Barriers to Patient Safety Incident Reporting in Lusaka District. Journal of Preventive and Rehabilitative Medicine, Volume 4, No. 1: 44-45, 2022.
[6] Obiajulu Nnamuchi and Simon U. Ortuanya. The human right to health in Africa and its challenges: A Critical Analysis of Millenium Development Goal 8, African Human Rights Law Journal, 12(1), 2012.
[7] Daniele Bryden and Ian Storey. Duty of Care and Medical Negligence. Continuing Education in Anaesthesia Critical Care & Pain. Vol. 11, Iss. 4, August, 2011.
[8] This principle entails that a practitioner whose actions are in conformity with the accepted practices of a responsible body of medical opinion will be acquitted of a medical negligence claim that is brought against them.
[9] [1957] 1 WLR 582
[10] (SCZ No. 8 of 2007).

inability of the family to present expert evidence in rebuttal led to the dismissal of the entire case. This has highlighted how often the burden places an onus on plaintiffs to break the professional consensus[11] of the medical practitioners. In most circumstances, this is a daunting task for the plaintiffs, who mostly are poor or lack the necessarily resources to achieve this task.

This precedent is echoed in many earlier decided cases in Zambia since independence. In the case of **Cicuto v Davidson and Oliver**,[12] a surgical misfortune during a hernia operation led to allegations of negligence, but the court dismissed the matter for lack of proof under the Bolam principle. In this matter, the court emphasized the need for expert rebuttal before such a claim could be proved by the claimant. The same was the case in **Edna Nyasulu v Attorney General**,[13] where there was an infection that occurred after an operation due to negligent care. However, on causation evidence, the plaintiff failed to prove that the damage was caused as a result of the acts by the medical practitioners. In **Rosemary Bwalya v ZCCM, Malcom Watson Hospital and Dr Malik**,[14] the Bolam principle was reaffirmed in the case where there is a misdiagnosis by medical practitioners. In this matter, the evidentiary threshold was placed very high to an extent that those who were affected by the negligent acts failed to prove that there was indeed medical negligence on the part of the medical practitioners.

Despite the many challenges faced by the health sector that have been pointed above and the changes that have occurred in society today, more recent jurisprudence has maintained the status core on matters to do with medical negligence. In some circumstances the court does consider the existence of delays in treatment that are a constant occurrence in many public hospitals. However, they demand clear proof of foreseeability by the medical practitioners before they can be held negligent in any circumstance. There is a plethora of matters that have recently gone before the courts, such as the matter where Idah Lungu sued the Levy Mwanawasa University Teaching Hospital,[15] on allegations of maternal care negligence after a surgical bandage was left in her abdomen following a Caesarean section. She argued that the hospital failed to ensure that all surgical materials were removed, alleging a breach of section 60 of the Health Professions Act of 2009, which requires medical professionals to maintain a high standard of care. She contended that the negligence by the medical practitioners nearly cost her life. In the case of **James Phillip**

[11] Professional Consensus is a widely held agreement among qualified specialists in a specific field based on the collective interpretation of available evidence. It represents a collective judgment that is used to establish the best practices in a field. In this situation every member of the medical team confirms their stance and the team makes a decision that everyone agrees on.
[12] (1968) ZR 149 (HC)
[13] (1983) ZR 105
[14] (2005) ZMSC 1
[15] News Diggers—Woman Sues Levy Mwanawasa Hospital for Leaving Surgical gauze in her Abdomen. https://diggers.news/courts/2024/04/17/woman-sues-levy-mwanawasa-hospital-leaving-surgical-gauze-in-her-abdomen/

Mdala (Suing as Administrator of the Estate of Agnes Lucia Kaluzi Mdala) v Viva Med Limited and Others,[16] the plaintiff sued the first defendant and its associated medical practitioners for the negligence that had resulted in the death of his wife. The court held that there was no negligence on the part of the defendants as they professionally discharged their duties in accordance with the required standard of their practice.

Complementary to civil law is the Health Professions Act,[17] which provides for the regulation of practitioners through the establishment of the Health Professions Council of Zambia. The Health Professions Act in section 66 defines professional misconduct as 'improper or disgraceful conduct,' and provides that sanctions include a fine, suspension or deregistration. Despite this provision speaking to the aspect of misconduct, the law does not include what would amount to medical negligence of health practitioners.

Despite the law not pronouncing itself explicitly on what constitutes medical negligence, cases such as **Wang v Health Professionals Council of Zambia**,[18] where negligent treatment was considered misconduct have highlighted how the law partly covers disciplinary actions against medical practitioners. Despite this, civil claims that are made against medical practitioners still require independent proof to be brought to court by the claimant themselves. This Act in section 8 demands that every medical practitioner should be registered, it prohibits any health practitioner from practicing without registration. It also requires under section 65 that practitioners uphold ethical standards at all times as they conduct their work. Despite this provision, the law does not shift the burden on the practitioner in matters that are brought before the court.

Challenges with the Traditional Burden of Proof

In sum, the inflexible burden of proof in Zambian medical negligence claims does turn what ought to be a way to accountability into complexities that patients have to go through. At the heart of this issue is the question of the control of evidence which is crucial to establish breach and causation as in most cases this evidence is lost, misplaced or the medical records are solely owned by the defendants. It is observed that most public hospitals retain manual documentation and the overstretched staff consider saving lives as the thing that is more important than actually compiling the paperwork of patients.[19] This in itself has led to the continued existence of gaps in holding medical practitioners accountable for the mishaps in their work. According to Kangwa, in analyzing the Kopa case, he postulates that plaintiffs actually have the onus to request medical

[16] [2024] ZMHC 265
[17] No. 17 of 2024
[18] (2012/HK/339)
[19] See Yali and Nzala, *supra* note 5.

records through discovery of documents.[20] This is not usually a success as there are delays or denials to access such information which then adds to the trauma that they are already going through.

Another obstacle is the necessary expert testimony required under the Bolam principle. With only 1 doctor per 10,000 people in Zambia, compared with the recommendation by the World Health Organisation (WHO) of 1 per 1,000 people.[21] It can be seen that experts of a suitable calibre are scarce and expensive to pay. Additionally, the patients in rural areas face challenges such as inadequate logistics, a phenomenon that is seen to worsen inequality.

It is very difficult to establish causation in complicated situations because the "but for" test requires demonstrating that the breach was the direct cause of the damage or injury that has been suffered. However, the interrelatedness of some factors in under-resourced environments, such as equipment failure or the lack of basic supplies, makes linkages difficult to establish.[22] In maternal cases, where Zambia's negligence rates are already high, proving negligence in the midst of systemic issues is a very difficult task. The litigation rates are low as there are less than 20 reported cases post-independence because of costs to pursue such matters and also awareness gaps in those who are affected.

Empirical evidence shows that many of those that are affected either settle matters outside court or they do not pursue them at all.[23] Vulnerable groups such as women, children and the poor bear the greatest impact. It has been observed that in many cases, economic challenges act as a barrier to the pursuit of such matters further. As seen in most African settings, fears of blame by many health providers leads to a situation where there is little to no reporting of such matters, which then perpetuates even more harm to those seeking health services.[24] These challenges make justice an illusion and hence, they are contradictory to Zambia's commitment to equity as spelled out in the Constitution.

Constitutional Foundations of the Right to Health in Zambia

Although the Constitution of Zambia does not explicitly provide for a right to health and is therefore not enumerated as a justiciable right in the current bill of rights. The constitution in article

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[20] See Kangwa, *supra* note 3.
[21] World Health Organization. Health Workforce in Zambia: 2023 Annual Report. https://www.who.int/countries/zmb
[22] Babafemi Odunsi. Medical Negligence and Its Litigation in Nigeria. Beijing Law Review, 2023, 14, 1090-1122.
[23] See Kangwa, *supra* note 3.
[24] Health Department of South Africa. National Policy for Patient Safety Incident Reporting and Learning in the Public Health Sector of South Africa. Technical Report. 2016: Yali and Nzala, *supra* note 5.

12 provides for the right to life as it prohibits arbitrary deprivations of the life of another person.[25] This right maybe looked at as a strong anchor for rethinking negligence burdens in Zambia so as to protect the lives of those seeking medical services. Fatal negligence, as seen in the case of Kopa v University Teaching Hospital Board of Management, clearly invokes this and in a way gives the state a duty to prevent avoidable deaths in public health facilities. The heavy burdens of proof applied by courts could be regarded as an indirect violation of the right to life because more often than not, they deny remedies to the affected parties.

The Constitution in article 8 upholds human dignity as a fundamental national value and principle and in article 15 forbids inhuman or degrading treatment.[26] Substandard health care in wards that are overcrowded and long waits before being attended to may qualify as degrading treatment especially for those patients that are vulnerable. It is trite that the principles of justice provide that there should be fair hearings and that every person must be able to have access to justice. However, it is difficult to uphold such principles as evidentiary irregularities make it hard to achieve fairness. This is because a plaintiff cannot meaningfully contest claims without being at an equal footing with the defendant.

Comparative regional constitutions support the right to health as a justiciable right as it has been explicitly embedded in the law. The Constitution of South Africa, in section 27, provides that everyone has the right to have access to health care.[27] This provision makes health rights binding and justiciable in this country. In Southern Africa, South Africa has one of the strongest provisions on the right to health, which in a way also informs cases of medical negligence. In Malawi, article 13 of the Constitution stipulates health promotion.[28] It provides that the state shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing legislation to provide adequate health care that is commensurate with the health needs of Malawian Society and international standards of health care.[29] Therefore, Zambia should interpret its provisions progressively to take advantage of such directives to inform justiciable rights with health rights. It may be contended that these provisions impose positive duties on the state to ensure accountable health care and therefore, unchecked systemic negligence can be seen to amount to violations of the constitution.

A Human Rights Perspective: Regional Obligations

[25] Moses Mulumba, et al. Constitutional Provisions for the for the Right to Health in East and Southern Africa. Centre for Health, Human Rights and Development. EQUINET Discussion Paper 81. April, 2010.
[26] The Constitution of Zambia
[27] The Constitution of South Africa.
[28] The Constitution of Malawi.
[29] Moses Mulumba, et al. Constitutional Provisions for the for the Right to Health in East and Southern Africa. Centre for Health. Policy Brief 27. EQUINET. Harare. November, 2011.

The ratification of the African Charter on Human and Peoples' Rights[30] by Zambia imposes binding duties. Article 16 of the charter mandates the "best attainable state of physical and mental health." It provides that state parties should take necessary measures to protect the health of their people and ensure that they receive medical attention when they are sick. The African Commission interprets article 16 expansively to ensure that states are held accountable for the harm that is caused to citizens. Consequently, negligence in those hospitals that are run by the state violates this provision especially where the harm that is caused to citizens is actually one that is preventable.[31]

Article 4[32] of the charter protects life and integrity as it provides that human beings are inviolable. It further provides that every human being is entitled to respect for his life and integrity. Therefore, no one may be arbitrary deprived of their life.[33] Article 7 has provisions for fair hearings. It provides that every person shall have the right to have his cause heard. It is therefore seen that heavy burdens of proof deny effective remedies for affected individuals as most times these individuals, who in most cases are the vulnerable find it difficult to prove medical negligence on the part of the medical practitioners as a result of a number of challenges. This conflicts with the provisions of the African Charter that have been stated above. As observed, these matters serve as reason to compel Zambia to re-adjust the burden of proof in matters of medical negligence so as to ensure that there is full compliance to the human rights provided in the African Charter.

Comparative Insights from Southern Africa

In the Southern African region, South Africa has similar common law roots and faces similar health strains as those faced by Zambia. Therefore, lessons may be drawn from their reforms on medical negligence. While the courts in South Africa had initially declined the application of the *res ipsa loquitur*[34] principle in medical cases in the earlier case of **Van Wyk v Lewis**,[35] in this case, the courts stated that a doctor is not liable if they follow standard accepted practices even if an injury occurs. It established the reasonable doctor test for negligence which focuses on reasonable care rather than absolute perfection. In more recent cases, the courts now apply the res ipsa loquitur principle with a lot of caution as opposed to the way it was applied in the past. The court now

[30] The African Charter, 1981.
[31] See Nnamuchi and Ortuanya, *supra* note 6.
[32] The African Charter, 1981.
[33] The African Charter, 1981.
[34] In English it is translated as the "thing speaks for itself." This principle entails that the mere occurrence of some type of accident or injury is sufficient to imply that there is the existence of negligence.
[35] (1924) AD 438

infers negligence from those facts that are unexplained, which then shifts the burden to the defendant to show that they did not cause the injury or damage that has been suffered.[36]

In the case of **Cecilia Goliath v Member of the Executive Council for Health, Eastern Cape**,[37] the South African Supreme Court addressed the unrealistic barrier created when courts refuse to apply the doctrine of *res ipsa loquitur*. In this matter, a surgical swab was left in the patient's abdomen after a routine hysterectomy. The lower court originally dismissed the claim, as they were bound by the old precedent of *Van Wyk v Lewis*, which avoided the doctrine in medical contexts. However, the court of appeal reversed this, noting that when the procedure is under the exclusive control of medical staff and the facts are within their direct knowledge, the court should draw an inference of negligence if the defendant fails to provide a reasonable explanation.

In the case of **Lungile Ntsele v MEC for Health, Gauteng Provincial Government**,[38] the court examined the burden of proof when a child sustained permanent brain damage due to perinatal asphyxia. In contrast to the rigid Zambian standard, the court held that because of the exceptional nature of medical cases, where the patient is often unconscious or lacks technical knowledge, the plaintiff only needs to establish a prima facie case. This then casts an evidential rebuttal burden on the defendant to destroy the probability of negligence. Furthermore, Ntsele established that when clinical notes are missing or lost, it inescapably justifies an adverse inference of negligence against the hospital.

Furthermore, in the case of **Charles Oppelt v Head: Health, Department of Health Provincial Administration: Western Cape**,[39] the South African Constitutional Court highlighted the unrealistic nature of delays in medical interventions. The court found the state liable for permanent paralysis because it failed to provide treatment within the critical four-hour window required for spinal cord injuries. This case emphasizes that the standard of care is not just about what a body of medical men think is acceptable practice, but whether a person's constitutional right to access healthcare services and timely intervention was respected.

It can be drawn from these two countries that the South African courts have developed their medical jurisprudence to ensure that it equally protects the constitutional rights of patients. However, the Zambian position tilts more towards protecting the medical practitioners and does not really carter for the patients. The law in Zambia has many exceptions that protect the medical practitioner in various instances which in a way ultimately neglects patients.

[36] See Carstens and Pearmain, *supra* note 4.
[37] [2014] ZASCA 182
[38] [2012] ZAGPJHC 208
[39] [2015] ZACC 33

Proposals for Reform

The reforms need to take a quantitative approach that aims to maintain professional confidence in the health sector. This can be done by firstly, liberalizing the *res ipsa loquitur* principle for clear cases of retained instruments which will then shift explanations to the defendant instead.

Secondly, introducing statutory presumptions in the case of missing records or the absence of consent under the Health Professions Act.

Thirdly, this shall entail compelling the timely disclosure of records to enable patients have full access to their medical records.

Fourthly, disciplinary findings of the Health Professions Council of Zambia (HPCZ) must be allowed to be considered as prima facie evidence of medical negligence under the Health Professions Act.

Fifthly, the public must be enlightenment on their rights by having campaigns on rights or awareness talks so as to align with the duties that are provided under the African Charter.

These recommendations are rooted in African insights and therefore, promote a balance between protecting the patient and ensuring that medical practitioners are protected when they adhere to standard medical practice. This balance ensures that both parties are considered as important in the handling of matters to do with medical negligence. Ultimately, such a balance will ensure that Zambian law is no longer a colonial relic, but a reflection of what is obtaining on the ground in our society today.

Conclusion

In Zambia, while protective, the burden of proof in medical negligence often times silences patients which contradicts their dignity as constitutionalized and as founded in African rights. Embracing inferences and disclosures from regional models would allow the nurturing of accountable medical care. Consequently, this evolution which will be driven by human sentiment will ensure that the law uplifts all citizens especially the most vulnerable. Thus, Zambia should rethink its burden of proof to ensure justice for all victims. By adopting a more sustainable and robust legal framework similar to that of South Africa, the Zambian courts could move away from a standard that allows medical judgment to bypass judicial scrutiny. Ultimately, this will develop the Zambian jurisprudence on medical negligence which for a long time has remained rooted in common law history.

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THE RIGHTS OF REFUGEES: THE INFLUENCE OF REGIONAL AND INTERNATIONAL TREATIES IN AFRICAN COUNTRIES

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ABSTRACT

This article critically examines the relationship between democracy, state sovereignty, and the protection of refugees' rights in Southern Africa, with particular focus on Zambia, Angola, and the Democratic Republic of Congo (DRC). Drawing on Hannah Arendt's theory that rights are secured through membership in a political community, it interrogates whether refugees excluded from the demos can meaningfully enjoy human rights protection. The study analyses restrictions on freedom of movement and political participation, especially the right to vote, under domestic refugee laws and international instruments including the 1951 Refugee Convention, its 1967 Protocol, and the OAU Convention. While Zambia and Angola maintain reservations limiting refugees' freedom of movement, the DRC presents a contrasting yet complex case of formal legal guarantees amid weak democratic structures. The article argues that state sovereignty often operates as a barrier to the full realization of refugees' rights, reinforcing political exclusion despite states' international obligations. However, the existence of regional and international refugee frameworks challenges Arendt's assertion by demonstrating that rights need not depend exclusively on political membership. The paper concludes that only a democracy genuinely grounded in human rights principles can ensure effective protection of refugees, and it recommends stronger domestication and implementation of international refugee law within host states.

Keywords: *Refugees; Democracy; State Sovereignty; Freedom of Movement*

INTRODUCTION

One theorist, Hannah Arendt, highlights that human rights only become meaningful when they are recognized in a political society and that legal rights depend on the membership of individuals to a political community. Therefore, suggesting that only those with political sovereignty are capable of solidifying their human rights. She concludes that those excluded from political communities do not have citizen rights to protect them and therefore in reality are left with limited rights.[40] So, according to Arendt's theory, individuals' membership into the country's political community allows them to solidify their rights as citizens in the country because it gives them the power to address issues pertaining to the protection and provision for their rights in the country by choosing leaders they believe will uphold their rights and freedoms through the social contract. Whereas, refugees do not get such a luxury as they have no one to address their concerns to without the existence of a social contract with the state. Therefore, they are left with only their most basic rights and needs provided to them as dictated by the masses. Consequently, despite the world going through a massive growth in human rights regimes with women, children and people of colour's rights now being recognized, some individuals rights – refugees - remain an anomaly of this flawed paradigm of democracy in which citizens right are the only rights that seem to exist. Refugees' rights and freedoms are therefore, according to Arendt, barely recognized before those of the citizens even though refugees make up a large proportion of the people of concern with whom human rights were intended to protect.

In Zambia, for example, encamped refugees inside refugee settlements have restricted rights to the freedom of movement. Most refugees are required to get permission and acquire a movement pass from settlement authorities in order to leave the settlement camp. Any refugees found outside the settlements without their movement pass or without permission from the authorities are subjected to the risk of getting arrested and detained by the state police.[41] In Angola, although the freedom of movement for refugees is guaranteed, it also comes with limitations set for reasons of public safety.[42] The 2015 Law 10/2015 states that refugees need to get permission from the settlement authorities to be able to leave their camps.[43] Although, the IRRI has reported that despite the existence of this provision in the law, there are no mechanisms in place for this to happen. Besides the fact that some refugees from the Lóvua Settlement have permission to travel to the towns of Dundo, Chitato and Ngazi, they are still required to get governmental permission to leave the province.[44] The UNHCR, U.S Department of State, the IRRI, Other NGOs and refugees have also

[40] Hannah Arendt, *The Origin of totalitarianism*, New Ed. Harvest Book (Harcourt Brace Jovanovich, 1979) 299.
[41] The Refugees Act No. 1 (n44) Section 63(a).
[42] Law on the Right of Asylum and the Refugee Status (n46) art 41.
[43] Law on the Right of Asylum and the Refugee Status (n46) art 31.
[44] Movement Restricted: Congolese Refugees in Angola (n103) 5.

testified on the restriction of the freedom of movement for refugees in Angola especially those in the Lóvua Settlement and Dundo Town.[45] Reports have described the atrocious treatment of refugees by the State Police including arbitrary arrests and detentions during periodic roundups. Refugees have also recounted events in which they have been restricted from the freedom of movement outside the settlements.[46]

Whether refugees should have the unrestricted right to move freely within the host country is a topic that has stirred up much of a debate. The 1951 Convention and its 1967 Protocol explicitly provide for the right of refugees to move freely within the host state's territory and to choose their place of residence under Article 26. Angola and Zambia, unlike the DRC, have expressed their reservation to this right. Specifically the right for refugees to choose their place of residency in their territory. The OAU Convention, on the other hand, does not even touch on the topic of refugees' freedom of movement in host countries. The IRRI has criticized and advocates for refugees' rights to the freedom of movement and against encampment. It asserts that encampment is an obstacle to refugees' freedom of movement and that camps and settlements;

"*reinforce the marginlisation of refugees and asylum seekers by restricting them to isolated environments. This in effect challenges their local integration and creates both personal as well as socio economic barriers in their ability to determine a well-rounded and healthy quality of life.*"[47]

It is therefore clearly evident that the restrictions on refugees' rights to freedom of movement, in comparison to Zambia and Angola's citizens, are being violated. Whereas Zambian and Angolan citizens have the comfort, through an institutional arrangement in which their common goods - the freedom of movement - are realized through the election of individuals who would carry out their will, refugees would otherwise not have the same luxury from the state without international interference. [48]

It should be noted, however, that DRC's regulations on the freedom of movement, on the other hand, is surprisingly more appreciative of the right, regardless of the fact that it has the poorest democratic regime amongst the three countries. Despite the issue that most refugees' rights to the freedom of movement are compromised due matters of security in the country, the UNHCR reports that the right to freedom of movement is guaranteed for refugees in the country. The Government

[45] U.S. Department of State, 2019 Country Reports on Human Rights Practices: Angola (2019) 13 <Angola - United States Department of State> accessed 27 June 2021.
[46] Movement Restricted: Congolese Refugees in Angola (n103) 6.
[47] 'Freedom of Movement for Refugees' (International Refugee Rights Initiative)< Freedom of Movement for Refugees – International Refugee Rights Initiative : International Refugee Rights Initiative (refugee-rights.org)> accessed 16 June 2021.
[48] Schumpeter (n24).

does not prevent refugees who would like to and choose to resettle in the host communities from moving out of the settlements, provided these are sufficiently far from the border and do not pose a security threat for refugees themselves or the host country."[49]

Most countries have signed and ratified the Declaration on Human Rights, therefore, the protection of human rights is mandatory for all regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[50] Therefore, the protection of individuals' rights, by the state, are not limited only to citizens who are part of the state's social contract, but its duty to protect individuals rights exists regardless of whether they are citizens or refugees. Furthermore, the development of the refugee conventions has reinforced the protection of refugees' fundamental rights addressing their needs and protection directly. Agreeably, some rights like the right to freedom of movement are not awarded to refugees in Zambia and Angola, but as earlier mentioned, such restrictions have been set for reasons of public safety.[51] More importantly, most of their fundamental human rights such as the right to life, the right to freedom from torture and inhumane treatment are protected by the state. Besides this, nationals are extremely welcoming to refugees especially in Africa. This is due to the fact that in most cases refugees come along with international support, that correspondingly also provides services and goods in host communities, such as education, employment, self-reliance opportunities and health care. Therefore, the existence of refugees in the country also reinforces the protection and provision for citizens' rights within host communities. Following this logic, the existence of international human rights and refugee instruments refutes the concept that individuals are required to be members of a political community or part of a political society in order to have their rights protected, hence challenging Arendt's theory.[52]

It should be a point to make that firstly, with the consent of the demos, the adoption of the refugee conventions is only possible in a democratic society. That is, through an institutional arrangement (the Government) in which political decisions (the decisions to give effect and or to implement the conventions into their state laws) are made and individuals make autonomous decisions through the elections that would carry out the will of the masses, resulting in individual and group liberties and promoted development.[53]

Secondly, despite the existence of the Declaration on Human Rights, the 1951 Convention and the OAU Convention on refugees, the problem of state sovereignty materialises.

[49] Democratic Republic of Congo Country Refugee Response Plan (n112) 6.
[50] Universal Declaration on Human Rights (n13) art 2.
[51] Law on the Right of Asylum and the Refugee Status (n46) art 41.
[52] Hannah Arendt, (n126) 299.
[53] Schumpeter (n24).

4. The Right to Vote and State Sovereignty

Mcloughlin has made a note on how democratic states rest their sovereign powers on the need to protect their citizens by producing extreme forms of political exclusions that abstract frameworks of human rights are unable to address. [54]

For example, the right to vote for refugees has been a controversial conversation for many years. This is because of individual's negative perception and attitude towards refugees' involvement in their political and security interests. It would be unconscionable to have foreigners or aliens – refugees - involved in the decision making process, regarding the entire nation's political and security matters. Although international law does not grant refugees the right to vote, it is at the state's discretion to allow refugees to participate in their elections and vote.

The ICCPR grants citizens in a country the right to vote and stand for public office but this right has not been extended to aliens and thus refugees in the country are not entitled to this right.[55] The 1951 Convention and the OAU Convention on refugees do not make any provisions for the political rights of refugees. Although, the conventions do state that refugees are required to respect the laws of the host country for reasons of maintaining public order.[56] Meaning that host countries have the right to limit and restrict the activities of refugees in their territory and most particularly the rights to vote with the exception of those that have acquired citizenship in a country.

This demonstrates how states use democracy and the protection of their citizens' rights as an excuse for state sovereignty to promote 'extreme forms of political exclusions." [57] Therefore, although most countries are signed to the Declaration on Human Rights the 1951 Convention and the OAU Convention on refugees, refugees do not, in reality, have the full protection of their rights through international human rights legal instruments.[58] Referencing Georgio Agamben, Mcloughlin highlights the shortcomings of human rights organisations in resolving the issue of statelessness by failing to confront 'political drivers' in their production of statelessness in order to preserve state sovereignty.[59]

Lastly, refugees' right to vote would be misplaced if granted in the host country. This is because the right to vote, especially in their country of origin, would best promote the full realization and

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[54] McLoughlin Daniel, 'Post-Marxism and the Politics of Human Rights: Lefort, Badiou, Agamben, Rancière' (2016) 27 Law and Critique 312.
[55] International Convention on Civil and Political Rights (n2) art 25.
[56] Convention Relating to the Status of Refugees (n34) art 2.
[57] McLoughlin Daniel (n140) 312.
[58] UNHCR, State Parties, Including reservations and declarations to the 1951 Refugee Convention, (1954) 189 United Nations Treaty Series 13. < UNHCR - States parties, including reservations and declarations, to the 1951 Refugee Convention> accessed 3 August 2021.
[59] McLoughlin Daniel (n140) 313.

respect for their other fundamental rights. This would allow refugees - the individuals that have been directly affect by human rights violations in their country of origin - the opportunity to participate in their country elections to choose the best state representatives that they believe would best promote and protect their rights. This would help tackle the problem of mass refugee productions in their countries of origin and restore the state's social contract allowing them to enjoy peace, security and protection of their rights.[60] This can be done by allowing refugees to be able to also vote outside their country of origin. The recent development of Out of Country Voting (OCV) for individuals outside their country of residence, would give them the right to vote whilst residing in other countries as refugees. The option of OCV has been practiced in countries such as Afghanistan in 2004, South Sudan in 2010 and Iraq in 2005 and 2010.[61] This development originated from the 1996 Guidance provided on the meaning of 'unreasonable restrictions' relating to Article 25 of the ICCPR.[62] The UN Human Rights Commission stated that no discrimination could be made amongst citizens on the right to vote. They did not, however, state the need for residency in their explanation. Meaning citizens residing abroad could still be permitted to exercise their right to vote. Such options should be available for refugees as well. In 1996 an attempt was made by the UNHCR to include the holding of national elections in settlement camps for refugees to be able to vote.[63] This unfortunately never materialized because emphasis was made on the matter of UNHCR's limited involvement in political and electoral matters, asserting that the UNHCR should not be actively involved in any way other than for the monitoring of international protection principles that are being violated.[64] Regardless, recent developments have shown improvements in such areas. In the 2015 Iraq elections, OCV was held for refugees by the Independent High Electoral Commission Office (IHEC), with the assistance of the UNHCR. Iraqi refugees were therefore able to participate in the peace building elections.

While refugees in Angola, DRC and Zambia still do not have permission to vote in their territory, or participation in their country of origin's elections, there has been a growing acceptance of refugees' situations around the world and the importance of their need to participate in their

[60] Thomas Hobbes (n122).
[61] 'Voting from Abroad: The International IDEA Handbook' (IDEA 2007) 25 < voting-from-abroad-the-international-idea-handbook.pdf> accessed 3 July 2021.
[62] UNHRC CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, 12 July 1996, CCPR/C/21/Rev.1/Add.7 https://www.refworld.org/docid/453883fc22.html accessed 3 July 2021.
[63] UNHCR Voluntary Repatriation: International Protection (1996) 66 < https://www.unhcr.org/3bfe68d32.pdf> accessed 3 July 2021.
[64] Ibid.

country of origin's elections which would hopefully allow them to return back to their countries of origin eventually.[65]

Conclusion

From the Preceding chapters it has been noted that the practice of democracy in most African countries, is different from the democracy that exists in the other parts of the world. The democracy in Africa is extremely flawed and in some cases it lacks the basic necessities desired for a rights based democratic system as shown by DRC.

However, the participation by international NGO's and other states, through support programmes and the provisions for refugees' rights and freedoms in these countries has played a huge role in the realization and promotion of refugees' basic rights such as the right to education health, employment within and outside the refugee settlement camps in Angola, Zambia and in the DRC.

Despite the huge role played by international NGO's, however, it is the recognition of the fundamental rights found in the Declaration, the 1951 Convention and the OAU Convention that provide the foundation for refugees' fundamental human rights, such as the right to freedom of movement. Theoretically the proper implementation of such instruments would require a democratic regime that meets the basic necessities for democracy. The DRC, on the other hand, has shown that this is not the case. DRC has displayed the technical indicators of a political democracy by holding regular elections but when analysed closely, their democratic regime was extremely flawed and actually violated the political rights of its nationals. It did not check off any of Diamond, Schumpter and Ake's descriptions of democracy as stated in Chapter 2. DRC has slow and stagnant economic, social and political development and its political method is corrupted. It has failed to provide and protect individual liberties.

The situation in the Democratic Republic of Congo is therefore still particularly bad and the country still has a long way to recovery. It still requires substantial improvements in many areas especially regarding democracy, human rights violations, impunity and excessive oppression of peoples' rights to freedom of expression. More is needed to actually correct the situation. Recommendations from different organisations have been made to the government of the Democratic Republic of Congo regarding these issues. Four NGO's, the Lotus Group, the League Of Voters, the Association Africaine Des Droits De L'Homme (ASADHO) an the International Federation for Human Rights (fidh) had recommended five key priority areas of focus for the new government to improve the countries human rights situation; 1. Fighting against impunity,

[65] Ruma Mandal, 'Legal Protection Policy: Research Series on Political Rights of Refugees' (UNHCR, November 2003) 13 <https://www.refworld.org/pdfid/3fe820794.pdf> accessed 3 July 2021.

promoting truth and strengthening justice in order to guarantee national reconciliation and lasting peace; 2. Respect fundamental rights and promote political dialogue; 3. Build an egalitarian society by promoting the rights of women and gender equality; 4. Enact substantial reforms to build the rule of law and democracy and 5. Strengthen cooperation with the international community and mechanisms for the protection of human rights.[66] These are actions for which the government may consider and implement for the country to move in the right and acceptable direction.

From the analysis made in the aforesaid chapters, it has been shown democracy and state sovereignty go hand in hand due to the fact that states rest their sovereignty on the needs and wants of those individuals that have elected them as their state representatives and leaders. With this, international organization are forced to respect state sovereignty but what results is that sovereignty of states begins to create a barrier for the protection of human rights for those individuals that fall outside the demos. As highlighted with Zambia and Angola reserving the right against refugees freedom of movement within their territory as well as with the right to vote. Therefore, state sovereignty has proven to create a fall back cushion for countries when it comes to the cooperation of states with the protection of all the fundamental human rights of refugees.

The information provided focuses only on conditions faced in Angola, DRC and Zambia in Southern Africa and is very limited but based on this information it is safe to conclude that only a democracy that fully upholds and respects human rights guarantees the protection and promotion the fundamental human rights of refugees.

However, it has been noticed and acknowledged that the issue of southern African countries' poor democracy and state sovereignty in host countries creates a barrier to the protection and promotion of refugees' rights and there is need for reform to address these problems.

REGIONAL AND INTERNATIONAL PERSPECTIVE

In the wake of World War II, the UN adopted the Convention Relating to the Status of Refugees in 1951[67] pursuant to Resolution 429 adopted the previous year.[68] The Convention was drawn with the purpose of protecting individuals that had been forced to flee their homes during the war. The 1951 Convention is a landmark treaty that defines who a refugee is. According to the definition in the 1951 Convention a refuge is defined as:

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[66] International Federation for Human Rights, Report on the Five Human Rights priorities addressed to President Felix Tshekedi (21 March 2019) <*fidh_drc_human-rights-roadmap_march2019 REPORT.pdf> accessed 03 July 2021.
[67] Convention Relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137.
[68] UNGA Res 429(V) (14 December 1950) UN Doc A/RES/429(V).

> "*any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear is unwilling to return to it*."

However, this definition is too restrictive because it has failed to acknowledge that other regions of the world, like Africa, have a distinct refugee problems from those created by World War II. Only about ten to twenty percent of individuals passed the conventional requirements to attain refugee status in host countries.[69] Despite the UN's efforts by adopting the Protocol Relating to the Status of Refugees in 1967, the definition has remained the same.[70]

In order to harmonise this situation, the Organisation of African Unity (OAU) adopted their own regional convention, the Convention Governing the Specific Aspects of Refugee Problems in 1969. The Convention maintained the same definition of refugee as it appears in the 1951 Convention under Article 1(1) but extended it to include;

> "*every person who, owing to external aggression, occupation, foreign domination or event seriously disturbing public order in either part or the whole country of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside of his country of origin or nationality."*[71]

This extension to the definition includes entire populations and mass groups that have been forced to flee from unbearable and dangerous conditions in their nations. It marked an important step towards expanding requirements needed for more refugees to gain refugee status in host countries. This definition is more adaptable to the refugee conditions in Africa and allowed more refugees in Africa to gain refugee status unlike the 1951 Convention.

The aforementioned Conventions are now the key international legal instruments that provide the foundation for the protection of refugees. They outline the rights awarded to refugees and the legal obligations of states for the protection of refugees, specifically covering principles such as non-refoulement,[72] asylum[73] and voluntary repatriation.[74]

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[69]Alfred De Zayas 'Human Rights and Refugees' (1992) 61 (1-4) Nordic Journal of International Law (1992) 253.
[70]Protocol Relating to the Status of Refugees (adopted 31 January 1967) 606 UNTS 267.
[71] AU, Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969) Article 1(2).
[72] Convention Relating to the Status of Refugees (n34) art 33.
[73] Convention Governing the Specific Aspects of Refugee Problems in Africa (n38) art 2.
[74] Convention Governing the Specific Aspects of Refugee Problems in Africa (n38) art 5.

The difficulty in the protection of refugees arises with the failure of the countries to provide competent, legal structures that would enable the effective implementation of international refugee laws. The lack of most African Governments to create competent and capable legal and administrative institutions for the effective implementation of the protection of the rights of refugees in Africa, has made the protection of refugees' rights problematic.[75]

ZAMBIA

The current domestic law that governs the refugee situation in Zambia is the Refugee Act, 2017 which replaced the Refugee (Control) Act, 1970.[76] The Refugee Act, 2017 domesticates the provisions of the 1951 Convention and the OAU Convention on refugees.[77] It also establishes the office of the Commissioner for refugees in Zambia highlighting all its functions, including the recognition, protection and control of refugees. The Act grants refugees rights and freedoms similar to those awarded to Zambian Nationals. Zambia has been home millions of refugees in the Southern region of Africa since gaining its independence in 1964. With refugees coming in mostly from Burundi, Rwanda, Democratic Republic of Congo, Angola and Somalia. By the end of February 2018, Zambia was host to over 70,000 refugees 92 percent of whom were Congolese.[78]

ANGOLA

In 2018, the Angolan Government passed the Law No.10/2015 on Asylum and Refugees Status. [79] This law revokes the Country's old laws on the Status of Refugees, Law no. 08/90 as well as any other legislation that contradicts the provisions in the new law.[80] The Legal provision was passed in order to regulate the right of asylum found in the Angolan Constitution Article 71 "*to transpose into the internal legal order for compliance with international obligations the precepts of the international legal instruments, to which Angola has adopted*," in particular the 1951 Convention, its 1967 Protocol and the OAU Convention on refugees.[81] In 2020 Angola was host to 25,806 Refugees.[82] The Law provides for the rights to health, housing and food, legal aid, the preservation of family unit and the right to care for vulnerable people. However, other rights are not provided for in the new law that was passed such as the right to education and work.

[75] Zachery A Lomo, 'The Struggle for Protection of the Rights of Refugees and IDP's in Africa: Making the Existing International Legal Regime Work' (2000) 18(2) Berkley Journal of International Law (2000) 268.
[76] National Assembly of Zambia, Refugee (Control) Act (adopted 4 September 1970).
[77] National Assembly of Zambia, The Refugees Act No. 1 of 2017.
[78] UNHCR, Zambia <https://www.unhcr.org/zambia.html> accessed 28 June 2021
[79] Angola National Assembly, Law on the Right of Asylum and the Refugee Status (adopted 17 June 2017) Law No. 10/2015.
[80] Angola National Assembly, Law on Refugee Status (adopted 1990) Law No.08/90.
[81] Law on the Right of Asylum and the Refugee Status (n46).
[82] UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo 2020 <https://reporting.unhcr.org/angola> accessed 15 June 2021.

DEMOCRATIC REPUBLIC OF CONGO

The Democratic Republic of Congo (DRC) has maintained an open-door policy to refugees coming in from neighboring countries such as Burundi, Central African Republic, South Sudan and Rwanda, where thousands of individuals are fleeing into the DRC to escape the realities of their country's conflict and violence. DRC has adopted the 1951 Convention, It's 1967 Protocol and the OAU Convention on refugees and is currently host to 490, 243 refugees as of 2020.[83] In DRC, however, national law for the refugees and asylum seekers is still in development. The current law for Refugees in the DRC is the Refugee Law No. 021/2002.[84] This law created the National Commission for Refugees (NCR) which is responsible for examining requests for asylum and granting identity cards to certify refugees' status in the country as refugees.[85] However, the UNHCR's compilation report has indicated that most governmental service providers often do not recognize the validity of the identity cards issued by the NCR.[86] This creates difficulties for refugees because access to their basic rights and needs such as healthcare and education for instance, are then restricted and in violation of refugees' rights.

Despite being a host country for refugees in Africa, DRC has been recorded to be one of the World's top ten countries to "produce" refugees in the world. The on-going armed conflict between government forces and rebel and guerilla armed forces causing security conditions to consistently decline, has been a torturous cycle for the Congolese population.[87] Especially in the eastern and central parts of the country where there exists widespread militia and guerilla rebel activities.

This has caused major internal as well as external displacement of the Congolese population. Recorded in 2017, 100 000 Congolese had fled the conflicts in the Kasai region into neighbouring countries as refugees.[88] Since then, between the periods of 2017 to 2019, a further estimate of 5 million people have been displaced, mostly from Kasai, Tanganyika, Ituri and Kivu regions. By the end of February 2019, an estimated figure of almost a million refugees were seeking refugee status in countries of asylum like Zambia and Angola.[89]

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[83] UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo 2020 <https://reporting.unhcr.org/node/4874?y=2020#objectives> accessed 15 June 2021.
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CONCLUSION AND RECOMMENDATION

From the foregoing, it is evident that refugees are entitled to human rights just like any other human being. It is also evident that refugees are vulnerable when it comes to recognition of their rights and civil liberties. It is recommended that host countries should implement or domestic regional and international treaties to enhance protection of the rights of the refugees. It is also recommended that states should promulgate myriad policies for the enforcement of the human rights of refugees.

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EVALUATING NIGERIA'S DATA PROTECTION ACT AND ITS EFFECTIVENESS IN THE DIGITAL AGE

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ABSTRACT

With the rapid pace of digitalisation and the rise of data-driven technologies, the issue of data protection has become increasingly important, as personal data is now widely seen as a valuable asset. In response to this development, the Nigerian Data Protection Act establishes a legal framework designed to safeguard individuals' data rights. However, like many laws in Nigeria, its practical impact is limited by challenges such as weak enforcement mechanisms and gaps within the existing legal structure. This article, therefore, examines the Nigerian Data Protection Act, with a focus on assessing its effectiveness and continued relevance in the digital age. The study adopts a doctrinal research methodology.

Keywords: *Data, Data Protection, Artificial Intelligence, Digitalisation, Digital age.*

1.0 Introduction

The rapid growth in digitalization has made data protection a major concern, as data has become a form of currency. Gone are the days when organizations collected data merely for record-keeping; today, personal and non-personal data is collected to drive insights, inform decisions, and create value. Data is shaping the world on a global scale,[90] and in the coming future, it will be almost impossible to do business without data.

Digitalization is the integration of digital technologies and advancements into all aspects of business, society and life in general. It involves the use of data to create new value. This development has led to the collections of various forms of data, including biometrics, financial, health and online behaviour data. Given that data can easily be accessed, this ease can lead to data misuse, which could cause infringement of data privacy rights, Identity theft, Financial Fraud, Surveillance, legal liabilities, discrimination and loss of trust in digital systems.[91]

Data protection has become a major issue due to the rise of advanced digital technology and sophisticated cyber and digital threats. This has inspired a new wave of comprehensive frameworks in various countries which are aimed to protect individuals and their data. One of such frameworks is the Nigerian Data Protection Act 2023, which was enacted to protect individuals personal data, safeguard data privacy and ensure lawful measures are adopted when handling data.

2.0 Legal Framework for Data Protection in Nigeria

As discussed in previous paragraphs it has been emphasized that the rise of digitalization has increased data collection, due to this there must be laws to protect individual's personal data. As a result, there is a need for legal frameworks to protect individuals and their legal frameworks. The Nigerian Data Protection Act 2023, this is the law that governs data protection and related matters. It is the privacy legal instrument for data protection. Privacy protection is a part of the fundamental human right enjoyed by every citizen, this right extends to data protection. This section will examine the legal frameworks for Data Protection in Nigeria, especially the NDPA 2023.

2.1 Historical development

Before the enactment of the Nigerian Data Protection Act, data protection in Nigeria relied on patchwork regulations; the only regulation available that supported, regulated and promoted data

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[90] Alius, "The Growing Importance of Data in the Digital Economy - Technology Org" (*Neurotechnology, UAB*, September 11, 2025) <https://www.technology.org/2025/09/11/the-growing-importance-of-data-in-the-digital-economy/> accessed January 5, 2026.

[91] Sustainability Directory, "What Are the Implications of Data Misuse? → Question" *ESG → Sustainability Directory* (October 29, 2025) <https://esg.sustainability-directory.com/question/what-are-the-implications-of-data-misuse/> accessed January 6, 2026.

privacy and protection was the right to privacy stipulated in section 37 of the 1999 Constitution.[92] In 2019 The National Information Technology Development Agency developed the Nigerian Data Protection Regulation, and it became the legally accepted framework for data privacy and protection. The need for a more elaborate codification that would be enforceable in all superior courts, hence on the 12th of June 2023, President Bola Ahmed Tinubu signed the Nigerian Data Protection Act into law.[93]

2.2 Objectives

This section seeks to explain the aims of the NDPA2023, the goal the act seeks to achieve is regulating the processing of personal data in Nigeria and ensuring that it is enforced by organizations and businesses in Nigeria. The act provides for the objectives of the act, it states that it is to safeguard the data processing of citizens data as guaranteed by the 1999 CFRN. One of the primary objectives of the act is to provide regulations that ensure the processing of data is lawful, provide means to seek redress in the event that there is a breach of data privacy, establish a commission that oversees data protection and privacy issues and strengthen the foundation of the nation's digital economy.

Overall, the objective demonstrates the act’s commitment to balancing technological advancement with the protection of individual rights in Nigeria’s evolving digital economy.[94]

2.3 Key provisions

In the following paragraphs we will discuss the provision of the NDPA 2023, it is important to establish that the act provides for several provisions which aim at regulating the processing of personal data and safeguarding the privacy of individuals. The second provision that would be examined are the rights of data subjects, this section emphasizes that the person who owns the data has the right to know whether the organisation is collecting or using their personal data, why it is being collected, what it is being used for, what type of data is being collected and how long it will be kept for. Individuals also have the right to get a copy of their personal data, ask for the data to be deleted, and restrict their use of data for certain information. Data controllers must delete personal data without delay when it is no longer needed or when there is no lawful reason to keep it.[95] This section of the act strengthens transparency, accountability and control by giving individuals power over how their personal data is handled, however this section has some gaps

[92] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 37.
[93] Ifeanyi Okonkwo, “Adeyemi Owoade, Overview of the Nigerian Data Protection Act” Jackson, Etti & Edu (Jul 11 2023) <https://a.storyblok.com/f/302089/x/ac8dcf7542/overview-of-the-new-nigerian-data-protection-act-ndpa-2023.pdf> accessed January 5, 2026.
[94] Nigerian Data Protection Act 2023 s1.
[95] NDPA 2023 s34

which are that "unreasonable delay" was not defined, this can give data controllers room to delay responding to request while claiming they are acting within a reasonable timeframe and there is no timeline in which a request should be fulfilled, this weakens enforcement.

The next provision is the obligation of controllers and processors, and it states in simple terms that the data controller and processors have the duty to protect the subject's data, keep personal data secure and provide necessary information to show compliance and notify the commission of the engagement of a new processor.[96] In case there is a data breach the data processor must notify the data controller and they must come together to figure out how to go about it and find a solution to the breach. In the case that the data breach will risk the individual's life the data controller has the duty to inform the commission within 72 hours.[97] When a new data processor is hired by the data controller, the duty to ensure that the processor follows the rules of the act is on the controller.[98]

Finally the final provision we would be examining is the penalties where there is noncompliance of enforcement order issued in Section 47,[99] the offender may be punished with a fine or imprisonment for up to one year. The court has the discretion to impose both a fine or imprisonment.

3.0 Institutional and Enforcement Framework

The effectiveness of any regulatory framework depends largely on the enforcement. There is a formal body whose responsibility is to ensure the enforcement of the Nigeria Data Protection Act and it is the Nigerian Data Protection Commission (NDPC). The NDPC is charged with oversight and enforcement functions. This institutional framework plays a huge role in translating legal provisions into practical compliance, it promotes awareness and registers data controllers and processors for effective enforcement.[100]

3.1 Powers of the NDPC

As mentioned in previous paragraphs the NDPC is the central enforcement body under the Nigeria Data Protection Act. The powers that the act has vested in the commission are very important because they enable real data protection in practice. The powers of the NDPC are not merely

[96] NDPA 2023 s29
[97] Ifeanyi Okonkwo, "Adeyemi Owoade, Overview of the Nigerian Data Protection Act" Jackson, Etti & Edu (Jul 11 2023) <https://a.storyblok.com/f/302089/x/ac8dcf7542/overview-of-the-new-nigerian-data-protection-act-ndpa-2023.pdf> accessed January 19, 2026.
[98] NDPA 2023 s40
[99] NDPA 2023 s47
[100] Dicer, "Elevate Your Data Protection Standards" (*Amanitrust*, May 4, 2025) <https://amanitrust.ng/blog/the-role-of-ndpc-ensuring-data-protection-compliance-in-nigeria> accessed January 19, 2026.

administrative but are intended to ensure compliance, accountability, and protection of citizens.

In exercising its mandate, the NDPC is empowered to promote awareness and improve data understanding of data protection of personal data.[101] Receive complaints from individuals that have had their data protection rights violated.[102] Offer recommendation and advice on any matter concerning data protection.[103] Evaluate the extent to which personal data protection standard for cross border transfer is adequate.[104] Submit legislative proposals that could possibly strengthen data protection in Nigeria.Through the regulative powers the commission is able to identify breaches, assess the extent of data protection violations and take appropriate steps to prevent continued misuse of personal data.

3.2 Enforcement mechanisms and sanctions

The protection of personal data under the Nigerian Data Protection Act of 2023 is not only about recognising rights and obligations, it is fundamentally about ensuring that those rights can be enforced and that when breaches occur they attract meaningful consequences. In Nigeria's regulatory system, enforcement mechanisms and sanctions are essential if the law is to move beyond paper commitments to actual impact. With this in mind, the Act establishes a suite of mechanisms, including complaints procedures, investigative powers, administrative fines, corrective orders, and remedies available to data subjects which are all designed to promote compliance and protect individuals whose personal data is mishandled or misused.[105]

Recent enforcement actions by the Nigeria Data Protection Commission (NDPC) suggest a gradual shift from a largely symbolic regulatory framework to a more assertive enforcement regime. In 2025, the NDPC imposed an administrative fine of ₦766,242,500 on MultiChoice Nigeria for violations of the Nigeria Data Protection Act, including intrusive, unnecessary and disproportionate data processing practices, as well as failure to cooperate with regulatory investigations.[106] This marked one of the largest data protection fines in Nigeria's history and signalled a growing willingness by the Commission to hold major corporate actors accountable.

Beyond these headline case, the NDPC has repeatedly warned banks, insurance companies and

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[101] SAN FCIArb (U K) OM Atoyebi, "An Appraisal of the Powers and Functions of the Nigeria Data Protection Commission in Data Protection in Nigeria" (*Omaplex Law Firm*, July 23, 2024) <https://omaplex.com.ng/an-appraisal-of-the-powers-and-functions-of-the-nigeria-data-protection-commission-in-data-protection-in-nigeria/> accessed January 19, 2026.

[102] ibid

[103] NDPA 2023 s5(m)

[104] SAN FCIArb (U K) OM Atoyebi, "An Appraisal of the Powers and Functions of the Nigeria Data Protection Commission in Data Protection in Nigeria" (*Omaplex Law Firm*, July 23, 2024) <https://omaplex.com.ng/an-appraisal-of-the-powers-and-functions-of-the-nigeria-data-protection-commission-in-data-protection-in-nigeria/> accessed January 19, 2026.

[105] NDPA 2023 s 46.

[106] Babatunde Bamigboye, "NIGERIA - NDPC Fines Multichoice Nigeria N766,242, 500 for Violating NDP Act" (*NADPA-RAPDP*) <https://www.rapdp.org/index.php/en/node/222> accessed January 20, 2026.

gaming organisations of impending sanctions for non-compliance with data protection audits, thereby indicating a broader regulatory shift towards proactive supervision rather than reactive complaint-handling. Taken together, these developments reflect an emerging enforcement culture that, while still in its early stages, suggests that the NDPA 2023 is beginning to acquire real deterrent value in practice.

Nevertheless, it remains to be seen whether such sanctions will be applied consistently across sectors and sustained over time, particularly in light of Nigeria's broader challenges relating to regulatory capacity, political interference and judicial delays.

3.3 Remedies Available to Data Subjects

Harm in this context may encompass financial loss, reputational damage, or emotional distress and harms that are increasingly recognised in data protection jurisprudence globally. The availability of these remedies affirms that personal data protection is not merely an administrative compliance issue, but one that intersects with fundamental human dignity and personal autonomy.[107] That being said, challenges such as the high cost of litigation, delays in court processes, and limited public awareness of legal rights may restrict the practical use of these remedies by ordinary Nigerians unless supported by legal aid structures or public education campaigns. An illustrative real-world example of consent and data processing practices in Nigeria can be observed in the context of online banking platforms such as Guaranty Trust Bank's internet banking service. When customers access certain online banking services, the platform may display a notice indicating that by continuing to use the service, the user consents to the processing of their personal data by GTBank, its holding company, and subsidiaries as detailed in the bank's privacy policy. This is a form of notice-and-consent practice that aligns with the principle that data processing must be lawful and based on an identifiable legal basis, such as the data subject's consent.

4.0 Data Protection in the Digital Age

The rapid growth of digital technologies has fundamentally transformed how personal data is generated, collected, stored, and exploited. These developments have significantly increased both the volume and sensitivity of data being processed by public and private actors. As a result, traditional data protection principles are increasingly being tested by the scale, speed, and complexity of modern data processing operations.[108] In Nigeria, the challenge is particularly more

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[107] NDPA 2023 s51.

[108] Abiodun Amuda-Kannike SAN, Shuaib Oniye and Yusuf Amuda-Kannike, "DATA PROTECTION LAWS IN NIGERIA: THE IMPACT OF AI AND TELECOM REGULATIONS ON E-COMMERCE SECURITY" (2025) 2 LexScriptio A Journal of the Department of Jurisprudence and Public Law 158.

due to the rapid adoption of digital services across banking, telecommunications, social media, and online retail, often without a commensurate growth in regulatory capacity or public awareness. The Nigerian Data Protection Act 2023 was enacted for this particular purpose. However, the effectiveness of the Act must be assessed against emerging digital realities such as AI-driven decision-making, big data profiling, fintech expansion, and cross-border e-commerce.[109]

4.1 AI and big data

Artificial intelligence and big data analytics have become central to modern governance, commerce, and service delivery. AI systems depend on vast datasets to train algorithms capable of recognizing patterns, predicting behaviour, and making automated decisions. Big data, in turn, refers to extremely large and complex datasets generated from digital platforms, social media interactions, financial transactions, biometric systems, and Internet-of-Things (IoT) devices.[110]

One of the primary data protection challenges posed by AI and big data is mass data harvesting and secondary use. Personal data collected for one purpose is frequently repurposed for unrelated objectives such as targeted advertising, behavioural profiling, credit scoring, or political micro-targeting without meaningful consent. This practice undermines the principles of purpose limitation and data minimisation recognised in modern privacy law.[111]

In the Nigerian context, oversight of AI remains underdeveloped as Nigeria does not have a specific regulatory framework to govern the use of AI. While the NDPA 2023 provides general safeguards such as lawful processing, consent, and security obligations, it does not contain detailed rules governing algorithmic accountability, automated decision-making, or explainability of AI outcomes. This creates a regulatory gap in relation to modern data-driven technologies.[112]

5.0 Comparative Analysis

A comparative analysis provides a useful lens for evaluating the strengths and weaknesses of Nigeria's data protection framework under the Nigeria Data Protection Act 2023 (NDPA). By examining how other African jurisdictions regulate personal data, it becomes possible to identify best practices that Nigeria can adopt to strengthen enforcement, close regulatory gaps, and respond more effectively to emerging digital technologies. South Africa offers a particularly strong point

[109] Edidiong Otong, "Exploring Artificial Intelligence (AI), Data Protection, And Digital Rights in Nigeria's Regulatory Framework and Global Standard" (2024) 12 Uniuyo Law Journal.
[110] Kalada DS Nonju and Benjamin Ihua-Maduenyi, "International Journal of Research and Innovation in Social Science" (2024) 5 International Journal of Research and Innovation In Social Science.
[111] Ifeoma Peters, "Emerging Technologies: Implications of AI, Big Data, IoT, Blockchain, and Biometrics on Privacy and Compliance – 1 - DNL Legal and Style" (*DNL Legal and Style - Blazing The Trails, Providing World Class Legal Services*, December 4, 2025) <https://dnllegalandstyle.com/dnl/emerging-technologies-implications-of-ai-big-data-iot-blockchain-and-biometrics-on-privacy-and-compliance-1/> accessed January 20, 2026.
[112] Edidiong Otong, "Exploring Artificial Intelligence (AI), Data Protection, And Digital Rights in Nigeria's Regulatory Framework and Global Standard" (2024) 12 Uniuyo Law Journal.

of comparison because it has one of the most comprehensive and mature data protection regimes on the continent. Its Protection of Personal Information Act 4 of 2013 (POPIA) is widely regarded as being closely aligned with international standards, particularly the EU General Data Protection Regulation (GDPR). Unlike Nigeria's relatively new statutory framework, POPIA has been in force since 2020 and has generated practical enforcement experience through regulatory actions, fines, and judicial oversight.[113] This section therefore examines South Africa's POPIA as a comparator to Nigeria's NDPA, focusing on its legal framework, regulatory authority, enforcement mechanisms, and practical effectiveness, with the aim of drawing lessons relevant to Nigeria's evolving data protection regime.

5.1 Protection of Personal Information Act (POPIA), South Africa

The Protection of Personal Information Act 4 of 2013 (POPIA) is South Africa's principal data protection legislation. It was enacted to give effect to the constitutional right to privacy under section 14 of the Constitution of the Republic of South Africa and to regulate the processing of personal information by both public and private bodies.[114] Although the Act was passed in 2013, it became fully operational on 1 July 2020 following a commencement proclamation, with a one-year grace period for compliance.[115]

POPIA is structured around eight core conditions for the lawful processing of personal information:

1. Accountability
2. Processing limitation
3. Purpose specification
4. Further processing limitation
5. Information quality
6. Openness
7. Security safeguards
8. Data subject participation.[116]

[113] Protection of Personal Information Act 4 2013.
[114] Constitution of the Republic of South Africa 1996, s 14.
[115] Proclamation No 21 of 2020.
[116] POPIA 2023, s4

These conditions closely mirror the data protection principles found in international instruments such as the GDPR and resemble the principles now codified under Nigeria's NDPA 2023. For example, POPIA requires that personal data be processed lawfully and in a reasonable manner, collected for a specific purpose, and not retained longer than necessary.[117] It also imposes strict obligations on responsible parties to implement appropriate technical and organisational measures to safeguard personal information against loss, damage, unauthorised access, misuse, breach or unlawful processing.[118]

In addition, POPIA provides extensive rights for data subjects, including the right of access to personal information, the right to request correction or deletion of inaccurate data, and the right to object to the processing of personal data, particularly for purposes such as direct marketing.[119] These rights are similar in substance to those contained in Nigeria's NDPA but are more elaborately regulated through subsidiary regulations and formal guidance issued by South Africa's supervisory authority.

5.2 Enforcement Mechanisms and Sanctions under POPIA

Where a responsible party is found to have contravened the Act, the Information Regulator may issue an enforcement notice directing the party to take specified remedial action within a stated period of time.[120] In serious cases, POPIA authorises the imposition of administrative fines of up to R 10 million and/or imprisonment for a period not exceeding ten years.[121] A notable example of POPIA's enforcement strength is the Dis-Chem Pharmacies case, where the Information Regulator fined a major retail pharmacy chain for unlawfully using customer contact details for direct marketing purposes without proper consent.[122]

Here, WhatsApp provided stronger privacy protections to users in Europe, but the consent process was flawed for users in South Africa. In addition, the policy did not explain what the collected data would be used for, and WhatsApp failed to show that it had sufficient safeguards in place to protect users' data.[123] This allegedly violated POPIA's transparency and consent requirements.

[117] POPIA 2023, s11.
[118] POPIA 2023, s 19.
[119] POPIA 2023, s 23-25
[120] POPIA 2023, s 95 (1) (a) (b).
[121] POPIA 2023, s 109
[122] Nomzamo Zondi (Information Regulator), "ENFORCEMENT NOTICE ISSUED TO DIS-CHEM DUE TO CONTRAVENTION OF POPIA" (*Information Regulator South Africa*, September 1, 2023) <https://inforegulator.org.za/wp-content/uploads/2020/07/FINAL-MEDIA-STATEMENT-ENFORCEMENT-NOTICE-ISSUED-TO-DISCHEM-PHARMACIES-LTD.pdf> accessed January 20, 2026.
[123] Tayla Pinto, "WhatsApp Enforcement Action" (*Michalsons*, April 28, 2025) <https://www.michalsons.com/blog/whatsapp-enforcement-notice-popia-breaches/77829> accessed January 20, 2026.

POPIA adopts a relatively strict approach to cross-border data transfers.[124]
This framework is closely aligned with the GDPR's adequacy and safeguard mechanisms and serves as a useful model for Nigeria, where cross-border data flows involving fintech platforms, cloud services and multinational tech companies are rapidly increasing.
Legal commentators have noted that POPIA's international compatibility enhances South Africa's attractiveness as a digital business hub while still maintaining strong privacy protections.[125] Nigeria's NDPA similarly aspires to GDPR-level alignment, but its effectiveness in regulating cross-border data transfers will depend on the development of clear adequacy standards and enforcement practice by the NDPC.

5.3 Comparative Lessons for Nigeria

South Africa's experience under POPIA offers several important lessons for Nigeria's evolving data protection regime:

First, clear regulatory guidance enhances compliance**.** The Regulator's publication of codes of conduct and guidance notes under POPIA has helped businesses understand their obligations and reduced interpretative uncertainty. Nigeria would benefit from a more aggressive issuance of sector-specific guidelines, particularly for fintech, AI and big data processing.[126]
Secondly, strong sanctions create real deterrence. The availability of substantial fines and criminal penalties under POPIA appears to have encouraged greater corporate compliance. Nigeria's NDPA should be enforced with similar seriousness to prevent data controllers from treating regulatory penalties as a mere cost of doing business.[127]

Finally, public awareness is critical. POPIA's impact has been reinforced by sustained public education campaigns and media coverage of enforcement actions. Nigeria must invest in similar awareness strategies to ensure that citizens understand their data protection rights and are willing to assert them. Nigeria is beginning to show enforcement maturity similar to jurisdictions such as

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124 POPIA 2023, s 72.

125 DLA Piper, "Data Protection Laws in South Africa" *Data Protection Laws of the World* (January 6, 2025) <https://www.dlapiperdataprotection.com/index.html?t=law&c=ZA> accessed January 20, 2026.
126 Michalsons, "Protection of Personal Information Act Summary" (*Michalsons*, October 20, 2023) <https://www.michalsons.com/focus-areas/privacy-and-data-protection/protection-of-personal-information-act-popia> accessed January 20, 2026.
127 Zlatko Delev, "GDPR & Data Protection Laws in Africa: A Comparison" (*GDPR Local*, November 29, 2023) <https://gdprlocal.com/gdpr-and-data-protection-laws-in-africa-a-comparison/> accessed January 20, 2026.

South Africa and the European Union, although it still lags behind in institutional capacity, regulatory guidance and judicial consistency

6.0 Conclusion

The enactment of the Nigeria Data Protection Act 2023 represents a major milestone in Nigeria's journey towards a robust data protection regime. By replacing the Nigeria Data Protection Regulation with a comprehensive statutory framework, the Act strengthens the legal basis for protecting personal data and establishes the Nigeria Data Protection Commission as a dedicated enforcement authority. In summary, while Nigeria has made commendable legal progress through the Nigeria Data Protection Act 2023, the challenges posed by emerging technologies and digital business models show that law alone is not enough.

7.0 Recommendations

To strengthen data protection in Nigeria and ensure that the legal framework remains effective in the digital age, the following recommendations are proposed:

Improving Public Awareness and Digital Literacy

A major weakness in Nigeria's data protection framework is low public awareness. Many Nigerians are unaware of their rights to access, rectify or erase their personal data or to lodge complaints with the NDPC.The government, in partnership with civil society organisations and technology companies, should launch nationwide public education campaigns using radio, television, social media and community outreach. These campaigns should explain data protection rights in simple language and encourage citizens to challenge unlawful data practices.

Enhancing Cross-Border Data Protection Cooperation

Nigeria should strengthen international cooperation with foreign data protection authorities and align its standards with global frameworks such as the EU General Data Protection Regulation. This would improve Nigeria's credibility as a data-secure jurisdiction and ensure better protection for Nigerians' data processed abroad. Ultimately, data protection in the digital age is not merely a technical or regulatory issue; it is a human rights issue.

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Protection of Personal Information Act 4 of 2013, ss 23–25.
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AN ANALYSIS OF THE NON- JUSTICIABILITY OF CHAPTER II OF THE NIGERIAN CONSTITUTION: ENFORCEMENT, EXCEPTIONS AND RECOMMENDATIONS

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ABSTRACT

The Constitution of the Federal Republic of Nigeria 1999 (as amended) establishes Chapter II as a set of Fundamental Objectives and Directive Principles of State Policy, outlining ambitious socio-economic, political, and developmental goals aimed at promoting citizen welfare, national unity, and equitable governance. Despite forming part of the supreme law, these provisions are largely rendered non-justiciable by Section 6(6)(c), which ousts the jurisdiction of courts from entertaining claims regarding government compliance or failure to implement them. This creates a significant gap between constitutional promises and enforceable rights, often reducing lofty ideals to mere political aspirations dependent on the goodwill of leaders. This paper examines the historical origins of Chapter II, tracing it to the 1979 Constitution and the recommendations of the Constitution Drafting Committee. It analyses key arguments supporting non-justiciability, including resource constraints, the doctrine of progressive realization, potential inter-branch conflicts, and the risk of raising unfulfilled public expectations. The study further highlights notable exceptions, such as legislative enactments that give effect to specific principles, cross-references to other justiciable sections, and the domesticated African Charter on Human and Peoples' Rights, which treats socio-economic rights as enforceable. The analysis concludes that the non-justiciability clause undermines accountability and weakens the social contract, effectively shielding the ruling class from delivering essential dividends of democracy, including security and welfare. It advocates for greater justiciability to foster responsive governance, poverty reduction, and sustainable development.

Keywords: *Chapter II, Nigerian Constitution, non-justiciability, Fundamental Objectives, Directive Principles of State Policy, Section 6(6)(c).*

INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999 is the grundnorm of the country, regulating the government, institutions and people. It is the organic and fundamental law, setting out the principles and guidelines for its citizens to regulate the affairs. Hence, it is an important part of the country, antecedent to the government and a consensus of the people.

The Constitution is divided into Chapters, each representing an important aspect of the country outlining the principles of that subject matter. Ranging from General Provisions, to Citizenship and Fundamental Rights, the provisions of the Constitution are sacrosanct, binding and supreme over the people by virtue of **S1(1)** [1]. However, the mere fact that there is a particular chapter which has been hotly contested on whether it is justiciable or not raised eyebrows as it leads to a serious concern on the enforceability of the supreme law.

DEFINITION OF TERMS

The **Black's Law Dictionary**[2] defines Justiciability as the quality or state of being appropriate or suitable for adjudication by a court. A justiciable issue is one that is capable of being properly brought before a court of law and decided using legal principles, rather than political or hypothetical considerations. An issue becomes justiciable if the rights asserted by the plaintiff are capable of being judicially molded or that the duty asserted can be judicially identified and its breach judicially determined.

Non-justiciability on the other hand has been described as a situation where a matter falls outside the conditions and purposes that circumscribe judicial actions. A matter or action which is of such nature makes it inherently unsuitable or incapable of judicial enforcement.

The Chapter II of the Constitution, titled Fundamental Objectives and Directive Principles of State Policy is an inaugural provision introduced into the Nigerian constitutional lexicon for the first time in 1979. The historical perspective of this Chapter can be traced down the colonial and military ruled Nigeria, the first draft done by a Constitution Drafting Committee on the event of the handover to civilian rule, after an incessant period of political unrest arising out of the military regime. The fundamental objectives and directive principles of state policy refers to goals and aspirations which the constitution has provided to serve as a guide to every government in the execution of its mandate or in carrying out its responsibilities or obligations towards its citizens. It is an innovative that was first introduced into the Nigerian constitutional lexicon in 1979 and it underscores the obligation of the government in terms of provision of basic amenities and

[1] Constitution of the Federal Republic of Nigeria 1999 (as amended)
[2] Bryan Garner *Black's Law Dictionary* (1990) 9TH Ed

creation of a conducive and suitable environment for the citizens to enjoy their rights. Furthermore, this objectives are ideals towards which the nation is expected to thrive, the directive principles laying down policies to be pursued[3].

BASIS FOR NON-JUSTICIABILITY

In as much as the provisions of Chapter II are embodied in the grundnorm and captures national ideals and guidelines for government, it's provision have been reduced to a mere ideal without sanctions and has been regarded as a sterile law. The rationale for this glaring contradiction is captured by the same supreme constitution in **S6(6)(c)** which provides that

"The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution"

This provision has the effect of ousting the jurisdiction of the courts from entertaining any issues arising from the government's neglect or failure to comply with the provisions of Chapter II. The plausibility of such a provision has been criticized because the lofty and rosy goals and objectives which every government are obligated to and should perform are given a loophole and maneuver, leaving the public to the mercies of their leaders, who will not regard themselves as under that obligation. The reason for the adoption of directive principles of state policy is to invest the principles with the quality of Constitutional directive to the various organs of Government, and inform and guide the actions of government with reference to those principles.

According to the Constitution Drafting Committee (1976), the Government of Nigeria and indeed those of other developing countries tend to be preoccupied with power and it's material prerequisites with little regard for political ideologies as to how society can be organized and transformed to the best advantage of all.. The CDC (1976) also viewed the inclusion of the fundamental objectives as providing a yardstick for measuring the performance of every government. It was to be a Constitutional directive to the various organs of Government to inform and guide their actions. With the objectives entrenched in the Constitution it was believed that those in government would concentrate on the business of governance and strive to achieve the goals of the government.

This then begs the question of what the intention of the draft man was in limiting the enforcement of such an innovative provision in Chapter II. These objectives cannot be enforced in court in the

[3] Prof. M. Ogwezzy *Lecture Note on Constitutional Law* (2024) Unpublished, Faculty of Law RSU

sense that an individual cannot bring an action against the government for not conforming to these objectives because they are non-justiciable. In **OKOGIE V ATTORNEY GENERAL OF LAGOS STATE**[4], the court held that section 13 is part of Chapter 2 that has been declared non-justiciable pursuant to section 6(6)(c) that has rendered the entire Chapter II non-justiciable. The effect is to the tune that there can be no legal course of action or remedy for anyone who is dissatisfied with the non-compliance of the government in conforming to the provisions of the Fundamental objectives and directive principles. Arguments for the non-justiciability will be treated as follow, viz-a-viz;

A. **Constitutional Basis:** Section 6 (6)(c) of the 1999 Constitution on the powers vested in the judiciary provides for non-justiciability. The clear wording of this Section perfectly ousts the jurisdiction of the Court as it relates to the Fundamental Objectives contained in Chapter II.This provision begs the question: why include rights on one hand and invalidate its enforcement with another? This is a sharp contradistinction and total departure from the provisions of Section 13, which mandates all organs of government, including the judiciary to adhere to, follow, and implement the directives outlined in the fundamental objectives and directive principles of state policy. It is common knowledge that the legal enforcement characteristic enjoyed by the law is what lends it the force that compels adherence. When this force is however removed from any law, it renders such a law an image of a mere toothless bulldog.
B. **Influence from International Community:** Another argument is that Nigeria must have been influenced by the notion in international law where socio-economic rights are differentiated from civil and political rights and as **Ellen Willes** opined on the doctrine of Progressive Realization, such idealized policies cannot be achieved on the go. Furthermore, it is argued that wealth has to be created first before it can be distributed[5]. More so, the non justiciability is validated by the fact that it would be dangerous from a political standpoint to arouse expectations that cannot be fulfilled, thus leading to a revolution of rising frustrations.
C. **Economic Reality and Difficulty in Attainment:** Thirdly, while maintaining the position that socialist economies tend to be less efficient than free enterprise economies, it is asserted that it will be difficult to pursue the two goals of rapid development and extreme

[4] (1981) 2 NCLR 337
[5] Adeoye Akinsanya *Fundamental Objectives and Directive Principles of State Policy in the Nigerian Constitution* (1993)

forms of income at the same time. It is also argued that states do not have the resources to implement socio-economic rights and therefore will need time to acquire such resources.[6]

D. **Burden on the Wheel of Justice :** Making these provisions justiciable would only lead to constant confrontation between the executive and/or the legislative on the one hand and the judiciary on the other. Also, the provisions are relatively new and no one could be too confident of the most appropriate method of ensuring their observance.

Consequently, the non-justiciable nature of Chapter II of the Nigerian Constitution means that while the objectives and principles outlined therein serve as important national aspirations and moral guidelines, they do not provide a strong legal basis for direct enforcement.[7]The government's compliance with these principles depends on political will and the accountability of elected officials, rather than legal mandates

EXCEPTIONS TO NON-JUSTICIABILITY

It is a trite principle of law that for every general rule, there is an exception. The following arguments establishes reasons for the justiciability of the Fundamental Objectives and Directive Principles of State Policy;

a. Legislative Competence

Foremost amongst these exceptions is that the National Assembly (the legislative arm of the government) can enact specific legislation that gives legal backing to any of the directive principles and these legislations shall be justiciable. This means that where there is a law passed to implement a particular directive principle, individuals can challenge the government's compliance with that law in court]. The case of OLAFISOYE V. FEDERAL REPUBLIC OF NIGERIA[8] lends a judicial backing to this exception

The enactment of the Economic and Financial Crimes Commission Act is a typical example in furtherance of Section 15(5) of the CFRN 1999 which provides that *the state shall abolish all corrupt practices and abuse of power*. It is important to highlight that the National Assembly has made limited legislative efforts to ensure the enforceability of the provisions in Chapter 2 of the Constitution. In contrast, there has been a multitude of legislations enacted to enforce the duties of citizens as stipulated in the chapter, the Personal Income Tax Act and other tax legislations being a typical example.

The legislature still has powers to confer actionable rights on the contents of the Chapter vide Item 60(a) of the Exclusive Legislative (part 1 Second Schedule) of the 1999 Constitution which

[6] Mack Ogbamosa *Combating Governance Crises through Justiciability of Chapter II* TheCable (2021)

[7] Nwauzi, L. O. *How Fundamental are the Fundamental Objectives and Directive Principles Under Chapter II of the Constitution of Nigeria* 1999.(2017)

[8] (2004) 4 NWLR (PT. 864) 580

empowers the National Assembly to make laws for the " *establishment and regulation of authorities*…t*o promote and enforce the observance of Chapter II of the Constitution."* When the legislature takes a step in this direction, S6(6)(c) will become impotent and right of access to court for enforcement of such rights by aggrieved citizens will be boosted.

This argument is further reiterated by the courts in the case of AG ONDO V AG FEDERATION[9]. The court held that "*Notwithstanding Section 15 of the 1999 Constitution, the EFCC Act was validly made to stamp out corruption as contained in Chapter II of the Constitution and in line with Item 60 of the Exclusive Legislature List.*

b. Intersection with other Constitutional Provision

Another exception is that some elements within Chapter II are directly incorporated into other parts of the Constitution, making them justiciable such as the provision in Section 42 that protects against discrimination as provided under section 15(2) of the Constitution. More so, where any part or any section of the constitution mentions any part in Chapter II of the constitution, by mere mentioning of that part, it has rendered the part mentioned in Chapter II justiciable. For instance, section 147(3) of the constitution mentioned section 14(3) which is under Chapter II by providing that the "President's appointment should be in conformity with the provisions of S14(3) of the constitution".

S.14 (3) provides that "*The composition of the Government of The Federation or any of its agencies and the conduct of it's affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies.*" Hence by the mere mention of this provision of Section 14(3) in Section 147(3), it has rendered section 14(3) which is under Chapter 2 of the constitution justiciable.

c. International Law

Nigeria is a signatory to the African Charter on Human Rights vide the African Charter on Human and People's Rights(Ratification and Enforcement Act Cap 10 , Laws of the Federation of Nigeria (LFN), which does not discriminate between the two types of rights. It means that socio-economic rights are actionable in Nigeria, notwithstanding the provision in S6(6)c) of the Constitution.

In the case of REGISTERED TRUSTEES OF SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) V PRESIDENT, FEDERAL REPUBLIC OF NIGERIA AND UNIVERSAL BASIC EDUCATION COMMISSION[10] the ECOWAS Court of

[9] (2002) NWLR (PT 772) 1
[10] Suit No ECW/CCJ/APP/08/08

Justice held that the rights guaranteed by the African Charter on Human and People's Rights are justiciable before the Court. It also held that every Nigerian has a right to education which can be enforced before the court and that Nigeria has the duty to give effect to the provisions of the African Charter.

Furthermore, in FAWEHINMI V ABACHA[11], per Ogundare JSC , it was held that where there is a conflict between a local statute and the African Charter, the provisions of the African Charter will prevail. The Court of Appeal in ORONTO DOUGLAS V SHELL PETROLEUM DEVELOPMENT COMPANY LTD[12] endorsed the justiciability of an action brought pursuant to Article 24 of the African Charter on Human Rights(Ratification and Enforcement) Act

d. Negating Proviso under S6(6)(c)

More so, the loophole for the non sacrosanctity of S6(6)(c) was expressed by Niki Tobi JSC in FEDERAL REPUBLIC OF NIGERIA V ANECHE[13] due to the leeway of the proviso *'except as otherwise provided by this constitution*'. In essence, the draftsman had in mind the existence of exceptions and not providing for a strict and rigid provision.

Furthermore, the provisions of S13 also made it a responsibility of all organs of government to *'conform to, observe and apply the provisions of'* Chapter II. However this has been argued that it as a responsibility without liability, as no sanctions are attached to it.

CONCLUSION AND RECOMMENDATION

The ruling class is advantaged by the non-justiciability clause because **S 6(6)(C)** takes away the ability and power of the citizens to make the government accountable for the promises in Chapter II which indeed is the basic dividend of democracy[14]. Despite the fact that the rights and duties enclosed in Chapter II of the Constitution are lofty and promising, they are such that form the basis of an ideal Nigeria that is desirable, however, the ouster clause in **S6(6) (C)** transforms those sweet savory promises into a poisonous and tasteless promise as it has become what an average Nigerian cannot enforce or enjoy. The ouster clause has now made those assurances of equality and prosperity an inappropriate subject matter for judicial determination.

The death of the provisions of Chapter II by virtue of its non-justiciability is also tantamount to the death of the Constitution. The opening phrase of the Constitution, says "*We the people………Do hereby make, enact and give ourselves the following constitution."* The question therefore is would a Nigerian gladly agree that as beautiful and lofty the provisions of Chapter II

[11] (2000) 6 NWLR (PT. 660) 228
[12](1992) 2 NWLR (PT 591) 466
[13] (2004) 1 SCN 36
[14] A. T. Durodola (2022) *Chapter Two of the 1999 Constitution of Nigeria; The Fraud, Illogicality and Prospects*

is, it will not be Non-justiciable? Chapter II houses the benefits and fruits of Democracy and the question if Nigerians would reject these fruits? The non-justiciability of Chapter II, put succinctly, amounts to fraud on the part of the drafters of the Constitution and deprivation of the manifold benefits of democracy.[15]

The law and rights are clearly resident in Chapter II of the Constitution of the Federal Republic of Nigeria, and the duties imposed on the government by the provisions of Chapter II of the Constitution crystalizes into rights for the enjoyment of the citizens. The failure of the government to carry out these duties amounts to a violation of the rights of the citizens which ordinarily should give room for remedy, but the non-justiciability of Chapter II of the constitution takes away remedy from the citizens

The recommendation of making Chapter II of the Nigerian Constitution justiciable is a significant proposal with the potential to yield several positive outcomes for the country. Allowing citizens to directly enforce the fundamental objectives and directive principles of state policy would **encourage better governance** by **(a)** holding government institutions accountable for the fulfilment of their obligations toward the welfare and well-being of citizens, **(b)** reduce poverty and **(c)** ensure that the government can be compelled to create and support policies that promote job creation and economic growth.

These goals are predicated on the necessity for the material wellbeing of the citizens with the state playing a pivotal role. They are means devised to attain the Constitutional promises enshrined in the preamble which are considered as necessary for the social, political, cultural and economic development of Nigeria.

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[15] Okeke Odinakachukwu "*Pro-justiciability approach towards enforcing the provisions of chapter ii of the constitution of the Federal Republic of Nigeria 1999*." (2023). Nnamdi Azikiwe University Journal of International Law and Jurisprudence 14.1

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RIGHTS OF REFUGEES IN HOST COUNTRIES: A CASE STUDY OF ZAMBIA, CONGO AND ANGOLA

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ABSTRACT

This article examines the protection of refugees' rights in Angola, the Democratic Republic of Congo (DRC), and Zambia, assessing the extent to which host governments, in collaboration with UNHCR and international partners, fulfil their humanitarian and legal obligations. While significant progress has been recorded in the provision of education, healthcare, water, sanitation, and legal assistance particularly in Zambia and parts of the DRC serious structural and political challenges persist. In Angola, documentation gaps, restrictions on movement, and reported expulsions undermine refugee protection despite humanitarian support in settlements such as Lóvua. In the DRC, although legal frameworks and remedial measures demonstrate formal commitment to human rights and refugee protection, persistent governance failures, electoral controversies, impunity for human rights violations, and ongoing armed conflict continue to generate displacement and weaken institutional protection mechanisms. Zambia presents a comparatively progressive legal regime, granting refugees access to courts, property ownership, employment, and pathways to citizenship, thereby promoting socio-economic integration. Drawing on social contract theory and democratic principles, the article interrogates whether "rule by the many" inherently prioritizes nationals over non-citizens, thereby limiting the universality of human rights in practice. It argues that political sovereignty often transforms universal human rights into citizenship-based entitlements, leaving refugees structurally vulnerable. The article concludes by recommending stronger domestication of regional and international refugee instruments, enhanced monitoring mechanisms, and improved accountability systems to ensure meaningful protection of refugees in host states.

Keywords: *Refugee Protection; Democracy; State Sovereignty; Human Rights*

INTRODUCTION

The Governments of the host countries, in partnership with the UNHCR and other non-governmental organisations such as the World Food Programme (WFP), World Vision, Plan International, Care International, International Organisation for Migration, Action Africa Help, Ajuda de Desenvolvimento de Povo para Povo (ADPP), work together for the provision of basic humanitarian needs for refugees in settlements and camps in the areas of education, healthcare, sanitation and employment. The obtaining conditions in host countries are as highlighted below.

Angola

The basic rights refugees receive are usually provided through international assistance from other NGO's. Following the new wave of refugees fleeing in from the Kasai region conflicts in DRC in 2017, a new refugee settlement, the Lóvua Settlement, was opened to accommodate over 35,000 refugees. The new settlement provides refugees with the basic needs and rights. For instance, the ADPP has provided education in the new settlement and surrounding communities by building 10 pre-schools for 1,107 children, 4 primary schools and an adult education center. The opening of these educational facilities has created work opportunities for refugees in the settlement as some individuals were recruited as to help run these projects.[1] In 2018 a new clinic was built by Lutheran World Federation (LWF) for refugees in the settlement to provide them with closer healthcare facilities whereas before refugees had had to travel about 24 km to access healthcare.[2] WASH services have also been provided in the camp by partners like LWF, Norwegian Church AID and UNICEF.[3] A new community center opened in which at least 1,500 refugees and people from host communities partook in various classes intended to promote self-reliance amongst refugees.

Despite refugees having access to the basic rights from international organisations, there have been limitations. The scarcity of employment globally has negatively affected the refugees as where an opportunity arises preference is given to the locals before refugees are considered

Owing to the massive influx of refugees received in 2017, most refugees were brought into the country without registration as this was an emergency situation. Consequently, a number of refugees in the Lóvua Settlement and around the area of Dundo town center had no documentation and had not received refugee status in the country. The International Refugee Rights Initiative (IRRI) reported that many unregistered refugees had no rights to freedom of movement as they

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[1] 'Quality Education for All in Lóvua' (ADPP) <https://www.adpp-angola.org/en/?Itemid=305> accessed 03 July 2021.

[2] 'LWF improves health care for refugees in Angola' (The Lutheran World Federation, 27 July 2018) <https://www.lutheranworld.org/news/lwf-improves-health-care-refugees-angola> accessed 01 July 2021.

[3] 'Water and Sanitation for Kasai refugees in Angola' (The Lutheran World Federation, 27 July 2018) <https://www.lutheranworld.org/news/water-and-sanitation-kasai-refugees-angola> accessed 01 July 2021.

were not allowed to leave the camps to seek work or conduct any self-reliance business without facing undesirable treatment from national authorities.[4]

The 2018 February report by the UNHCR documented how many refugees had their documents confiscated by national authorities for no proper reasons. This incident led to many refugees fleeing their protection centers in fear of being deported.[5]

In the same year the Human Rights Watch reported on the massive expulsion of refugees and migrants in Angola by State Security forces. 400,000 people including refugees that had been forced flee and return back to their home countries. Angolan security forces had been accused of arbitrary detentions, harassment, sexual assaults, beatings, looting and burning down of homes by Congolese refugees that had forcibly crossed the border.[6] This was not only an abuse of refugees' rights but also went against the rule of non-refoulement under the 1951 Convention and the OAU 1969 Convention.[7]

Despite refugees being granted the same access to legal services as Angolan nationals under Law No. 10/15, because most refugees are unregistered it inadvertently is difficult for them to access any legal services because they do not have the legal documents that recognize them as refugees in the country.[8] Urban refugees have also been subjected to the risk of harassment, abuse, detention and discrimination by national authorities due to lack of proper documentation.[9] The situation for refugees has been compounded with the Covid 19 pandemic. The Angolan Government has suspended all refugee and asylum seeker registration and documentation for Covid 19 reasons.

Democratic Republic of Congo

From the UNHCR 2020 statistics 20 education facilities had been constructed in the Democratic Republic of Congo. As a result of this 8,199 children enrolled into primary education and 1,797 secondary school for Burundian Refugees.[10] From the 2019 End of Year Report it was documented

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[4] International Refugee Rights Initiative, Movement Restricted: Congolese Refugees in Angola (March 2018) 6 <file:///C:/Users/me/Downloads/Angola-DRC-paper-final.pdf accessed 27 June 2021.

[5] UNHCR, "Inter-agency operational update –DRC situation", 7 March 2018, <https://data2.unhcr.org/en/documents/download/62468> accessed on 12 June 2018).

[6] Angola: Stop Abusive Expulsions of Migrants: serious abuses alleged in Diamond Mining Crackdown (Human Rights Watch, 15 November 2018) <https://www.hrw.org/news/2018/11/15/angola-stop-abusive-expulsions-migrants> accessed 30 June 2021.

[7] Convention Relating to the Status of Refugees (n34) art 33; Convention Governing the Specific Aspects of Refugee Problems in Africa (n38) art 2(3).

[8] Law on the Right of Asylum and the Refugee Status (n46) art 42.

[9] UNHCR, Global Focus UNHCR Operations Worldwide: Angola, 2020 <https://reporting.unhcr.org/node/10321?y=2020#year> accessed 15 June 2021.

[10] UNHCR, Global Focus UNHCR Operations Worldwide: Burundi Refugees in DRC 2020 <https://reporting.unhcr.org/node/24664> accessed 30 June 2021.

that South Sudanese refugees received 19 boreholes for water supply[11] whereas in 2020, shelters were constructed for vulnerable South Sudanese refugees. Rehabilitation of community infrastructures such as schools, roads and healthcare centers were done. The services provided also benefited host villages around the area. Due to Covid-19, 14 hangars had been constructed to help facilitate for individuals and families needing to quarantine at the general hospital.[12]

The DRC also guarantee refugees access to legal services.[13] Biometric registration of refugees also begun and by 2020, 1,280 Central African refugees had been issued identity cards outside the North Ubangi camps. This has provided them with legal documentation as refugee cards. In Bondo territory at least 1,795 households had their biometric registration.[14] Although this was a positive development, this is still problematic because, as mentioned earlier, refugee cards are not being recognized by government service providers and so their basic needs and rights are still being withheld.[15]

In addition to the Conventions on refugees, the DRC is a signatory and has ratified the UN Declaration on Human Rights, the African Charter on Human and People's Right. It is also a signatory to the Charter on Democracy, Elections and Governance though it has not ratified it yet.[16] Its Constitution declares, in the Preamble, that it "is a State based on the rule of law, independent, sovereign, united and indivisible, social, democratic and secular."

Additionally, the Constitution reaffirms the country's adherence and attachment to the UN Declaration on Huma Rights and the African Charter on Human and People's Rights.[17] The drafting and passing of the constitution, followed by the countries very first elections in 2006 was a positive step for the country towards democracy and the promotion and protection of human rights for their nationals.

However, as highlighted earlier, the participation of a country in elections does not guarantee that the country is democratic in Africa. Most countries participate in routine elections but most of these countries are far from truly being democratic and the DRC is one of them. Since gaining its independence in 1960, the DRC has experienced some of the darkest times in Africa. Confronted

[11] UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo, Water 2019 <https://reporting.unhcr.org/node/28031> accessed 30 June 2021.
[12] UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo <https://reporting.unhcr.org/node/32012> accessed 30 June 2021.
[13] Democratic Republic of Congo Country Refugee Response Plan (Reliefweb, January 2019 – December 2020) 6 <Democratic Republic of the Congo Country Refugee Response Plan (CRRP) January 2019 - December 2020 - Democratic Republic of the Congo | ReliefWeb> accessed 17 June 2021.
[14] UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo, Central African Refugees 2020 <https://reporting.unhcr.org/node/24662> accessed 30 June 2021.
[15] The Status of Refugees in Democratic Republic of Congo (n51) art 27.
[16] African Charter on Democracy, Elections and Governance (n26).
[17] The Constitution of the Democratic Republic of Congo (adopted 13 May 2005).

with civil wars and conflicts involving national and international forces, the Democratic Republic of Congo experienced the continents largest and widespread interstate conflict.[18] This became known as the African War and is considered as being equivalent to World War I.[19] The country's presidency and government, for many years, had only been succeeded through coup d'états, and run by strict authoritarian and one party regimes. It was only after four decades that the country held its very first elections in 2006 after a Constitution was adopted the year before. Elections have been held from then on but these have not gone without controversies. In 2016 at the end of Joseph Kabila's final presidential term, the Commission Electorale Nationale Indépendante (CENI) announced that they were unable to hold the presidential elections that were meant to take place in November that year. This resulted in another two years of Joseph Kabila sitting in Presidency.[20] This clearly depicts the seriousness of the interference to democracy experienced in the country. This resulted in an obvious violation of the political rights of the People of Congo and foreseeably, triggered a frustration and angry nation which resulted in the unfortunate death of 50 citizens, who were killed by the state officials whilst hundreds of others were arbitrarily arrested.[21] The results of the elections which were finally held in December 2018, after a two year wait, further caused more controversies. Allegations of rigged elections arose after media houses received leaked information that the number of votes counted by the Catholic Church and those announced by CENI to the public had a huge difference.[22] When majority of the former ruling party won majority of the parliamentary seats, this inevitably gave the former ruling political party the final say on who the countries Prime Minister would be. Noting that the Prime Minister is in charge of the Government's ministry and security agencies, Kabila's Political party has still maintained majority control over the countries decision in most of the countries ministerial departments.

It is, therefore, difficult to argue that this would generate much change in the country. Such actions render the whole election process and democratic process redundant and frustrates any development needed for the people of Congo regarding any protection of their human rights.

The countries participation in somewhat regular elections has not been genuine and the people of the country are not having their political rights respected. The holding of the election process,

[18] Howard Wolpe, 'The Great Lakes crisis: an American view' (2000) 7 South African Journal of International Affairs 27.

[19] André Mbata B Mangu, 'From war to peace: The Democratic Republic of Congo in transition' (2003) 10 South African Journal of International Affairs 159 – 160.

[20] Aaron Ross 'Congo Commission Expects Presidential Vote to Delay to Dec 2018' (Reuters, 1 October 2016) <https://www.reuters.com/article/us-congo-prez-vote-idUSKCN1213BH> accessed 23 June 2021.

[21] Jason Burke, 'Clashes in Kinshasa Leave 50 dead, say DRC opposition groups' (The Guardian, 20 September 2016) <https://www.theguardian.com/world/2016/sep/19/democratic-republic-congo-demonstrations-banned-police-killed-joseph-kabila-etienne-tshisekedi> accessed 23 June 2021.

[22] 'DR Congo presidential election: Church questions results' (BBC News, 10 January 2019) <https://www.bbc.com/news/world-africa-46827760> accessed 23 June 2021.

with the purpose of establishing an institutional organisation to carry out the will of the masses, did not solidify the existence of democracy within the country.

This form of democracy fails to meet any of the requirements provided for in Diamond, Ake or even Schumpeter's definitions on democracy. The violation and abuse of millions of individuals civil, political, economic, cultural and social rights and freedoms, mostly committed by state officials, have been the main focus of concern for the people of the DRC. Therefore, showing no state protection of individual or group liberties or any autonomous spheres.[23] Furthermore, the existence of corruption and greed from higher senior government officials has proved staggering economic and developmental outcomes for the country.[24] There are massive gaps between rich and poor in the country. The country's wealth circulates amongst the higher social classes, most of whom are politicians, through unconscionable arrangements amongst themselves. This inevitably slows down any economic development in the country. Even the institutional arrangement in which political decisions through the election of individuals who assemble to carry out the will and common good of the people does not exist or exists at an extremely faulty level as highlighted in the above paragraph.[25] Therefore, by definition the DRC cannot be said to be ruled by the many and thus not truly a democratic state.

a. Human rights violations and the displacement of citizens

The country has had numerous reports on the gruesome violation and abuse of the citizens' most fundamental human rights and freedoms that have resulted from kidnappings, forced disappearances, murders, sexual violations, extrajudicial executions, arbitrary detentions, threats, harassments and the oppression of journalists, media houses and human rights activists around the country. In 2020, Amnesty International reported on the killing of thousands of Congolese in the North and South Kivu Provinces, the Ituri Province in the East as well as in the Kasai region.[26] Most of the killings were reported to have been committed by non-government armed groups although state agents, like the Armed Forces of the Democratic Republic of Congo (Forces Armées de la République Démocratique du Congo (FARDC)) and the Congolese National Police (Police Nationale Congolaise (PNC)) have also been reported to take part in extrajudicial killings and summary executions in these conflict affected areas.

[23] Diamond (n25).
[24] Ake (n26).
[25] Schumpeter (n24).
[26] 'The Democratic Republic of the Congo 2020' (Amnesty International, 2020) <https://www.amnesty.org/en/countries/africa/democratic-republic-of-the-congo/report-democratic-republic-of-the-congo/> accessed 26 June 2021.

The United Nations Joint Human Rights Office (UNJHRO) in DRC also reported that over 225 civilians had been murdered at the hands of state agents with 33 being women and 18 children in the first half of the year 2020.[27] In addition, state agents have been reported to also commit sexual violence crimes against women and girls. The UNJHRO recorded 1,376 victims of conflict-related sexual violence of which 31 percent of the cases reported had been attributed to state officials. 80 percent of the cases were women and 19 percent were children. FARDC and the PNC have continued to be listed as primary perpetrators for conflict related sexual violence in Beni territory during ongoing operations against Allied Democratic Forces (ADF).[28]

Additionally, human rights defenders, media reporters and journalists also face serious violations of their human rights under Articles 6, 9(2) and 11 against their rights to liberty, security of person, freedom from arbitrary detention and freedom of expression.[29] Reports documented included; death threats against Denis Mukwege, a Nobel Peace Prize Laureate, for his demands for accountability of human rights violations in the DRC;[30] Jean Claude Katende and Jean-Pierre Mutemba, human rights defenders, were threatened for their active posts demanding justice for the various charges held against the Presidential Senate;[31] and Dismas Kitenge Senga, the Head of a human rights NGO that documents human rights violations in Kisangani, received threats from unknown sources in 2006 following his activities and radio interviews in which he denounced the violations of human rights in the country and the impunity enjoyed by senior military officers alleged to have committed serious human rights violations.[32] In 2014, five community human rights defenders had been detained and faced charges for their criticism of an oil company that had violated its agreement with the community to provide health and education centers and water supply for the community in Tshopo Province in exchange for the exploitation of their land.[33]

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[27] Joint United Nations Office for Human Rights: OHCHR-MONUSCO, 'Violations of Human Rights and International Humanitarian Law committed by combatants of the Allied Democratic Forces (ADF) and members of the Congolese defense and security forces in the territories of Beni (North Kivu),Irumu and Mambasa (Ituri)' (2020) 11 <DRC_Public_Report.pdf (ohchr.org)> accessed 26 June 2021.

[28] UNGA, 'Report by UNHCHR on Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo' (14 September 2020) UN Doc A/HRC/45/49 5.

[29] African Charter on Human and People's Rights (adopted 27 June 1981) 21 ILM 58.

[30] 'Democratic Republic of Congo: Concrete actions must be taken to protect Denis Mukwege after death threats' (Amnesty International, 2020) <https://www.amnesty.org/en/latest/news/2020/09/democratic-republic-of-congo-concrete-actions-must-be-taken-to-protect-denis-mukwege/> accessed 27 June 2021.

[31] 'International Federation for Human Rights, Death Threats – COD 003/0506/OBS 57 (04 May 2006) <https://www.fidh.org/Menaces-de-mort-COD-003-0506-OBS-57> accessed 27 June 2021.

[32] 'New acts of Harassment against Mr. Disas Kitenge' (OMCT, 21 November 2006) <https://www.omct.org/en/resources/urgent-interventions/new-acts-of-harassment-against-mr-dismas-kitenge> accessed 27 June 2021.

[33] 'The Democratic Republic of the Congo 2020' (Amnesty International, 2020) <https://www.amnesty.org/en/countries/africa/democratic-republic-of-the-congo/report-democratic-republic-of-the-congo/> accessed 26 June 2021.

Most journalists and media workers have been heavily subjected to violent threats, intimidation, harassment, arbitrary arrests and detention and prosecution. Specific reports include journalists such as Dek'son Assani Kamango who was arrested and Christine Tshibuyi who had been threatened and physically assaulted by men in a vehicle commonly used by the Republican Guard.[34] In Mongala Province at least 6 journalists had their credentials revoked whilst authorities temporarily shut down four radio stations and suspended several broadcast programs that had a political nature to them.[35] Other human rights defenders have been murdered such as Floribert Chebeya and his Driver Fidèle Bazana and Pascal Kabungulu Kibembi.[36] These violations are committed by state officials and authorities who have been appointed to protect and regulate Congolese citizens' fundamental rights and freedoms. Such actions, however, institute grave violations of Congolese individuals' right to freedom of expression and constitutes oppression of the people by instilling fear in citizens against speaking up for their most fundamental human rights.

It is understandable that human rights are sometimes violated in most countries however the DRC government has failed to hold these perpetrators accountable for their human rights offences. Most senior state officers have been enjoying impunity for the violation of human rights in the state without any form of reprimand to hold them accountable. Most senior army officers have been under United states of America and European Sanctions for human rights violations for years but have remained in senior army positions whilst some even received promotions.[37]

Gabriel Amisi was promoted after Felix Tshisekedi conducted a reshuffling of army positions in July 2020, despite being under European Union sanctions for human rights violations and obstructions of the electoral process in DRC.[38] Gabriel had replaced John Numbi who had held the army General position since 2017, who too, is under EU ad USA Sanctions for the murder of human rights defender Floribert Chebeya and his driver Fidèle Bazana. Numbi did not received

[34] 'Amnesty International Report 2020/2021: The State of the World's Human Rights' (Amnesty International, 2021) 141 <(https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF> accessed 26 June 2021.
[35] 'DR Congo: Authorities Foundering on Rights: Crackdown on Media, Dissent, Protests' (Human Rights Watch, 22 July 2020) <https://www.hrw.org/news/2020/07/22/dr-congo-authorities-foundering-rights> accessed 26 June 2021.
[36] 'DR Congo: Prominent Human Rights Defender Killed: Joint Government and UN Inquiry Needed into Death of Floribert Chebeya Bahizire' (Huma Rights Watch, 3 June 2010) <https://www.hrw.org/news/2010/06/03/dr-congo-prominent-human-rights-defender-killed> accessed 26 June 2021.
[37] 'DR Congo: EU, US Sanction Top Officials: UN, AU Should Expand Actions Against Rights Abusers, Press for Credible Elections' (Human Rights Watch, 1 June 2017) <https://www.hrw.org/news/2017/06/01/dr-congo-eu-us-sanction-top-officials> accessed 26 June 2021.
[38] 'Congo replaces Sanctioned Army Chief with Deputy also sanctioned for rights abuses' (Reuters, 17 July 2017) <https://www.reuters.com/article/us-congo-army-idUSKCN24I2L9> accessed 26 June 2021.

any punishment for these crimes other than being denounced as police chief at the time the crimes were committed.[39]

It is clear that the DRC Government has repeatedly failed to hold human rights violators accountable for the crimes they commit against the nationals. Such inaction by the government is the primary reason and encouragement that human rights offenders use to continue committing crimes that violate the rights of the Congolese people.

Most conflict affected areas are largely invaded by armed rebel groups such as the ADF and others that cause the massive displacement of locals in the Ituri province, North and South Kivu Provinces, Tanganyika Provinces, and the Kasai Regions. However, blame cannot be place solely on these rebels groups as it has been shown on numerous occasions that state officials like FARDC and the PNC are also responsible. This is because the country has a heavy culture that lacks respect for human rights and enjoys impunity for the violations of these rights. Therefore, state operations against armed rebel groups in conflict affected areas are not likely to take into consideration any human rights laws and international humanitarian laws to protect the lives of locals in these conflict affected areas. Which is the reason that clashes in these areas result in massive violations of human rights resulting in severe casualties and displacement of locals. For example, Operations held by FARDC under Operation Sukola 1, army officials failed to take into consideration the recommendations made by the UNJHRO relating to the assessment of the risks of retaliations against isolated civilians in the area as well as implementing any mitigation measures. This resulted in a provoked wave of retaliation attacks by the armed ADF rebels, against civilian populations which resulted in severe casualties and massive displacement of these civilians.[40]

It has been due to these violations that the DRC has become one of the biggest sources of displaced people in the continent with the largest number of Internally Displaced People (IDP). It has almost a million refugees and asylum seekers in other neighboring countries. Recently, in April 2021, over 75,000 people were forced to flee their homes following conflict between the Hutu and Tembo militia in Bubungu in South Kivu Province.[41] It was recorded that an increase of deterioration of security and political situations had led to a declaration of State of Emergency. Over 3,000 protection reports were made regarding this situation with the highest total number of human rights violations that have ever been monitored in the Ituri area since the beginning of the UNHCR and

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[39] 'Wait for fair Trial Continues, Ten Years After Murder of Floribert Chebeya and Fidèle Bazana' (OMCT, 02 June 2020) <https://www.omct.org/en/resources/urgent-interventions/wait-for-fair-trial-continues-ten-years-after-murder-of-floribert-chebeya-and-fid%C3%A8le-bazana> accessed 26 June 2021.

[40] Joint United Nations Office for Human Rights: OHCHR-MONUSCO (n68) 7.

[41] UNHCR, 'Operational Update: Democratic Republic Of Congo' (April 2021) <file:///C:/Users/me/Downloads/UNHCR%20DRC%20Operational%20update%20template_%20April2021_FINAL_2%20(1).pdf> accessed 26 June 2021.

INTESOS protection programmes. This situation lead to over 45,000 Congolese attempting to flee into Uganda in mid May 2020.[42] In 2018 UNICEF reported over 3.8 million Congolese affected by conflicts in the Kasai region in DRC.[43] An estimate of thousands of Congolese had fled to Angola and about 8,000 internally displaced due to intercommunal conflict between customary chiefs and the Government.[44] This was because a wide conflict involving armed security forced, militia groups and armed groups caused alarming human rights violations leading to millions in the Kasai region to flee their homes, losing access to health care, education, safe drinking water and sanitation. The most ghastly of the human rights violations reported included children being killed and kidnapped and forced to fight and kill, or being used as human shields.[45] By the end of May 2021 it was estimated that 948,815 refugees were being hosted in other countries which is over a 100,000 more than the estimated number reported in 2018.[46]

b. Remedial measures taken

To address some of the aforementioned issues the DRC's Government and other international and national non-governmental organisations have taken steps to ensure and to better protect and promote the fundamental human rights of the nationals. For example, in a positive step towards respecting the freedom of expression and right to liberty, on March 13 2019, Félix Tshisekedi ordered the release of 700 people, many of whom had been arbitrarily detained for expressing their political views or participating in peaceful political protests.[47]

Furthermore, to tackle the major issue of impunity in the country, the Courts have recently been holding human rights offenders accountable for their crimes. The UNHCHR reported, in August 2020, that during the period in which the report was made at least 148 members of the armed forces, 37 Congolese PNC officers and 48 members of armed groups had been arrested and convicted in the Congolese courts for the violation of citizens' human rights.[48] In July 2019, a Judicial Commission of Inquiry was established in Ituri Province to investigate the violence

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[42] 'Over 3,000 Congolese refugees arrive in Uganda in three days' (UNHCR, 07 July 2020) <https://www.unhcr.org/news/briefing/2020/7/5f042a5a4/3000-congolese-refugees-arrive-uganda-three-days.html> accessed 26 June 2021.

[43] 'Conflict in the Kasai, Democratic Republic of the Congo' (Unicef) <https://www.unicef.org/child-alert/democratic-republic-of-congo> accessed 27 June 2021.

[44] UNHCR, 'Supplementary Appeal: Congolese Situation, Responding to the needs of displaced Congolese and refugees' (January – December 2018) <https://www.unhcr.org/5a8c27fb7.pdf> accessed 27 June 2021.

[45] Conflict in the Kasai, Democratic Republic of the Congo (n84).

[46] UNHCR, Operational Data Portal: Refugee Situations, Democratic Republic of Congo, 2021 <https://data2.unhcr.org/en/situations/drc> accessed 27 June 2021.

[47] 'DRC: Release of prisoners of conscience first step towards restoring human rights' (Amnesty International, 14 March 2019) <https://www.amnesty.org/en/latest/news/2019/03/drc-release-of-prisoners-of-conscience-first-step-towards-restoring-human-rights/> accessed 2 August 202.

[48] Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo (n69) 9.

committed in June 2019 in Dugu and Mahagi territories. And since it was established, more than 1,500 victims and witnesses were heard in the Courts and resulted in 187 suspects of human rights offences being detained and 128 defendants being referred to the Garrison Military Tribunal of Ituri. In addition to this, the Garrison Military Tribunal sentenced three combatants of the Force de Résistance Patriotique de l'Ituri (a rebel group) to 20 years' imprisonment for war crimes involving rape and looting and for participating in a rebel movement in Irumu territory in 2017.[49] The UNJHRO have also been involved and supported 10 joint investigation missions and 11 mobile court sessions throughout the country. The Office also organized 24 protection missions to provide protection and legal assistance to 1,044 victims and witnesses between June 2019 and May 2020.[50]

Other bigger perpetrators such as Ntabo Nteberi Sheka of the Nduma Defence of Congo armed Group (NDC-Sheka),[51] and Frédéric Masudi Alimasi, (Kokodikoko), the chief of the Mai-Mai Raia Mutomboki armed group were finally sentenced to life imprisonment, for their crimes against humanity including rape, sexual slavery, child recruitment and murder and executions.[52] Takungomo Mukambwila (Le Pouce), the senior leader of the Mai-mai Raia Mutomboki Chalequine received 20 years for crimes against humanity including rape and sexual slavery.[53] In November 2019, an addendum to the 2013 Joint Communiqué between the Government of DRC and the UN on the fight against sexual violence in conflict was signed during a visit from the Special Representative of the Secretary General on Sexual Violence in Conflict.[54] At least 453 risk assessments were reported to have been carried out by the Secretariat responsible for human rights due diligence policy on UN support to non-UN security forces. As a result of risk mitigation measures, the policy led to significant progress in the fight against impunity. For instance, joint committees have been established to monitor cases of human rights violations by the members of the FARDC and NPC officers as well as to follow-up on remedial measures taken by the authorities

[49] Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo (n69) 9.
[50] Ibid 10.
[51] Office of the Special Representative of the Secretary General for Children and Armed Conflict, United Nations Officials Welcome the Conviction of Ntabo Ntaberi Sheka for War Crimes of Rape Sexual Slavery, Child Recruitment and Murder in Democratic Republic of Congo, (24 November 2020) <https://childrenandarmedconflict.un.org/2020/11/united-nations-officials-welcome-the-conviction-of-ntabo-ntaberi-sheka-for-war-crimes-of-rape-sexual-slavery-child-recruitment-and-murder-in-democratic-republic-of-the-congo/> accessed 2 November 2021.
[52] Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo (n69) 7.
[53] UNSC, Overview of the Secretary General's Report (30 March 2021) UN Doc S/2021/312 12.
[54] The Democratic Republic of Congo Addendum to the Joint Communication on Conflict-Related Sexual Violence: Between the Democratic Republic of Congo and the United Nations Organisation (November 2019) <http://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/12/joint-communique/addendum-au-communique-conjoint-sur-les-violences-sexuelles-liees-au-conflit-entre-la-republique-democratique-du-congo-et-lorganisation-des-nations-unies/RDC.pdf> accessed 02 August 2021.

in such cases.[55] Furthermore, an action plan on sexual violence by the NPC was adopted in November 2019.[56]

Lastly, with regards to the prevention of displacement of Congolese, the country has addressed some of the problem areas of the conflict happening in the country. The UNJHRO reported in 2021, that since the appointment of a new commander as head of Operation Sukola, there have been some positive outcomes in which ADF and other armed rebel groups' bases had been ceased and state authority have been restored in these areas. This was done whilst following and respecting human rights and international humanitarian law.[57] Furthermore, early warning and rapid reaction mechanisms have been reinforced and are being improved to ensure that civilian populations work with the security forces to prevent and deal with armed attacks in the area. Telephone operators have also been involved in these operations to increase coverage areas affected by the presence of armed groups.[58]

Zambia

In Zambia, refugee settlement camps and surrounding host communities have received sufficient assistance in the provision of water and sanitation. In 2020 the Mantapala refugee settlement was provided with 51 boreholes and 400 household latrines were drilled and constructed, respectively, with the support of Kfw Development Bank of Germany, the European Union through Unicef, World Vision and the New Apostolic Church Relief Organisation. Refugees are now being provided with an improved 31 litres of water per day, which is 11 litres above the standard requirement for refugees in settlements.

Refugees are provided with food through the assistance of the WFP and the Action Africa Help International Zambia.[59] A new referral hospital has recently been built in the capital city of Lusaka to facilitate health care services for urban refugees and act as a referral hospital for refugees in settlements. The facility also provides mental health care services for refugees. The UNHCR in conjunction with other international NGO's have sustained 11 health care facilities in proximity to the three settlements in order to provide quality services and healthcare for refugees. 100 percent of the people of concern to the UNHCR had access to and received primary healthcare.[60] Refugees

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[55] Human Rights Situation and the Activities of the United Nations Joint Human Rights Office on the Democratic Republic of the Congo (n69) 6.
[56] Ibid 8.
[57] Joint United Nations Office for Human Rights: OHCHR-MONUSCO (n68) 13.
[58] Ibid 14.
[59] UNHCR, Factsheet: Zambia (August 2020) 3 <file:///C:/Users/me/Downloads/UNHCR%20Fact%20Sheet%20Zambia%20August%202020%20final_RBSAxxfinal.pdf> accessed 20 June 2021.
[60] UNHCR, Global Focus UNHCR Operations Worldwide: Democratic Republic of Congo 2020 <https://reporting.unhcr.org/node/10322?y=2020#year> accessed 7 June 2021.

have also been granted free access to the courts under Section 40(1) of Zambia's Refugee Act, 2017 and they enjoy the same treatment as a citizen in matters pertaining to access to the court, including legal aid and exemption from the payment of security for costs.[61] For example in 2015, two former Rwandan refugees, Mr. Innocent Habumugisha and Mr. Egide Rwasibo, were able to start legal proceedings against the Minister of Home Affairs for wrongful deportation back to Rwanda on grounds that they were spies for the Rwandan Government. The Zambian High Court Ruled against the Minister of Home Affairs and stated that the deportation was "unconscionable and unreasonable" because this put the two men at risk of being persecuted back in Rwanda since they had been welcomed into Zambia as Refugees.[62]

Apart from providing basic food, health, education and sanitation needs for refugees in settlement camps, the Zambian government through the enacted Refugee Act has enshrined legal rights and protections for refugees similar to those of its citizens. It has also included provisions for social and economic integration of refugees in Zambia. For instance, refugees above the age of 16 and their dependents have been granted permission for residency in the country through the prescription of an identity card under section 45(1)(a) and (b) as well as the right to be granted citizenship for those that have met the national requirements to acquire Zambian citizenship under section 49(2).

Prior to the new Act, in 2011, through the integration programme, over 10,000 Angolan Refugees who had lived in Zambia from 1966 to 1986 were granted citizenship by the Zambian Government. By 2015 the integration criteria allowed over 15,000 Angolan registered refugees and about 4,000 Rwandan registered refugees to gain citizenship in Zambia.

The Refugee Act also grants registered refugees the rights to ownership of movable and immovable property under section 39. It also gives the refugee the right to acquire a work and study permit under section 45. Through this statutory provision, the refugee is able to seek employment and enroll for studies in the county under section 41(1).[63] Refugees are also allowed to own and establish commercial and industrial companies under Section 42 of the Refugee Act 2017[64] as read together with the Immigration and Deportation Act of 2010.[65]

1. **Rule by the Many as against Rights of Refugees in Host Countries.**

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[61] The Refugees Act No. 1 (n44) section 40 (2).

[62] Ivan Mugisha, 'Deported from Zambia, Former Rwanda refugees choose to stay' (Reliefweb, 16 September 2018) <Deported from Zambia, former Rwandan refugees choose to stay - Zambia | ReliefWeb> accessed 7 June 2021.

[63] The Refugees Act No. 1 (n44).

[64] Ibid Section 42.

[65] National Assembly of Zambia, Immigration and Deportation Act No.18 of 2010 section 29(1).

If the aforementioned definition of democracy is applied, then the question that follows is who are the many and how do they rule? Firstly, rule by the many or the demos would be by selected representation elected through free, fair and transparent elections. Otherwise this would not be democracy but rather, would fall into some other form of absolutism. Secondly, the demos would be the individuals that make up the state; the nationals.

According to Thomas Hobbes, organised states were formed by way of mutual agreements known as social contracts, by individuals, in an effort to escape the "state of nature," which Hobbes believed was the horrific state of humanity before social contracts were formed.[66] The basic idea of Hobbes' is theory is that individuals, in order to escape the "*poor, nasty, brutish and short*" life of the state of nature, are willing to compromise on some of their rights in exchange for security of their other rights such as peace and protection in order to live peacefully.[67] However, if states truly are formed in this manner, then this begs the question; what happens to those who come into the state from outside? Not by their own choice, but because owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, or those owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of their country of origin or nationality, are compelled to leave their place of habitual residence in order to seek refuge in another place outside their country of origin, the refugees. [68]

Only two solutions materialise for refugees in these circumstances. The first, is for refugees to create their own social contracts and the second is for them to merely join the host state's social contract. The former solution is unrealistic and close to impossible. The latter, means that refugees who are coming from diverse backgrounds, politically, socially, culturally and religiously, would be forced to give up these rights in order to join the host countries social contract. Situations in which refugees enter a state and want to create their own social contract with the state is highly unwelcomed as most host countries are not willing to compromise on their legal rights – the mutual agreement made with the state in a social contract.[69] Consequently, because the selected representatives of a state are chosen and get their power to rule from the demos, whom they rest their sovereign powers in, the state will be set to protect the rights of the nationals. In the process of doing so, anyone who falls outside their borders, such as refugees, are excluded. As a result, the popular conception of the universality of human rights is challenged and rights become citizen's rights by way of political sovereignty.

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[66] Thomas Hobbes, Leviathan, Introduction and Notes by J. C. A Gaskin, (OUP 1998)
[67] Ibid.
[68] Convention Governing the Specific Aspects of Refugee Problems in Africa (n38) art 1.
[69] Ammar Younas, 'Examining the Social Contract Theory: A case of refugee crisis' (SSRN Electronic Journal, 2017)

CONCLUSION AND RECOMMENDATIONS

It is recommended that the regional and international treaties should be enhanced in terms of domestic application of the principles and protection of rights of refugees in host countries. This approach will promote uniformity in application of the law and enhanced protection of refugees. Evidently, despite accession or ratification of the treaties or protocols, the protection of the rights of the refugees still remain a huge challenge in most host countries. There is need fpr enhanced reporting and monitoring mechanisms for host countries.

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SICK AND FORGOTTEN: EXAMINING THE RIGHT TO HEALTHCARE FOR MENTALLY ILL INMATES IN NIGERIAN PRISONS

By

Faith Oluwadarasimi Fakuade

ABSTRACT

This article examines the right to healthcare for mentally ill inmates in Nigerian correctional facilities, looking closely at the gap between what the law promises and what actually happens in practice. Mentally ill inmates are caught between two systems, criminal justice and healthcare and are consistently let down by both. Despite the enactment of the Nigerian Correctional Service Act 2019 and the Mental Health Act 2021, both important steps forward, this article argues that Nigerian law, as it stands and as it is currently applied, fails to properly protect the right to healthcare for this group of people. Drawing on the constitutional guarantee of human dignity under Section 34 of the Constitution of the Federal Republic of Nigeria 1999, and drawing comparisons with the UN Nelson Mandela Rules and the South African constitutional framework, this article identifies serious gaps in Nigeria's laws and institutions when it comes to mental healthcare in prisons. The article closes with specific recommendations for legislative and institutional reform, arguing that how Nigeria treats mentally ill inmates is ultimately a measure of its real commitment to human dignity and to a fairer criminal justice system.

Keywords: *Mental health, Nigerian prisons, Right to Healthcare, Correctional Service Act 2019, Mental Health Act 2021, criminal justice reform*

Introduction

Inside Nigerian correctional facilities lives a population that society has made invisible twice over people who are both imprisoned and mentally ill. They sit in an uncomfortable middle ground between the criminal justice system and the healthcare system, and they are let down by both. They are too sick to be ignored and too criminal to be prioritised. The result is a quiet crisis unfolding behind prison walls.

Nigeria's correctional system holds a significant number of people with mental illness, whether they arrived with pre-existing conditions or developed them during imprisonment. Overcrowding, violence, poor nutrition, and the sustained trauma of incarceration create conditions that make mental illness worse. Yet the legal frameworks governing these facilities have historically treated healthcare as an afterthought, and mental healthcare as something barely within reach.

The enactment of the Nigerian Correctional Service Act 2019 and the Mental Health Act 2021 were important steps forward.[70] On paper, these laws signal a move toward treating inmates more humanely and with greater awareness of their rights. In practice, however, the gap between what the law promises and what happens inside those facilities remains enormous and has largely been ignored in Nigerian legal scholarship.[71] This article examines that gap.

This article argues that Nigerian law, as it is currently written and applied, fails to properly protect the right to healthcare for mentally ill inmates. Despite the constitutional guarantee of human dignity under Section 34 of the Constitution of the Federal Republic of Nigeria 1999,[72] and the progressive provisions of the Correctional Service Act 2019[73] and the Mental Health Act 2021,[74] mentally ill inmates remain among the most consistently overlooked groups in Nigeria's healthcare and criminal justice landscape.

This article proceeds in five parts. Part II sets out the background, defining who this article is concerned with and the legal basis for the right to healthcare in detention. Part III looks at the relevant Nigerian legislative framework and where it falls short. Part IV examines the disconnect between what the law says and what actually happens in correctional facilities. Part V draws briefly on the South African experience and the UN Nelson Mandela Rules as points of comparison.[75] Part VI concludes with specific recommendations for legislative and institutional reform.

Background: Who Are We Talking About?

Before turning to the legal framework, it is important to be clear about who this article is concerned with. When we talk about mentally ill inmates, we are really talking about at least three different groups of people. The first are those who entered correctional facilities with pre-existing mental

[70] Nigerian Correctional Service Act 2019; Mental Health Act 2021.

[71] A review of major Nigerian legal databases including the Nigerian Law Journal and the African Journals Online (AJOL) reveals limited scholarship specifically addressing mental healthcare in Nigerian correctional facilities.

[72] Constitution of the Federal Republic of Nigeria 1999, s 34, this provision guarantees every individual's right to the dignity of the human person and prohibits torture, inhuman or degrading treatment.

[73] Nigerian Correctional Service Act 2019, ss 2, 23: establishing the objectives of the correctional service and making provision for healthcare services in custodial centres.

[74] Mental Health Act 2021, s 12: establishing the right of persons with mental illness to access treatment and care without discrimination.

[75] United Nations Office on Drugs and Crime, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (UN Doc A/RES/70/175, 2015).

health conditions whether those conditions were identified at the point of admission or went undetected. The second are those who developed mental illness during incarceration, something that research has consistently shown, given how damaging prison conditions can be. The third group and perhaps the most legally complicated are those found unfit to stand trial or not guilty by reason of insanity, who end up held indefinitely in facilities that are entirely unsuited to their needs.

What these three groups share is a particular vulnerability. They are disproportionately poor, they often lack both the means and the voice to speak up for themselves, and they are held within a system the correctional system that does not have the facilities or trained staff to properly care for them. Their situation touches on both the right to liberty and the right to health, yet they keep falling through the gaps of both systems.

The legal basis for the right to healthcare in correctional settings works on two levels. At the national level, Section 17(3)(d) of the Constitution of the Federal Republic of Nigeria 1999 directs the state to ensure adequate medical and health facilities for all persons.[76] Internationally, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Nigeria is a state party recognises the right of everyone to the highest attainable standard of physical and mental health.[77] The UN Nelson Mandela Rules go further and spell out what this means in practice within prisons, providing that inmates shall enjoy the same standards of healthcare available in the wider community, without discrimination on the grounds of their legal status.[78]

Together, these provisions establish a clear minimum standard: persons deprived of their liberty do not lose their right to healthcare. The state, by taking custody of someone, takes on a stronger duty of care toward that person. The question this article addresses is whether Nigeria's legal framework properly fulfils that duty, and the answer, as the sections below demonstrate, is that it does not.[79]

The Legal Framework: What the Law Says and Where It Falls Short

A. The Nigerian Correctional Service Act 2019

The Nigerian Correctional Service Act 2019 marked a real shift in how Nigeria thinks about its custodial institutions. By renaming the Nigerian Prison Service the Nigerian Correctional Service, the legislature signalled a desire to move away from purely punishing inmates and toward helping them return to society.[80] Section 23 of the Act makes provision for healthcare delivery, requiring the Service to maintain basic health facilities and provide medical treatment to persons in its custody.[81]

The problem with this provision, however, is what it leaves out. While Section 24 of the Act addresses mental health providing a mechanism for referral where an inmate appears to be of

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[76] Constitution of the Federal Republic of Nigeria 1999, s 17(3)(d).
[77] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 12.
[78] UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (UN Doc A/RES/70/175, 2015), r 24.
[79] See Anselm Chidi Odinkalu and Osaze Lanre Ehonwa, *Behind the Wall: A Report on Prison Conditions in Nigeria and the Nigerian Prison System* (Civil Liberties Organisation 1996).
[80] Nigerian Correctional Service Act 2019, s 2.
[81] Nigerian Correctional Service Act 2019, s 23.

unsound mind, the Act does not require psychiatric screening on admission, does not require mental health professionals to be employed as a matter of course, and does not set aside any dedicated budget for mental healthcare. The phrase 'basic health facilities'—the language Section 23 uses cannot, by any reasonable reading, cover the specialised, sustained, and often resource-heavy interventions that serious mental illness requires. The Act's silence on mental health is not accidental. It reflects a deeper failure to treat mental health as real healthcare at all.

B. The Mental Health Act 2021

The Mental Health Act 2021 was a major piece of legislation, replacing the outdated Lunacy Act of 1958 and bringing Nigeria's mental health law into more modern territory. The Act establishes the right of persons with mental illness to access treatment and care without discrimination[82] and sets out minimum standards for facility-based treatment.[83]

The Act's key weakness, however, is how little it does for people inside correctional facilities. While sections 46 to 58 deal with the treatment of persons with mental health conditions in criminal proceedings, these provisions do not set out a full framework for the conditions under which mentally ill people may lawfully be held in prisons. There is nothing that compels correctional institutions to bring mental health services in-house, no standard setting minimum treatment conditions within custodial settings, and no clear process for moving mentally ill inmates from correctional facilities to proper psychiatric institutions. What the Act does well for people in the community has not carried over in any meaningful way to those inside correctional facilities.

C. Constitutional Provisions and Their Limits

The constitutional picture presents a problem that is familiar in Nigerian law. Section 17(3)(d) of the 1999 Constitution directs the state toward the provision of adequate medical and health facilities, but this provision falls within Chapter II the Fundamental Objectives and Directive Principles of State Policy which is expressly made non-justiciable by Section 6(6)(c).[84] A mentally ill inmate cannot, on the strength of this provision alone, successfully sue the state for failing to provide adequate mental healthcare.

Section 34, by contrast, is justiciable. The right to dignity of the human person which prohibits torture, inhuman or degrading treatment has been read by Nigerian courts in an increasingly broad way.[85] There is a strong argument, supported by decisions from other jurisdictions that holding a mentally ill inmate in conditions that make their illness worse, or that deny them any treatment, amounts to inhuman or degrading treatment within the meaning of Section 34. This argument has not yet been fully tested in the Nigerian courts, but it remains one of the more promising routes for constitutional reform.

Law versus Reality: The Gap in Implementation

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[82] Mental Health Act 2021, s 12.

[83] Mental Health Act 2021, ss 24–25; see also ss 46–58 which address treatment of persons with mental health conditions in criminal proceedings.

[84] Constitution of the Federal Republic of Nigeria 1999, s 6(6)(c).

[85] *Gbemre v Shell Petroleum Development Company Nigeria Ltd & Others* (Suit No. FHC/B/CS/53/05) [2005] AHRLR 151 — the Federal High Court held that the rights to life and dignity under ss 33 and 34 of the Constitution could be read broadly beyond their literal terms; this approach has been invoked by analogy in arguments that s 34 extends to conditions of detention that aggravate mental illness.

The gap between what Nigeria's laws say and what mentally ill inmates actually experience in prison is, to put it plainly, enormous. Reports by the Prison Advocacy, Reform and Welfare Action organisation (PRAWA) have consistently shown that the majority of Nigerian correctional facilities have no resident psychiatrist, no access to psychotropic medications, and no formal mental health screening process at the point of admission.[86] The National Human Rights Commission's annual reporting has similarly flagged conditions in correctional facilities as falling well below minimum international standards.[87]

The problem is deep and runs through multiple layers. When it comes to physical infrastructure, Nigerian correctional facilities are severely overcrowded, operating, in many cases, at over two hundred percent of their intended capacity.[88] The physical and psychological effects of such overcrowding fall hardest on mentally ill inmates, who are less able to manage the social pressures of overcrowded incarceration and more exposed to exploitation and harm.

When it comes to staffing, there is a serious absence of mental health professionals within the correctional system. Nigeria faces a severe national shortage of psychiatrists with approximately 250 certified psychiatrists serving a population of over 200 million and what little exists is concentrated in metropolitan teaching hospitals, not in prisons.[89] In practice, this means that mentally ill inmates get no psychiatric assessment, no medication management, and no therapy of any kind. Their conditions get worse, not because the law ignores them, but because the facilities and staff needed to help them simply do not exist.

The human cost of this failure is documented in specific facilities. At the Makurdi Medium Security Correctional Facility in Benue State, research has confirmed that inmates with mental health conditions receive no resident psychiatric care, with occasional referrals to the Federal Medical Centre representing the full extent of the facility's mental health provision.[90]

At Agodi Correctional Centre in Ibadan, studies have shown a facility in which over ninety percent of inmates are awaiting trial, creating conditions of prolonged uncertainty that are well known to trigger and worsen mental illness.[91] Most shockingly, Amnesty International's documented visits to ten correctional facilities across Enugu, Kano, Lagos, and the Federal Capital Territory revealed a system in which persons with mental illness are brought to prison by their own families and classified as 'civil lunatics' held without conviction, without treatment, and without any legal mechanism compelling the state to provide either. In one documented case, a woman held in these circumstances remained in a cell with eleven other inmates for nearly three years before the intervention of a non-governmental organisation secured her transfer to hospital.[92]

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86 PRAWA, *Prison Health Care in Nigeria: An Assessment* (PRAWA 2018).

87 National Human Rights Commission, *Annual Report on the State of Human Rights in Nigeria* (NHRC 2021).

88 Penal Reform International, *Global Prison Trends 2023* (Penal Reform International 2023).

89 Federal Ministry of Health, *National Mental Health Policy* (FMOH 2021); CE Okechukwu, 'Shortage of Psychiatrists: A Barrier to Effective Mental Health-Care Delivery in Nigeria' (2020) 5 International Journal of Noncommunicable Diseases 22.

90 E Nwefoh and others, 'Depression and Experience of Incarceration in North Central Nigeria: A Situation Analysis at Makurdi Medium Security Prison' (2020) 14 International Journal of Mental Health Systems 76.

91 JO Abdulmalik and others, 'Prevalence and Correlates of Mental Health Problems Among Awaiting Trial Inmates in a Prison Facility in Ibadan, Nigeria' (2014) 43 African Journal of Medicine and Medical Sciences 193.

92 Amnesty International, *Nigeria: Prisoners' Rights Systematically Flouted* (AFR 44/001/2008), the report documented visits to ten custodial facilities in Enugu, Kano, Lagos and the FCT. One documented case involved a woman held as a 'civil lunatic' without conviction for nearly three years before NGO intervention secured her transfer to hospital.

What is perhaps most troubling is that mentally ill inmates are frequently subjected to forms of management that are not only inadequate but actively harmful. Solitary confinement, used informally to manage disruptive inmates is well documented to make mental health conditions worse. Physical restraints are also reportedly used in place of proper clinical care across different facilities. These are not the practices of a system that takes seriously its duty to protect the health and dignity of the people in its care.

V. A Comparative Look: South Africa and the Nelson Mandela Rules

A. The South African Framework

South Africa's constitutional and legislative framework offers a useful comparison for Nigeria, not because South Africa's prison system is without its own problems, but because its legal framework provides tools that Nigeria's does not. Section 35(2)(e) of the Constitution of the Republic of South Africa 1996 expressly guarantees every detained person the right to conditions of detention consistent with human dignity, including adequate medical treatment at state expense.[93] This provision is directly justiciable and has been enforced by South African courts in ways that have actually improved conditions of detention.

The Mental Health Care Act 17 of 2002 adds another layer of protection. It applies broadly to include persons in the criminal justice system and specifically protects the rights of mentally ill people who are detained, including those held in correctional facilities.[94] The Act sets out clear processes for moving mentally ill offenders from correctional to psychiatric facilities and prescribes minimum standards for the care of mentally ill persons in detention. Nigeria has no comparable legislation.

B. The Nelson Mandela Rules as an International Standard

The UN Standard Minimum Rules for the Treatment of Prisoners—widely known as the Nelson Mandela Rules represent the most widely recognised international standard for treating people in detention. Rule 109 specifically addresses prisoners with mental disabilities, stating that such prisoners should not be held in prisons and that steps should be taken to move them to mental health facilities as soon as possible.[95] Rules 24 to 35 set out broader healthcare standards, requiring that inmates have the same access to healthcare as people outside prison, and that health personnel in prisons are held to the same professional ethics as practitioners in the community.[96]

Nigeria has not incorporated the Nelson Mandela Rules into domestic law, and there is no indication that these Rules played any role in drafting or applying the Correctional Service Act 2019. The fact that Nigeria's legislative framework makes no reference to, or engagement with, these international standards is itself a telling sign of the gap between Nigeria's commitments on paper and what happens in practice.

VI. Recommendations and Conclusion

A. Recommendations

[93] Constitution of the Republic of South Africa 1996, s 35(2)(e).
[94] Mental Health Care Act 17 of 2002 (South Africa), s 1.
[95] Nelson Mandela Rules (n 8), r 109.
[96] ibid, rr 24–35.

Based on what this article has examined, there are several key areas where reform is needed. This article puts forward three recommendations as priority areas.

First, the Nigerian Correctional Service Act 2019 should be amended to include a specific and mandatory mental health framework. This should cover mandatory psychiatric screening for all inmates on admission, requirements for mental health professionals to be employed within correctional facilities, minimum standards for managing mentally ill inmates, and a clear process for transferring inmates to appropriate psychiatric facilities where medically necessary.[97]

Second, the Mental Health Act 2021 should be amended to strengthen its provisions relating to people within the correctional system. While sections 46 to 58 form a starting point, they do not go far enough to require that mental health services be built into prison care, nor do they set minimum standards for holding mentally ill persons in such facilities. Regulations under the Act should specifically address this gap and should require coordination between the Nigerian Correctional Service and the Federal Ministry of Health for integrated mental health service delivery.[98]

Third, the Nigerian government should, as a matter of urgency, put its obligations under the Nelson Mandela Rules into practice within the correctional context. This should include directing the Nigerian Correctional Service to review all conditions of detention against the standards in the Rules and to produce an implementation plan with clear deadlines for bringing those conditions into compliance.

B. Conclusion

The treatment of mentally ill inmates in Nigeria's correctional system is, at its core, a constitutional question. Section 34 of the Constitution guarantees the dignity of every person, not every person who has never committed an offence, or every person who is mentally well, but every person.[99] Systematically denying inmates' mental healthcare and leaving them to deteriorate in neglect goes against this guarantee.

The Nigerian Correctional Service Act 2019 and the Mental Health Act 2021 are real legislative progress. But progress on paper means nothing to a mentally ill person held in a facility with no psychiatrist, no medication, and no legal mechanism compelling the state to provide either. The law has moved. The institutions have not followed.

This article has argued that closing that gap requires more than goodwill, it requires specific legislative changes, real institutional reform, and a conscious decision to treat mentally ill inmates as rights-holders rather than administrative inconveniences. The measure of a legal system's commitment to human dignity is found not in how it treats those it most admires, but in how it treats those it most easily forgets. Nigeria's mentally ill inmates have been forgotten for long enough.

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[98] Mental Health Act 2021, ss 24–25, 46–58.
[99] Constitution of the Federal Republic of Nigeria 1999, s 34.

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SOCIAL MEDIA'S ROLE IN HUMAN RIGHTS ADVOCACY: CATALYST FOR CHANGE OR INSTRUMENT OF HARM

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ABSTRACT

At its essence, human rights advocacy is founded on the pursuit of dignity, accountability, and justice for the most vulnerable- a pursuit that is in constant need of adaptation to the evolving landscapes of power and communication. It is in the evolving structure of communication that the internet emerges in the 21st century. The Internet is painstakingly an enormous expansion to human Right Activism development. Literally, it is considered a useful key or essential to Political participation; human development and social advancement causing massive Internet revolution in the world. In the present day context, where digital communication permeates every aspect of life, the role of digital media platforms now entail public discourse, where accountability can be demanded in real time. Unfortunately, the same digital forum which effortlessly amplifies the cry of justice, is also the forum, which is capable of hampering the rights it protected in the first place. Against this backdrop, this essay is a scholastic attempt at examining and striking a balance between the dual effect of Human Right Advocacy in the 21st century.

Keywords: *Human Rights Advocacy, Social Media, Digital Age, Misinformation, Cyberbullying, Online Activism.*

1.0 INTRODUCTION

In 2013, a 13 year old girl Ochanya Ogbanje, from Benue state, was entrusted to the care of her aunt for education. During her stay with her aunt, she endured multiple sexual intercourse with her aunt's husband and her aunt's son for over five years. This abuse led to a Vesicovaginal fistula (VVF). Subsequently, The National Agency for the Prohibition Hiiiiiof Trafficking in Persons (NAPTIP) brought Ochanya's case to the Federal High Court and the judge dismissed the case on the grounds that the case lacked sufficient evidence. Ochanya suffered severe pain in her last days until she tragically died in 2018.

7 years after Ochanya's death, the social media responded with the hashtag #JusticeforOchanya - a national movement, which in less than two days, attracted over a hundred thousand petition signatures, leading the case to be reopened. However, this same social media platforms that helped Ochanya advocate her rights, served as an efficient tool for the cyberbullying of the judge, spread of untrue facts, and the public branding of the crime suspects as "rapists", without a formal conviction. Ochanya's case is an epitome of the two-fold nature of the digital age -an age characterized by the transformative power of social media which has reshaped and still continues to reshape human rights advocacy globally.

On this note, there is no doubt that social media has a two-fold effect on human rights advocacy: first, it serves as a means of amplification for marginalized groups, as seen in Ochanya's case and secondly, it can operate as an unregulated space where due process can be evaded through cyber bullying, misinformation and defamation. Nonetheless, the need to interrogate this duality is evident in the inadequacy of simply celebrating or condemning the technology. This then begs the question, Quo Vadis?

2.0 CONCEPTUAL HISTORY OF SOCIAL MEDIA IN HUMAN RIGHTS ADVOCACY

Social media is considered a huge development in human civilization,[100] but its application to human rights advocacy has a distinct conceptual history. Before the digital age, human rights advocacy was mainly saddled on the shoulders of a few institutions like Amnesty International and Human Rights Watch, where meticulous report-writing, press releases, and diplomatic channels were the means of advocacy. However, this process, while effective, was typically slow.

[100] AM Richards and SR Sheyigari, 'The Influence of Social Media on Human Rights Activism and Political Participation in North Central' (2024) 8(5) Wukari International Studies Journal

Fortunately, the spread of internet services was gradual but steady, driven by the government's liberalization of the telecommunications sector in 2001. With the entrance of providers like MTN, Glo, and Airtel, mobile internet became increasingly accessible, laying the foundation for social media adoption. In Nigeria, the evolution of social media began with platforms like Hi5 and MySpace which introduced for the first time online profiles and friend networks. However, the platform was short-lived due to slow and expensive internet access. This challenge changed dramatically with Facebook's dominance (2007–2012), which became the go-to platform due to its simplicity and power to connect Nigerians globally.[101]

Interestingly, while the world experienced the evolution of the digital age through these platforms, the channels of human rights advocacy were quietly strengthening. The Arab spring of 2011, was the first global revelation of the catalytic role of social media as a tool for change and justice.[102] With just a post on Facebook from a local witness, an international movement was born which spread across several African countries. Subsequently after the Arab Spring, there have been multiple instances where 'Netizens'[103] have championed a pivotal change via social media. In Nigeria alone, these platforms have been repeatedly utilized through movements like #BringOurGirlsBack, #EndSars and most recently #JusticeForOchanya. However, despite the growing use of these platforms to seek Justice, there has also been a prevalent number of fallacious claims and hate speech.

3.0 SOCIAL MEDIA AS A CATALYST FOR HUMAN RIGHTS ADVOCACY

Building on the evolution of the internet and social media platforms, social media has undeniably strengthened human rights advocacy by acting as a catalyst for change. Firstly, the core impact of social media in raising legal awareness is its ability to democratize information. Legal matters, which were once confined to law books, courtrooms, libraries and law offices, are now more visible and accessible than ever.[104] The digital age, through social media platforms, is characterized by a decentralized communication system between individuals across every part of the world. Thus, this networking system has also aided legal awareness by exposing injustice. In this regard, Social Networking Sites (SNS) function as virtual bulletin boards for public announcements and

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[101] Joyce, 'The History of Social Media in Nigeria' (EasyUssdCode, 18 July 2025) <https://easyussdcode.com/the-history-of-social-media-in-nigeria/>accessed 27 October 2025

[102] Philip N Howard and others, 'Opening Closed Regimes: What Was the Role of Social Media during the Arab Spring?' (2011) SSRN Electronic Journal <https://doi.org/10.2139/ssrn.2595096> accessed 28 March 2026

[103] 'Netizens', The Merriam-Webster Dictionary (Merriam-Webster 2019)

[104] Isaac Ogunsan, 'The Role of Social Media Platforms in Raising Awareness of Legal Rights in the United States' (2024) <https://www.researchgate.net/publication/388179414_The_Role_of_Social_Media_Platforms_in_Raising_Awareness_of_Legal_Rights_in_the_United_States> accessed 27 October 2025

provide an environment where users discuss, exchange, and even debate public issues of interest, as seen in the Ochanya case.

In addition, the formation of online communities where users can network with like-minded people, seek info and participate in discussions can fill in the gap caused by the decline in mass media and come to circumvent it in the process[105]. Subsequently, the social network system has become a significant instrument of advocacy for grassroots activists, concerned citizens, and the mobilization of society, using them as catalysts and driving instruments of social change on a global scale.[106]

Lastly, beyond the use of social media as a platform to amplify human rights advocacy, it has also served as an effective means of protection of the identity of the victims and protesters. This was a key instrument in the success of the #EndSarsProtest, reason being that there were alleged threats from the Nigerian government. Through special features on social media apps, it allows victims and protesters to share their stories while maintaining a degree of anonymity, shielding them from immediate physical reprisal or abuse.

4.0 SOCIAL MEDIA'S ROLE AS AN INSTRUMENT OF HARM IN HUMAN RIGHTS ADVOCACY.

To paint the full picture of the role of social media, it is worth noting that despite social media's catalytic role in human rights advocacy, it still poses a potential instrument of harm to society if not properly used.

The first of the many problems social networking sites face is the rise of fake news and disinformation exchange,[107] which hinders efficient human rights advocacy. Anyone who has access to the internet wields the power not only to amplify authentic information, but also to project defamatory or hate speeches which hamper the right to dignity of another individual. It is unfortunate to note that social platforms operate in a manner which prioritizes sensationalism over accuracy of facts. A lucid example, was during the #EndSARS movement, where there were a lot of manipulated videos trending online, which in turn led to confusion and undermining of credible advocacy efforts. A similar situation came into play, in Ochanya's case, where social media users

[105] Atte Oksanen and others, 'Online Communities Come with Real-World Consequences for Individuals and Societies' (2024) 2(1) Communications Psychology <https://doi.org/10.1038/s44271-024-00112-6> accessed 28th March 2026
[106] AA Rahman, 'Navigating the Digital Age: Social Networking Sites and the Protection of Freedom of Expression' (2024) 5(3) Research Journal in Advanced Humanities 594 <https://doi.org/10.58256/6ay4et86> accessed 11th October 2025
[107] Ibid

prematurely condemned the accused men as rapists even before a judicial verdict was reached, thus blurring the line between activism and defamation.

Secondly, the emergence of social media in the digital age has undeniably brought about what is known as "cyber bullying". Recently, the Nigerian government took down approximately 59 million pieces of content considered "harmful" or "offensive" across social media platforms like TikTok, Facebook, Instagram, and X.[108] These numbers are testament to the alarming rate of cyber bullying alone which occurs in the Nigerian digital space. In recent years, the constant practice of netizens posting nude contents of individuals who are at loggerheads is a classic example of the potential harm which the digital age has brought through social media. While social platforms like X are efficient tools for public discourse and social interaction, they also serve as fertile grounds for embarrassments, making activists and victims targets of online mobs. Essentially, while social media might provide a platform for human rights advocacy, it also wields an unchecked capability of being misused for activities which undermines its main essence.

5.0 STRIKING THE BALANCE AMIDST THE DUAL NATURE OF SOCIAL MEDIA ON HUMAN RIGHTS ADVOCACY

Having understood that the presence of social media in this digital age, has undeniably brought about the democratization of information and amplification of marginalized voices, its dual nature necessitates an intentional and conscious strategy to strike a balance between protecting citizens against harm and empowering advocacy. It's worth noting that striking this balance will take a fair mixture of ethical engagement from citizens and structural reforms by these social media platforms.

At the individual level, responsible usage begins with digital literacy. Digital literacy includes both the technical ability and emotional skill level needed to generate thought and communicate in multiple formats within digital environments.[109] Thus one of the most efficient ways by which Netizens can communicate without impeding on the rights of another, is by assessing the veracity of information before sharing or amplifying it. The spread of misinformation most times are usually as a result of unchecked facts.

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[108] Azeez Kareem, 'Nigeria removes 59m harmful posts, shuts 13.5m social media accounts' The Guardian (Nigeria, 20 August 2025) <https://guardian.ng/news/nigeria-metro/nigeria-removes-59m-harmful-posts-shuts-13-5m-social-media-accounts/> accessed 1 March 2026

[109] Fonseca, Joselia & Borges Tiago, Maria, "Digital Literacy Education and Cyberbullying Combat: Scope and Perspectives" (2024) <https://www.researchgate.net/publication/381091811_Digital_Literacy_Education_and_Cyberbullying_Combat_Scope_and_Perspectives > accessed 30th March 2026

Secondly, at the structural level, social media platforms can aid in balancing the dual nature of social media on human rights advocacy. To achieve this, there must be an effective structure for content moderation. Content moderation must change from opaque, inconsistently applied policies to a transparent system of framework that respects not only the freedom of expression but also the right to dignity of netizens. This is a vital element to balancing the tides of digital activism and online harm, reason being that social media platforms allow the amplification of movements like #JusticeForOchanya to flourish by allowing unfiltered voices to demand accountability. On the other hand, the same absence of oversight permits cyberbullying, defamation, and the spread of misinformation which in turn poses a destruction of the very justice these same advocates seek. It can be argued that if there were effective content moderation within social media platforms, the premature branding of the accused in Ochanya's case as "rapists" before any judicial verdict, could have been struck out or could have been mitigated by effective content moderation.

Additionally, beyond content moderation alone, there is also a pressing need for adequate regulatory laws by government and other independent bodies, to ensure accountability on the path of social platforms. Reason being that social media platforms like instagram, Facebook, Tiktok, make their own rules stating what is allowed and what not, to put in other words, they personally determine what they take down and what they leave. Thus, government agencies must also step in to provide guidance to content moderation while respecting the right to expression. Nigeria for example, through the National Information Technology Development Agency (NITDA) has introduced regulatory codes which mandates that social platforms like X, Facebook and TikTok, conform to national laws.

6.0 CONCLUSION

Gleaning from the classical examples where social media has been both instruments of good and evil, the debate seems not to be one of goodness or badness, rather, it borders more on its nature as a two-edged sword whose impact is dependent on the hands that wield it. The realization of this dual reality, further explains why our usage of the internet, and social platforms must be approached with constant consciousness and responsibility.

To put in other words, it means pausing before you share, and asking whether your acts may impede on the rights of another. The answers you give yourself to these questions will determine whether you are serving as a catalyst to human rights advocacy or whether you are further contributing to its potential as a harm to it.

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ANALYZING THE ONGOING TRANSITIONAL JUSTICE PROCESS IN ETHIOPIA: CHALLENGES AND PROSPECTS

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ABSTRACT

Ethiopia's 27-year EPRDF regime was marked by systematic human rights violations. Following the political transition in April 2018 and the devastating northern conflict (2020-2022), a comprehensive transitional justice (TJ) process was launched. This article critically analyzes the ongoing TJ process, focusing on its legal and institutional frameworks. Employing a qualitative research design, it examines the strengths and weaknesses of the National Transitional Justice Policy, its alignment with the Pretoria Agreement, the African Union Transitional Justice Policy (AUTJP), and the EHRC-OHCHR joint report. The article identifies significant legal gaps, such as the policy's lack of inclusiveness, the contested decision to use a special bench within existing courts rather than a new, independent court, and its inability to effectively address international actors' crimes. It further explores institutional challenges, including the government's perceived lack of impartiality, insufficient funding, ongoing conflicts in Amhara and Oromia, and the credibility crisis of the Ethiopian National Dialogue Commission. The article argues that for the TJ process to be successful, it must be inclusive, establish a truly independent judicial mechanism, and integrate international legal standards. The analysis concludes by proposing recommendations for a more contextually appropriate and effective pathway to justice and reconciliation in Ethiopia.

Keywords: Transitional Justice, Ethiopia, Transitional Justice Policy, National Dialogue, Gross Human Rights Violations

INTRODUCTION

In nations emerging from protracted civil war or dictatorial regimes, confronting a legacy of gross human rights violations is a formidable challenge. Transitional justice (TJ) has emerged as the field dedicated to this task, encompassing the full range of processes and mechanisms societies use to address past abuses, ensure accountability, serve justice, and achieve reconciliation.[1] As the United Nations Secretary-General has articulated, TJ includes judicial and non-judicial mechanisms, with varying levels of international involvement, such as prosecutions, reparations, truth-seeking, and institutional reform.[2]

Ethiopia's recent history is replete with such challenges. After 27 years of the EPRDF's authoritarian rule, a period marked by extrajudicial killings, arbitrary detention, and torture,[3] the political landscape shifted in 2018 with the ascension of Prime Minister Abiy Ahmed. This transition, however, was not a clean break from conflict. The subsequent war in northern Ethiopia (2020-2022), which concluded with the Pretoria Cessation of Hostilities Agreement (COHA), left a devastating trail of human rights abuses.[4] The COHA, alongside the African Union Transitional Justice Policy (AUTJP) and a joint investigation by the Ethiopian Human Rights Commission (EHRC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), explicitly called for a comprehensive TJ process to address these violations.[5]

In response, the Ethiopian government launched a national TJ process, culminating in the adoption of a National Transitional Justice Policy in April 2024 and an accompanying Implementation Roadmap.[6] This article critically examines this ongoing process. It investigates the key legal and institutional challenges that threaten its success, focusing on the newly adopted policy and its alignment with international and regional frameworks. The central research question is: What are the legal and institutional challenges and opportunities influencing the implementation of Ethiopia's ongoing transitional justice process, and how is the process currently progressing?

This analysis is based on a qualitative, doctrinal research design, analyzing primary documents such as the TJ policy, the Pretoria Agreement, the AUTJP, and secondary literature. It also incorporates insights from empirical sources, including interviews with legal scholars and facilitators of public consultations. The article contributes to a critical understanding of Ethiopia's TJ trajectory, offering recommendations for a more effective and victim-centered process.

THE ETHIOPIAN TRANSITIONAL JUSTICE FRAMEWORK: POLICY AND INSTITUTIONS

The current TJ process in Ethiopia is governed by a set of legal frameworks and institutional mechanisms established post-2022. These were designed to guide the country from conflict toward a future of justice and stability, though they have been met with significant scrutiny.

2.1 Legal Frameworks: The Policy and Its Implementation Roadmap

The cornerstone of the process is the National Transitional Justice Policy of the Federal Democratic Republic of Ethiopia, adopted in April 2024. Stemming from Article 10(3) of the Pretoria Agreement, the policy aims to establish a coordinated and inclusive TJ system.[7] It is structured around the four TJ pillars: the right to truth, justice, reparation, and guarantees of non-repetition. The policy includes provisions for criminal accountability, truth-seeking through a dedicated commission, conditional amnesty, and institutional reform.[8]

Following the policy, a detailed Transitional Justice Implementation Roadmap was adopted in July 2024. This roadmap outlines the specific processes, timelines, stakeholder roles, and budgetary requirements for translating the policy's directives into action. It is designed to guide the establishment of new TJ institutions and ensure their coordinated and effective operation.[9]

2.2 Institutional Mechanisms

The policy and roadmap envision a multi-institutional framework. The Ministry of Justice serves as the overall facilitator and coordinator.[10] Beyond existing institutions like the Ethiopian Human Rights Commission (EHRC), which has advocated for accountability,[11] the policy establishes four new bodies: a Special Prosecutor’s Office, a Special Bench within the regular courts to handle trials, a Truth, Amnesty and Reparations Commission, and an Institutional Reform Commission.[12]

The Ethiopian National Dialogue Commission (ENDC), established separately in December 2021, is another critical institution with a mandate to facilitate national consensus. Its success is considered interdependent with the TJ process, though its own challenges have complicated the broader transitional landscape.[13]

3. CRITICAL ANALYSIS: LEGAL AND INSTITUTIONAL GAPS

Despite the structural efforts, the Ethiopian TJ process is plagued by significant legal and institutional gaps that threaten its effectiveness and credibility.

3.1 Legal Gaps and Critiques of the National TJ Policy

The National TJ Policy has faced substantial criticism from legal experts, opposition parties, and civil society for several key flaws:

a) Lack of Inclusivity and Impartiality Concerns: The policy is criticized for being ‘non-inclusive.’ Key stakeholders, including armed groups (e.g., Oromo Liberation Army, Fano) and some opposition political parties, were not meaningfully engaged in its drafting.[14] This lack of participation undermines the process's legitimacy from the outset. Furthermore, the government's dominant role as the initiator, policy-maker, and implementer raises concerns about impartiality. As one legal expert noted, ‘the perpetrator himself cannot be the judge,’ highlighting the inherent conflict of interest given the government's alleged role in the Tigray war.[15]

b) Judicial Mechanism: Special Bench vs. Special Court: A major point of contention is the decision to establish a ‘special bench’ within the existing federal court structure to handle TJ trials, rather than a new, independent special court as recommended by the expert working group.[16] This decision is problematic for two reasons. First, it is perceived as vulnerable to political influence, given the low public credibility and perceived lack of independence of the ordinary courts.[17] Second, it potentially conflicts with Article 79 of the FDRE Constitution, which prohibits the establishment of ‘special’ or ‘ad-hoc’ courts that do not exercise jurisdiction as provided for by law.[18] The decision to place the TJ trials within the regular court structure risks compromising their impartiality in a process that demands the highest level of public trust.

c) Inability to Address International Crimes: The policy's focus on domestic law is a critical gap. The crimes committed during the Tigray war involved foreign forces, particularly Eritrean soldiers, who have been accused of committing war crimes and crimes against humanity.[19] A purely domestic legal framework lacks the jurisdiction and mechanisms to effectively hold such international actors accountable. As one legal scholar argued, ‘seeking justice only through domestic procedures would undermine the process’ and that ‘a matter between two countries is a dilemma that can not be resolved through the internal law of one country.’[20]

d) Overly Broad Temporal and Institutional Scope: The policy’s temporal scope, which extends back to the 1987 constitution, is seen as overly ambitious, conflating the distinct issues of the Dergue and EPRDF eras with the more recent Tigray war.[21] Attempting to resolve these different layers of grievances through a single process is logistically and politically complex. Additionally, the Truth Commission’s mandate is ‘open-ended’ and ‘broadened,’ making it susceptible to being overburdened and politicized.[22]

3.2 Institutional and Practical Challenges

Beyond the legal framework, the TJ process faces severe practical and institutional hurdles.

a) Perceived Government Impartiality: The ruling government's practical impartiality is perhaps the most significant challenge. Critics argue the process is a superficial attempt to 'escape accountability' and deflect international pressure.[23] The government's closure of a UN Human Rights Council investigative team, citing its own TJ process, is cited as evidence of this strategy.[24] The Ethiopian government, as a party to the Pretoria Agreement, is simultaneously the alleged perpetrator and the architect of the justice process, which fatally undermines its credibility.

b) Ongoing Conflict and Instability: The TJ process is being implemented while Ethiopia remains embroiled in ongoing conflicts in the Amhara and Oromia regions. This makes public consultations and the building of trust extremely difficult, as 'peace is essential for transition.'[25] The government's inability to halt violence and protect civilians fundamentally contradicts the goals of the TJ process and questions its feasibility.

c) Institutional Failures and Credibility Crisis: The credibility of key institutions is in doubt. The ENDC, established to foster national consensus, has been criticized for its lack of transparency in commissioner selection, leading to the exclusion of influential groups and a perception of political instrumentalization.[26] Similarly, the previously established Ethiopian Reconciliation Commission 'ended their terms without doing any valuable work.'[27] A lack of sufficient funding also cripples the ability of these institutions to function effectively.[28]

4. CONCLUSION AND RECOMMENDATIONS

Ethiopia's ongoing transitional justice process is at a critical juncture. While the adoption of a national policy and roadmap demonstrates a formal commitment, the process is fundamentally undermined by a lack of trust, political will, and an enabling environment for justice. The current legal framework suffers from critical gaps, including the absence of a genuinely independent judicial mechanism, an inability to address international crimes, and a non-inclusive design. These flaws are compounded by the government's perceived lack of impartiality and the backdrop of ongoing conflict.

For the TJ process to have any chance of success, it must be fundamentally reformed. Based on the analysis, the following recommendations are proposed:

1. Ensure Meaningful Inclusivity: The process must be broadened to include all affected communities including those in Tigray, Amhara, and Oromia and opposition political parties, ensuring they have a genuine voice in shaping and implementing the TJ mechanisms.

2. Establish a Truly Independent Judicial Mechanism: Given the lack of trust in the regular courts, the government should revisit its decision and establish a new, independent special court for TJ

trials. This would likely require a constitutional amendment to Article 79 of the FDRE Constitution, a necessary step to ensure the judicial process is seen as impartial.

3. Integrate International Legal Standards: To address crimes with international dimensions, the process must incorporate international law and experts. A hybrid model, where international and national judges and prosecutors work together, could provide the necessary impartiality and jurisdictional capability to hold all perpetrators accountable, including foreign forces.

4. Prioritize Peace and End Conflicts: The TJ process cannot succeed amidst widespread violence. The government must prioritize resolving the ongoing conflicts in Amhara and Oromia and ensure the withdrawal of foreign forces from Tigray, creating a stable environment for justice and reconciliation to take root.

5. Narrow and Clarify the Mandate of the Truth Commission: To prevent it from being overburdened and politicized, the mandate of the Truth Commission should be clearly defined with a specific and close-ended temporal scope, focusing on achievable goals.

6. Secure Sufficient and Transparent Funding: The government must facilitate the allocation of sufficient budget for the TJ institutions. It should also actively seek and transparently manage financial and technical support from international partners to ensure the process is adequately resourced.

The path to transitional justice in Ethiopia is fraught with obstacles, but it is a necessary journey for the country to heal its deep-seated divisions. The success of this process will ultimately depend on whether the state can transcend its own interests and build a genuinely impartial, inclusive, and accountable framework for justice.

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JUSTICE BEYOND REACH: RURAL WOMEN AND THE STRUGGLE FOR LEGAL PROTECTION IN NIGERIA

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ABSTRACT

Despite constitutional guarantees and international commitments toward gender equality, many rural women in Nigeria remain effectively excluded from meaningful legal protection. Deeply rooted patriarchal structures, discriminatory customs, and socio-economic inequalities continue to undermine the realization of their fundamental rights. This study examines the persistent barriers that prevent rural women from accessing justice and enjoying legal protection in Nigeria. It interrogates how cultural practices, limited access to education and resources, and weak institutional enforcement mechanisms contribute to the marginalization of rural women, particularly in matters relating to property rights, economic participation, and decision-making. Adopting both doctrinal and non-doctrinal research methods, the study analyzes relevant constitutional provisions, statutes, and judicial authorities alongside empirical insights from scholarly literature and socio-economic data on rural women's lived realities. The doctrinal analysis evaluates the adequacy of Nigeria's legal framework for protecting women's rights, while the non-doctrinal approach situates these laws within the broader social and cultural context that shapes their implementation. The paper argues that although legal protections formally exist, structural inequalities and entrenched cultural norms continue to frustrate their practical application, leaving many rural women without effective remedies. It concludes that bridging this gap requires not only stronger legal enforcement but also institutional reforms, community-level awareness, and inclusive policy interventions aimed at empowering rural women and integrating them into decision-making processes. Ultimately, achieving genuine justice for rural women is essential for sustainable development, social equity, and the strengthening of Nigeria's democratic and legal institutions.

Keywords: Rural Women, Access to Justice, Gender Inequality, Legal Protection, Nigeria.

INTRODUCTION

Over the years, Nigeria has become widely recognized as a patriarchal society where the inalienable rights of women are routinely subjected to ridicule, abuse, neglect, and violations. Cultural, religious, and societal norms have entrenched a historical imbalance in power relations between men and women, shaping perceptions and roles in ways that consistently disadvantage women. In many respects, the denial of women's natural rights begins at birth and persists throughout their lives.

In several parts of Nigeria, girls are prematurely and compulsorily betrothed, denied access to basic education, and confined to domestic chores. These early restrictions set the stage for a lifetime of total dependence on men they often do not know. Upon the death of a husband, many widows are further subjected to degrading cultural practices, denied the right to inherit property, and left in misery by customs disguised as respect for the deceased. These practices continue to reinforce the historical neglect of women in Nigeria.

The potential of rural women is especially undermined by entrenched gender inequalities. Discriminatory social norms, restrictive legal frameworks, and exclusionary institutions limit their rights, autonomy, and opportunities. These barriers not only affect their well-being and economic empowerment but also weaken the resilience of food systems.

Despite some progress in recent decades, women still have significantly less access than men to resources such as land, finance, education, and essential farming inputs. On average, women spend twice as much time as men on unpaid domestic and care work, with rural women facing an even heavier burden due to a lack of access to equipment and labor-saving technologies.[1]

According to Research, women also remain underrepresented in rural organizations and institutions at both local and national levels, leaving them excluded from key decision-making processes. Even within households, their voices are often disregarded in financial and business matters, including decisions on the using their earnings. [2]

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[1] C P Adekunle, F O Oke, A K Aromolaran and A S Coster, Gender's Time Utilisation Pattern Among Rural Dwellers in Ogun State, Nigeria (Nigerian Journal of Rural Sociology, 2022) https://ageconsearch.umn.edu/record/347407 accessed 24 August 2025.

[2] A N A Idike, Women Empowerment and Rural Development in Nigeria (on ResearchGate, date of online version unknown)https://www.academicexcellencesociety.com/women_empowerment_and_rural_development_in_nigeria.pdf accessed 24 August 2025.

CONCEPTUAL AND THEORETICAL FRAMEWORK

Justice can be viewed through two lenses: formal justice, which emphasizes equality before the law, and substantive justice, which addresses real-life differences by considering specific context and outcomes. Legal protection contains constitutional guarantees, human rights obligations, and practical access to remedies. However, for **rural women,** defined as women in non-urban areas with limited resources, the socio-economic realities of poverty, illiteracy, and cultural barriers often render such protection ineffective.

This study draws on three theoretical frameworks. Feminist Legal Theory, which critiques how patriarchal structures influence both lawmaking and enforcement, often to the detriment of women. Access to Justice Theory highlights systemic barriers beyond the courtroom, such as cost, distance, and lack of awareness. Finally, a Human Rights-Based Approach situates Nigeria within its international commitments, stressing that the protection of women is not merely domestic policy but a binding global obligation.

LEGAL FRAMEWORK: THE LEGAL PROTECTION THE LAW OFFERS TO PEOPLE IN NIGERIA.

Nigeria, being a democratic country, provides for equal protection of law; this is evidenced by section 14 of the CFRN 1999 which provides that the country shall be based on the principles of democracy and **social justice.**[3] Matters regarding women's rights fall under the concurrent legislative list. This means for adequate protection, both the National Assembly and State Houses of Assembly have the power to legislate on women's rights.

Through the constitution, the law offers legal protection to women, as **Section 34** provides that every **individual** (including women) shall have the right to human dignity. Not only that, section 42 (1) (a) provide that a person shall not be subjected (either expressly or by or in the practical application of) to any law in force in Nigeria, in which another sex is not subjected to.[4]

In addition, the Child's Rights Act 2003 gives the right to freedom from discrimination based on sex.[5] It also provides that any female child who becomes pregnant before the completion of her education has the right, after delivery, to continue with her education on the basis of her individual ability. [6] Also, every child regardless of their gender has the right

[3] The Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 14.
[4] Ibid S. 34 and 42 (1) (a)
[5] Child Rights Act (2003) s.10
[6] Ibid s. 15(5)

to **free** compulsory and universal basic education and it shall be the duty of the government to provide such.[7] It also prohibits child marriage and child betrothal. [8]

Another law that protects women is the Violence Against Person's Act (2015), even though it doesn't only protect women but the general public, it protects women against forceful ejection from home, female circumcision, forced financial dependence, spousal battery, harmful widowhood practices, Female Genital Mutilation[9] etc. It must be noted that despite the wide range of protection this act offers, it has not been domesticated in all states thereby limiting the legal protection women at the grassroot level.[10]

On an international view, Nigeria is also a party to many international and regional conventions which have been ratified based on the constitution's requirement.[11] Some include; The Convention on the Elimination of All forms of Discrimination against Women, The African Charter on Human and People's Right, as well as the Rights of women in Africa, known as the Maputo Protocol and all of these ensure that the laws in Nigeria are conformed to providing legal protection to women

Judicial decisions, further illuminate the doctrinal landscape, and they have helped in protecting women legally especially in places where there is a gap in the law, for example the ground breaking case **Ukeje v Ukeje**[12] revolutionizes the treatment of women regarding inheritance in the Igbo culture, as the court declared the Igbo Customary law which prevented female children from inheriting property of their deceased fathers to be null and void. Also, the case of **Anneke v Nweke**[13]**,** where the Court invalidated a custom denying a widow the right to inherit her late husband's property and declared it ultra vires. The case **Mojekwu v. Mojekwu**[14] also serves as a land mark decision regarding Women's Rights as it declared the Oli-Ekpe, custom which prevented women from inheriting property in certain Igbo communities to be unconstitutional.

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[7] Ibid s. 15
[8] Ibid s. 21-23
[9] Violence Against Persons (prohibition) Act, 2015 part 1
[10] TG Obagboye 'Protecting Women's Rights in Nigeria in the 21st Century: Challenges and Prospects' (2020) African Journal of Law and Human Rights (AJLHR) 4(1) 112 https://ezenwaohaetorc.org/journals/index.php/AJHR/article/download/1002/1005 accessed 21 August 2025.
[11] Ibid (Constitution) s. 12
[12] (2014) 11 NWLR (PT.1418) 384
[13] (2014) - LD- SC-25
[14] (1997) 7 N.W.L.R 283

However, despite the vast range of legal protection offered to women, why is justice still beyond reach especially for women not in urban cities in Nigeria and what are the gaps that cause this?

ENFORCEMENT GAPS HINDERING JUSTICE FOR RURAL WOMEN IN NIGERIA

It is no news that Nigeria has progressive legal frameworks in place that guarantees women's rights, however rural women remain largely excluded from this protection. The issue lies not in the absence of laws but in the persistent gaps that undermine their enforcement, leaving many women with rights in theory but no action in practice. Against this backdrop, through a survey, we have gathered four major enforcement gaps standing out as critical impediments to realizing substantive justice for rural women in Nigeria:

1. **Limited Adoption and Implementation:**

The first gap lies in the fragmented domestication and implementation of policies and statutes. The Violence Against Persons (Prohibition) Act of 2015, for instance, applies only in the Federal Capital Territory unless adopted by states. While some states have domesticated it, many rural communities remain outside its reach[15]. Even where laws exist, institutions such as family courts, shelters, and victim support services are either absent in rural areas, or concentrated in urban towns.

2. **Poor Law Enforcement and Institutional Constraints:**

Police officers and local courts often operate with limited resources. They lack training in gender-sensitive cases and it procedures. In some cases, outright corruption and bias are the order of the day, discouraging women from reporting violations. Non-governmental organizations reports of women being turned away from police stations or pressured into informal settlements that deny them justice are not unheard of (FIDA Nigeria, 2018; WACOL, 2020).[16]

3. **Customary and Religious Resistance:**

The coexistence of statutory, customary, and Sharia systems often results in conflicts of law. For instance, while the Constitution guarantees the right to freedom from discrimination in

[15] VAPP Tracker – Partners West Africa Nigeria (Partners Nigeria West Africa, 2025) https://www.partnersnigeria.org/vapp-tracker/ accessed 24 August 2025.

[16] Obnoxious Cultural Norms against women: WACOL pushes for replicating Enugu's shining light across Nigeria (Daily Post Nigeria, 13 September 2021) https://dailypost.ng/2021/09/13/obnoxious-cultural-norms-against-women-wacol-pushes-for-replicating-enugus-shining-light-across-nigeria/ accessed 24 August 2025.

section 42, customary practices still exclude women from inheriting property. Despite the Supreme Court decision in Ukeje v. Ukeje (2014) affirming women's inheritance rights, customary courts and local leaders in rural communities continue to enforce male-only inheritance regimes. The persistence of such practices illustrates the division between constitutional supremacy and entrenched patriarchal norms [17]

4. **Structural Exclusion of Rural Women:**

Finally, structural exclusion compounds the gap. High illiteracy rates, lack of awareness of legal rights, and poverty mean many women cannot activate the protections available to them. Even when these women are aware, barriers such as distance to courts or the cost of litigation processes keep justice out of reach .[18]

NON-DOCTRINAL ANALYSIS

Although Nigerian women are constitutionally guaranteed equality and protected under statutes like the Violence Against Persons (Prohibition) Act and international conventions such as CEDAW, for rural women these rights remain largely aspirational. Their realities are determined less by statutory law than by cultural norms, economic exclusion, and weak institutions. This study bridges the gap between "law in the books" and "law in action" by combining legal analysis with survey evidence from 17 rural women engaged in farming, trading, artisan work, civil service, and household duties.

Respondents were predominantly young (82.4% aged 15–24) and single (88.2%), with most working in the informal sector as traders (41.2%) and artisans (17.6%), where labor protections are minimal. Awareness of rights was relatively high (88.2%), yet only 29.4% knew where to seek redress. Common violations included domestic violence (29.4%), denial of inheritance (29.4%), land disputes (23.5%), workplace discrimination (17.6%), and child marriage (5.9%). Despite this, 70.6% did not pursue justice, discouraged by stigma (50%), financial constraints (25%), and lack of awareness (25%). Those who sought help encountered fragmented pathways police, courts, family, NGOs, or community leaders

[17] Legal Pluralism and Marriage in Nigeria: A Structure for Denying Rights to Women (Folashade Rose Adegbite, University of Ghana Law Journal vol XXXI 110, April 2023) https://www.researchgate.net/publication/370268300_LEGAL_PLURALISM_AND_MARRIAGE_IN_NIGERIA_A_STRUCTURE_FOR_DENYING_RIGHTS_TO_WOMEN accessed 24 August 2025.

[18] Sexual and Gender Based Violence: The Imperative of an Effective and Coordinated Response Mechanism in Nigeria (CLEEN Foundation blog, 24 May 2018) https://cleen.org/2018/05/24/sexual-and-gender-based-violence-the-imperative-of-an-effective-and-coordinated-response-mechanism-in-nigeria/ accessed 24 August 2025.

with inconsistent outcomes. Corruption and cultural/family pressures (70.6% each) were the strongest barriers, reinforcing distrust: only 23.5% trusted the legal system.

Yet, respondents unanimously endorsed reforms: grassroots legal awareness in local languages, affordable legal aid, cultural shifts away from patriarchy, improved education, and transparent judicial processes. Their views confirm that passing laws is insufficient; meaningful protection requires dismantling economic, social, and institutional barriers that silence women. Until targeted interventions align customary practices with constitutional guarantees, rural women will continue to experience equality only on paper rights in theory but fragile in practice.

BRIDGING THE GAP: TOWARDS REAL LEGAL PROTECTION

Bridging the gap between formal law and actual justice for rural women needs community-based delivery, affordable solutions, and institutions that reach the grassroots. Legal literacy must shift from occasional awareness programs to permanent, community embedded assistance. The Sierra Leone community paralegal model shows how trained non lawyers, supported by qualified lawyers, can resolve daily disputes, reduce bureaucratic abuse, and turn rights into practical remedies; importantly, they operate in local languages and spaces that rural women actually use. [19] Nigeria can adopt this model by partnering NGOs with traditional leaders and women's associations to place paralegal desks in markets, health centers and agricultural cooperatives.

Another vital area is on affordability and settlement, Nigeria's Legal Aid Council (LAC) remains a statutory gateway but is chronically under-resourced relative to need, leaving women in rural areas effectively unserved. Empirical reviews of LAC highlight funding, staffing and geographical coverage gaps that blunt its mandate. [20]Scaling community mediation alongside LAC, through accredited mediators and paralegals linked to state Multi-Door Courthouses can deliver faster, cheaper outcomes on maintenance, inheritance, land use and intimate-partner violence, while reserving litigation for hard-rights violations.

Also, institutions need to reach people where they are. East African examples show that bringing courts and related services directly to communities through mobile or traveling sessions reduces travel time and costs, clears case backlogs and increases witness

[19] Vivek Maru, 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide' (2006) 31 Yale Journal of International Law 427.

[20] Adewale Afolayan and Joy Ekuwa Ibidun, 'Limitations of the Legal Aid Council of Nigeria: Challenges to Access to Justice' (2020) International Journal of Law and Clinical Education (IJOLACLE).

participation. Research from Uganda on access to justice reveals that people consistently want services closer to home (community awareness programs, alternative dispute resolution, and local service delivery); innovations that respond to these needs "mobile justice" work better than centralized approaches. [21]Nigeria could test regular mobile court sessions (magistrate and customary courts) scheduled around market days, including victim support and interpretation services on location.

Finally, successful models from other countries provide practical blueprints. South Africa's research on access to justice shows how well coordinated, government-funded legal services supported by supervised law graduate community programs and legal clinics can reach poor and rural communities, ensuring quality control and extending beyond cities are highlighted as essential design features. [22]Kenya's Huduma Centers demonstrate the benefits of centralized, multiple service locations: academic studies link Huduma with better service quality and public satisfaction. [23]A Nigerian version "Justice Huduma" could bring together police officers trained in gender based violence, LAC personnel, alternative dispute resolution staff, civil registration services, and paralegal assistance in Area Council or Local Government headquarters, combined with regular mobile court schedules. Connecting all these elements community paralegals, expanded alternative dispute resolution, mobile court sessions, constitutionally compliant customary courts, and integrated service centers represents the most viable approach to bring genuine legal protection within reach of rural women.

CONCLUSION

The plight of rural women in Nigeria illustrates how deeply entrenched patriarchal structures, discriminatory norms, and restrictive legal systems continue to deny women their fundamental rights. From birth to death, many women face systemic barriers that confine them to dependency, silence their voices, and strip them of opportunities for self-actualization. While progress has been made in improving access to education, resources, and participation, these efforts remain insufficient in addressing the deep-rooted inequalities that undermine women's autonomy and economic empowerment.

[21]Ruth Kigozi and others, 'Innovations in Access to Justice in Uganda' (2024) 20 Journal of Social Sciences 45.
[22] David Holness, 'Improving Access to Justice through Law Graduate Post-Study Community Service in South Africa' (2020) 23 Potchefstroom Electronic Law Journal (PER/PELJ) 1.
[23] Peter Orare and George Kilinge, 'Strategic Role of Huduma Centre Initiatives on Public Service Delivery in Kenya' (2017) 19(9) IOSR Journal of Business and Management 35.

Rural women, who play a crucial role in sustaining households and food systems, are particularly vulnerable to marginalization. Their exclusion from decision-making spaces, denial of inheritance rights, and overwhelming burden of unpaid labor weaken not only their personal development but also national growth and social stability. With crises such as conflict and climate change intensifying their hardships, the urgent need for stronger legal protection, gender-sensitive policies, and inclusive institutions cannot be overstated.

True justice and equality for rural women in Nigeria will remain beyond reach until deliberate efforts are made to dismantle oppressive structures and ensure that the rights of women are respected, protected, and enforced at every level of society.

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ISREAL, IRAN: INTERROGATING LIMITS OF ARTICLE 51 OF THE UN CHARTER IN SHADOWS OF NUCLEAR THREATS

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Abstract

This article examines the legal architecture of the prohibition on the use of force under the UN Charter and evaluates whether Israel's strike on Iran can be justified within, or as an evolution of, Article 51's self-defense framework. While the Charter system traditionally restricts unilateral force to narrow circumstances involving an actual armed attack, the article argues that existential threats, particularly those involving declared intentions of annihilation combined with nuclear capability, may warrant a more flexible interpretation of 'imminence'. By contrasting Israel's situation with controversial precedents such as the 2003 Iraq invasion and Russia's 2022 attack on Ukraine, the article contends that preventive force, though legally fraught, may be justified where a State faces credible, explicit, and long-standing threats to its survival.

1. INTRODUCTION

Modern international law on the use of force emerged from humanity's darkest moments, described by the renowned international relations theorist, Alexander Wendt, as "the 'Hobbesian anarchy' (the 'war of all against all') in which actors operate on the principle of 'kill or be killed', which is explained as a self-help system"[1]. The twentieth century proved that unregulated force could annihilate entire societies, pushing States to adopt the United Nations (UN) Charter's strict prohibition on the use of force and its narrow exceptions[2]. The 1919 League of Nations Covenant and the 1928 Kellogg-Briand Pact failed to prevent World War II. The introduction of Article 2(4) of the UN Charter aimed to close the door on military conquest, while Article 51 preserves only a tightly confined right of self-defense. But in recent decades, States have begun prying that door open again[3]. Claims of "anticipatory" or "preemptive" self-defense, which used to be fringe arguments, are increasingly invoked to justify military action before any armed attack occurs[4]. The pattern has exacerbated this debate: the 2003 invasion of Iraq by the allied forces of the USA, UK, and Australia[5], Russia's assault on Ukraine launched in 2022[6], and now the joint US–Israel strike on Iranian territory[7] all rely on the idea that future threats can excuse present force. This shift raises an important question: if States can decide for themselves when a threat is "imminent," does the Charter's collective security system still mean anything? This article looks at the legal basis of self-defense, examines whether anticipatory force is lawful, and examines the military strike on Iran within the wider pattern of preventive uses of force. It proposes the need for a more context-sensitive

[1] Sonja M. Amadae, 'Hobbesian Anarchy' Chapter (pp. 153–174). In Sonja M. Amadae (ed.) *Prisoners of Reason: Game Theory and Neoliberal Political Economy* (Cambridge: Cambridge University Press, 2016), the summary section.

[2] UN Charter, arts. 2(4) and 51.

[3] Ibid. p. 2: "The military actions by the United State, the UK and Australia against Iraq in 2003 provides an example of actions prohibited by art. 2(4) of the UN Charter".

[4] Onur Senturk, 'The Legal Implications of Preemptive Strikes Under International Law: A Case Study of the Israel-Iran Tensions' *Vision Factory* (16 August 2024), available at https://www.visionfactory.org/post/the-legal-implications-of-preemptive-strikes-under-international-law-israel-iran-case-study?utm_source=chatgpt.com, accessed 24 March 2026.

[5] Christian Henderson, *The Use of Force and International Law* (Cambridge University Press, 2018), p.1, para.1.

[6] Robert Person and Michael McFau, 'What Putin Fears Most' (April 2022) 33(2) *Journal of Democracy,* pp. 18-27. Available at https://www.journalofdemocracy.org/articles/what-putin-fears-most/, accessed 24 March 2026.

[7] Nicholas Vinocur, 'Israel warns of 'military option' against Iran as Netanyahu embraces Trump' Politico (Europe, 26 February 2025), available at https://www.politico.eu/article/israel-benjamin-netanyahu-donald-trump-gideon-saar-politics-war-foreign-policy/, accessed on 24 March 2026.

understanding of imminence and preventive self-defense, arguing that the time has come for the Charter's rules to be adaptive.

2. THE LEGAL ARCHITECTURE OF THE PROHIBITION ON FORCE

Article 2(4) of the UN Charter, as read with Article 1 of the same, declares that in pursuit of the purpose to develop friendly relations and to maintain international peace and security, among others, the UN and its member States "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the [p]urposes…" Clearly, this provision **prohibits both the threat and use of force**, and it is referred to as "the cornerstone provision of the UN Charter"[8]. The International Court of Justice (ICJ) has repeatedly affirmed the status of this provision as a cornerstone of the Charter system and a rule of customary international law[9]. Apparently, the purpose of this provision of the Charter is to prevent unilateral recourse to war and to channel disputes into peaceful mechanisms[10]. The general rule prohibiting military force allows for certain exemptions[11]. Thus, the breadth of Article 2(4) reflects the Charter's structural design, which projects that unilateral force is the exception, not the rule. It is without surprise therefore that courts have always interpreted restrictively any deviation from this principle.

Article 51 of the Charter permits self-defense, stating that "[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security" requiring that such defensive measures taken be immediately reported to the UN Security Council". The language of Article 51 asserts an inherent retaliatory right of any State or a collective of States in an event of an armed attack[12]. The ICJ has consistently interpreted the phrase "if an armed attack occurs" as

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[8] James L. Brierly, *The Law of Nations* (6th edn., Oxford University Press, 1963), p. 414; Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community* (Martinus Nijhoff, 2009).
[9] Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*). Merits, Judgment. I.C.J. Reports 1986; Corfu Channel Case (*UK v Albania*) (Merits) [1949] ICJ Rep 4; North Sea Continental Shelf Cases (*Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*) (Merits) [1969] ICJ Rep 3; Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, ICJ Reports 1985, p 13.
[10] *Supra* n.2, art. 1(1).
[11] *Supra* n.9, p.92, para.193.
[12] Ibid.

establishing a high threshold. In the *Nicaragua Case,*[13] for example, the Court held that only the gravest forms of force, those comparable in scale and effects to conventional military operations, constitute armed attacks and that lesser uses of force, or indirect support to armed groups, do not trigger Article 51. Subsequent cases, including the *Oil Platforms Case*[14] and the Armed Activities on the *Territory of the Congo Case*[15], reaffirmed this restrictive approach.

The "Caroline" incident, an 1837 raid by British Canadian militia across the Niagara River border to sink an American steamboat being used by Canadian insurgents, is well-known to many international law scholars and practitioners[16]. In that case, an expedition of Canadian militia, under the authority of Great Britain, crossed the Niagara River to the U.S. shore, where the American steamer *Caroline* was docked. Rebels fighting the Canadian government were encamped along the border between Canada and the U.S. The vessel had been used by sympathetic Americans to transport supplies and arms to the Canadian rebel group. The Canadian forces set the *Caroline* ablaze. Mutual diplomatic accusations and retaliations ensued and border tensions ran high for years. United States Secretary of State, Daniel Webster's, resulting correspondence with British representative Lord Ashburton is often cited today as a key authority on customary international self-defense standards.

While the International Court of Justice (ICJ) has consistently refused to endorse a doctrine of preventive or preemptive self-defense, the 1837 *Caroline incident* is frequently invoked to justify anticipatory self-defense. Yet the standard articulated by U.S. Secretary of State Daniel Webster, that necessity must be "instant, overwhelming, leaving no choice of means, and no moment for deliberation", is exceptionally narrow, presupposing an imminent and unavoidable attack. Modern scholarship remains divided on whether anticipatory self-defense forms part of customary international law, with some arguing that preventive force aimed at distant or speculative threats has no basis in law[17].

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[13] *Supra*, n.9.
[14] (Islamic Republic of Iran v. United States of America), Oil Platforms (Islamic Republic of Iran v United States of America) (Judgment) [2003] ICJ Rep 161.
[15] (Democratic Republic of the Congo v. Uganda) (Judgment) [2005] ICJ Rep. 168.
[16] Matthew C. Waxman, 'The Caroline Affair in the Evolving International Law of Self-Defense' (AUGUST 28, 2018) *Lawfare*. Available at https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3511&context=faculty_scholarship, accessed on 25 March 2026.
[17] Bothe Michael, 'Terrorism and the Legality of Pre-emptive Force' (2003) 14(2) *European Journal of International Law*, pp. 227 – 240; Council of Europe, Parliamentary Assembly, 'The concept of preventive war and its consequences for international relations' (8 June 2007) Doc 11293 ("de PUIG Report") available at https://pace.coe.int/files/11677/html, accessed on 27 March 2026.

3. ASSESSMENT OF ISRAEL'S STRIKE ON IRAN

There is no publicly available evidence that Iran launched an armed attack against Israel at the time of the strike. This may be, and has been, used to advance the argument that Israel's military action fails the *Caroline test*. For example, the UN experts characterised the US/Israel joint "'military operation' against Iran as 'entirely illegal under international law' and that it 'constitutes an act of aggression'."[18] The thesis of this article, which is that there should be room to enlarge or shrink the scope of Article 51 of the UN Charter based on circumstances, disagrees with this finding by experts under the United Nations Human Rights (UNHR) for the following reasons.

The Israeli government has reportedly asserted that the strike was a "preventive" measure intended to address an imminent and inevitable threat posed by Iran's efforts to develop a nuclear weapon[19]. A 'preventive' attack is defined as "an armed conflict initiated in the belief that military conflict, while not imminent, is inevitable, and that to delay would involve greater risk"[20]. Supported by this definition, my thesis is that the right to exist should perch above what I think is a mechanical approach of preserving the restrictive approach. A dead nation will not be available to assert its right to exist. If a nation awaits a nuclear attack and perishes without defending itself when it had a chance to do so, can that reflect justice? I submit that it cannot.

I reckon that Iran's enrichment of nuclear and reported development of nuclear weapons should, in itself, not constitute a threat or ground to launch an attack against it in the name of self-defense. Iran's enrichment of nuclear foe whatever economic or military purposes may be argued to fall within its right to a wider principle of self-determination, which is expressly established in Articles 1 and 55 of the UN Charter. This wider principle recognizes that "all peoples have the right to freely determine their political status and pursue their economic, social, and cultural development, including internal rights to self-governance and external rights to sovereign statehood, free from alien subjugation and foreign domination"[21].

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[18] UN Special Procedures, 'UN experts denounce aggression on Iran & Lebanon, warn of devastating regional escalation' (12 March 2026) available at https://www.ohchr.org/en/press-releases/2026/03/un-experts-denounce-aggression-iran-and-lebanon-warn-devastating-regional, accessed on 27 March 2026.

[19] Ori Goldberg, 'The Real Reason Israel Attacked Iran' *Al-Jazeera* (15 June 2025). Available at https://www.aljazeera.com/opinions/2025/6/15/the-real-reason-israel-attacked-iran, accessed on 27 March 2026.

[20] Office of the Chairman of the Joint Chiefs of Staff, *DOD Dictionary of Military and Associated Terms* (Washington DC: The Joint Staff, January 2021), as amended in 2022.

[21] Aureliu Cristescu, Special Rapporteur, 'The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments' (1981) UN Doc E/CN.4/Sub.2/404/Rev.1.

That as it may be, in judging whether Israel's preventive attack on Iran's nuclear threat is justified or not, it is very important to consider "the historical animosity expressed by successive Iranian governments, who have consistently denied the existence of the State of Israel and have sought its destruction, referring to it as the 'Zionist regime'"[22]. In an annual speech in support of the Palestinians, renewing threats against Israel, Iran's former supreme leader, the late Ayatollah Ali Khamenei, made a statement on Friday, 22 May 2020, calling Israel a "cancerous tumor" that "will undoubtedly be uprooted and destroyed"[23]. Before this statement, former Iranian president Mahmoud Ahmadinejad is reported to have remarked that the eradication of Israel is a fundamental tenet of Iran's ideology[24]. A day after declaring that Israel "should be wiped off the map," President Ahmadinejad reportedly incited students to scream "death to Israel" at a government-sponsored conference called the "World without Zionism"[25]. This anti-Israel hostility has been consistently professed and preserved over the years by the Iranian regime[26].

It is my considered argument, therefore, that any argument that Israel's references to Iran's long-term threats backed by nuclear development do not satisfy the Article 51 threshold is optionally blind to the reality of a real threat and the true spirit of the law that allows for self-defense.

4. PREVENTIVE FORCE AND THE SCOPE OF THE CHARTER SYSTEM

While opposing views may argue that Israel's justification echoes an attempt to broaden self-defense beyond the legal limits of Articles 2(4) and 51 of the UN Charter, this article advances the argument that the need to survive serious threats of annihilation frantically justifies pre-emptive self-defense as a nation that is dead in the literal sense cannot act against an actual attach that it would have waited for. The use of the 2003 U.S. invasion of Iraq, which was also premised on alleged weapons of mass destruction and hypothetical future threats,

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[22] Roger Motaze, 'Preventive strikes and International Law', *Atlas Institute for International Affairs* (20 June 2025), available at https://atlasinstitute.org/preventive-strikes-and-international-law/, accessed on 27 March 2026.

[23] Amir Vahdat and Jon Gambrell, 'Iran leader says Israel a 'cancerous tumor' to be destroyed' AP Newsroom (22 May 2020), available at https://apnews.com/article/a033042303545d9ef783a95222d51b83, accessed on 27 March 2026.

[24] Trita Parsi, 'Under the Veil of Ideology' *Middle East Research and Information Project* (9 June 2006). Available at https://www.merip.org/2006/06/under-the-veil-of-ideology/, accessed on 27 March 2026.

[25] Gregory H. Stanton, 'Taking Iran's Threats of Genocide Against Israel Seriously' Genocide Watch (22 June 2025), available at https://www.genocidewatch.com/single-post/taking-iran-s-threats-of-genocide-against-israel-seriously, accessed on 27 March 2026.

[26] Udi Evental, 'Why the Islamic Regime in Tehran calls for the Destruction of Israel?' *Institute for Policy and Strategy* (17 February 2019). Available at https://www.runi.ac.il/en/research-institutes/government/ips/publications/spotlight-13-2-19, accessed on 27 March 2026.

should be distinguished from the present threat faced by Israel because the U.S. claims were later discredited, while the blatant declaration by the Iranian regime's leaders cannot be objectively dismissed or wished away. Neither can Israel simply ignore these threats without committing fatal negligence, which, unfortunately, the nation could possibly not live to regret. Russia's 2022 invasion of Ukraine, which similarly invoked speculative security concerns, including potential NATO expansion, may similarly be distinguished from Israel's concern. This is particularly so because the mere presence of NATO closer to the Russian territory without a full declaration by NATO of its intention to annihilate Russia may not impose the kind of threat requiring pre-emptive self-defense. Therefore, while the 2003 Iraq fate and the 2022 Ukraine fate precedents illustrate the dangers of allowing States to unilaterally redefine 'imminence' of threat, Israel's interpretation of the imminent threat was not merely abstract.

6. CONCLUSION

The UN Charter framework governing the use of force was crafted to constrain unilateral military action and preserve international peace, but its rigid thresholds do not always account for modern threats involving nuclear capability and explicit declarations of intent to destroy another State. While traditional doctrine rejects preventive or pre-emptive self-defense absent an actual armed attack, Israel's situation, marked by decades of open hostility from Iran's leadership and the prospect of nuclear armament, presents a qualitatively different security dilemma. Unlike the discredited claims underpinning the 2003 Iraq invasion or Russia's speculative justifications in 2022, Israel faces a declared and ideologically entrenched threat to its existence. In such circumstances, a strictly mechanical application of Article 51 risks rendering the right of self-defense meaningless for States confronting existential danger. The article, therefore, concludes that the Charter system must be interpreted with sufficient flexibility to allow preventive action where credible, explicit, and imminent threats of annihilation exist, lest international law fail in its fundamental purpose of safeguarding the survival of States.

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THE CHALLENGES FACED BY FEMALE JOURNALISTS IN THE MEDIA WORK PLACE

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ABSTRACT

This study examines the challenges faced by female journalists in media workplaces in Zambia. Despite the increasing participation of women in journalism, many continue to experience gender-based discrimination that limits their professional growth and equal participation in the media industry. The research highlights key challenges such as financial inequality, limited access to leadership positions due to the glass ceiling, masculine newsroom cultures, and sexual harassment. It further explores how historical, cultural, and social factors have contributed to the persistence of discriminatory practices against women in the workplace.The study analyzes relevant national and international legal frameworks, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Employment Code Act, and the Gender Equity and Equality Act, which seek to promote equality and protect women from discrimination. However, despite these legal protections, many female journalists continue to face unequal pay, restricted career advancement opportunities, gender stereotypes, and unsafe working environments. The research concludes that gender discrimination remains deeply embedded within the Zambian media industry and continues to affect the professional experiences of female journalists. It emphasizes the need for stronger enforcement of existing laws, institutional reforms, and changes in workplace culture to promote equality, protect women's rights, and create a more inclusive media environment.

Keywords: *Female Journalists, Gender Discrimination, Media Workplace, Zambia*

1.0 INTRODUCTION

Journalism has practically become a feminine profession across the world however female journalists and women working in other sectors of employment must deal with specific threatening environments that restrict their work.[1] From gender discrimination at work, sexist and misogynist comments, sexual violence and gender based killings of women these threats tend to be invisible and are not recognized as undue restrictions of their human rights by most colleagues, the media, and state authorities.[2]Female journalists in Zambia, like the rest of the world face a number of gender based challenges. This research discusses challenges faced by female journalists in the media work place.

2.0 GENDER DISCRIMINATION AT WORK

Discrimination against women is defined under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[3]Female journalists primarily entered journalism to appreciate female audiences in the nineteenth century and were expected to write about topics to be considered of interest by women, such as food, fashion, family and furniture. Today, global research shows under representation at all levels of news organizations, with a glass ceiling among many other barriers preventing women from rising to the top positions. Although in recent years more and more women have been practicing journalism, social norms and gender stereotypes still present an enormous challenge to the ability of women to begin and peruse a career in journalism on equal terms with men.[4]

Barriers to women's ability to climb the cooperate ladder in the media industry and negative or gender-blind and biased attitudes in the media are varied.[5] They include, women's low status in society, traditional and cultural expectations, heavy workloads, double shifts of working at

[1]E Lanza, *Women Journalists and Freedom of Expression, Discrimination and gender-based violence faced by women journalists in the exercise of their profession* (The Swedish International Development Cooperation Agency 2018) 10.
[2]Ibid.
[3]*Article 1 of the Convention on the Elimination of all Forms of Discrimination against Women.*
[4]E Lanza, *Women Journalists and Freedom of Expression, Discrimination and gender-based violence faced by women journalists in the exercise of their profession* (The Swedish International Development Cooperation Agency 2018) 16.
[5]R Nyondo, *Career Choices for female Journalism Student: A case in Zambia* (UNZA Press 2005) 3.

home and office , and their absence in positions of formal authority or decision making.[6]Gender discrimination in different institutions including media houses as observed today derives its roots from the time society begun differentiating roles between women and men. These roles were defined according to societal beliefs and customs. The customs and beliefs became the norm by adoption and compliance. Society started to perceive men's roles as being superior to those of women and the status of men was given a superior position. The superior status ensured men's dominance in all areas of human activity with exception of maternal roles of carrying a baby for nine months.

The colonial governments in Sub-Saharan Africa made it worse. Females were discriminated against in the education system and society accepted it. Interviews with older women in a literacy class reveled that females who pursued any formal education were even labeled as "prostitutes."[7]The colonial system gave education and employment to males, therefore, men became responsible for policy formulation and drafting rules and regulations. In the process, their priorities did not consider women's interests. The colonial governments, by empowering men with education and employment, automatically positioned them as the sole bread earners of the families. The important role that a woman held in the home was diminished more and more. This masculine culture reflected in society in general also penetrated media houses and other institutions and other social sectors.

3.0 THE CHALLENGES OF FEMALE JOURNALISTS IN MEDIA WORK PLACES

Gender discrimination generates inequalities between men and women. More and more women find that they have to prove themselves in their work places so that they are seen as equals to their male counterparts. Below are some of the challenges that female journalists encounter in their work places.

4.0 FINANCIAL INEQUALITIES

Financial inequality is where women earn a lower wage than men although they share identical professional qualifications and credentials.[8]In reality globally female journalists are paid less as compared to male colleagues in some media houses, and they work under huge social pressure and mobility problems. This is because journalism has been observed to be organized on masculine values notwithstanding the rise in the number of women entering the field.

[6]Ibid.
[7]Ibid.
[8]LT Dibetso, *Airing out the Dirty laundry, Gender discrimination in Zambian media workplaces* (Fesmedia Africa 2015) 12.

Recognition of their work and better wages are needed to encourage female journalists to stay in this profession. It can be opined here that some rules or practices appear on the surface to be neutral but in practice lead to exclusions, which excludes some women from certain opportunities in employment.[9]

'The Employment Code Act' under Section 5 (4) explicitly provides that "An *employer shall pay an employee equal wages for work of equal value.*"[10]Furthermore, Article 16 (1) (b) of the *'International Labor Organizations' Fundamental Conventions'* (ILO) under the equal remuneration Convention provides for equal remuneration for men and women workers.[11]In addition, Article 11 (d) of CEDAW Provides for "*the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work*."[12]

In chapter three it was noted that Section 5(4) of the *'Employment Code Act'* has a weakness. This weakness being that the *'Employment Code Act'* does not expressly provide means on how the equal remuneration principle can be achieved. Therefore because of such gaps in the current law female journalists still continue facing problems of financial inequality.

According to a central statistical survey with a population of 15 million, 400, 000 of Zambia's citizens are in formal, pensionable employment and the majority of these are male.[13] While different gender activists have mouthed various campaigns to balance the gender scale in the country, they are most often met with resistance when it comes to addressing the salary or wage disparate between women and men.[14] The more women we have in employment, the greater potential for economies to grow.[15] Although many will argue that there is no clear connection between economic growth and all aspects of gender equality, an increase in the female labor forces results in faster economic growth.[16]

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[9]Article 16 1 (b) of the International Labor Organizations' Fundamental Conventions.
[10]Section 5(4) of the Employment Code Act No.3 of 2019.
[11]Article 16 (1) (b) of the International Labor Organizations' Fundamental Conventions.
[12]Article 11 (d) of the Convention on the Elimination of all Forms of Discrimination against Women.
[13]LT Dibetso*, Airing out the Dirty laundry, Gender discrimination in Zambian media workplaces* (Fesmedia Africa 2015)18.
[14]Ibid.
[15]Ibid.
[16]Organizations for Economic Cooperation and Development (OECD), Gender Equality in Education, Employment and Entrepreneurship: Final Report to the MCM <http://www.oecd.org/employment/50423364.pdf. >Accessed 9th December 2021 at 08:03.

In 2013, the male employment to population ratio stood at 72.2 percent while the ration for females was 47.1 percent.[17] Women in most countries earn on average only 60 to 75 percent of men's wages.[18]Financial inequality is a very problematic issue in many media work places across the country. The inequalities are not restricted to remuneration only. Female media workers also have challenges with regard to receiving benefits like housing and travelling allowances.[19] A huge contributing factor to this form of discrimination is the view that women are economic dependents and the likelihood that women are in organized sectors or not represented in unions if they are not organized then those structures are weak.[20]

5.0 THE GLASS CEILING CONCEPT

Glass ceiling is a situation where women are prevented from competing for higher positions and climbing the professional ladder through fair and equal promotion in the work place.[21]According to Section 5 (1) of the *'Employment Code Act'* under non-discrimination at undertaking "*An employer shall promote equal opportunity in employment and eliminate discrimination.*"[22]Furthermore, Article 11 (b) of CEDAW states that "*the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment*." As discussed in the previous chapters of the research regardless of these international and domestic provisions established to promote gender equality, female journalists continue to face problems related to the glass ceiling.

As discussed through ought the previous chapters of this research journalism was basically viewed as a profession dominated by men in the past.[23] As it grew, women were restricted by custom, tradition, and religion from getting into the profession and those who dared were faced with significant discrimination. In spite of this, women are not relenting in their efforts to get to the top and desired positions like their male counterparts who are editors, reporters, sports analysts and journalists. Although, the profession is deeply characterized by gender segregation

[17]International Labor Organization, Global Employment Trends 2014: Risk of a jobless recovery? <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/dpcuments/publication/wcms 23353.pdf >Accessed 9th December 2021 at 08:12.
[18]World Bank Gender Data Portal <http://datatopics.worldbank.org/gender/key%20gender%20employment%20indicators> Accessed 9th December 2021 at 08:22.
[19]LT Dibetso, *Airing out the Dirty laundry, Gender discrimination in Zambian media* workplaces (Fesmedia Africa 2015) 19.
[20]Ibid.
[21]Ibid at p.12.
[22]Section 5 (1) of the Employment Code Act No.3 of 2019.

with women in the minority, they are still noticeable and found to be actively involved in journalism.

Female journalists are aspiring to improve their status and to resist the culture of stereotype which has been the bane of the media industry, by embracing areas that had been traditionally occupied by the male such as hard news, crime and politics. Despite this effort, only a few of them have risen to the peak of the profession in Zambia. Generally, there are few women in government and senior positions in many private and public media companies. According to Ann Zulu a multi award winning Zambian journalist in an article titled *Zambian Feminine Pages*, she adds that despite having more female journalists than men in Zambia, majority of people who hold top positions in the media are men, while women are assistants or nothing.[24]In the Zambian media, it really doesn't matter whether the females are better, being female makes them only good enough to assist the male and be juniors.[25] She further goes on to say that senior positions are exclusively reserved for the best man, while the best woman is always his assistant or nothing.[26]

Ann Zulu also adds that in many cases, the best journalists are women, but they are still made to aspire for the second best position or nothing, no matter how good they are.[27]She also highlights the issue of women in politics were she emphasizes that there are fewer females at the top because the enthusiasm to succeed, compete and beat the male counterparts has been killed.[28] Basically, very few women are able to break free from this societal inflicted mental incapacitation, and go higher.[29] And these few are most of the females you see at the top.[30]

However, in spite of all these challenges female journalists are facing with regard to leadership roles in the media industry, we can see most female journalists in the country occupying leadership roles.

Despite the changes and progress, there are still low numbers of women representation in parliament which itself entails a lack of confidence in women's participation and authority in

[24]A Zulu, A Zambian Female Journalist's Perspective <https://www.zambianFemininepages.blogspot.com/202...> Accessed 09th December 2021 at 09:54.
[25]A Zulu, A Zambian Female Journalist's Perspective <https://www.zambianFemininepages.blogspot.com/202...> Accessed 09th December 2021 at 09:54.
[26]A Zulu, *A Zambian Female Journalist's Perspective* <https://www.zambianFemininepages.blogspot.com/202...> Accessed 09th December 2021 at 09:54.
[27]A Zulu, A Zambian Female Journalist's Perspective <https://www.zambianFemininepages.blogspot.com/202...> Accessed 09th December 2021 at 09:54.
[28]Ibid.
[29]Ibid.
[30]Ibid.

decision making positions. It further defies the provisions of the Constitution under Section 45 (1) (d), which provides that the electoral system shall ensure that gender equity in the National Assembly or council which has not been achieved.[31] Furthermore, the provisions of the *'Gender Equity and Equality Act'* provides under Section 24 (1) for the Ministry responsible for gender to ensure that there is equal representation and participation of both sexes in decision making. This provision has however, not been achieved as can be seen through National Assembly representation of men to women.

The aforementioned results further override the provisions provided for in the Zambian *'Bill of Rights'* under Article 23 which provides for the protection from discrimination on the grounds of ones gender. The *'Gender Equity and Equality Act'* further provides for prohibition of discrimination and states that "*A person, public or private body shall not discriminate against any sex*." In a nut shell this brings about the prohibition of discrimination of women whether in the household or social realm and indeed the corporate realm of society.

5.0 THE MASCULINE NEWSROOM CULTURE

The masculine newsroom culture is concerned with gender stereotypes whereby definitions of femininity and masculinity influence the types of jobs or story topics that female journalists are assigned compared to their male colleagues.[32] A practical example is where editors have a tendency to assign soft news like entertainment and lifestyle and hard news such as politics, economics, and sports to male journalists.[33] Generally, the same gender biases found in the institutions of society are being filtered into media houses and newsrooms.[34]From the time of the dawn of the printing era of the 14th century, to the first female professional journalist Anne Royall of 1800s to the yellow press in the early 19th century, men supervised media houses and newsrooms.[35]Men constructed the rules and regulations and set the standards of what is newsworthy and what is good professional conduct.[36]

The regulations and rules of conduct suited the masculine world and had little consideration for female interests.[37] The work schedules, the shift hours and assignments of different news

[31]Section 45 (1) (d) of the Constitution of Zambia (Amendment) No.2 of the Laws of Zambia.
[32]LT Dibetso, *Airing out the Dirty laundry, Gender discrimination in Zambian media workplaces* (Fesmedia Africa 2015), 12.
[33]Ibid.
[34]R Nyondo, *Career Choices for female Journalism Student: A case in Zambia* (UNZA Press 2005) 3.
[35]R Nyondo, *Career Choices for female Journalism Student: A case in Zambia* (UNZA Press 2005), 3.
[36]R Nyondo, *Career Choices for female Journalism Student: A case in Zambia* (UNZA Press 2005), 3.
[37]R Nyondo, *Career Choices for female Journalism Student: A case in Zambia* (UNZA Press 2005), 3.

beats all perpetuate the old acquired and learned biases in society.[38] Basically, rules of the game were blended to suit male conditions and their interpretations worked to the advantage of male journalists.[39]

6.0 SEXUAL HARASSMENT

The *'Employment Code Act'* under the provisions of Section 95(1), makes it mandatory for the employer to have an employment policy on harassment. Sexual harassment is an unwelcome and inappropriate sexual advancement or a request for sexual favors such as other verbal or physical conduct of a sexual nature in exchange for various favors or security from the harassers.[40] While sexual harassment may often on first glance be taken as simple social ineptness or as an awkward expression of romantic attraction, researchers have spoken against these views as wrong and pernicious because they can lead women who suffer harassment to blame themselves, believing that something in their dress or behavior might have brought the unwanted attention.[41]

Many research experts on sexual violence state that harassment is a tactic used to control or frighten women.[42]Sexual harassment is most frequent in occupations and work places where women are new and are in the minority.[43]In fact, no matter how many men they encounter in the course of their work, women who hold jobs traditionally held by men are far more likely to be more prevalent in work places where men fill senior positions, either as sub editors, managers or editors. It must be noted however that sexual harassment victims can be of any gender notwithstanding, the highest record of victims being female.

According to an article by Paul Mboshya titled *Game Stores manager arrested for sexual harassment*, the Zambian case involving the Game Stores manger Vincent Pallan clearly highlights the aforementioned position. In this case, Vincent Pallan was charged with indecent assault of women employees contrary to Section 137[44]and Section 137 (a) [45] of the *'Penal Code Act'* for sexual harassment. The case arose as a result of one of the former female employees

[38]Ibid at p.5.
[39]Ibid at p. 5.
[40]P Michele, *Definitions and incidence of academic and workplace sexual harassment Sexual harassment* (SUNY Press 1991) 65.
[41]LT Dibetso, *Airing out the Dirty laundry, Gender discrimination in Zambian media workplaces* (Fesmedia Africa 2015) 20.
[42]LT Dibetso, *Airing out the Dirty laundry, Gender discrimination in Zambian media workplaces* (Fesmedia Africa 2015) 20.
[43]Ibid.
[44]Penal Code Act Chapter 87 of the Laws of Zambia.
[45]Penal Code Act Chapter 87 of the Laws of Zambia.

Ms. Mukamuluti Mwila who complained to the magistrate court after her dismissal following her refusal to his sexual advances.[46]This ordeal was supported by other victims who encountered a similar situation but because of the lack of supporting witnesses, the manager was acquitted.[47] This scenario among many other cases highlights the potential of various forms of harassment that women are subjected to and the disregard for the law regarding harassment of women.

As an extension of most of the above forms of gender discrimination faced by female journalists in their work places, age or ageism, as well as woman's physique and aesthetic appearance have been known to play a role on discrimination against women. This is persistent especially in the media profession, namely broadcast media, where age and appearance often dictates success.[48]Female journalists are also affected by inflexible working hours, limited or no access to affordable quality childcare, poor parental leave policies and social attitudes among many other factors.[49] The impact of these patterns of gender discrimination, which also affects other grounds of women in other fields of employment, is exacerbated by the long working hours typical of the organizational culture of many media outlets.[50] In addition, other reasons that prevent equal representation of women in the journalism industry has been attributed to women being seen as a cost because of the responsibility they bear such as paid maternity leaves and other child care or social responsibilities which would in most cases, render them absent from the work place.

6.0 CONCLUSION

This research has provided a clear picture of the effects and results of the gender imbalances in both society and in the media work place. Female journalists have the right to practice journalism free from gender discrimination. It is clear that persistent discriminatory practices, social norms and stereotypes among many other forms of discrimination perpetuate inequitable access to opportunities, resources and power exist within the Zambian media industry. Gender discrimination in Zambian media work places has been institutionalized and has become the

[46]P Mboshya, Game Stores manager arrested for sexual harassment <https://www.daily-mail.co.zm/game-stortes-mannager-arrested-sexual-harrasennt/> Accessed 17th November 2021 at 21:37.
[47]Ibid.
[48]LT, Dibetso, *Airing out the Dirty laundry, Gender discrimination in Zambian media workplaces* (Fesmedia Africa 2015) 12.
[49]E Lanza, *Women Journalists and Freedom of Expression, Discrimination and gender-based violence faced by women journalists in the exercise of their profession* (The Swedish International Development Cooperation Agency, 2018) 18.
[50]Ibid at p.18.

lived experience of many female media workers. The problem with institutionalization or normalization of gender discrimination is that media workers may dismiss some of it as part of acceptable newsroom culture. Finally, the following chapter shall give a general conclusion and findings regarding the preceding chapters. It shall then provide various recommendations which will subsequently answer the problem statement initially provided in chapter one and subsequently seal the gaps this research seeks to address.

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INTELLECTUAL PROPERTY INFRINGEMENT OF ARCHITECTURAL WORKS IN ZAMBIA

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ABSTRACT

Architects and engineers depend on copyright law to protect their original works. The objective of this study is to explore how effective the Zambian copyright law regime is with regard to the protection of the rights and interests of creators of architectural works against copyright infringement. This study goes on to look at both domestic and international laws governing the rights and interests of creators of architectural works against copyright infringement. The aim of this research is to address the need for the awareness of the infringement of architectural works in Zambia against unauthorized copying. The findings of this research have also shown that there is a high level of ignorance and lack of sensitization in Zambia with respect to the issue of copyright infringement of architectural works. The solution includes the need to revise the copyright law in order to improve its enforcement and the protection of architectural works against unauthorized copying. Furthermore, there is need for proper training, education and sensitization of the rights and interests of creators of architectural works against copyright infringement among members of the public.

Key words: Intellectual Property Law, Copyright, Architectural Works,

Introduction

This chapter will build on issues previously discussed in chapters one and two in relation to the infringement of architectural works. This chapter gives a broader and detailed discussion as to what copyright infringement is. This chapter examines when copyright is infringed. Furthermore, this chapter gives an insight on the criteria for copyright protection. This chapter also looks at the primary and secondary infringement of architectural works.

Copyright Infringement

Before examining copyright infringement in detail, it is worth observing, that, while there has been a great deal of norm-setting in relation to the rights of the copyright owner, the question of what amounts to copyright infringement has not generally been the subject of international consideration and has only recently been regarded as a matter that has been the subject of regional harmonization. In Zambia the applicable tests for infringement have largely been developed locally and, for the most part, by the courts. Having acknowledged that the Zambian copyright law has taken its course, it is worth noting two recent developments. Firstly, the rule that copyright does not protect ideas has found its way into both regional and international arrangements, and has been interpreted as establishing an outer limit to the scope of protection that any country may grant through copyright. Secondly, regional harmonization initiatives seem to require that copyright infringement be found to occur where any part as opposed to any substantial part of work is reproduced. The second development is already transforming the fundamental principles by which infringement is analyzed. It can be opined that there is great anticipation that many of the propositions in relation to further guidance on infringement of copyright under the various directives by the courts are subject to change over the next years both locally and internationally. Copyright infringement entails taking the work without the consent of its owner, rather than any dealing with the physical object. The use of works protected by copyright law without permission infringes on certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works. The copyright holder is typically the work's creator, or a publisher or other business to whom copyright has been assigned. Copyright holders regularly invoke legal and technological measures to prevent and penalize copyright infringement. The rational is that, the lawful owner of the physical item is free to deal with it as they wish, as long as a restricted act is not committed. In spite of the Copyright Act providing for the protection of architectural works against infringement, there is very little that creators of architectural works can do to stop copyright infringement. Fundamentally, copyright law exists to prevent others from taking unfair advantage of a person's creative efforts. There are two types of infringement namely primary and secondary infringement.

Criteria for Copyright Protection

According to Section 17 of the Copyright Act, the owner of a copyright shall have the exclusive right to do or authorize others to copy or reproduce the work, publish or issue copies, to perform among many other things.[1] On the other hand Section 21(1) of the Copyright Act provides for acts which do not constitute infringements, which include fair dealing with a work for the purposes of research other than for profit , fair dealing for the purposes of criticisms or review, provided there is sufficient acknowledgment and fair dealing for the purposes of reporting events among many other things.[2]

In the event of an infringement, a copyright owner is entitled to certain remedies as laid out in Section 25(2) of the Copyright Act such damages, injunctions or account of profits among many other remedies.[3]

The ingredients of a copyright are that it must be original, reduced in a permanent form and must be authorized by the owner. The originality requirement means that the work was independently created by the author and not copied from other works and that it possess at least some minimal degree of creativity. In the case of *Ladbroke (Football) Ltd v William Hill (Football) Ltd,*[4] the court held that originality requires only that the work should not be copied but should originate from the author. Section 2(e) of the Copyright Act provides that adaptation in relation to an artistic work in two dimensions, the reproduction of that work in an object in three dimensions. [138] Basically originality is equated to the degree of skill , labor and judgment that went into the creation of the work as was established in the case of *LB (Plastics) Ltd v Swish Products Ltd*.[5]

Similarly, in the case of *British Leyland Motor Corporation v Armstrong Patents,*[6] the plaintiff manufactured motor vehicles with motor parts produced in accordance with detailed designs. The defendant specialised in the manufacture of spare parts which would be sold to motor

[1] Section 17 of the Copyright Act
[2] Section 21(1) of the Copyright Act
[3] Section 25(2) of the Copyright Act
[4] *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273 (HL).
[5] *LB (Plastics) Ltd v Swish Products Ltd* [1979] RPC 551.
[6] *British Leyland Motor Corporation Ltd v Armstrong Patents Co Ltd* [1986] AC 577 (HL).

vehicle owners. In order for the replacement parts to fit, the defendant's design needed to be virtually identical to that of the original component. The plaintiff's exhaust was not eligible for copyright, patent or design protection. The court held that the defendant's conduct amounted to indirect copying of the designs under Section 48(1) of the British Copyright Act of 1956. The British Copyright Act under Section 48(1) provided that the conversion of a two-dimensional work into one of three dimensions will constitute a reproduction. However, an artist making a faithful representation of a still object such as a sofa uses more of his skill in lighting and applying paint to canvas which then earns him the copyright.

The second criteria for copyright protection is that the work must be reduced in a permanent form as provided for under Section 8 (3) of the Copyright Act.[7] Whilst artistic works will be in a tangible form, literally , dramatic or musical work must be recorded in a permanent form. Such fixation can be made by anyone even without permission of the author as established in the case of *Walter v Lane.*[8]

The last criteria for copyright protection is that a copyright must be authorized by the owner. The copyright owner can deal with his work in any way he pleases by exploiting it individually or he may choose to sell it, assign it or even license it. Basically moral rights can never be transferred and always remain with the original author of the work. Section 7 of the Copyright Act provides that copyright is a property right which subsists in the products of creativity and can be exploited in two main ways, either by means of assignment or a license.[9]An evaluation of the cases by the courts reveals how they have enforced intellectual property rights in relation to the infringement of architectural works. It is notable that there are very few decided cases in intellectual property law in Zambia in relation to the infringement of architectural works due to the lack of effective and vigorous awareness of the matter at hand. Nevertheless, the few cases in which the courts have decided the opportunity to adjudicate on intellectual property rights are very helpful for purposes of analyzing how the courts have fared in the enforcement of these rights.

The courts had an occasion to deal with copyrights in the case of *Performing Right Society Ltd v Francis Anthony Hickey trading as Bar-b-que Drive in Restaurant*[10]. In this case the plaintiff took out an action for infringement of a copyright. The defendant played three musical records

[7] Section 8 (3) of the Copyright Act.[7]
[8] *Walter v Lane* [1900] AC 539 (HL).
[9] Section 7 of the Copyright Act
[10] *Performing Right Society Ltd v Francis Anthony Hickey t/a Bar-b-que Drive-in Restaurant* (1974) ZR 61.

in public without obtaining a license from the plaintiff who was the owner of the copyright. The defense raised by the defendant was that the infringement was done innocently and under a mistake. The court held that it was not disputed that there was an infringement on the part of the defendant. However, the court took into account the defense put up by the defendant and held that the plaintiff was entitled to damages but an account of profits. An injunction was also granted against the defendant.

There is need to exercise care in admitting the defense of infringement of a copyright. The Halsbury's Law of England at paragraph 938, states that a defendant does not establish that he had no reasonable grounds for suspecting the exercise of a copyright by showing that he had an honest but erroneous view of the law.[11] Generally emphasis is placed on the fact that the innocence as to the infringement must be reasonable. This is simply because the law trying to protect copyrights will be used to create a mischief in that any person can claim the defense of innocence of infringement and escape liability from damages.

Primary Infringement

A primary infringement involves a direct infringement by the defendant. Direct copying occurs where a copyrighted work in its initial presentation is made. On the other hand indirect copying occurs when the work is presented in some form other than its initial presentation. In an action of primary infringement, the onus falls upon the claimant to show on the balance of probabilities that the defendant carried out one of the activities that falls within the copyright owner's control. The first element in proving infringement is that the defendant's work was derived from the copyright work. This entails that there must be a causal connection between the copyright work and the allegedly infringing work as established in the case of *Francis Day, & Hunter Ltd v Bron.*[12] In a nut shell the copyright work must be the source of the infringing work. Secondly the restricted act was carried out in relation to the work or substantial part thereof.

In terms of the first element, for work to be infringed upon, it must be derived from the copyrighted work. In other words, it must be copied. If two works created independently are found to be substantially the same, the first in time to be created will not be infringed by the second. The similarity may be coincidental or perhaps the result of the two works may have derived from a common source such as a famous building of St. Paul's Cathedral in London. If

[11] The Halsbury's Law of England at paragraph 938

[12] *Francis Day & Hunter Ltd v Bron* [1963] Ch 587.

the second author uses the first author's work to identify the common source, there will be no infringement, since by going back to the primary source the second author will have expended his own skill and effort in his work as established in the case of *Pike v Nicholas*.[13] The copying of architectural plans by duplicating the original plans is a practical example of copyright infringement. A perfect replica is not necessary to prove infringement , as long as an ordinary average layman would realize that there is an appropriation from the original work. Angela Adrian suggested that "*The test is whether the plan or building was a copy of the concept or style and therefore legitimate or a copy of the author's original manifestations of that concept or style and therefore an infringement.*"

A Casual Connection

It is an established legal principle that an infringing work need not be copied directly from the original work. It may very well be that the infringing author may not even know of its existence. It is important to note that it is not necessary for the defendant's work to be derived directly from the original work, however it is possible for a defendant to infringe were they base their work on a copy of the original work. It is also significant to note that it does not matter if the intermediate reproduction is itself a legitimate. A practical example of this scenario is where a person photographs a three-dimensional object such as a building. They may infringe the copyright in the drawings on which the sculpture was based, even though they have never seen those drawings. Furthermore a good example concerning the causal link element of the test for infringement is the case of *Solar Thomson Engineering Co. Ltd v Barton.*[14] In this case, the defendant asked a design engineer to design a spare part for a machine. In order to avoid infringing the copyright in the original design drawings of the claimant's spare part, the defendants gave the design engineer detailed instructions and the surrounding hardware, but did not show him the claimant's original drawing. The design engineer created a design drawing which was very similar to the claimant's original design drawing. The court of appeal held that the instructions given to the design engineer amounted to a sufficient causal link for copyright in the original drawings to be infringed.

Indirect Copying and Substantial Copying

The second and final element that needs to be asked in an infringement action is whether the restricted act has been carried out in relation to the work or a substantial part thereof. Section

[13] *Pike v Nicholas* (1869) LR 5 Ch App 251.
[14] *Solar Thomson Engineering Co Ltd v Barton* [1977] RPC 537.

2 of the Copyright Act provides that substantial part includes any part of a work which can be identified as part of the work of someone who is familiar with the work.[15] Furthermore, Section 17(7) of the Copyright Act provides that the doing of an act controlled by the copyright in a work includes the doing of that act in relation to substantial part of the work. Apart from a causal connection, in order to infringe copyright must be in relation to the work as a whole, or any substantial part of it. A substantial part is defined qualitatively and not quantitatively as established in the case of *Ladbroke (Football Ltd) v William Hill (Football Ltd)*.[16] It is difficult to determine what a substantial part is as there is no standard measure. The courts determine substantial by reference to the quality of what was taken and not the quantity. Even a very small part of work can be substantial if it is the most valuable or memorable piece of work.

The case of *Pearce v Ove Arup Partnership Ltd*,[17] illustrates the substantial part principle. Here an architectural student, Pearce, had made some drawings of a town hall in 1986. He claimed that an English civil engineering company together with the Dutch architects and builders as well as the Dutch local authority had infringed his copyright under the Dutch copyright statutes by erecting the Kunsthal in Rotterdam. Pearce claimed that features of Kunsthal's design had been copied from his Docklands plans thereby infringing upon his UK and Dutch copyrights. In this instance, the judge struck out the action on the grounds that there was insufficient similarity between the building and the claimant's drawings. It was held that Kunsthal was independently designed with a similar feature to Pearce's design hence there was no infringement incurred. In particular, the judge held that the degree of similarity between the claimant's drawings and those of the defendants was not sufficient to give rise to an inference of copying. He considered that the claim was based on speculation and accordingly ordered the claim against each of the defendants to be struck out.

The issue of subconscious copying is relevant to architectural works. The infringer need not be aware that he is copying in order to infringe another's copyright work. If an architect inspects an architectural plan, he may be influenced by the prior viewing. It is possible that he may take the architectural concept and style embodied in the plan and apply it to his own design in an original plan produced by him without any infringement.

Secondary Infringement

[15] Section 2 of the Copyright Act
[16] Section 17(7) of the Copyright Act
[17] *Pearce v Ove Arup Partnership Ltd* [2000] Ch 403.

In an attempt to inhibit the negative impact that illegal acts have upon copyright owners, copyright law acknowledges that it is not enough merely to afford remedies against those who copy or perform the copyright work. Instead, copyright law recognizes that it is also necessary to provide owners with protection against those who aid and abet the primary infringer. Such accessorial infringement is known as secondary infringement. There are two important differences between primary and secondary infringement. The first relates to the scope of protection, primary infringement is associated with people who are directly involved in the reproduction and performance among other things of copyright works. In contrast, secondary infringement is concerned with people in a commercial context who either deal with infringing copies, facilitate such copying , or facilitate public performance. The second difference between the two forms of infringement relates to the mental element that the defendant must exhibit in order to infringe. Generally it has been observed that, the state of mind of the defendant is not formally taken into account when deciding whether an act of primary infringement has occurred. In the case of secondary infringement, however, liability is dependent on the defendant knowing, or having reason to believe, that the activities in question are wrongful. Section 18 of the Copyright Act, provides that secondary infringement occurs where an individual facilitates primary infringement activities or deals in infringing copies for commercial gain.[18] Secondary infringement includes permitting a place of public entertainment to be used for an infringing performance as established in the case of *Harms Ltd & Chappell v Martians Club Ltd.*[19] According to the Copyright Act, secondary infringement constitutes providing apparatus for making or transmitting an infringing article. Importing, other than for private use, an infringing copy with the knowledge or belief that it infringes copyright also constitutes secondary infringement.[20] Possessing, hiring, selling or prejudicially distributing an infringing copy of a work according to Section 19(ii)(b) to (e) also includes secondary infringement.[21]

Furthermore secondary infringement includes making, letting for hire, importing or possessing an article designed or adapted for making illegal copies and having reasonable belief the article will be used to infringe copyright.

Infringement of Architectural Works. When it comes to the infringement of architectural works such as drawings, designs or even plans, among other architectural works, the court can find

[18] Section 18 of the Copyright Act
[19] *Harms (Incorporated) Ltd v Martans Club Ltd* [1927] 1 Ch 526.
[20] Copyright Act, Section 19(ii)(b)-(e)
[21] Copyright Act, Section 19(ii)(b) to (e)

designs to be visually similar with the same general layout, it may nonetheless find the dissimilarities significant enough to preclude a finding of infringement. Common elements across the two floor plans may include the number of bedrooms, a two car garage, living room, dining room, family room, foyer kitchen, two bathrooms, a nook, and a porch which although substantially similar, no reasonable court could find the two floor plans at issue to be a copyright infringement, unless they are of the same dimensions. For architectural copyright infringement, a plaintiff must prove that the ownership is a valid copyright. The plaintiff must also prove that there has been copying of protectable elements. In the case of *Miller's Ale House Inc v Boyton Carolina Ale House,*[22] the court held that in order to establish ownership of a valid copyright, the plaintiff must prove, among other things, that the work is original which means only that the work was independently created by the author and that it possesses at least some minimal degree of creativity. To establish copying, the plaintiff must show as a factual matter that the defendant copied the protected work and that the protected expression itself was copied. On the other hand in the case of *Dream Custom Homes, Inc v Modern Day Const, Inc,*[23] the court held that in the absence of direct proof of copying, a plaintiff may prove copying by demonstrating that the defendants had access to the copyrighted work and that the works are substantially similar. The test for substantial similarity for architectural works is whether a reasonable court could find the competing designs are substantially similar at the level of protected expression. One of the highest profile victims of copyright infringement of architectural works is one of the world's most famous architects Zaha Hadid. The Veuve Cliquot businesswoman of the year 2018, took legal action against a Chinese construction firm that was building a design in Chongqing similar to Hadid's Wangjing Soho complex in Beijing.

Conclusion

Copyright is a property right. Generally it provides the owner with the exclusive right to perform certain acts in relation to the work that is subject to the copy. From the fore going it is quite clear that, any one performing any of these restricted acts, in relation to the whole or substantial part of the work, without the license or consent of the copyright owner will infringe the copyright. Copyright does not give a monopoly right, unless the owner alone has access to the constituents of the work. It is clear that a key issue for architects and engineers is determining whether the line is to be drawn between the manifestation of original concepts or style contained

[22] *Miller's Ale House Inc v Boynton Carolina Ale House LLC* 702 F 3d 1312 (11th Cir 2012).
[23] *Dream Custom Homes Inc v Modern Day Construction Inc* 773 F Supp 2d 1288 (MD Fla 2011).

in the architectural plans protected as a monopoly, and express concepts and ideas that may be legitimately used as established in the case of *Jones v London Borough of Tower Hamlets*.[24] If architectural works contain unique designs, copyright protection applies.

[24] *Jones v London Borough of Tower Hamlets* [2001] EWCA Civ 330.

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AN ANALYSIS OF THE GENDER EQUALITY LAWS IN ZAMBIA

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ABSTRACT

This chapter examines the legal and institutional framework for promoting gender equity and equality in Zambia, with particular attention to the protection of women, including female journalists, from discrimination in the workplace and society. It traces the historical development of gender equality from early international movements for women's rights to contemporary legal standards. The study analyzes key international instruments ratified by Zambia, including the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Labour Organization (ILO) Conventions, the Maputo Protocol, the SADC Protocol on Gender and Development, and the Sustainable Development Goals (SDGs). It further examines Zambia's domestic legal framework, including the Constitution of Zambia, the Gender Equity and Equality Act, the Employment Code Act, the Industrial and Labour Relations Act, the National Gender Policy, and the Seventh National Development Plan. The chapter also highlights the role of institutions such as the Ministry of Gender, the United Nations Development Programme (UNDP), and the Zambia National Women's Lobby Group in advancing gender equality. The study finds that although Zambia has established comprehensive legal and policy mechanisms to promote gender equity and protect women's rights, significant challenges remain due to persistent patriarchal norms, discrimination, and social inequalities. It concludes that effective implementation and enforcement of existing laws and policies are essential for achieving substantive gender equality in Zambia.

Keywords: *Gender Equality, Gender Discrimination, Women's Rights, Zambia.*

1.0 INTRODUCTION

Zambia is a signatory to many international instruments pertaining to the establishment of the international and regional human rights standards with regard to gender equity and equality. This chapter gives a broader insight of various laws which protect and promote gender equality in Zambia. In addition, it will take into account the legal framework which can be seen through the various organizations and legal mechanisms enforced to address and achieve gender equality in Zambia. Following the escalation in the number of issues surrounding the discrimination of female journalists in various Zambian media work places, this chapter seeks to look into the different local and international laws and the forms of legislation that have been established.

2.0 THE EVOLUTION OF THE LEGAL FRAMEWORK

The fight for gender equality can be traced as far back as the 19th century which was after the anti-slavery convention held in London of 1840 that prompted the declaration of sentiments at the first women's rights convention in Seneca Falls in the year 1848.[1]It was addressed to acknowledge women's rights and promote gender balance in a male dominated territory.[2]Following this convention, women around the world became aware of the need to fight for their public rights and realized that attaining equal rights to those of men was of great significance as women were not accorded the same equal opportunities as men.

Having achieved suffrage and equality in property rights, feminists after the first world war broadened their objectives to tackling discrimination in employment opportunities, pay and education, reproductive rights and the role of women in the family and household. In an effort to achieve this equality, there have been various local and international organizations as well as statutes that have been established in achieving the foregoing and these shall be addressed to a greater extent below.

3.2 INTERNATIONAL INSTRUMENTS

3.2.1 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The *Universal Declaration of Human Rights* is an international document adopted by the United Nations General Assembly that enshrines the rights and freedoms of all human

[1]V Woolf, *A Room of One's own* (Hogarth Press 1991) 53.
[2]Ibid.

beings.[3]The Universal Declaration begins by recognizing in its preamble that "*the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world.* "Article 7 of the Universal Declaration provides that "*all are equal before the law and are entitled without any discrimination to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination*."[4] It is quite clear that the aforementioned provisions are beneficial to female journalists as they generally guarantee protection against discrimination. The Universal Declaration of Human Rights provides an international standard of human rights that countries are expected to recognize and adhere to in an effort to achieve gender equality.

3.2.2 THE CONVENTION ON THE ELIMINATON OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW is part of a broader global discourse on gender equality. It is one of the many international instruments that have been ratified in Zambia. This convention is beneficial to female journalists in that it provides the basis for realizing equality between women and men in the media work place by ensuring equal access and equal opportunities for all.[5]Through its provisions, CEDAW has the obligation to ensure that its member countries achieve equality and equity. For reference purposes, Article 2 provides that *"states are to agree to pursue by all appropriate means a policy to eliminating discrimination against women and to undertake to concrete steps to eliminate discriminatory laws, policies and practices in the national legal framework.*"[6]

Furthermore, Article 3 of the convention provides that "*Member states are to take all appropriate measures to ensure the full development and advancement of women so as to guarantee them the enjoyment of human rights and fundamental freedoms on the basis of equality with men*."[7] In addition, Article 5 of the convention further provides that "*states are to take appropriate measures to eliminate stereotyping, prejudices and discriminatory cultural practices.*" Equal educational opportunities are also another key aspect that the convection seeks to address. For instance Article 10 establishes that "*States shall ensure that women have*

[3]What is the Universal Declaration of Human Rights? <http://www.humanrights.gov.au/our-work/what-universal…>Accessed 20th October 2021 at 17:00.
[4] Article 7 of the Universal Declaration of Human Rights.
[5]United Nations Women, **Convention on the Elimination of all Forms of Discrimination against Women** <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>Accessed 20thOctober 2021 at 16:33.
[6]Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women.
[7]Article 3 of the Convention on the Elimination of all Forms of Discrimination against Women.

equal rights with men in education, including equal access to schools, vocational training, circular and educational sources."[8]

Lastly, Article 7 and 11 of the convention provides for states to ensure that women have equal rights and opportunities in the work force. Article 7 provides for women to be accorded equal opportunities to hold public office and to participate in civil society. Article 11 further emphasizes that states provide women with the same opportunities as men in employment, such as in promotion, training, equal remuneration, social security and safe working conditions.[9]These provisions have been enshrined in domestic instruments such as the '*Employment Code Act No.3 of 2019'* and the '*Gender Equity and Equality Act No.22 of 2015.'*

3.2.3 THE INTERNATIONAL LABOR ORGANISATIONS' FUNDAMENTAL CONVENTIONS (ILO)

ILO Conventions concerning gender specific issues have a long history. [10]The elimination of discrimination and the promotion of equality have been a core concern and objective of the ILO since its creation.[11]The principle of equality and non-discrimination was further developed by the Discrimination (Employment and Occupation) convention of 1958 (No.111) accompanied by Recommendation No.111.[12]This convention has been the first international instrument recognizing the right to non-discrimination at work and providing a definition of discrimination that has been a reference for the subsequent international human treaties and national legislation dealing with discrimination.[13]It remains the main international instrument specifically tackling the right to equality and non-discrimination in the world of work.[14]

The conventions cover a wide area of social and labor issues including basic human rights, minimum wages, industrial relations, employment policy, social dialogue, social security and other issues.[15] The Convention provides for the elimination in respect of employment and

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[8]Article 10 of the Convention on the Elimination of all Forms of Discrimination against Women.
[9]Article 11 of the Convention on the Elimination of all Forms of Discrimination against Women.
[10]International Labor Organization Conventions, ILO <https://www.iloconventions.scholar.google.com/scholar?hl> Accessed 21stOctober 2021 at 18:03.
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[15]International Labor Organization Conventions, ILO <https://www.ilo.org/moscow/areas-of-work/gend...> Accessed 20thOctober 2021 at 17:30.

occupation in an effort to establish gender equity and equality in employment. For instance Article 1 under the equal remuneration Convention provides for equal remuneration for men and women workers. This international instrument helps to safeguard the human rights of female journalists against discrimination in their media work places as Zambia has enshrined the provisions of the aforementioned international instrument in its domestic legislations such as the '*Employment Code Act'* in respect to the promotion of gender equity and equality in employment.

3.2.4 THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

This protocol is also referred to as the '*Maputo Protocol.'*[16] It is highly beneficial to female journalists as it is aimed at guaranteeing comprehensive rights surrounding women including spear heading the equal participation of women and social equality with men in order to improve autonomy in decision making. Zambia is among the member countries in the African Union that have ratified this protocol. Some of the main provisions relating to gender equality are provided for under Article 2 of the Protocol. Basically, Article 2 provides for the elimination of all forms of discrimination against women through appropriate legislative, institutional and various surrounding measures.[17]

Furthermore, Article 18 of the protocol provides for the equal access of men and women in justice and protection before the law, which could be achieved through the establishment of adequate educational institutions and facilities structured to pay particular attention to women and to generally sensitize everyone on the rights of women.[18]Thus, this policy is established to safeguard women's rights through the foregoing to ensure that women are adequately promoted in attaining equality before the law. In addition, Article 9 of the protocol provides for the promotion of equal participation of women in the political and decision making process.[19]It establishes that states ought to take positive action in promoting participative governance as well as equal participation of women in the political life through affirmative action, enabling national legislation and through other measures in achieving the same.[20]

[16]The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2012.
[17]Article 2 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2012.
[18]Article 8 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2012.
[19]Article 9 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2012.
[20]Ibid.

The protocol under Article 12 also provides for the importance of states in taking appropriate measures so as to ensure equal educational opportunities are provided for while also providing for protection from all forms of abuse as per Article 12(c) respectively.[21]The aforementioned protocol is highly beneficial to female journalists as it imposes an obligation on the state to promote the participation of women in key decision making leadership positions which are mostly taken by men in the media sector.

3.2.5 SADC PROTOCOL ON GENDER AND DEVELOPMENT

The Southern African Development community established a protocol on promoting gender equality throughout its member states in 2008. Zambia has effected and ratified this protocol and has been enshrined in the '*Gender Equity and Equality Act*.'[22]The protocol as enshrined under Article 3 seeks to provide for the empowerment of women, to eliminate discrimination and to achieve gender equity and equality through the development and implementation of gender responsive legislation, policies, programs and projects.[23]

3.2.6 SUSTAINABLE DEVELOPMENT GOALS

'Sustainable development goals' (SDG's) are goals that the United Nations General Assembly adopted on the 25th of September 2015 which has been ratified and is applicable in Zambia. Generally, these goals seek to achieve what the Millennium Development Goals did not achieve.[24]Gender equality is highlighted as one of the goals to be achieved under the new agenda and this has been provided for under the 5th goal which provides for "*the achievement of gender equality and to empower all women and girls*."[25]These goals are highly beneficial to many young female journalists in various media training institutions who aspire to venture in to the media industry and to take up key decision making leadership positions in the media sector.

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[21]Ibid.
[22]Gender Equity and Equality Act of 2015 [No.22 of 2015].
[23]SADC Protocol on Gender Development, SADC <https://www.sadcprotocalongenderdevelopment.org.>Accessed on 20th October 2021 at 19:27.
[24]Sustainable Development Goals <https: //www.sustainabledevelopmentgoals.org.> Accessed on 20th October 2021 at 19:27.
[25] Sustainable Development Goals <https: //www.sustainabledevelopmentgoals.org.> Accessed on 20th October 2021 at 19:27.

3.3 DOMESTIC LEGISLATION

3.3.1THE CONSTITUTION OF ZAMBIA

The '*constitution of Zambia*' is the supreme law of the land from which all other laws emanate as provided for under Article 1(3).[26] The newly amended constitution recognizes the need to achieve gender equality hence its preamble which provides that "*The people of Zambia do confirm the equal worth of women and men and their right to freely participate in, determine and build a sustainable political, legal, economic and social order*."[27]Various articles confirm this position and the method through which the objectives can be achieved as can be seen under Article 231(2) of the constitution which provides for the establishment of the Gender Equity and Equality Commission whose functions are to "*promote the attainment and mainstreaming of gender equality in Zambia."*[28]

Furthermore, the functions of the Gender Equity and Equality Commission are provided for under Article 231(3) (a) (b) and (c) of the constitution "*which are to monitor, investigate, research, educate, advice and report on issues concerning gender equality and to ensure that institutions comply with legal requirements and other standards relating to gender equality.*"[29]Necessary steps are also being taken to secure appropriate redress to complaints relating to gender discrimination and to perform other such functions as prescribed.[30]

3.3.2 THE GENDER EQUITY AND EQUALITY ACT

The *'Gender Equity and Equality Act'* is a recently enacted Act that was established to spearhead and provide guidelines for achievements of women's equity and equality in Zambia.[31]The provisions of this Act are specifically established to address the key components in promoting women's representation in the social and cultural realm. For instance the preamble , provides that, the Act is established to "*provide for the taking of measures and making of strategic decisions in all spheres of life in order to ensure gender equity , equality and integration of both sexes in society, promote gender equity and equality as a cross cutting issue in all spheres of life and stimulate productive resources and development opportunities*

[26]The Constitution of Zambia (Amendment) No.2 of the Laws of Zambia.
[27]The Constitution of Zambia (Amendment) No.2 of the Laws of Zambia.
[28]The Constitution of Zambia Chapter One of the Laws of Zambia.
[29]The Constitution of Zambia Chapter One of the Laws of Zambia.
[30]The Constitution of Zambia Chapter One of the Laws of Zambia.
[31]Gender Equity and Equality Act [No.22 of 2015].

for both sexes, prohibit harassment, victimization and harmful social, cultural and religious practices."[32]

The Act was further enacted to domesticate various international instruments that have a mandate to promote gender equity and equality, such include as per the Act, to "*give effect to the Convention on the Elimination of all Forms of Discrimination against women, the protocol to the African Charter of Human and Peoples Rights on the Rights of Women in Africa and the SADC Protocol on Gender and Development*."[33]In addition, the Act also has a mandate to create the Gender Equity and Equality Commission and provide for its functions and powers which have been established under part III of the Act.[34]The Gender Equity and Equality Commission has the responsibility of ensuring in liaison with the Ministry of Gender that gender equality and equity is attained and mainstreamed in public and private affairs and structures.[35]

Furthermore, the Gender Equity and Equality Commission has the responsibility of recommending , to appropriate authorities, any measures that need to be taken to ensure gender equity and equality takes its toll.[36]The establishment of this Act signifies the role of government in seeking to achieve women's equity and equality in Zambia, thereby promoting equal representation in all spheres of life.

3.3.3 THE EMPLOYMENT CODE ACT OF 2019

This Act is meant to regulate the employment of persons and prohibit discrimination at an undertaking which is our main area of focus among many other provisions of the said Act. In an effort to ensure the promotion of gender equity and equality, as discussed earlier, Zambia has incorporated some of the provisions of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in the Employment Code Act under Part 1 Section 5, which provides for non-discrimination at undertaking.

3.3.4 THE INDUSTRIAL AND LABOUR RELATIONS ACT

The *'Industrial and Labor Relations Act'* provides for the formation of trade unions and employers' representative organizations including matters related to dispute resolution in employment cases. The High Court of Zambia, under the Industrial Relations Division, is

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[32]Gender Equity and Equality Act [No.22 of 2015].
[33]Gender Equity and Equality Act [No.22 of 2015].
[34]Section 9(1) (a) of the Gender Equity and Equality Act [No.22 of 2015].
[35]Section 9(1) (c) of the Gender Equity and Equality Act [No.22 of 2015].
[36]Section 9(1) (c) of the Gender Equity and Equality Act [No.22 of 2015].

vested with original and exclusive jurisdiction to hear and determine any labor related matter. The Industrial Relations Court became a Division of the High Court of judicature for Zambia effective from the enactment of the '*Constitution of Zambia (Amendment) Act No. 2 of 2016'* pursuant to the provisions of Article 133(2) of the *Constitutional Court of Zambia Act Chapter 1 of the laws of Zambia*. Article 133 provides as follows "*There are established, as divisions of the High Court, the Industrial Relations Court, Commercial Court and Children's Court.* "In relation to the concept of gender discrimination, Section 108 of the *'Industrial and Labor Relations Act'* provides for restriction on discrimination in employment.[37]

3.3.5 THE NATIONAL GENDER POLICY OF 2014

The *'National Gender policy'* is a policy that was established to ensure full attainment of gender equality in the development process by adequately redressing the existing gender imbalances.[38]The policy also provides for equal opportunities for women and men to actively participate and contribute to their fullest ability and equitably benefit from national development.[39]This position of the policy signifies the effort of the government in achieving equality throughout the country.

Furthermore, the policy examines situations in various sectors from a gender perspective in order to provide the appropriate guidance, strategies and interventions for its successful implementation.[40]Some of these policies have been provided for under Section 5.1 (b) of the policy which establishes the measures under which the policy can be achieved countrywide which includes strengthening capacities and dissemination of information.[41]This can be achieved by conducting awareness campaigns on legal instruments on the rights of women, girls, boys and men. With the high increase rate of gender based violence, the policy has also implemented objectives aimed at reducing the rate of gender based violence cases in the country as provided for under Section 5.10 of the policy.[42] All this can be greatly achieved by operationalizing the Anti-GBV Act, advocating for the prevention of gender based violence through advocacy and sensitization programs on the media as well as developing mentorship programs for young women and men to respect and recognize women and children's rights.[43]

[37]Industrial and Labour Relations Act Chapter 269 of the laws of Zambia.
[38]National Gender Policy of 2014.
[39]National Gender Policy of 2014.
[40]National Gender Policy of 2014.
[41]National Gender Policy of 2014.
[42]National Gender Policy of 2014.
[43]National Gender Policy of 2014.

Lastly, the policy seeks to increase quality education and for all to attain skills development as well as strengthening capacities of women and men so as to take up leadership and decision making roles. The policy through its various objectives and measures signifies the Zambian governments' efforts to ensure that equity and equality is achieved at all levels in society.

3.3.6 THE SEVENTH NATIONAL DEVELOPMENT PLAN 2017-2021

'Seventh National Development Plan' also referred to as 7NDP is Zambia's development approach and brings out ambitious plans to make Zambia a prosperous middle income economy to subsequently produce a better livelihood for all Zambians.[44]The government under the Ministry of National Development Planning seeks to achieve gender equality through this plan by enhancing capacity for gender mainstreaming and engender policies, plans, programs, projects, activities and budgets by coordinating and monitoring implementation of the '*National Gender Policy*.'[45]

In addition where women's empowerment is concerned, the government through this plan will engender the planning and budgeting processes for the purposes of equality especially in the key sectors driving national development.[46]This is in an effort to ensure that there is an equitable distribution of national resources between women and men and to further reduce the income and poverty gap between men and women in Zambia respectively.[47]In essence this development plan clearly highlights governments' efforts in achieving equality through the five year plan and places inter alia, women and girls as a key area that needs to be addressed and developed.

To achieve the aforementioned through this plan, the Civil Society Organizations through the 7NDP offers ways through which this could be achieved. Such methods include undertaking sensitization campaigns focusing on the involvement of men and women in the promotion of gender equality and to ensure that adequate resources are allocated to sectors such as health, education and agriculture among others that have the multiplier effect and potential to improve the status of women, the youth and children in society.[48]

3.4 INTERNATIONAL AND LOCAL ORGANISATIONS

[44]Republic of Zambia, Seventh National Development Plan, Ministry of National Development Planning, (2017).
[45]Republic of Zambia, Seventh National Development Plan, Ministry of National Development Planning, (2017).
[46]Republic of Zambia, Seventh National Development Plan, Ministry of National Development Planning, (2017).
[47]Republic of Zambia, Seventh National Development Plan, Ministry of National Development Planning, (2017).
[48]Republic of Zambia, Seventh National Development Plan, Ministry of National Development Planning, (2017).

3.4.1THE UNITED NATIONS DEVELOPMENT PROGRAM (UNDP)

The UNDP is an international organization under the United Nations which advocates for change and development in member countries and works internationally to help countries achieve the *'Sustainable Development Goals'* (SDG's) and for the purpose of this study in achieving gender equality of female journalists in the Zambian media work places.[49] The UNDP recognizes that equal participation is essential in the consolidation of strong democracies.

Furthermore, it acknowledges that inclusive political processes are prerequisites for equitable and sustainable development and therefore, women need to be accorded equal access to political power as well as equal opportunities for their voices to be heard.[50]Zambia is one of the countries that has ratified the provisions under the UNDP and thus seeks to achieve the aforementioned for the benefit of women and girls in the country.

3.4.2 THE MINISTRY OF GENDER

The Ministry of Gender is a ministry responsible for promoting gender related issues in Zambia and was recently established in the year 2012. It is responsible for protecting and promoting women's rights, curbing gender based violence as well as reducing gender discrimination by making responsible progressive changes to legislation.[51]It further aims at prioritizing women's advancements and to strengthen their capacity in influencing decision making at the highest level with regard to matters relating to gender equality and equity.[52]

The Ministry of Gender has the function of coordinating and monitoring the implementation of various legal policies and statutes such as the *National Gender Policy*, the *Matrimonial Causes Act* and the *Anti-Gender Based Violence Act* respectively.[53]The monitoring of the implementation of these laws and policies by the Ministry of Gender is beneficial to female journalists as it helps in promoting and spearheading women's equity and equality as these laws are ineffective without proper implementation and monitoring.

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[49]S Chaban, *Regional Organizations, Gender Equality and the Political Empowerment of Women* (United Nations Development Program 2017) 14.

[50]Ibid at p.15.

[51]Ministry of Gender-About the Ministry, (*Ministry of Gender,* 2019) <https://www.gender.gove.zm/?page_id=4862> Accessed 21st October 2021 at 20:34.

[52]Ministry of Gender-About the Ministry, (*Ministry of Gender*, 2019) <https://www.gender.gove.zm/?page_id=4862> Accessed 21st October 2021 at 20:40.

[53]Ministry of Gender-About the Ministry, (*Ministry of Gender*, 2019) <https://www.gender.gove.zm/?page_id=4862> Accessed 21st October 2021 at 20:45.

3.4.3 ZAMBIA NATIONAL WOMEN'S LOBBY GROUP

The Zambia National Women's Lobby Group is another women's organization that is concerned with protecting and promoting women's rights.[54]It has a mandate to bridge the gender gap in advocating for women's increased participation and representation in Zambia.[55]This organization was formed after independence and was established as a result of the unequal distribution of leadership positions and representation in the newly formed government.

The NWLG's goals include the promotion of equal participation of women in the political decision making process, promoting a culture of gender equality and equity and respect for the human rights of women through changes in attitudes, language, procedure and laws, and having more women politicians through affirmative action.[56]The National Women's Lobby Group therefore implores all Zambians to support the cause for gender equity and equality on the ground.

4.0 CONCLUSION

This research has provided the legal framework that has been established with regard to the promotion of gender equity and equality in Zambia. In addition various local and international organizations which are established to help achieve gender equality have also been discussed in detail. This chapter has also introduced us to various inclusions in the newly amended constitution in an effort to achieve gender equity and equality.[57] However, irrespective of having all these international and domestic forms of legislations, policies and organizations aforementioned present in Zambia which are meant to help achieve gender equity and equality, female journalist still face gender discrimination, inequalities and social injustices that continue to persist as a result of patriarchy being firmly entrenched in society.

[54]V Phiri, Acts to tackle challenges faced by female candidates <https://www.womenslobby.org.zm >Accessed 21st October 2021 at 20:54.
[55]B Katebe, Support cause for gender equality < https://www.daily-mail.co.zm> Accessed 21st October 2021 at 20:59.
[56]Gender Equity and Equality Act [No.22 of 2015, 457].
[57]The Constitution of Zambia Chapter One of the Laws of Zambia.

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V Phiri, **Acts to tackle challenges faced by female candidates** <https://www.womenslobby.org.zm >Accessed 21st October 2021 at 20:54.

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A COMPARATIVE ANALYSIS OF THE COPYRIGHT LAW BETWEEN THE UNITED KINDGDOM AND ZAMBIA

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ABSTRACT

This chapter examines the scope of copyright protection for architectural works, with particular emphasis on the legal challenges surrounding the definition of a "building" and the protection of non-habitable structures. It explores the historical development of copyright protection for architectural works and highlights the uncertainties that arise when distinguishing protected architectural works from non-protected three-dimensional structures such as bridges, dams, and monuments. The study compares the legal frameworks governing architectural copyright in the United Kingdom and Zambia. It finds that while both jurisdictions recognize architectural works as copyrightable artistic works, the United Kingdom provides a broader and clearer definition of a building under its copyright legislation, thereby offering greater legal certainty. In contrast, the Zambian Copyright Act does not define the term "building," creating ambiguity regarding the scope of protection available to architects and designers. The chapter further analyzes the remedies available for copyright infringement, including damages, injunctions, accounts of profits, delivery up of infringing articles, and criminal sanctions. It observes that although both jurisdictions provide similar remedies and comply with international copyright standards, the absence of clear statutory definitions and judicial guidance in Zambia limits the effective enforcement of rights relating to architectural works. The study concludes that legal clarity regarding the protection of architectural works is essential to safeguard the rights and interests of creators while encouraging innovation and development within the architectural profession.

Keywords: *Architectural Works, Copyright Infringement, Intellectual Property Rights, Copyright Protection*

INTRODUCTION

From time immemorial, there has been litigation over what constitutes a building that can be protected as an architectural work.[58] This may reflect the fact that architects and other designers create a wide variety of structures. Recognizing the difficulty in using the term building, the legislative history attempts to refine the definition of architectural works.[59] It states that the term building encompasses habitable structures such as houses and office buildings. It also covers structures that are used, but not inhabited, by human beings, such as churches, pergolas, gazebos, and garden pavilions.[60] Thus, according to legislative history, if the structure is meant to be inhabited by a human being, even temporarily, as in the case of a gazebo, it is a building and qualifies as a copyrightable architectural work.[61]

The legislative history, however, does not resolve all ambiguities. Generally, the history restricts the definition of building to exclude bridges, dams and related non-habitable three-dimensional structures from protection.[62] This exclusion raises two major questions. The first question being whether this distinction is necessary and, if so, how an architect can know whether his or her work will be categorized as a protected architectural work or as a non-protected non-habitable three-dimensional structure.[63]

It can be opined that many bridges across the world are monumental and deserve as much protection as buildings. For example, architects recognize the Golden Gate Bridge and the Bay Bridge in California as significant works of architectural and engineering design.[64] Since the legislative history precludes protection of certain works of architecture such as bridges, these works should be afforded copyright protection because the legislative history creates an inappropriate distinction between architectural works and non-habitable three-dimensional structures.[65]

THE UNITED KINGDOM COPYRIGHT LAW

Copyright law protects original architectural drawings and plans as artistic works under the Copyright, Designs and Patents Act 1988.[66] A work of architecture, being a building or a model for a building, is also protected as an artistic work.[67] Section 4(1)(b) of the Copyright, Designs and Patents Act 1988 defines a work of architecture as "a building or a model for a building," while section 4(2) provides that "building" includes any fixed structure or part of a building.[68]

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[58] Robert R. Jones Associates Inc v Nino Homes (1991) 858 F Supp 1185 (ED Va).
[59] US Congress, House Report No 101-735, *Architectural Works Copyright Protection Act 1990* 20–21.
[60] ibid.
[61] ibid.
[62] House Report No 101-735 (n 2) 20–21.
[63] William F Patry, *Patry on Copyright* (Thomson Reuters 2024) vol 2, §3:117.
[64] David P Billington, *The Tower and the Bridge* (Princeton University Press 1983) 187–193
[65] Patry (n 6) §3:117.
[66] Copyright, Designs and Patents Act 1988 (UK), s 4.
[67] ibid s 4(1)(b).
[68] ibid s 4(2).

This broad interpretation was recognized in *Macmillan Publishers Ltd v Thomas Reed Publications Ltd*, where the court discussed the scope of copyright protection afforded to artistic works under the Act.[69] The definition includes modern additions to older buildings, such as the Clore Gallery extension at Tate Britain in London.[70]

There is no requirement that architectural works possess artistic merit before protection is conferred.[71] Accordingly, a simple office building may qualify for protection in the same manner as the Houses of Parliament, provided that the work satisfies the requirement of originality.[72]

THE ZAMBIAN COPYRIGHT LAW

The Copyright and Performance Rights Act of Zambia provides protection for works of architecture in the form of buildings and models as artistic works.[73] However, unlike the United Kingdom Copyright, Designs and Patents Act 1988, the Zambian Act does not define the term "building."[74]

This omission creates uncertainty regarding the scope of protection afforded to architectural works in Zambia. Since the Act does not define the term, creators may find it difficult to determine whether particular structures qualify for copyright protection.[75]

The Zambian copyright law does not specifically define what constitutes infringement of architectural works. Consequently, courts must rely on general copyright principles concerning substantial reproduction and copying of the expression of ideas rather than ideas themselves.[76]

The rationale for the historical reluctance to protect completed buildings was based on the copyright principle that ideas are not protected, only their expression.[77] Copyright law protects architectural drawings and plans but not the underlying ideas, concepts, or design principles embodied in them.[78] This principle promotes innovation and prevents monopolization of architectural concepts.[79]

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[69] *Macmillan Publishers Ltd v Thomas Reed Publications Ltd* [1993] FSR 455.
[70] Hugh Laddie, Peter Prescott and Mary Vitoria, *The Modern Law of Copyright and Designs* (4th edn, LexisNexis 2011) para 3.88.
[71] Copyright, Designs and Patents Act 1988, s 1(1)(a).
[72] Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia, s 2.
[73] ibid.
[74] Lloyd N Sakala, *Intellectual Property Law in Zambia* (UNZA Press 2015) 112
[75] *L B Plastics Ltd v Swish Products Ltd* [1979] RPC 551.
[76] *Baker v Selden* 101 US 99 (1879).
[77] ibid.
[78] Lionel Bently and Brad Sherman, *Intellectual Property Law* (6th edn, OUP 2022) 126.
[79] Cornish, Llewelyn and Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (10th edn, Sweet & Maxwell 2024) 765

REMEDIES FOR THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

An infringement of an intellectual property right is generally actionable as a tort, and the remedies available for tortious conduct are also applicable to intellectual property disputes.[80]

In copyright law, legislation often specifies the remedies available. For example, when considering additional damages, courts may take into account the flagrancy of the infringement and any benefit accruing to the defendant.[81]

Part III of the Copyright and Performance Rights Act provides that infringement of copyright is actionable at the suit of the owner of the copyright.[82] Remedies generally fall into two categories: civil remedies and criminal sanctions.[83]

CIVIL REMEDIES

A copyright owner whose rights have been infringed may seek damages, injunctions, account of profits, delivery up, or any other remedy available in relation to infringement of proprietary rights.[84]

The primary objective of damages is to compensate the claimant for losses suffered as a result of the infringement. The court seeks to place the claimant in the position they would have occupied had the infringement not occurred.[85]

This principle was applied in *Claydon Architectural Metalwork Ltd v DJ Higgins & Sons Ltd*, where the court held that losses that are too remote are not recoverable in damages.[86]

Under copyright law, innocence may operate as a defence to a claim for damages where the defendant proves that he was unaware and had no reasonable grounds for suspecting the existence of copyright.[87]

Additional damages may be awarded under United Kingdom copyright law where the circumstances justify such an award. These damages are compensatory rather than punitive in nature.[88]

An injunction is an equitable remedy restraining actual or threatened infringement. The principles governing interlocutory injunctions were authoritatively stated in *American*

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[80] Copyright, Designs and Patents Act 1988, s 97(2).
[81] Ibid
[82] Copyright and Performance Rights Act (Zambia), Part III.
[83] Cornish, Llewelyn and Aplin (n 23) 765.
[84] Copyright, Designs and Patents Act 1988, s 96.
[85] ibid.
[86] *Claydon Architectural Metalwork Ltd v DJ Higgins & Sons Ltd* [1997] FSR 718
[87]. Copyright, Designs and Patents Act 1988, s 97(1).
[88] ibid s 97(2).

Cyanamid Co v Ethicon Ltd.[89] The court held that the claimant must demonstrate that there is a serious question to be tried and that damages would not be an adequate remedy.

Account of profits is an alternative remedy to damages and requires the infringer to surrender profits derived from the infringement.[90] In *Performing Right Society Ltd v A Hickey (Bar-B-Que Drive-In Restaurant)*, the court considered the circumstances under which an account of profits could be awarded instead of damages.[91]

The plaintiff may also seek delivery up of infringing articles for destruction or disposal. Section 28(4) of the Copyright and Performance Rights Act provides for destruction orders.[92]

Under English law, an architect may also protect his interests through land registration mechanisms such as cautions and restrictions affecting property that allegedly embodies infringing architectural plans.[93]

CRIMINAL SANCTIONS

Certain intellectual property statutes provide criminal sanctions for infringement.[94] These sanctions may include fines, imprisonment, or both.[95] For example, section 28(1) of the Zambian Copyright and Performance Rights Act provides criminal penalties for copyright infringement, including substantial fines and terms of imprisonment upon conviction.[96]

In practice, courts often impose fines, with imprisonment serving as an alternative sanction where the fine is not paid.[97]

CONCLUSION

Unlike the legislative history of the Architectural Works Copyright Protection Act, both the United Kingdom and Zambian statutes provide protection for architectural works without expressly excluding all non-habitable three-dimensional structures from protection.

Both legal systems generally comply with the requirements of the Berne Convention for the Protection of Literary and Artistic Works, which recognizes works of architecture as protected artistic works.[98]

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[89] *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.
[90] Cornish, Llewelyn and Aplin (n 23) 789.
[91] *Performing Right Society Ltd v A Hickey (Bar-B-Que Drive-In Restaurant)* [1951] 2 KB 739.
[92] Copyright and Performance Rights Act (Zambia), s 28(4)
[93] Land Registration Act 1925 (UK), s 54(1).
[94] Copyright and Performance Rights Act (Zambia), s 28.
[95] ibid.
[96] ibid s 28(1).
[97] Berne Convention for the Protection of Literary and Artistic Works 1886, art 2(1).
[98] Copyright, Designs and Patents Act 1988, s 4(2).

An advantage of the United Kingdom system is the broad definition of "building" contained in section 4(2) of the Copyright, Designs and Patents Act 1988.[99] In contrast, the absence of a statutory definition in the Zambian Copyright and Performance Rights Act remains a significant limitation in determining the scope of protection afforded to architectural works.

[99] Copyright and Performance Rights Act (Zambia), Chapter 406.

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