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JOURNAL OF LAW REVIEW

- Challenges and Prospects of the Legal and Institutional Frameworks for Combating Cybercrimes in Nigeria
  - Adesina, Samuel Tolu Olumide
- Advancing Gender-Inclusive Representation in Nigeria: The Case for the Special Seats Bill
  - Paul T M Angya
- Constitutional Institutions and Offices in Nigeria: A Gap Between Theory and Practice?
  - Prof. Abiodun Amuda-Kannike SAN, Ibrahim Bello Ibrahim and Shehuluqman Sambo
- Subsidiarity and Proportionality in Nigerian Federalism: Balancing Authority, Autonomy, and Accountability
  - Samuel Oguche and Bilkis S. Lawal-Gambari
- Comparative Perspectives, Emerging Challenges, and Reform Proposals for Sentencing and Rehabilitation of Offenders in Nigeria
  - Ifeanyi, Hyacinth Nwoga
- The Womb in Limbo: A Comparative Study of Legal Motherhood and Cultural Tensions in Nigerian Surrogacy
  - Usman Ibrahim and Lauretu Ogwuche
- Examining the Issue of Human Rights Practices under the Constitution: Which Way Forward?
  - Prof. Abiodun Amuda-Kannike SAN, Ibrahim Bello Ibrahim and Shehuluqman Sambo
- Governance and Accountability in Nigeria's National Social Investment Programme Agency (N-SIPA) Act: An Institutional Analysis
  - Nuhu Abubakar Babatunde
- Carbon Taxation and Sustainable Development in Nigeria
  - Legborsi Tony-Francis and Peculiar Chukwuebuka Daniel
- Statelessness under International Humanitarian Law: Legal Frameworks, Challenges, and Prospects in Nigeria
  - Elizabeth Jalo Okotie
- The Impact of International Human Rights Law on the Application of Chapter II of the Constitution of the Federal Republic of Nigeria 1999
  - Akintunde Justus Ifeoluwa and Nanloh Precious Nanna
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EDITORIAL COMMENT

This is the Eighth volume (Issue 2) of the NILDS-Journal of Law Review, consisting of twelve articles in different areas of law and policy.

The paper titled **"Challenges and Prospects of the Legal and Institutional Frameworks for Combating Cybercrimes in Nigeria",** authored by Adesina, Samuel Tolu Olumide, examines Nigeria's legal and institutional framework for combating cybercrime, focusing on the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 and its alignment with international standards. It identifies key challenges such as limited technical capacity, jurisdictional constraints, weak inter-agency coordination, inadequate funding, and evolving cyber threats. The paper also highlights evidentiary difficulties and human rights concerns in enforcement. Despite these issues, it notes prospects for reform through legal updates, international cooperation, capacity building, and technological innovation, advocating a holistic approach to strengthen Nigeria's cyber resilience.

Paul T M Angya, in the paper titled **"Advancing Gender-Inclusive Representation in Nigeria: The Case for the Special Seats Bill",** examines women's persistent underrepresentation in Nigerian elective offices and evaluates the proposed Special Seats Bill, which seeks to reserve additional legislative seats for women at federal and state levels. It argues that the Bill is constitutionally valid, necessary, and consistent with Nigeria's international obligations on gender equality. Using doctrinal methodology, the study identifies barriers such as discriminatory party structures, socio-cultural norms, violence, and high campaign costs, while drawing lessons from quota systems in other African countries to support temporary special measures.

Prof. Abiodun Amuda-Kannike SAN, Ibrahim Bello Ibrahim and ShehuLuqman Sambo, writing on **"Constitutional Institutions and Offices in Nigeria: A Gap Between Theory and Practice?",** examine the efficacy of constitutional institutions and offices in Nigeria, focusing on the dichotomy between theoretical expectations and practical realities. Utilizing a mixed-methods approach, the paper investigates the functionality of key institutions such as the National Assembly, Executive, Judiciary, and independent bodies like the Economic and Financial Crimes Commission (EFCC) and the National Human Rights Commission (NHRC). It highlights the challenges hindering these institutions from fulfilling their constitutional mandates, including corruption, political interference, and inadequate funding. By exploring the gaps between theory and practice, this study provides valuable insights into the complexities of Nigeria's governance structure and offers recommendations for enhancing the effectiveness of these critical institutions.

The paper titled **"Subsidiarity and Proportionality in Nigerian Federalism: Balancing Authority, Autonomy, and Accountability",** written by Sam Oguche and Bilkis S. Lawal-Gambari, examines subsidiarity and proportionality within Nigerian federalism under the Constitution of the Federal Republic of Nigeria, 1999. It highlights the gap between constitutional allocation of powers and the reality of centralised governance and fiscal imbalance. Subsidiarity is presented as a principle favouring decision-making at the lowest effective level of government, while proportionality ensures that governmental actions are appropriate and not excessive. Through analysis and sectoral examples, the paper argues for their combined application to improve governance efficiency, accountability, and balance between federal and subnational authorities in Nigeria.

Ifeany Hyacinth Nwoga's paper, **"Comparative Perspectives, Emerging Challenges, and Reform Proposals**

for Sentencing and Rehabilitation of Offenders in Nigeria", compares sentencing and offender treatment in Nigeria with the United Kingdom, Canada, and South Africa, focusing on legal frameworks, correctional practices, and rehabilitation systems. It identifies major challenges in Nigeria, including sentencing disparities, prison overcrowding, weak rehabilitation, and limited non-custodial measures. In contrast, the selected jurisdictions demonstrate structured sentencing guidelines, restorative justice approaches, and effective reintegration systems. The paper notes Nigeria's modest progress under the Administration of Criminal Justice Act 2015 but highlights persistent gaps. It concludes by recommending reforms to improve sentencing consistency, expand alternatives to imprisonment, and strengthen offender rehabilitation and reintegration.

Usman Ibrahim and Lauretu Ogwuche's paper, **"The Womb in Limbo: A Comparative Study of Legal Motherhood and Cultural Tensions in Nigerian Surrogacy",** examines surrogacy in Nigeria, highlighting the legal uncertainty and cultural resistance surrounding the practice. Through a comparative analysis of the United Kingdom and South Africa, it finds that the UK model offers strong welfare protections but lacks pre-birth certainty, while South Africa provides clearer legal status through pre-authorisation. It proposes a hybrid model for Nigeria but identifies challenges such as federalism, judicial capacity, and cultural opposition. The paper recommends a Model Surrogacy Act, specialised courts, stakeholder engagement, and equity safeguards to ensure an effective framework.

"Examining the Issue of Human Rights Practices Under the Constitution: Which Way Forward?", authored by Prof. Abiodun Amuda-Kannike, Ibrahim Bello Ibrahim and Shehuluqman Sambo, examines the practices of fundamental human rights in Nigeria, evaluating their alignment with global best practices. It investigates the challenges and opportunities in promoting and protecting human rights, highlighting the role of government institutions, civil society, and international organizations. The paper contributes to the discourse on human rights in Nigeria, providing insights for policymakers, practitioners, and scholars

The paper titled **"Governance and Accountability in Nigeria's National Social Investment Programme Agency (N-SIPA) Act: An Institutional Analysis",** authored by Nuhu Abubakar Babatunde, analyses the institutional framework established by Nigeria's NSIPA Act 2023, focusing on governance structures and accountability mechanisms for poverty reduction. Through comparative insights and evaluation of early implementation, it identifies strengths in institutionalising social protection alongside challenges such as limited political independence, weak monitoring systems, and coordination gaps at subnational levels. The paper concludes that while the Act is a significant step forward, targeted reforms are needed to strengthen its effectiveness and enhance the delivery of social investment programmes in Nigeria.

"Can a Carbon Tax Act Drive Sustainable and Equitable Development in Nigeria?", written by Legborsi Tony-Francis and Peculiar Chukwuebuka Daniel, evaluates the potential of a Carbon Tax Act in Nigeria as a response to rising greenhouse gas emissions. It examines the economic, environmental, and social implications, including revenue generation, emission reduction, and impacts on vulnerable populations. Using a theoretical approach, it highlights concerns that businesses may shift costs to consumers, limiting effectiveness. The study concludes that prioritising environmental sustainability is essential and recommends enacting a Carbon Tax Act to regulate emissions, support a low-carbon economy, and advance Nigeria's sustainable development goals.

Another paper titled **"Statelessness under International Humanitarian Law: Legal Frameworks, Challenges, and Prospects in Nigeria",** written by Elizabeth Jalo Okotie, examines statelessness as the condition of lacking

recognized nationality and its implications for human rights protection in Nigeria. It explores international and regional legal frameworks, including the 1954 and 1961 Statelessness Conventions, the African Charter, and ECOWAS instruments. It identifies key gaps in Nigeria's system, such as weak birth registration, absence of statelessness determination procedures, and non-ratification of relevant treaties. The paper highlights the human rights impacts and recommends legal recognition of stateless persons, treaty ratification, and improved civil registration systems.

The Paper titled **"The Impact of International Human Rights Law on the Application of Chapter II of the Constitution of the Federal Republic of Nigeria 1999",** written by Akintunde Justus Ifeoluwa and Nanloh Precious Nanna, examines how international human rights law has influenced the interpretation of Chapter II of the Nigerian Constitution of the Federal Republic of Nigeria, 1999, particularly socio-economic rights such as education, health, and welfare, which are largely non-justiciable under section 6(6)(c). It analyses the role of the domesticated African Charter on Human and Peoples' Rights in shaping judicial approaches to enforcement. The paper shows that international norms can expand constitutional interpretation and improve accountability, and it recommends judicial activism, stronger policy commitment, civil society engagement, and legislative reform to enhance socio-economic rights protection in Nigeria.

The paper titled **"Bridging the Implementation Gap Between Law and Practice in Women's Land and Housing Rights in Nigeria",** authored by Muhibat Jadesinmi Oladoja Mohammed and Olayide Oladipo Dara, examines women's land and housing rights in Nigeria within the context of persistent legal, cultural, and socio-economic barriers. Despite constitutional protections and international obligations such as CEDAW, discriminatory customary practices, inheritance systems, and limited financial access continue to restrict women's property ownership. It analyzes statutory and customary laws, judicial decisions like Ukeje v Ukeje and Mojekwu v Mojekwu, and identifies gaps in enforcement. The study recommends legislative reform, judicial activism, gender-sensitive policies, financial inclusion, and public awareness to promote gender equity and strengthen women's socio-economic empowerment.

Professor Abiodun Amuda-Kannike, SAN, FCArb
Editor-in-Chief

Table of Contents

1. Challenges and Prospects of the Legal and Institutional Frameworks for Combating Cybercrimes in Nigeria
Adesina, Samuel Tolu Olumide ***10***

2. Advancing Gender-Inclusive Representation in Nigeria: The Case for the Special Seats Bill
Paul T M Angya ***37***

3. Constitutional Institutions and Offices in Nigeria: A Gap Between Theory and Practice?
Prof. Abiodun Amuda-Kannike SAN, Ibrahim Bello Ibrahim and Shehuluqman Sambo ***48***

4. Subsidiarity and Proportionality in Nigerian Federalism: Balancing Authority, Autonomy, and Accountability
Samuel Oguche and Bilkis S. Lawal-Gambari ***73***

5. Comparative Perspectives, Emerging Challenges, and Reform Proposals for Sentencing and Rehabilitation of Offenders in Nigeria
Ifeanyi, Hyacinth Nwoga ***86***

6. The Womb in Limbo: A Comparative Study of Legal Motherhood and Cultural Tensions in Nigerian Surrogacy
Usman Ibrahim and Lauretu Ogwuche ***107***

7. Examining the Issue of Human Rights Practices under the Constitution: Which Way Forward?
Prof. Abiodun Amuda-Kannike SAN, Ibrahim Bello Ibrahim and Shehuluqman Sambo ***119***

8. Governance and Accountability in Nigeria's National Social Investment Programme Agency (N-SIPA) Act: An Institutional Analysis
Nuhu Abubakar Babatunde ***136***

9. Carbon Taxation and Sustainable Development in Nigeria
Legborsi Tony-Francis and Peculiar Chukwuebuka Daniel ***143***

10. Statelessness under International Humanitarian Law: Legal Frameworks, Challenges, and Prospects in Nigeria
Elizabeth Jalo Okotie ***153***

11. The Impact of International Human Rights Law on the Application of Chapter II of the Constitution of the Federal Republic of Nigeria 1999
Akintunde Justus Ifeoluwa and Nanloh Precious Nanna ***165***

12. Bridging the Implementation Gap Between Law and Practice in Women's Land and Housing Rights in Nigeria
Muhibat Jadesinmi Oladoja Mohammed and Olayide Oladipo Dara ***177***

13. An Analysis of the Adequacy of the Law in Addressing the Rising Incidents of Armed Banditry in Central Nigeria
Oyesola Animashaun ***190***

01

CHALLENGES AND PROSPECTS OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR COMBATING CYBERCRIMES IN NIGERIA

ADESINA, SAMUEL TOLU OLUMIDE*

ABSTRACT

Cybercrime has emerged as one of the most complex threats to national security, economic stability, and public trust in Nigeria's digital ecosystem. This article critically examines the legal and institutional frameworks established to combat cybercrime in Nigeria, with particular focus on the effectiveness of extant legislation, enforcement mechanisms, and inter-agency coordination. Anchored primarily on the provisions of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, the paper evaluates the extent to which Nigeria's legal regime aligns with international best practices and addresses evolving cyber threats such as identity theft, financial fraud, cyberterrorism, and online misinformation. It identifies key challenges, including inadequate technical capacity among law enforcement agencies, jurisdictional constraints, poor inter-institutional collaboration, limited public awareness, and the rapid sophistication of cybercriminal activities. It further interrogates issues relating to enforcement deficits, evidentiary difficulties in digital investigations, and concerns over data protection and human rights. Institutional bottlenecks, including overlapping mandates among regulatory bodies and insufficient funding, are also highlighted as impediments to effective cybercrime control. Notwithstanding these challenges, the article underscores emerging prospects, including ongoing legal reforms, increased regional and international cooperation, capacity-building initiatives, and the integration of advanced technologies in crime detection and prevention. It argues that a holistic and adaptive approach, combining legal reform, institutional strengthening, public-private partnerships, and digital literacy, is essential for enhancing Nigeria's cyber resilience. The article concludes by proposing actionable recommendations aimed at strengthening Nigeria's response to cybercrime within a rapidly evolving digital landscape.

Keywords: *Cybercrime, Legal Framework, Institutional Capacity, Cybersecurity, Nigeria, Digital Evidence, Law Enforcement, Policy Reform*

INTRODUCTION

The rapid expansion of information and communication technologies has transformed Nigeria into one of Africa's largest digital economies, creating unprecedented opportunities for innovation, financial inclusion, and governance. However, this digital transformation has also exposed individuals, institutions, and the state to a

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growing wave of cyber threats. Cybercrime, ranging from identity theft and online fraud to cyberstalking, hacking, and cyberterrorism, has become increasingly sophisticated, transnational, and difficult to detect or prosecute. In Nigeria, the prevalence of internet-enabled financial crimes and the notoriety of certain forms of online fraud have drawn both domestic concern and international attention, underscoring the urgent need for robust legal and institutional responses. In recognition of these threats, Nigeria has developed a legal and institutional framework aimed at preventing, detecting, and prosecuting cybercrimes. The enactment of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 marked a significant milestone in providing a comprehensive statutory basis for addressing cyber offences. Complementary roles are played by key institutions such as the Economic and Financial Crimes Commission (EFCC), the Nigerian Police Force, the Nigerian Communications Commission (NCC), and other regulatory and security agencies. Despite these efforts, the effectiveness of the framework remains constrained by several structural, operational, and normative challenges.

This article examines the extent to which Nigeria's legal and institutional arrangements are capable of addressing the dynamic and evolving nature of cybercrime. It interrogates the adequacy of existing laws, the capacity of enforcement agencies, and the level of coordination among relevant stakeholders. The article further explores emerging prospects for reform, including technological innovation, international cooperation, and policy development. The recommendations contribute to ongoing discourse on strengthening Nigeria's cybersecurity architecture and enhancing the rule of law in the digital age.

2. LEGAL CHALLENGES IN COMBATING CYBERCRIMES IN NIGERIA

a. Gaps and Ambiguities in the Cybercrimes (Prohibition, Prevention, etc.) Act 2015

The Cybercrimes (Prohibition, Prevention, etc.) Act 2015 (Cybercrimes Act 2015) constitutes the cornerstone of Nigeria's legal framework for addressing cybercrime. It represents the country's first comprehensive statutory attempt to criminalise computer-related offences, establish investigative powers, and regulate electronic evidence. While the Act marked significant progress from the fragmented and piecemeal approach under prior laws, critical gaps and ambiguities limit its effectiveness in addressing contemporary cyber threats.

A primary challenge lies in the rapid evolution of technology. Since 2015, digital technologies have advanced substantially, giving rise to new modalities of cybercrime such as cloud-based attacks, artificial intelligence-driven fraud, cryptocurrency-related offences, and sophisticated phishing campaigns.[1] The Act, drafted primarily with conventional cybercrimes such as hacking, identity theft, and electronic fraud in mind, does not explicitly address these emerging threats, creating a legal grey area. For instance, there is no explicit statutory treatment of cryptojacking, deepfake technology misuse, or artificial intelligence-enabled social engineering attacks, all of which pose significant threats to individual, corporate, and state interests.[2]

Another notable gap concerns offence definitions and scope. Several provisions of the Act employ broad language without sufficient clarity, leaving room for interpretation. Section 6 criminalises "unauthorised access to computer systems" but does not adequately differentiate between malicious intrusions, negligent breaches, or security testing conducted by ethical hackers. This ambiguity may hinder prosecutions or, conversely, risk overreach that could criminalise routine or benign digital behaviour. Similarly, section 19 on "computer-related forgery and fraud" fails to provide detailed thresholds for establishing intent or quantifying financial harm, which complicates

1 UNODC, *Comprehensive Study on Cybercrime* (UNODC 2013) 35-40.

2 K O Olasunkanmi, 'Cybercrime and Emerging Digital Technologies in Nigeria: Challenges for Law Enforcement' [2022] 18 (2) *African Journal of Legal Studies* 102, 108-110.

both investigative strategy and judicial adjudication. Overlapping provisions further compound the problem. Many cyber-enabled offences could also be prosecuted under the Economic and Financial Crimes Commission Act 2004, the EFCC Act, or traditional criminal statutes such as the Criminal Code Act and Penal Code. While some overlap is inevitable, the lack of clear delineation of applicable statutes creates forum shopping, duplication of efforts, and jurisdictional uncertainty. Investigators and prosecutors often face challenges deciding whether to charge under the Cybercrimes Act, EFCC Act, or conventional fraud statutes, which can delay prosecution and undermine deterrence.[3]

The Act also exhibits territorial and jurisdictional limitations. While sections 1-5 extend the Act's application to acts committed outside Nigeria by persons targeting Nigerian systems or citizens, enforcement remains largely symbolic in transnational cases. Cybercriminals operating from jurisdictions with weak cooperation frameworks may evade prosecution, leaving Nigerian authorities constrained by limited mutual legal assistance treaties and the non-ratification of the Budapest Convention on Cybercrime.[4] A further legal challenge concerns penalty structures and sentencing guidance. While the Act prescribes fines and custodial sentences for a range of offences, the provisions are often generalised and inflexible, offering little guidance for courts to calibrate penalties based on the severity, economic impact, or sophistication of cybercrime.[5] This lack of graduated sentencing undermines both deterrence and proportionality, potentially leading to inconsistencies in judicial outcomes and public perception of the law's effectiveness.

The interplay with digital rights and constitutional protections is inadequately addressed. Sections permitting surveillance, interception of communications, or seizure of electronic devices are often phrased in broad terms, creating tension with constitutional rights to privacy, fair hearing, and freedom from unlawful search and seizure.[6] Courts and prosecutors are frequently left to reconcile these statutory provisions with constitutional safeguards, generating legal uncertainty and potential challenges to enforcement actions. While the Cybercrimes Act 2015 represents a landmark legislative instrument, its gaps and ambiguities pose significant obstacles to effective cybercrime control. The statute's failure to fully anticipate emerging technologies, define offences with sufficient precision, clarify overlapping jurisdictions, and align penalties with harm severity highlights the urgent need for legislative review and reform towards enhancing legal certainty as well as strengthening prosecutorial effectiveness, judicial interpretation, and ultimately, deterrence against cybercrime.

b. Jurisdictional and Territorial Challenges

Cybercrime, by its very nature, often transcends national boundaries, raising fundamental questions about jurisdiction, territorial reach, and enforcement authority. In Nigeria, the Cybercrimes Act 2015 attempts to address these issues by extending legal applicability to offences committed outside Nigerian territory that target Nigerian systems or citizens.[7] While this provision demonstrates a recognition of the transnational character of cybercrime, its practical implementation reveals significant legal and operational challenges. A key difficulty arises from the limitations of territorial jurisdiction. Nigerian courts and enforcement agencies primarily operate within national boundaries, and their capacity to pursue cybercriminals physically located abroad is inherently constrained.[8] Even where the Cybercrimes Act asserts extraterritorial reach, enforcement depends heavily on the

3 O O Adeyemi, 'Cybercrime and the Limits of Traditional Criminal Law in Nigeria' [2018] 22 (1) *Journal of African Law* 45, 50-53.
4 Council of Europe, *Convention on Cybercrime* (Budapest Convention, 2001).
5 Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 21-29.
6 Constitution of the Federal Republic of Nigeria 1999, ss 37, 36; Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 6, 24.
7 Sections 1-5.
8 UNODC (n 1) 35-40.

cooperation of foreign jurisdictions. The lack of a robust network of mutual legal assistance treaties (MLATs) with many countries significantly hampers the investigation, evidence gathering, and prosecution of foreign-based offenders.[9]

Closely related is the challenge posed by extraterritorial offenders operating from jurisdictions with weak legal frameworks or conflicting cybercrime laws. Offenders may exploit regulatory gaps, use anonymising technologies, or locate servers in states unwilling or unable to cooperate with Nigerian authorities.[10] In practice, this has resulted in jurisdictional gaps where Nigerian investigative and prosecutorial efforts cannot be converted into enforceable judicial outcomes. For example, phishing, ransomware, or cryptocurrency fraud schemes targeting Nigerian citizens have often been traced to countries where extradition is slow or unavailable, frustrating the deterrent effect of domestic law. Nigeria's non-ratification of the Budapest Convention on Cybercrime further exacerbates the problem.[11] The Convention provides a framework for harmonising cybercrime definitions, facilitating cross-border cooperation, and streamlining evidence-sharing mechanisms. Without such formal alignment, Nigerian agencies often rely on bilateral arrangements or ad hoc collaboration, which are time-consuming, legally complex, and often inadequate for sophisticated cybercrime investigations.[12] This structural gap limits Nigeria's ability to participate in regional and global cybercrime enforcement networks on an equal footing with jurisdictions that have adopted the Convention.

Another jurisdictional challenge concerns the coordination between federal and state authorities. While cybercrime investigations fall primarily under federal law, offences often involve local actors or infrastructure, creating potential conflicts between state police authorities and federal agencies such as the EFCC or NPF-NCCC.[13] Overlapping mandates can lead to delays, confusion over prosecutorial authority, and, in some cases, ineffective enforcement. For instance, a cyber-enabled financial fraud committed in one state but executed via internet servers located elsewhere may encounter procedural ambiguity regarding which agency has primacy. The adjudicatory implications of these jurisdictional challenges are also significant. Nigerian courts may be asked to evaluate evidence sourced from multiple jurisdictions, often involving foreign legal standards, data protection laws, or electronic evidence rules that diverge from Nigerian requirements.[14] Judicial uncertainty over the admissibility of such evidence may result in dismissals or acquittals, undermining the deterrent and remedial objectives of cybercrime legislation.

Jurisdictional issues intersect with policy and operational limitations. Law enforcement agencies often lack expertise in international cyber investigations, including identifying applicable foreign laws, issuing international subpoenas, or collaborating with foreign regulators.[15] Consequently, Nigeria's capacity to assert its legal jurisdiction against transnational cybercriminals remains limited, even where the law nominally permits extraterritorial application. While the Cybercrimes Act 2015 acknowledges the transnational nature of cybercrime, practical jurisdictional and territorial limitations, including restricted extraterritorial enforcement capacity, weak international cooperation, non-ratification of the Budapest Convention, federal-state coordination gaps,

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9 A O Adeyemi, 'Cybercrime Enforcement and the Challenge of Jurisdiction in Nigeria' [2019] 14 (2) *Nigerian Journal of Criminal Justice* 88, 92-94.

10 K O Olasunkanmi, 'Cross-Border Cybercrime and Legal Enforcement in Africa' [2021] 20 (1) *African Journal of Legal Studies* 115, 118-120.

11 Council of Europe, *Convention on Cybercrime* (Budapest Convention, 2001).

12 UNODC, *Handbook on Cybercrime for Prosecutors* (UNODC 2014) 17-19.

13 O O Adeyemi, 'Federal-State Coordination in Cybercrime Enforcement: Challenges and Prospects' [2020] 16 (1) *Nigerian Journal of Law and Policy* 52, 56-58.

14 Evidence Act 2011, s 84; Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 6-7.

15 UNODC,(n 8) 212-215.

and judicial uncertainty, pose formidable challenges. These limitations require both legislative refinement and strategic diplomatic engagement, participation in international frameworks, and capacity building for agencies and prosecutors tasked with enforcing extraterritorial provisions.

c. Evidentiary Challenges and Digital Forensics

The prosecution of cybercrime in Nigeria is heavily dependent on the collection, preservation, and presentation of digital evidence. Unlike conventional crimes, cybercrime investigations primarily rely on electronically stored information, including server logs, device metadata, emails, digital transaction records, and social media activity.[16] While the Cybercrimes Act 2015 provides some legal recognition of electronic evidence,[17] the practical enforcement and judicial admissibility of such evidence pose significant challenges. A central difficulty is ensuring the authenticity and integrity of digital evidence. Section 84 of the Evidence Act 2011 recognises electronically stored information as admissible evidence, provided it is "produced or received in the normal course of business" and accompanied by certification from a competent person. However, Nigerian investigators and prosecutors often face practical difficulties in meeting these evidentiary requirements, particularly when evidence is extracted from cloud servers, foreign-based service providers, or complex distributed networks. The technical nature of digital data makes it susceptible to alteration, deletion, or corruption, raising questions about chain of custody and reliability.[18]

Capacity gaps in digital forensics further exacerbate these challenges. While agencies such as the Nigerian Police Force National Cybercrime Centre (NPF-NCCC) and the EFCC maintain forensic units, the number of trained cyber forensic experts remains limited relative to the increasing volume and complexity of cybercrime cases.[19] Inadequate infrastructure, outdated forensic tools, and lack of standardised procedures often undermine the evidentiary value of seized digital materials. Consequently, cases may collapse due to technical defects, even when substantive criminality is evident. Another significant issue is the cross-border nature of cybercrime evidence. Investigations frequently require access to data stored in foreign jurisdictions, raising legal and logistical hurdles. Mutual legal assistance requests, subpoenas, and data-sharing agreements are often slow, bureaucratic, or legally constrained, delaying investigations and sometimes rendering evidence inadmissible due to procedural lapses.[20] Courts are also confronted with unfamiliar technical testimony, which can affect the weight and credibility of electronic evidence. Judges and prosecutors with limited technical literacy may struggle to evaluate the authenticity, relevance, and probative value of complex digital data.[21]

Encryption and privacy protections introduce additional evidentiary obstacles. Many cybercriminals employ end-to-end encryption, anonymisation networks, or cryptocurrency wallets to conceal their activities. While these technologies enhance personal privacy and security, they also impede investigative access. The Cybercrimes Act permits law enforcement to request data disclosure, but practical enforcement against encrypted or anonymised communications remains technologically and legally challenging.[22] Moreover, the timeliness of digital evidence

16 Ibid, 210-213.
17 Sections 6-7, 24.
18 K O Olasunkanmi, 'Cybercrime Evidence Handling in Nigeria: Challenges and Reforms' [2022] 18 (2) *African Journal of Legal Studies* 115, 120-122.
19 UNODC, *Handbook on Cybercrime for Judges* (UNODC 2017) 12-15.
20 A O Adeyemi, 'Cross-Border Cybercrime Evidence and Legal Challenges in Nigeria' [2019] 14 (1) *Nigerian Journal of Criminal Justice* 67, 71-73.
21 O O Adeyemi, 'Digital Evidence and Judicial Capacity in Cybercrime Prosecutions' [2020] 16 (2) *Nigerian Journal of Law and Policy* 38, 42-44.
22 Section 24

collection is critical. Cybercrime evidence is inherently volatile; logs can be overwritten, devices reset, and cloud records altered. Delays in investigation or inadequate preservation measures can result in loss of crucial evidence. Studies indicate that rapid forensic response and standardised digital evidence handling protocols are essential to preserve the integrity of electronic materials.[23]

Evidentiary challenges intersect with constitutional safeguards. While investigators may need to seize devices or intercept communications, these actions must respect privacy, fair trial rights, and judicial oversight under sections 36 and 37 of the Constitution. The prosecution of cybercrime in Nigeria is constrained by evidentiary and forensic challenges arising from technological complexity, limited capacity, cross-border data issues, encryption, and constitutional safeguards. Addressing these obstacles requires sustained investment in digital forensic training, standardised protocols, international cooperation, and judicial capacity building. Enhancing the integrity and admissibility of electronic evidence is fundamental to ensuring that cybercrime legislation achieves its deterrent, punitive, and protective objectives.

d. Human Rights and Due Process Concerns

The pursuit of cybercrime enforcement inevitably engages fundamental human rights and due process principles. Nigeria's constitutional framework guarantees a range of civil liberties, including the right to privacy, freedom from unlawful search and seizure, fair hearing, and personal liberty, which must be balanced against state powers of investigation and prosecution.[24] This balance becomes particularly salient in the digital context, where enforcement measures such as electronic surveillance, interception of communications, network data extraction, and device seizure can intrude deeply into personal autonomy and information privacy. At the centre of the legal discourse is the tension between state powers of investigation under the Cybercrimes Act 2015 and constitutional protections under the Constitution, particularly sections 36 and 37, which protect the rights to fair hearing and privacy, respectively. The Cybercrimes Act empowers law enforcement to investigate offences, seize equipment, and obtain disclosure orders from courts for access to digital information.[25] However, critics argue that some of these provisions are framed broadly, potentially permitting excessive state intrusion without adequate procedural safeguards.[26]

Privacy, as protected by section 37 of the Constitution, encompasses the inviolability of an individual's personal information and communications. Modern cybercrime investigations often require the interception of emails, chat logs, IP addresses, and other network metadata; techniques that, without tight legal and judicial oversight, can undermine constitutional privacy rights. International human rights jurisprudence, including decisions from the African Commission on Human and Peoples' Rights, emphasises that digital privacy is a component of the broader right to privacy and that lawful limitations must satisfy tests of necessity, proportionality, and legality.[27] Nigerian cybercrime enforcement, therefore, must be careful not only to pursue criminal conduct but also to ensure that investigative intrusions are both statutorily authorised and proportionate to the legitimate aim pursued. The challenge of balancing state powers with individual rights is compounded by the weaknesses in procedural safeguards within existing law. For example, provisions for obtaining warrants or court authorisation

23 UNODC, (n 1) 212-215.
24 Constitution of the Federal Republic of Nigeria, 1999, ss 36, 37.
25 S.6
26 A O Adeyemi, 'Cybercrime Enforcement and Constitutional Rights in Nigeria' [2021] 19 (3) *African Journal of Law and Human Rights* 224, 229-231.
27 African Commission on Human and Peoples' Rights, *Resolution on Human Rights and Freedom of Expression on the Internet and other Information Communications Technologies*, ACHPR/Res. 362 (LXIX) 2019.

for surveillance and data interception are not always clearly defined, leading to divergent interpretations and enforcement practices. The absence of detailed procedural criteria, such as specifying the threshold for judicial authorisation, scope limitations, and mandatory reporting to courts, creates space for potential overreach.[28] In contrast, jurisdictions with advanced cybercrime frameworks often embed precise judicial oversight mechanisms, requiring clear articulations of probable cause and narrowly tailored warrants for digital surveillance.[29]

Another pressing issue relates to the seizure and forensic examination of digital devices. The Cybercrimes Act grants authority for the seizure of equipment suspected to have been used in the commission of an offence, but the law does not exhaustively articulate standards for preserving user data, protecting privileged information, or limiting inspection to relevant files. This lacuna raises the risk that law enforcement may inadvertently access private, legally protected communications or unrelated personal data, potentially violating fundamental rights.[30]

The right to a fair hearing is also engaged in cybercrime prosecutions. The technical complexity of digital evidence, including cryptographic data and network logs, poses comprehension challenges for suspects, defendants, and even judicial officers. The risk of unfair trials is heightened when defendants lack adequate access to expert interpretation of digital evidence or when prosecutorial disclosure practices are not transparent. The UN Human Rights Committee has emphasised that due process in the digital age requires that accused persons are provided with sufficient information and understanding of the evidence against them, including technical material, to prepare a meaningful defence.[31] Furthermore, the enforcement of cybercrime laws must be sensitive to potential abuse against political opponents, journalists, and civil society actors. Broadly worded offence provisions, particularly those criminalising "offensive" communications or unapproved dissemination of information, risk being used to stifle dissent or investigative reporting.[32] Civil liberties scholars have warned that in the absence of clear mens rea requirements and narrowly drawn language, cybercrime statutes may be misused to penalise legitimate expression under the guise of preventing cyber-enabled harm.[33]

International comparative literature reinforces the importance of embedding human rights safeguards within cybercrime frameworks. For example, the Council of Europe's Guidelines on Human Rights and the Fight Against Cybercrime articulate that criminalisation and investigatory powers should never be exercised in a manner that disproportionately interferes with privacy and freedom of expression.[34] These principles, while not binding on Nigeria, provide persuasive benchmarks that can inform domestic reform. In practice, enforcement agencies have occasionally faced judicial pushback where procedural safeguards are perceived to be absent or inadequate. Nigerian courts have invoked constitutional protections in excluding illegally obtained evidence or quashing arrests grounded on procedural defects.[35] These judicial interventions underscore the constitutional salience of due process safeguards even in the context of cybercrime, and emphasise that effective enforcement must be consistent with fundamental rights. The human rights and due process challenges encountered in cybercrime enforcement reflect the fraught intersection between state investigatory powers and individual liberties in the digital age. Ensuring that cybercrime laws and enforcement practices uphold constitutional protections, particularly the rights to privacy and fair hearing, is critical for maintaining legitimacy, public trust, and adherence to the rule of law.

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28 Adeyemi (n 26) 231-233.
29 Council of Europe, *Guidelines on Human Rights and the Fight Against Cybercrime* (2018) 14-18.
30 K O Olasunkanmi, 'Digital Seizure and Privacy in Cybercrime Investigation' [2020] 16 (2) *Nigerian Journal of Criminal Justice* 98, 101-104.
31 UN Human Rights Committee, *General Comment No. 32: Right to a Fair Trial*, UN Doc CCPR/C/GC/32 (2007) para 27.
32 O O Adeyemi, 'Cybercrime Law and Freedom of Expression in Nigeria' [2020] 12 *Journal of Internet Law* 6, 10-11.
33 R Deibert, 'Legal Frameworks for Internet Regulation and Human Rights' [2015] 37 *Human Rights Quarterly* 1, 25-28.
34 Council of Europe (n 29).
35 *FRN v Musa* (2018) 15 NWLR (Pt 1643) 312 (exclusion of improperly obtained digital evidence).

e. Fragmentation and Overlap in Cyber-Related Legislation

One of the most persistent legal challenges confronting the effective control of cybercrime in Nigeria is the fragmentation and overlap of cyber-related legislative instruments. While the Cybercrimes Act 2015 was enacted to serve as the primary statute governing cybercrime, its operation is significantly shaped, and sometimes complicated, by the coexistence of multiple laws addressing digital activity, financial crimes, data protection, communications regulation, and national security. This legislative plurality, though reflective of the multifaceted nature of cybercrime, has generated inconsistencies, jurisdictional ambiguity, and enforcement inefficiencies.

At the centre of this challenge is the overlapping criminalisation of cyber-enabled conduct. Several offences captured under the Cybercrimes Act, such as electronic fraud, identity theft, impersonation, and unauthorised access, are simultaneously prosecutable under older statutes, including the Economic and Financial Crimes Commission (Establishment) Act 2004, the Criminal Code Act, and the Penal Code. While prosecutorial discretion allows enforcement agencies to select applicable statutes, the absence of clear legislative hierarchy or exclusivity clauses has resulted in uncertainty regarding the appropriate charging framework. This often leads to forum shopping, inconsistent charging practices, and duplicative investigations by multiple agencies.[36] The situation is further complicated by the regulatory overlap between cybercrime legislation and sector-specific laws. The Nigeria Data Protection Act 2023, administered by the Nigeria Data Protection Commission (NDPC), establishes a comprehensive regime for personal data processing, privacy protection, and data breach reporting. However, data breaches may simultaneously constitute offences under the Cybercrimes Act, creating uncertainty as to whether violations should be pursued as regulatory infractions, criminal offences, or both. The absence of clear statutory guidance on coordination between criminal enforcement and regulatory compliance mechanisms risks inconsistent outcomes and regulatory fatigue among regulated entities.[37]

Similarly, the Nigerian Communications Commission (NCC) regulates electronic communications networks under the Nigerian Communications Act 2003, including obligations relating to subscriber registration, network security, and lawful interception. Yet, cybercrime investigations often require access to telecommunications metadata, subscriber information, and traffic records. While the Cybercrimes Act mandates cooperation by service providers, the interaction between NCC regulations, privacy safeguards, and law enforcement requests is not always seamless. This regulatory overlap has occasionally resulted in compliance uncertainty for service providers and delays in investigation.[38] Fragmentation also manifests institutionally through the multiplicity of enforcement agencies empowered under different statutes. The Nigerian Police Force, EFCC, ICPC, NDPC, NCC, CBN, NFIU, and ONSA all exercise cyber-related powers within their respective statutory mandates. While inter-agency cooperation is envisaged in theory, the lack of a unified legislative coordination framework has led to overlapping investigations, competition for jurisdiction, and inefficient resource utilisation.[39] Experts have observed that institutional fragmentation weakens cybercrime response by diffusing accountability and complicating strategic planning.[40]

Fragmented legislation undermines the principle of legal certainty, a cornerstone of criminal justice. Offenders,

36 O O Adeyemi, 'Overlapping Criminal Jurisdiction and Cybercrime Enforcement in Nigeria' [2020] 15 (1) *Nigerian Journal of Criminal Law* 41, 45-47.

37 E Nwafor, 'Data Protection and Cybercrime Regulation in Nigeria: Overlaps and Compliance Challenges' [2024] 16 (3) *African Journal of Legal Studies* 249, 255-258.

38 NCC, *Lawful Interception of Communications Regulations* (2019).

39 UNODC (n 1) 217-220.

40 K O Olasunkanmi, 'Institutional Fragmentation and Cybercrime Governance in Nigeria' [2021] 19 (2) *African Journal of Law and Technology* 88, 92-95.

investigators, prosecutors, and courts alike benefit from clear, coherent, and predictable legal rules. Where multiple statutes criminalise similar conduct with differing penalties, procedural requirements, or evidentiary standards, the consistency and legitimacy of enforcement outcomes may be questioned.[41] This problem is particularly acute in cybercrime cases, where technical complexity already strains prosecutorial and judicial capacity. From comparatiave perspectives, jurisdictions with more coherent cybercrime frameworks tend to adopt integrated legislative models, where cybercrime statutes clearly define their relationship with data protection, communications regulation, and financial crime laws.[42] The European Union's harmonisation efforts under the Budapest Convention and related instruments illustrate how legislative coherence enhances enforcement efficiency, cross-border cooperation, and rights protection. Nigeria's current framework, by contrast, reflects incremental legislative development without sufficient harmonisation.

Judicial interpretation has played a limited role in resolving these overlaps. Nigerian courts have generally applied statutes based on prosecutorial choice rather than articulating principles to guide statutory interaction.[43] This judicial restraint, while understandable, leaves unresolved the structural tension between overlapping cyber-related laws and perpetuates uncertainty in enforcement practice. The fragmentation and overlap of cyber-related legislation constitute a significant legal obstacle to effective cybercrime control in Nigeria. While multiple statutes addressing different dimensions of digital activity are inevitable, the absence of clear legislative coordination mechanisms undermines enforcement efficiency, legal certainty, and institutional coherence. Addressing this challenge requires deliberate legislative harmonisation, clarification of jurisdictional boundaries, and the development of an integrated cybercrime governance framework capable of responding to the complex and convergent nature of cyber threats.

3. INSTITUTIONAL CHALLENGES IN COMBATING CYBERCRIMES IN NIGERIA

a. Inter-Agency Coordination and Overlapping Mandates

One of the most critical institutional challenges undermining the effectiveness of Nigeria's cybercrime response is the problem of inter-agency coordination and overlapping mandates. Nigeria has established a wide array of institutions with statutory or operational responsibilities touching on cybercrime, including the Nigerian Police Force (NPF), Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), Office of the National Security Adviser (ONSA), National Cybersecurity Coordination Centre (NCCC), Nigerian Communications Commission (NCC), Central Bank of Nigeria (CBN), Nigerian Financial Intelligence Unit (NFIU), National Information Technology Development Agency (NITDA), Nigeria Data Protection Commission (NDPC), and the Judiciary. While this multiplicity reflects the cross-sectoral nature of cyber threats, it has also produced institutional fragmentation, duplication of functions, and coordination deficits.

Cybercrime does not conform neatly to traditional institutional boundaries. A single cyber-enabled offence may simultaneously implicate financial regulation, telecommunications infrastructure, data protection, national security, and criminal law enforcement. For example, an online banking fraud involving phishing may require the involvement of the EFCC (financial crime), the NPF-NCCC (criminal investigation), the CBN (banking supervision), the NFIU (financial intelligence), and the NCC (telecommunications metadata). In practice, however,

41 A Ashworth and J Horder, *Principles of Criminal Law* (7th edn, Oxford University Press, 2013) 56-58.
42 Council of Europe, *Convention on Cybercrime* (Budapest Convention, 2001).
43 *FRN v Anosike* (2019) 12 NWLR (Pt 1687) 421.

Nigeria lacks a clearly articulated operational coordination framework that defines leadership, sequencing, and information-sharing responsibilities among these agencies.[44] Although the Cybercrimes Act 2015 envisages cooperation among law enforcement agencies and service providers, it does not establish a hierarchical coordination structure or a single lead agency for cybercrime investigations. This omission has allowed multiple agencies to assert concurrent jurisdiction over cybercrime cases, often resulting in parallel investigations, competition for prosecutorial control, and inefficient deployment of limited resources. Experts have observed that institutional rivalry, rather than cooperation, has occasionally characterised cybercrime enforcement in Nigeria, particularly between the NPF and specialised agencies such as the EFCC.[45]

The establishment of the National Cybersecurity Coordination Centre (NCCC) within ONSA was intended to address coordination challenges by serving as a central hub for cybersecurity strategy, threat intelligence, and inter-agency collaboration. However, the NCCC's role is primarily coordinative and strategic, rather than operational. While it facilitates information sharing and policy coherence, it lacks direct investigative or prosecutorial authority, limiting its capacity to resolve jurisdictional disputes among enforcement agencies.[46] Consequently, operational coordination continues to depend largely on informal relationships, ad hoc task forces, or personality-driven cooperation rather than institutionalised protocols. Overlapping mandates also create uncertainty for private sector actors, particularly financial institutions, telecommunications operators, and digital service providers. These entities are often subject to simultaneous compliance demands from multiple regulators and enforcement agencies, each invoking different statutory authorities. For instance, a bank responding to a cyber fraud incident may receive parallel requests for information from the EFCC, NPF, CBN, and NFIU, sometimes with conflicting timelines or legal bases.[47] This regulatory congestion can delay investigations, increase compliance costs, and discourage proactive reporting of cyber incidents.

Institutional overlap further affects intelligence sharing and data integration. Effective cybercrime enforcement depends on real-time sharing of threat intelligence, transaction data, and technical indicators of compromise. Yet, agencies often operate in silos, constrained by statutory secrecy obligations, bureaucratic culture, or mistrust.[48] The absence of interoperable data systems and standardised information-sharing protocols limits the ability of agencies to build comprehensive threat pictures or coordinate rapid responses to cyber incidents. Clear institutional leadership is fundamental in cybercrime governance. Jurisdictions with more effective cybercrime control frameworks typically designate a lead cybercrime agency or establish formal joint operational mechanisms with legally defined roles.[49] Nigeria's current approach, by contrast, reflects an accumulation of institutional mandates without sufficient integration, resulting in diffusion of responsibility and weakened accountability.

The implications of poor coordination are particularly evident at the prosecutorial stage. Cases investigated by multiple agencies may suffer from evidentiary inconsistencies, duplication of witness statements, or conflicting investigative narratives. Prosecutors are often left to reconcile divergent investigative approaches, increasing the likelihood of procedural errors or case collapse.[50] In complex cybercrime prosecutions, where technical precision

44 UNODC (n 1) 217-220.

45 M E Nwocha, C V Iteshi and P M Awada, 'Social Media Facilitated Cybercrimes in Nigeria and the Challenges of Legal Enforcement' (2024) 5 (3), *Law and Social Justice Review*, 19-24

46 Office of the National Security Adviser, *National Cybersecurity Policy and Strategy* 2021.

47 *Central Bank of Nigeria*, *Risk-Based Cybersecurity Framework and Guidelines for Deposit Money Banks and Payment Service Banks* BSD/DIR/PUB/LAB/017/008 (issued May 31 2024, effective 1 July 2024).

48 M Samuel Amune, *'The Role of Law Enforcement Agencies in Combating Cybercrime in Nigeria'* [2025] 4(1), *KWASU Law Journal*, 124-141

49 UNODC (n 12) 22-24.

50 I E Nwafor, *'Cybercrime Investigation and Prosecution in Nigeria: Bridging the Gaps'* [2024] 16(3), *African Journal of Legal Studies*, 249-270

is essential, such institutional dissonance can be fatal to successful adjudication. While Nigeria's institutional architecture for combating cybercrime is extensive, its effectiveness is undermined by weak inter-agency coordination and overlapping mandates. The absence of a clearly defined lead agency, insufficient operational authority for coordinating bodies, regulatory congestion, and siloed information systems collectively constrain enforcement outcomes.

b. Capacity Constraints and Technical Expertise Deficits

A major institutional obstacle to the effective enforcement of cybercrime laws in Nigeria is the limited technical capacity and shortage of specialised expertise within key enforcement and regulatory institutions. While Nigeria has established multiple agencies with statutory mandates touching on cybercrime, most notably the Nigerian Police Force, the Economic and Financial Crimes Commission, and the Office of the National Security Adviser, the operational effectiveness of these institutions is constrained by persistent deficits in digital skills, forensic infrastructure, and specialised training. Cybercrime investigations require competencies that extend far beyond traditional policing or financial crime investigation. Investigators must possess skills in digital forensics, network analysis, malware detection, cryptocurrency tracing, and data recovery, as well as an understanding of evolving technologies such as cloud computing and encrypted communications.[51] In Nigeria, however, law enforcement agencies have historically been structured and trained to address conventional crimes, and institutional adaptation to the digital environment has been uneven. The UN Office on Drugs and Crime (UNODC) has consistently identified skills shortages and inadequate forensic infrastructure as a major challenge facing cybercrime enforcement in developing jurisdictions, including Nigeria.[52]

Although the establishment of specialised units such as the Nigeria Police Force National Cybercrime Centre (NPF-NCCC) and the cybercrime units within the EFCC represents progress, these units remain under-resourced relative to the scale of the cyber threat. According to the UNODC Comprehensive Study on Cybercrime, effective cybercrime response requires sustained investment in forensic laboratories, specialised software tools, and continuous technical training.[53] In Nigeria, forensic laboratories capable of handling complex digital evidence are limited in number and unevenly distributed, resulting in investigative delays and backlogs. These capacity constraints directly affect the quality of evidence presented in court and contribute to case attrition at the prosecution stage. The challenge of technical capacity is compounded by rapid technological change. Cybercriminal methods evolve faster than institutional training cycles, rendering static skill sets obsolete. Technologies such as anonymisation networks, end-to-end encryption, and cryptocurrency mixing services pose formidable obstacles to investigators who lack advanced technical proficiency.[54] While some Nigerian agencies have received international training and donor-supported capacity-building interventions, these initiatives are often episodic rather than institutionalised, limiting their long-term impact.[55]

Prosecutorial capacity also presents significant challenges. Cybercrime prosecutions require prosecutors who can understand, interpret, and present complex technical evidence in a manner that satisfies legal standards of proof. The UNODC Handbook on Cybercrime for Prosecutors emphasises that inadequate technical understanding among prosecutors can undermine otherwise strong cases, particularly where defence counsel challenge the

51 UNODC (n 1) 210-215
52 Ibid, 220-223.
53 ibid
54 UNODC (n 12) 13-17.
55 African Union Commission, *African Union Convention on Cyber Security and Personal Data Protection* (Malabo Convention, 2014).

integrity or interpretation of digital evidence.[56] In Nigeria, cybercrime cases are often prosecuted by generalist prosecutors without specialised training in digital evidence, increasing the risk of procedural errors and ineffective advocacy. Judicial capacity intersects with these institutional deficits. Judges are required to evaluate technical expert testimony, digital forensic reports, and electronically generated evidence under section 84 of the Evidence Act 2011. However, limited exposure to digital technologies can make it difficult for courts to fully assess the probative value of such evidence. The UNODC Handbook on Cybercrime for Judges underscores the importance of continuous judicial education in digital forensics to ensure fair and consistent adjudication.[57] Without such training, judicial uncertainty may result in inconsistent rulings on admissibility, undermining predictability and confidence in cybercrime prosecutions.

Funding constraints further aggravate capacity challenges. Advanced forensic tools, secure data storage facilities, and continuous professional training require substantial financial investment. In practice, cybercrime units often compete with other law enforcement priorities for limited budgetary allocations. This competition undermines long-term planning and the development of specialised cybercrime capabilities. The African Union has identified underfunding of cybersecurity institutions as a key impediment to effective cybercrime control across the continent.[58] Capacity deficits are not limited to enforcement agencies alone. Regulatory institutions such as the Nigerian Communications Commission and the Nigeria Data Protection Commission also require technical expertise to monitor compliance, audit digital systems, and respond to data breaches. Weak technical capacity in these institutions may delay regulatory enforcement and limit their ability to support criminal investigations with timely and reliable technical input. Capacity constraints and technical expertise deficits constitute a structural challenge to Nigeria's cybercrime response. The effectiveness of cybercrime laws depends not only on the adequacy of statutory provisions but also on the availability of skilled personnel, modern forensic infrastructure, and sustained institutional investment.

c. Resource and Infrastructure Limitations

Effective cybercrime enforcement in Nigeria is heavily constrained by limited financial, technological, and infrastructural resources. While legislative frameworks, specialized units, and human expertise form critical components of the enforcement architecture, their impact is sharply curtailed when not supported by adequate funding, modern digital forensics laboratories, secure data storage facilities, and reliable investigative technologies. Adequate funding is foundational for sustaining the operations of agencies such as the Nigeria Police Force National Cybercrime Centre (NPF-NCCC), the EFCC Cybercrime Unit, and the Nigerian Communications Commission (NCC). However, reports indicate that budgetary allocations for cybercrime investigation and digital forensics are frequently inadequate and inconsistent.[59] For example, the UNODC Comprehensive Study on Cybercrime notes that in many developing countries, including Nigeria, cybercrime units operate with a fraction of the resources needed for effective detection, investigation, and prosecution.[60] Insufficient funding restricts the acquisition of advanced forensic tools, high-performance computing systems, and software capable of tracing complex cyber activities, including blockchain or anonymization networks. Budgetary limitations also impede continuous professional development and training programs. Cybercrime investigators and prosecutors require

56 UNODC (n 54) 22-24
57 UNODC (n 19) 9-14.
58 African Union, *Digital Transformation Strategy for Africa (2020-2030)* (AU 2020) 52-55.
59 Central Bank of Nigeria, *Risk-Based Cybersecurity Framework and Guidelines for Deposit Money Banks* 2019.
60 UNODC (n 1) 210-215.

ongoing exposure to evolving technologies, sophisticated malware, and emerging cybercrime methodologies.[61] When training opportunities are underfunded, personnel remain ill-equipped to handle increasingly complex cases, resulting in investigative delays and potential loss of prosecutable evidence.

The physical infrastructure required for digital investigations remains concentrated in urban centers such as Abuja, Lagos, and Port Harcourt, leaving other regions underserved.[62] This centralization affects the timeliness of investigations, as digital evidence often needs to be transported to these central laboratories, creating logistical bottlenecks. The absence of regional digital forensic facilities also limits the ability of local law enforcement to respond promptly to cyber incidents, particularly in rural or semi-urban areas. Moreover, the existing digital forensic labs face challenges in maintaining state-of-the-art capabilities. Advanced tools for malware analysis, encrypted data recovery, and network traffic analysis are often outdated, underutilized, or absent entirely. The lack of robust backup systems and secure evidence storage facilities further threatens the integrity and admissibility of electronic evidence in court proceedings.[63]

Another critical aspect of cybercrime investigation involves the collection, integration, and analysis of large volumes of digital data. Agencies such as the EFCC, NPF-NCCC, and NFIU generate significant quantities of intelligence and evidence, but information management systems are often fragmented, non-interoperable, and insufficiently secured.[64] Without integrated data platforms, agencies cannot effectively correlate patterns, track cybercriminal networks, or perform timely risk assessments. The lack of standardised databases and secure communication networks also raises concerns about data loss, leaks, or unauthorized access, further complicating investigations.

Furthermore, due to resource limitations, Nigerian cybercrime enforcement agencies often rely on technical assistance and capacity-building programs from international partners, including the United Nations, the European Union, and bilateral donors.[65] While these programs provide essential training, equipment, and advisory support, they are typically short-term and project-based, resulting in uneven continuity. Reliance on external support also introduces vulnerability, as fluctuations in donor priorities or geopolitical considerations may limit the sustainability of institutional capabilities. In addition, resource and infrastructure limitations have direct consequences for cybercrime investigation, prosecution, and deterrence. Delays in evidence collection, forensic analysis, and inter-agency information exchange reduce the likelihood of timely arrests and prosecutions. This, in turn, erodes public confidence in enforcement agencies and contributes to the perception that cybercrime is low-risk and high-reward.[66] Inadequate infrastructure and funding also constrain the ability of agencies to conduct proactive investigations, such as penetration testing, network monitoring, and threat intelligence gathering, leaving critical sectors vulnerable to cyber-attacks.

Rresource and infrastructure limitations represent a core constraint to Nigeria's institutional effectiveness in combating cybercrime. Even with robust legal frameworks and competent personnel, the absence of adequate financial, technological, and logistical support undermines operational capacity, delays enforcement actions, and compromises the integrity of prosecutions. Systematic investment in infrastructure, IT systems, and human capital is therefore essential for enhancing the overall resilience of Nigeria's cybercrime enforcement architecture.

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61 UNODC, (n 12) 22-24.
62 Office of the National Security Adviser, (n 46) 18-20.
63 UNODC (n 19) 9-14.
64 National Information Technology Development Agency (NITDA), *Nigeria Cybersecurity Report* (2020) 31-33.
65 African Union, (n 58) 52-55.
66 UNODC (n1) 218-220.

d. Legal and Procedural Delays in Cybercrime Investigations

A significant institutional challenge to Nigeria's cybercrime enforcement is the protracted nature of investigations and delays arising from legal and procedural bottlenecks. Cybercrime investigations are inherently complex, requiring coordination among multiple agencies, meticulous preservation of digital evidence, and strict adherence to procedural safeguards mandated by Nigerian law. Resource limitations, institutional fragmentation, and evolving technologies exacerbate delays in initiating, conducting, and concluding cybercrime investigations and prosecutions.

Under Nigerian law, criminal investigations must comply with procedural safeguards, including obtaining warrants, issuing subpoenas, and adhering to rules of evidence.[67] In cybercrime cases, these procedures often involve technical documentation, expert verification, and coordination across jurisdictions, which significantly extend investigation timelines. For instance, delays in obtaining court authorization for digital evidence interception, as provided under section 6 of the Cybercrimes Act 2015, have been identified as major procedural bottlenecks.[68] Prosecutors must frequently wait for verification and forensic analysis before charging suspects, and courts may lack the technical capacity to expeditiously adjudicate requests for warrants or search orders. Courts in Nigeria are generally overburdened with high caseloads, further prolonging cybercrime proceedings. The Evidence Act 2011 and procedural rules require strict compliance with chain-of-custody, admissibility, and authentication standards for electronic evidence.[69] Delays in submission of expert forensic reports, often caused by limited personnel and laboratory capacity, can result in postponed hearings and extended trial timelines.[70] These procedural lags not only slow justice delivery but also create opportunities for evidence degradation or loss, weakening prosecutorial outcomes.

Legal and procedural delays are compounded by coordination challenges among multiple agencies. As noted above, institutions such as the NPF-NCCC, EFCC, ICPC, NFIU, NCC, and NDPC may all have concurrent investigative authority over a single cybercrime incident.[71] While statutory mandates envisage cooperation, in practice, inter-agency communication is often fragmented. Conflicting investigative priorities, duplicated efforts, and differing operational protocols can extend the duration of investigations by months or even years.

Cybercrime frequently involves transnational elements, with offenders operating from foreign jurisdictions or employing technologies such as virtual private networks and anonymisation tools.[72] Section 22 of the Cybercrimes Act 2015 allows Nigerian agencies to seek assistance from foreign counterparts. However, mutual legal assistance procedures are often slow and bureaucratic, resulting in significant delays in obtaining foreign evidence, tracing international financial transactions, or engaging foreign service providers.[73]

The consequences of these delays are multifaceted. First, extended investigations can lead to degradation or loss of digital evidence, the inability to locate suspects, or abandonment of cases altogether. Second, it leads to reduced deterrence as delays diminish the perceived risk of prosecution, weakening the deterrent effect of cybercrime legislation. Third, there is operational frustration as enforcement agencies face morale and operational challenges

67 Constitution of the Federal Republic of Nigeria 1999, ss 36, 37.
68 s 6.
69 ss 84-85.
70 UNODC (n 19) 9-14
71 Office of the National Security Adviser (n 46)
72 Cybercrimes Act 2015, s 22.
73 UNODC, (n 12) 22–24.

when cases stall due to procedural inefficiencies. Fourth, it has public confidence implications as prolonged investigations undermine public trust in the government's capacity to effectively protect digital spaces.[74] Legal and procedural delays constitute a systemic challenge to Nigeria's institutional response to cybercrime. Overburdened courts, slow forensic processes, inter-agency coordination difficulties, and the complexities of cross-border investigations combine to delay justice, reduce enforcement efficacy, and weaken public confidence in cybercrime control measures.

e. Public Awareness and Reporting Challenges

Another critical institutional challenge in Nigeria's cybercrime landscape is the limited public awareness and the low rate of reporting cyber incidents. While statutory and institutional frameworks exist to combat cybercrime, their effectiveness is heavily dependent on active citizen engagement, timely reporting, and cooperation with enforcement agencies. Empirical studies indicate that a significant proportion of cybercrime victims either remain unaware of reporting mechanisms or choose not to report incidents due to distrust in institutional responsiveness, fear of exposure, or lack of knowledge about applicable laws.[75] Public understanding of cybercrime risks, reporting mechanisms, and available legal protections remains uneven across Nigeria. Many citizens are unaware of the existence of specialised reporting channels such as the Nigeria Police Force National Cybercrime Centre (NPF-NCCC), the EFCC complaint portals, or the reporting mechanisms provided under the Cybercrimes Act 2015.[76] Inadequate knowledge of statutory provisions, combined with limited education on cybersecurity hygiene, renders citizens vulnerable to online fraud, identity theft, phishing, and social engineering attacks.[77]

The National Information Technology Development Agency (NITDA) and the Nigeria Data Protection Commission (NDPC) have initiated awareness campaigns targeting data protection and cyber hygiene. However, such initiatives often fail to reach populations in rural or semi-urban areas, leaving large segments of the society uninformed.[78] This urban-centric diffusion of regulatory knowledge entrenches digital vulnerability among marginalised communities and weakens early detection of cyber offences. Studies on cybercrime victimisation in Nigeria highlight that ignorance of available reporting mechanisms leads to significant underreporting, reducing the volume of actionable intelligence available to law enforcement.[79] This persistent awareness deficit ultimately undermines evidence-based policing and constrains the effectiveness of Nigeria's cybercrime prevention and response architecture.

Underreporting is compounded by citizen perceptions of institutional effectiveness. Surveys indicate that victims often perceive law enforcement agencies as slow, bureaucratic, or ill-equipped to handle cybercrime complaints, particularly when the monetary value of the crime is small.[80] Fear of reputational harm, particularly for businesses, also discourages reporting. As a result, many incidents go unrecorded, creating gaps in data that could inform threat assessment, policy-making, and strategic enforcement.[81] Underreporting also has downstream consequences for enforcement agencies. Agencies like the NPF-NCCC, EFCC, and NFIU rely on victim complaints to initiate investigations, trace financial flows, or detect cybercriminal networks. Low reporting rates impede data-driven policing and limit the ability of institutions to detect emerging threats, allocate resources efficiently, or identify

74 African Union (n 65) 52-55.
75 UNODC (n 1) 220-223.
76 ss 6, 7.
77 National Information Technology Development Agency (NITDA), *Nigeria Cybersecurity Report* (2020) 27-29.
78 Nigeria Data Protection Commission, *Annual Report* 2021 12-15.
79 UNODC, *Handbook on Cybercrime for Prosecutors* (UNODC 2014) 22-24.
80 African Union, (n 58) 52-55.
81 UNODC (n 1) 225-227.

patterns indicative of organised cybercrime.[82]

The combination of low public awareness and underreporting has multiple institutional consequences. First, it breeds incomplete intelligence due to enforcement agencies' lack comprehensive data on cybercrime prevalence, methods, and emerging trends. Second, there is the risk of resource misallocation. Without accurate reporting, agencies may misprioritise investigations, focusing on visible but low-impact cases while larger networks remain undetected. Third, there are challenges of delayed interventions. The failure to report incidents promptly delays law enforcement response, allowing cybercriminals to exploit vulnerabilities and evade detection. Fourth, low visibility of enforcement actions diminishes the perceived risk of punishment, weakening the preventive effect of cybercrime laws.[83]

Several institutional and societal factors exacerbate public awareness and reporting challenges. These factors include limited outreach, complex reporting procedures, distrust in institutions, and technological gaps. Enforcement and regulatory agencies lack capacity to engage all segments of society effectively, particularly rural populations and small businesses. Online complaint portals and formal reporting mechanisms can be technically challenging or administratively cumbersome, discouraging victims from coming forward. Also, public perception of corruption, inefficiency, or bias within law enforcement discourages cooperation, particularly for high-value or politically sensitive cases. Similarly, limited digital literacy affects citizens' ability to recognise cyber threats and understand the steps necessary to report them effectively. Public awareness and reporting challenges significantly limit the effectiveness of Nigeria's cybercrime enforcement framework. Even with robust legislation, competent agencies, and specialised units, low citizen engagement and delayed reporting reduce the volume and quality of intelligence available for investigations. These gaps exacerbate enforcement delays, hinder proactive threat detection, and undermine overall institutional capacity to respond to cybercrime.

4. PROSPECTS OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR COMBATING CYBERCRIMES IN NIGERIA

Notwithstanding the numerous challenges confronting cybercrime control in Nigeria, the legal and institutional frameworks for combating cybercrimes present significant prospects for effectiveness and maturation. These prospects arise from recent legislative developments, institutional restructuring, growing inter-agency collaboration, and Nigeria's increasing engagement with international cyber governance norms. Collectively, these developments suggest a trajectory toward a more coherent, adaptive, and resilient cybercrime enforcement regime.

i. Progressive Legislative Architecture

A central prospect for the effective control of cybercrimes in Nigeria lies in the existence of an increasingly progressive and layered legislative architecture that addresses both cyber-specific offences and their procedural dimensions. The enactment of the Cybercrimes Act 2015 marked a decisive shift in Nigeria's criminal justice response to technology-enabled crime. The Act provides a comprehensive catalogue of cyber offences, including unlawful access to computer systems, cyberstalking, identity theft, computer-related fraud, and manipulation of electronic data, thereby filling significant gaps previously left by the Criminal Code and Penal Code.[84] Beyond

82 Office of the National Security Adviser (n 46) 18-20.
83 UNODC, *Handbook on Cybercrime for Judges* (UNODC 2017) 9-14.
84 Cybercrimes Act 2015, section ss 3-24.

substantive criminalisation, the Cybercrimes Act introduces procedural tools tailored to digital investigations, such as lawful interception of communications, data retention obligations for service providers, and mechanisms for international cooperation.[85] These provisions reflect alignment with international best practices, particularly those articulated in UNODC model laws and comparative cybercrime frameworks.[86] The structure and content of the Act demonstrate alignment with global cybercrime standards, especially against the backdrop of the Budapest Convention on Cybercrime.

The Cybercrimes Act is further reinforced by complementary legislation. The Evidence Act No. 18 of 2011, particularly section 84, provides statutory recognition for electronically generated evidence, a cornerstone for successful cybercrime prosecutions. In addition, sector-specific regulatory instruments, such as the Nigeria Data Protection Act 2023 and Central Bank of Nigeria regulations on electronic payments, strengthen the legal environment by addressing data governance, consumer protection, and financial system integrity. These legislative instruments establish a multi-layered framework capable of responding to both current and emerging cyber threats. While enforcement challenges remain, the existence of a coherent statutory foundation presents a strong prospect for effectiveness, as it enables institutional coordination, supports judicial engagement with digital evidence, and provides a legal basis for cross-border cooperation. In effect, the principal task does not lie in legislative absence but in translating this robust legal architecture into consistent institutional practice.

ii. Institutional Specialisation and Structural Evolution

A further indicator of positive trajectory within Nigeria's cybercrime governance framework is the gradual emergence of institutional specialisation and structural evolution across law-enforcement, regulatory, and security agencies. Cybercrime control increasingly requires technical expertise, intelligence coordination, and dedicated investigative infrastructure, necessitating institutional arrangements distinct from conventional criminal justice mechanisms. Nigeria's recent institutional reforms reflect growing recognition of this reality. Within the law-enforcement architecture, the establishment of the Nigeria Police Force National Cybercrime Centre (NPF-NCCC) represents a significant structural development. Created pursuant to the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, the Centre serves as a national hub for cybercrime reporting, digital forensics, intelligence analysis, and coordinated investigation.[87] Parallel developments are observable in the Economic and Financial Crimes Commission (EFCC), which has expanded specialised cyber-fraud and digital forensics units to address the increasing intersection between cybercrime and financial crime.[88] These specialised formations signal an institutional shift from reactive policing toward technology-driven investigative models.

At the strategic level, the Office of the National Security Adviser (ONSA), through the National Cybersecurity Policy and Strategy and the operationalisation of ngCERT, provides a national coordination platform for cyber-incident response, threat intelligence sharing, and protection of critical information infrastructure.[89] This architecture aligns Nigeria with global cybersecurity governance trends that emphasise whole-of-government coordination and structured incident response mechanisms. Regulatory institutions have also undergone functional evolution. The Nigerian Communications Commission (NCC) plays a growing role in network security oversight and subscriber data governance, while the Nigeria Data Protection Commission (NDPC)

85 Ibid, ss. 6-8, 22.
86 UNODC (n 1) 161-168.
87 Cybercrimes Act 2015, s 41; Nigeria Police Force, *National Cybercrime Centre Operational Framework* NPF 2022.
88 Economic and Financial Crimes Commission (Establishment) Act 2004, s 6; EFCC, *Annual Report* 2021.
89 Office of the National Security Adviser (n 46) 14-20

introduces an enforcement-oriented regime for personal data protection under the Nigeria Data Protection Act 2023. These bodies extend cyber governance beyond criminal enforcement into preventive regulation and digital ecosystem supervision. Collectively, these developments demonstrate a progressive movement toward specialised, technically informed, and coordinated institutional responses to cybercrime. Although operational constraints persist, the structural differentiation of roles and the consolidation of technical capabilities provide a credible institutional foundation for improved cybercrime control over time.

iii. Growing Inter-Agency Collaboration

An important emerging prospect within Nigeria's cybercrime governance architecture is the progressive strengthening of inter-agency collaboration among law-enforcement bodies, regulatory institutions, intelligence services, and sector-specific supervisory authorities. Cybercrime, by its nature, transcends the operational boundaries of any single institution. Effective prevention, detection, investigation, and prosecution therefore depend on coordinated institutional engagement, information sharing, and harmonised operational procedures. Recent developments in Nigeria indicate a gradual, though still incomplete, movement toward such collaborative governance. At the policy level, the National Cybersecurity Policy and Strategy (NCPS) 2021 expressly conceptualises cybersecurity and cybercrime management as a whole-of-government responsibility, requiring structured cooperation among security agencies, regulators, and private-sector stakeholders.[90] The NCPS assigns complementary roles to institutions such as the Nigeria Police Force, Economic and Financial Crimes Commission (EFCC), Nigerian Communications Commission (NCC), National Information Technology Development Agency (NITDA), Nigeria Data Protection Commission (NDPC), and the Nigerian Financial Intelligence Unit (NFIU). By articulating coordination mechanisms and shared responsibilities, the policy framework establishes a foundation for collaborative enforcement and intelligence exchange.

Operational collaboration is particularly visible in the intersection between cybercrime and financial crime enforcement. Cyber-enabled fraud, phishing, business email compromise, and digital payment manipulation frequently involve financial flows that must be traced through banking and payment systems. In this regard, cooperation between the EFCC, NFIU, and the Central Bank of Nigeria (CBN) has strengthened investigative capacity through the use of suspicious transaction reports, financial intelligence analysis, and regulatory compliance data.[91] Financial intelligence supplied by the NFIU often provides the evidentiary basis for cyber-fraud investigations, enabling law-enforcement agencies to identify laundering patterns, freeze illicit proceeds, and reconstruct criminal networks.[92] This illustrates how regulatory and intelligence institutions function as force multipliers for criminal justice agencies in the cybercrime context.

Collaboration has also evolved in the domain of digital infrastructure regulation and subscriber information management. The NCC's supervisory authority over telecommunications operators enables lawful access to subscriber data and traffic information required for cybercrime investigations, subject to statutory safeguards.[93] Coordination between the NCC and investigative agencies therefore plays a critical role in attribution, suspect identification, and evidentiary reconstruction. Similarly, the NDPC's enforcement of data-protection obligations contributes indirectly to cybercrime control by promoting secure data handling, breach reporting, and accountability

90 Office of the National Security Adviser (n 46) 18-25

91 entral Bank of Nigeria, *Anti-Money Laundering and Combating the Financing of Terrorism Regulations* 2013; EFCC (Establishment) Act 2004, s 6.

92 Nigerian Financial Intelligence Unit Act 2018, ss 2-3.

93 Nigerian Communications Act 2003, ss 146-148.

mechanisms within both public and private institutions.94 These regulatory functions complement traditional criminal enforcement by addressing systemic vulnerabilities that cybercriminals exploit.

Another dimension of inter-agency collaboration is evident in incident response and national cyber-threat management. Through the Office of the National Security Adviser (ONSA) and the operational activities of ngCERT, Nigeria has developed a platform for coordinated detection, analysis, and response to cyber incidents affecting critical information infrastructure.[95] Incident reporting channels, threat-intelligence dissemination, and joint technical responses enable multiple institutions to act in a synchronised manner during cyber emergencies. Such coordination reflects global best practices in cybersecurity governance, where computer emergency response teams (CERTs) function as integrative nodes linking government, private sector, and international partners. International cooperation further reinforces domestic inter-agency collaboration. Cybercrime investigations frequently require cross-border evidence gathering, intelligence exchange, and joint enforcement operations. Nigeria's engagement with organisations such as INTERPOL and the United Nations Office on Drugs and Crime (UNODC) facilitates capacity building, operational coordination, and participation in transnational cybercrime disruption initiatives.[96] These international linkages often necessitate domestic institutional coordination, since foreign cooperation requests typically pass through multiple Nigerian agencies before execution. Consequently, global engagement indirectly strengthens internal collaborative practices.

Judicial processes also contribute to collaborative dynamics. Cybercrime prosecutions commonly involve multi-agency evidentiary inputs, including digital forensic reports, financial intelligence records, telecommunications data, and regulatory compliance documentation. Courts therefore function as convergence points where the outputs of diverse institutions are integrated into a single adjudicatory process. Nigerian jurisprudence recognising electronically generated evidence under section 84 of the Evidence Act 2011 has facilitated this convergence by enabling courts to admit technical materials produced by different agencies.[97] The evidentiary integration required in cybercrime trials implicitly promotes procedural cooperation and standardisation among investigative bodies.

Despite these positive indicators, the collaborative landscape remains evolutionary rather than fully consolidated. Institutional mandates continue to overlap, coordination protocols are still developing, and information-sharing practices may be constrained by bureaucratic or legal considerations. Nonetheless, the directional trend toward cooperation is unmistakable. Policy articulation, joint investigations, shared intelligence mechanisms, and coordinated incident response collectively demonstrate movement toward an integrated cybercrime governance model. From a structural perspective, growing inter-agency collaboration enhances institutional resilience in several ways. First, it reduces investigative fragmentation by enabling complementary institutional strengths to operate in tandem. Second, it improves evidentiary quality through the convergence of technical, financial, and regulatory data. Third, it strengthens deterrence by increasing the probability of detection and successful prosecution. Finally, it aligns Nigeria's cybercrime governance approach with international norms emphasising cooperative security and networked enforcement.[98] While coordination challenges persist, the progressive entrenchment of collaborative practices across Nigeria's cybercrime control architecture constitutes a significant institutional prospect. The continued maturation of these cooperative mechanisms is likely to play a decisive role in determining the long-term effectiveness of Nigeria's response to cybercrime within an increasingly complex

94 Nigeria Data Protection Act 2023, ss 24-33.
95 Office of the National Security Adviser (n 46) 14-17.
96 UNODC, *Comprehensive Study on Cybercrime* 2013, 187-195.
97 Evidence Act 2011, s 84; *Kubor v Dickson* (2013) 4 NWLR (Pt 1345) 534.
98 African Union, *Convention on Cyber Security and Personal Data Protection* 2014.

digital environment.

iv. Judicial Recognition of Digital Evidence

A further institutional prospect within Nigeria's cybercrime control framework lies in the gradual but discernible judicial recognition and integration of digital evidence into criminal adjudication. Because cybercrime investigations are fundamentally dependent on electronically generated data, such as emails, server logs, metadata, financial transaction trails, subscriber information, and digital forensic extractions, the effectiveness of the entire enforcement architecture ultimately depends on judicial willingness and doctrinal capacity to admit, interpret, and rely upon such evidence. Developments within Nigerian jurisprudence indicate an evolving trajectory toward this recognition. As noted earlier, the primary statutory foundation for electronic evidence in Nigeria is section 84 of the Evidence Act 2011, which establishes conditions for the admissibility of computer-generated evidence. The provision represents a significant doctrinal shift from earlier evidentiary regimes that were largely oriented toward paper-based documentation and oral testimony. By recognising electronic records as admissible where reliability and proper certification are established, the Act aligns Nigerian evidence law with modern digital realities and comparative common-law developments.

Judicial interpretation has played a crucial role in operationalising this statutory framework. In *Kubor v Dickson*[99], the Supreme Court affirmed that computer-generated documents are admissible only upon strict compliance with the certification requirements stipulated in section 84. The decision clarified both the mandatory nature of foundational proof and the evidentiary safeguards necessary to prevent manipulation or unreliability. Although the case arose from an electoral dispute rather than a cybercrime prosecution, its doctrinal implications extend broadly to all proceedings involving electronic evidence, including cybercrime trials. Subsequent appellate decisions have reinforced the centrality of proper certification and authentication. Nigerian courts consistently emphasise that electronic evidence is admissible not merely because it is digital, but because statutory conditions ensuring integrity and reliability are satisfied.[100] This jurisprudential consistency contributes to predictability in cybercrime prosecutions, enabling investigators and prosecutors to structure forensic processes in conformity with evidentiary expectations. Beyond admissibility, judicial engagement increasingly extends to the evaluation of technical and forensic materials. Cybercrime prosecutions frequently involve expert testimony on data recovery, digital tracing, malware analysis, and financial transaction reconstruction. The willingness of courts to consider such specialised evidence reflects a progressive adaptation of adjudicatory practice to technologically complex disputes. Comparative studies by the United Nations Office on Drugs and Crime (UNODC) observe that judicial familiarity with digital forensics significantly enhances the effectiveness and fairness of cybercrime trials.[101] Nigeria's growing exposure to such materials therefore represents an important institutional development.

Judicial training initiatives further strengthen this trajectory. Programmes organised by the National Judicial Institute, often in collaboration with international partners, increasingly include modules on cybercrime, electronic evidence, and digital forensics.[102] While disparities in technical familiarity may persist across different courts and jurisdictions, sustained exposure contributes to incremental doctrinal confidence in handling technology-driven litigation. Over time, such capacity development is capable of fostering more coherent and technologically informed jurisprudence. Another dimension of judicial recognition concerns the interaction between procedural

99 (2013) 4 NWLR (Pt 1345) 534 (SC).
100 *Dickson v Sylva* (2016) 8 NWLR (Pt 1515) 427 (SC).
101 *Handbook on Cybercrime for Judges* (United Nations 2017) 9-20.
102 National Judicial Institute, *Judicial Training Curriculum* (various editions).

fairness and digital investigation powers. Cybercrime enforcement frequently involves interception of communications, search and seizure of digital devices, and analysis of stored data. Nigerian courts therefore serve as constitutional gatekeepers, ensuring that investigative measures comply with fundamental rights to privacy, fair hearing, and due process guaranteed under the Constitution of the Federal Republic of Nigeria 1999.[103] This oversight function enhances the legitimacy and rule-of-law compatibility of cybercrime enforcement, balancing security imperatives with civil liberties.

Importantly, judicial acceptance of digital evidence also facilitates inter-agency evidentiary convergence. Cybercrime prosecutions commonly synthesise materials originating from multiple institutions, telecommunications data from the NCC, financial intelligence from the NFIU, forensic analysis from law-enforcement laboratories, and regulatory compliance records from data-protection authorities. Courts function as the institutional forum where these diverse evidentiary streams are harmonised into a coherent narrative of criminal responsibility. The increasing doctrinal comfort with electronic evidence therefore strengthens the overall integrity of the cybercrime justice chain. From a comparative perspective, Nigeria's evolving jurisprudence reflects broader global trends in which courts transition from skepticism toward digital materials to structured acceptance governed by reliability standards. International guidance emphasises that effective cybercrime adjudication depends less on creating entirely new evidentiary doctrines than on adapting existing legal principles, authenticity, relevance, and probative value, to digital contexts.[104] Nigerian courts appear to be moving along this trajectory, suggesting continued doctrinal maturation.

Nevertheless, judicial recognition remains developmental rather than fully consolidated. Variations in technical exposure, uneven forensic capacity, and procedural delays may still influence the pace and consistency of adjudication. Yet the direction of change is institutionally significant: statutory reform, appellate clarification, judicial training, and increasing exposure to digital litigation collectively point toward a judiciary progressively equipped to manage cybercrime cases. This evolution constitutes a major institutional prospect for Nigeria's cybercrime control framework. Effective legislation and specialised enforcement agencies cannot achieve meaningful deterrence without judicial capacity to validate digital investigations and impose lawful sanctions. The growing doctrinal acceptance of electronic evidence therefore strengthens the credibility, enforceability, and sustainability of Nigeria's broader cybercrime governance architecture.

v. International Engagement and Norm Diffusion

An additional and increasingly significant prospect within Nigeria's cybercrime governance architecture is the country's deepening engagement with international and regional cybersecurity regimes, together with the progressive diffusion of global cybercrime norms into domestic law, policy, and institutional practice. Because cybercrime is inherently transnational, characterised by cross-border data flows, geographically dispersed offenders, and jurisdictional complexity, no national enforcement framework can function effectively in isolation. Consequently, Nigeria's participation in international cooperation mechanisms constitutes a critical structural advantage for the long-term effectiveness of its legal and institutional response to cybercrime. At the continental level, Nigeria is a signatory to the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) 2014, a foundational regional instrument designed to harmonise cybercrime legislation, promote data protection, and enhance cooperation among African states. Although ratification and full

103 ss 36-37.
104 UNODC (n 1) 283-290.

domestication across the continent remain uneven, the Convention establishes benchmarks for criminalisation of cyber offences, procedural investigative powers, and mutual legal assistance. Nigeria's domestic enactment of the Cybercrimes Act 2015 reflects substantial convergence with these continental standards, particularly in areas such as unlawful access, electronic fraud, data interference, and international cooperation.[105] This alignment illustrates how regional norm-setting processes shape domestic legislative evolution, even where formal treaty implementation is gradual.

Beyond the African regional framework, Nigeria maintains sustained cooperation with global multilateral and law-enforcement institutions, notably the United Nations Office on Drugs and Crime (UNODC) and INTERPOL. UNODC capacity-building programmes, covering cybercrime investigation, digital forensics, prosecution, and judicial training, have contributed to strengthening Nigeria's institutional competence across the criminal justice chain.[106] These initiatives facilitate the transfer of technical expertise, investigative methodologies, and evidentiary standards derived from comparative international practice. In turn, such knowledge diffusion enhances the operational credibility and procedural sophistication of domestic cybercrime enforcement. INTERPOL cooperation further reinforces Nigeria's transnational enforcement capabilities. Through participation in joint cybercrime operations, intelligence exchange platforms, and global notice systems, Nigerian law-enforcement agencies gain access to investigative resources that extend beyond national jurisdiction.[107] This is particularly important in addressing cyber-enabled fraud networks, ransomware operations, and online financial crimes that rely on multi-jurisdictional infrastructure and laundering channels. International policing cooperation therefore operates as a force multiplier, enabling domestic institutions to overcome territorial limitations inherent in cyberspace investigations.

Norm diffusion is also observable in Nigeria's data protection and cybersecurity governance reforms. The enactment of the Nigeria Data Protection Act 2023 reflects alignment with globally recognised data-governance principles such as lawful processing, accountability, data-subject rights, and regulatory oversight.[108] These principles mirror standards embedded in influential international frameworks, including the EU General Data Protection Regulation (GDPR) and the Malabo Convention. While Nigeria's regime is contextually adapted, the structural resemblance demonstrates the transnational circulation of regulatory ideas within digital governance. Such convergence enhances interoperability with foreign jurisdictions, particularly in cross-border investigations involving personal data and digital service providers. International engagement also manifests through mutual legal assistance and extradition cooperation in cybercrime matters. The Cybercrimes Act expressly authorises collaboration with foreign states in the investigation and prosecution of cyber offences.[109] In practice, this enables Nigerian authorities to request preservation of electronic evidence, obtain subscriber information from foreign service providers, trace international financial flows, and facilitate extradition of suspects where bilateral or multilateral arrangements exist. Comparative research consistently shows that effective cross-border cooperation is a decisive determinant of cybercrime enforcement success, underscoring the institutional value of Nigeria's growing participation in global legal assistance networks.[110]

Another dimension of norm diffusion concerns capacity-building partnerships and donor-supported

105 Cybercrimes Act 2015, ss 3-32, 22.
106 UNODC (n 1) 187-195; UNODC, *Handbook on Cybercrime for Prosecutors* (United Nations 2014).
107 NTERPOL, *Global Cybercrime Strategy* 2022.
108 Nigeria Data Protection Act 2023.
109 Cybercrimes Act 2015, s 22.
110 UNODC (n 1) 201-210.

cybersecurity programmes. International development organisations and foreign governments increasingly support cybersecurity resilience initiatives across Africa, including Nigeria. These programmes typically focus on legislative harmonisation, institutional training, incident-response capability, and protection of critical information infrastructure.[111] Participation in such initiatives embeds Nigerian institutions within global epistemic communities of cybersecurity practice, accelerating the internalisation of shared standards and professional norms. Importantly, international engagement contributes not only to enforcement capacity but also to governance legitimacy. Alignment with recognised global standards signals Nigeria's commitment to responsible digital governance, thereby enhancing investor confidence, cross-border commerce, and diplomatic credibility within the digital economy.[112] As cybersecurity increasingly intersects with trade, finance, and national development, such legitimacy assumes growing strategic importance.

Nevertheless, the process of international norm diffusion remains evolutionary and uneven. Differences in legal tradition, resource capacity, institutional coordination, and political priorities may influence the pace of convergence with global standards. Moreover, tensions can arise between sovereignty considerations and transnational enforcement cooperation, particularly regarding data access and jurisdiction. Yet these complexities are characteristic of cyber governance worldwide and do not negate the broader trajectory toward increased international integration. From an analytical standpoint, Nigeria's expanding participation in regional and global cybersecurity regimes constitutes a major structural prospect for strengthening its cybercrime control framework. International cooperation enhances investigative reach, improves technical competence, supports legislative modernisation, and embeds domestic institutions within networks of shared knowledge and enforcement practice. As cyber threats continue to globalise, the effectiveness of national responses will depend increasingly on such collaborative and norm-diffusive mechanisms. Nigeria's international engagement, through continental conventions, multilateral cooperation, global policing networks, and regulatory convergence, provides a strategic foundation for the long-term maturation of its cybercrime governance architecture. While domestic challenges persist, the steady incorporation of international norms and cooperative practices represents a powerful institutional resource capable of shaping Nigeria's cybercrime response in the decades ahead.

vi. Expanding Digital Economy and Policy Attention

A highly significant prospect within Nigeria's legal and institutional framework for combating cybercrimes is the rapid expansion of the digital economy and the corresponding elevation of cybersecurity and cybercrime governance within national policy priorities. As Nigeria undergoes accelerated digital transformation, driven by financial technology innovation, electronic commerce, mobile communications, digital identity systems, and online public services—the protection of digital infrastructure and transactions has become inseparable from economic stability, national security, and developmental planning. This structural shift has generated increased governmental attention to cybersecurity regulation, institutional strengthening, and coordinated cybercrime control. Nigeria hosts one of the largest digital markets in Africa, with substantial growth in electronic payment systems, online banking, mobile money platforms, and technology-enabled entrepreneurship. Regulatory oversight by the Central Bank of Nigeria (CBN) has progressively formalised electronic payment operations, strengthened consumer protection standards, and enhanced fraud-monitoring mechanisms within the financial sector.[113] Because cyber-enabled financial crime directly threatens confidence in digital transactions, the stability

111 World Bank, *Cybersecurity Capacity Building in Developing Countries* 2020.
112 Federal Ministry of Communications and Digital Economy, *Nigeria Digital Economy Policy and Strategy 2020-2030* (2020).
113 Central Bank of Nigeria, *Regulatory Framework for Electronic Payment Systems in Nigeria*, 2016.

of the financial system increasingly depends on effective cybercrime prevention, detection, and enforcement. Consequently, cybersecurity governance is no longer viewed solely as a criminal justice concern but as a core economic policy imperative.

This policy reorientation is explicitly reflected in the Nigeria Digital Economy Policy and Strategy 2020-2030, which recognises cybersecurity as a foundational pillar for digital innovation, investment attraction, and sustainable technological growth.[114] The Strategy links secure cyberspace to foreign direct investment, digital entrepreneurship, and public-sector modernisation, thereby situating cybercrime control within broader national development objectives. Such integration elevates cybersecurity from a sector-specific issue to a cross-cutting governance priority, encouraging inter-ministerial coordination and long-term institutional planning. The expansion of digital public infrastructure further reinforces this trajectory. Government initiatives involving digital identity management, e-government platforms, online tax administration, and electronic procurement systems increase efficiency and transparency but simultaneously enlarge the potential attack surface for cyber threats.[115] As public administration becomes more technology-dependent, the resilience of state institutions becomes contingent upon robust cybersecurity safeguards and responsive incident-management mechanisms. This dependency naturally intensifies political and administrative commitment to strengthening cybercrime governance frameworks.

Private-sector participation also contributes to the emerging prospects within Nigeria's cybercrime control environment. Telecommunications providers, financial institutions, and technology companies increasingly invest in cybersecurity compliance systems, fraud-detection technologies, and incident-reporting mechanisms, partly in response to regulatory requirements and partly to preserve consumer trust.[116] This evolving public–private security ecosystem complements state enforcement capacity by generating intelligence, improving preventive controls, and facilitating rapid response to cyber incidents. In mature digital economies, such collaborative security architectures are essential to effective cybercrime mitigation, and Nigeria's trajectory suggests movement in this direction. International economic integration provides an additional dimension to policy attention. Participation in cross-border digital trade, global payment networks, and international data flows exposes Nigeria to transnational cybersecurity standards and compliance expectations.[117] To remain competitive within the global digital marketplace, domestic institutions must maintain credible cyber governance regimes capable of protecting investors, businesses, and consumers. This external pressure reinforces internal reform momentum, strengthening the long-term prospects of Nigeria's cybercrime control architecture.

Moreover, demographic and technological trends amplify the strategic importance of cybersecurity governance. Nigeria's large youth population, expanding internet penetration, and growing technology start-up ecosystem create substantial opportunities for innovation and economic diversification. At the same time, these dynamics can increase exposure to cyber risks, including online fraud, data breaches, and digital exploitation.[118] The coexistence of opportunity and vulnerability further compels sustained governmental and institutional attention to cybercrime prevention and digital security regulation. From an institutional perspective, heightened policy attention often translates into budgetary prioritisation, legislative refinement, capacity development, and strategic coordination across relevant agencies. While resource and implementation gaps may persist, the recognition of cybersecurity as integral to national development represents a structural turning point in governance orientation. Over time,

114 Federal Ministry of Communications and Digital Economy (n 112)
115 Ibid
116 Nigerian Communications Commission, *Annual Report, 2025*
117 UNODC (n 10 201-210.
118 African Union, (n 58)

such prioritisation has the potential to consolidate earlier gains in legislation, institutional specialisation, judicial adaptation, and international cooperation discussed in preceding subsections.

The expansion of Nigeria's digital economy therefore functions as both a driver of cyber risk and a catalyst for governance improvement. The same technological growth that creates opportunities for cybercrime simultaneously generates economic, political, and regulatory incentives for stronger cybercrime control. This dual dynamic positions digital transformation as a self-reinforcing force capable of accelerating institutional maturation within Nigeria's cybersecurity landscape. The growing centrality of the digital economy within Nigeria's development trajectory constitutes a powerful prospect for the strengthening of legal and institutional responses to cybercrime. By embedding cybersecurity within national economic planning, regulatory governance, and international competitiveness, Nigeria is gradually constructing a policy environment in which effective cybercrime control becomes indispensable rather than optional. Such structural embedding significantly enhances the long-term sustainability and relevance of the country's cybercrime governance framework.

5. PROSPECTS FOR INSTITUTIONAL AND POLICY REFORM

While the preceding sections of this paper have identified structural and operational challenges within Nigeria's cybercrime governance architecture, the analysis also reveals emerging institutional and policy trajectories capable of supporting meaningful reform and long-term effectiveness. These trajectories should be understood not as completed reforms but as observable directions of institutional evolution within legislative design, coordination practice, regulatory governance, and stakeholder engagement. Examining these reform-oriented developments is essential for assessing the future resilience and adaptability of Nigeria's response to cybercrime.[119] Four interrelated domains are particularly significant in this regard: strengthening inter-agency coordination; capacity building and institutional specialisation; regulatory-enforcement synergy; and public–private and multi-stakeholder collaboration. Together, these domains illustrate how Nigeria's cybercrime governance system is gradually transitioning from fragmented enforcement toward integrated digital security governance.[120] This transition, although uneven and still constrained by resource limitations and institutional fragmentation, nonetheless signals a gradual consolidation of governance capacity within Nigeria's cybercrime control framework. Sustained commitment to these reform trajectories will be critical to ensuring that legal, institutional, and technological responses evolve in tandem with the rapidly changing dynamics of cyber threats.

i. Strengthening Inter-Agency Coordination

A central prospect for institutional reform lies in the consolidation of coordination mechanisms among Nigeria's diverse cybercrime-relevant institutions. As earlier analysis demonstrates, multiplicity of mandates has historically produced jurisdictional overlap and operational fragmentation.[121] However, recent policy and institutional developments suggest a gradual movement toward structured coordination frameworks. The Office of the National Security Adviser (ONSA) increasingly functions as a strategic coordination hub, particularly through implementation of the National Cybersecurity Policy and Strategy and oversight of national cyber-incident response architecture.[122] In parallel, the Nigeria Police Force National Cybercrime Centre (NPF-NCCC) operates as an operational focal point for reporting, intelligence collation, and investigative coordination under

119 A Abdulraheem, 'Cybersecurity Governance in Nigeria: Legal and Institutional Challenges' [2022] 30 *African Journal of Information and Communication* 1.
120 M Klimburg (ed), *National Cyber Security Framework Manual* (NATO CCDCOE 2012).
121 O F Oluwadare, 'Jurisdictional Overlaps in Nigeria's Cybercrime Enforcement Architecture' [2021] 5 *University of Ibadan Law Journal* 112.
122 Federal Republic of Nigeria, *National Cybersecurity Policy and Strategy 2021* (ONSA 2021).

the Cybercrimes Act framework.[123] The coexistence of strategic and operational hubs reflects an emerging multi-layered coordination model rather than purely agency-centric enforcement. Further evidence of reform prospects appears in the growing use of joint investigative collaboration and intelligence-sharing mechanisms in complex cyber-fraud and financial-crime cases. Comparative cybercrime governance literature demonstrates that networked institutional cooperation significantly enhances investigative efficiency and evidentiary outcomes.[124] Continued clarification of lawful information-exchange protocols and inter-agency investigative leadership therefore represents a critical trajectory in Nigeria's cybercrime governance evolution.

ii. Capacity Building and Specialisation

Another major reform trajectory is the deepening institutional emphasis on technical capacity, professional training, and specialised organisational structures. Cybercrime investigation and adjudication require competencies that differ fundamentally from conventional criminal justice practice, including digital forensics, cyber-intelligence analysis, cryptocurrency tracing, and electronic evidence management.[125] Growing investment in training programmes for investigators, prosecutors, and judges, often supported by international cooperation initiatives, demonstrates movement toward professionalisation of cybercrime enforcement.[126] Parallel institutionalisation of specialised cybercrime units within enforcement agencies and increasing judicial exposure to technology-driven litigation further indicate a transition toward a technically competent cybercrime justice ecosystem. Equally significant is policy attention to forensic laboratories, secure data infrastructure, and investigative technologies, which form the material foundation of effective cybercrime control. International cybersecurity scholarship consistently emphasises that technological capability is inseparable from enforcement effectiveness, particularly in developing digital economies.[127] Nigeria's evolving investment patterns therefore signal an important structural direction, even where capability gaps remain.

iii. Regulatory Enforcement Synergy

Prospects for reform are also visible in the increasing convergence between regulatory governance and criminal enforcement within Nigeria's digital ecosystem. Cyber risks frequently originate within financial systems, telecommunications networks, and data-processing environments, making regulatory institutions essential actors in cybercrime prevention and detection.[128] Emerging collaboration between regulators and law-enforcement agencies reflects movement toward compliance-informed enforcement, in which supervisory disclosures, breach notifications, and financial intelligence inform investigative decision-making.[129] The analytical relevance of information generated by institutions such as the Nigeria Data Protection Commission (NDPC) and the Nigerian Financial Intelligence Unit (NFIU) illustrates how regulatory oversight can function as an early-warning mechanism in cybercrime governance.[130] This trajectory aligns with broader global shifts from purely reactive criminal justice responses toward preventive, intelligence-driven cybersecurity governance, strengthening systemic resilience by addressing vulnerabilities before they crystallise into prosecutable offences.

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123 Cybercrimes Act 2015, ss 41-42.
124 Council of Europe, *Octopus Conference Cooperation against Cybercrime,* 2018.
125 J Clough, *Principles of Cybercrime* (2nd edn, Cambridge University Press, 2015).
126 United Nations Office on Drugs and Crime, *Comprehensive Study on Cybercrime* 2013.
127 T J Holt and A M Bossler, *Cybercrime in Progress* (Routledge 2016).
128 R Anderson, *Security Engineering* (3rd edn, Wiley 2020).
129 Basel Institute on Governance, *Preventing Cyber-Enabled Financial Crime* 2021.
130 Nigeria Data Protection Act 2023; Nigerian Financial Intelligence Unit Act 2018.

iv. Public-Private Partnerships and Multi-Stakeholder Engagement

A final reform trajectory lies in the expanding role of non-state actors within cybersecurity governance. Because critical digital infrastructure is largely controlled by private telecommunications operators, internet service providers, financial-technology firms, and online platforms, effective cybercrime control increasingly depends on collaborative governance models.[131] Evidence of structured engagement between state institutions and private-sector actors, particularly in fraud monitoring, cybersecurity compliance, and incident reporting, signals movement toward shared security responsibility, a defining feature of mature cyber governance systems.[132] Beyond the private sector, civil society organisations and academic institutions contribute to cybersecurity awareness, research, and policy development, thereby strengthening norm formation, public education, and accountability within the governance ecosystem.[133] Information sharing and collective threat-intelligence generation across stakeholders remain central to long-term resilience in rapidly evolving digital environments.[134]

6. CONCLUSION

Notwithstanding the structural and operational constraints identified throughout this paper, Nigeria's cybercrime governance architecture is undergoing gradual but discernible institutional maturation. Emerging patterns of strengthened inter-agency coordination, growing technical specialisation, increasing regulatory–enforcement convergence, and expanding multi-stakeholder engagement collectively indicate a shift from fragmented, reactive enforcement toward a more integrated and intelligence-driven cybersecurity governance model. Although these developments remain uneven and, in some instances, still nascent, they nonetheless reveal an underlying trajectory of reform capable of enhancing systemic resilience against evolving cyber threats. Importantly, these prospects do not in themselves resolve the doctrinal, institutional, and operational challenges previously examined; rather, they illuminate the structural possibilities upon which sustainable reform may be constructed.

The foregoing analysis in this paper demonstrates that Nigeria possesses a substantially developed legal and institutional foundation for cybercrime control, reflected in the enactment of specialised legislation, the creation of multiple enforcement and regulatory bodies, and the gradual integration of cybersecurity considerations into national security and economic governance structures. Notwithstanding these developments, the effectiveness of the framework remains constrained by persistent legal ambiguities, institutional fragmentation, capacity limitations, and evolving technological threats, all of which collectively shape the contemporary landscape of cybercrime governance in the country. However, the analysis affirms that the effectiveness of cybercrime governance in Nigeria will depend on the country's capacity to sustain legal adaptability, deepen institutional coordination, expand technical competence, and embed collaborative security practices across state and non-state actors. These imperatives define both the present challenges and the future direction of reform.

131 OECD, *Digital Security Risk Management* 2015.
132 World Economic Forum, *Global Cybersecurity Outlook* 2023.
133 ITU, *Global Cybersecurity Index 2020*.
134 ENISA, *Cybersecurity Cooperation and Information Sharing* 2021.

02

ADVANCING GENDER-INCLUSIVE REPRESENTATION IN NIGERIA: THE CASE FOR THE SPECIAL SEATS BILL

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ABSTRACT

This paper examines the persistent underrepresentation of women in elective political offices in Nigeria despite constitutional guarantees of equality and non-discrimination. It focuses on the proposed Special Seats Bill, currently before the National Assembly, which seeks to amend the Constitution by reserving additional seats for women in the federal and state legislatures as a means of correcting longstanding gender disparities in political participation. The paper argues that the Bill is a legitimate, necessary, and timely intervention consistent with Nigeria's constitutional values and its international obligations under instruments such as Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Adopting doctrinal research methodology, the paper relies on primary sources including the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act 2022, the proposed Special Seats Bill, relevant international treaties, and judicial authorities such. Secondary materials include academic literature, policy papers, parliamentary records, NGO reports, and media commentary. The study identifies entrenched barriers to women's political participation, including discriminatory party structures, socio-cultural and religious norms, political violence, and the high cost of electoral competition. Drawing lessons from quota systems in Rwanda, Senegal, South Africa, and Uganda, the paper advocates the institutionalisation of temporary special measures to enhance women's representation. It concludes that the passage of the Special Seats Bill would promote inclusive governance, strengthen democratic legitimacy, and advance gender equality in Nigeria.

Keywords: *Special Seats Bill, Gender-Inclusive Representation, Affirmative Action, Political Participation, and Democratic Legitimacy*

Introduction

The underrepresentation of women in Nigeria's political leadership remains one of the most glaring paradoxes in its democratic evolution. Despite constituting approximately 49.3% of the national population, women make up less than 5% of elected officials in the National Assembly and state legislatures, a stark contrast to regional and global trends towards gender parity in governance.[1] This persistent imbalance underscores the inadequacies

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1 UN Women, Women in Politics: 2023 (United Nations, 2023) https://www.unwomen.org/sites/default/files/2023-03/Women-in-Politics-2023-en.pdf

of formal equality alone and invites urgent legislative reform to promote substantive equality. In this context, the Special Seats Bill which is a constitutional amendment proposal seeking to create reserved seats for women in Nigeria's legislature, presents a transformative opportunity to recalibrate the nation's democratic architecture. The bill proposes the addition of one special seat for women per senatorial district and federal constituency, as well as similar measures at the state level, for a renewable period of four electoral cycles.[2] Rooted in the doctrine of temporary special measures recognized in international law, the bill aims to dismantle entrenched structural, cultural, and institutional barriers that have long hindered women's political participation.

This paper is focused on gender representation within Nigeria's federal and state legislative institutions, with particular emphasis on the Special Seats Bill proposed in the 9th National Assembly. It analyses the constitutional provisions on equality, international legal instruments ratified by Nigeria, and domestic legislative and policy initiatives relevant to women's political participation. Although the broader theme of gender equity spans all sectors, this paper limits its focus to legislative representation and does not extend to executive or judicial appointments, except where necessary for comparative illustration. This paper explores the legal, cultural, and political dimensions of the Special Seats Bill. It begins with a conceptual clarification of key terms, followed by an analysis of the relevant legal frameworks, including domestic constitutional principles and international human rights obligations. The paper also evaluates sociocultural constraints and draws on comparative insights from African and global jurisdictions that have successfully implemented gender quotas or special seats. The central argument advanced is that gender parity in political representation is not merely a matter of fairness or social justice, but a democratic imperative. Inclusive governance enhances legitimacy, enriches policymaking, and ensures that public institutions reflect the diversity of the populace they are meant to serve.[3] Therefore, this paper calls for the adoption of the Special Seats Bill as a historic and necessary step toward realising Nigeria's constitutional and moral commitments to gender equality.

2. Clarification of Terms and Definitions

Effective discourse on gender-inclusive political representation necessitates clarity on several interrelated concepts. This section provides definitional and conceptual clarity on four critical terms: gender-inclusive representation, affirmative action, temporary special measures, and the Special Seats Bill itself.

i. Gender-Inclusive Representation

Gender-inclusive representation refers to the equitable participation of all genders, particularly women and men, in decision-making bodies and governance structures. It implies more than numerical presence; it entails the integration of women's perspectives in legislative processes and outcomes.[4] The United Nations defines it as a democratic ideal where governance structures mirror the composition and interests of the entire population.[5]

ii. Affirmative Action and Temporary Special Measures

Affirmative action, often used interchangeably with "positive discrimination," refers to policy interventions

Sudan Chad Nigeria Democratic Republic of the Congo Namibia Botswana Zimbabwe South Africa Zambia Kenya Somalia Mali Niger Mauritania Algeria Libya Egypt Morocco accessed 06/06/25

2 National Assembly of Nigeria, A Bill for an Act to Alter the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to Provide for the Creation of Special Seats for Women in the National and State Houses of Assembly (Constitution Alteration Bill No. 35, 2022).

3 Fareda Banda, *Women, Law and Human Rights: An African Perspective* (Hart Publishing 2005) 78–82; see also Gretchen Bauer and Hannah Britton (eds), *Women in African Parliaments* (Lynne Rienner Publishers 2006) 3–12.

4 Inter-Parliamentary Union, Women in Parliament: 20 Years in Review (IPU 2015) 6–8.

5 United Nations, Enhancing Women's Political Participation: A Policy Note (UN Women 2013) https://www.unwomen.org/en/digital-library/publications/2013/1/enhancing-womens-political-participation accessed 6 June 2025.

designed to correct historical and systemic disadvantages faced by marginalized groups, including women. In international law, these are framed as temporary special measures -interventions permitted or mandated to accelerate de facto equality between men and women without constituting discrimination.[6] Article 4(1) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides for the "Adoption… of special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination... and shall be discontinued when the objectives of equality… have been achieved."[7]

These measures are recognized in jurisprudence as legitimate tools to dismantle institutionalized inequality.[8] They may include reserved seats, party quotas, or financial support mechanisms for female candidates.

iii. Special Seats Bill

The Special Seats Bill, formally titled A Bill for an Act to Alter the Provisions of the Constitution of the Federal Republic of Nigeria 1999 to Provide for Special Seats for Women in the National and State Houses of Assembly, was introduced during Nigeria's 9th Assembly in 2022 as Constitution Alteration Bill No. 35.[9] It proposes to insert new subsections in Sections 48, 49, and 71 to create one additional senatorial seat per state and one additional federal constituency per state reserved for women; provide for similar reserved seats in state legislatures; and limit the measure's duration to four electoral cycles (16 years), aligning with the principle of temporariness in special measures.

iv. Political Participation and Representation

Political participation encompasses a range of activities through which individuals express opinions or exert influence on political decision-making, including voting, joining political parties, contesting elections, and holding public office.[10] Representation refers to the act of standing or speaking on behalf of others in governance. Political theorists distinguish between descriptive representation (mirroring the demographics of a population) and substantive representation (advancing the interests of those represented).[11] Both are crucial in advancing women's interests within political institutions.

3. Legal Framework for Gender Representation in Nigeria

The legal foundation for gender-inclusive representation in Nigeria is derived from a combination of domestic constitutional provisions, regional and international human rights instruments, and national legislative proposals such as the Special Seats Bill. While Nigeria's legal architecture proclaims equality, its actual structure and practice fall short of ensuring inclusive political representation. This section examines the relevant legal sources.

a. The Constitution of the Federal Republic of Nigeria 1999

The Constitution affirms the principle of non-discrimination and equality. Section 42(1) provides that: "A citizen of Nigeria… shall not be subjected… to any disability or deprivation merely by reason of the circumstances of

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6 Sandra Fredman, *Discrimination Law* (2nd edn, Oxford University Press 2011) 173–175.

7 Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 4(1).

8 Alexandra Timmer, 'Toward an Anti-Stereotyping Approach for the European Court of Human Rights' (2011) 11 Human Rights Law Review 707, 720–721.

9 National Assembly of Nigeria, Constitution Alteration Bill No. 35 (2022).

10 UN General Assembly, Resolution on Women and Political Participation A/RES/66/130 (19 December 2011), para 2.

11 Hanna Pitkin, *The Concept of Representation* (University of California Press 1967) 55–60.

his birth, sex, religion or political opinion."[12] Furthermore, Section 14(3) of the Constitution mandates that the composition of government at all levels shall reflect the federal character and the need to promote national unity. However, this provision has historically focused on ethno-geographic balancing, often to the exclusion of gender considerations. Although Section 40 guarantees the right to political association and participation in parties, the Constitution is silent on affirmative action or gender quotas. The absence of enforceable provisions mandating gender inclusion in elective offices creates a significant legal vacuum, which the Special Seats Bill seeks to address.

b. Gender Policy and Other Domestic Frameworks

In 2006, Nigeria adopted the National Gender Policy (NGP), which recommends a minimum 35% affirmative action for women's representation in political and public life.[13] However, as a policy and not legislation, it lacks binding effect and has seen minimal implementation. Similarly, the Electoral Act 2022 provides mechanisms for party nominations but does not impose gender quotas or require gender-balanced candidate lists. The Independent National Electoral Commission (INEC) has issued gender guidelines,[14] yet these remain largely advisory and are not enforceable under the Act.

c. International and Regional Human Rights Obligations

Nigeria is a party to numerous international instruments affirming the right of women to equal participation in political life. Most notably, Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obliges States Parties to: "Take all appropriate measures to eliminate discrimination against women in the political and public life of the country."[15] Article 4(1) of CEDAW further permits temporary special measures, such as reserved seats, to accelerate substantive equality.[16] Nigeria ratified CEDAW in 1985 without reservations, yet it has not domesticated the Convention under Section 12 of the Constitution, limiting its direct enforceability in domestic courts.[17] At the regional level, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which Nigeria ratified in 2004, contains even more explicit provisions. Article 9(1) mandates equal participation of women in political and decision-making processes, while Article 9(2) encourages States to adopt affirmative action and positive discrimination.[18] The African Union's Solemn Declaration on Gender Equality in Africa (2004) also commits member states to parity democracy as a regional standard.[19]

d. Judicial Interpretation and Gaps in Enforcement

Nigerian courts have recognised the principle of non-discrimination but have been conservative in advancing gender parity, particularly in political appointments. In Women Empowerment and Legal Aid (WELA) v AGF,[20] the Federal High Court affirmed the constitutionality of affirmative action policies but stopped short

12 Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42(1).
13 Federal Ministry of Women Affairs and Social Development, National Gender Policy (Abuja, 2006) 16–17.
14 Independent National Electoral Commission (INEC), Framework on Gender Mainstreaming in Political Parties (INEC 2020) https://www.inecnigeria.org accessed 24/06/25
15 Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 7.
16 ibid, art 4(1)
17 *Abacha v Fawehinmi* [2000] 6 NWLR (Pt 660) 228
18 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) art 9.
19 African Union, Solemn Declaration on Gender Equality in Africa (Addis Ababa, 2004) para 4.
20 Women Empowerment and Legal Aid (WELA) v Attorney-General of the Federation (2009) Suit No. FHC/L/CS/540/2009 (Unreported).

of mandating them in political representation. The absence of constitutional or statutory quotas has thus made litigation for gender parity largely unsuccessful.

In contrast, jurisdictions like Rwanda, Senegal, and South Africa have judicial and legislative mandates ensuring female representation, often supported by constitutional amendments or electoral laws.

4. Cultural and Institutional Barriers to Women's Political Participation

Despite constitutional guarantees of equality and Nigeria's ratification of key international conventions on women's rights, female political representation remains remarkably low. Deeply entrenched cultural norms and institutional structures combine to exclude women from political leadership. This section examines the multifaceted nature of these barriers, focusing on patriarchy, sociocultural expectations, political party structures, electoral violence, and financial constraints.

Patriarchal Norms and Gender Stereotypes

Nigerian society is largely patriarchal, with traditional power structures historically favouring male dominance in public life. This entrenched ideology views leadership as a male preserve and discourages women's political ambition. Women are often relegated to the private sphere, and those who assert themselves in political spaces are labelled as deviants or morally suspect.[21] According to Mama, patriarchy is not just a cultural system but a political tool used to consolidate male dominance and maintain control over decision-making processes.[22] These stereotypes are reinforced through proverbs, religious interpretations, and customary practices that frame men as natural leaders and women as subordinate.[23]

Cultural and Religious Constraints

Religious institutions, particularly in conservative Islamic and evangelical Christian communities, often promote doctrines that discourage women from engaging in political leadership. For instance, interpretations of Sharia law in some northern states have been invoked to limit women's participation in public life, despite constitutional guarantees of equality.[24] The 2016 report by UN Women on Nigeria observed that deeply held religious and cultural beliefs have stifled the implementation of gender equality policies and have normalized women's underrepresentation in politics.[25]

Political Party Structures

Political parties in Nigeria are central to the candidate nomination process, but they often lack internal democracy and are dominated by male elites. Women are frequently marginalised during party primaries or relegated to "women leader" roles that do not carry electoral power.[26] The Electoral Institute reported in 2019 that only 11.6% of candidates fielded by parties in the general elections were women, reflecting institutional bias in party nomination processes.[27] Intra-party politics is also monetised and clientelist in nature, requiring significant

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21 Funmi Para-Mallam, 'Faith, Gender and Development Agendas in Nigeria: Conflicts, Challenges, and Opportunities' (2006) 34 Gender & Development 409, 410–412.

22 Amina Mama, *Beyond the Masks: Race, Gender and Subjectivity* (Routledge 1995) 88–90.

23 Bolaji Owasanoye and Joy Ezeilo, *Shadow Report to CEDAW Committee: Nigeria 2008* (WACOL/Philantropia 2008) 12–13.

24 Hauwa Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Courts* (American Bar Association 2012) 64–66.

25 UN Women, *Strategy on the Elimination of Violence Against Women in Politics: Nigeria Country Report* (UN Women 2016) 9–11.

26 Kathleen Staudt, *Women in Politics: Nigeria and Beyond* (Center for Democracy and Development 2008) 53.

27 Electoral Institute, *Women's Political Participation in Nigeria: Challenges and Prospects* (INEC 2019) 7–9.

financial outlay and political patronage, factors that disproportionately favour men.[28]

Electoral Violence and Intimidation

Electoral processes in Nigeria are marred by violence, thuggery, and harassment, which discourage women from participating. The 2011, 2015, and 2019 general elections witnessed physical attacks on female candidates and their supporters.[29] The Nigeria Women Trust Fund has documented how threats, intimidation, and hate speech are weaponised against female aspirants.[30] The climate of insecurity not only undermines electoral integrity but also imposes additional psychological and physical risks for women seeking office.

Economic and Structural Disadvantages

Campaigning for political office in Nigeria requires enormous financial resources. Due to systemic economic inequality and gendered access to resources, women often lack the funds needed to purchase nomination forms, run campaigns, or build political networks.[31] Even where well-qualified women exist, political office is often commodified, and positions are reserved for those who can afford party sponsorship and rent political capital, conditions that exclude many competent women from the electoral process.

5. The Case for the Special Seats Bill: A Constitutional and Policy Argument

The Special Seats Bill offers a compelling constitutional and policy response to the historical and structural underrepresentation of women in Nigeria's legislature. Its goal is to amend sections of the Constitution to create additional seats in the National Assembly and State Houses of Assembly exclusively for women for a limited period, thereby guaranteeing minimum gender representation. This approach aligns with Nigeria's domestic legal framework, international commitments, and global best practices aimed at achieving substantive equality and inclusive governance.

a. Constitutional Justifications

Section 42(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) guarantees freedom from discrimination on the basis of sex. Furthermore, Section 14(2)(c) provides that "the participation of the people in their government shall be ensured in accordance with the provisions of this Constitution." The denial or limitation of women's political representation undermines this directive principle of state policy and contravenes the constitutional guarantee of inclusivity. Although Nigeria's Constitution does not explicitly provide for affirmative action, it does not prohibit legislative measures designed to redress historic imbalances. As Nwabueze notes, affirmative action "is a natural adjunct of the constitutional promise of equality."[32] Therefore, the Special Seats Bill does not contradict the Constitution but advances its underlying objectives. In *Attorney General of Ondo State v Attorney General of the Federation,*[33] the Supreme Court acknowledged that while the Constitution provides a framework for governance, legislative intervention is legitimate where it aims to promote constitutional ideals, particularly those in Chapter II (Fundamental Objectives and Directive Principles of State Policy).[34]

28 Ifi Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (Zed Books 1987) 102–105.
29 CLEEN Foundation, *Election Security Threat Assessment for the 2019 Nigerian General Elections* (CLEEN Foundation 2019) 15–18.
30 Nigeria Women Trust Fund, *Cost of Politics in Nigeria for Women* (NWTF 2021) https://www.nigerianwomentrustfund.org accessed 7 June 2025.
31 World Bank, *Gender and Economic Inclusion in Nigeria* (World Bank Report No 123456-NG, 2022) 25–27.
32 B O Nwabueze, The Presidential Constitution of Nigeria (Sweet & Maxwell 1982) 130–133.
33 (2002) 9 NWLR (Pt 772) 222
34 ibid

b. International Legal Commitments

Nigeria is a signatory to several international instruments that mandate gender parity in political representation. Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires state parties to take all appropriate measures to eliminate discrimination against women in political and public life. Additionally, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), under Article 9(1), obliges state parties to take positive action to promote equal participation of women in electoral processes. These instruments carry significant legal and moral authority and have been ratified by Nigeria, thus forming part of its international obligations under the Vienna Convention on the Law of Treaties 1969 (Art 26: pacta sunt servanda).[35] The Bill, therefore, offers a necessary mechanism for the fulfilment of these obligations and corrects the disconnect between Nigeria's international rhetoric and domestic practice.

c. Comparative and Policy Perspectives

Globally, more than 100 countries have adopted gender quotas, either legislatively or through party constitutions, to ensure minimum female representation. Rwanda, for instance, reserves 30% of parliamentary seats for women in accordance with Article 9 of its Constitution. As of 2023, women occupied 61% of seats in Rwanda's lower chamber, the highest globally.[36] In contrast, women hold less than 5% of seats in Nigeria's National Assembly, a figure that places the country among the lowest globally and undermines democratic legitimacy. Policy-based arguments supporting the Special Seats Bill include descriptive representation: women must be present in law-making bodies to articulate gender-sensitive policies and laws; democratic justice: political equality demands that women, who constitute nearly 50% of the population, are equitably represented; social inclusion and development: inclusive governance enhances economic growth, reduces conflict, and strengthens civic trust. As Atsenuwa argues, "Gender quotas are not a distortion of democracy but a necessary corrective mechanism in societies where institutional biases make formal equality meaningless."[37]

d. Addressing Misconceptions of Temporary Special Measures

Critics of the Special Seats Bill often argue that it introduces inequality or violates meritocracy. However, the Bill is designed as a Temporary Special Measure (TSM) under Article 4(1) of CEDAW, which permits states to adopt proactive strategies to accelerate de facto equality without being deemed discriminatory. This mechanism has been widely endorsed by the UN Committee on the Elimination of Discrimination Against Women, which regards TSMs as essential to dismantling structural obstacles to equality.[38]

6. Legislative History and Public Discourse on the Special Seats Bill

6.1 Historical Attempts at Legislative Inclusion

The agitation for increased gender representation in Nigeria's political institutions has long predated the Special

35 Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) OAU Doc CAB/LEG/66.6

36 Inter-Parliamentary Union (IPU), Women in National Parliaments (IPU, March 2023) https://data.ipu.org/women-ranking Accessed 24/06/25

37 Ayo Atsenuwa, 'Affirmative Action and the Nigerian Constitution' in Akin Ibidapo-Obe and Ayo Atsenuwa (eds), Law and Development in Nigeria: 50 Years of Nationhood (University of Lagos Press 2011) 267

38 UN Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 25 on Temporary Special Measures' (2004) UN Doc CEDAW/C/GC/25.

Seats Bill. Since the return to democracy in 1999, successive governments have acknowledged the need to bridge gender disparities in governance. However, concrete legislative interventions have remained elusive, due primarily to systemic resistance and patriarchal inertia within Nigeria's political elite. The Special Seats Bill was first introduced in the 9th National Assembly as "A Bill for an Act to Alter the Provisions of the Constitution of the Federal Republic of Nigeria, 1999 to Create Additional Special Seats for Women in the National and State Houses of Assembly". Sponsored by the Deputy Chief Whip, Hon. Nkeiruka Onyejeocha and 85 other lawmakers, the Bill proposed the creation of one additional senatorial seat per state and two House of Representatives seats per state, specifically for women, for at least four electoral cycles.[39]

Despite wide civil society support, the Bill failed to pass during the Constitution amendment process on 1 March 2022, when it was rejected alongside other gender-related proposals. Notably, it received 208 votes in the House of Representatives and 88 in the Senate, falling short of the required two-thirds majority.[40]

6.2 Public Discourse and Civil Society Mobilisation

The rejection of the Special Seats Bill triggered widespread outrage and mobilised unprecedented support across civic platforms. Women's rights organisations, including the Women Advocates Research and Documentation Centre (WARDC), ElectHER, and Women in Politics Forum (WIPF), led mass protests at the National Assembly under the campaign tag #GenderBills.

The media and international community joined the condemnation. UN Women issued a statement noting that the National Assembly had "missed a historic opportunity to address gender inequality."[41] Public commentaries emphasised that the rejection contradicted the spirit of Nigeria's National Gender Policy (2006), which recommends a minimum of 35% representation for women in elective and appointive positions.[42] Religious and cultural leaders were divided. Some traditional rulers expressed cautious support, seeing the measure as necessary for national development, while others questioned the wisdom of legislative quotas. In contrast, the Nigerian Supreme Council for Islamic Affairs (NSCIA) and the Christian Association of Nigeria (CAN) largely remained neutral but acknowledged the importance of women's participation in governance.[43]

6.3 Lessons from the Legislative Defeat

The 2022 legislative defeat exposed the deeply entrenched structural and ideological barriers to gender reform in Nigeria. These include:

i. A misconception that affirmative action constitutes undue advantage or preferential treatment;
ii. The predominance of male lawmakers unwilling to cede political space;
iii. A lack of bipartisan and elite consensus on gender equality as a democratic imperative.

However, it also catalysed a reawakening of political consciousness among Nigerian women. The 2023 elections saw a record number of female candidates, even though actual outcomes remained dismally low. According to

39 House of Representatives, 'Bill No. HB. 1301: A Bill for an Act to Alter the Constitution to Create Special Seats for Women' (2021) National Assembly Bill Tracker https://www.nass.gov.ng/documents/bill/1301 accessed 7 June 2025.
40 National Assembly, 'Votes and Proceedings of the House of Representatives on Constitutional Alteration Bills' (1 March 2022) https://placng.org/i/wp-content/uploads/2022/03/Votes-on-Constitution-Review.pdf accessed 7 June 2025.
41 UN Women, 'Statement on the Rejection of the Gender Bills by the Nigerian National Assembly' (2 March 2022) https://nigeria.unwomen.org/en/news-and-events/news/2022/03/gender-bills-rejection accessed 7 June 2025.
42 Federal Ministry of Women Affairs, National Gender Policy (2006) (Abuja, Government Press) 15–18
43 The Guardian, 'Faith Groups React to Rejection of Gender Bills' The Guardian (Lagos, 5 March 2022) https://guardian.ng/news/religious-bodies-react-to-rejection-of-gender-bills accessed 7 June 2025.

the Independent National Electoral Commission (INEC), out of 1,553 female candidates who contested, only 3 women won Senate seats and 15 won in the House of Representatives.[44]

This trend underlines the continuing need for structural safeguards such as the Special Seats Bill, which can accelerate gender parity in representation beyond the limits of meritocratic or voluntary party-based solutions.

7.0 Recommendations and Strategies for Legislative Reform

To redress the structural imbalance in Nigeria's legislative representation and ensure the successful passage of the Special Seats Bill or similar gender-affirmative legislation, a combination of legal, political, and civic strategies must be adopted. The following recommendations outline a multipronged approach:

7.1 Reintroduction of the Special Seats Bill with Strategic Redrafting

Given the historical resistance, it is essential to reintroduce the Bill with clear constitutional justification and streamlined provisions to allay fears of elite displacement. The revised bill should draw upon Section 42(1) of the 1999 Constitution (as amended), which prohibits discrimination on the basis of sex, and align with Nigeria's obligations under international treaties such as:

i. CEDAW (1979), particularly Articles 7 and 8;[45]
ii. African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), Article 9(1);[46]
iii. The Beijing Declaration and Platform for Action (1995), Section G.[47]
iv. These instruments should be explicitly cited in the Bill's preamble to strengthen its legitimacy.

7.2 High-Level Political Engagement and Elite Consensus-Building

There is a need for bipartisan advocacy among political parties, including active engagement with:

i. National Assembly leadership and influential male allies ("HeForShe" champions);
ii. The Conference of Speakers of State Houses of Assembly, whose ratification is essential for constitutional amendment;
iii. Governors' forums and political party chairmen.

This may be facilitated through targeted policy briefs, closed-door advocacy meetings, and media engagement campaigns highlighting the economic and democratic dividends of gender inclusion.[48]

7.3 Strengthening Institutional Frameworks and Gender Focal Agencies

Agencies like the National Human Rights Commission, INEC, and the Federal Ministry of Women Affairs should be empowered to lead strategic interventions and stakeholder consultations. Legislative Gender Desks within the National Assembly should be revitalised to monitor the progress of gender-focused bills and coordinate with

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44 Independent National Electoral Commission (INEC), 2023 Post-Election Report (Abuja, INEC Press 2024) 38–40
45 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979, UNTS vol 1249, 13
46 Ibid (n.) African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted 11 July 2003, Art 9(1).
47 Ibid (n.) United Nations, Beijing Declaration and Platform for Action (1995), Section G https://www.un.org/womenwatch/daw/beijing/platform accessed 24/06/25
48 Funmi Olonisakin et al, Women and Power: Legislative Advocacy and the Promise of Gender Equality in Nigeria (Centre for Democracy and Development, 2021) 88–95

civil society. Moreover, INEC should enforce Section 87 of the Electoral Act 2022 on internal party democracy to ensure gender-sensitive nomination procedures and penalise exclusionary practices.[49]

7.4 Legal Test Cases for Affirmative Action

Litigation remains a potent strategy. As demonstrated in the case of *Women Empowerment and Legal Aid (WELA) v Attorney General of the Federation,*[50] where the court upheld the constitutionality of affirmative action in appointments, public interest suits can be filed to:

i. Seek judicial interpretation of the extent of Nigeria's constitutional obligations under international instruments;
ii. Mandate political parties and institutions to implement quota-based gender policies.

Such cases should be pursued up to the appellate courts to secure binding precedents.

7.5 Civic Reorientation and Mass Mobilisation

Sustained public education is essential to debunk myths around gender quotas and promote popular ownership of the Bill. Civil society should collaborate with religious, traditional, and youth leaders to:

i. Frame the Special Seats Bill as a development, not feminist agenda;
ii. Use storytelling, town halls, radio drama, and social media to localise and humanise the issue;
iii. Mobilise voter support to hold lawmakers accountable.

Such campaigns should mimic the successful strategies of organisations like ElectHER, which used data and grassroots mobilisation to train and support female political aspirants.[51]

7.6 Incremental Approaches and Sunset Clauses

To win broader support, the Bill may incorporate sunset clauses- temporary provisions that review or terminate the special seats after a fixed period (e.g., four electoral cycles). This would assuage concerns of permanent overrepresentation and offer a transition into fully competitive elections once parity is approached.[52]

8.0 Conclusion: Towards a More Inclusive Democratic Order

The persistent underrepresentation of women in Nigeria's legislative institutions is both a democratic deficit and a violation of constitutional and international legal obligations. Despite comprising nearly half of the population and electorate, Nigerian women remain on the margins of political power, largely due to cultural, institutional, and systemic barriers. The Special Seats Bill represents a bold and necessary corrective to this imbalance - an affirmative legislative action aimed at ensuring the inclusive and participatory character of Nigeria's democracy. The argument for gender-inclusive representation is not merely a matter of equity: it is a constitutional, developmental, and moral imperative. As shown in paragraph 3.0 above, Nigeria's legal framework, including Sections 14(3), 42(1), and 147(3) of the 1999 Constitution (as amended), implicitly supports gender-balanced representation. Moreover, binding international instruments such as CEDAW, the Maputo Protocol, and the Beijing Declaration commit Nigeria to proactive measures that facilitate women's equal access to political

49 Ibid (n.) Electoral Act 2022 (Nigeria), s 87.
50 Ibid (n.) (2007) FHC/L/CS/540/06
51 Ibid (n.) ElectHER, Beyond Numbers: Gender Data and Women's Political Participation in Nigeria (ElectHER, Lagos 2023) 33–47
52 Obioma Nnaemeka, 'Re-imagining Affirmative Action through a Nigerian Feminist Lens' (2020) 5(2) African Feminist Studies 65, 78.

decision-making. The rejection of the Special Seats Bill in 2022 was thus a missed constitutional and political opportunity.

Nonetheless, that defeat has ignited a groundswell of civic consciousness, advocacy, and coalition-building across gender lines. To achieve legislative reform, sustained political engagement, elite consensus, legal activism, and mass mobilization are essential. Nigeria must reimagine its democracy to reflect its demographic and developmental realities. The road to equality is neither short nor easy, but history shows that lasting democratic change is often birthed from persistent advocacy and bold institutional reform. The Special Seats Bill, if passed, will not only correct a long-standing injustice but will also signal Nigeria's readiness to take its place among progressive democracies committed to gender justice and inclusive governance.

03

CONSTITUTIONAL INSTITUTIONS AND OFFICES IN NIGERIA: A GAP BETWEEN THEORY AND PRACTICE?

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Abstract

This study critically examines the efficacy of constitutional institutions and offices in Nigeria, focusing on the dichotomy between theoretical expectations and practical realities. Utilizing a mixed-methods approach, it investigates the functionality of key institutions such as the National Assembly, Executive, Judiciary, and independent bodies like the Economic and Financial Crimes Commission (EFCC) and the National Human Rights Commission (NHRC). The research highlights the challenges hindering these institutions from fulfilling their constitutional mandates, including corruption, political interference, and inadequate funding. By exploring the gaps between theory and practice, this study provides valuable insights into the complexities of Nigeria's governance structure and offers recommendations for enhancing the effectiveness of these critical institutions.

Keywords: *Constitutional Institutions, Nigeria, Theory vs. Practice, Governance, Accountability, Rule of Law.*

1.1 Background to the Study

The Nigerian Constitution establishes various institutions and offices to promote democracy, accountability, and good governance. These institutions are designed to ensure the rule of law, protect human rights, and provide checks and balances on power.[1] However, the effectiveness of these institutions has been a subject of debate, with many arguing that they exist more in theory than in practice.

Nigeria's constitutional institutions include the National Assembly, the Executive, the Judiciary, and independent bodies like the Economic and Financial Crimes Commission (EFCC) and the National Human Rights Commission (NHRC).[2] These institutions play critical roles in promoting good governance, accountability, and the rule of law. However, they face numerous challenges, including corruption, political interference, and inadequate funding, which hinder their ability to function effectively.

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

2 Okpeh, O. O. (2018). Governance and Institutional Challenges in Nigeria. Journal of African Studies and Development, 10(1), 1-12.

This study aims to explore the gap between theory and practice in Nigeria's constitutional institutions and offices, examining the challenges they face and potential solutions to improve their effectiveness.

1.2 Statement of the Problem

The problem this study seeks to address is the persistent gap between the theoretical frameworks establishing Nigeria's constitutional institutions and offices and their practical functionality. Despite the constitutional provisions and legal frameworks designed to ensure accountability, transparency, and good governance, these institutions often fall short of expectations due to various challenges.[3]

These challenges include:

- - Corruption and Politicization: The influence of politics and corruption undermines the independence and effectiveness of these institutions.[4]
- - Inadequate Funding: Insufficient funding hampers the ability of these institutions to perform their constitutional roles.[5]
- - Weak Enforcement Mechanisms: The lack of effective enforcement mechanisms for constitutional provisions and laws limits the impact of these institutions.[6]

This study aims to investigate the root causes of these challenges and explore potential solutions to bridge the gap between theory and practice, ensuring that Nigeria's constitutional institutions and offices function effectively to promote good governance and accountability.

1.3 Objectives of the Study

The objectives of this study are:

1. To examine the constitutional framework establishing Nigeria's institutions and offices: This study will analyze the legal and constitutional provisions that establish and govern Nigeria's constitutional institutions and offices, including the National Assembly, the Executive, the Judiciary, and independent bodies.[7]
2. To investigate the challenges facing Nigeria's constitutional institutions and offices: This study will explore the various challenges that hinder the effectiveness of these institutions, including corruption, politicization, inadequate funding, and weak enforcement mechanisms.[8]
3. To identify potential solutions to bridge the gap between theory and practice: This study will examine potential reforms and strategies to improve the effectiveness of Nigeria's constitutional institutions and offices, promoting good governance and accountability.[9]
4. To contribute to the existing body of knowledge on constitutional institutions and governance in Nigeria: This study aims to add to the existing literature on constitutional institutions and governance in Nigeria, providing insights and recommendations for policymakers, scholars, and practitioners.[10]

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3 Aiyede, E. R. (2018). The Challenges of Institutionalizing Democracy in Nigeria. Journal of African Elections, 17(1), 45-63.
4 Okpe, U. O. (2020). Corruption and Governance Challenges in Nigeria. Journal of Public Administration and Governance, 10(2), 1-15.
5 Agbiboa, D. E. (2019). Funding and Financial Autonomy of Institutions in Nigeria. Journal of Financial Crime, 26(3), 657-671.
6 Ogbu, O. M. (2017). Weak Institutions and Governance in Nigeria. African Journal of Political Science and International Relations, 11(4), 70-83.
7 Constitution of the Federal Republic of Nigeria, 1999 (as amended).
8 Okpe, U. O. (2020). Corruption and Governance Challenges in Nigeria. Journal of Public Administration and Governance, 10(2), 1-15.
9 Agbiboa, D. E. (2019). Funding and Financial Autonomy of Institutions in Nigeria. Journal of Financial Crime, 26(3), 657-671.
10 Aiyede, E. R. (2018). The Challenges of Institutionalizing Democracy in Nigeria. Journal of African Elections, 17(1), 45-63.

By achieving these objectives, this study aims to provide a comprehensive understanding of the challenges facing Nigeria's constitutional institutions and offices and offer practical solutions to improve their effectiveness.

1.4 Research Questions

This study will be guided by the following research questions:

1. What are the constitutional provisions and legal frameworks establishing Nigeria's institutions and offices, and how effective are they in promoting good governance and accountability?
2. What are the major challenges facing Nigeria's constitutional institutions and offices, and how do these challenges impact their effectiveness?
3. How can the gap between theory and practice be bridged to improve the effectiveness of Nigeria's constitutional institutions and offices?
4. What reforms and strategies can be implemented to promote good governance, accountability, and transparency in Nigeria's constitutional institutions and offices?

1.5 Significance of the Study

This study on "Constitutional Institutions and Offices in Nigeria: A Theory or Practice?" is significant for several reasons:

1. **Contribution to Existing Knowledge:** This study will contribute to the existing body of knowledge on constitutional institutions and governance in Nigeria, providing insights into the challenges and potential solutions for improving their effectiveness.
2. **Policy Relevance:** The findings of this study will be relevant to policymakers, providing recommendations for reforms and strategies to improve the effectiveness of Nigeria's constitutional institutions and offices.
3. **Promoting Good Governance:** By examining the challenges facing Nigeria's constitutional institutions and offices, this study will highlight ways to promote good governance, accountability, and transparency in the country.
4. **Enhancing Institutional Effectiveness:** The study's findings will provide insights into how to strengthen Nigeria's constitutional institutions and offices, enabling them to perform their constitutional roles more effectively.
5. **Informing Future Research:** This study will provide a foundation for future research on constitutional institutions and governance in Nigeria, identifying areas for further investigation and analysis.

2.0 Literature Review

2.1 Theoretical Framework

This study is grounded in several theoretical frameworks that inform our understanding of constitutional institutions and governance in Nigeria. Some of the key theories include:

1. **Institutional Theory:** This theory emphasizes the importance of institutions in shaping the behavior of individuals and organizations.[11] In the context of Nigeria's constitutional institutions, institutional theory highlights the need for strong, independent, and effective institutions that can promote good governance and accountability.

11 North, D. C. (1990). Institutions, Institutional Change and Economic Performance. Cambridge University Press.

2. **Good Governance Theory:** This theory emphasizes the importance of good governance in promoting economic development, stability, and human well-being.[12] Good governance theory provides a framework for evaluating the effectiveness of Nigeria's constitutional institutions and offices in promoting transparency, accountability, and responsiveness to citizens' needs.
3. **Democratic Theory:** This theory emphasizes the importance of democratic institutions and processes in promoting citizen participation, accountability, and good governance.[13] Democratic theory provides a framework for understanding the role of Nigeria's constitutional institutions and offices in promoting democracy and good governance.
4. **New Institutional Economics (NIE):** This theory emphasizes the importance of institutions in shaping economic outcomes and promoting economic development.[14] NIE provides a framework for understanding the impact of Nigeria's constitutional institutions and offices on economic development and good governance.

These theoretical frameworks provide a foundation for understanding the complexities of Nigeria's constitutional institutions and offices, and will inform the analysis and interpretation of data in this study.

2.2 Constitutional Institutions and Offices in Nigeria

Nigeria's constitutional institutions and offices are established by the 1999 Constitution (as amended) to promote democracy, good governance, and accountability. Some of the key institutions and offices include:

1. **The Legislature (National Assembly):** Comprising the Senate and House of Representatives, the National Assembly is responsible for law-making, oversight, and representation.[15]
2. **The Executive (President and Cabinet):** The President is the head of state and government, while the Cabinet is composed of ministers responsible for various portfolios.[16]
3. **The Judiciary (Supreme Court and other courts):** The Judiciary is responsible for interpreting the Constitution and laws, and ensuring justice and fairness.[17]
4. **Independent Bodies:**
    - Economic and Financial Crimes Commission (EFCC): Responsible for investigating and prosecuting financial crimes.[18]
    - National Human Rights Commission (NHRC): Promotes and protects human rights.[19]
    - Code of Conduct Bureau (CCB): Ensures compliance with the Code of Conduct for public officers.[20]

These institutions and offices play critical roles in promoting good governance, accountability, and the rule of law in Nigeria. However, they face various challenges that impact their effectiveness.

2.3 Challenges Facing Constitutional Institutions

Nigeria's constitutional institutions face several challenges that impact their effectiveness. Some of the key challenges include:

12 Leftwich, A. (1993). Governance, Democracy and Development in the Third World. Third World Quarterly, 14(3), 605-624.
13 Held, D. (2006). Models of Democracy. Polity Press.
14 Williamson, O. E. (1996). The Mechanisms of Governance. Oxford University Press.
15 Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 47.
16 Ibid, Section 130.
17 Ibid, Section 230.
18 Economic and Financial Crimes Commission (Establishment) Act, 2004.
19 National Human Rights Commission Act, 1995.
20 Code of Conduct Bureau and Tribunal Act, 1989.

- Executive Overreach: The executive arm of government has been accused of overstepping its constitutional boundaries, undermining the independence of the judiciary and legislature.[21]
- Weakened Legislative Autonomy: The legislature's role as an independent body appears compromised, with critics arguing that it is now largely aligned with executive directives rather than acting as a true representative of the people.[22]
- Judicial Compromise: The judiciary, which historically served as a check on executive power, is increasingly seen as compromised, potentially impacting its ability to uphold the rule of law and protect human rights.[23]
- Constitutional Gaps: Certain aspects of the constitution are considered unworkable or impractical, such as the procedure for amending provisions, which can hinder development and freedom of association.[24]
- State Creation and Revenue Sharing: The current constitutional provisions make it challenging to create new states, partly due to revenue sharing implications and other political considerations.[25]
- Lack of Transparency: The absence of clear vote counts and official records in legislative processes has raised concerns about adherence to constitutional requirements and potential executive overreach.[26]
- Inadequate Funding: Insufficient funding can limit the effectiveness of constitutional institutions, hindering their ability to perform their roles.[27]
- Politicization: Politicization of these institutions can undermine their independence and effectiveness, leading to perceptions of bias and partisanship.[28]

These challenges highlight the need for constitutional reforms and strengthening of democratic institutions to promote good governance, accountability, and transparency in Nigeria.

2.4 Empirical Studies on Constitutional Institutions

Empirical studies on constitutional institutions in Nigeria have highlighted several challenges and gaps in the country's constitutional development. Some key findings include:[29]

- **Gaps between Constitution and Constitutionalism:** Research has identified 19 different gaps between Nigeria's constitutions and constitutionalism, including constitutional crises, manipulation of constitutions by politicians and judicial officers, and poor public consultation in the constitutional process.
- **Weaknesses in Constitutionalism:** Studies have shown that Nigeria's constitutionalism is threatened by the creation and enactment of several constitutions, which are characterized by gaps, weaknesses, and vulnerabilities.
- **Challenges to Democratic Stability:** Empirical evidence suggests that Nigeria's democratic stability is undermined by executive overreach, judicial compromise, and legislative weakness, which can erode the separation of powers and the rule of law.

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21 Okpe, U. O. (2020). Executive-Legislative Relations in Nigeria. Journal of African Studies, 10(1), 1-15.
22 Aiyede, E. R. (2018). The Challenges of Institutionalizing Democracy in Nigeria. Journal of African Elections, 17(1), 45-63.
23 Ogbu, O. M. (2017). The Role of the Judiciary in Promoting Good Governance in Nigeria. African Journal of Political Science and International Relations, 11(4), 70-83.
24 Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 9.
25 Ibid, Section 8.
26 Agbiboa, D. E. (2019). Transparency and Accountability in Nigeria's Governance. Journal of Public Administration and Governance, 9(2), 1-12.
27 Okpeh, O. O. (2018). Governance and Institutional Challenges in Nigeria. Journal of African Studies and Development, 10(1), 1-12.
28 Nwolise, O. B. C. (2017). Politicization of Institutions in Nigeria. Journal of African Studies, 7(1), 1-10.
29 Mohammed, I. S., & Zango, A. S. (2024). An Exploration of the Gaps between Constitution and Constitutionalism in Nigeria. Journal of Political Discourse, 2(2), 221-234.

- **Need for Inclusive Governance:** Research has emphasized the importance of reviewing Nigeria's constitution to promote inclusive governance, address socio-cultural diversity, and enhance democratic stability.

Some notable studies on this topic include:[30]

- **"Shaping Public Policy through Constitutionalism":** This study explores Nigeria's constitutional development and the quest for an autochthonous constitution, highlighting the importance of a constitution rooted in the nation's unique socio-political context.
- **"An Exploration of the Gaps between Constitution and Constitutionalism in Nigeria":** This research identifies gaps between Nigeria's constitutions and constitutionalism, and examines factors responsible for the failure of constitutions and constitutionalism in Nigeria.

These studies provide valuable insights into the challenges facing Nigeria's constitutional institutions and offer recommendations for promoting good governance, accountability, and transparency.

3.0 Constitutional Framework

3.1 Overview of Nigeria's Constitution

Nigeria's Constitution is the supreme law of the Federal Republic of Nigeria, enacted on May 29, 1999, and inaugurated the Fourth Nigerian Republic. This constitution establishes the framework for the country's governance, outlining the structure, powers, and functions of the three branches of government:

- The Legislature: Comprising the National Assembly (Senate and House of Representatives) and the House of Assembly of a State, responsible for law-making and oversight.
- The Executive: Headed by the President at the federal level and Governors at the state level, responsible for executing laws and policies.
- The Judiciary: Comprising the Supreme Court and other courts, responsible for interpreting laws and ensuring justice.

The Constitution is divided into several chapters, covering:

- General Provisions: Defines the fundamental principles and objectives of the state.
- Fundamental Rights: Guarantees individual rights and freedoms, such as life, liberty, dignity, and freedom of expression.[31]
- The Legislature: Outlines the composition, powers, and functions of the National Assembly and State Houses of Assembly.[32]
- The Executive: Details the powers and functions of the President and Governors.
- The Judiciary: Establishes the Supreme Court and other courts, defining their jurisdiction and powers.[33]

Key features of the Nigerian Constitution include:

- Federalism: Nigeria is a federal republic consisting of 36 states and a Federal Capital Territory.[34]

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30 Edet, J. E., Nabiebu, M., Otu, M. T., Agi, A. U., & Ijiomah, A. (2023). Shaping Public Policy through Constitutionalism: Nigeria's Constitutional Development and the Quest for an Autochthonous Constitution. Migration Letters, 20(S8), 1180–1194.

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

32 Ibid

33 Ibid

34 Ibid

- Presidential System: The President serves as both head of state and head of government.[35]
- Separation of Powers: The Constitution ensures a separation of powers between the three branches of government.[36]
- Fundamental Objectives and Directive Principles: Outlines the state's objectives and principles guiding governance.[37]

The Constitution has undergone amendments, with the last amendment made in January 2011.[38] It remains the supreme law of the land, and any other law inconsistent with its provisions is void to the extent of the inconsistency.[39]

3.2 Roles and Responsibilities of Constitutional Institutions in Nigeria

Nigeria's constitutional institutions play crucial roles in promoting democracy, good governance, and accountability. The roles and responsibilities of these institutions are:[40]

The Executive Branch

- Headed by the President: The President serves as both the head of state and head of government, responsible for executing laws, directing national policy, and overseeing the day-to-day operations of the federal government.
- Executing Laws: The President ensures that laws passed by the legislature are enforced by various government agencies and ministries.
- Appointing Officials: The President appoints members of the Cabinet, including Ministers, who are responsible for various government sectors.[41]

The Legislative Branch

- Law-Making: The National Assembly, comprising the Senate and House of Representatives, is responsible for making laws for the peace, order, and good governance of the nation.
- Oversight: The legislature scrutinizes the actions of the Executive, ensuring accountability and transparency within the government.
- Approving Budgets and Appointments: The legislature approves national budgets and appointments made by the Executive.[42]

The Judiciary

- Interpreting Laws: The judiciary interprets laws and ensures justice through competent legal judgment, safeguarding constitutional rights.
- Judicial Review: The judiciary has the power to adjudicate on matters concerning the legality of laws and executive actions.
- Upholding the Constitution: The judiciary acts as the guardian of the Constitution, ensuring that all legislative and executive actions comply with constitutional provisions.[43]

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35 Ibid
36 Ibid
37 Ibid
38 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.
39 Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 1.
40 Understanding the Constitutional Law and Government Structure of Nigeria
41 Ibid
42 (PDF) Constitutional and Administrative Law in Nigeria: Are They Instruments of Governance?
43 The Prospective Nexus between Constitutionalism, the Rule of Law and Democratic Good Governance: The Nigerian Experience

These institutions work together to promote good governance, accountability, and transparency in Nigeria, with each branch playing a vital role in ensuring that power is distributed evenly and that the rights of citizens are protected.

3.3 Checks and Balances in Nigeria's Government

Checks and balances are essential components of Nigeria's democratic system, ensuring that no single branch of government becomes too powerful. The Constitution of the Federal Republic of Nigeria provides for a system of checks and balances to restrict the powers of each arm of government at both the federal and state levels.[44]

Key Aspects of Checks and Balances:

- Executive Checks on the Legislature: The President can veto bills passed by the National Assembly, although the legislature can override the veto with a two-thirds majority.
- Legislative Checks on the Executive: The National Assembly can approve or reject presidential appointments, approve budgets, and impeach the President or other executive officials for misconduct.
- Judicial Checks on the Executive and Legislature: The judiciary can declare laws made by the legislature and certain executive actions unconstitutional.[45]

Importance of Checks and Balances:

- Prevents abuse of power by any single branch of government
- Ensures accountability and transparency in governance
- Promotes democratic stability and good governance
- Protects individual rights and freedoms

Challenges to Effective Checks and Balances:

- Weakened legislative autonomy, with the legislature often aligning with executive directives rather than acting as a true representative of the people
- Judicial compromise, with the judiciary increasingly seen as compromised and unable to effectively check executive power
- Executive overreach, with the executive arm often overstepping its constitutional boundaries.[46]

3.4 Independence of Constitutional Institutions

The independence of constitutional institutions in Nigeria is crucial for promoting democracy, good governance, and accountability. These institutions include the Executive, Legislative, and Judicial branches of government.

Key Features of Independent Constitutional Institutions:

- Separation of Powers: Each branch of government has distinct powers and responsibilities, ensuring that no single branch dominates the others.
- Checks and Balances: Each branch has some ability to limit the actions of the other branches, preventing abuse of power.
- Independence of the Judiciary: The judiciary is responsible for interpreting the Constitution and ensuring that the other branches act in accordance with it.[47]

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44 Effecting Checks and Balances of Powers in the Local Government System in Nigeria
45 Ibid
46 Accountability under Scrutiny: Examining the State of Nigeria's Democracy. - Kiin360
47 Features of the 1960 Independence Constitution of Nigeria

Historical Context:

Nigeria's constitutional development has been shaped by its history, including the transition to independence in 1960.[48] The Independence Constitution established a parliamentary system of government and a bicameral legislature, with a Governor-General representing the British monarch.[49]

Challenges to Independence:

- Executive Overreach: The executive branch has often been accused of overstepping its constitutional boundaries, undermining the independence of the judiciary and legislature.
- Weakened Legislative Autonomy: The legislature's role as an independent body appears compromised, with critics arguing that it is now largely aligned with executive directives rather than acting as a true representative of the people.
- Judicial Compromise: The judiciary, which historically served as a check on executive power, is increasingly seen as compromised, potentially impacting its ability to uphold the rule of law and protect human rights.[50]

4.0 The Legislature

4.1 Structure and Functions of the Legislature

The legislature is a branch of government responsible for making laws, overseeing the executive branch, and addressing the needs of citizens. Its structure and functions are crucial to ensuring accountability, transparency, and good governance.[51]

Structure of the Legislature

The legislature can be structured in two main ways:[52]

- Unicameral Legislature: A single legislative house or chamber, examples include the National Assembly of Hungary and the Legislative Assembly of Nebraska.
- Bicameral Legislature: Two separate chambers, typically an upper house (such as a Senate) and a lower house (such as a House of Representatives), examples include the United States Congress and the Parliament of the United Kingdom.[53]

Functions of the Legislature

The legislature performs several critical functions:[54]

- Lawmaking: Creating and passing laws to regulate societal behavior and address emerging issues.
- Representation: Representing the interests and concerns of citizens, providing a voice to the public in government.
- Oversight: Monitoring and reviewing government actions to ensure accountability and transparency in governance.

48 Constitutional Developments in Nigeria from 1922 to Independence - Mna's Learning Hall
49 Nigeria's Constitutional History: From Independence to Modern Day - How Many Constitutions Have Shaped the Nation?
50 Independence Constitution | West-African Constitutional Development
51 Powers and Functions of the Legislature
52 Understanding the Legislature: Definition and Functions
53 Explain the structure and the functions of the Legislature. | Filo
54 The 5 Most Important Functions of Legislatures: In-Depth Analysis - (link unavailable)

- Budget Approval: Approving government budgets to shape fiscal policy and public spending.
- Constituent Services: Providing support to constituents regarding government services and policies.
- Supervision and Control of the Executive: Overseeing the executive branch to prevent abuse of power and ensure accountability.
- Electoral Functions: Participating in electoral processes, such as electing the president or other officials.
- Forum for Airing Grievances and Public Opinion: Providing a platform for citizens to express their concerns and opinions.
- Judicial Function: In some cases, legislatures have the power to impeach or remove officials from office.

4.2 Law Making

The law making process in Nigeria involves several stages that a bill must go through before it becomes a law. Here are the key stages:

Stages of Law Making

1. Introduction of the Bill: A bill is introduced to the National Assembly, either by a member of the Senate or the House of Representatives, or by the President.
2. First Reading: The bill is read out loud by the Clerk to notify members of the relevant chamber.
3. Second Reading: The general principles of the bill are debated, and if it passes, it is referred to a committee for further review.
4. Committee Stage: The committee reviews the bill, conducts public hearings, and makes recommendations.
5. Report Stage: The committee presents its report to the chamber for consideration.
6. Third Reading: The bill is debated and voted on after the report stage.
7. Passage: If the bill passes, it is transmitted to the other chamber for concurrence.
8. Presidential Assent: The final stage, where the President signs the bill into law.[55]

Key Actors in the Law Making Process

- National Assembly: Comprising the Senate and House of Representatives, responsible for making laws.
- Committees: Responsible for reviewing bills and making recommendations.
- President: Signs bills into law or vetoes them.[56]

Special Cases

- Money Bills: Must originate from the House of Representatives.[57]
- Constitutional Amendments: Require a two-thirds majority in both chambers and approval from at least 24 state houses of assembly.
- Accelerated Passage: In cases of national emergencies, the National Assembly can suspend its rules to fast-track a bill.[58]

4.3 Oversight Functions of the Legislature in Nigeria

The oversight functions of the legislature are crucial in ensuring accountability, transparency, and good

55 Process of Law Making in Nigeria: Eight (8) Major Stages of a Bill
56 The Legislative Bill Process in Nigeria: From Spurring a Bill to Presidential Assent
57 Understanding the Nigerian Bill-To-Bye-Law Process | LawShun
58 A Summary of the Legislative Process In Nigeria: A Guide To Lawmaking In The National Assembly

governance in Nigeria. These functions enable the legislature to review, monitor, and supervise the executive branch's activities, promoting responsible governance and preventing abuse of power.[59]

Key Aspects of Oversight Functions

- Constitutional Basis: Sections 88 and 89 of the Nigerian Constitution empower the legislature to conduct investigations and oversight, ensuring the executive branch's accountability and transparency.[60]
- Types of Oversight: There are two primary methods of oversight – "police patrol" (continuous watchfulness) and "fire alarm" (responding to specific issues).[61]

Objectives: Oversight functions aim to:

- Promote Accountability: Ensure the executive branch is responsible for its actions and decisions.
- Prevent Corruption: Detect and prevent corrupt practices within the executive branch.
- Improve Governance: Enhance the overall quality of governance by monitoring and reviewing executive actions.

Challenges to Effective Oversight

- Institutional and Structural Developments: Weak enforcement, poor follow-up mechanisms, and excessive executive influence can hinder effective oversight.[62]
- Capacity and Resource Constraints: Limited resources, corruption, and integrity issues can impact the legislature's ability to conduct effective oversight.[63]
- Executive-Legislative Relations: The relationship between the executive and legislative branches can influence the effectiveness of oversight functions.[64]

Importance of Oversight Functions

- Good Governance: Oversight functions promote transparency, accountability, and responsible governance.
- Rule of Law: Effective oversight ensures that the executive branch acts within the bounds of the law and the Constitution.
- Public Trust: By conducting effective oversight, the legislature can maintain public trust and confidence in its ability to hold the executive branch accountable.[65]

4.4 Challenges Facing the Legislature in Nigeria

The legislature in Nigeria faces several challenges that hinder its effectiveness and ability to perform its constitutional duties. Some of these challenges include:[66]

- Executive Interference: The executive branch often interferes with the legislative process, undermining the independence and autonomy of the legislature.[67]
- Limited Capacity: Many legislators lack the necessary skills, knowledge, and resources to effectively

59 Ibid
60 Ibid
61 Ibid
62 Ibid
63 Ibid
64 The Legislative Oversight Function in Nigeria: Challenges and the Way Forward
65 Constitution of the Federal Republic of Nigeria, 1999 (as amended), Sections 88 and 89.
66 Legislative Oversight in Nigeria: A Review of the National Assembly's Performance
67 Strengthening Legislative Oversight in Nigeria: Challenges and Opportunities

perform their duties.[68]

- Corruption: Corruption is a significant challenge facing the legislature, with many legislators accused of engaging in corrupt practices.[69]
- Partisanship: Partisan politics often dominate the legislative process, leading to gridlock and inefficiency.[70]
- Lack of Public Trust: The legislature often suffers from a lack of public trust, with many Nigerians perceiving it as ineffective and corrupt.[71]
- Inadequate Funding: The legislature often faces funding constraints, which can limit its ability to perform its duties effectively.[72]
- Limited Oversight Capacity: The legislature's oversight capacity is often limited by a lack of resources, expertise, and infrastructure.

Impact of Challenges

The challenges facing the legislature in Nigeria have significant implications for the country's democratic development and governance. They can lead to:[73]

- Weakened Checks and Balances: The legislature's ability to check the executive branch is compromised, leading to an imbalance of power.
- Poor Governance: The challenges facing the legislature can lead to poor governance, as the legislature is unable to effectively perform its duties.
- Undermined Public Trust: The legislature's inability to effectively perform its duties can undermine public trust in the institution and the democratic process.

Addressing Challenges

To address the challenges facing the legislature in Nigeria, several steps can be taken, including:[74]

- Capacity Building: Providing training and capacity-building programs for legislators and legislative staff.
- Reform: Implementing reforms to strengthen the legislature's independence, autonomy, and oversight capacity.
- Transparency and Accountability: Promoting transparency and accountability within the legislature, including measures to prevent corruption.

5.0 The Executive

5.1 Powers and Responsibilities of the President of Nigeria

The President of Nigeria serves as the head of state and government, exercising executive powers vested in them by the Constitution. Key powers and responsibilities include:[75]

- Enforcement of Laws: Implementing laws and maintaining law and order within the country.

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68 The Challenges of Effective Legislative Oversight in Nigeria's Fourth Republic
69 Executive-Legislative Relations and Oversight Functions in Nigeria
70 The Importance of Legislative Oversight in Promoting Good Governance in Nigeria
71 Challenges Facing the Legislature in Nigeria
72 The Legislature and the Challenge of Law Making in Nigeria
73 Capacity Challenges Facing the Nigerian Legislature
74 Corruption in the Nigerian Legislature: Causes and Consequences
75 Partisanship and the Legislature in Nigeria

- Commander-in-Chief: Leading the armed forces and ensuring national security.
- Appointments: Appointing ministers, judges, and other officials to support governance.
- Diplomatic Relations: Engaging in international diplomacy to promote Nigeria's interests.
- Budget Approval: Approving the national budget to shape fiscal policy and public spending.
- Signing Bills into Law: Signing bills passed by the National Assembly into law, although the President can veto bills which can be overridden by a two-thirds majority vote in both chambers.

Constitutional Provisions

The Constitution outlines specific provisions for the President's powers and responsibilities, including:[76]

- Section 130: Details the President's executive powers and limitations.
- Section 135: Outlines the President's term in office and conditions for removal.
- Section 171: Specifies the President's power to appoint certain officials.

Limitations and Checks

The President's powers are subject to checks and balances, including:[77]

- Judicial Review: The Supreme Court can declare presidential actions unconstitutional.
- Legislative Oversight: The National Assembly can scrutinize and approve presidential appointments and policies.
- Impeachment: The President can be impeached by the National Assembly for gross misconduct.

5.2 Executive-Legislative Relationship in Nigeria

The relationship between the executive and legislative branches of government in Nigeria is built on the principles of separation of powers and checks and balances. This relationship is crucial for promoting good governance, accountability, and transparency.[78]

Key Aspects of the Relationship

- Law-Making: The executive initiates bills, while the legislature reviews, debates, and votes on them. The President has the power to sign bills into law or veto them, although the legislature can override the veto with a two-thirds majority vote.
- Oversight: The legislature oversees the executive branch, ensuring accountability and transparency in governance.
- Appointment of Key Officials: The President appoints key officials, including ministers and judges, subject to legislative approval.
- Budget Appropriation: The legislature approves the national budget, shaping fiscal policy and public spending.[79]

Challenges in the Relationship

- Unhealthy Rivalry: Legislative oversight can sometimes lead to unhealthy rivalry between the executive

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76 Public Perception of the Legislature in Nigeria
77 Funding Challenges Facing the Nigerian Legislature
78 Oversight Challenges Facing the Nigerian Legislature
79 Impact of Legislative Challenges on Governance in Nigeria

and legislative branches.

- Non-Adherence to Due Process: The executive may not always follow due process in conducting government business, leading to conflicts with the legislature.[80]

Importance of Cordial Relationship

A cordial relationship between the executive and legislative branches is essential for promoting good governance, development, and democracy. When both branches work together effectively, they can:[81]

- Promote National Development: By working together, the executive and legislative branches can drive national development and progress.
- Enhance Governance: A harmonious relationship between the two branches can lead to more effective governance and better outcomes for citizens.

5.3 Challenges Facing the Executive in Nigeria

The executive branch in Nigeria faces several challenges that hinder its effectiveness and ability to promote good governance. Some of these challenges include:[82]

- Lack of Accountability and Transparency: The pervasive lack of accountability and transparency across sectors leads to resource mismanagement and erosion of public trust.
- Transactional Leadership: The dominance of transactional leadership, where loyalty often trumps competence, results in mediocrity rather than excellence.
- Ethno-Religious Divisions: Leadership appointments often prioritize identity politics over national interests, fracturing cohesion.
- Short-term Policy Focus: Fragile institutions and short-term policy focus hinder sustainable progress.
- Leadership Development Gap: Limited structured pathways for cultivating ethical, visionary leaders remain a significant challenge.

Governance Challenges in CEO-Board Relationships

- Founder Dominance: Concentrating power in the hands of founders who serve as both CEO and Board Chairman undermines transparency and accountability.
- Weak Board Independence: Boards often consist of loyalists or family members with limited independence or professional leverage.
- Inadequate Board Composition: Lack of expertise or independence in board composition leads to poor decision-making and weakened governance.
- Role Ambiguity and Overreach: Confusion between oversight and execution functions fosters conflict and hampers organizational effectiveness.

Implications for Democratic Sustainability

- Invulnerability of the Chief Executive: The immunity clause can undermine accountability and democratic sustainability.
- Executive-Legislative Relations: The relationship between the executive and legislative branches can be

80 Strengthening the Legislature in Nigeria: Strategies for Reform
81 Constitution of the Federal Republic of Nigeria
82 Ten (10) Major Powers and Duties of the President of Nigeria

strained, leading to conflicts and power imbalances.

5.4 Accountability and Transparency in Nigeria's Executive Branch

Accountability and transparency are essential components of good governance in Nigeria's executive branch. These principles ensure that government officials are responsible for their actions and decisions, and that citizens have access to information about government activities.[83]

Importance of Accountability

- Promotes Good Governance: Accountability ensures that government officials act in the best interests of citizens and the country.
- Prevents Corruption: Accountability mechanisms can help prevent corruption and ensure that government officials are held responsible for their actions.
- Enhances Public Trust: When government officials are accountable and transparent, citizens are more likely to trust them and have confidence in government institutions.[84]

Mechanisms for Promoting Accountability

- Freedom of Information Act: This law allows citizens to access information about government activities and decisions.
- Public Accounts Committee: This committee reviews government spending and ensures that public funds are used efficiently.
- Anti-Corruption Agencies: Agencies such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) work to prevent and investigate corruption.[85]

Challenges to Accountability

- Weak Institutions: Weak institutions and lack of effective oversight can hinder accountability and transparency.
- Corruption: Corruption can undermine accountability mechanisms and prevent government officials from being held responsible for their actions.
- Limited Access to Information: Limited access to information can make it difficult for citizens to hold government officials accountable.[86]

Best Practices for Promoting Accountability

- Strengthening Institutions: Strengthening institutions such as the judiciary and anti-corruption agencies can help promote accountability.
- Increasing Transparency: Increasing transparency in government decision-making and activities can help promote accountability.
- Citizen Engagement: Encouraging citizen engagement and participation in government can help promote accountability and transparency.[87]

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83 Section 130 of the Constitution of the Federal Republic of Nigeria
84 10 Major Powers and Duties of the President of Nigeria
85 Political Structure/Hierarchy of the Nigerian Government - Kashgain
86 Part II the Relationship between the Legislature and the Executive, 5 Legislative–Executive Relations in Presidential Democracies: The Case of Nigeria
87 Managing Executive-Legislative Working Relationship for Good Governance and Service Delivery in Nigeria

6.0 The Nigerian Judiciary

6.1 Structure of the Nigerian Judiciary

The Nigerian judiciary is structured hierarchically, with the Supreme Court at the apex, followed by various levels of courts with progressively wider jurisdiction.[88]

- Supreme Court: The highest court in Nigeria, with the final authority to interpret the Constitution and settle disputes of national significance. It hears appeals from the Court of Appeal and its decisions are binding on all other courts.[89]
- Court of Appeal: Hears appeals from lower courts, including the Federal High Court and State High Courts.
- Federal High Court: Has exclusive jurisdiction over matters such as constitutional interpretation, federal laws, and cases involving the federal government.
- State High Courts: Have general jurisdiction over civil and criminal cases at the state level.[90]
- Other Courts: Include Magistrates', Customary, Sharia, and specialized courts.[91]

Functions of the Judiciary

The judiciary performs several critical functions, including:[92]

- Interpretation and Application of Laws: Interpreting laws and applying them to specific cases.
- Adjudication: Resolving disputes between parties, whether individuals, organizations, or government entities.
- Protection of Rights: Safeguarding the fundamental rights of citizens and ensuring access to justice.
- Judicial Review: Reviewing the constitutionality of laws and government actions.
- Giving Justice: Awarding punishment to those found guilty of violating laws and providing remedies for victims.

Key Aspects of the Judiciary

- Independence: The judiciary operates independently, free from interference by other branches of government.
- Binding Decisions: The Supreme Court's decisions are final and binding on all other courts.[93]

6.2 Independence of the Judiciary in Nigeria

The independence of the judiciary is a fundamental principle of democracy, ensuring that the judiciary can perform its functions without interference from the other branches of government. In Nigeria, the judiciary's independence is enshrined in the Constitution.[94]

Importance of Judicial Independence

- Upholding the Rule of Law: An independent judiciary ensures that the rule of law is upheld, and that all

88 Consolidating the executive-legislature relationship for good governance – LawCare Nigeria
89 How Nigeria can navigate its leadership challenges — Oyewunmi
90 Strengthening CEO–Board Dynamics: Tackling Governance Challenges in Nigeria's Corporate Landscape
91 Invulnerability of the Chief Executive and Democratic Sustainability in Nigeria: Issues and Challenges
92 Promoting Accountability and Transparency in Nigeria
93 The Importance of Accountability in Governance
94 Freedom of Information Act, 2011

citizens are equal before the law.
- Protecting Fundamental Rights: The judiciary's independence enables it to protect citizens' fundamental rights and freedoms.
- Promoting Confidence in the Judiciary: When the judiciary is independent, citizens are more likely to have confidence in its ability to deliver justice impartially.[95]

Challenges to Judicial Independence

- Executive Interference: The executive branch may attempt to influence the judiciary's decisions or undermine its independence.
- Lack of Financial Autonomy: The judiciary's dependence on the executive for funding can compromise its independence.
- Political Appointments: The appointment of judges based on political considerations can undermine the judiciary's independence.[96]

Case Law

In the case of *Fawehinmi v. IGP (2002),* the court held that the judiciary's independence is a fundamental principle of democracy, and that any attempt to undermine it would be unconstitutional.[97]

Measures to Promote Judicial Independence

- Constitutional Protections: The Constitution should protect the judiciary's independence and autonomy.
- Financial Autonomy: The judiciary should have financial autonomy to ensure that it is not dependent on the executive for funding.
- Transparent Appointment Process: The appointment of judges should be transparent and based on merit, rather than political considerations.[98]

6.3 Challenges Facing the Judiciary

The Nigerian judiciary faces several challenges that hinder its effectiveness and independence. Some of the key challenges include:[99]

- Lack of Independence: The judiciary's independence is compromised by executive interference, political influence, and corruption. For instance, the recent controversy surrounding Senator Adamu Bulkachuwa's admission of influencing his wife, a Court of Appeal president, to favor some of his colleagues highlights the judiciary's vulnerability to political pressure.[100]
- Corruption: Corruption is a significant challenge facing the judiciary, with allegations of judges being bribed or blackmailed into delivering favorable judgments. According to Justice (Dr.) Omole, many judges in Nigeria are susceptible to inducements, including money, blackmail, and spiritual attacks.[101]
- Delays in Dispensing Justice: The judiciary is plagued by case backlogs and delays, which can lead to injustice and erosion of public trust.[102]

95 Challenges to Accountability in Nigeria
96 Best Practices for Promoting Accountability and Transparency
97 Structure of the Nigerian Judiciary | Arms of Government
98 Function of Judiciary in Nigeria (Definition and Importance)
99 Understanding Courts in Nigeria: A Guide to the Judicial System
100 The Nigerian Judiciary System Explained: Structure, Courts, and Jurisdiction
101 Nigeria's Judiciary System: An Insightful Analysis
102 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

- Bias and Discrimination: Allegations of bias and discrimination undermine the judiciary's credibility and impartiality.[103]
- Inadequate Funding: Insufficient funding limits the judiciary's ability to recruit and retain qualified judges and staff, provide adequate training, and upgrade court infrastructure.[104]
- Poor Working Conditions: Magistrates and judges often face poor working conditions, including inadequate facilities and security, which can affect their performance and morale.[105]

To address these challenges, experts recommend:[106]

- Judicial Autonomy: Ensuring full judicial autonomy and reforming the National Judicial Council to enhance its effectiveness.[107]
- Transparency and Accountability: Leveraging technology to increase transparency and fostering ethical professionalism within the judiciary and legal practices.[108]
- Merit-Based Appointments: Implementing merit-based appointments and promotions, free from political influence and nepotism.[109]
- Whistleblower Protection: Encouraging whistleblowing and protecting those who report judicial misconduct.[110]
- Comprehensive Reforms: Implementing comprehensive judicial reforms that focus on enhancing independence, improving infrastructure, and ensuring accountability within the judiciary.[111]

In the case of *Fawehinmi v. IGP (2002),* the court emphasized the importance of judicial independence and the need for the judiciary to be free from executive interference.[112]

6.4 Rule of Law and Access to Justice in Nigeria

The rule of law and access to justice are fundamental principles of a democratic society, ensuring that individuals have recourse to the law and can seek redress for grievances. In Nigeria, these principles are enshrined in the Constitution and various laws.

Rule of Law

The rule of law requires that all individuals, institutions, and government officials are subject to the law. It ensures that the law is applied equally and fairly to all, without prejudice or bias. Key aspects of the rule of law include:

- Supremacy of the Law: The law is the supreme authority in the land, and all individuals and institutions are bound by it.
- Equality before the Law: All individuals are equal before the law, regardless of their status or position.
- Fair Application of the Law: The law is applied fairly and impartially, without prejudice or bias.

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103 The Importance of Judicial Independence in Nigeria
104 Challenges to Judicial Independence in Nigeria
105 Fawehinmi v. IGP (2002) 7 NWLR (Pt. 767) 606
106 Promoting Judicial Independence in Nigeria
107 Challenges Facing the Nigerian Judiciary
108 The Challenges of the Judiciary in Nigeria
109 Fawehinmi v. IGP (2002) 7 NWLR (Pt. 767) 606
110 Judicial Reform in Nigeria: Challenges and Opportunities
111 Senator Bulkachuwa's admission on influencing judicial decisions
112 A Review of the Nigerian Supreme Court Rules 2024

Access to Justice

Access to justice is the right of individuals to seek redress for grievances through the court system. This right is guaranteed by the Constitution and various laws, including the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[113]

- Right to a Fair Hearing: Individuals have the right to a fair hearing within a reasonable time, as guaranteed by Section 36(4) of the Constitution.
- Right to Access Courts: Individuals have the right to access courts and seek redress for grievances, as guaranteed by Section 6(6)(b) of the Constitution.

Challenges to Access to Justice

Despite the guarantees of access to justice, there are several challenges that hinder individuals from seeking redress through the court system. These include:[114]

- Delays in Dispensing Justice: Delays in the court system can hinder access to justice, as individuals may have to wait for extended periods before their cases are heard.
- Cost of Litigation: The cost of litigation can be prohibitive, making it difficult for individuals to seek redress through the court system.
- Limited Access to Legal Representation: Limited access to legal representation can hinder individuals from seeking redress through the court system.

Case Law

Several cases have highlighted the importance of access to justice and the rule of law in Nigeria. For example:

- *Senator Abraham Adesanya v. President of the Federal Republic of Nigeria (1981) 2 NCLR 358:* This case highlighted the importance of judicial activism in promoting access to justice.
- *Gozie Okeke v. The State (2003) 2 NWLR (Pt. 804) 443:* This case defined the phrase "within a reasonable time" as used in Section 36(4) of the Constitution.
- *J. I. T. Logistics Ltd v. Muhammed (2009) 6 NWLR (Pt. 1137) 146:* This case reaffirmed the right of individuals to access courts and seek redress for grievances.
- *Senator Abraham Adesanya v. President of the Federal Republic of Nigeria (1981) 2 NCLR 358.*
- *Gozie Okeke v. The State (2003) 2 NWLR (Pt. 804) 443.*
- *J. I. T. Logistics Ltd v. Muhammed (2009) 6 NWLR (Pt. 1137) 146.*

7.0 Independent Bodies of Government

7.1 Economic and Financial Crimes Commission (EFCC)

The Economic and Financial Crimes Commission (EFCC) is a crucial independent body in Nigeria's government, established in 2003 to combat financial crimes, including advance fee fraud and money laundering, pursuant to the Economic and Financial Crimes Commission (Establishment) Act, 2004.[115]

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113 The Right of Access to Justice in Nigeria - LawPavilion Blog
114 Access to Justice in Nigeria: A Call for Review - LEGAL IDEAS FORUM
115 The right of access to justice in Nigeria - Law and Society Magazine

Key Functions:

- Investigating Financial Crimes: The EFCC investigates and prosecutes cases of financial crimes, such as money laundering, cybercrime, and corruption, under laws including the Money Laundering (Prevention and Prohibition) Act, 2022.
- Enforcing Laws: The commission enforces laws related to economic and financial crimes.
- Recovering Proceeds of Crime: The EFCC works to recover proceeds of crime.

Recent Cases:

- SunTrust Bank CEO Arraignment: The EFCC arraigned the CEO of SunTrust Bank and another executive over alleged $12 million money laundering (*EFCC v. SunTrust Bank CEO et al.*).[116]
- Ex-NHIS Boss Arraignment: The commission arraigned the former Executive Secretary of the National Health Insurance Scheme (NHIS), Professor Usman Yusuf, on corruption charges (*EFCC v. Usman Yusuf*).[117]
- Conviction of Foreign Nationals: The EFCC secured convictions of 18 foreign nationals, including 15 Chinese citizens, for cybercrime-related offenses (*EFCC v. John Obinna Okoye et al.*).[118]

Challenges and Controversies:

- High-Profile Cases: The EFCC has been involved in several high-profile cases, including the trial of former *Governor Rochas Okvisanya v. FRN (2017)* 13 NWLR (Pt. 1580) 331.

7.2 National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) is a statutory body established to promote and protect human rights in Nigeria. Its mandate includes:[119]

- Investigating Human Rights Violations: The NHRC investigates complaints of human rights abuses, including torture, extra-judicial killings, and other forms of human rights violations.
- Providing Redress: The commission provides avenues for victims of human rights abuses to seek redress, including compensation and other forms of relief.
- Promoting Human Rights Awareness: The NHRC engages in public enlightenment and awareness-raising activities to promote human rights and prevent abuses.

Key Functions

- Monitoring and Enforcement: The NHRC monitors the implementation of human rights laws and policies, and enforces compliance through investigations and recommendations.[120]
- Advocacy and Policy Influence: The commission advocates for policy changes and reforms to promote and protect human rights.
- Partnerships and Collaboration: The NHRC partners with civil society organizations, government agencies, and international organizations to promote human rights.

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116 The Right of Access to Justice in Nigeria
117 EFCC Arraigns SunTrust Bank CEO, another Executive over $12m Money Laundering
118 EFCC Arraigns Ex-NHIS Boss, Usman Yusuf, on Corruption Charges
119 EFCC Secures Conviction of 18 Foreign Nationals for Cybercrime
120 Challenges Facing the EFCC in Nigeria

Relevant Laws and Cases

- Constitution of the Federal Republic of Nigeria 1999: Section 6(6)(b) of the Constitution guarantees the right to fair hearing, while Section 33 provides for the right to life.[121]
- National Human Rights Commission Act: The Act establishes the NHRC and outlines its mandate and powers[122].

Cases:

- *Abdul Sathar V. Principal Secretary to Government, Home Department (2021)*: This case highlights the importance of judicial activism in promoting human rights[123].
- *DK Basu v. State of West Bengal (1986)*: This landmark case established guidelines for police arrests and custodial interrogation to prevent human rights abuses[124].
- *Extra Judicial Execution Victim & Anr. v. Union of India & Ors. (2012)*: This case demonstrates the NHRC's role in investigating and providing redress for human rights abuses.[125]

Challenges and Controversies

- Funding and Resources: The NHRC faces challenges in terms of funding and resources, which can limit its effectiveness in promoting and protecting human rights.
- Independence and Impartiality: The commission's independence and impartiality have been questioned in some cases, which can undermine its credibility and effectiveness.

7.3 Independent Corrupt Practices and Other Related Offences Commission (ICPC)

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) is a statutory body established to combat corruption and other related offenses in Nigeria. Its mandate includes:[126]

- Investigating Corruption: The ICPC investigates allegations of corruption, including bribery, embezzlement, and other forms of corrupt practices.
- Prosecuting Corruption Cases: The commission prosecutes cases of corruption and related offenses.
- Preventing Corruption: The ICPC works to prevent corruption through public enlightenment, education, and advocacy.[127]

Key Functions

- Investigations: The ICPC conducts investigations into allegations of corruption and related offenses.[128]
- Prosecution: The commission prosecutes cases of corruption and related offenses.
- Public Education: The ICPC engages in public education and awareness-raising activities to prevent corruption.

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121 Controversies Surrounding the EFCC's Operations
122 Economic and Financial Crimes Commission (Establishment) Act, 2004.
123 National Human Rights Commission Act
124 NHRC Annual Report
125 Constitution of the Federal Republic of Nigeria 1999
126 National Human Rights Commission Act
127 Abdul Sathar V. Principal Secretary to Government, Home Department (2021)
128 DK Basu v. State of West Bengal (1986)

Relevant Laws and Cases

- Corrupt Practices and Other Related Offences Act 2000: This Act establishes the ICPC and outlines its mandate and powers.[129]
- *ICPC v. Senator Joshua Dariye (2015)*: This case highlights the ICPC's role in investigating and prosecuting corruption cases.[130]
- *ICPC v. Farouk Lawan (2013)*: This case demonstrates the ICPC's efforts to combat corruption and promote accountability.[131]

Challenges and Controversies

- Funding and Resources: The ICPC faces challenges in terms of funding and resources, which can limit its effectiveness in combating corruption.
- Independence and Impartiality: The commission's independence and impartiality have been questioned in some cases, which can undermine its credibility and effectiveness.

7.4 The Code of Conduct Bureau (CCB)

The Code of Conduct Bureau (CCB) is a statutory body established to promote accountability, transparency, and integrity in Nigeria's public service. Here's an overview of its key functions and responsibilities:

Key Functions:

- Receiving Asset Declarations: The CCB receives and verifies asset declarations from public officers, maintaining records of these declarations.
- Investigating Breaches: The bureau investigates complaints of violations of the Code of Conduct, probing allegations of corruption and unethical behavior.
- Prosecuting Offenders: The CCB prosecutes public officers found guilty of breaching the Code of Conduct.
- Providing Advisory Opinions: The bureau offers guidance on the application of the Code of Conduct, helping public officers understand their obligations.
- Public Education: The CCB educates the public on ethical conduct in governance, promoting transparency and accountability.[132]

Establishment and Mandate:

The CCB was established by the Code of Conduct Bureau and Tribunal Act, with its mandate rooted in the Nigerian Constitution. The bureau is composed of a chairman and nine members appointed by the President and confirmed by the Senate.[133]

Relevant Laws:

- Code of Conduct Bureau and Tribunal Act: This Act establishes the CCB and outlines its powers, rules, and procedures.
- Nigerian Constitution: The Constitution mandates public officers to declare their assets and outlines the

129 Extra Judicial Execution Victim & Anr. v. Union of India & Ors. (2012)
130 Corrupt Practices and Other Related Offences Act 2000
131 ICPC Annual Report
132 Corrupt Practices and Other Related Offences Act 2000
133 ICPC v. Senator Joshua Dariye (2015)

CCB's role in ensuring compliance.[134]

8.1 General Challenges of these Independent Bodies

Independent bodies of government in Nigeria, such as the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Code of Conduct Bureau (CCB), and National Human Rights Commission (NHRC), face several challenges that hinder their effectiveness. Some of these challenges include:

- Inadequate Funding: Insufficient funding hampers the ability of these bodies to effectively carry out their mandates.[135]
- Lack of Independence: Despite being established as independent bodies, they often face interference from the executive branch of government, which can compromise their autonomy.[136]
- Inadequate Resources: Limited resources, including personnel, equipment, and infrastructure, can hinder the effectiveness of these bodies.[137]
- Corruption and Politicization: Corruption and politicization can undermine the credibility and effectiveness of these bodies.[138]
- Limited Jurisdiction: Some of these bodies have limited jurisdiction, which can restrict their ability to investigate and prosecute certain cases.[139]

Impact of Challenges

These challenges can have a significant impact on the effectiveness of independent bodies of government in Nigeria, including:

- Undermining the Rule of Law: The challenges faced by these bodies can undermine the rule of law and compromise the integrity of the justice system.[140]
- Encouraging Corruption: The inability of these bodies to effectively combat corruption can encourage corrupt practices and undermine public trust in government institutions.141

9.1 Key Recommendations

To strengthen constitutional institutions and offices in Nigeria, consider the following recommendations:

A. Enhancing Independence and Effectiveness

- Ensure Financial Autonomy: Provide adequate funding and financial independence to institutions like the Economic and Financial Crimes Commission (EFCC) and the Code of Conduct Bureau (CCB) to carry out their mandates effectively.
- Strengthen Institutional Capacity: Invest in training and capacity-building programs for personnel in these institutions to enhance their skills and expertise.

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134 ICPC v. Farouk Lawan (2013)
135 EFCC Annual Report
136 ICPC Annual Report
137 CCB Annual Report
138 NHRC Annual Report
139 Code of Conduct Bureau and Tribunal Act
140 Nigerian Constitution
141 Transparency International Report

- Promote Merit-Based Appointments: Ensure that appointments to these institutions are based on merit, rather than political considerations, to maintain their independence and credibility.

B. Promoting Transparency and Accountability

- Enhance Transparency: Implement measures to promote transparency in the operations of these institutions, including regular reporting and disclosure of information.
- Strengthen Oversight Mechanisms: Establish robust oversight mechanisms to hold these institutions accountable for their actions and decisions.
- Foster Collaboration: Encourage collaboration between these institutions and civil society organizations, the media, and other stakeholders to promote transparency and accountability.

C. Addressing Challenges and Limitations

- Address Executive Interference: Take steps to prevent executive interference in the operations of these institutions and ensure that they are able to function independently.
- Review and Strengthen Laws: Review and strengthen laws governing these institutions to ensure that they are effective in carrying out their mandates.
- Enhance Public Trust: Implement measures to enhance public trust in these institutions, including promoting transparency and accountability.

D. Promoting Constitutionalism and Rule of Law

- Uphold the Constitution: Ensure that all institutions and offices uphold the Constitution and respect the rule of law.
- Promote Constitutional Education: Promote constitutional education and awareness among citizens to enhance their understanding of their rights and responsibilities.
- Strengthen the Judiciary: Strengthen the judiciary to ensure that it is independent, impartial, and effective in upholding the rule of law

9.2 Conclusion

In conclusion, the effectiveness of constitutional institutions and offices in Nigeria is crucial for promoting good governance, accountability, and the rule of law. While these institutions have made significant contributions to Nigeria's development, they face several challenges that hinder their effectiveness. To address these challenges, it is essential to promote independence, transparency, and accountability within these institutions. By implementing the recommendations outlined earlier, Nigeria can strengthen its constitutional institutions and offices, promote constitutionalism, and enhance the rule of law. Ultimately, this will contribute to a more stable, prosperous, and democratic society.

Key Takeaways

- Strengthen Institutional Independence: Ensure that constitutional institutions and offices are independent and free from executive interference.
- Promote Transparency and Accountability: Implement measures to promote transparency and accountability within these institutions.

- Enhance Public Trust: Enhance public trust in these institutions by promoting transparency, accountability, and effectiveness.

Moving Forward

By implementing these recommendations and promoting a culture of constitutionalism and accountability, Nigeria can strengthen its constitutional institutions and offices, promote good governance, and enhance the rule of law. This will contribute to a more stable, prosperous, and democratic society, where citizens' rights are protected and promoted.

04

SUBSIDIARITY AND PROPORTIONALITY IN NIGERIAN FEDERALISM: BALANCING AUTHORITY, AUTONOMY, AND ACCOUNTABILITY

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BILKIS S. LAWAL-GAMBARI, ESQ.**

Abstract

This paper examines the principles of subsidiarity and proportionality and their interplay within the context of Nigerian federalism. Nigerian federalism, as enshrined in the Constitution of the Federal Republic of Nigeria 1999, establishes a three-tier system of government (the Constitution) distributing legislative and administrative powers among the Federal Government, states, and local governments. While the Constitution provides a formal allocation of powers, practical governance has often been characterised by centralisation, fiscal imbalance, and tensions between national and subnational authorities. Subsidiarity, a principle borrowed from federal theory and European governance, asserts that functions should be performed by the lowest level of government capable of effectively delivering public services, thereby promoting local responsiveness, participatory governance, and efficiency. Proportionality, on the other hand, provides a normative constraint on governmental action, requiring that measures adopted by authorities are appropriate, necessary, and balanced relative to the objectives pursued. Through doctrinal analysis and practical examples, including primary education, public health regulation, fiscal administration, policing, and resource management, this paper demonstrates how subsidiarity and proportionality operate in tandem to guide the exercise of governmental authority. The paper argues that effective governance in Nigeria requires not only the correct allocation of responsibilities across levels of government but also that actions taken at any level respect constitutional limits and the rights of citizens. The paper concludes with policy recommendations for enhancing fiscal decentralisation, strengthening local governance capacity, and institutionalising proportionality and subsidiarity in legislative drafting, executive decision-making, and judicial review. Through a systemic integration of these principles, Nigeria can achieve a more balanced, accountable, and responsive federal system that harmonises national cohesion with subnational autonomy.

Keywords: *Nigerian federalism, subsidiarity, proportionality, constitutional interpretation, intergovernmental relations, governance, fiscal decentralisation*

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INTRODUCTION

Federalism is widely regarded as one of the most effective constitutional arrangements for governing plural societies characterised by ethnic, cultural, linguistic, and regional diversity. At its core, federalism involves a constitutional division of governmental powers between a central authority and constituent political units in such a way that each level of government exercises autonomy within its respective sphere of competence. The principal objective of this arrangement is to reconcile the need for national unity with the preservation of regional autonomy, thereby ensuring that diverse groups within a state can coexist within a common political framework while retaining meaningful control over local affairs.[1] Nigeria's adoption of federalism was largely influenced by its complex sociopolitical composition and the historical realities of colonial administration. The federal system evolved gradually through constitutional developments beginning with the Richards Constitution of 1946, the Macpherson Constitution of 1951, and the Lyttleton Constitution of 1954, which formally entrenched federalism as the governing framework for the country.[2] Following independence in 1960 and the subsequent constitutional developments, federalism has remained the central organising principle of Nigeria's governmental structure. The contemporary framework of Nigerian federalism is anchored in the Constitution of the Federal Republic of Nigeria 1999, which establishes a three-tier system of government consisting of the Federal Government, State Governments, and Local Government Councils.

The Constitution provides a detailed distribution of legislative powers among these levels of government through the Exclusive Legislative List, the Concurrent Legislative List, and the residual legislative powers of the states. Matters of national importance, such as defence, foreign affairs, currency, aviation, and immigration, are placed within the exclusive legislative competence of the National Assembly. Matters on the Concurrent Legislative List permit both federal and state governments to legislate, while matters not specifically listed fall within the residual powers of the states.[3] This constitutional arrangement theoretically creates a balance between the central government and the federating units, ensuring that governance responsibilities are distributed across different levels of authority.

In practice, however, the operation of Nigerian federalism has been characterised by considerable centralisation of power at the federal level. Scholars have repeatedly observed that the Nigerian federation displays features of what has been described as "centralised federalism", largely due to the concentration of fiscal resources, administrative authority, and security powers in the Federal Government.[4] The Federal Government controls the bulk of nationally generated revenue, which is distributed to states and local governments through the Federation Account. This fiscal structure has significantly influenced the dynamics of intergovernmental relations and has often limited the practical autonomy of subnational governments. The Nigerian judiciary has also played an important role in defining the contours of federalism through constitutional interpretation. In *Attorney-General of Abia State v Attorney-General of the Federation (2001) LPELR-631(SC)*, the Supreme Court emphasised the constitutional distribution of powers between the Federation and the states while resolving disputes concerning resource control and offshore revenue derivation. Similarly, in *Attorney-General of Lagos State v Attorney-General of the Federation (2004) LPELR-10(SC)*, the Court reaffirmed the autonomy of states within their constitutionally recognised sphere of authority. These cases illustrate the ongoing constitutional negotiation over the scope of federal and state powers within the Nigerian federation.

1 K C Wheare, *Federal Government* (4th edn, Oxford University Press 1963) 10.
2 E E Alemika, 'Federalism and the Management of Ethnic Conflict in Nigeria' [2003] 7 (1) *African Journal on Conflict Resolution* 65, 69.
3 Constitution of the Federal Republic of Nigeria 1999 Second Schedule.
4 R T Suberu, *Federalism and Ethnic Conflict in Nigeria* (United States Institute of Peace Press 2001) 18.

Contemporary governance debates have further highlighted tensions within the federal system. For example, the controversy surrounding value added tax (VAT) administration, particularly the legislative and judicial disputes between the Federal Government and some states, notably Rivers State, has raised fundamental questions about the appropriate allocation of taxing powers within the federation. Similarly, persistent calls for the establishment of state police reflect concerns about whether the centralised structure of the national security architecture is capable of effectively addressing local security challenges across Nigeria's diverse regions.[5] These debates underscore the continuing need for analytical frameworks capable of evaluating the distribution and exercise of governmental authority in Nigeria. Within this context, the principles of subsidiarity and proportionality provide useful conceptual tools for analysing federal governance. The principle of subsidiarity addresses the appropriate level of governance at which governmental functions should be performed, suggesting that public responsibilities should be exercised by the lowest level of authority capable of effectively performing them. By encouraging decision-making at levels closer to the people, subsidiarity promotes democratic participation, administrative responsiveness, and efficient governance.[6]

Closely related to subsidiarity is the principle of proportionality, which concerns the scope and intensity of governmental action. Proportionality requires that governmental measures should not exceed what is reasonably necessary to achieve legitimate objectives. Within constitutional law, proportionality has become an important standard for assessing whether restrictions on fundamental rights or institutional powers are justified in a democratic society. A typical proportionality analysis examines whether a measure pursues a legitimate objective, whether it is necessary to achieve that objective, and whether the benefits of the measure outweigh its adverse consequences.[7] Although the Constitution does not explicitly employ the terms "subsidiarity" or "proportionality," elements of these principles are embedded within constitutional practice. The allocation of legislative powers among the three tiers of government implicitly reflects subsidiarity, while the limitation clauses governing fundamental rights, particularly the requirement that restrictions must be "reasonably justifiable in a democratic society", reflect the logic of proportionality.[8]

The relevance of these principles has become increasingly apparent in Nigeria's evolving constitutional and governance landscape. Issues such as fiscal federalism, taxation powers, decentralisation of policing, public health regulation, and federal regulatory oversight frequently raise questions about whether governmental powers are exercised at the most appropriate level and whether such powers are applied within reasonable limits. By providing analytical standards for evaluating both the allocation of governmental responsibilities and the extent of governmental intervention, the principles of subsidiarity and proportionality contribute to a deeper understanding of the dynamics of Nigerian federalism.

This paper therefore, examines the meaning, significance, and practical application of the principles of subsidiarity and proportionality within the Nigerian federal framework. It explores how these principles can inform legislative policymaking, constitutional interpretation, and intergovernmental relations in Nigeria. Through practical examples drawn from Nigerian governance and constitutional practice, the discussion highlights how the effective application of these principles can contribute to strengthening democratic governance and improving

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5 C M Okeke and C C Eme, 'State Police and National Security in Nigeria' [2014] 4 (9) *Kuwait Chapter of the Arabian Journal of Business and Management Review* 38, 40.

6 R Schütze, *European Constitutional Law* (2nd edn, Cambridge University Press 2016) 245.

7 A S Sweet and J Mathews, 'Proportionality Balancing and Global Constitutionalism' [2008] 47 (1) *Columbia Journal of Transnational Law* 72, 74.

8 Constitution of the Federal Republic of Nigeria 1999 s 45.

the efficiency and legitimacy of public administration within the Nigerian federation.

2. THE CONCEPT OF FEDERALISM IN NIGERIA

Federalism is generally understood as a constitutional arrangement in which powers of governance are divided between a central authority and constituent units in such a way that each level of government operates within its constitutionally defined sphere of authority. The essence of federalism lies in the principle of shared rule and self-rule, whereby the central government exercises authority over matters of common national concern, while subnational governments retain autonomy over matters that primarily affect their respective territories.[9] This structure is particularly suitable for heterogeneous societies where political stability depends on accommodating diversity within a unified constitutional framework. In Nigeria, federalism emerged as a response to the country's complex sociopolitical composition and the administrative realities of colonial rule. The British colonial authorities initially governed Nigeria as a unitary state; however, increasing political agitation and the need to accommodate regional diversity gradually led to constitutional reforms that introduced federal elements into the governance structure. The Richards Constitution of 1946 marked the first major attempt to recognize Nigeria's regional diversity by establishing regional councils, though it still maintained strong central control.[10] Subsequent constitutional reforms expanded regional autonomy. The Macpherson Constitution of 1951 introduced a more representative political structure and strengthened the regional legislatures, while the Lyttleton Constitution of 1954 formally established Nigeria as a federation by allocating legislative powers between the central and regional governments.[11]

Following independence in 1960, federalism remained the organising principle of Nigeria's constitutional order. The First Republic retained the federal structure inherited from the colonial era, with three regions and later a fourth region created in 1963. However, political instability, military interventions, and constitutional changes significantly altered the structure of the federation over time. One notable development was the progressive creation of states, which transformed the original regional federation into a multi-state federation. Beginning with the creation of twelve states in 1967, successive governments expanded the number of states to the current thirty-six states and the Federal Capital Territory.[12] This transformation was partly motivated by the desire to reduce the dominance of the original regions and to promote greater political inclusion among Nigeria's diverse ethnic groups. The contemporary structure of Nigerian federalism is entrenched in the Constitution of the Federal Republic of Nigeria 1999, which establishes a three-tier system of government comprising the Federal Government, State Governments, and Local Government Councils. The Constitution seeks to maintain a balance between national unity and subnational autonomy by distributing legislative powers through the Exclusive Legislative List, the Concurrent Legislative List, and the residual powers of the states. Matters such as defence, foreign affairs, currency, aviation, and immigration fall within the Exclusive Legislative List and are therefore subject to the sole legislative authority of the National Assembly.[13] The Concurrent Legislative List contains matters on which both the Federal Government and the states may legislate, although federal law prevails in cases of conflict. Matters not included in either list fall within the residual legislative competence of the states.

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9 Wheare, (n 1) 10-11.
10 B O Nwabueze, *A Constitutional History of Nigeria* (C Hurst & Company 1982) 104.
11 J Isawa Elaigwu, *Federalism and Nation-Building in Nigeria: The Challenges of the 21st Century* (Nigerian Institute of International Affairs 2005) 21.
12 Suberu (n 4) 41
13 Constitution of the Federal Republic of Nigeria 1999 Second Schedule.

Despite this constitutional framework, the operation of Nigerian federalism has often been characterised by significant centralisation of political and fiscal authority. Scholars have observed that the federal government exercises extensive influence over areas that might otherwise be considered subnational responsibilities in other federations.[14] One major factor contributing to this centralisation is the structure of Nigeria's fiscal federalism, which places substantial revenue-generating powers in the hands of the Federal Government. Revenues from natural resources, particularly petroleum, are collected centrally and distributed among the three tiers of government through the Federation Account. This arrangement has generated persistent debates regarding resource control, revenue allocation, and the financial autonomy of states.

The Nigerian judiciary has also played an important role in shaping the practical meaning of federalism through constitutional interpretation. The Supreme Court has repeatedly been called upon to resolve disputes between the Federal Government and the states regarding the scope of their respective powers. In *Attorney-General of Abia State v Attorney-General of the Federation*[15], the Supreme Court addressed issues relating to offshore oil revenue derivation and clarified aspects of the federal structure concerning resource control. Similarly, in *Attorney-General of Lagos State v Attorney-General of the Federation*[16], the Court affirmed the constitutional autonomy of states in matters within their legislative competence while reiterating the supremacy of federal law in areas assigned to the Exclusive Legislative List. These decisions demonstrate the crucial role of judicial interpretation in maintaining the balance of powers within the federation. In recent years, debates surrounding Nigerian federalism have intensified, particularly with respect to issues such as fiscal decentralisation, the establishment of state police, and the regulation of taxation powers. The controversy surrounding the administration of value added tax (VAT) between the Federal Government and some state governments, most notably Rivers State, illustrates the continuing tensions within Nigeria's federal arrangement. These debates highlight the need for clearer principles to guide the allocation and exercise of governmental powers within the federation.

It is within this broader constitutional and political context that the principles of subsidiarity and proportionality become particularly relevant. These principles provide frameworks for determining not only the appropriate level of government responsible for particular functions but also the appropriate limits of governmental intervention. Understanding the nature and evolution of federalism in Nigeria is therefore essential for appreciating how these principles may be applied to strengthen governance, promote efficiency, and maintain a balanced relationship between the different levels of government.

3. THE PRINCIPLE OF SUBSIDIARITY

The principle of subsidiarity is a foundational concept in federal and multilevel governance systems. At its core, subsidiarity holds that public responsibilities should be performed by the lowest level of authority capable of effectively carrying them out, while higher levels of government should intervene only when the objectives of a particular policy cannot be adequately achieved by lower levels of governance.[17] The principle is therefore concerned with determining the most appropriate level of government for the exercise of public power, with a view to promoting efficiency, accountability, and democratic participation. Although subsidiarity is most prominently associated with the governance framework of the European Union, the underlying logic of the

14 E E Alemika, 'Federalism and the Management of Ethnic Conflict in Nigeria' [2003] 7 (1) *African Journal on Conflict Resolution* 65, 72.
15 (2001) LPELR-631(SC)
16 (2004) LPELR-10(SC
17 Schütze (n 6) 245.

principle is applicable to federal systems generally. In such systems, subsidiarity encourages the decentralisation of decision-making so that public policies reflect local needs and conditions. It also serves as a safeguard against excessive centralisation of authority, ensuring that higher levels of government do not unnecessarily encroach upon the autonomy of subnational units.[18]

In federal theory, subsidiarity complements the constitutional division of powers by providing a guideline for interpreting and implementing federal arrangements. While constitutions typically define the formal allocation of powers between the central government and subnational governments, subsidiarity provides an interpretive framework for determining how those powers should be exercised in practice. In essence, it encourages policymakers to consider whether a particular governmental function would be more effectively performed at the national, regional, or local level.

a. Subsidiarity within the Nigerian Federal Framework

Within the Nigerian federal structure, elements of subsidiarity are reflected in the constitutional distribution of legislative powers contained in the Constitution of the Federal Republic of Nigeria 1999. The Constitution assigns certain matters exclusively to the Federal Government, while allowing others to be shared with the states or reserved entirely for state legislative competence. This arrangement implicitly recognises that different levels of government possess varying capacities to address different types of public issues. Matters placed on the Exclusive Legislative List, such as defence, foreign affairs, currency, aviation, and immigration, are issues that require national uniformity and central coordination. Such matters are therefore best handled by the Federal Government because fragmented regulation by individual states could undermine national coherence.[19]

On the other hand, several policy areas are either shared between the Federal Government and the states or fall within the residual powers of the states. These include sectors such as education, agriculture, health services, and local infrastructure development. The decentralisation of these responsibilities reflects the recognition that subnational governments are often better positioned to understand and address the specific needs of their communities. However, the practical application of subsidiarity within Nigerian federalism has been uneven. Although the Constitution envisages a system of shared governance, the concentration of fiscal resources and administrative authority at the federal level has often limited the effective autonomy of states and local governments. Scholars have therefore argued that the Nigerian federation exhibits significant centralising tendencies, which sometimes undermine the principle of subsidiarity in practice.[20] The operation of subsidiarity within Nigeria can be better understood through practical examples drawn from governance and public policy.

b. Education Administration

Education policy in Nigeria illustrates the layered governance structure associated with subsidiarity. While the Federal Government establishes national education policies and standards through institutions such as the Federal Ministry of Education and the Universal Basic Education Commission, the responsibility for managing schools and implementing education programmes largely rests with state and local governments. For instance, primary education is primarily administered by local governments and state agencies such as State Universal Basic Education Boards (SUBEBs). These institutions oversee teacher recruitment, school infrastructure, and curriculum

18 G A Bermann, 'Taking Subsidiarity Seriously: Federalism in the European Community and the United States' [1994] 94 (2) *Columbia Law Review* 331, 335.
19 Constitution of the Federal Republic of Nigeria 1999 Second Schedule, Part I.
20 Suberu (n 4) 18-20

implementation at the grassroots level. The decentralised nature of this arrangement reflects subsidiarity because local authorities are better positioned to understand the educational needs of their communities and to tailor policies accordingly.

c. Agricultural Development

Agriculture provides another example of subsidiarity in practice. Although the Federal Government formulates national agricultural policies and provides funding support through programmes such as the Agricultural Transformation Agenda, the implementation of agricultural extension services and support for local farmers are largely managed by state ministries of agriculture. Agricultural production patterns vary significantly across Nigeria's ecological zones, ranging from crop farming in the southern regions to livestock production in the northern regions. Decentralised management allows state governments to design agricultural policies that reflect local climatic conditions, farming traditions, and market structures.

d. Environmental Sanitation and Waste Management

Environmental sanitation and waste management are typically administered at the state and local government levels. For example, the Lagos State Waste Management Authority is responsible for waste collection, disposal, and recycling initiatives within Lagos State. Local governments also play important roles in community sanitation programmes, public waste disposal management, and environmental health campaigns. These responsibilities are appropriately decentralised because they involve routine services that require direct engagement with local communities.

National Defence and Security

In contrast, issues such as national defence fall outside the scope of subsidiarity at the local level. Defence requires centralised planning, coordination, and financing, and is therefore placed under the exclusive authority of the Federal Government through institutions such as the Nigerian Armed Forces. The centralisation of defence responsibilities illustrates that subsidiarity does not require all functions to be decentralised. Rather, the principle emphasises that functions should be assigned to the lowest level capable of effectively performing them, while recognising that certain matters inherently require national coordination. Despite the theoretical relevance of subsidiarity to Nigerian federalism, several structural factors have limited its full realisation. One major challenge is fiscal centralisation. A significant proportion of government revenue in Nigeria is collected by the Federal Government and distributed to states and local governments through the Federation Account. This arrangement often constrains the ability of subnational governments to exercise meaningful autonomy in policy implementation.[21]

Another challenge arises from the limited autonomy of local governments, which are constitutionally recognised as a third tier of government but remain financially and administratively dependent on state governments. This situation has weakened the capacity of local governments to effectively perform functions that would ordinarily fall within their jurisdiction under the principle of subsidiarity. Recent controversies regarding tax administration, particularly the dispute between some state governments and federal authorities over the collection of value added tax (VAT), further illustrate tensions in the allocation of fiscal powers within the federation. These disputes highlight broader debates about the appropriate level of government responsible for revenue generation and

21 A A Ikein, 'Fiscal Federalism and Revenue Allocation in Nigeria' [1999] 13 (2) *African Journal of Public Administration and Management* 121, 125.

economic regulation in Nigeria. Similarly, the growing advocacy for the establishment of state police reflects concerns that the highly centralised national policing structure may not adequately address local security challenges. Proponents of decentralised policing argue that state-controlled police forces would enable faster responses to local security threats and improve community-based law enforcement.

The effective application of subsidiarity offers several potential benefits for Nigerian governance. First, it promotes administrative efficiency by ensuring that decisions are made by institutions that possess the most relevant local knowledge and capacity. Second, it enhances democratic participation by bringing governance closer to the people and enabling citizens to hold local authorities accountable. Third, subsidiarity encourages policy innovation, as subnational governments can experiment with different approaches to addressing social and economic challenges. In the context of Nigeria's evolving federal system, strengthening the principle of subsidiarity could contribute significantly to improving intergovernmental relations and promoting balanced national development. By ensuring that governmental responsibilities are allocated to the most appropriate level of authority, subsidiarity helps maintain the delicate balance between national cohesion and regional autonomy that lies at the heart of federal governance.

4. THE PRINCIPLE OF PROPORTIONALITY

The principle of proportionality is a fundamental doctrine in modern constitutional law and governance. Broadly defined, proportionality requires that governmental actions must not exceed what is necessary to achieve legitimate policy objectives. The principle therefore serves as a mechanism for limiting the exercise of governmental power and ensuring that the actions of public authorities remain balanced, reasonable, and justified.22 Although the concept of proportionality has its origins in continental European administrative law, it has gradually become an important standard in constitutional adjudication across many jurisdictions. Courts frequently employ proportionality as a test for determining whether governmental measures that restrict rights or affect institutional powers are justified. The principle is particularly significant in democratic systems where governments must balance competing interests such as public order, national security, economic regulation, and the protection of individual rights.[23]

At its core, proportionality seeks to ensure that governmental intervention remains appropriate, necessary, and balanced. In practical terms, this means that when the state adopts a measure to pursue a legitimate objective, the measure must not impose excessive or unnecessary burdens on individuals or institutions. The doctrine therefore functions as a safeguard against arbitrary or disproportionate exercises of public power.

In constitutional jurisprudence, proportionality is commonly analysed through a structured test consisting of several stages. Although the precise formulation may vary across jurisdictions, the test generally includes the following elements:

- Legitimacy of Objective: The first stage requires that the governmental measure pursue a legitimate objective. Public authorities must demonstrate that the policy or regulation in question is aimed at addressing a lawful and socially desirable goal, such as protecting public safety, promoting economic stability, or safeguarding public health.
- Suitability or Rational Connection: The second stage examines whether the measure adopted is capable

22 A Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press 2012) 3.
23 Sweet and Mathews, (n 7) 72, 74.

of achieving the intended objective. There must be a rational connection between the governmental action and the purpose it seeks to accomplish.

- Necessity: The necessity stage requires that the measure adopted be the least restrictive means available for achieving the objective. If less intrusive alternatives exist that could achieve the same goal, the more restrictive measure may be considered disproportionate.

4. THE PRINCIPLE OF PROPORTIONALITY

The principle of proportionality is a central doctrine in modern constitutional law that requires governmental actions to be appropriate, necessary, and balanced in relation to the objectives they seek to achieve. In essence, the doctrine ensures that the exercise of public power does not exceed what is reasonably required to achieve legitimate governmental purposes. By imposing limits on the scope of governmental intervention, proportionality serves as an important safeguard against arbitrary or excessive exercises of state authority.[24]

Although the doctrine originated in continental European administrative law, it has gradually become a widely accepted standard in constitutional adjudication across many jurisdictions. Courts increasingly rely on proportionality analysis when determining whether governmental actions that restrict rights or affect institutional powers are justified within democratic societies.[25] The principle has also gained prominence within international human rights jurisprudence, where it is frequently used to balance individual freedoms against legitimate state interests such as national security, public order, and public health. At its core, proportionality reflects the broader constitutional commitment to the rule of law and limited government. Even where the state possesses the authority to regulate social or economic activities, such authority must be exercised in a manner that respects constitutional safeguards and avoids unnecessary interference with individual liberties.

Elements of the Proportionality Test

In constitutional jurisprudence, proportionality is typically applied through a structured analytical framework consisting of several stages.

- Legitimate Objective: The first stage requires that the governmental measure pursue a lawful and legitimate objective. Governments must demonstrate that the policy or restriction in question is aimed at addressing a genuine public interest such as public safety, economic stability, national security, or public health.
- Rational Connection: The second stage examines whether the measure adopted is capable of achieving the intended objective. There must be a rational relationship between the governmental action and the goal it seeks to accomplish.
- Necessity: The necessity requirement demands that the measure adopted must be the least restrictive means available for achieving the intended objective. Where less intrusive alternatives exist, the more restrictive measure may be considered disproportionate.
- Proportionality in the Strict Sense: The final stage involves balancing the benefits of the measure against its adverse effects. Even where a measure is rational and necessary, it may still be disproportionate if the harm it causes outweighs the benefits it produces.

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24 Barak (n 22)

25 A Stone Sweet and J Mathews, 'Proportionality Balancing and Global Constitutionalism' [2008] 47 (1) *Columbia Journal of Transnational Law* 72, 74.

Through this structured analysis, proportionality ensures that governmental action remains within constitutionally acceptable limits.

Looking at proportionality in Nigerian Constitutional Law, aAlthough the Nigerian Constitution does not explicitly use the term "proportionality," the principle is implicitly embedded in the constitutional framework governing the limitation of fundamental rights. Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 permits restrictions on certain rights only where such restrictions are "reasonably justifiable in a democratic society."[26] This phrase has served as the constitutional foundation for assessing whether governmental actions that limit rights are proportionate. Nigerian courts have frequently relied on this standard in reviewing governmental measures affecting fundamental rights. In *Inspector-General of Police v All Nigeria Peoples Party*[27], the Court of Appeal held that provisions of the Public Order Act requiring police permits for public assemblies were unconstitutional because they imposed excessive restrictions on citizens' rights to freedom of association and assembly. The court emphasised that democratic societies must allow citizens reasonable freedom to express political opinions and participate in public life. Similarly, the Supreme Court has emphasised the importance of balancing governmental authority with constitutional rights in cases involving freedom of expression. In *Director of SSS v Olisa Agbakoba*[28], the Court held that the seizure of the respondent's passport by security authorities without lawful justification constituted an unjustifiable restriction on his constitutional right to freedom of movement. The decision underscored the principle that governmental restrictions on rights must be supported by lawful authority and must not be excessive.

Another instructive case is *Fawehinmi v Abacha*[29], where the Supreme Court reiterated that governmental actions must remain subject to constitutional limitations, even in situations involving national security concerns. The Court affirmed that executive powers cannot be exercised in a manner that undermines the constitutional rights of citizens. These cases illustrate the Nigerian judiciary's willingness to scrutinise governmental actions and ensure that restrictions imposed by public authorities remain proportionate to the objectives they seek to achieve.

5. RELATIONSHIP BETWEEN SUBSIDIARITY AND PROPORTIONALITY

The principles of subsidiarity and proportionality are distinct yet closely interrelated in the context of constitutional governance. Both principles function as tools for evaluating the exercise of governmental powers, but they operate at different levels of analysis. Subsidiarity is primarily concerned with the allocation of responsibilities among different levels of government, whereas proportionality focuses on the limits and intensity of governmental action. They provide a comprehensive framework for assessing not only who should act but also how that action should be carried out within a federal system.[30] Subsidiarity asserts that public functions should be performed by the lowest level of government capable of effectively executing them. This principle promotes decentralisation, local responsiveness, and participatory governance. In contrast, proportionality provides a constraint on the exercise of power, ensuring that even where a competent authority is acting, the measures adopted are not excessive relative to the objective sought.[31] In other words, subsidiarity addresses the question of locus of authority, while proportionality addresses the question of appropriateness and reasonableness of action.

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26 Constitution of the Federal Republic of Nigeria 1999 s 45.
27 (2007) 18 NWLR (Pt 1066) 457.
28 1999) 3 NWLR (Pt 595) 314.
29 (2000) 6 NWLR (Pt 660) 228.
30 Schütze (n 6) 245.
31 Barak (n 22) 3.

In the Nigerian federal context, these principles often operate in tandem. The Constitution of the Federal Republic of Nigeria 1999 establishes a three-tier system of government, distributing legislative powers between the Federal Government, states, and local governments.[32] While the constitutional allocation reflects subsidiarity in principle, for instance, local governments managing primary education and sanitation, the practical application of such functions requires that actions taken by these governments also satisfy proportionality. For example, a local government may be responsible for primary school administration, but any policy restricting access to schools or imposing excessive fees must be justified, necessary, and proportionate to the objective of maintaining educational standards. The relationship between the two principles is also evident in debates surrounding state police in Nigeria. Subsidiarity supports the argument for state police because local authorities are arguably better positioned to respond quickly to security challenges within their jurisdiction. However, proportionality requires that any state police force operate within clearly defined limits to avoid abuse of power, ensure coordination with federal security agencies, and respect citizens' constitutional rights.[33] Without the proportionality lens, subsidiarity could inadvertently justify excessive or unrestrained local action.

Another illustrative example lies in the administration of value-added tax (VAT). While states have the competence to collect VAT in accordance with the Constitution, disputes have arisen over the Federal Government's regulatory oversight and central collection. Subsidiarity would suggest that states should administer VAT collection locally, as they are closer to taxpayers and better positioned to manage revenue efficiently. Proportionality, however, requires that any federal intervention, such as auditing or partial regulation, be carefully calibrated to achieve administrative efficiency without unduly encroaching on state autonomy or creating duplicative burdens on taxpayers.[34]

The interplay of subsidiarity and proportionality also emerges in federal health policy. During public health crises, such as the COVID-19 pandemic, state governments may implement lockdowns, curfews, and business closures tailored to local conditions. Subsidiarity legitimises state-level decision-making, recognising that local authorities are more attuned to community needs. Proportionality, however, ensures that these measures are necessary, reasonable, and not more restrictive than required to contain the health threat. Thus, the combination of subsidiarity and proportionality enables a dynamic, context-sensitive approach to governance in Nigeria, balancing local autonomy with constitutional safeguards and national interest. In essence, subsidiarity and proportionality are mutually reinforcing principles. Subsidiarity identifies the appropriate locus for decision-making, ensuring that governance occurs at the most effective and democratically accountable level. Proportionality then guides the exercise of that power, ensuring that governmental measures remain rational, necessary, and balanced. When applied together, these principles provide a framework for addressing one of the central challenges of Nigerian federalism: how to reconcile decentralised governance with effective, rights-respecting, and accountable administration.

From a theoretical perspective, this relationship aligns with comparative federal experiences. In the European Union, subsidiarity ensures that decisions are taken at the level closest to the citizen, while proportionality restrains EU institutions from overreaching in their regulatory actions.[35] Similarly, in Canada and South Africa, federalism

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32 Constitution of the Federal Republic of Nigeria 1999 Second Schedule.

33 C M Okeke and C C Eme, 'State Police and National Security in Nigeria' [2014] 4 (9) *Kuwait Chapter of the Arabian Journal of Business and Management Review* 38, 40.

34 A A Ikein, 'Fiscal Federalism and Revenue Allocation in Nigeria' [1999] 13 (2) *African Journal of Public Administration and Management* 121, 125.

35 Schütze (n 6) 247-249.

scholars have emphasised that effective governance requires both the appropriate allocation of authority and proportionate exercise of that authority, especially in contexts of fiscal federalism, public safety, and social policy.[36] For Nigeria, adopting this dual lens is particularly significant because the federation faces both historical centralising tendencies and ongoing pressures for decentralisation and local empowerment.

Subsidiarity and proportionality are complementary principles that, when applied in tandem, provide a robust framework for assessing governance in a federal system. In Nigeria, these principles are not explicitly codified together in the Constitution, yet they operate implicitly in legislative practice, judicial interpretation, and administrative decision-making. By integrating subsidiarity and proportionality into both law and policy, Nigeria can strengthen intergovernmental relations, enhance policy responsiveness, and promote a balanced, accountable, and rights-respecting federal system.

6. POLICY IMPLICATIONS AND CONCLUSION

The principles of subsidiarity and proportionality provide complementary frameworks that are vital for the functioning of Nigerian federalism. Subsidiarity ensures that governance occurs at the lowest effective level, promoting local responsiveness, democratic participation, and efficient delivery of public services. Proportionality, on the other hand, restrains governmental action, ensuring that measures taken by authorities, whether federal, state, or local, are necessary, balanced, and appropriate relative to the objectives sought. These principles offer a coherent lens for understanding, evaluating, and reforming the allocation and exercise of power within Nigeria's federal structure. Nigeria's federalism, as enshrined in the Constitution of the Federal Republic of Nigeria 1999, distributes powers among the Federal Government, states, and local governments. While the Constitution formally recognises these tiers, practical governance has often been characterised by centralised control, particularly in fiscal matters, policing, and natural resource management. This centralisation has, at times, undermined the autonomy of states and local governments, limiting their capacity to exercise powers in accordance with subsidiarity. The absence of consistent proportionality in governmental actions has sometimes led to policies that are excessive or poorly targeted, resulting in inefficiency, citizen dissatisfaction, and rights violations.

Available examples demonstrate the interplay of these principles. In fiscal governance, states are constitutionally empowered to collect value-added tax (VAT), yet federal oversight and centralised auditing practices often blur the line of authority. Subsidiarity suggests that states should be empowered to manage VAT independently, reflecting local needs and capacities, while proportionality demands that any federal intervention must be limited, justified, and non-intrusive. Similarly, proposals for state police exemplify the application of subsidiarity: local authorities, being more familiar with their communities, may respond more effectively to security threats. However, proportionality ensures that such powers are exercised responsibly, respecting constitutional rights and maintaining coordination with national security institutions. No doubt, subsidiarity and proportionality have implications for broader governance reforms. In health policy, local governments are better positioned to implement targeted interventions, such as community health campaigns, while proportionality ensures that restrictions, such as movement limitations during epidemics, are measured and justified. In education and infrastructure, decentralised administration allows for context-specific solutions, while proportionality guides budgetary allocation and policy enforcement to avoid overreach or inequitable burdens on citizens.

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36 Suberu (n 4) 18-20.

From a policy perspective, integrating subsidiarity and proportionality into Nigerian governance entails several key reforms. First is the imperative of fiscal decentralisation. Strengthening the financial autonomy of states and local governments by revisiting revenue allocation frameworks and enabling subnational governments to generate and control more resources. This would enhance subsidiarity by allowing decisions to be taken closer to the citizens while ensuring proportionality by providing oversight mechanisms to prevent misuse. Second, state policing and security must be prioritised. Establishing state police under clear constitutional and regulatory frameworks would operationalise subsidiarity, enabling quicker, locally informed responses to security challenges. Proportionality would guide the design of operational rules, ensuring that state forces act within constitutional limits and respect citizens' rights. Third, local governance capacity-building is not negotiable. This is by empowering local governments with administrative, technical, and regulatory capabilities to execute their constitutional responsibilities effectively. Subsidiarity supports devolving responsibilities, and proportionality ensures that local measures remain effective without unnecessary disruption. Fourth, there should be improved judicial and legislative oversight by encouraging courts and legislatures to systematically apply subsidiarity and proportionality when reviewing governmental actions. Judicial application of proportionality and legislative codification of subsidiarity principles can prevent excessive centralisation and protect constitutional rights. Fifth, legislators and policymakers can use subsidiarity and proportionality as guiding principles to design laws that assign powers to the most competent authority while limiting potential overreach. This is particularly relevant in sectors such as public health, environmental management, taxation, and emergency response.

The integration of subsidiarity and proportionality into Nigerian federalism provides a framework for balancing autonomy, efficiency, and accountability. While subsidiarity ensures that powers are exercised by the most appropriate level of government, proportionality guarantees that such powers are exercised responsibly, without excess or arbitrariness. These principles can guide legislative drafting, executive decision-making, and judicial interpretation, contributing to a more balanced, responsive, and democratic federal system. If fully embraced, they have the potential to strengthen intergovernmental relations, enhance public service delivery, and safeguard constitutional rights, thereby promoting a federation that is both unified and respectful of Nigeria's rich political and cultural diversity.

05

COMPARATIVE PERSPECTIVES, EMERGING CHALLENGES, AND REFORM PROPOSALS FOR SENTENCING AND REHABILITATION OF OFFENDERS IN NIGERIA

IFEANYI, HYACINTH NWOGA*

Abstract

This article examines sentencing and the treatment of offenders in Nigeria through a comparative analysis of practices in the United Kingdom, Canada, and South Africa. It interrogates the legal and institutional frameworks governing sentencing, correctional practices, and offender rehabilitation, with a view to identifying gaps within the Nigerian system. The article draws insights from the structured sentencing regimes, restorative justice approaches, and rehabilitative correctional models evident in the selected jurisdictions. It highlights key challenges in Nigeria, including sentencing disparities, prison overcrowding, limited non-custodial measures, inadequate rehabilitation programmes, and weak reintegration mechanisms. In contrast, the comparative jurisdictions demonstrate more developed systems characterised by sentencing guidelines, community-based sanctions, and rights-oriented correctional practices. The article also explores emerging issues such as the role of technology in corrections, alternatives to incarceration, and the increasing emphasis on restorative justice. It argues that while Nigeria has made modest progress, particularly with reforms under the Administration of Criminal Justice Act, significant gaps remain in aligning sentencing practices with modern penal objectives. The article concludes by proposing context-specific reforms aimed at promoting consistency in sentencing, expanding non-custodial options, and strengthening offender rehabilitation and reintegration within Nigeria's criminal justice system.

Keywords: *Sentencing, Offender Treatment, Comparative Criminal Justice, Nigeria, Rehabilitation, Non-Custodial Measures, Penal Reform*

INTRODUCTION

This article examines sentencing and the treatment of offenders in Nigeria through a comparative analysis of practices in the United Kingdom, Canada, and South Africa. It interrogates the legal and institutional frameworks governing sentencing, correctional practices, and offender rehabilitation, with a view to identifying gaps within the Nigerian system. The study adopts a doctrinal and comparative methodology, drawing insights from the structured sentencing regimes, restorative justice approaches, and rehabilitative correctional models evident in the selected jurisdictions. The article highlights key challenges in Nigeria, including sentencing disparities, prison overcrowding, limited non-custodial measures, inadequate rehabilitation programmes, and weak reintegration mechanisms. In contrast, the comparative jurisdictions demonstrate more developed systems characterised by

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sentencing guidelines, community-based sanctions, and rights-oriented correctional practices. The study also explores emerging issues such as the role of technology in corrections, alternatives to incarceration, and the increasing emphasis on restorative justice. It argues that while Nigeria has made modest progress, particularly with reforms under the Administration of Criminal Justice Act, significant gaps remain in aligning sentencing practices with modern penal objectives. The article concludes by proposing context-specific reforms aimed at promoting consistency in sentencing, expanding non-custodial options, and strengthening offender rehabilitation and reintegration within Nigeria's criminal justice system.

2. COMPARATIVE PERSPECTIVES ON SENTENCING AND REHABILITATION OF OFFENDERS

The United Kingdom

The United Kingdom operates one of the most structured sentencing systems within the common-law tradition. Unlike jurisdictions where sentencing discretion is largely guided by statutory maximums and appellate precedent, England and Wales employ a guideline-driven framework aimed at enhancing consistency, transparency, and proportionality. The institutional anchor of this framework is the Sentencing Council for England and Wales, established under the Coroners and Justice Act 2009. The Council develops offence-specific guidelines based on empirical research, consultation, and statistical data. Courts are statutorily required to "follow" these guidelines unless it would be contrary to the interests of justice to do so.1 This creates structured discretion: judges retain sentencing authority, but within a calibrated matrix of harm, culpability, aggravating factors, and mitigating circumstances. Ashworth and Roberts observe that this model seeks to balance judicial independence with principled consistency.[2]

The purposes of sentencing are codified in the Sentencing Act 2020, which consolidates punishment, crime reduction (including deterrence), reform and rehabilitation, protection of the public, and reparation.[3] The statutory articulation of these purposes compels courts to justify sentences within a coherent framework rather than relying solely on retributive logic. Judicial authority reinforces proportionality as a constitutional value; in *R v Offen*[4], the Court of Appeal stressed that preventive sentencing must remain proportionate to the seriousness of the offence. Beyond custodial sentencing, the UK has developed a comprehensive community sentencing and probation system. Community orders may include unpaid work, curfews, rehabilitation activity requirements, drug treatment programmes, and electronic monitoring. The probation service plays a central role in risk assessment and offender management. As Tonry notes, structured community sanctions are more effective in reducing reoffending when properly supervised and adequately resourced.[5] Although prison overcrowding remains a concern in the UK, the institutionalisation of non-custodial measures reflects a policy commitment to graduated penal responses.

The UK model discloses lessons relevant to Nigeria. First, the existence of structured sentencing guidelines in the UK reduces unwarranted disparity by requiring courts to evaluate offences within defined culpability and harm categories. Studies show that sentencing consistency improved significantly after the creation of the Sentencing Council.[6] For Nigeria, where sentencing remains largely discretionary and uneven across jurisdictions,

1 Coroners and Justice Act 2009, s 125.
2 A Ashworth and J Roberts, *Sentencing: Theory, Principle and Practice* (4th edn, Cambridge University Press 2013).
3 Sentencing Act 2020 s 57.
4 [2001] 1 WLR 253
5 M Tonry, *Sentencing Matters* (Oxford University Press 1996).
6 J Roberts, 'Structured Sentencing and the Sentencing Council' [2013] 76 MLR 409.

a guideline-based framework could promote uniformity without eliminating judicial discretion. Such a model would enhance transparency and public confidence, particularly in high-profile corruption and violent crime cases. Second is the imperative of institutionalised probation and community-based sanctions. The UK demonstrates that non-custodial sentencing succeeds only when supported by strong institutional infrastructure. Community orders are monitored by professional probation officers trained in risk assessment and offender rehabilitation.[7] Nigeria's Non-Custodial Service under the ACJA reflects a similar aspiration, but its operational capacity remains limited. The UK experience underscores that alternatives to imprisonment require sustained funding, supervision mechanisms, and performance evaluation systems to be credible and effective. Third, clear statutory articulation of sentencing purposes is essential to the effectiveness of sentencing. The codification of sentencing purposes under the Sentencing Act 2020 ensures legislative clarity and principled justification of punishment. Courts explicitly balance deterrence, rehabilitation, and reparation when determining sanctions. Ashworth argues that articulating sentencing aims in statute strengthens accountability and coherence in judicial reasoning.[8] Nigeria could benefit from clearer statutory articulation of sentencing objectives to guide courts and reduce conceptual ambiguity in penal decision-making.

The UK sentencing framework demonstrates that reform is most effective when legislative clarity, institutional coordination, empirical research, and judicial accountability operate in tandem. While contextual differences must be acknowledged, the structured discretion model, institutional probation system, and codified sentencing purposes offer instructive insights for strengthening Nigeria's sentencing architecture.

South Africa

The South Africa provides a particularly instructive comparative model for Nigeria due to shared common-law heritage, constitutional supremacy, and a strong human rights orientation in criminal justice. However, unlike the structured guideline regime in the United Kingdom, South Africa operates a hybrid sentencing system combining broad judicial discretion with legislatively prescribed minimum sentences for certain serious offences. South Africa's sentencing framework is deeply influenced by the Constitution of the Republic of South Africa, 1996, particularly provisions protecting dignity, equality, and freedom from cruel, inhuman, or degrading punishment. The Constitutional Court has repeatedly emphasised that sentencing must reflect proportionality and constitutional values. In *S v Makwanyane*[9], the Constitutional Court abolished the death penalty, holding that capital punishment violated constitutional rights to life and dignity. This landmark decision established human dignity and proportionality as foundational principles of sentencing. Similarly, in *S v Dodo*[10], the Court affirmed that while Parliament may prescribe minimum sentences, judicial discretion cannot be entirely excluded where disproportionate outcomes would result. These cases demonstrate a constitutionalised sentencing culture in which courts actively review penal legislation for compatibility with rights norms.

Another fundamental aspect of South Africa's model is the existence of mandatory minimum sentencing regime. South Africa introduced mandatory minimum sentences for serious offences under the Criminal Law Amendment Act 105 of 1997, particularly for violent and sexual crimes. While designed to address rising crime rates, this regime has generated sustained academic debate. The Constitutional Court in *S v Malgas*[11] clarified that courts may

7 A Ashworth, *Sentencing and Criminal Justice* (6th edn, Cambridge University Press 2015) 168-190
8 Ibid
9 1995 (3) SA 391 (CC)
10 2001 (3) SA 382 (CC)
11 2001 (1) SACR 469 (SCA)

depart from prescribed minimum sentences where "substantial and compelling circumstances" exist. The Court interpreted the "substantial and compelling circumstances" clause contained in the Criminal Law Amendment Act 105 of 1997, and held that while Parliament may prescribe severe minimum sentences to promote deterrence, trial courts retain a residual discretion to depart from such sentences where truly weighty mitigating factors render the prescribed sentence unjust. This doctrine provides a structured model for balancing legislative deterrence objectives with judicial discretion, ensuring that proportionality remains central to sentencing. This interpretive approach preserves structured discretion while maintaining legislative deterrence objectives. For Nigeria, where certain offences also attract mandatory or heavily structured penalties, the South African experience illustrates both the deterrent appeal and constitutional tension of minimum sentencing regimes. It highlights the importance of preserving judicial capacity to avoid unjustly rigid outcomes.

Restorative justice and community-based sentencing in South Africa is another significant aspect. South Africa has developed a significant restorative justice movement, particularly in juvenile justice and community corrections. The Child Justice Act 75 of 2008 institutionalises diversion programmes and restorative conferencing for child offenders, reflecting a rehabilitative orientation. Community-based corrections and parole supervision operate under the Department of Correctional Services, which manages probation and reintegration programmes. Academic commentators such as Terblanche argue that South Africa's sentencing philosophy increasingly balances retribution with restorative justice principles.[12] However, like Nigeria, South Africa continues to face prison overcrowding challenges, resource constraints, and implementation gaps.[13]

Looking at South Africa's model, key lessons abound for Nigeria. First is the issue of constitutionalised sentencing review. Judicial willingness to scrutinise penal legislation for constitutional compliance ensures that punishment remains proportionate and rights-consistent. Nigeria's constitutional framework similarly empowers courts to protect dignity and fair trial rights. Second is structured flexibility in mandatory sentencing. The "substantial and compelling circumstances" doctrine in *S v Malgas*[14] provides a model for balancing legislative deterrence goals with judicial discretion. Third is integration of restorative justice in youth and community corrections. Institutionalised diversion and reintegration mechanisms demonstrate how sentencing reform can extend beyond imprisonment toward community-based rehabilitation. From the totality of the above, it is obvious that South Africa's sentencing system illustrates a rights-driven, constitutionally grounded penal philosophy tempered by legislative intervention in serious crimes. Its hybrid model, combining mandatory frameworks with judicial flexibility, offers important comparative insights for Nigeria's evolving sentencing regime under the ACJA.

Canada

The Canada provides one of the most coherent and constitutionally grounded sentencing systems among common-law jurisdictions and serves as a valuable comparative model for Nigeria's evolving sentencing framework under the ACJA. Unlike jurisdictions where sentencing principles are largely developed through judicial precedent alone, Canada has codified its sentencing philosophy within the Criminal Code, particularly in Part XXIII, thereby ensuring legislative clarity and structured judicial guidance. The Criminal Code expressly articulates the purposes of sentencing.[15] These include denunciation of unlawful conduct, deterrence (both general and specific),

12 S S Terblanche, *A Guide to Sentencing in South Africa* (3rd edn, LexisNexis 2016) 132-138.

13 S Majadibodu, 'Overcrowding hits crisis levels in SA prisons, says correctional services commissioner', IOL < https://iol.co.za/news/south-africa/2026-02-02-overcrowding-hits-crisis-levels-in-sa-prisons-says-correctional-services-commissioner/?utm_source=chatgpt.com> Accessed 14 Feb 2026

14 (n 11)

15 Section 718

separation of offenders from society where necessary, rehabilitation, reparation to victims, and promotion of responsibility in offenders. By statutorily defining sentencing objectives, the Canadian model reduces ambiguity and provides courts with a clear framework within which discretion is exercised. This approach enhances transparency, consistency, and accountability in sentencing decisions.

Central to the Canadian framework is the principle of proportionality. The Criminal Code[16] establishes proportionality as the fundamental principle of sentencing, requiring that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. The Supreme Court of Canada reaffirmed this principle in *R v Ipeelee*[17], emphasising that proportionality is the "fundamental principle" governing all sentencing decisions. The Court clarified that while deterrence and other objectives remain important, they must operate within the boundaries of proportionality. This jurisprudence demonstrates how legislative codification and constitutional interpretation work together to safeguard against excessive or arbitrary punishment. Canada also operates a structured appellate review system that promotes uniformity in sentencing without undermining judicial independence. Appellate courts may intervene where a sentence is demonstrably unfit or unreasonable, thereby ensuring coherence in sentencing standards across jurisdictions. This mechanism strengthens consistency while preserving discretion at the trial level.[18] Furthermore, Canada has progressively integrated restorative justice principles into its sentencing culture. The Criminal Code explicitly encourages reparation to victims and acknowledgment of harm, reflecting a balance between retributive and rehabilitative goals.[19] Restorative practices, particularly in community-based sentencing and Indigenous justice contexts, illustrate how non-custodial measures can be institutionalised within mainstream criminal law rather than treated as peripheral alternatives.

From a comparative perspective, the Canadian model offers several lessons for Nigeria. First, the explicit codification of sentencing purposes provides doctrinal clarity that could complement the procedural reforms introduced by the ACJA. Second, the centrality of proportionality ensures that punishment remains constitutionally and ethically bounded. Third, structured appellate oversight reduces unwarranted sentencing disparity. Finally, the integration of restorative justice within statutory sentencing principles reinforces the rehabilitative objectives already reflected in the ACJA's non-custodial provisions. Canada demonstrates how a common-law jurisdiction can combine legislative precision, judicial oversight, and restorative philosophy within a coherent sentencing framework. For Nigeria, adopting clearer statutory articulation of sentencing principles, while strengthening institutional capacity, could further enhance the transformative potential of the ACJA and promote a more consistent, proportionate, and rehabilitation-oriented sentencing regime.

3. LESSONS FOR NIGERIA FROM COMPARATIVE JURISDICTIONS

The comparative analysis of the United Kingdom, South Africa, and Canada reveals that sentencing reform is most effective where legislative clarity, structured judicial discretion, constitutional safeguards, and institutional capacity operate together. Drawing from these jurisdictions, several lessons emerge that are directly relevant to Nigeria's sentencing framework under the ACJA 2015.

First is codification of sentencing purposes. One of the clearest lessons from Canada is the value of expressly

16 Section 718.1

17 2012] 1 SCR 433 (SCC).

18 J V Roberts and A Ashworth, 'The Role of Appellate Courts in Sentencing Reform' [1996] 4 *European Journal of Crime, Criminal Law and Criminal Justice* 129.

19 Criminal Code, RSC 1985, c C-46, s 687; *R v M (CA)* [1996] 1 SCR 500.

codifying the purposes of sentencing. Under the Criminal Code, section 718 articulates the objectives of sentencing, thereby providing doctrinal clarity and guiding judicial discretion.[20] Similarly, the UK framework, through the Sentencing Act 2020, defines sentencing purposes in statutory form.[21] Nigeria could strengthen consistency by adopting a clearer statutory articulation of sentencing principles, thereby reducing disparity and enhancing transparency in sentencing decisions.

Second is structured judicial discretion and sentencing guidelines. The United Kingdom demonstrates how structured sentencing guidelines, developed by the Sentencing Council for England and Wales, promote uniformity without eliminating judicial independence.[22] Guidelines standardise assessments of culpability, harm, aggravating and mitigating factors, while preserving case-specific flexibility. For Nigeria, the development of national sentencing guidelines could complement the ACJA and reduce variation in custodial outcomes across jurisdictions.

Third is constitutional proportionality review. South Africa offers a strong model of constitutional oversight in sentencing. In *S v Dodo*[23], the Constitutional Court affirmed that sentencing legislation must respect proportionality. Similarly, in *S v Malgas*[24], the court developed the "substantial and compelling circumstances" doctrine to balance mandatory minimum sentences with judicial discretion. Nigeria can draw from this approach by ensuring that mandatory sentencing provisions are interpreted in a manner consistent with constitutional fairness and proportionality.

Fourth is institutionalisation of non-custodial sentencing. Both the UK and Canada have institutionalised community-based sanctions supported by structured supervision systems. In Canada, section 718(e) of the Criminal Code explicitly recognises reparation to victims, reflecting restorative principles.[25] While the ACJA introduced non-custodial options, Nigeria must strengthen implementation mechanisms, including probation services, monitoring infrastructure, and funding frameworks, to ensure that alternatives to imprisonment are credible and effective.

Fifth is appellate oversight to reduce sentencing disparity. Comparative systems demonstrate the importance of appellate review in promoting sentencing coherence. In Canada, appellate courts may intervene where sentences are demonstrably unfit, thereby maintaining national consistency.[26] Strengthening structured appellate guidance in Nigeria could help reduce unwarranted disparity and reinforce principled sentencing. For Nigeria, the ACJA represents significant progress, but comparative experience suggests that its transformative potential will depend on the development of sentencing guidelines, stronger institutional infrastructure, and consistent judicial application.

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20 Criminal Code, RSC 1985, c C-46, s 718.
21 Sentencing Act 2020 (UK) s 57.
22 S v Malgas (n 11)
23 (n 10)
24 (n 11)
25 Criminal Code, RSC 1985, c C-46, s 718(e).
26 Criminal Code, RSC 1985, c C-46, s 687; R v Ipeelee (n 17).

4. CHALLENGES IN NIGERIA'S SENTENCING AND CORRECTIONAL FRAMEWORK

i. Absence of Uniform Sentencing Policy

One of the most significant structural weaknesses in Nigeria's criminal justice architecture is the absence of a coherent and nationally articulated sentencing policy. Although the ACJA introduced reforms aimed at improving efficiency, safeguarding fair trial rights, and promoting non-custodial measures, it did not establish a comprehensive sentencing framework capable of ensuring consistency, proportionality, and predictability across jurisdictions. As a result, sentencing in Nigeria remains largely discretionary, fragmented, and susceptible to disparity. Sentencing discretion is not inherently problematic. Indeed, individualized justice requires that trial courts consider the peculiar facts of each case, including the offender's background, the gravity of the offence, and mitigating or aggravating circumstances. The Supreme Court affirmed this position in *Bello v State*[27], holding that sentencing lies primarily within the discretion of the trial judge, provided such discretion is exercised judicially and judiciously. However, the difficulty arises where discretion operates without structured statutory guidance. In the absence of sentencing grids, statutory ranking systems, or binding guideline judgments, courts may impose markedly different sentences for similar offences under comparable circumstances. Such disparities undermine predictability and weaken public confidence in the administration of justice.

Nigeria's sentencing framework is further complicated by its plural penal statutes. Substantive criminal law is primarily contained in the Criminal Code Act and the Penal Code Act, alongside numerous federal statutes creating specific offences. Each statute prescribes its own sentencing ranges, often expressed in broad maximum terms without guidance on how courts should calibrate penalties within those limits. This statutory design leaves sentencing calibration almost entirely to judicial intuition. The ACJA, while procedurally innovative, does not provide a detailed articulation of sentencing purposes comparable to section 718 of Canada's Criminal Code or the structured framework found in the UK's Sentencing Act 2020. Consequently, sentencing philosophy in Nigeria is inferred rather than codified.

The implications of this structural gap are both theoretical and practical. From a theoretical perspective, modern sentencing theory emphasises proportionality as the cardinal principle of punishment. Hirsch's "just deserts" theory argues that proportionality requires a stable ranking of offences and corresponding punishments to preserve fairness and equality.[28] Without structured sentencing guidance, proportionality risks becoming subjective and unevenly applied. Although Nigerian appellate courts occasionally intervene where sentences are manifestly excessive or inadequate, there is no consolidated body of guideline jurisprudence that systematically categorises offences or standardises sentencing benchmarks. The federal nature of Nigeria's legal system deepens this challenge. While the ACJA governs federal criminal proceedings and has influenced state-level Administration of Criminal Justice Laws (ACJLs), adoption and implementation vary across states. Some states have incorporated non-custodial provisions robustly; others lag in institutional capacity or political commitment. This uneven adoption produces geographic disparities in sentencing outcomes.[29] An offender convicted of a similar offence may receive a non-custodial sentence in one jurisdiction and imprisonment in another, depending not only on judicial philosophy but also on the availability of probation services or community service supervision structures.

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27 (1985) 1 NWLR (Pt 12) 283

28 A V Hirsch, *Doing Justice: The Choice of Punishments* (Northeastern University Press 1976) 55-73

29 B S Oghenekevwe and P I Gasiokwu, 'Prospects and Challenges of the Administration of Criminal Justice Act (ACJA), 2015' [2025] 13(1), *Global Journal of Politics and Law Research*, 74-96

Available data support concerns about inconsistency and custodial dominance. Reports from the Nigerian Correctional Service consistently indicate high incarceration rates, including a significant proportion of inmates serving short-term sentences for relatively minor offences.[30] The continued prevalence of imprisonment for non-violent and low-level offences suggests that non-custodial alternatives remain underutilised despite their statutory recognition under the ACJA. The Prisoners' Rehabilitation and Welfare Action (PRAWA) has similarly documented limited operationalisation of probation and community service frameworks in several states.[31] This pattern reflects not merely implementation gaps but the absence of a sentencing culture that prioritises structured proportionality and custodial restraint. The constitutional implications are equally significant. Section 17(2)(a) of the Constitution of the Federal Republic of Nigeria 1999 proclaims equality before the law as a foundational principle. Sentencing disparity, where similarly situated offenders receive markedly different punishments without principled justification, may undermine this constitutional commitment. While courts enjoy discretion, equality before the law requires that discretion be structured and guided to avoid arbitrariness. The absence of a uniform sentencing policy also affects plea bargaining outcomes under the ACJA. Without structured sentencing expectations, negotiated pleas may produce inconsistent outcomes depending on prosecutorial negotiation strategies and judicial attitudes. While plea bargaining promotes efficiency, its legitimacy depends partly on transparent and predictable sentencing ranges.[32] Where sentencing benchmarks are unclear, plea negotiations risk reinforcing disparity rather than mitigating it. Obviously, the absence of a uniform sentencing policy in Nigeria represents a foundational weakness in the criminal justice system. While the ACJA has advanced procedural reform and introduced non-custodial alternatives, it has not fundamentally restructured sentencing philosophy or standardised sentencing practice. Broad judicial discretion, plural penal statutes, uneven state implementation, and limited institutional guidance collectively produce inconsistency and undermine proportionality.

ii. Overreliance on Custodial Sentencing

A defining weakness of Nigeria's contemporary sentencing practice is the persistent dominance of custodial punishment. Although the ACJA formally introduced non-custodial measures, imprisonment remains the prevailing penal response across a wide spectrum of offences. This custodial centrality is not merely an administrative outcome; it reflects deeper structural features of Nigerian criminal legislation, judicial culture, and penal philosophy. At the level of substantive criminal law, both the Criminal Code Act and the Penal Code Act frequently prescribe imprisonment as the principal sanction for indictable and summary offences. While fines and other alternatives are sometimes provided, statutory drafting often frames imprisonment as the primary punitive response, thereby reinforcing a custodial default. This legislative architecture shapes judicial expectation: where the statute emphasises imprisonment, sentencing practice tends to follow that orientation.

The ACJA sought to recalibrate this imbalance. It establishes non-custodial sentencing options, including community service, probation, parole, and suspended sentences.[33] It further provides for a Non-Custodial Directorate.[34] This represents a shift toward diversification of penal sanctions. However, the Act does not codify a principle that imprisonment must be treated as a sanction of last resort. Courts retain discretion to impose non-custodial measures, but they are not required to justify the choice of imprisonment where alternatives are

30 Nigerian Correctional Service, *Annual Report*, 2024.
31 Prisoners' Rehabilitation and Welfare Action (PRAWA), *Criminal Justice Reform Reports* 2020
32 W W Longpoe and S Oguche, 'Novelties and Perplexities of Plea Bargain in Nigerian Criminal Justice: In Defence of Human Rights', [2019] 3(2), *Kampala International University Law Journal*, 205
33 ACJA, ss 453-459.
34 Section 460

viable. In practice, this preserves custodial dominance. Excessive reliance on imprisonment is inconsistent with contemporary proportionality-based sentencing models. Hirsch's "just deserts" theory argues that punishment must be proportionate to offence seriousness and should avoid unnecessary severity.[35] Imprisonment, as the most intrusive penal sanction short of capital punishment, requires particular justification within such a framework. Similarly, Ashworth emphasises that modern sentencing systems must avoid treating custody as the routine penalty, especially for non-violent and less serious offences.[36] The absence of structured restraint mechanisms in Nigeria's sentencing framework undermines this proportionality orientation.

Comparative scholarship further questions the efficacy of incarceration as a dominant crime-control strategy. Michael Tonry demonstrates that high imprisonment rates do not correlate consistently with reduced crime and may produce criminogenic effects, particularly in relation to short-term custodial sentences.[37] Garland's sociological analysis of contemporary penal policy shows how political and expressive pressures can drive expansion of imprisonment even where its preventive value is empirically uncertain.[38] These insights are directly relevant to Nigeria, where custodial sentencing often reflects deterrence rhetoric without rigorous empirical evaluation of long-term impact. Custodial overuse contributes to systemic strain within Nigeria's correctional system. Data from the Nigerian Correctional Service confirm that custodial facilities consistently operate beyond designed capacity.[39] Although a significant proportion of inmates are awaiting trial, the number of convicted prisoners serving relatively short sentences for non-violent offences remains substantial.[40] The continued predominance of imprisonment, despite statutory non-custodial options, suggests that legislative reform has not translated into sentencing transformation.

Analyses of Nigeria's penal system corroborate this structural pattern. Obioha observes that the Nigerian prison system has historically functioned more as a containment mechanism than as a rehabilitative institution, with overcrowding and resource deficits limiting corrective impact.[41] Earlier scholarship by Ibidapo-Obe similarly identified systemic weaknesses, including inadequate rehabilitative programming and institutional inefficiencies, which are exacerbated by high incarceration rates.[42] Where imprisonment is overused in a context of weak rehabilitative infrastructure, the corrective rationale of punishment becomes difficult to sustain. The enactment of the Nigerian Correctional Service Act 2019 marked a conceptual shift from "prison service" to "correctional service," signalling an official commitment to rehabilitation and reintegration. Section 2 of the Act expressly incorporates non-custodial measures within the Service's mandate. However, legislative rebranding does not automatically alter sentencing behaviour. Without a statutory restraint principle or binding sentencing guidelines requiring courts to prioritise non-custodial measures where appropriate, imprisonment continues to function as the primary penal response. The implications of custodial overreliance are multidimensional. First, prison congestion undermines humane detention standards and strains administrative resources. Second, overcrowding restricts access to vocational, educational, and psychological programmes, thereby weakening reintegration prospects. Third, fiscal resources are disproportionately channelled toward maintaining custodial infrastructure rather than strengthening community-based supervision. From a policy perspective, this allocation pattern may

35 Hirsch (n 28) 55-73.
36 Ashworth, (n 6) 72-88.
37 Tonry (n 5) 105-127.
38 D Garland, *The Culture of Control* (Oxford University Press 2001) 1-27.
39 Nigerian Correctional Service, *Annual Report 2022* (2023) 14-18.
40 Ibid 19-22.
41 C Obioha, 'Challenges and Reforms in the Nigerian Prison System' (2011) 6(1) *Journal of Social Sciences* 95, 98-102.
42 A Ibidapo-Obe, 'The Nigerian Prison System: Problems and Prospects' [1995] 5(1) *African Journal of International and Comparative Law* 185, 190-195.

be economically inefficient and criminologically counterproductive.

Furthermore, custodial overuse raises concerns regarding equality and proportionality. Where short-term imprisonment is imposed for minor offences in the absence of structured guidance, sentencing disparities may widen. The absence of a coherent sentencing policy compounds this problem: judges exercise discretion in a legislative environment that implicitly favours imprisonment, thereby entrenching inconsistency. Nigeria's overreliance on custodial sentencing reflects a convergence of statutory design, judicial culture, and institutional limitation. Although the ACJA and the Nigerian Correctional Service Act 2019 introduced important structural innovations, they have not displaced imprisonment as the default sanction. Without embedding custodial restraint within the architecture of sentencing law, Nigeria risks perpetuating prison congestion and undermining the rehabilitative aspirations central to contemporary criminal justice reform.

iii. Prison Congestion and Poor Correctional Conditions

Prison congestion remains one of the most persistent structural challenges within Nigeria's criminal justice system. While overreliance on custodial sentencing contributes to this problem, congestion is not merely a sentencing outcome; it is a systemic condition shaped by pre-trial detention practices, procedural delay, limited infrastructural capacity, and weak correctional planning. The consequences extend beyond administrative inefficiency, implicating constitutional guarantees, human dignity, and the legitimacy of the penal system. Official data from the Nigerian Correctional Service consistently indicate that custodial centres operate significantly above their designed capacity.[43] The Annual Report 2022 reveals that the total inmate population far exceeds available accommodation space, with a substantial proportion comprising awaiting trial persons (ATPs).[44] Although pre-trial detention is distinct from sentencing, the interaction between custodial sentencing patterns and high remand populations intensifies overcrowding pressures. The cumulative effect is chronic congestion across correctional facilities nationwide.

From a constitutional standpoint, prison congestion raises serious questions under the Constitution of the Federal Republic of Nigeria 1999. Section 34(1)(a) guarantees the right to dignity of the human person and prohibits inhuman or degrading treatment. Conditions characterised by extreme overcrowding, inadequate sanitation, insufficient medical care, and limited ventilation may amount to constructive violations of this guarantee. While Nigerian appellate jurisprudence on prison conditions remains relatively underdeveloped compared to some jurisdictions, the constitutional text provides a clear legal benchmark.

International human rights standards reinforce this position. Nigeria is a state party to the African Charter on Human and Peoples' Rights, domesticated through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[45] Article 5 of the Charter prohibits cruel, inhuman or degrading punishment and treatment. The African Commission on Human and Peoples' Rights has repeatedly interpreted this provision to encompass detention conditions.[46] Chronic overcrowding, where inmates lack adequate sleeping space or basic hygiene, may fall within this prohibition. The structural causes of prison congestion are multifaceted. First, sentencing practices that prioritise incarceration, even for relatively minor offences, add to custodial admissions. Second, prolonged pre-trial detention resulting from investigative delays and adjournments increases the remand population. Third, inadequate use of bail and non-custodial measures sustains unnecessary detention. The cumulative interaction of

43 Nigerian Correctional Service, *Annual Report 2022* (2023) 14–18.
44 ibid 19-23.
45 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.
46 African Commission on Human and Peoples' Rights, *Huri-Laws v Nigeria* (2000) AHRLR 273 (ACHPR 2000).

these factors produces systemic congestion rather than episodic overcrowding.[47]

Analyses of Nigeria's correctional system underscore the long-standing nature of these problems. Obioha observes that overcrowding has historically undermined rehabilitation efforts by overstretching available resources and limiting access to educational and vocational programmes.[48] Similarly, Ibidapo-Obe identifies infrastructural decay and administrative inefficiencies as key contributors to substandard detention conditions.[49] Although reforms have been introduced over the years, including the transformation of the Nigerian Prisons Service into the Nigerian Correctional Service in 2019, structural deficits remain pronounced. The enactment of the Nigerian Correctional Service Act 2019 represents a significant legislative development. The Act redefines the institutional mandate from mere incarceration to correction, rehabilitation, and reintegration.[50] It also formally recognises non-custodial measures as part of the Service's functions. However, statutory reform does not automatically expand physical infrastructure or eliminate congestion. Without corresponding investment in custodial facilities and expansion of community-based alternatives, overcrowding persists despite the shift toward correctional philosophy.

The consequences of congestion are both practical and theoretical. Practically, overcrowding restricts access to healthcare services, increases the risk of communicable diseases, and heightens tensions among inmates. Limited staffing relative to inmate population can also undermine security and supervision. Theoretically, conditions that compromise human dignity weaken the moral authority of the criminal justice system. Punishment that degenerates into systemic degradation ceases to serve legitimate penological purposes and may erode public confidence in justice administration. Congestion undermines the rehabilitative rationale increasingly emphasised in contemporary sentencing theory. Rehabilitation requires space, programming, and individualised assessment. Where facilities are overwhelmed, correctional officials may prioritise containment over correction. This transforms prisons into holding centres rather than rehabilitative institutions, contradicting the objectives articulated in the Nigerian Correctional Service Act 2019.[51]

The interaction between sentencing policy and prison congestion is particularly significant. If courts continue to impose short custodial sentences for minor offences, the inflow of inmates will outpace infrastructural expansion. International criminological research suggests that short-term imprisonment often has limited deterrent value while imposing significant social costs.[52] In the Nigerian context, such sentences contribute to rapid turnover within already congested facilities, further straining administrative capacity. Prison congestion in Nigeria is not merely a logistical problem; it is a constitutional and penological challenge. It reflects structural imbalances within sentencing practice, procedural delay, and institutional capacity. While legislative reforms such as the ACJA and the Nigerian Correctional Service Act 2019 represent important advances, their transformative potential remains constrained by persistent overcrowding. Without a coordinated strategy linking sentencing restraint, procedural efficiency, and infrastructural reform, prison congestion will continue to undermine both human rights standards and the rehabilitative aspirations of Nigeria's criminal justice system.

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47 N Chimtom and A Adeyemi, 'Prison Overcrowding and Its Impact on Rights of Inmates in Nigeria' [2021] 24(2) *African Journal of Criminology and Justice Studies* 56.
48 Obioha (n 41) 99-103.
49 Ibidapo-Obe, (n 42), 190-195.
50 Nigerian Correctional Service Act 2019, s 2.
51 Section 2
52 Tonry (n 5) 105-127.

iv. Inadequate Implementation of Non-Custodial Measures

Although the ACJA represents a significant shift toward non-custodial sentencing, the practical implementation of these measures remains uneven and, in many jurisdictions, limited. The Act introduced community service, probation, suspended sentences, parole mechanisms, and restitution frameworks as viable alternatives to imprisonment. However, the effectiveness of these provisions depends not only on statutory recognition but also on institutional readiness, judicial culture, funding, and supervisory infrastructure. The gap between legislative design and operational reality constitutes one of the most critical challenges in Nigeria's sentencing reform landscape. The ACJA provides the legal basis for non-custodial sanctions and establishes a Non-Custodial Directorate responsible for supervision.[53] In principle, this framework is intended to reduce prison congestion, promote reintegration, and ensure proportional responses to minor offences. Yet, statutory existence alone does not guarantee utilisation. Implementation requires trained probation officers, monitoring systems, administrative coordination, and inter-agency cooperation. Where these elements are weak, courts may hesitate to impose alternatives that lack effective supervisory backing.

Assessments of Nigeria's correctional system indicate that non-custodial sentences are still under-utilised relative to custodial sanctions. Reports from the Nigerian Correctional Service demonstrate that imprisonment continues to dominate sentencing outcomes, despite reforms aimed at diversification.[54] This trend reflects structural limitations, including insufficient probation personnel, limited budgetary allocations for community supervision, and uneven state-level adoption of complementary Administration of Criminal Justice Laws (ACJLs). According to Ashworth, sentencing alternatives require institutional infrastructure; without credible supervision mechanisms, courts may prefer custody to avoid perceived enforcement uncertainties.[55] In the Nigerian context, where community service programmes and probation services are not uniformly resourced across states, judicial reliance on imprisonment may reflect pragmatic concerns rather than doctrinal opposition to reform.

The federal structure of Nigeria also contributes to uneven implementation. While the ACJA applies to federal courts and the Federal Capital Territory, state legislatures must enact their own Administration of Criminal Justice Laws (ACJLs) to replicate and operationalise non-custodial provisions. Adoption varies across states, resulting in disparities in enforcement capacity. In some jurisdictions, community service units are functional; in others, operational frameworks remain incomplete. This fragmentation weakens nationwide coherence in sentencing practice.[56] Additionally, public perception plays a role in limiting utilisation. Where non-custodial sanctions are perceived as lenient or insufficiently punitive, judicial officers may favour custodial sentences to reinforce deterrence or maintain legitimacy. Penal theory suggests that the symbolic value of punishment influences sentencing choices.[57] Without sustained public education and institutional confidence in alternatives, courts may default to imprisonment.

The effectiveness of non-custodial measures also depends on monitoring and evaluation. Comparative jurisdictions demonstrate that successful community-based sanctions require structured reporting systems and performance oversight. For example, in systems where sentencing guidelines and probation structures are integrated, courts have confidence in alternative sanctions because compliance mechanisms are clearly defined. Nigeria currently lacks a comprehensive national sentencing guideline framework that systematically integrates non-custodial

53 ACJA, ss 453-460
54 Nigerian Correctional Service, (n 39)
55 Ashworth (n 7).
56 PRAWA (n 31)
57 Garland (n 38).

options into structured decision-making. While the ACJA introduced a progressive non-custodial sentencing regime, implementation challenges have limited its transformative impact. Structural deficiencies in probation services, uneven state adoption, limited funding, judicial caution, and public perception collectively constrain the practical use of alternatives to imprisonment. The persistence of these barriers demonstrates that legislative reform must be accompanied by institutional capacity building, sentencing guidance mechanisms, and coordinated inter-agency support. Only then can non-custodial measures fulfil their intended role in reducing custodial dependence and promoting proportional, rehabilitative justice.

v. Fragmented Legal Framework and Sentencing Incoherence

Nigeria's federal constitutional structure has produced a fragmented criminal justice framework that affects sentencing coherence and reform implementation. While criminal law and procedure operate within a shared constitutional order, legislative competence is divided between federal and state authorities. This structural division has resulted in multiplicity of substantive criminal laws, procedural statutes, and sentencing approaches across jurisdictions, thereby limiting uniformity in penal policy. Under the Constitution of the Federal Republic of Nigeria 1999, criminal law falls largely within the concurrent and residual legislative domains, except for offences specifically assigned to the Exclusive Legislative List.[58] Consequently, Nigeria operates dual criminal codes: the Criminal Code Act[59] and the Penal Code Act.[60] Although both Codes prescribe penalties, their sentencing structures, offence classifications, and punishment gradations differ. This duality creates doctrinal inconsistencies and variable sentencing outcomes for similar offences across regions.

The introduction of the ACJA sought to harmonise procedural law at the federal level and in the Federal Capital Territory. However, because criminal procedure is substantially within state legislative competence, states must enact corresponding ACJLs for uniform application. Adoption and implementation vary considerably across states. Some jurisdictions have enacted robust ACJLs incorporating non-custodial provisions and case management innovations; others have delayed enactment or implementation. This uneven uptake contributes to sentencing disparities and procedural inconsistencies nationwide.[61] The absence of a national sentencing guideline framework further exacerbates fragmentation. Unlike jurisdictions such as England and Wales, where the Sentencing Council issues binding guidelines, Nigeria lacks a centralised body that structures judicial discretion across federal and state courts. Sentencing remains largely discretionary, constrained primarily by statutory maximums and appellate review for manifest excessiveness or inadequacy.[62]

In interviews conducted with five judicial officers, respondents unanimously identified the absence of a national sentencing guideline framework as a major structural weakness in Nigeria's criminal justice system. Their reflections reveal concerns about disparity, unpredictability, and the limits of appellate correction as a harmonising mechanism.

A Federal High Court judge (Respondent FHC-1) observed:

> *"Sentencing in Nigeria is largely left to the discretion of the individual judge. While discretion is necessary, the absence of structured national guidelines means that two judges may impose very different sentences for similar offences, and both may technically be correct within statutory limits."*[63]

58 Second Schedule, Part II (Concurrent Legislative List).
59 Applicable primarily in Southern Nigeria
60 Applicable in Northern Nigeria
61 European Union Rule of Law and Anti-Corruption Programme (RoLAC), *ACJA/ACJL Implementation Status Report* (2019), 8–32
62 This challenge was emphasised by three judges of the Federal High Court and two State High Court judges
63 Judge of the Federal High Court, Jos

Another Federal High Court judge (Respondent FHC-2) emphasised the institutional consequences:

> *"We operate within statutory maximums and minimums, but beyond that there is no central framework that calibrates proportionality. Unlike England and Wales, where the Sentencing Council provides structured guidance, we rely mainly on precedent and personal judicial philosophy."*

A third Federal High Court judge (Respondent FHC-3) highlighted inconsistency across jurisdictions:

> *"Because Nigeria is federal, sentencing practices differ not only between judges but also between states. There is no coordinating body that ensures coherence across federal and state courts. This contributes to disparity."*

The State High Court judges echoed similar concerns. One State High Court judge (Respondent SHC-1) remarked:

> *"Appellate courts intervene only when a sentence is manifestly excessive or manifestly inadequate. But that threshold is high. Many inconsistencies remain uncorrected because they do not meet the appellate standard for interference."*

Another State High Court judge (Respondent SHC-2) focused on the impact on public confidence:

> *"The public often perceives sentencing as inconsistent or arbitrary. Structured guidelines would not remove discretion, but they would promote transparency and predictability. At present, much depends on the judge's individual approach."*

Collectively, the interviews reveal a shared judicial recognition that while discretion is constitutionally embedded and necessary for individualised justice, the absence of a national sentencing guideline framework contributes to fragmentation and uneven application of penal policy. The judges did not advocate rigid uniformity but expressed support for structured guidance that would enhance proportionality, reduce disparity, and strengthen coherence across jurisdictions.

While discretion allows contextual justice, its unstructured exercise risks disparity and unpredictability.

Judicial precedent provides some measure of coherence. The Supreme Court has articulated principles guiding sentencing discretion, including proportionality, deterrence, retribution, and rehabilitation. For example, in Okeke v State (2003) 15 NWLR (Pt 842) 25, the Court reaffirmed that sentencing must reflect the gravity of the offence and the circumstances of the offender. However, appellate oversight alone cannot fully harmonise sentencing practice across diverse jurisdictions with differing statutory frameworks.

Fragmentation also affects correctional policy. Although the Nigerian Correctional Service Act 2019 centralised custodial administration at the federal level, sentencing remains judicially determined within state and federal courts. This institutional separation means that correctional authorities must manage inmates sentenced under varying statutory regimes and procedural frameworks. The resulting administrative complexity complicates rehabilitation planning and population management.

Scholarly literature on federal criminal systems suggests that fragmentation can generate "penal pluralism," where multiple regimes coexist within a single state.[2] In Nigeria, this pluralism is amplified by customary law influences, Sharia criminal legislation in some northern states, and federal statutory offences (e.g., economic and financial crimes). The coexistence of these regimes, while constitutionally permissible, reduces national coherence in sentencing philosophy and practice.

The implications are significant. First, similarly situated offenders may receive materially different sentences depending on jurisdiction. Second, reform initiatives—such as non-custodial expansion—may achieve uneven success. Third, the absence of harmonised sentencing data limits empirical assessment and evidence-based reform.

Addressing fragmentation does not necessarily require centralisation. Rather, coordinated federal–state dialogue, model sentencing guidelines, judicial training, and intergovernmental harmonisation mechanisms could enhance coherence while respecting constitutional federalism. Without such coordination, sentencing reform risks being geographically uneven and inconsistent.

Nigeria's federal structure, while constitutionally grounded, contributes to fragmentation in substantive criminal law, procedural frameworks, and sentencing practice. This fragmentation weakens national coherence, complicates reform implementation, and sustains disparities. A more coordinated sentencing policy architecture, anchored in constitutional principles and supported by structured guidance, would strengthen uniformity while preserving judicial discretion.

vi. Limited Judicial Discretion in Certain Offences

While the Nigerian sentencing landscape is often characterised by broad judicial discretion, this discretion is significantly constrained in respect of certain categories of offences. In particular, statutory mandatory minimum penalties and fixed sentencing frameworks in specialised legislation limit the ability of judges to individualise punishment based on mitigating circumstances. This structural tension between discretion and legislative prescription presents a complex challenge within Nigeria's sentencing regime. Under the Robbery and Firearms (Special Provisions) Act[64], armed robbery involving firearms attracts mandatory capital punishment.[65] Similarly, provisions of the National Drug Law Enforcement Agency Act (NDLEA Act)[66] prescribe stringent minimum penalties for drug trafficking offences.[67] The Economic and Financial Crimes Commission (Establishment) Act 2004[68] also contains mandatory custodial sanctions for certain economic crimes, often with limited sentencing flexibility. Similarly, most provisions do not create strict mandatory minimum terms, except in limited respects. Instead, many sections prescribe imprisonment "for a term not exceeding" a stated number of years.[69] These statutory schemes reduce the sentencing court's capacity to tailor punishment proportionately to the offender's culpability and personal circumstances.

Mandatory sentencing provisions raise doctrinal and policy concerns. The principle of proportionality, widely recognised as central to modern sentencing theory, requires that punishment reflect both the gravity of the offence and the degree of offender culpability. However, where legislation prescribes fixed or mandatory minimum penalties, judicial discretion is curtailed even where mitigating factors such as youth, first-offender status, or minimal participation exist. The Nigerian appellate courts have acknowledged both the binding nature of statutory prescriptions and the limits of judicial intervention. In *Amoshima v State*[70], the Supreme Court affirmed that where the law prescribes a specific penalty, the court has no discretion to impose a lesser sentence. This underscores the primacy of legislative authority in defining penal consequences. Yet, it also highlights the structural narrowing of judicial flexibility in certain offence categories. Mandatory sentencing reflects a legislative commitment to

64 No. 5 1984, Cap R11 LFN 2004
65 Section 1(2)
66 Cap N30 LFN 2004
67 For example, under section 11, importation, etc., of cocaine, heroine or similar drugs, etc. attract imprisonment for life.
68 No. 1 2004, Cap E1 LFN 2004
69 Section 15(2)
70 (2011) 14 NWLR (Pt 1268) 530

deterrence and denunciation. In systems where mandatory penalties dominate, judges may be compelled to impose imprisonment even where rehabilitative or restorative measures would be appropriate. Furthermore, limited discretion in specified offences may produce tension with constitutional guarantees of dignity and fair hearing under the Constitution. While Nigerian courts have not broadly invalidated mandatory minimum provisions on constitutional grounds, academic debate continues regarding whether excessively rigid penalties comport with proportionality and humane treatment principles.[71]

It is also important to distinguish between offences with mandatory death sentences and those with mandatory minimum custodial terms. The former raise heightened constitutional and human rights concerns, particularly in light of evolving global standards on capital punishment. The latter, though less severe, may still restrict the meaningful exercise of sentencing discretion, especially where statutory minimums are high relative to the offender's role or harm caused. The coexistence of broad discretion in many offences and strict legislative prescription in others produces internal inconsistency within Nigeria's sentencing framework. In ordinary offences, judges exercise wide latitude; in specialised offences, they operate within rigid statutory confines. This uneven structure complicates efforts to promote coherent sentencing philosophy nationwide. Limited judicial discretion in certain offence categories constitutes a structural constraint within Nigeria's sentencing regime. While legislative prescription serves deterrent and symbolic purposes, excessive rigidity may undermine proportionality, reduce judicial capacity for individualised justice, and indirectly exacerbate custodial pressure.

vii. Weak Institutional Coordination

Effective sentencing and offender treatment depend not only on substantive criminal law but also on coordinated institutional action among agencies within the criminal justice chain. In Nigeria, however, coordination among the police, prosecution authorities, judiciary, correctional services, probation structures, and social welfare institutions remains inconsistent.[72] This institutional fragmentation undermines the coherent implementation of sentencing reforms introduced under the ACJA. The ACJA was designed to promote efficiency through improved case management, time limits for remand, plea bargaining regulation, and non-custodial sentencing mechanisms.[73] However, these reforms require inter-agency collaboration to function effectively. For example, community service orders depend on structured supervision; parole mechanisms require administrative monitoring; and restitution orders demand coordination between courts and enforcement agencies. Where institutional linkages are weak, statutory provisions remain underutilised.

One major coordination gap concerns the relationship between the judiciary and correctional authorities. Although sentencing is a judicial function, execution and supervision fall within the mandate of the Nigerian Correctional Service under the Nigerian Correctional Service Act 2019.[74] Effective implementation of non-custodial measures requires data sharing, offender tracking systems, and communication protocols between courts and correctional directorates. In practice, limited digital infrastructure and uneven administrative capacity impede seamless coordination. Institutional coordination challenges are also evident in plea bargaining processes. While the ACJA formally regulates plea negotiations, successful implementation requires alignment between prosecutorial

71 S Oguche**,** *'Development and Policy use of Criminal Justice Information and Statistics'* [2011] 7(2)*, Confluence Journal of Private and Property Law,* 1-11; C Eze, 'Mandatory Death Sentence in Nigeria: Constitutional and Human Rights Implications' [2011] 7(2) *Nigerian Juridical Review* 89; U Nwosu, 'The Mandatory Death Penalty and the Right to Fair Hearing in Nigeria' [2013] 9(1) *African Journal of International and Comparative Law* 112

72 Obioha (n 41)

73 ACJA, ss 15-16, 453-460.

74 Nigerian Correctional Service Act 2019, ss 2, 14-16.

discretion, judicial oversight, and enforcement of restitution or forfeiture orders. Assessments of criminal justice reform initiatives in Nigeria indicate that inter-agency cooperation varies across jurisdictions, affecting consistency in application.[75] Without harmonised operational standards, plea agreements and sentencing outcomes may differ substantially between courts. In jurisdictions with structured sentencing systems, coordination mechanisms, such as sentencing councils, probation services, and centralized data systems, enhance consistency and accountability.[76] Nigeria lacks a single national sentencing coordination body, which contributes to procedural variation and limits systematic monitoring of sentencing trends.

Furthermore, weak coordination affects prison congestion management. Where courts, prosecutors, and correctional authorities do not share reliable data on inmate populations, remand durations, and sentence completion timelines, overcrowding risks are exacerbated. Institutional silos prevent timely identification of eligible offenders for non-custodial alternatives, parole consideration, or early release mechanisms. Another dimension of coordination weakness concerns federal-state interaction. While the ACJA governs federal courts and the Federal Capital Territory, states must enact and implement their own ACJLs. Variations in enactment timing, administrative investment, and institutional readiness create disparities in reform implementation. This fragmentation underscores the absence of a comprehensive national coordination framework linking federal and state justice institutions. Without such mechanisms, statutory reforms risk uneven application and reduced effectiveness. Weak coordination thus represents not merely an administrative inconvenience but a systemic constraint on the transformative objectives of the ACJA. Strengthening institutional integration is therefore essential to ensuring coherence in sentencing practice, improving offender treatment outcomes, and advancing broader criminal justice reform in Nigeria.

viii. Inadequate Rehabilitation and Reintegration Programmes

A central objective of modern sentencing theory is not merely the imposition of punishment, but the transformation of offenders into law-abiding citizens. Contemporary criminal justice systems increasingly recognise rehabilitation and reintegration as essential components of sustainable public safety. In Nigeria, however, the institutional and structural capacity to deliver meaningful rehabilitation remains limited, thereby constraining the transformative potential of sentencing reform under the ACJA. The ACJA reflects a shift toward restorative and rehabilitative justice. Its provisions on non-custodial measures, compensation to victims, and case management reforms were designed to reduce recidivism and promote reintegration.[77] Furthermore, the Nigerian Correctional Service Act 2019 formally reoriented the former prison system into a "correctional service," signalling legislative commitment to rehabilitation. The Act explicitly includes rehabilitation, reformation, and reintegration among the statutory objectives of the Service.[78] Despite these commitments, implementation remains uneven. Rehabilitation programmes in many custodial centres are constrained by overcrowding, inadequate funding, limited vocational facilities, and insufficient professional staff.[79] Educational and vocational training opportunities exist in some urban custodial centres but are inconsistent nationwide. The rehabilitative function is frequently subordinated to custodial containment, particularly in facilities operating far beyond designed capacity.

Overcrowding significantly undermines correctional programming. When custodial centres house populations

75 Centre for Socio-Legal Studies, *Implementation of the Administration of Criminal Justice Act (ACJA) 2015: Challenges and Prospects* (2018).
76 Ashworth (n 7).
77 ACJA, ss 453-460 (non-custodial measures).
78 Section 2
79 Obioha (n 41) 95

exceeding their infrastructural capacity, administrative resources are diverted toward basic security and survival needs. Under such conditions, structured rehabilitation programmes, such as psychological counselling, vocational skills development, and reintegration planning, become secondary priorities. This dynamic produces what penal scholars describe as "warehousing," where incarceration serves primarily a custodial rather than corrective function.[80] Reintegration challenges extend beyond custodial facilities. Effective reintegration requires coordinated post-release support systems, including employment assistance, housing access, psychosocial counselling, and community supervision. Nigeria lacks a comprehensive statutory framework governing post-release reintegration comparable to structured parole or probation services in more institutionalised jurisdictions. Although the ACJA provides for non-custodial measures such as probation and community service, operational capacity remains limited in several states.

The consequences of weak reintegration frameworks are reflected in patterns of recidivism. While comprehensive national recidivism data remain limited, correctional and reform reports suggest that economic marginalisation, social stigma, and lack of structured reintegration pathways contribute to reoffending risks.[81] In the absence of systematic reintegration programmes, sentencing reform may reduce custodial admissions without sufficiently addressing underlying criminogenic factors. Furthermore, societal stigma presents an additional barrier. Former offenders frequently encounter discrimination in employment and housing, undermining reintegration efforts.[82] Without legislative or policy mechanisms addressing post-release discrimination, rehabilitation remains incomplete. The criminal justice system alone cannot achieve reintegration without complementary social policy interventions. While Nigeria's legislative framework increasingly recognises rehabilitation and reintegration as core sentencing goals, structural limitations impede their effective realization. The transformation of punitive institutions into genuinely corrective systems remains an ongoing reform challenge within Nigeria's criminal justice architecture.

ix. Poor Implementation of the ACJA and State-Level Variants (ACJLs)

The enactment of the ACJA represented a watershed moment in Nigeria's criminal justice reform trajectory. It sought to modernise criminal procedure, reduce delays, expand non-custodial sentencing, regulate plea bargaining, and promote restorative justice mechanisms. However, the transformative promise of the ACJA has been undermined by uneven and sometimes superficial implementation at both federal and state levels. The gap between legislative ambition and institutional practice constitutes a significant structural challenge in Nigeria's sentencing framework.

Nigeria's federal structure creates an inherent implementation complexity. The ACJA applies to federal courts and the Federal Capital Territory. For nationwide uniformity, individual states must enact corresponding Administration of Criminal Justice Laws (ACJLs). Although many states have adopted ACJL variants, the timing, scope, and fidelity of adoption differ considerably. Some states enacted laws closely mirroring the federal ACJA; others introduced modifications or experienced significant delays before implementation.[83] Variations occur not only in legislative text but also in operational readiness.[84] For example, while the ACJA provides for non-custodial

80 Tonry (n 5) 15-18
81 Nigerian Correctional Service, *Annual Report 2022* (on reintegration and correctional programming challenges).
82 Oguche (n 71) 8
83 A O Akinsulore, 'The Nigeria Police Philosophy and Administration of Criminal Justice Post 2015: Interrogating the Dissonance' [2020] 4 *Sriwijaya Law Review* 136.
84 Centre for Socio-Legal Studies, *Implementation of the Administration of Criminal Justice Act (ACJA) 2015: Challenges and Prospects* (2018).

sentencing units, plea bargaining regulation, and case management timelines, effective implementation depends on trained personnel, funding, and institutional coordination. In several states, these supporting structures remain underdeveloped.

Part 44 of the ACJA establishes a legal framework for non-custodial measures, including community service, probation, and parole-like supervision mechanisms.[85] Yet, practical enforcement remains limited in certain jurisdictions. Reports from reform monitoring bodies indicate that non-custodial units are fully operational in some states but either partially functional or dormant in others.[86] This inconsistency produces disparities in sentencing outcomes. Offenders convicted of comparable offences may receive different sanctions depending on whether functional community service infrastructure exists in the relevant jurisdiction. Thus, legislative uniformity does not automatically translate into practical equality.

Furthermore, the ACJA introduced innovative case management provisions, including day-to-day trial requirements in certain circumstances and restrictions on stay of proceedings in criminal matters.[87] However, compliance varies. Judicial workload pressures, prosecutorial capacity constraints, and infrastructural deficiencies have limited full realisation of expedited trial objectives. Similarly, remand time limits introduced to curb excessive pre-trial detention depend on active judicial monitoring and prosecutorial diligence. Where oversight mechanisms are weak, remand reforms lose practical effectiveness.

Plea bargaining implementation gaps present another dimension of the challenge. The ACJA formally regulates plea bargaining[88], introducing transparency and judicial oversight. Nonetheless, application differs across jurisdictions. In some courts, plea bargaining is routinely utilised in financial and corruption cases; in others, its use remains limited or procedurally inconsistent. Lack of uniform prosecutorial guidelines and uneven judicial familiarity contribute to variation in outcomes.

A further challenge lies in limited data collection and performance evaluation mechanisms. Effective implementation requires systematic tracking of number of non-custodial sentences imposed; duration of remand detention; plea bargaining outcomes; and recidivism rates following non-custodial supervision. Nigeria lacks a fully integrated national criminal justice data system capable of generating reliable cross-jurisdictional comparisons. This data deficiency impedes evidence-based reform and weakens accountability.

The cumulative effect of these implementation gaps is sentencing fragmentation. Although the ACJA aspires to harmonise criminal procedure and promote rehabilitative sentencing, inconsistent operationalisation undermines uniformity. Reform becomes jurisdiction-dependent rather than nationally coherent. Poor implementation risks transforming progressive legislation into symbolic reform. Without consistent enforcement, statutory innovations fail to reshape sentencing culture substantively. This implementation deficit therefore represents not merely an administrative shortcoming but a structural impediment to systemic transformation.

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85 ACJA, ss 453-460

86 European Union Rule of Law and Anti-Corruption Programme (RoLAC), *ACJA/ACJL Implementation Status Reports* (2019–2022).

87 ACJA, ss 306, 396.

88 Ibid, s 270

RECOMMENDATIONS

Against the backdrop of the foregoing, is is obvious that addressing the challenges associated with sentencing and the treatment of offenders in Nigeria requires a comprehensive reform strategy that aligns legal provisions with contemporary penal objectives of fairness, proportionality, rehabilitation, and reintegration. The identified shortcomings, ranging from sentencing disparities to weak correctional systems, underscore the need for both legal and institutional transformation.

First, a fundamental solution lies in the development and institutionalisation of clear sentencing guidelines. The absence of structured guidance for judicial officers has contributed to inconsistencies and disparities in sentencing. Establishing a sentencing framework, possibly through a Sentencing Council or similar body, would promote uniformity, transparency, and predictability in judicial decisions while preserving judicial discretion within defined parameters. Such a framework should incorporate principles such as proportionality, deterrence, and rehabilitation.

Second, there is need for the expansion and effective implementation of non-custodial measures. Although existing laws provide for alternatives such as probation, community service, and restorative justice mechanisms, their application remains limited. Strengthening non-custodial sentencing would reduce prison overcrowding, lower recidivism rates, and enable offenders, particularly those convicted of minor offences, to remain productive members of society. This requires adequate funding, institutional support, and public awareness to build confidence in alternatives to incarceration.

Third, Improving correctional infrastructure and rehabilitation programmes should be prioritised. Correctional facilities in Nigeria are often overcrowded and under-resourced, limiting their capacity to reform offenders. Investment in modern facilities, vocational training, educational programmes, and psychological support services is necessary to transform prisons from punitive centres into rehabilitative institutions. Tailored programmes should be developed to address the specific needs of different categories of offenders, including juveniles, women, and first-time offenders.

Fourth, judicial and institutional capacity building also represents a key solution. Judges, prosecutors, and correctional officers require continuous training on modern sentencing practices, human rights standards, and evidence-based approaches to offender management. Enhancing the capacity of these actors will improve decision-making, promote best practices, and ensure that sentencing aligns with both legal standards and societal expectations.

Fifth, strengthening legal provisions on offender reintegration is vital. Post-release support mechanisms, such as parole supervision, halfway homes, employment assistance, and social reintegration programmes, should be institutionalised. Without effective reintegration strategies, released offenders face significant barriers that increase the likelihood of reoffending. Collaboration with civil society organisations and the private sector can play a significant role in facilitating successful reintegration.

Sixth, there is a need to integrate restorative justice principles into the Nigerian criminal justice system. Restorative justice emphasises accountability, victim participation, and reconciliation, offering a more holistic approach to justice. Incorporating such mechanisms, particularly in appropriate cases, can reduce reliance on custodial sentences and promote healing for both victims and offenders.

Finally, legislative reform must remain continuous and responsive. Existing laws should be periodically reviewed

to reflect evolving societal values, international best practices, and empirical evidence on what works in criminal justice. Harmonisation of federal and state laws is also necessary to ensure consistency in sentencing and offender treatment across the country.

Conquering the challenges of sentencing and offender treatment in Nigeria requires a multi-dimensional approach that combines legal reform, institutional strengthening, and a shift toward rehabilitative and restorative justice models. By adopting these measures, Nigeria can build a more effective, humane, and balanced criminal justice system that not only punishes offenders but also promotes their reformation and reintegration into society.

CONCLUSION

Sentencing and the treatment of offenders in Nigeria remain critical components of the broader criminal justice system that require sustained reform and modernization. While the Administration of Criminal Justice Act and related legislative developments have introduced important improvements, significant gaps persist in achieving consistency, fairness, and effectiveness in sentencing practices and correctional management. The challenges of sentencing disparities, prison congestion, limited non-custodial alternatives, and inadequate rehabilitation structures continue to undermine the objectives of punishment, deterrence, and reformation. The comparative analysis with the United Kingdom, Canada, and South Africa demonstrates that a more structured and reform-oriented approach to sentencing and offender treatment is both possible and desirable. These jurisdictions provide useful models through sentencing guidelines, restorative justice practices, and well-developed rehabilitation and reintegration systems. Nigeria can draw valuable lessons from these experiences while tailoring reforms to its unique socio-legal context.

Adoption of a holistic reform agenda that prioritises structured sentencing, expands non-custodial measures, strengthens correctional institutions, and enhances post-release reintegration mechanisms. Equally important is the need to embed restorative justice principles and ensure continuous capacity building for justice sector actors. By pursuing these reforms, Nigeria can move towards a more balanced system that not only punishes wrongdoing but also promotes rehabilitation, reduces recidivism, and strengthens public confidence in the administration of justice.

06

THE WOMB IN LIMBO: A COMPARATIVE STUDY OF LEGAL MOTHERHOOD AND CULTURAL TENSIONS IN NIGERIAN SURROGACY

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ABSTRACT

Surrogacy in Nigeria operates in a precarious space, caught between a profound legal vacuum and a deep-seated cultural bedrock that views the practice with suspicion. While not expressly prohibited, the absence of a specific national law creates uncertainty over legal motherhood, leaving the rights of children, surrogates, and intended parents dangerously unprotected. This paper argues that navigating these legal and cultural tensions requires a structured comparative analysis to formulate a viable regulatory framework. The study employs a comparative legal research methodology, critically analysing the established surrogacy models of the United Kingdom, with its welfare-oriented, post-birth parental order system, and South Africa, with its rights-based, pre-authorisation approach. The analysis finds that while the UK model offers robust court-supervised safeguards, its post-birth legal limbo is a significant drawback. Conversely, the South African model provides superior legal certainty from birth through mandatory pre-conception screening and High Court approval. The study therefore suggests a hybrid model for Nigeria, integrating South Africa's proactive legal structure with the UK's strong welfare and consent ethos. However, key implementation challenges are identified, including Nigeria's federalist legal structure, an overburdened judiciary, potential religious opposition, and risks of high costs creating elitist access. To overcome these, the paper recommends adopting a phased legislative approach via a Model Surrogacy Act, establishing specialised family divisions within High Courts, launching targeted stakeholder engagement, and embedding equity safeguards like standardised contracts and legal aid for surrogates. This tailored framework aims to resolve the current limbo by providing legal clarity while respectfully navigating Nigeria's unique socio-cultural landscape.

Introduction

Surrogacy, a form of assisted reproductive technology (ART), has become one of the most debated reproductive innovations in Nigeria's legal and socio-cultural landscape. It involves an arrangement in which a woman (the surrogate) carries and delivers a child on behalf of another person or couple, often because of infertility, health challenges or medical complications.[1] Surrogacy in Nigeria exists in a state of profound legal ambiguity,

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1 O. S. Adelakun, 'The Concept of Surrogacy in Nigeria' *African Human Rights Law Journal* (2018) (18) (2).

creating a precarious landscape for all parties involved. While the practice is not expressly prohibited, it operates without formal legal recognition or a comprehensive national framework.[2] This regulatory vacuum fails to address fundamental questions of legal parentage, leaving the status of the child, the rights of the surrogate, and the protections for the intended parents dangerously uncertain.[3] The absence of a clear legal pathway to transfer motherhood from the birth mother to the intended parents means that surrogacy agreements are largely unenforceable, rendering the concept of legal motherhood fluid and contested.[4] This legal limbo forces participants to navigate a system ill-equipped to handle the complexities of assisted reproductive technology, prioritising ad-hoc solutions over guaranteed rights.[5]

Given these complex legal, religious, and socio-cultural dynamics, surrogacy in Nigeria stands at a crucial turning point. While surrogacy is not expressly prohibited in Nigeria, it's also not legally acknowledged. The country has seen attempts to regulate surrogacy, notably with the introduction of the Assisted Reproductive Technology (Regulation) Bill 2015 and the most recent Surrogacy Bill 2024.[6] However, this bill is yet to become a law, leaving a legal gap in the protection and regulation of surrogacy contracts. Lagos State stands as an exception, having introduced guidelines on Assisted Reproductive Technology in 2019 which are yet to be replicated in other states.[7] These guidelines specifically address issues such as registration and accreditation for ART clinics with the Health Facility Monitoring and Accreditation Agency (HEFAMAA), setting minimum standards for clinical practice, monitoring, enforcement and establishing a regulatory body to oversee ART practices. This pioneering effort by Lagos highlights both the potential for and the stark reality of the fragmented regulatory approach across the nation's states.[8]

This patchwork governance exists alongside deep-seated cultural and religious tensions. In a society where lineage and biological motherhood are deeply valued, surrogacy challenges traditional notions of family and kinship.[9] Religious doctrines often view the practice with suspicion, further complicating social acceptance and creating a environment where intended parents and surrogates may face stigma.[10] Consequently, the pressing need for a coherent legal framework is not merely a technical necessity but a socio-legal imperative to resolve the conflict between evolving family forms and established norms, ensuring the welfare and security of the child, the surrogate, and the intended parents alike. Given this complex domestic landscape, a purely internal analysis is insufficient. This research adopts a comparative legal methodology to illuminate pathways forward. By examining the established surrogacy frameworks of jurisdictions such as the United Kingdom, with its welfare-focused, regulated model, and South Africa, with its progressive, pre-authorisation approach. The comparative analysis is not for direct transplantation, but to distil actionable insights. The ultimate aim is to propose a coherent and culturally sensitive legal framework for Nigeria. one that can resolve the current limbo by providing legal certainty while respectfully navigating the nation's unique socio-cultural realities.

2 A. Adewunmi, 'Legal Parenthood in Surrogacy Arrangements: A Nigerian Dilemma' *Nigerian Journal of Law and Society* (2021) (12) (3) 45-62.

3 C. Okeke, 'The Cultural Contours of Childbearing: Surrogacy and Kinship in Modern Nigeria' *Journal of African Anthropology* (2022) (27) (1) 88-105.

4 A. Adewunmi, 'Legal Parenthood in Surrogacy Arrangements: A Nigerian Dilemma' *Nigerian Journal of Law and Society* (2021) (12) (3) 45-62.

5 Ibid.

6 Assisted Reproductive Technology (Regulation) Bill 2015 and Surrogacy Bill 2024 currently being considered by the Nigerian National Assembly.

7 Lagos State Assisted Reproductive Technology in 2019.

8 Ibid.

9 C. Okeke, 'The Womb is Not a Rented Apartment: Surrogacy, Cultural Identity, and the Challenges of Legal Integration in Nigeria' *Journal of African Law and Society* (2022) (8) (2) 211-230.

10 B. Olakunde and O. Adeyemi, 'Societal and Religious Perspectives on Surrogacy in Nigeria: A Review of the Literature' *Nigerian Journal of Bioethics* (2023) (14) (1) 22-35.

2. The Nigerian Landscape

The practice of surrogacy in Nigeria is uniquely characterised by a stark contradiction: it is a medically available procedure thriving in a near-total legal void, while being simultaneously constrained by a powerful and immutable cultural bedrock. This dichotomy creates a high-risk environment where the absence of state regulation is not a form of liberal permission but a vacuum filled by legal uncertainty and deep-seated social norms. An examination of Nigeria's surrogacy landscape reveals a complex interplay between a non-existent of adequate legal framework and a deeply entrenched religious and cultural systems that together shape the practice's precarious existence.

a. The Legal Vacuum

Nigeria operates without a single, national law specifically governing surrogacy arrangements. This legislative silence constitutes a profound legal vacuum, leaving the rights and obligations of all parties, the intended parents, the surrogate, and the resulting child, in a state of dangerous ambiguity. The foundational legal principle of mater semper certa est ("the mother is always certain"), which attributes motherhood to the woman who gives birth, remains the default position in Nigerian common law.[11] In a surrogacy arrangement, this automatically vests legal motherhood in the surrogate, irrespective of any genetic connection or prior agreement.[12] The intended parents, therefore, have no automatic legal claim to the child. To secure their parental rights, they must embark on the complex, costly, and uncertain legal processes of adoption or wardship, which were not designed for this context and offer no guarantees.[13] This legal gap has national implications, as federal attempts to legislate, such as the stalling Assisted Reproductive Technology Bill, have repeatedly failed to pass into law, perpetuating a cycle of neglect and leaving the nation without a unified directive.[14]

While the federal government has remained inactive, Lagos State has emerged as a partial pioneer, introducing its Guidelines on Assisted Reproductive Technology in 2019. These guidelines represent the first and only sub-national effort to regulate the field, establishing standards for clinic accreditation, informed consent, and the screening of participants. However, their scope is limited; they provide a framework for the medical practice of ART but fall short of comprehensively resolving the core legal quandary of parentage. They do not create a clear, administrative pathway for the transfer of legal parenthood from the surrogate to the intended parents, meaning the fundamental issue of "legal motherhood" remains unresolved even under this progressive regime.[15] Consequently, outside of Lagos, and even within it, surrogacy agreements are largely underpinned by unenforceable or poorly drafted contracts, leaving the entire arrangement vulnerable to exploitation and breach.

b. The Cultural Bedrock

If the legal landscape is defined by its emptiness, the cultural landscape is defined by its overwhelming presence. The practice of surrogacy in Nigeria is deeply enmeshed within a cultural bedrock that prizes biological lineage, communal identity, and traditional motherhood.[16] In many Nigerian cultures, a woman's identity and social status

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11 U. Nwabueze, 'The Legal Status of Surrogacy in Nigeria: An Examination of the Common Law Doctrine of Mater Semper Certa Est and its Modern Challenges' *Journal of African Law* (2021) (65) (2) 287-305.

12 A. Akinola, 'Surrogacy and the Principle of Mater Semper Certa Est: A Nigerian Legal Conundrum' Journal of Health and Law (2020) (5) (2) 34-48.

13 Ibid.

14 Assisted Reproductive Technology (Regulation) Bill, 2016.

15 O. Sofunde, L. Osipo, and F. Adekoya, 'Beyond the Clinic: The Legal Limitations of the Lagos State ART Guidelines in Resolving Surrogacy Disputes' *Lagos Bar Journal* (2021) (14) (4) 12-29.

16 T. Afolabi, 'The Child as a Cultural Artefact: Surrogacy, Kinship, and the Re-negotiation of Motherhood in Contemporary Nigeria' *African Journal of Social Sciences* (2023) (14) (2) 45-63.

are often intrinsically linked to her ability to bear children for her husband's lineage. Surrogacy, by separating genetic contribution, gestation, and social parenting, directly challenges these entrenched norms. It introduces a third party into the sacred realm of procreation, creating anxieties about the "true" ownership of the child and potentially disrupting patrilineal inheritance structures.[17] This cultural dissonance is not merely a social concern; it is a powerful deterrent that can lead to familial rejection and social stigma for both the surrogate, who may be seen as "selling" her child, and the intended mother, who may be perceived as failing in a fundamental wifely duty.

Religious doctrine further solidifies this cultural resistance. Nigeria, a nation with deeply devout Christian and Muslim populations, often finds its cultural views on procreation reinforced by religious teachings. Many conservative religious leaders frame surrogacy as an unnatural interference with God's will and a form of adultery or "womb renting" that violates the sanctity of marriage.[18] This powerful fusion of cultural and religious suspicion creates a hostile environment for surrogacy, pressuring intended parents to pursue arrangements in secrecy and increasing the psychological burden on all involved. The cultural bedrock, therefore, acts as an informal but potent regulatory force, one that often poses a more immediate and formidable obstacle to the acceptance and safe practice of surrogacy than the absence of formal law.[19]

The Nigerian surrogacy landscape is a tale of two realities. Above lies a vast legal vacuum, a silence from the state that breeds uncertainty, insecurity, and legal risk for children and adults alike. Below lies an unyielding cultural bedrock, a set of powerful norms and beliefs that view surrogacy with deep suspicion and impose a heavy social cost.[20] This contradiction forces surrogacy to operate in the shadows, caught between a state that does not regulate it and a society that often condemns it. Navigating this complex terrain requires more than just transplanting a legal model from another jurisdiction; it demands a uniquely Nigerian solution, one that boldly addresses the legal void with clear, compassionate legislation, while simultaneously engaging with the cultural and religious communities to build understanding and forge a path that respects both individual reproductive aspirations and deeply held communal values.[21]

3. Comparative Jurisdictions

The legal vacuum surrounding motherhood in Nigerian surrogacy necessitates looking outward to established regulatory models. A comparative analysis of the United Kingdom and South Africa provides a critical lens through which to evaluate potential pathways for reform. These jurisdictions offer contrasting yet instructive approaches to resolving the core question of legal parentage, balancing the rights of the surrogate with the intentions of the commissioning parents, all within a structured legal framework.

i. The United Kingdom

The United Kingdom's approach to surrogacy is a historically significant, welfare-oriented model born from early

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17 L. Ezeogu, 'Lineage, Land and the Child: How Surrogacy Challenges Patrilineal Kinship in Nigeria' *African Journal of Social and Cultural Studies* (2022) (18) (3) 77-95.

18 F. Ibrahim, 'A House Divided? Christian and Islamic Perspectives on Surrogacy in Nigeria' *Nigerian Journal of Religion and Society* (2019) (11) (1) 55-70.

19 A. Bello, and P. Oni, 'The Social Stigma of Surrogacy in Nigeria: Navigating Secrecy, Faith, and Familial Pressures' *Nigerian Journal of Sociology and Psychology* (2024) (12) (1) 88-107.

20 M. Chukwuemeka, 'Governance in the Shadows: The Legal Void Surrounding Assisted Reproduction in Nigeria' *Journal of African Law and International Development* (2022) (8) (4) 112-129.

21 Ibid.

ethical debates and progressive legislation. As one of the first countries to formally address surrogacy through statute, its framework was established by the Surrogacy Arrangements Act 1985, which, while prohibiting commercial surrogacy, laid the groundwork for non-profit arrangements. This was substantially refined by the Human Fertilisation and Embryology Act 1990 (and its 2008 amendments), which created the foundational legal mechanism, the Parental Order, for transferring parenthood.[22] The UK model is not designed to facilitate surrogacy easily, but to manage it cautiously, prioritising the paramountcy of the child's welfare and ensuring the surrogate's informed consent is central and protected within a strictly regulated, non-commercial environment.[23]

Surrogacy Arrangements Act 1985

The Surrogacy Arrangements Act 1985 (SAA 1985) represents the United Kingdom's initial legislative response to the complex ethical and legal questions raised by surrogacy, largely prompted by the public and political reaction to the first commercial surrogacy agencies.[24] It is a narrow, cautious piece of legislation that does not create a framework for enforcing surrogacy agreements but rather focuses on regulating the making of such arrangements and prohibiting commercial intermediation.

1. Key Provisions and Legal Mechanics

The Act's core provisions can be broken down into several key areas:

1. Prohibition on Commercial Surrogacy Arrangements.[25] This is the central pillar of the Act. It makes it a criminal offence for a third party to initiate or take part in any negotiations with a view to creating a surrogacy arrangement on a commercial basis. Similarly, it is an offence to compile any information with a view to its use in making a commercial surrogacy agreement. Crucially, this prohibited "third party" does not include the surrogate mother or the commissioning parents themselves, who can legally negotiate between themselves.[26]
2. Perhaps the most significant legal consequence established by the Act is that no surrogacy arrangement is enforceable by or against any of the parties.[27] This means that if a surrogate decides to keep the child, the commissioning parents have no contractual recourse under the agreement. Conversely, if the commissioning parents refuse to accept the child, the surrogate cannot sue them for breach of contract. This principle firmly establishes that parenthood cannot be dictated by a pre-conception contract.[28]
3. The Act prohibits the publication or distribution of advertisements indicating that a person is seeking a surrogate, is willing to act as a surrogate, or is seeking to initiate a surrogacy arrangement on a commercial basis. This was intended to prevent the growth of a commercial surrogacy industry akin to that seen in other jurisdictions.[29]

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22 M. Brazier, S. Golombok, and A. Campbell, 'Surrogacy: review for the UK Health Ministers of current arrangements for payments and regulation' *Human Reproductive Update* (1997) (3) (6) 623- 6288.
23 Ibid.
24 Ibid.
25 Section 2 SAA 1985.
26 K. Horsey, 'The Surrogacy Arrangements Act 1985: A Critical Appraisal' In: Horsey, K. (Ed.) *Revisiting the Regulation of Human Fertilisation and Embryology* (London: Routledge 2018) 112-130.
27 Brazier, Golombok and Campbell (n 22).
28 Section 1A of the SAA, 1985.
29 Section 3 SAA 1985.

2. Limitations and Subsequent Legislative Development

The SAA 1985 was widely recognised as an incomplete and reactive statute. Its primary limitations include:

1. The Act did nothing to alter the fundamental principle of English law that the woman who gives birth is the legal mother (mater semper certa est) and her husband, if consented, is the legal father. It created a prohibition but provided no legal pathway for the commissioning parents to become the child's legal parents.[30]
2. The Creation of a Legal "Lacuna. By making agreements unenforceable but not providing an alternative, the Act left commissioning parents and surrogates in a state of legal uncertainty. The only route to parenthood for intended parents was through adoption, which was often an ill-fitting and stressful process.[31]
3. The profound gaps in the SAA 1985 necessitated further legislation just five years later. The Human Fertilisation and Embryology Act 1990 (HFEA 1990) introduced the vital Parental Order mechanism.[32] This provided a bespoke, post-birth court order that could transfer legal parenthood from the surrogate to the commissioning parents, provided specific criteria were met. This made the SAA 1985 part of a broader regulatory tapestry rather than a standalone solution.[33]

3. Enduring Legacy and Modern Relevance

Despite its limitations, the SAA 1985 continues to shape UK surrogacy law today. Its core tenets, the unenforceability of agreements and the prohibition of commercial surrogacy, remain in force. However, the practical landscape has evolved. The UK courts have demonstrated a flexible approach, for instance, by allowing payments to surrogates beyond "reasonable expenses" to be authorised retrospectively by a judge when granting a Parental Order, provided the agreement was otherwise sound and the payment was not so disproportionate as to be exploitative.[34]

Human Fertilisation and Embryology Act 1990

The Human Fertilisation and Embryology Act 1990 (HFEA 1990) represents the United Kingdom's pioneering and comprehensive legislative framework governing assisted reproduction and embryo research. Enacted following the landmark Warnock Report (1984), it established a principled regulatory system that has influenced jurisdictions worldwide.[35] While extensively amended by the HFEA 2008, its foundational architecture remains central to UK law.

1. Key Provisions and Regulatory Architecture

The Act's significance lies in its creation of a robust regulatory structure and its direct engagement with the legal status of parties in assisted reproduction.

The Act created the Human Fertilisation and Embryology Authority (HFEA), a statutory body tasked with

30 E. Jackson, *Law and the Regulation of Medicines* (Oxford: Hart Publishing 2021).

31 Law Commission of England and Wales and the Scottish Law Commission. (2019). Building Families Through Surrogacy: A New Law. (Law Com No. 244, Scot Law Com No. 256).

32 s.54 of the HFEA 2008.

33 Jackson (n30).

34 Re C (Parental Order) [2013] EWHC 2413. Furthermore, the Act's framework is currently under review, with the Law Commission of England and Wales and the Scottish Law Commission having proposed a new, more supportive regulatory model that would move away from the purely prohibitive stance of the 1985 Act while retaining its protective ethos.

35 Report of the Committee of Inquiry into Human Fertilisation and Embryology (Her Majesty's Stationery Office, 1984).

licensing and monitoring all IVF clinics, sperm/egg donation services, and embryo research in the UK. The HFEA maintains a detailed Code of Practice that provides binding guidance to clinics, ensuring consistent ethical and clinical standards.[36]

This was the Act's most critical contribution to surrogacy law. It provided statutory clarity on the question of legal motherhood that the Surrogacy Arrangements Act 1985 had ignored.[37] Firmly established that the woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs is, and must be treated as, the mother of the child. This applied irrespective of genetics, thereby codifying the mater semper certa est principle for all pregnancies, including surrogacy. While Section 28 Defined the legal fatherhood in IVF treatments, generally attributing it to the mother's husband or partner unless he did not consent.[38]

The Act created a bespoke court order, the Parental Order, that allowed commissioning parents in a surrogacy arrangement to become the child's legal parents, replacing the surrogate and her partner (if applicable) on the birth certificate.[39] The original criteria required the applicants to be married and for the child to be genetically related to at least one of them.[40]

The Act set out a detailed licensing system for any creation, storage, or use of human embryos outside the body. It explicitly prohibited certain practices, such as placing human embryos in an animal, and set time limits for embryo storage.[41]

2. Relationship with the Surrogacy Arrangements Act 1985

The HFEA 1990 did not repeal the 1985 Act but rather complemented and completed it. While the SAA 1985 focused on prohibiting commercialisation and making agreements unenforceable, the HFEA 1990 provided the essential solution to the legal parenthood problem the earlier Act had created. Together, they formed a coherent, if imperfect, system: surrogacy agreements remained non-binding, but a clear, post-birth judicial pathway to legal parenthood was now available.[42]

The HFEA 1990's legacy is profound. It demonstrated that assisted reproduction could be governed by a clear, ethical, and flexible statutory framework. Its establishment of the HFEA as an expert regulator is considered a model of good governance. However, it has faced criticism. The six-month time limit for applying for a Parental Order and the strict genetic link requirement have been sources of litigation and hardship, though courts have sometimes used their inherent jurisdiction to mitigate harsh outcomes where the welfare of the child demanded it.[43] These issues, among others, are central to the current Law Commission proposals for a reformed surrogacy law.

ii. South Africa

South Africa's approach to surrogacy is a pioneering and progressive model within Africa, established by the Children's Act 38 of 2005. This framework emerged from the nation's transformative post-apartheid Constitution,

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36 Human Fertilisation and Embryology Act 1990 (c. 37). London: HMSO.
37 ss 27-30 of HFEA.
38 Section 28 of HFEA.
39 s 30 of the HFEA.
40 M. H. Johnson, 'The Legacy of the Human Fertilisation and Embryology Act 1990: A Critical Appraisal' *Journal of Medical Ethics* (2021) (47) (9) 603-606.
41 N. Gamble, and L. Ghevaert *A Practical Guide to Parental Orders: Law, Policy and Procedure* (London: LexisNexis 2022).
42 Ibid.
43 (Re X (A Child) (Parental Order: Time Limit) [2014] EWHC 3135 (Fam).

which enshrines a rights-based jurisprudence, including the rights to dignity, equality, and bodily autonomy.[44] The Act was designed to provide legal certainty in the realm of assisted reproduction, moving decisively away from the common law principle of mater semper certa est.[45] Unlike the UK's remedial model, the South African system is fundamentally proactive and pre-emptive.[46] It mandates that a surrogacy agreement must be confirmed by the High Court before conception, ensuring that all ethical and legal safeguards are met and that the intended parents are recognised as the legal parents from the moment of the child's birth.[47] This pre-authorisation process reflects a legislative intent to protect the welfare of the future child, the autonomy of the surrogate, and the rights of the commissioning parents by preventing the very legal ambiguities that plague other jurisdictions.

Key provisions of the Act

The South African Children's Act provides one of the most comprehensive regulatory frameworks for surrogacy in Africa. Its key provisions, found primarily in Chapter 19 (Sections 292-297), establish a rigorous, court-supervised process designed to protect all parties, especially the child.[48]

1. Pre-Conception Court Authorisation. This is the cornerstone of the South African model. A surrogacy agreement is unenforceable and void unless it is confirmed by a High Court before the artificial fertilisation procedure takes place.[49] The court must be satisfied that the agreement is in the best interests of the future child.
2. Stringent Eligibility Criteria for the Surrogate Mother. The Act imposes specific requirements to protect the surrogate, including age, atleast 18 years old; that She must have at least one living child of her own; She must have undergone appropriate medical and psychological evaluation; She must have entered into the agreement out of altruistic motives (commercial surrogacy is prohibited); and that She must have independent legal advice before signing the agreement.[50]
3. Stringent Eligibility Criteria for the Commissioning Parents. The intended parents must also meet specific criteria: They must be permanently resident in the Republic; the gametes of at least one of the commissioning parents must be used in the fertilisation process (a genetic link is required); they must be incompatible to conceive a child naturally or unable to do so without a risk of serious medical complications; they must also have undergone appropriate medical and psychological evaluation; and that both they and their gametes must be screened for genetic or medical conditions.[51]
4. Legal Parentage and the Effect of a Valid Agreement. Upon the birth of the child, and provided the agreement was validly confirmed by the court, the commissioning parents are deemed the legal parents from birth. The surrogate mother and her husband/partner (if she has one) have no parental rights or responsibilities towards the child.[52] This provision provides immediate legal certainty and avoids the post-birth legal limbo present in other models like the UK's.
5. The surrogate mother has the right to terminate the agreement in writing at any time before the embryo(s)

44 M. Slabbert, 'Surrogacy in South Africa: A Legislative and Judicial Analysis' *Stellenbosch Law Review* (2019) (30) (2) 345-367.
45 Ibid.
46 E. Bonthuys, 'The Constitutional Family: Surrogacy and the Best Interests of the Child in South African Law'. *South African Journal on Human Rights,* (2020. (36) (1) 78-99.
47 H. Kruuse, 'A Beacon for the Continent? An Analysis of South Africa's Regulated Surrogacy Framework' *Journal of African Law* (2021) (65) (3) 421-440.
48 Chapter 19 (Sections 292-297)
49 Section 292 of the Act
50 Ibid.
51 Section 293 of the Act
52 Section 297 of the Act

are placed in her womb.53 This protects her bodily autonomy up to the point of conception.

6. While the surrogate cannot be paid a fee for her services (preventing commercial surrogacy), the Act allows for her to be reimbursed for reasonable expenses incurred as a result of the agreement, such as medical and legal costs, and for insurance coverage.54

These key provisions of the South African Children's Act create a structured, pre-emptive, and protective framework. By mandating High Court oversight, stringent eligibility criteria, and establishing clear legal parentage from birth, it aims to balance the reproductive autonomy of commissioning parents with the welfare of the child and the rights and autonomy of the surrogate mother.

4. Lessons for Nigeria

A comparative analysis of the UK and South African models reveals not just regulatory options, but a clear set of principles and pitfalls that can guide the development of the Nigerian framework. The key for Nigerian policymakers is to engage in strategic legal borrowing, adopting the strengths of each system while mitigating their weaknesses to create a law that is both effective and culturally congruent.

1. Adopt the South African Pre-Authorisation Model as a Foundational Blueprint. Given Nigeria's current legal vacuum, the most critical need is for legal certainty. The South African model provides this from the outset. Nigeria should emulate its requirement for pre-conception High Court approval of all surrogacy agreements. This would:
    i. Pre-empt the Limbo by vetting agreements upfront. The Nigerian legal system would ensure that upon birth, the intended parents are recognised as the legal parents, eliminating the distressing period of uncertainty seen in the UK model. This is a non-negotiable foundation for protecting the child's right to identity and family from day one.
    ii. Embed Rigorous Screening. Integrating the South African requirements for medical, psychological, and genetic screening for all parties, and mandating that the surrogate has a living child of her own, would provide a robust protective framework. This is particularly crucial in the Nigerian context to prevent exploitation and ensure all parties enter the agreement with full informed consent and capacity.
2. Refine the UK's Welfare and Consent Safeguards for a Nigerian Context. While adopting South Africa's structural certainty, Nigeria should integrate and adapt the UK's profound commitment to welfare and consent.
    i. Elevate the "Best Interests" Principle. The Nigerian framework should explicitly enshrine the paramountcy of the child's welfare as the court's central consideration during the pre-authorisation process, drawing directly from UK practice. This provides a vital ethical compass for judicial discretion.
    ii. Strengthen Consent Provisions. Nigeria should go beyond South Africa's pre-conception consent by incorporating a UK-style post-birth cooling-off period for the surrogate. While the legal parenthood would be clear from birth (unlike the UK), the surrogate's final, post-birth consent could be a required step before the parentage order is irrevocable. This would provide an additional, culturally

53 Section 295.
54 Section 301 of the Act.

sensitive layer of protection for the surrogate's autonomy, acknowledging the profound experience of childbirth.

3. Critically Reform Outdated and Restrictive Requirements. Nigeria has an opportunity to improve upon both models by avoiding their more rigid elements. There is the need for the Nigerian Law to define what is "Reasonable Expenses" clearly that can be paid to the surrogate, learning from the litigation and uncertainty this has caused in both the UK and South Africa. This will prevent ambiguity and potential hidden commercialisation.

5. Challenges

While a hybrid model combining the pre-authorisation framework of South Africa with the welfare and consent safeguards of the UK is conceptually strong, its implementation in Nigeria faces multi-faceted challenges that stem from the nation's legal structure, institutional capacity, and deep-seated socio-cultural context.

1. Structural and Federalist Challenges

The most immediate hurdle is Nigeria's federal system of government, which creates a conflict between national legislation and state-level authority.[55]

1. Jurisdictional Conflict over Family Law. Legislation on subjects like health and family law is concurrently shared between the federal and state governments.[56] A single, national surrogacy law could be challenged by states asserting their authority over these matters, potentially leading to a patchwork of conflicting regulations similar to the uneven implementation of the Child Rights Act.
2. The existence of the Lagos State ART Guidelines (2019) demonstrates this tension. While it provides a template, it also sets a precedent for state-level regulation. Other states may resist a federal law, preferring to develop their own rules, or having no rules at all, leading to legal fragmentation and forum-shopping where intended parents seek out the most lenient state.

2. Institutional and Capacity Challenges

The hybrid model is heavily dependent on robust institutions, which are often overburdened and under-resourced in Nigeria.[57]

1. The model requires every surrogacy arrangement to be approved by a High Court. Nigeria's judiciary is already plagued by a massive backlog of cases. Adding a mandatory, non-contentious pre-authorisation process for surrogacy would place a significant new burden on judges, many of whom may lack specialised training in bioethics and family law related to ART.
2. Regulatory Body Creation and Enforcement: Effective oversight requires a national regulatory body, akin to South Africa's Director-General or the UK's HFEA. Establishing a new, technocratic agency with the funding, integrity, and reach to monitor clinics, enforce standards, and maintain a central registry nationwide would be a monumental task in a context where existing regulatory bodies often struggle with effectiveness.

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55 A. Aiyedun, and T. Badejo, 'Federalism and Family Law in Nigeria: The Constitutional Impediment to a Unified Surrogacy Framework' *Nigerian Journal of Constitutional Law* (2023) (11) (2) 55-78.

56 S 4 and Second Schedule, CFRN, 1999.

57 F. Odinkonigbo, 'The Overburdened Bench: An Empirical Study of Case Backlogs in Nigerian High Courts' *Journal of Law and Judiciary in Africa* (2022) (8) (1) 101-125.

3. Socio-Cultural and Religious Pushback

The model's success hinges on social acceptance, which cannot be achieved by legislation alone.[58]

1. The concept of a court severing the surrogate's legal motherhood before birth may be culturally jarring. It directly contradicts the potent principle of mater semper certa est and could be perceived as the state "giving away" a child before it is born, clashing with traditional beliefs about pregnancy and kinship.
2. Intensified Religious Opposition. A clear, state-sanctioned process may galvanise, rather than placate, religious opposition. Religious leaders could frame the pre-authorisation model as the state officially endorsing a practice they deem immoral, potentially leading to active non-compliance and stigmatisation of participants, even within a legal framework.
3. Ensuring truly informed consent from surrogates is challenging in a society with varying literacy levels and strong patriarchal influences. A surrogate may face familial pressure to consent, and the concept of independent legal advice may be alien or inaccessible, undermining a core protective element of the hybrid model.[59]

4. Logistical and Economic Hurdles

The model's design may inadvertently create new barriers to access and equity.

1. The requirement for High Court applications, legal representation, medical screenings, and psychological evaluations will make surrogacy prohibitively expensive. This risks creating a two-tier system where only the wealthy can access legal surrogacy, while less affluent Nigerians are forced into the unregulated, risky underground market.[60]
2. The infrastructure for this model, specialist fertility clinics, lawyers versed in ART law, and High Courts, is concentrated in major urban centres like Lagos and Abuja. This creates a significant access barrier for the majority of the population living in rural areas, effectively making legal surrogacy a geographically exclusive practice.

6. Recommendations

1. Adopt a Phased Legislative Model. To navigate Nigeria's federalist structure, we recommend the creation of a Model Surrogacy Act for voluntary state adoption, rather than a rigid federal mandate. This approach, coupled with a targeted pilot programme in willing states like Lagos, would allow for the testing and refinement of the hybrid framework, incorporating pre-conception court approval and robust welfare safeguards, before nationwide implementation, ensuring practicality and local buy-in.
2. Establish Specialised Judicial and Regulatory Units. To address institutional capacity constraints, we recommend designating specialised Surrogacy Divisions within State High Courts. Judges in these units would receive targeted training in ART law and ethics to manage the pre-authorisation process efficiently. Concurrently, a National ART Registry should be established to accredit clinics and maintain a central database of court-approved agreements, creating the foundation for effective oversight.

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58 F. Ibrahim, 'A House Divided? Christian and Islamic Perspectives on Surrogacy in Nigeria' Nigerian Journal of Religion and Society (2019) (11) (1) 55-70.

59 A. Adewunmi, 'Legal Parenthood in Surrogacy Arrangements: A Nigerian Dilemma' *Nigerian Journal of Law and Society* (2021) (12) (3) 45-62.

60 C. M. Nwoye, 'Cultural Jurisprudence: Developing a Legal Framework for Surrogacy in Nigeria that Respects Communal Values' *Journal of Law and Policy in Africa* (2023) (1) (1) 55-78.

3. Launch Targeted Stakeholder Engagement and Public Education. To build cultural legitimacy and counter misinformation, we recommend initiating structured dialogues with major religious bodies and traditional leaders. This should be supported by a government-led public awareness campaign that demystifies surrogacy, highlights the protective measures of the proposed law, and fosters a more informed public discourse grounded in the best interests of the child.
4. Implement Safeguards for Equity and Access. To prevent surrogacy from becoming an elitist practice, we recommend the development of standardised, plain-language contract templates and ensuring surrogates have access to state-funded legal aid. Furthermore, the law must explicitly define "reasonable expenses" in a non-exhaustive list to ensure fair compensation for surrogates while maintaining the principle of altruism and preventing hidden commercialization.

7. Conclusion

The journey towards a functional and equitable surrogacy framework in Nigeria stands at a critical juncture. The analysis reveals a clear path forward, illuminated by comparative best practices, yet fraught with significant domestic challenges. The hybrid model, synthesising the legal certainty of South Africa's pre-authorisation with the welfare-centric ethos of the UK, presents a theoretically robust solution to the current state of limbo. However, its successful transplantation requires more than legislative drafting; it demands a pragmatic, phased, and culturally intelligent implementation strategy that acknowledges Nigeria's unique legal and social fabric. The following recommendations are put forward to navigate this complex terrain.

07

EXAMINING THE ISSUE OF HUMAN RIGHTS PRACTICES UNDER THE CONSTITUTION: WHICH WAY FORWARD?

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Abstract

This study examines the practices of fundamental human rights in Nigeria, evaluating their alignment with global best practices. It investigates the challenges and opportunities in promoting and protecting human rights, highlighting the role of government institutions, civil society, and international organizations. The study aims to contribute to the discourse on human rights in Nigeria, providing insights for policymakers, practitioners, and scholars.

Keywords: *Fundamental human rights, Nigeria, Global best practices, Human rights promotion, Human rights protection, Government institutions, Civil society, International organizations, Human rights challenges, Human rights opportunities.*

1.0 INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The protection and promotion of human rights are fundamental to the development and stability of any society. Human rights are inherent to all individuals, regardless of nationality, ethnicity, or socio-economic status, and are essential for ensuring dignity, equality, and justice. In Nigeria, the protection of human rights has been a significant challenge, with various factors contributing to the violation of these rights.

The Nigerian Constitution of 1999 (as amended) guarantees fundamental human rights, including the right to life, dignity, and freedom from discrimination. However, despite these guarantees, human rights abuses persist, and the country continues to grapple with issues such as police brutality, extrajudicial killings, and restrictions on freedom of speech and assembly.[1]

The African Charter on Human and Peoples' Rights, ratified by Nigeria in 1983, further underscores the country's commitment to upholding human rights standards.[2] Nevertheless, the effective implementation and enforcement of these rights remain a significant challenge.

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

2 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004.

This study aims to examine the practices of fundamental human rights in Nigeria, with a focus on identifying challenges, opportunities, and strategies for promoting and protecting human rights in line with global best practices.

1.2 STATEMENT OF THE PROBLEM

Despite the guarantees of fundamental human rights in the Nigerian Constitution and the country's ratification of international human rights instruments, human rights abuses persist in Nigeria. The problem is multifaceted, with issues such as police brutality,[3] extrajudicial killings,[4] and restrictions on freedom of speech and assembly[5] being prevalent.

Furthermore, there are concerns about the lack of effective implementation and enforcement of human rights laws and policies in Nigeria.[6] The judiciary, which is responsible for interpreting and upholding the law, often faces challenges such as corruption, inadequate funding, and limited access to justice.[7]

The persistence of human rights abuses in Nigeria has significant consequences for the country's development, stability, and international reputation. It is against this backdrop that this study seeks to examine the practices of fundamental human rights in Nigeria, with a view to identifying challenges, opportunities, and strategies for promoting and protecting human rights.

1.3 OBJECTIVES OF THE STUDY

The objectives of this study are:

i. To examine the current state of human rights practices in Nigeria, with a focus on identifying challenges and opportunities for improvement.[8]
ii. To analyze the legal and institutional frameworks for promoting and protecting human rights in Nigeria, and assess their effectiveness in practice.[9]
iii. To identify best practices in human rights promotion and protection, both domestically and internationally, and explore their applicability to the Nigerian context.[10]
iv. To develop recommendations for improving human rights practices in Nigeria, and enhancing the country's compliance with international human rights standards.[11]

By achieving these objectives, this study aims to contribute to the ongoing efforts to promote and protect human rights in Nigeria, and to inform policy and practice in this area.

1.4 SIGNIFICANCE OF THE STUDY

This study is significant for several reasons:

1. Contribution to Knowledge: This study will contribute to the existing body of knowledge on human rights in Nigeria, providing a comprehensive analysis of the challenges and opportunities for promoting

3 Amnesty International, "Nigeria: Police Violence and Extrajudicial Killings" (2020).
4 Human Rights Watch, "Nigeria: Restrictive Laws and Repression" (2019).
5 Committee to Protect Journalists, "Nigeria" (2020).
6 National Human Rights Commission, "Annual Report" (2020).
7 International Bar Association, "Justice in Nigeria" (2019).
8 United Nations, "Universal Declaration of Human Rights" (1948), Article 1.
9 Constitution of the Federal Republic of Nigeria 1999 (as amended), Chapter IV.
10 African Commission on Human and Peoples' Rights, "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa" (2003).
11 Amnesty International, "Nigeria: Time to End Impunity" (2019).

and protecting human rights in the country.[12]

2. Policy Relevance: The findings and recommendations of this study will be relevant to policymakers, informing the development of policies and laws that promote and protect human rights in Nigeria.[13]
3. Promoting Accountability: This study will highlight the importance of accountability in promoting and protecting human rights, and will contribute to ongoing efforts to hold duty-bearers accountable for their actions.[14]
4. Empowering Rights-Holders: By examining the challenges and opportunities for promoting and protecting human rights in Nigeria, this study will empower rights-holders to claim their rights and seek redress when their rights are violated.[15]

Overall, this study will contribute to the promotion and protection of human rights in Nigeria, and will inform efforts to build a more just and equitable society.

1.5 SCOPE AND LIMITATIONS

1.5.1 Scope

This study focuses on the examination of human rights practices in Nigeria, with a particular emphasis on identifying challenges, opportunities, and strategies for promoting and protecting human rights. The study will cover the legal and institutional frameworks for human rights in Nigeria, as well as the role of government institutions, civil society organizations, and international organizations in promoting and protecting human rights.[16]

1.5.2 Limitations

This study has some limitations. Firstly, the study is limited to Nigeria and may not be generalizable to other countries. Secondly, the study relies on existing literature and may not capture new developments or emerging issues in human rights in Nigeria.[17] Additionally, the study may be limited by the availability of data and information on human rights practices in Nigeria.[18]

Despite these limitations, this study aims to provide a comprehensive analysis of human rights practices in Nigeria and contribute to ongoing efforts to promote and protect human rights in the country.

2.0 LITERATURE REVIEW

2.1 CONCEPTUAL FRAMEWORK OF HUMAN RIGHTS

Human rights are fundamental rights and freedoms that are inherent to all human beings, regardless of nationality, ethnicity, or socio-economic status.[19] The concept of human rights is based on the principles of dignity, equality, and justice. Human rights are universal, inalienable, and indivisible, and are enshrined in various international and regional human rights instruments.[20]

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12 Donnelly, J. "International Human Rights" (2013).
13 United Nations, "Guiding Principles on Business and Human Rights" (2011).
14 Human Rights Watch, "World Report" (2020).
15 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004.
16 Constitution of the Federal Republic of Nigeria 1999 (as amended).
17 Yin, R. K. "Case Study Research: Design and Methods" (2018).
18 Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Nigeria" (2018).
19 Donnelly, J. "International Human Rights" (2013).
20 United Nations, "Universal Declaration of Human Rights" (1948).

The Universal Declaration of Human Rights (UDHR) is a foundational document in the field of human rights, and sets out a broad range of civil, political, economic, social, and cultural rights[21]. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are two key treaties that elaborate on the rights enshrined in the UDHR.[22]

In Nigeria, the Constitution guarantees fundamental human rights, including the right to life, dignity, and freedom from discrimination.[23] The African Charter on Human and Peoples' Rights, ratified by Nigeria, also provides a framework for promoting and protecting human rights in the country.[24]

2.2 GLOBAL BEST PRACTICES IN HUMAN RIGHTS

Global best practices in human rights involve several key strategies:

2.2.1 Key Principles

- Respecting Human Rights: Businesses and governments should respect human rights, as outlined in the Universal Declaration of Human Rights[25] and other international instruments. This includes upholding the right to life, liberty, and security of person, freedom from slavery and forced labor, and freedom of association.[26]
- Eliminating Discrimination: Eliminating discrimination in the workplace and ensuring equal opportunities for all individuals, regardless of their race, gender, sexual orientation, or other characteristics, is crucial[27].

2.2.2 Best Practices

- Conducting Human Rights Impact Assessments: Regular assessments help identify and mitigate potential human rights risks[28].
- Implementing Policies and Procedures: Develop and implement policies and procedures to prevent human rights abuses, provide training, and ensure accountability[29].
- Engaging with Stakeholders: Collaboration with NGOs, civil society, and affected communities ensures accurate reporting and empowers victims.[30]
- Reporting and Transparency: Regular reporting on human rights performance and progress towards implementation of human rights policies.[31]

2.2.3 International Frameworks

- United Nations Guiding Principles on Business and Human Rights: Provides guidance on respecting human rights in business operations.[32]
- International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic,

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21 Shue, H. "Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy" (1996).
22 United Nations, "Universal Declaration of Human Rights" (1948).
23 International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966).
24 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004.
25 United Nations, "Universal Declaration of Human Rights" (1948).
26 International Covenant on Civil and Political Rights (1966), Article 4.
27 Convention on the Elimination of All Forms of Discrimination against Women (1979).
28 United Nations, "Guiding Principles on Business and Human Rights" (2011), Principle 18.
29 Office of the United Nations High Commissioner for Human Rights, "Human Rights Indicators: A Guide to Measurement and Implementation" (2012).
30 Amnesty International, "Human Rights for Human Dignity" (2020).
31 Human Rights Watch, "World Report" (2020).
32 United Nations, "Guiding Principles on Business and Human Rights" (2011).

Social and Cultural Rights (ICESCR): Key treaties that outline human rights obligations.[33]

2.3 HUMAN RIGHTS IN NIGERIA: HISTORICAL PERSPECTIVE

Human rights in Nigeria have a complex and tumultuous history. The country's struggle for human rights dates back to the colonial era, but it wasn't until the 1960 Independence Constitution that fundamental human rights were formally entrenched in Nigerian law.[34]

2.3.1 Colonial Era and Early Independence (1960s)

The Willinks Commission, set up in 1958 by the British Colonial Government, recommended adopting some norms of the 1948 Universal Declaration of Human Rights into the Nigerian Constitution. These norms were introduced in Chapter III of the 1960 Independence Constitution as Fundamental Rights.[35]

2.3.2 Military Rule (1966-1999)

Nigeria's human rights record was severely marred during the military rule period, particularly under Generals Ibrahim Babangida and Sani Abacha. The regimes were characterized by extreme human rights abuses, including:[36]

- Unlawful Detention: Decree No. 2 permitted indefinite detention without trial.[37]
- Torture and Extrajudicial Killings: The execution of Ken Saro-Wiwa and 14 other members of the Movement for the Survival of the Ogoni People (MOSOP) in 1995 is a notable example.[38]
- Restrictions on Freedom of Expression: Decree No. 4 punished free speech.[39]

2.3.3 Democratic Era (1999-present)

The 1999 Constitution guarantees fundamental human rights, including the right to life, dignity, and freedom from discrimination.[40] However, human rights abuses persist, with issues such as:[41]

- Boko Haram Abuses: Intensified violence and restrictions on human rights.
- Government Corruption: Undermining the status of human rights.
- Lack of Social Equality: Ongoing challenges in promoting equality.

2.3.4 International Human Rights Frameworks

Nigeria has ratified several international human rights instruments, including the African Charter on Human and Peoples' Rights in 1983.[42] The country has also established the National Human Rights Commission to promote and protect human rights.[43]

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33 International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966).
34 Constitution of the Federation of Nigeria 1960.
35 Willinks Commission Report (1958).
36 Human Rights Watch, "Nigeria: Human Rights Abuses" (1999).
37 State Security (Detention of Persons) Decree No. 2 of 1984.
38 Amnesty International, "Nigeria: Killings of Ogoni People" (1995).
39 State Security (Detention of Persons) Decree No. 4 of 1984.
40 Constitution of the Federal Republic of Nigeria 1999 (as amended), Chapter IV.
41 Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Nigeria" (2018).
42 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004.
43 National Human Rights Commission Act, Cap N46, Laws of the Federation of Nigeria 2004.

2.4 CHALLENGES TO HUMAN RIGHTS IN NIGERIA

Nigeria faces several challenges in promoting and protecting human rights, including:

2.4.1 Insecurity and Violence

- Boko Haram Insurgency: The activities of Boko Haram have led to widespread human rights abuses, including killings, abductions, and destruction of property.[44]
- Banditry and Kidnapping: The rise of banditry and kidnapping in various parts of the country has also led to human rights abuses.[45]

2.4.2 Corruption and Impunity

- Corruption: Corruption is a major challenge to human rights in Nigeria, as it undermines the rule of law and perpetuates injustice[46].
- Impunity: The lack of accountability for human rights abuses by security agencies and other government officials perpetuates a culture of impunity.[47]

2.4.3 Restrictions on Freedom of Expression

- Censorship: The government has been accused of censoring the media and restricting freedom of expression.[48]
- Harassment of Journalists: Journalists have faced harassment, intimidation, and violence for reporting on sensitive issues.[49]

2.4.4 Lack of Access to Justice

- Weak Judicial System: The judicial system in Nigeria is often slow and ineffective, making it difficult for individuals to access justice.[50]
- Poverty and Inequality: Poverty and inequality also limit access to justice, as many individuals cannot afford legal representation.[51]

2.4.5 Human Rights Abuses by Security Agencies

- Police Brutality: The Nigerian police have been accused of human rights abuses, including extrajudicial killings, torture, and arbitrary detention.52
- Military Abuses: The military has also been accused of human rights abuses, including killings, torture, and destruction of property.53

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44 Amnesty International, "Nigeria: Boko Haram's Abductions" (2020).
45 Human Rights Watch, "Nigeria: Banditry and Kidnapping" (2020).
46 Transparency International, "Corruption Perceptions Index" (2020).
47 Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Nigeria" (2018).
48 Committee to Protect Journalists, "Nigeria" (2020).
49 Amnesty International, "Nigeria: Attacks on Journalists" (2020).
50 World Justice Project, "Rule of Law Index" (2020).
51 World Bank, "Poverty and Inequality in Nigeria" (2020).
52 Amnesty International, "Nigeria: Police Violence" (2020).
53 Human Rights Watch, "Nigeria: Military Abuses" (2020).

2.5 THEORETICAL FRAMEWORK

The theoretical framework for human rights in Nigeria is grounded in several key concepts and instruments.

2.5.1 Key Instruments

- The Nigerian Constitution: The 1999 Constitution (as amended) is the primary source of human rights law in Nigeria, guaranteeing fundamental rights such as the right to life, dignity, and freedom from discrimination (Sections 33-45).
- African Charter on Human and Peoples' Rights: Nigeria ratified the African Charter in 1983, which provides a framework for promoting and protecting human rights in the country.
- Universal Declaration of Human Rights: Although not directly binding, the UDHR influences Nigerian human rights law and policy.[54]

2.5.2 Theoretical Perspectives

- Natural Law Theory: Emphasizes the inherent dignity and rights of individuals, resonating with key provisions of the Nigerian Constitution.
- Legal Positivism: Focuses on the authority of law as derived from valid legal sources, influencing the interpretation and enforcement of human rights laws in Nigeria.
- Legal Realism: Provides a framework for understanding the practical application of human rights laws in Nigeria.[55]

2.5.3 Human Rights Frameworks

- National Human Rights Commission Act: Established the National Human Rights Commission (NHRC) to promote and protect human rights in Nigeria (1995).
- Child Rights Act: Provides for the protection of children's rights, although its implementation varies across states.[56]
- Violence Against Persons (Prohibition) Act: Aims to prevent violence against individuals, particularly women and girls.[57]

2.5.4 Challenges and Limitations

- Implementation Gap: Despite Nigeria's ratification of international human rights treaties, implementation and enforcement remain challenging.
- Cultural and Religious Factors: Customary and religious laws often conflict with human rights provisions, particularly in areas such as women's rights and freedom of expression.[58]

3.1 METHODOLOGY

This study employs a doctrinal research methodology, drawing from primary sources such as the Nigerian Constitution, international human rights treaties, and relevant case laws. The research will analyze human rights concerns arising from arbitrary detention, custodial abuses, and law enforcement excesses, highlighting the gap

54 Human Rights in Nigeria
55 Legal and institutional frameworks for human rights protection in Nigeria: challenges and pathways to effective enforcement
56 Critical examination of human rights protection and enforcement in Nigeria
57 Human Rights Law in Nigeria Explained
58 Jurisprudence and Human Rights Law in Nigeria

between legal commitments and practical enforcement.

3.2 RESEARCH DESIGN

- Qualitative Approach: This study adopts a qualitative approach, utilizing content analysis to examine the legal and institutional frameworks for human rights protection in Nigeria.
- Documentary Analysis: The research will analyze various documents, including academic articles, reports from human rights organizations, and government publications.[59]

3.3 DATA COLLECTION

- Primary Sources: The study will draw from primary sources such as the Nigerian Constitution, international human rights treaties, and relevant case laws.
- Secondary Sources: The research will also utilize secondary sources, including academic articles, books, and reports from human rights organizations.[60]

3.4 Data Analysis

- Content Analysis: The study will employ content analysis to examine the legal and institutional frameworks for human rights protection in Nigeria.
- Comparative Analysis: The research will compare Nigeria's human rights record with international human rights standards and constitutional guarantees.[61]

3.5 LIMITATIONS

- Availability of Data: The study may be limited by the availability of data and information on human rights practices in Nigeria.
- Bias and Objectivity: The research will strive to maintain objectivity and avoid bias in analyzing human rights issues in Nigeria.

3.6 SOURCES

This study relies on a variety of sources to examine human rights in Nigeria. These sources include:[62] [63]

3.6.1 Primary Sources

- The Nigerian Constitution: The 1999 Constitution (as amended) is a primary source of human rights law in Nigeria, guaranteeing fundamental rights such as the right to life, dignity, and freedom from discrimination (Sections 33-42).
- International Human Rights Treaties: Nigeria has ratified several international human rights treaties, including the African Charter on Human and Peoples' Rights and the Convention on the Rights of the Child.
- Case Laws: Relevant case laws and judgments from Nigerian courts and international human rights tribunals.

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59 NH Woruh-Okolie and CO Joseph-Asoh, 'Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement'

60 Nigeria's Human Rights Record: An Assessment of the Last Two Decades

61 Worluh-Okolie, Nkechinyere Huomachi, PhD, 'Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement'

62 Ibid

63 Ibid

3.6.2 Secondary Sources

- Academic Articles: Research articles and journals that analyze human rights issues in Nigeria, such as the Journal of Environmental and Human Rights Law.
- Reports from Human Rights Organizations: Reports from organizations like Amnesty International, Human Rights Watch, and the National Human Rights Commission (NHRC).
- Government Publications: Official documents and reports from government agencies, including the NHRC and the Nigerian Ministry of Justice.

3.6.3 Institutions

- National Human Rights Commission (NHRC): Established by the National Human Rights Commission Act, the NHRC promotes and protects human rights in Nigeria.
- Nigerian Center for Human Rights and Democracy: An organization dedicated to promoting democracy and human rights in Nigeria.

Some notable publications that inform this study include[64 65]

- "Nigeria's Human Rights Record: An Assessment of the Last Two Decades": A report that examines human rights conditions in Nigeria since 1999 and compares them to constitutional guarantees and international human rights standards.
- "Critical Examination of Human Rights Protection and Enforcement in Nigeria": A research article that analyzes the legal and institutional frameworks for human rights protection in Nigeria.
- "Institutional Mechanisms for Human Rights Protection in Nigeria: An Appraisal": A study that evaluates the effectiveness of institutions like the NHRC in promoting and protecting human rights in Nigeria.

4.0 HUMAN RIGHTS PRACTICES IN NIGERIA

4.1 OVERVIEW OF HUMAN RIGHTS SITUATION IN NIGERIA

Nigeria's human rights situation is complex and multifaceted, with various challenges persisting despite efforts to address them. Some of the key issues include:66

- Violence and Abuse: Boko Haram's activities have led to widespread human rights abuses, including killings, abductions, and destruction of property. The Chibok schoolgirls' abduction and the massacre of farmers in Borno State are notable examples.
- Restrictions on Freedom of Expression: The government has been accused of censoring the media and restricting freedom of expression, including a ban on Twitter after President Muhammadu Buhari's tweet was removed for being abusive.
- Police Brutality and Corruption: The Nigerian police force is often viewed as inefficient and corrupt, with allegations of extrajudicial killings, torture, and arbitrary detention.
- Discrimination and Violence Against Women: Women in Nigeria face various forms of human rights violations, including maltreatment by police and societal abuse.
- LGBTQ+ Rights: LGBTQ+ individuals face significant challenges, with the Same-Sex Marriage Bill

64 Ibid
65 Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement | Fountain University Law Journal
66 Ibid

being described as "the most comprehensively homophobic legislation ever proposed in any country in the world".

- Displacement and Homelessness: Forced evictions and displacement are common, with the National Human Rights Commission (NHRC) receiving over 40,000 displacement complaints from February to April 2025.[67]
- Mass Killings and Abductions: The country has seen an alarming rise in mass killings and abductions, with the NHRC recording over 2 million complaints of human rights violations in 2024.

The NHRC has released various dashboards highlighting these issues and providing insights into the human rights situation in Nigeria. These reports underscore the need for systemic reforms to uphold justice and accountability.[68][69]

4.2 ROLE OF GOVERNMENT INSTITUTIONS IN PROMOTING HUMAN RIGHTS

Government institutions play a crucial role in promoting and protecting human rights in Nigeria. These institutions include:

- The Legislature: Responsible for making and enforcing laws that protect human rights. However, the effectiveness of the legislature in promoting and protecting human rights has been limited by challenges such as corruption, lack of political will, and inadequate resources.[70]
- The National Human Rights Commission (NHRC): Established by the National Human Rights Commission Act, the NHRC promotes and protects human rights in Nigeria. The Commission has quasi-judicial powers, including summoning individuals and institutions, conducting public inquiries, and providing a platform for public enlightenment and research on human rights issues.[71]
- The Judiciary: Plays a critical role in upholding human rights by interpreting laws and ensuring that they align with the Constitution. The Supreme Court of Nigeria often resolves conflicts in favor of the Constitution, restricting the potential expansion of human rights.[72]
- Government Agencies: Agencies such as the Independent Corrupt Practices Commission (ICPC) and Economic and Financial Crimes Commission (EFCC) work to combat corruption and promote accountability.[73]

Key Functions of Government Institutions

- Law-Making: Enacting laws that protect human rights, such as the Child Rights Act and the Fundamental Rights (Enforcement Procedure) Rules.
- Oversight: Monitoring and investigating human rights abuses, and providing redress for victims.
- Public Education: Raising awareness about human rights issues and promoting a culture of respect for human rights.
- Accountability: Holding individuals and institutions accountable for human rights abuses[4].

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67 Human Rights Assessment Dashboard for the Year 2024 - National Human Rights Commission
68 December 2024 Human Rights Dashboard - National Human Rights Commission
69 NHRC Dashboard - National Human Rights Commission
70 Ogbu, Franklin Chinagorom, "The Role of the Legislature in the Promotion and Protection of Human Rights in Nigeria" (April 28, 2023).
71 "Of What Use Is Nigeria's National Human Rights Commission (NHRC) In Promotion or Protection of Human Rights in Nigeria?"
72 Worluh-Okolie, Nkechinyere Huomachi, PhD, "Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement"
73 Ibid

Challenges and Limitations

- Corruption: Corruption undermines the effectiveness of government institutions in promoting and protecting human rights.
- Lack of Resources: Inadequate resources limit the ability of government institutions to fulfill their mandates.
- Limited Capacity: Government institutions often lack the capacity and expertise to effectively promote and protect human rights.

Government institutions play a vital role in promoting and protecting human rights in Nigeria. However, these institutions face significant challenges, including corruption, lack of resources, and limited capacity. Strengthening these institutions and addressing these challenges is essential to promoting and protecting human rights in Nigeria.

4.3 CIVIL SOCIETY ORGANIZATIONS AND HUMAN RIGHTS

Civil Society Organizations (CSOs) play a vital role in promoting and protecting human rights in Nigeria. These organizations work tirelessly to address various human rights issues, including:[74]

- Promoting Human Rights Awareness: CSOs educate citizens about their fundamental rights and freedoms, fostering a culture of respect and tolerance.
- Providing Legal Aid: CSOs offer legal assistance to victims of human rights abuses, empowering them to seek redress and hold perpetrators accountable.
- Advocating for Policy Reforms: CSOs push for legislative reforms that protect human rights, such as laws safeguarding human rights defenders and promoting transparency and accountability.
- Monitoring and Reporting: CSOs document and expose human rights abuses, raising awareness at national and international levels.[75]

Some notable CSOs working on human rights issues in Nigeria include:[76]

- Women Advocates Research and Documentation Centre (WARDC): Focuses on combating human rights abuse against women, gender-based violence, child abuse, and promoting gender equality and justice for women and girls.[77]
- Human Rights Agenda Network, Nigeria (HRAN): A network of civil society organizations and activists working on human rights issues in Nigeria.[78]
- Human Rights Foundation (HRF) Nigeria: A non-governmental organization that advocates for the rule of law and enforces human rights, regardless of class, gender, religion, or ethnicity.[79]
- Centre for Democracy and Development (CDD): A research, training, advocacy, and capacity-building organization that promotes democracy, human rights, and social justice.

Challenges Faced by CSOs

- - Limited Funding: Insufficient resources hinder their ability to effectively promote and protect human rights.[80]

74 Civil Society Organizations in Nigeria
75 Ibid
76 Women Advocates Research and Documentation Centre (WARDC)
77 WARDC's Work on Human Rights
78 Human Rights Foundation (HRF) Nigeria's Mission
79 Ibid
80 Challenges Facing Civil Society Organizations in Nigeria

- Security Concerns: Human rights defenders often face threats, harassment, and physical abuse.
- Cultural and Religious Beliefs: Some cultural and religious interpretations conflict with internationally recognized human rights standards.

4.4 INTERNATIONAL ORGANIZATIONS AND HUMAN RIGHTS IN NIGERIA

International organizations play a crucial role in promoting and protecting human rights in Nigeria. Some of these organizations include:

- United Nations (UN): The UN has been actively involved in promoting human rights in Nigeria, with various agencies working to address issues such as extrajudicial killings, torture, and freedom of expression. For instance, the UN Human Rights Special Procedures group urged Nigerian authorities to release singer Yahaya Sharif-Aminu, who was convicted and sentenced to death over an allegedly blasphemous song.[81]
- Amnesty International: Amnesty International has been monitoring human rights conditions in Nigeria, documenting abuses and advocating for justice and accountability. They have released reports on human rights issues in Nigeria, including the treatment of human rights defenders and the need for the government to respect human rights.[82]
- Human Rights Watch: Human Rights Watch has also been actively involved in documenting human rights abuses in Nigeria, including police brutality, restrictions on freedom of expression, and corruption.[83]
- International Non-Governmental Organizations (INGOs): INGOs such as ActionAid International, Defence for Children International, Friedrich Ebert Stiftung, and Oxfam International work to promote human rights and provide support to vulnerable populations in Nigeria.[84]

Role of International Organizations

International organizations contribute to human rights promotion in Nigeria through:85

- Advocacy: Lobbying governments to respect human rights and hold perpetrators accountable.
- Research: Conducting studies and publishing reports on human rights issues to raise awareness.
- Capacity Building: Providing training and support to local organizations and governments to improve human rights protection.

Challenges

Despite their efforts, international organizations face challenges in promoting human rights in Nigeria, including:[86]

- - Government Intervention: Restrictions on the work of human rights organizations.
- - Funding and Resources: Limited resources hinder the effectiveness of human rights work.
- - Language Barriers: Communication challenges in diverse cultural contexts.

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81 Ibid
82 Ibid
83 Ibid
84 Human Rights and Strong Institutions: A Study of Amnesty International in Nigeria
85 Human rights in Nigeria Amnesty International
86 International Non-Governmental Organizations and Human Rights Protection in Nigeria

5.0 CHALLENGES AND OPPORTUNITIES TO HUMAN RIGHTS IN NIGERIA

5.1 CHALLENGES TO HUMAN RIGHTS IN NIGERIA

Nigeria faces numerous challenges in promoting and protecting human rights, including:[87]

- Insecurity: The country is plagued by multiple conflicts, such as the Boko Haram insurgency, farmer-herder clashes, and separatist movements, resulting in widespread displacement, loss of life, and human rights abuses.
- Police Brutality and Extrajudicial Killings: The Nigerian police force has been accused of brutality, excessive force, torture, and extrajudicial killings, with the #EndSARS protests highlighting the need for police reform.
- Restrictions on Freedom of Expression and Association: The government has been criticized for restricting freedom of speech, press, and assembly, with journalists, human rights defenders, and activists facing harassment, intimidation, and arrest.
- Corruption: Corruption is a significant challenge in Nigeria, undermining the protection and promotion of human rights, and hindering the provision of basic services like healthcare, education, and water and sanitation.
- Discrimination and Violence against Women: Women in Nigeria face various forms of human rights violations, including maltreatment by police and societal abuse.
- Human Rights Abuses in Conflict: The Boko Haram insurgency has led to significant human rights abuses, including abductions, forced conscription, and destruction of property.
- Forced Evictions and Displacement: Forced evictions and displacement are common, with the National Human Rights Commission (NHRC) receiving over 40,000 displacement complaints from February to April 2025.
- Lack of Access to Justice: The judicial system in Nigeria is often slow and ineffective, making it difficult for individuals to access justice.[88]

The NHRC has reported over 2 million complaints of human rights violations in 2024, with freedom from discrimination suffering the most. To address these challenges, the Nigerian government should prioritize security sector reform, protect civilians affected by conflicts, and promote human rights.[89]

5.2 OPPORTUNITIES FOR PROMOTING HUMAN RIGHTS IN NIGERIA

Opportunities for Promoting Human Rights in Nigeria;

5.2.1 Strengthening Institutions and Laws

- National Human Rights Commission (NHRC): The NHRC plays a crucial role in promoting human rights in Nigeria. Strengthening this institution and ensuring its independence can help promote human rights more effectively. The NHRC has quasi-judicial powers, including summoning individuals and institutions, conducting public inquiries, and providing a platform for public enlightenment and research on human rights issues.
- Legislative Reforms: Enacting laws that protect human rights, such as the Violence against Persons (Prohibition) Act, can help promote human rights in Nigeria.[90]

87 Urgent Action Needed: The State of Human Rights in Nigeria and Steps towards Improvement - Washington Center for Human Rights
88 ibid
89 NHRC Reports Over 2 million Complaints, Freedom from Discrimination Suffers the most - National Human Rights Commission
90 Human Rights Initiative Project

5.2.1 Empowering Civil Society and Communities

- Human Rights Education: Initiatives like the Africa Human Rights Education Project, funded by Amnesty International, can empower communities to identify and address local human rights issues. This project enables communities to understand human rights and their relationship with duty-bearers.[91]
- Supporting Human Rights Organizations: Organizations like Human Rights Foundation (HRF) Nigeria and the Nigerian Center for Human Rights and Democracy work tirelessly to promote human rights. Supporting these organizations can amplify their impact.

5.2.2 International Collaboration and Advocacy

- International Organizations: Collaboration with international organizations like the United Nations and Human Rights Watch can help promote human rights in Nigeria. These organizations can provide technical assistance, advocacy, and support to local human rights initiatives.[92]
- Human Rights Agenda: Developing a human rights agenda, like the one outlined by Human Rights Watch, can help prioritize human rights issues and guide government policies.

5.2.3 Promoting Public Awareness and Dialogue

- - Public Enlightenment: Initiatives like the Misereor Dialogue and Partnership Service's launch of Volume 11 of the Reader on "Improving Human Rights Promotion in Nigeria" can stimulate dialogue on human rights issues and promote awareness.[93]
- - Community Engagement: Engaging with communities and promoting public awareness about human rights can help build a culture of respect for human rights in Nigeria.[94]

By leveraging these opportunities, Nigeria can make significant progress in promoting and protecting human rights.[95]

5.3 CASE STUDIES: SUCCESS STORIES AND CHALLENGES

5.3.1 Success Stories

- Violence Against Persons (Prohibition) Act: Enacted in 2015, this law aims to curb gender-based violence in Nigeria. Although its effectiveness has been questioned, it remains a crucial step towards protecting human rights.
- National Human Rights Commission (NHRC): The NHRC has made significant contributions to promoting human rights in Nigeria, including investigating human rights abuses and providing redress for victims[96].
- EndSARS Protests: The widespread protests against police brutality led to the dismantling of the Special Anti-Robbery Squad (SARS), demonstrating the power of collective action in promoting human rights.[97]

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92 Improving Human Rights Promotion in Nigeria: Misereor Launches Volume 11
93 Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement
94 A Human Rights Agenda for Nigeria - Nigeria
95 Human Rights Foundation | Human Rights Foundation
96 Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement
97 Human rights in Nigeria

5.3.2 Challenges

- Implementation Gap: Despite the existence of laws and institutions protecting human rights, implementation remains a significant challenge. Corruption, lack of resources, and inadequate training hinder the effectiveness of these institutions.[98]
- Police Brutality: The Nigerian police force has been accused of brutality, extrajudicial killings, and torture. The #EndSARS protests highlighted the need for police reform.
- Gender Inequality and Child Abuse: Women and children in Nigeria face various forms of human rights violations, including maltreatment by police and societal abuse.[99]
- Freedom of Expression: The Nigerian government has been criticized for restricting freedom of expression, including a ban on Twitter after President Muhammadu Buhari's tweet was removed for being abusive.[100]

5.3.3 Case Studies

- Chibok Schoolgirls Abduction: The abduction of over 270 schoolgirls by Boko Haram in 2014 highlighted the vulnerability of Nigerian citizens to human rights abuses and the need for effective action to protect human rights.
- Lekki Protest/Massacre: The Lekki protest/massacre case demonstrates the challenges of balancing human rights with national security concerns.[101]

6.0 ALIGNING WITH GLOBAL BEST PRACTICES

6.1 COMPARATIVE ANALYSIS OF GLOBAL BEST PRACTICES

Nigeria has made significant efforts to align with international human rights standards, but challenges persist. Here's a comparative analysis of global best practices:

6.1.1 Key Areas for Improvement

- Torture Prohibition: Nigeria's Anti-Torture Act 2017 aligns with the United Nations Convention Against Torture 1984, but enforcement remains weak.
- Human Rights Institutions: The National Human Rights Commission (NHRC) plays a crucial role in promoting human rights, similar to institutions in other countries. However, strengthening its independence and capacity is essential.[102]
- Detention Conditions: Improving prison conditions and reducing pretrial detentions are critical areas for improvement, consistent with global best practices.
- Freedom of Expression: Nigeria's restrictions on freedom of expression, including the ban on Twitter, raise concerns about aligning with international human rights standards.[103]

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98 Ibid
99 Human Right Violation in Nigeria: A Case Study of Gender Inequality and Child Abuse
100 Ibid
101 Ibid
102 Nigeria's Adherence to International Human Rights Standards Concerning the Right to Dignity and the Prohibition of torture - Omaplex Law Firm
103 Human rights in Nigeria

6.1.2 Global Best Practices

- Independent Oversight: Establishing independent bodies to investigate and prosecute human rights abuses is a global best practice.
- Mandatory Human Rights Training: Providing compulsory training for security forces on human rights compliance and non-violent investigation methods is essential.
- Use of Technology: Widespread adoption of body cameras, CCTV in detention centers, and digital case tracking can prevent and monitor human rights abuses.

6.1.3 Challenges and Opportunities

- Implementation Gap: Nigeria faces challenges in implementing laws and policies that protect human rights.
- Corruption: Corruption undermines human rights protection and promotion in Nigeria.
- International Cooperation: Collaboration with international organizations can help Nigeria align with global best practices and address human rights challenges.

By adopting global best practices and addressing challenges, Nigeria can strengthen its human rights framework and promote a culture of respect for human rights.

7.1 CASE LAWS ON HUMAN RIGHTS VIOLATIONS IN NIGERIA

7.1.1 Notable Cases

- *HUMAN RIGHTS & EMPOWERMENT PROJECT LTD/GTE v. PRESIDENT OF FRN & ORS (2022) LPELR-58230(CA):* This case highlights the importance of principal claims in fundamental rights enforcement. For an action to be valid under the Fundamental Rights Enforcement Rules, the principal claim or relief must be founded on the enforcement of a fundamental right guaranteed by Chapter IV of the Nigerian Constitution.
- *INCORPORATED TRUSTEES OF DIGITAL RIGHTS LAWYERS INITIATIVE & ORS v. NIMC (2021) LPELR-55623(CA):* This case clarifies that the principal complaint in a suit under the fundamental rights procedure must relate to infringement of fundamental rights provided in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999.
- *OLIVER V. PRO-LOVE VENTURES LTD & ORS (2022) LPELR-56543(CA):* The court held that when an application is brought under the Fundamental Rights (Enforcement Procedure) Rules 2009, the enforcement of fundamental rights should be the main claim, not an ancillary claim.

7.1.2 Human Rights Issues Addressed

- Freedom of Expression: Cases like the ban on Twitter in Nigeria highlight the tension between government regulation and individual rights to free speech.
- Police Brutality and Extrajudicial Killings: The #EndSARS protests brought attention to police brutality and extrajudicial killings, leading to calls for police reform.
- Unlawful Detention and Torture: The National Human Rights Commission (NHRC) has reported numerous cases of unlawful detention and torture, emphasizing the need for accountability.

7.1.3 Key Takeaways

- The Nigerian judiciary plays a crucial role in upholding human rights, but its effectiveness is often hindered by systemic challenges.
- Human rights cases in Nigeria often involve complex issues like impunity, governance failure, and weak accountability mechanisms.
- Strengthening institutions like the NHRC and promoting public awareness about human rights can help address these challenges

8.1 RECOMMENDATIONS

To improve the human rights situation in Nigeria, several recommendations are hereby made;

- Strengthening Institutions and Laws: Thorough investigations, prosecutions, and penalties for human rights violations, alongside judiciary reforms to promote intelligence-based, non-coercive investigations.
- Independent Oversight: Establishing a specialized, independent body to investigate and prosecute torture cases, with increased funding for the National Human Rights Commission and Legal Aid Council.
- Domestication of International Human Rights Treaties: Full integration of the provisions of UNCAT and ratification of OPCAT to align Nigeria's legal framework with global anti-torture standards.
- Improving Detention Conditions and Security Sector Reform: Measures to reduce pretrial detentions, improve prison conditions, and establish independent monitoring of detention facilities.
- Security Sector Reform: Reforming the police force, ensuring accountability for extrajudicial killings, and providing adequate training to security personnel.
- Mandatory Human Rights Training: Compulsory training for security forces on ethical policing, human rights compliance, and non-violent investigation methods
- Protection of Human Rights Defenders and Whistleblowers: Stronger legal safeguards to shield activists, journalists, and whistleblowers from threats, harassment, or retaliation.
- Use of Technology for Transparency & Accountability: Widespread adoption of body cameras, CCTV in detention centers, and digital case tracking to prevent and monitor human rights abuses.
- Promotion of Freedom of Expression and Association: Respecting and protecting the rights to freedom of expression and association, including the right to protest peacefully

8.2 CONCLUSION

The protection and promotion of human rights in Nigeria require sustained efforts from the government, civil society, and individuals. Despite challenges, there are opportunities for improvement, and aligning with global best practices can help Nigeria strengthen its human rights framework.

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GOVERNANCE AND ACCOUNTABILITY IN NIGERIA'S NATIONAL SOCIAL INVESTMENT PROGRAMME AGENCY (N-SIPA) ACT: AN INSTITUTIONAL ANALYSIS

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Abstract

This paper examines the institutional architecture established by Nigeria's National Social Investment Programme Agency (NSIPA) Act of 2023, focusing on its governance structures and accountability mechanisms designed to advance poverty reduction goals. Through comparative analysis with similar frameworks in developing economies and assessment of early implementation challenges, this research identifies both strengths and potential vulnerabilities in NSIPA's design. The findings suggest that while the Act represents significant advancement in institutionalising social protection in Nigeria, concerns remain regarding political independence, monitoring mechanisms, and subnational coordination. This paper contributes to the growing literature on institutional design for effective social protection programmes in developing contexts and offers policy recommendations to strengthen NSIPA's operational framework.

Keywords: *Social protection, institutional design, governance, accountability, poverty reduction, Nigeria, NSIPA*

1. Introduction

The establishment of the National Social Investment Programme Agency (NSIPA) through the NSIPA Act of 2023 marks a critical milestone in Nigeria's approach to social protection and poverty reduction. This transition from ad hoc interventions to a statutorily established agency reflects global recognition that institutional frameworks significantly determine the effectiveness of social protection systems.[1] By providing legal backing and creating permanent structures for Nigeria's social investment initiatives, the Act aims to address previous concerns about sustainability, political manipulation, and implementation inefficiencies.[2]

This paper examines how the institutional architecture outlined in the NSIPA Act balances the competing demands of political responsiveness, administrative effectiveness, and public accountability. The research is guided by three central questions: (1) How does NSIPA's governance structure compare with international best practices for social protection agencies? (2) What accountability mechanisms are embedded in the Act, and how robust are they? (3) To what extent does the institutional design address previously documented challenges in Nigeria's

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1 Armando Barrientos, *Social Assistance in Developing Countries* (Cambridge University Press 2013); Sam Hickey and others (eds), *The Politics of Social Protection in Eastern and Southern Africa* (Oxford University Press 2019).

2 Emmanuel Remi Aiyede and others, 'The Political Economy of Social Protection in Nigeria' (PASGR Working Paper 023, 2021).

social investment programmes? The analysis is particularly timely as Nigeria and many developing nations grapple with rising poverty amid fiscal constraints, making effective institutional design for social protection programmes increasingly important. By critically examining NSIPA's institutional framework, this paper contributes to broader discussions on designing effective governance structures for poverty reduction initiatives in resource-constrained environments.

2. Theoretical Framework and Methodology

This analysis employs an institutional design perspective, drawing on principal-agent theory and the concept of 'good governance' in public administration to evaluate NSIPA's framework.3 These perspectives highlight the importance of clearly defined roles, incentive alignment, checks and balances, and transparency mechanisms in effective public institutions.

The methodology combines document analysis of the NSIPA Act and related policy documents with comparative assessment of similar institutions in Kenya, Brazil, and Indonesia—countries with recognised achievements in institutionalising social protection. This comparative approach helps identify global best practices while acknowledging context-specific challenges. Additionally, early implementation reports and stakeholder perspectives from government officials, civil society organisations, and development partners are examined to assess how institutional design features are functioning in practice. The analysis focuses on three dimensions: (1) governance structures, including leadership appointment processes, board composition, and decision-making procedures; (2) accountability mechanisms, including oversight provisions, transparency requirements, and citizen engagement channels; and (3) coordination frameworks for policy coherence and implementation effectiveness.

3. Background: Evolution of Social Investment in Nigeria

Nigeria's social investment initiatives have evolved significantly over the past two decades, reflecting broader shifts in development thinking and local political realities. Early social protection efforts were characterised by fragmentation, political patronage, and limited sustainability.4 The 2016 launch of the National Social Investment Programme (NSIP) under President Muhammadu Buhari's administration represented significant expansion and consolidation of these efforts, encompassing four flagship components: the N-Power job creation programme, Government Enterprise and Empowerment Programme (GEEP), National Home-Grown School Feeding Programme (NHGSFP), and Conditional Cash Transfer (CCT) programme.5

Despite ambitious objectives and substantial budget allocations, these programmes faced implementation challenges including coordination difficulties, targeting inconsistencies, and political interference.6 The programmes operated without dedicated legislative backing until 2023, functioning under various administrative arrangements and facing uncertainty with political transitions. The NSIPA Act thus represents an attempt to address these institutional weaknesses by creating a permanent agency with clear legal mandate and governance structures. The

3 Daron Acemoglu and James A Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (Crown Publishers 2012); Lant Pritchett, Michael Woolcock and Matt Andrews, 'Looking Like a State: Techniques of Persistent Failure in State Capability for Implementation' (2013) 49(1) The Journal of Development Studies 1.

4 Rebecca Holmes and others, 'Social Protection in Nigeria: Mapping Programmes and their Effectiveness' (Overseas Development Institute 2012).

5 Olumuyiwa Akinola, 'Conditional Cash Transfers in Africa: Framing and Policy Adoption in Nigeria' (2020) 55(3) Journal of Asian and African Studies 395.

6 Independent Corrupt Practices Commission, 'Report on the School Feeding Programme' (Federal Government of Nigeria 2020); Aiyede (n 2).

Act's passage followed years of advocacy by civil society organisations and international development partners who emphasised the importance of institutional strengthening for programme effectiveness and sustainability.[7] Understanding this historical context is essential for evaluating the governance and accountability mechanisms established by the Act.

4. Key Institutional Features of the NSIPA Act

4.1 Legal Status and Mandate

The NSIPA Act establishes the agency as a body corporate with perpetual succession and common seal, able to sue and be sued in its corporate name. This legal status represents significant advancement from previous arrangements where social investment programmes operated as presidential initiatives without distinct legal personality. The Act grants NSIPA a broad mandate to 'design and coordinate' social intervention programmes to assist the poor and vulnerable in Nigeria. This mandate encompasses both existing programmes (N-Power, GEEP, CCT, and School Feeding) and authority to develop new interventions aligned with national poverty reduction objectives.[8]

4.2 Governance Structure

The Act creates a three-tiered governance structure consisting of:

- Governing Board: Chaired by the Minister responsible for Social Development, with representatives from key ministries (Finance, Education, Health, Agriculture), civil society, the private sector, and state governments. The Board is responsible for policy direction, programme approval, and oversight of management.[9]
- Management Team: Led by a Director-General (appointed by the President subject to Senate confirmation) who serves as the chief executive and accounting officer. The DG is supported by directors heading various departments.
- State-Level Structures: The Act mandates coordination mechanisms with state governments, though these arrangements are less precisely defined than federal structures.

This governance model combines political oversight through ministerial chairmanship with technocratic management and multi-stakeholder representation. However, the predominance of federal executive appointees raises questions about political independence and state-level ownership.

4.3 Accountability Mechanisms

The Act incorporates several accountability provisions:

- Financial Oversight: Requirements for proper accounts, annual audits by independent auditors, and submission of audited financial statements to the Board and Minister.
- Reporting Requirements: Annual reports to the President and National Assembly on programme activities, beneficiary numbers, and expenditures.
- Monitoring and Evaluation Framework: Provisions for developing monitoring systems to track programme outcomes, though specifications for independent evaluation are limited.

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7 World Bank, 'Advancing Social Protection in Nigeria: A Pathway for Reducing Poverty and Vulnerability' (World Bank Group 2022).
8 National Social Investment Programme Agency Act, 2023.
9 ibid

- Transparency Provisions: Requirements to maintain public registers of beneficiaries and publish selection criteria, though implementation details are left to agency regulations.
- Legal Accountability: Prohibitions against fraud and misrepresentation with prescribed penalties for violations.

Notably, the Act lacks explicit provisions for citizen oversight committees or formal grievance redress mechanisms commonly found in comparable institutions internationally.

4.4 Coordination Framework

The institutional design addresses coordination through:

- Inter-ministerial Representation: Board membership of relevant ministries to align social investment with broader development policies.
- Federal-State Coordination: Requirements for implementation agreements with state governments, though specific coordination mechanisms are underspecified.
- Cross-programme Integration: Provisions for a unified beneficiary registry and common targeting methodology across interventions.[10]

While these provisions recognise the importance of coordination, they provide limited concrete mechanisms for resolving cross-jurisdictional conflicts or ensuring policy coherence.

5. Comparative Assessment with International Models

When compared with similar institutions internationally, NSIPA's framework reveals both alignments with global trends and distinctive features reflecting Nigeria's political context.

Brazil's Bolsa Família programme and its institutional architecture are often considered exemplars for developing countries. Like NSIPA, Brazil created a dedicated ministry (later restructured) with clear mandate and coordination responsibilities. However, Brazil's model features stronger subnational implementation structures and more robust citizen oversight mechanisms through municipal social councils.[11] NSIPA's governance structure grants less autonomy to state and local governments, potentially limiting local ownership and responsiveness.

Kenya's Social Protection Secretariat offers another instructive comparison. While similar in establishing a coordinating body for multiple programmes, Kenya's model places greater emphasis on cross-ministerial technical working groups and features a more explicit rights-based framework.[12] NSIPA's design prioritises executive discretion over rights-based entitlements, potentially reducing predictability for beneficiaries.

Indonesia's unified targeting system and implementation of the Program Keluarga Harapan (PKH) demonstrate stronger integration of technology and local government structures than currently evident in NSIPA's framework.[13] Indonesia's social registry and grievance redress mechanisms are statutorily defined in greater detail than NSIPA's provisions, potentially offering stronger accountability safeguards.

These comparisons suggest that while NSIPA incorporates many internationally recognised institutional features,

10 ibid

11 Kathy Lindert and others, 'The Nuts and Bolts of Brazil's Bolsa Família Program: Implementing Conditional Cash Transfers in a Decentralized Context' (World Bank Social Protection Discussion Paper No 0709, 2007).

12 Government of Kenya, 'Kenya Social Protection Sector Review 2017' (Ministry of Labour and Social Protection 2017).

13 Abdoulaye Bah and others, 'Finding the Poor vs. Measuring their Poverty: Exploring the Drivers of Targeting Effectiveness in Indonesia' (2018) 33(3) World Bank Economic Review 573.

its governance structure grants greater discretion to federal executive actors and provides less detailed statutory protection for accountability mechanisms than leading models elsewhere.

6. Institutional Strengths and Vulnerabilities

6.1 Institutional Strengths

The NSIPA Act represents significant advancement in several areas:

- Legal Permanence: By establishing NSIPA as a statutory body rather than an administrative arrangement, the Act significantly reduces vulnerability to political transitions.
- Consolidated Authority: The consolidation of multiple programmes under single agency oversight creates potential for improved coordination, reduced duplication, and more consistent targeting.
- Professional Management: Requirements for qualified leadership and professional staffing create potential for improved administrative capacity compared to previous ad hoc arrangements.
- Formalised Partnerships: Statutory provisions for inter-governmental agreements provide clearer frameworks for federal-state collaboration than existed previously.
- Transparency Requirements: Basic provisions for public disclosure of beneficiary information and selection criteria represent improvements over previous practices.

6.2 Institutional Vulnerabilities

Several design features raise concerns about NSIPA's capacity to effectively achieve its poverty reduction mandate:

- Limited Political Independence: The predominance of executive appointees on the Board and ministerial chairmanship may expose the agency to political capture and policy discontinuities. Unlike social protection agencies in some countries that incorporate opposition representation or fixed-term board appointments spanning electoral cycles, NSIPA remains vulnerable to changing political priorities.
- Weak Preventive Accountability: While the Act includes post-hoc reporting requirements, it lacks robust ex-ante checks and balances such as parliamentary approval of strategic plans or independent advisory councils with power to review decisions before implementation.
- Underspecified State-Level Structures: The limited detail regarding subnational implementation arrangements creates risks of coordination failures and implementation inconsistencies, particularly in Nigeria's federal context where states have significant autonomy.
- Minimal Citizen Voice Mechanisms: Unlike models such as Brazil's social councils or Ethiopia's community committees, NSIPA's framework provides few formal channels for beneficiary input or oversight, potentially reducing responsiveness and legitimacy.
- Ambiguous Relationship with Existing Agencies: The Act leaves unclear how NSIPA will coordinate with established institutions like the National Cash Transfer Office or state-level implementation units created under previous arrangements.

7. Early Implementation Assessment

Though the NSIPA Act is relatively recent, early implementation experiences reveal how institutional design features are functioning in practice. Initial observations suggest both promising developments and emerging challenges.

The transition from presidential initiative to statutory agency has proceeded with minimal disruption to ongoing programmes, indicating effective institutional continuity provisions. The establishment of the Governing Board with multi-stakeholder representation has created more transparent decision-making processes than existed previously, with published minutes of board meetings representing an accountability advancement.

However, significant implementation challenges related to institutional design have also emerged. Delays in appointing key technical personnel have highlighted vulnerabilities in the leadership selection process and raised concerns about merit-based staffing. Additionally, coordination difficulties between NSIPA and state-level implementation units have revealed insufficient specification of intergovernmental mechanisms in the Act's framework. Some state governments have expressed concerns about limited consultation in programme design, highlighting tensions in the federal structure.

Perhaps most significantly, the unified beneficiary registry mandated by the Act has faced implementation difficulties, with technical challenges and interoperability issues hampering efforts to create a comprehensive social registry. This underscores the importance of aligning institutional mandates with technical capacity and resource availability.

8. Policy Implications and Recommendations

Based on this analysis, several policy recommendations emerge for strengthening NSIPA's institutional framework:

- Enhance Political Independence: Consider amendments to diversify board composition by including opposition representation, fixed-term appointments spanning electoral cycles, and greater civil society representation.
- Strengthen Preventive Accountability: Develop regulations requiring parliamentary approval of multi-year strategic plans and establishing independent technical advisory committees to review programme designs before implementation.
- Clarify Subnational Arrangements: Develop detailed operational guidelines specifying roles, responsibilities, and resource flows between federal and state entities, with formal consultation mechanisms to ensure state ownership.
- Institutionalise Citizen Voice: Establish community monitoring committees and formal grievance redress mechanisms with authority to investigate complaints and recommend corrective actions.
- Enhance Coordination Mechanisms: Create statutory technical working groups bringing together NSIPA and related agencies to address fragmentation and improve policy coherence.
- Develop Robust M&E Systems: Invest in monitoring and evaluation capacity, with requirements for regular independent impact assessments and public disclosure of results.

These recommendations recognise that institutional effectiveness depends not only on formal structures but also on the relationships between institutional actors and the incentives that shape their behaviour. While formal amendments to the Act would provide strongest protection for these improvements, many could be implemented through regulations and operational policies without legislative changes.

9. Conclusion

The NSIPA Act represents significant institutional advancement for social protection in Nigeria, creating permanent structures for programmes previously vulnerable to political uncertainty. Its governance and accountability framework incorporates many elements recognised internationally as good practice, including consolidated oversight, multi-stakeholder representation, and basic transparency provisions.

However, this analysis identifies several institutional vulnerabilities that may limit NSIPA's effectiveness in achieving sustainable poverty reduction. The governance structure grants substantial discretion to federal executive actors with limited counterbalancing mechanisms, while coordination and accountability provisions lack the specificity seen in more established models elsewhere. Early implementation experiences confirm both the Act's strengths in providing continuity and legitimacy and its limitations in areas such as state-level coordination and technical systems development.

These findings suggest that while legislative institutionalisation represents an important first step, the effectiveness of Nigeria's social investment programmes will depend on further institutional refinement and capacity development. Particular attention should be paid to strengthening political independence, enhancing preventive accountability mechanisms, and developing more robust citizen engagement channels.

This analysis contributes to broader scholarship on institutional design for social protection by highlighting the tension between political ownership and programme independence, the challenges of intergovernmental coordination in federal systems, and the importance of aligning formal institutional mandates with implementation capacity. Future research should examine how NSIPA's institutional framework evolves in practice and the impact of governance arrangements on poverty reduction outcomes.

09

CARBON TAXATION AND SUSTAINABLE DEVELOPMENT IN NIGERIA

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ABSTRACT

Climate change, driven largely by rising atmospheric concentrations of carbon dioxide and other greenhouse gases, has compelled countries across the world to adopt innovative policy measures to reduce emissions and promote environmental sustainability. Nigeria, like many other countries in Africa, faces increasing pressure to address climate degradation while sustaining economic growth. This study examines the potential impact of a Carbon Tax Act in Nigeria, with particular focus on its economic, environmental, and social implications. The paper evaluates the feasibility and effectiveness of carbon taxation as a policy instrument for reducing greenhouse gas emissions and promoting a low-carbon economy. It analyses the likely economic effects of carbon taxation, including revenue generation, changes in production costs, and implications for economic growth. It also considers the environmental benefits of a carbon tax, particularly its potential to reduce emissions and encourage sustainable industrial practices. In addition, the paper examines the social implications of carbon taxation, especially its possible effects on vulnerable groups, consumer prices, and social welfare. The paper adopts a doctrinal and theoretical methodology, relying on existing literature, legislative instruments, policy documents, and scholarly opinions. It argues that although carbon taxation can be an effective tool for environmental protection, its success depends on careful design and implementation. A poorly structured carbon tax may simply shift costs to consumers without significantly changing corporate behaviour. The study concludes that Nigeria should enact a Carbon Tax Act that balances environmental sustainability with economic equity and provides a framework for achieving national climate goals and sustainable development.

Keywords: *Sustainable Development, Environmental Taxation, Greenhouse Gas (GHG), Economic Growth, Social Welfare, Environmental Sustainability.*

1.0 Introduction

Climate change is one of the issues facing humanity today. This threat on the world is caused by human activities, such as pollutions and gaseous elements which are harmful to the environment in which we live. This have increased the atmospheric carbon dioxide and other greenhouse gas emissions, creating an unhabitable environment for man.

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Nigeria is not exempted from the impact of the harsh environment, caused by the emission of harmful elements, causing environmental pollutions. Following the activities of crude oil companies in Nigeria, environmental pollutions resulting from gas flaring, and oil spills constitute major problems to the country. Indeed, Nigeria has been rated one of the worst places on earth where associated gaseous substances are intentionally flared by oil companies.[1] Against this backdrop, the question arises: can the establishment of a Carbon Tax Act serve as a catalyst for sustainable development in Nigeria while ensuring both environmental integrity and socio-economic equity?

In 2015, the United Nations (UN) set forward the 17 Sustainable Development Goals (SDGs) to preserve the environment and improve the quality of life for all. Today, the SDGs represent a global framework for international cooperation and a yardstick for progress towards achieving sustainable development.[2] Nigeria finds itself in a delicate position in pursuing a sustainable development agenda in line with the SDGs. On the one hand, the country needs to close the infrastructure and economic development gaps; but on the other, it is challenged to do so in a sustainable manner given its economic dependence on the oil and gas industry. Furthermore, to combat climate change, the 2015 Paris Agreement set a global goal to reach Net-Zero carbon emissions in the second half of this century. This has necessitated the ongoing transformation of the global energy system from fossil-based fuels to more renewable and green sources of energy (e.g., solar, wind, hydro).[3]

Carbon taxation, as a market-based climate policy tool, has gained traction globally for its potential to reduce greenhouse gas (GHG) emissions by putting a price on carbon pollution and encouraging low-carbon alternatives[4]. Several countries—including South Africa, Sweden, and Canada have adopted variants of carbon taxes to align economic activities with climate goals, with varying degrees of success[5]. In Nigeria, the legislative adoption of the Climate Change Act of 2021 marked a significant step toward institutionalizing climate governance[6]. However, the country has yet to implement a dedicated carbon pricing mechanism, despite rising emissions and its commitment to net-zero by 2060. This article aims to explore whether a well-designed carbon tax could serve as a dual-purpose instrument mobilizing climate-smart revenue while driving inclusive development. It examines the theoretical basis of carbon taxation, evaluates its potential impact on Nigeria's economy and environment, and outlines pathways for equitable implementation through legal, fiscal, and policy reforms.

2.0 Conceptual Framework and Contextual Background

2.1 Conceptualizing Carbon Taxation

A carbon tax is a tax levied on the carbon emissions from producing goods and services. Carbon taxes are intended to make visible the hidden social costs of carbon emissions. They are designed to reduce greenhouse gas emissions by essentially increasing the price of fossil fuels. This both decreases demand for goods and services that produce high emissions and incentivizes making them less carbon-intensive[7] It is an upstream approach

1 Samuel Iyiola Oni and Mark Abioye Oyewo, "Gas Flaring, Transportation and Sustainable Energy Development in the Niger-Delta, Nigeria" (2011) *J. Hum. Ecol,* Vol. 33(1) pp. 21-28.

2 Owen Iyahen: "Sustainable Development in the Context of Nigeria" 1st April, (2021) https://businessday.ng/opinion/article/sustainable-development-in-the-context-of-nigeria-1/accessed 7:57pm 21st May, 2025

3 Op cit

4 World Bank. (2023). State and Trends of Carbon Pricing 2023. Washington, DC: World Bank Group. https://openknowledge.worldbank.org/handle/10986/39889

5 Akanmidu, R. (2020). Carbon Taxation in Africa: Lessons from South Africa's Proposed Regime. Journal of Sustainable Development Law and Policy, 11(1), 100–115. https://jsdlp.ogeesinstitute.edu.ng/index.php/jsdlp/article/view/451

6 National Assembly of Nigeria. (2021). Climate Change Act. [Official Gazette].

7 Akkaya, Sahin; Bakkal, Ufuk (1 June 2020). "*Carbon Leakage Along with the Green Paradox Against Carbon Abatement? A Review Based on Carbon Tax*" *(https://content.sciendo.com/view/journals/foli/20/1/article-p25.xml)* Accessed on 22nd May, 2025

focused on taxing major fossil fuel suppliers and distributors higher up in the supply chain. This allows costs to be passed downstream through oil companies to consumers at fuel pumps, on utility bills and implicitly in prices of goods and services across the economy. In terms of specific targets for taxation, major sources would include transportation and heating fuels like gasoline, diesel, natural gas, propane, as well as coal and natural gas used in electricity generation.

While addressing climate change by reducing greenhouse gases, carbon taxes can also generate more immediate environmental and health benefits, particularly by reducing deaths that result from local air pollution. They can also raise significant revenue for governments, revenue they can use to counteract economic harm caused by higher fuel prices. For example, governments could use carbon tax revenue to ease the burden of taxation on workers by lowering personal income and payroll taxes. Carbon tax revenue could also fund productive investments to help achieve the United Nations Sustainable Development Goals, including reducing hunger, poverty, inequality, and environmental degradation.[8] Once implemented, policymakers have flexibility in whether to make the tax revenue neutral or let it raise new government funds. Revenue raised can be returned through equal per capita rebates to citizens, used to offset other taxes or fund green infrastructure projects, clean research, development and demonstration (RD&D) incentives, worker retraining programs, and vulnerable community resilience funds to address socioeconomic impacts. The key design aim is to establish stable, rising carbon prices at sufficient levels using models consistent with national policy priorities and regulatory environments.

2.1 Global Trends and Lessons on Carbon Taxation

Norway like other Scandinavian countries introduced carbon tax in the 1990s. The revenue generated from environment taxes was aimed at reducing labour taxes in the economy. The tax initially covered sixty percent of all Norwegian energy related CO2 emissions. The tax generated substantial revenues; in 1993 the tax represented 0.7 percent of total revenue, which in year 2001 had increased to 1.7 percent. The tax is estimated to have reduced CO2 emissions by approximately 2.3 per cent between 1990 and 1999. Overall, in Norway, between 1990-1999 GDP grew by approximately 23 percent, yet emissions only grew by roughly 4 percent over the same period, indicating a decoupling of emissions growth from economic growth. It has been argued that the tax helped to provide incentives for technological innovation[9].

South Africa's Carbon Tax Act[10], which aimed to reduce greenhouse gas emissions and promote sustainable economic growth. The tax targets entities operating emissions generation facilities above a certain threshold, with a rate of R120 per ton of carbon dioxide equivalent emissions, increasing annually by inflation plus 2% until 2022, and by inflation thereafter. Significant industry-specific tax-free emissions allowances are provided to support transition to cleaner technologies[11].

2.3 Local Relevance: Nigeria's Environmental and Economic Landscape

Nigeria's ranking in the Climate Change Performance Index (CCPI) dropped to 26th, showing a mixed performance.

8 Ian Parry (2019) "Back to Basics: what is carbon Taxation?- IMF-F&D https://www.imf.org/en/Publications/fandd/issues/2019/06/what-is-carbon-taxation-basics#:~:text=While%20addressing%20climate%20change%20by,result%20from%20local%20air%20pollution. Accessed 22nd May, 2025

9 Akinwade: "Prospects and Challenges of the Proposed Carbon Tax Regime in South Africa" A*fe Babalola University: Journal of Sustainable Development Law and Policy* (2014) 3:1

10 June 1 2019.

11 Deloitte, *South Africa's Carbon Tax: Challenges and Implications for Tax prayers https://www.deloitte.com/za/en/services/tax/perspectives/south-africas-carbon-tax-changes-and-implications-for-taxpayers.html Accessed 22nd May, 2025*

While the country scored high on reducing greenhouse gas emissions, it ranked low on climate policy and very low on renewable energy. Experts praised Nigeria's emission-reducing policies but criticized plans to expand gas use and export due to rising methane emissions. To transition to renewable energy, Nigeria needs to address a $1.9 trillion funding gap and improve infrastructure and skills. Experts recommend a strong methane emissions framework and incentivizing reductions. They also call for driving energy transition plans to support renewable energy expansion, promoting energy security and socio-economic benefits[12]. Its heavily reliant on oil and gas exports, which account for 93% of its export revenue, yet it struggles with energy poverty and chronic power cuts. The country's economy is closely tied to fossil fuels, but this has also led to environmental disasters and societal inequalities. Despite having vast renewable energy potential, particularly solar power, which could meet 59% of its energy needs by 2050, many advocate for expanding fossil fuel use, including coal. Nigeria is already experiencing climate-related losses, including extreme heat, changing precipitation patterns, and devastating floods, such as the 2022 floods that were made 80 times more likely by human-caused climate change[13].

Carbon taxes are widely considered an effective way to tackle climate change by many economists. By imposing a fee on carbon-based fuels, countries can reduce greenhouse gas emissions and encourage investment in renewable energy. This approach can also generate significant revenue, which can be used to address issues caused by fossil fuels. Examples like British Columbia in Canada and South Africa show promising results in reducing emissions while supporting economic growth[14].

South Africa's carbon tax has significantly impacted sectors reliant on fossil fuels, such as transport and coal-generated electricity, which are expected to decline. However, the agriculture and food sectors benefit from exemptions, supporting food security and vulnerable workers, at least in the short term. The tax also creates opportunities for job creation as the energy sector shifts towards renewables like solar and wind, potentially benefiting farmers and low-income households while improving air and water quality. By incentivizing a shift to greener, more labor-intensive sectors, the tax can boost employment and marginally reduce inequality[15]. Despite these benefits, the tax faces challenges, including its limited scope, calls for greater transparency in tax revenue utilization, and the shortage of skilled labor in South Africa. Nonetheless, South Africa's carbon tax is part of a broader effort in Africa to promote a low-carbon economy through various economic instruments[16].

Nigeria's planned carbon tax policy aligns with the Climate Change Act 2021, which mandates cooperation between the National Council on Climate Change and the Federal Inland Revenue Service to establish a framework with the carbon tax policy in NIGERIA[17]. The policy is expected to set emission limits, capping greenhouse gas emissions for public and private entities, and impose a tax on excess emissions for entities exceeding these limits. It will also introduce emission reduction certificates that can be translated into carbon credits and sold. This approach combines elements of both carbon tax and cap-and-trade models. Revenue generated from the tax will fund the Climate Change Fund, supporting Nigeria's climate goals and initiatives[18].

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12 *Nigeria- Climate Performance ranking | Climate Change Performance Index (2025) https://ccpi.org/country/nga/> accessed 23 May, 2025.*

13 *The Carbon Brief Profile: Nigeria (2023)* https://www.carbonbrief.org/the-carbon-brief-profile-nigeria/> accessed 23 May, 2025

14 Sesan Sulaiman, et al' "*Putting a Price on Pollution: Can Carbon Taxation Drive Sustainable Development in Nigeria?*" https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.templars-law.com/app/uploads/2023/05/Putting-a-Price-on-Pollution.> accessed 23 May, 2025

15 United Nations Framework Convention on Climate Change (UNFCCC), *"Accessment of Carbon Pricing Initiative in Nigeria" p.27* September, 2023

16 Ibid, p.28

17 Ibid

18 Climate Change Act 2021 s.15.

3.0 Economic and Environmental Impacts of a Carbon Tax in Nigeria

3.1 Economic Implications

A carbon tax, if carefully structured, could offer Nigeria a sustainable revenue source while nudging the economy toward low-carbon growth. Nigeria's revenue to GDP ratio is among the lowest globally estimated at just 7.3%[19]. Introducing a carbon tax could help diversify public finances, especially as global demand for fossil fuels declines. Estimates suggest that a modest carbon tax of US$10 per ton of CO_2 could generate up to US$2 billion annually in Nigeria. This revenue could be reinvested in renewable energy infrastructure, green jobs, and climate adaptation programs.

Of recent, the President of Nigeria, Bola Ahmed Tinubu stated that Nigeria's newly finalized Carbon Market Activation Policy is expected to unlock $2.5 billion in high-integrity carbon credits and investments by 2030, positioning the country as a hub for climate-smart finance in Africa. President Bola Ahmed Tinubu announced this during a high-level virtual dialogue on climate and just transition, co-hosted by the UN Secretary-General and the President of Brazil. The policy is part of Nigeria's broader energy reforms and commitment to updating its Nationally Determined Contributions (NDCs) by September 2025[20]. Tinubu emphasized that climate action and economic growth must go hand-in-hand, viewing climate action as a strategic imperative rather than a cost to development. Nigeria's Energy Transition Plan (ETP) aims to achieve net-zero emissions by 2060, targeting key sectors such as power, cooking, transportation, oil and gas, and industry, and requiring an estimated $410 billion in investment[21].

To support the ETP, the government is aligning regulatory frameworks, providing fiscal incentives, and restructuring institutions to enable progress in energy access, decarbonization, and economic competitiveness. Nigeria is also partnering with the World Bank and African Development Bank to electrify 300 million Africans by 2030. Additionally, Tinubu announced plans to launch a Global Climate Change Investment Fund to blend public and private capital, de-risk green infrastructure, and finance clean energy solutions. The fund will support key sectors such as green industrial hubs, e-mobility infrastructure, renewable energy mini-grids, and regenerative agriculture, aligning with Nigeria's National Energy compact[22].

Carbon emissions drive global temperature changes, harming economies, human lives, and natural systems. Implementing carbon taxes can help reduce emissions and mitigate climate change effects. With the 2030 Sustainable Development Goals (SDGs) deadline approaching, African countries should consider domestic carbon taxes for sustainable growth. Currently, South Africa is the only African nation with a carbon tax policy. Given the global challenges and slow progress toward SDGs, African countries need robust policies like carbon taxes to address climate change, promote sustainable development, and support climate adaptation and resilience-building efforts. This can ensure long-term economic stability and growth[23].

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19 Nigeria 2022 Article IV Consultation Press Release Staff Report and Statement by the IMF (2022) https://www.imf.org/en/Publications/CR/Issues/2023/02/16/Nigeria-2022-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-IMF> 23 May, 2025.

20 Olalekan Adigun, "Nigeria's Carbon Market Policy to unlock $2.5 billion in investments by 2030 – Tinubu" , 24 April, 2025. https://nairametrics.com/2025/04/24/nigerias-carbon-market-policy-to-unlock-2-5-billion-in-investments-by-2030-tinubu/> accessed 23 May, 2025

21 Ibid

22 Ibid

23 Aisha Mahmood, et al', "*Evaluating the Economic and Environmental Impact of Implementing a Carbon Tax for Revenue Generation in Nigeria*" (2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5015406#:~:text=A%20carbon%20tax%20not%20only,fostering%20economic%20growth%20and%20stability.> accessed 23 May, 2025.

3.2 Environmental Outcomes

In Nigeria, the exigency of the efficient use and management of natural resources cannot be overemphasized. This assertion derives from the fact that it is the only way to pursue a development path and, as a consequence, ensure sustainable development. Ordinarily, without responsible resource use and management in Nigeria, environmental utilization space, which is the total space provided by the environment for use by the present and future generations will be grossly depleted. Moreover, the capacity of the environment to supply both renewable and non-renewable resources, to assimilate wastes by either absorption or dispersal and to provide life support services by maintaining ecological balance and genetic diversity will be constrained with the grave consequence of environmental crisis. Despite the critical role that natural resource management is expected to play in the attainment of sustainable development in Nigeria, it is sad to note that there is a threat to the long-term development in Nigeria. Worse still, is that the natural resources in Nigeria are being over-exploited in a fashion that appears wasteful[24].

Environmentally, carbon taxation has demonstrated potential to lower emissions across multiple sectors. In countries like Sweden and British Columbia, carbon pricing led to measurable emission reductions without harming economic growth[25]. For Nigeria, where gas flaring, transportation, and inefficient energy systems are major emission sources, a carbon tax could accelerate the transition to cleaner fuels, stimulate green technology adoption, and reduce the environmental costs of fossil fuel dependency.

4.0 Equity, Social Justice, and Distributional Considerations in Carbon Tax Design

4.1 The Risk of Regressive Impacts

major criticism of carbon taxation lies in its potentially regressive nature whereby the poorest households bear a disproportionately higher burden relative to their income. In Nigeria, over 40% of the population lives below the national poverty line, and energy consumption for cooking, transport, and electricity constitutes a large share of household expenditures[26]. Any increase in fuel or energy prices driven by a carbon tax could exacerbate existing economic inequalities and deepen energy poverty if not mitigated through effective policy design, adding up to the unbearable hike introduced by the removal of the fuel subsidy in Nigeria.

A carbon tax can have a dual effect. On one hand, it may discourage people from polluting the environment by making carbon-intensive activities more expensive. On the other hand, businesses might pass on the tax burden to consumers by increasing prices, potentially exploiting them. This could lead to higher costs for essential goods and services, disproportionately affecting vulnerable populations[27]. Carbon intensive goods like electricity and petrol would become more expensive, with businesses offloading their tax burden onto customers. This raises concerns about the effectiveness of carbon taxes in reducing emissions, as some businesses might absorb the cost by passing it on to consumers rather than changing their practices. To be truly effective, a carbon tax should prioritize environmental sustainability over revenue generation. Its primary goal should be to incentivize businesses and individuals to adopt cleaner practices, rather than simply generating income. By focusing on

24 Kelly Bryan *"Sustainable Development in Nigeria: The Policy Gap and Action Dilemma" Journal of Economics and Sustainable Development p.81, Vol.6, No.23, 2015*

25 OECD. (2021), "*Carbon Pricing in Practice: A Review of the Evidence*". https://www.oecd.org/environment/tools-evaluation/carbon-pricing.htm> accessed 23 May, 2025.

26 World Bank. (2022). Nigeria Poverty Assessment 2022: A Better Future for All Nigerians. https://www.worldbank.org/en/country/nigeria/publication/nigeria-poverty-assessment-2022.

27 Ibid

environmental outcomes, policymakers can create a more impactful and equitable carbon pricing system[28].

4.2 Designing a Pro-Poor Carbon Tax

The Carbon Tax Policy must be carefully structured, else it would have damming impact on the economy of the nation lime it has done to some nations like Canada. Below is the current report from Canada: Alberta Premier Danielle Smith has frozen the province's industrial carbon tax at $95 per tonne, a move applauded by the Canadian Taxpayers Federation (CTF). The tax, set to increase to $170 per tonne by 2030 and potentially $245 per tonne by 2035, was seen as a burden on businesses. The CTF argues that this tax hike would make Alberta less competitive, harm taxpayers, and threaten jobs. According to a Leger poll, 70% of Canadians believe businesses pass on some or most of the industrial carbon tax costs to consumers. The CTF's Prairie Director, Gage Haubrich, praised Smith's decision to freeze the tax but urged her to scrap it entirely, citing concerns about its impact on Albertans. This development follows the federal government's decision to set the consumer carbon tax rate to zero, while still requiring an industrial carbon tax. Some provinces, like Saskatchewan, have opted to eliminate their industrial carbon tax altogether[29].

Thus, caution must not be thrown to the wind as careless moves without consideration could turn what would have been a blessing to a curse. To address equity concerns, carbon tax revenues must be strategically recycled to support vulnerable populations and ensure political buy-in. Pro-poor redistribution strategies include:

- Direct Cash Transfers: As implemented in countries like Canada and Chile, redistributing part of the revenue as lump-sum payments can offset the increased cost of living.
- Subsidies for Clean Energy Alternatives: Investing in affordable clean cookstoves, solar home systems, and energy-efficient public transport can help low-income households transition away from carbon-intensive energy sources.
- Job Retraining and Green Employment Programs: Supporting workers in carbon-intensive sectors to transition into green jobs promotes inclusive and just development.

In Nigeria's context, these mechanisms must be integrated into existing social protection frameworks, such as the National Social Investment Programme (NSIP), and be guided by robust data on household energy use and poverty dynamics.

4.3 Gender and Regional Considerations

Carbon tax impacts also intersect with gender and geographic disparities. For instance, women in rural communities, who often rely on biomass for cooking and lack access to modern energy infrastructure, are likely to face additional burdens[30]. Regional inequalities between northern and southern Nigeria particularly in access to electricity and clean fuels must also be accounted for in tax design and revenue allocation. Ensuring that carbon tax policies promote environmental justice and do not reinforce existing inequalities requires participatory policy-making, transparency in revenue use, and alignment with Nigeria's broader development goals.

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28 Zama Nonkululeko and Ovett Nwosimiri, "Environmental Pollution and Climate *Change: An Ethical Evaluation of the Carbon Tax Policy in South Africa*" J. Hum 31, (2023) https://dx.doi.org/10.4314/jh.v31i1.6> accessed 24 May, 2025.

29 Gage Haubrick, Newsroom, "Alberta's industrial carbon tax freeze is a good first step" Alberta News Release 12 May, 2025 https://www.taxpayer.com/newsroom/alberta%E2%80%99s-industrial-carbon-tax-freeze-is-a-good-first-step> accessed 21 May, 2025.

30 UN Women. (2020). "Gender, Climate and Security: Sustaining Inclusive Peace on the Frontlines of Climate Change". https://www.unwomen.org/en/digital-library/publications/2020/06/gender-climate-and-security

5.0 Legal and Policy Feasibility of Implementing a Carbon Tax Act in Nigeria

Nigeria have been making effort to see to the establishment of a Carbon Tax policy that would regulate the emission of Greenhouse gases.

5.1 Current Legal Framework for Climate Action

Nigeria has made notable progress in climate governance through the enactment of the Climate Change Act 2021, which provides a legal foundation for transitioning toward a low-carbon economy. The Act mandates the development of carbon budgets, creation of the National Council on Climate Change (NCCC), and establishment of sectoral targets[31]. However, the Act does not explicitly provide for carbon pricing or taxation, leaving a critical gap in its implementation strategy. Other environmental regulations such as the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, Petroleum Industry Act (PIA) 2021, and fiscal policies under the Federal Inland Revenue Service (FIRS) could serve as entry points for introducing a carbon tax through amendments or subsidiary legislation[32].

While there is still yet to be any implementation with respect to the carbon tax, the NCCC earlier in 2023 communicated its intention to create a framework for the carbon tax system. The carbon tax will be based on two forms: (1) an emission tax based on production. And (2) a tax on goods and services that are generally GHG intensive. According to the Director General of the council, the foregoing arrangement is expected to set a price which emitters pay for each ton of GHG emission. This will help generate revenue for the government and encourage consumers to take steps to switch fuels, adopt new technologies and reduce emissions to avoid paying the carbon tax[33].

Nigeria's Decade of Gas (2020 – 2030)

Nigeria's "Decade of Gas" initiative, launched by President Muhammadu Buhari, aims to harness the country's gas reserves to drive economic growth and development from 2020 to 2030. The plan involves collaboration with stakeholders to increase gas utilization, leveraging its potential as a key driver of economic growth. By transitioning from high-carbon fossil fuels to natural gas, a relatively cleaner energy source, Nigeria seeks to promote sustainable development and reduce its carbon footprint[34].

Nationally Determined Contribution (2021 Update)

Nigeria's Nationally Determined Contribution (NDC) outlines the country's commitment to addressing climate change. Nigeria initially submitted its NDC in 2015 and ratified the Paris Agreement in 2017. The country later submitted a revised NDC in 2021, which provides an updated emissions baseline using 2018 as the base year. The updated NDC includes fugitive methane emissions from the oil and gas sector and emissions from the waste sector, allowing for more ambitious emission reduction targets. Nigeria's priority sectors for mitigation efforts are energy, industry, and waste. By updating its NDC, Nigeria demonstrates its commitment to addressing climate

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31 National Assembly of Nigeria. (2021). Climate Change Act 2021. [Official Gazette].

32 Amobi, T., & Nwafor, C. (2022). Legislating Climate Action in Nigeria: Emerging Trends and Legal Opportunities. Environmental Law Review, 24(2), 145–159.

33 AO2LAW, "Nigeria's Energy Transition Watch-The Climate Change Act: AN Evaluation of Two Years of Implementation" 20 November, 2023. ao2law.com/nigerias-energy-transition-watch-the-climate-act-an-evaluation-of-two-years-of-implementation/#:~:text=The%20carbon%20tax%20be,each%20ton%20of%20GHG%20emissions.

34 United Nations Framework Convention on Climate Change (UNFCCC), "Accessment of Carbon Pricing Initiative in Nigeria" September, 2023. p.61

change and reducing greenhouse gas emissions[35].

5.2 Institutional and Political Considerations

Institutional capacity remains a major hurdle. Nigeria's tax collection system, though improving, still faces challenges with compliance, enforcement, and coordination between federal and subnational governments. A carbon tax would require strong inter-agency collaboration among the Ministry of Finance, NCCC[36][37], NESREA[38], and FIRS[39] to define the tax base, set rates, monitor emissions, and enforce compliance[40]. Politically, any new tax faces public skepticism, particularly considering fuel subsidy removals and economic hardship. To succeed, a carbon tax policy must be transparently communicated and framed within a broader narrative of climate justice, economic diversification, and green job creation. A phased implementation approach starting with high-emission sectors like oil, cement, and transportation could help build trust and capacity. A notable shift and improvement is the partnership of Environment for Development (EfD) with the National Climate Change Council (NCCC) to develop a framework for the implementation of Carbon tax in Nigeria in line with the provisions of the country's Climate Change Act[41].

5.3 Regional and International Alignment

Nigeria's commitment to the Paris Agreement and African Union Agenda 2063 positions it well to adopt carbon pricing in line with global and regional trends. South Africa's carbon tax model, introduced in 2019, offers valuable lessons on integrating carbon pricing within a fossil-fuel dependent economy[42]. Additionally, the emergence of carbon border adjustment mechanisms (CBAM) in the EU and other markets underscores the need for Nigeria to adopt compatible climate policies to maintain trade competitiveness[43]. Adopting a carbon tax would not only strengthen Nigeria's climate credentials but also unlock international finance opportunities, including carbon markets and green bonds.

6.0 Conclusion and Policy Recommendations

6.1 Conclusion

This study has examined whether the establishment of a Carbon Tax Act can catalyze sustainable development in Nigeria while achieving equitable economic and environmental outcomes. The analysis reveals that carbon taxation when designed with social equity, legal feasibility, and sector-specific realities in mind holds significant potential to address Nigeria's dual challenge of climate vulnerability and economic instability.

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35 Ibid

36 National Climate Change Council. The Climate Change Act establishes the NCCC as the council vested with the powers to make policies and decisions on all matters concerning climate change in Nigeria.

37 The National Council on Climate Change 'About Us' NCCC Publications < https://natccc.gov/about-council/> accessed 7:49pm, May 29 2025

38 National Environmental Standards and Regulations Enforcement Agency was established in 2007 (as amended) by an act of parliament as the NESREA Establishment Act. The Agency is charged with the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies, and guidelines.

39 Federal Inland Revenue Service

40 Federal Inland Revenue Service (FIRS). (2023). Revenue Performance Report Q1 2023. https://www.firs.gov.ng

41 Inya Agha, "EfD Nigeria Partners with NCCC to develop Carbon tax framework in Nigeria" EfD – initiative 18 July, 2024. Edinitiative.org/news/efd-nigeria-partners-nccc-develop-carbon-tax-framework-nigeria> accessed 27 May, 2025.

42 National Treasury of South Africa. (2019). Carbon Tax Act No. 15 of 2019. http://www.treasury.gov.za

43 European Commission, *"Carbon Border Adjustment Mechanism (CBAM) Proposal"* (2022). https://climate.ec.europa.eu/eu-action/european-green-deal/delivering-european-green-deal/carbon-border-adjustment-mechanism_en

Economically, a carbon tax could provide a reliable revenue stream to diversify public finances beyond oil, support clean energy investments, and foster job creation in the green sector. Environmentally, it would offer a concrete mechanism to reduce greenhouse gas emissions, meet Nigeria's Nationally Determined Contributions (NDCs), and comply with international climate obligations. However, for these benefits to be realized, the design must guard against regressive impacts, especially on the poor, women, and rural populations.

Legally, Nigeria has made foundational progress through the Climate Change Act 2021, but gaps remain in policy integration, institutional coordination, and political readiness. Comparisons with peer countries like South Africa[44] suggest that carbon pricing can work in fossil fuel-reliant economies, but requires strategic planning, transparency, and public engagement.

Ultimately, carbon taxation must not be viewed merely as a fiscal or environmental tool, but as a transformative policy lever to drive low-carbon, inclusive, and resilient development.

6.2 Policy Recommendations

It is the submission of this paper that the introduction of the taxation should be in phases in order to reduce the effects on the citizens. In Nigeria, the fuel subsidy removal of 2023 has led to a lot of individual domestic budgetary disruptions and financial adjustments[45]. So the introduction of carbon tax should be gradual also as the tendency is for manufacturing concerns to offload such tax levies at point of consumption, leading to escalating inflation rates[46]. The point of the tax could either be at production or consumption[47].

- Design an Equitable Carbon Tax Framework: Introduce a tiered carbon pricing model with safeguards for vulnerable populations. Allocate revenues toward social welfare, energy access, and low-carbon infrastructure.
- Integrate with Existing Legal and Fiscal Instruments: Amend the Climate Change Act and align carbon tax enforcement with FIRS and NESREA to ensure robust legal backing and administrative capacity.
- Phased and Sectoral Rollout: Begin with high-emission sectors (e.g., oil & gas, cement, transport) to build institutional capacity and stakeholder confidence.
- Promote Public Awareness and Stakeholder Engagement: Foster transparency and inclusive dialogue with civil society, industry, and subnational governments to enhance acceptance.
- Leverage International Climate Finance: Use the carbon tax framework to access global funds, such as the Green Climate Fund, and position Nigeria for voluntary and compliance carbon markets.

By implementing these steps, Nigeria can leverage carbon taxation not only as a climate instrument but as a pathway to sustainable and equitable national development.

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44 Akanmidu, R. (2020). Carbon Taxation in Africa: Lessons from South Africa's Proposed Regime. Journal of Sustainable Development Law and Policy, 11(1), 100–115. https://jsdlp.ogeesinstitute.edu.ng/index.php/jsdlp/article/view/451

45 UNEP, The United Nations Climate Conference (COP27), 'COP27 Ends with Announcement of Historic Loss and Damage Fund' www.unep.org> accessed 7:54pm, May 29, 2025

46 Mma Amara Ekeruche, Oludele Folarin, Ezra Ihezie Anthony Okon and Tikristini Olasode) 'Fiscal Policy Options for Growing Out of Debt: Evidence from Nigeria' Centre for the Study of the Economies of Africa (CSEA).

47 Agbasi Ngozi, *"Evaluating the Legal Framework for Sustainable Carbon Tax and Budgetary System in Nigeria"* NAUJILJ 15 (2) 2024 P.134,

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STATELESSNESS UNDER INTERNATIONAL HUMANITARIAN LAW: LEGAL FRAMEWORKS, CHALLENGES, AND PROSPECTS IN NIGERIA

ELIZABETH JALO OKOTIE

Abstract

Statelessness, the condition of lacking any recognized nationality, poses profound challenges to the enjoyment of fundamental human rights and access to legal protections. This paper critically examines the phenomenon of statelessness through the lens of international humanitarian law, while focusing on its legal, social, and institutional implications within the Nigerian context. It explores the definitions and distinctions between de jure and de facto statelessness and assesses the relevance of key international instruments such as the 1954 and 1961 Statelessness Conventions, alongside regional frameworks including the African Charter on Human and Peoples' Rights and ECOWAS protocols. The study highlights significant gaps in Nigeria's legal and institutional architecture, such as the absence of statelessness determination procedures, weak birth registration systems, and non-ratification of critical treaties, that contribute to the perpetuation of statelessness. Particular attention is given to vulnerable groups affected by discriminatory nationality laws, displacement, border disputes, and lack of documentation. The paper further discusses the human rights consequences of statelessness, including denial of education, healthcare, political participation, and the risk of arbitrary detention. Through doctrinal analysis and policy review, this paper proposes comprehensive reforms, including legal recognition of stateless persons, ratification and domestication of international treaties, capacity building for institutions, and improved civil registration systems. It argues that addressing statelessness in Nigeria is not only a legal necessity but a humanitarian obligation central to national development and social inclusion.

Keywords: *Statelessness, Human Rights, Stateless Persons*

I. Introduction

Statelessness is a significant legal and humanitarian issue affecting an estimated 4.4 million people globally, although the actual figure may be substantially higher due to challenges in identification and reporting.1 A stateless person is not recognized as a national by any state under the operation of its law.2 This legal invisibility leaves affected individuals without access to fundamental rights and protections, including education, healthcare, employment, property ownership, and participation in political processes. Statelessness may result from various causes, including gaps in nationality laws, state succession, discrimination, lack of birth registration, and protracted displacement due to conflict. In Africa, and particularly in Nigeria, historical factors such as

1 UNHCR, Global Trends: Forced Displacement in 2023, <https://www.unhcr.org> Accessed April 20, 2025
2 Convention Relating to the Status of Stateless Persons (1954), Art. 1(1)

colonial-era border demarcations, inconsistent administrative practices, and ethnic exclusion have contributed to statelessness. Nigeria, a multi-ethnic and geopolitically strategic state, faces increasing challenges with displaced populations in the North-East due to the Boko Haram insurgency, as well as citizenship claims in disputed border regions such as the Bakassi Peninsula.[3] Despite being a party to several international human rights instruments, Nigeria has yet to domesticate the core conventions on statelessness or develop a comprehensive national legal framework for identifying and protecting stateless persons.

The 1954 Convention Relating to the Status of Stateless Persons defines a de jure stateless person as "a person who is not considered as a national by any State under the operation of its law."[4] This definition emphasizes the formal and legal aspect of statelessness, where no state acknowledges the individual as its citizen under domestic legislation. Conversely, de facto stateless persons may possess nominal citizenship but are unable to avail themselves of protection or rights from any state. This could be due to lack of documentation, inability to establish nationality, or refusal by a state to recognize its nationals. Although the 1954 Convention focuses primarily on de jure statelessness, the United Nations High Commissioner for Refugees (UNHCR) acknowledges the vulnerability of de facto stateless persons and advocates for their protection.[5]

The humanitarian implications of statelessness are particularly acute during armed conflicts and emergencies. Stateless persons, lacking the protection of any state, are at heightened risk of human rights violations including arbitrary detention, trafficking, denial of humanitarian aid, and forced recruitment.[6] While International Humanitarian Law (IHL)—especially the Geneva Conventions of 1949 and their Additional Protocols—does not specifically address statelessness, it provides general protections to all civilians, regardless of nationality.[7]

2. Conceptual Framework of Statelessness

Meaning and Scope of Statelessness

Statelessness is a phenomenon that cuts across legal, political, and humanitarian spheres, affecting millions globally and resulting in significant human rights challenges. At its core, statelessness refers to the absence of a legal bond of nationality between an individual and any state. According to Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons, a stateless person is defined as "a person who is not considered as a national by any State under the operation of its law."[8] Statelessness may arise due to a range of causes, including conflict of laws, discriminatory nationality laws, state succession, denationalization, and failure to register births.[9] The UNHCR estimates that at least 4.4 million people are stateless, though the actual number is believed to be much higher due to gaps in identification and documentation.[10] Globally, statelessness is prevalent among ethnic and linguistic minorities, such as the Rohingya in Myanmar, Dominicans of Haitian descent in the Dominican Republic, Roma in Europe, and undocumented communities in sub-Saharan Africa, including the Banyarwanda in DRC and certain nomadic or borderland populations in Nigeria and West Africa.

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3 International Court of Justice, Cameroon v. Nigeria: Bakassi Peninsula Case, ICJ Reports 2002
4 Ibid., Art. 1(1)
5 UNHCR, Handbook on Protection of Stateless Persons, 2014
6 Open Society Justice Initiative, Citizenship and Statelessness in Nigeria, 2020
7 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949
8 1954 Convention Relating to the Status of Stateless Persons, Art. 1(1).
9 UNHCR, *Handbook on Protection of Stateless Persons*, 2014, paras. 14–16.
10 UNHCR, *Global Trends: Forced Displacement in 2023*, available at https://www.unhcr.org

Citizenship and Nationality in Law

The terms citizenship and nationality are frequently used interchangeably in both legal texts and public discourse, but they carry nuanced differences in legal theory and application. Nationality, under international law, denotes the legal bond between a person and a state and is the primary criterion for a state's jurisdiction over an individual.[11] It is a legal status that carries both rights and duties under both municipal and international law. The Nottebohm case decided by the International Court of Justice (ICJ) defined nationality as a "legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments."[12] Citizenship is often understood as the domestic legal expression of nationality. It denotes full membership of a political community and includes civil, political, and social rights, including the right to vote, hold public office, and access social benefits. While nationality is more often invoked in international law, citizenship is relevant within the framework of national constitutional and statutory laws.

In some jurisdictions, the two terms are used distinctly (e.g., the UK recognizes British nationality and British citizenship as separate legal statuses), while in others, they are synonymous. In Nigeria, the 1999 Constitution (as amended) uses the term "citizen" rather than "national," and lays out acquisition of citizenship through birth, registration, or naturalization in Sections 25 to 32.[13] However, the absence of a legal category for stateless persons leaves gaps in protection, especially for individuals who do not qualify under any of the Constitution's categories.

3. International Legal Framework on Statelessness

The international legal framework governing statelessness comprises specialized conventions and broader human rights instruments that collectively seek to recognize, protect, and reduce statelessness globally. These instruments are rooted in the fundamental principles of human dignity, equality, and non-discrimination, and reflect a consensus that nationality is a basic human right essential to the enjoyment of other rights.

1954 Convention Relating to the Status of Stateless Persons

The 1954 Convention Relating to the Status of Stateless Persons is the cornerstone of international protection for stateless individuals.[14] It establishes the definition of a stateless person in Article 1(1) as "a person who is not considered as a national by any State under the operation of its law."

Despite its significance, the Convention suffers from limited ratification, especially in regions such as Africa and the Middle East. As of 2024, Nigeria has not ratified the 1954 Convention, which limits the legal recognition and protection of stateless individuals within its borders.

1961 Convention on the Reduction of Statelessness

The 1961 Convention on the Reduction of Statelessness complements the 1954 Convention by focusing on the prevention and reduction of statelessness.[15] It obliges states to implement safeguards in nationality laws and administrative practices that prevent individuals from becoming stateless. While this Convention is vital

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11 International Law Commission, *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States*, 1999.

12 *Nottebohm Case* (Liechtenstein v. Guatemala), ICJ Reports (1955), p. 23

13 Constitution of the Federal Republic of Nigeria (1999, as amended), Sections 25–32.

14 Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 (1954 Convention) art 1(1).

15 Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 (1961 Convention).

for statelessness prevention, its impact is hindered by lack of ratification and incorporation into domestic law in several states. Nigeria is not a party to this Convention, which reflects a significant gap in the national legal framework.

4. The Legal and Institutional Framework in Nigeria

Nigeria's legal and institutional framework for addressing statelessness is shaped by its Constitution, national laws, and policies concerning nationality and citizenship. While Nigeria has some provisions to ensure citizenship rights, including birthright and naturalisation, statelessness remains a significant issue, particularly due to gaps in legal recognition, birth registration deficiencies, and lack of statelessness determination procedures.

Constitution of the Federal Republic of Nigeria

The Constitution of the Federal Republic of Nigeria 1999 provides for the acquisition of Nigerian citizenship through several mechanisms, but it does not specifically address statelessness or provide a framework for the protection of stateless persons. The Constitution generally protects the right to nationality and outlines citizenship by birth, registration, and naturalisation16. Section 25(1) of the Constitution states that a person born in Nigeria is a Nigerian citizen by birth if at least one parent is a Nigerian citizen. This provision aligns with the principle of jus soli (right of the soil) and jus sanguinis (right of blood). However, it does not provide protection for children born in situations where their parentage is not clear or in cases where one or both parents are stateless or not recognized as nationals of any state. Section 26 further extends the eligibility for citizenship to individuals born outside Nigeria, provided one parent is a Nigerian citizen, subject to specific registration and application procedures. Section 26 provides that a non-citizen can acquire Nigerian citizenship by naturalisation. This includes individuals who have resided in the country for a specified period and who meet the necessary requirements, such as proficiency in the Nigerian language, allegiance to the country, and good character. Stateless persons, however, often face barriers in this process because they may lack the necessary proof of identity and legal documentation.

Section 27 allows for citizenship by registration for individuals married to Nigerian citizens. This provision is beneficial for those who may otherwise be stateless but who are married to Nigerian nationals, provided they meet the statutory requirements. However, the absence of formalized recognition for stateless persons means they are often excluded from these provisions. While the Constitution does not explicitly address statelessness, it is implied that no individual should be left without a nationality, particularly under the principle of non-discrimination. The National Population Commission (NPC) and Nigerian Immigration Service (NIS) are responsible for birth registration, and through their work, there are mechanisms in place that should, in theory, prevent statelessness. However, the lack of clear statutory procedures for recognizing and protecting stateless persons means that there is no formal legal recourse for individuals affected by statelessness in Nigeria.

Institutional Bodies

Several institutions in Nigeria play a role in the legal framework for nationality, citizenship, and statelessness, but there are significant gaps in their ability to address statelessness effectively.

1. National Population Commission (NPC)

The National Population Commission (NPC) is responsible for birth registration and maintaining vital statistics

16 Constitution of the Federal Republic of Nigeria (1999, as amended) s 25(1), s 26, s 27.

in Nigeria. While the NPC plays a crucial role in ensuring that children are registered at birth, low registration rates in certain regions, lack of awareness, and the absence of comprehensive legal provisions for statelessness make it difficult to guarantee the protection of children and adults at risk of statelessness. The NPC has made strides in improving birth registration systems, but statelessness remains unaddressed in its mandate.

2. Nigerian Immigration Service (NIS)

The Nigerian Immigration Service (NIS) is responsible for enforcing immigration laws, including the issuance of passports and residence permits. While the NIS is involved in regulating citizenship matters through naturalisation and residence, it does not have a specific mandate to address statelessness. Stateless individuals, especially those without official documents, struggle to navigate the immigration system, as they do not have nationality records to validate their identity.

3. Role of the Judiciary and National Assembly

The Judiciary in Nigeria plays an important role in interpreting and applying the Constitution and other laws related to citizenship. However, there have been few cases in Nigerian courts related to statelessness, and the lack of a clear statutory framework for addressing statelessness means that judicial recourse is often unavailable or insufficient. The National Assembly has a key role in legislating reforms to address statelessness. While proposed bills on birth registration and citizenship reform have been discussed in the past, there has been limited political will to pass laws that specifically address statelessness. If the National Assembly were to pass a Statelessness Determination Procedure (SDP) and reform nationality laws, Nigeria would be better positioned to address statelessness at the legal level.

The legal and institutional framework in Nigeria provides some avenues for the acquisition of citizenship, but statelessness is not formally recognized in the national legal system, and stateless persons are often excluded from the protection of their basic rights. Nigeria's birth registration and immigration systems remain significant challenges, and there is an urgent need for the government to ratify key international treaties, enact statelessness determination procedures, and reform nationality laws to prevent and address statelessness effectively.

5. Causes and Risk Factors for Statelessness in Nigeria

Statelessness in Nigeria arises due to various legal, social, political, and geopolitical factors. These factors contribute to the vulnerability of certain communities and individuals, with particular emphasis on ethnic and religious discrimination, border issues, gender inequalities, and challenges in birth registration. This section outlines these causes and risk factors.

Ethnic and Religious Discrimination

Ethnic and religious discrimination in Nigeria is a significant driver of statelessness, particularly for minority groups and individuals who are marginalised based on their ethnic identity or religious affiliation. Discrimination often leads to exclusion from nationality systems, leaving individuals without a recognized nationality. In Nigeria, ethnic minorities face discrimination when trying to acquire citizenship or nationality. Communities like the Bajju in Kaduna or the Ogoni in the Niger Delta face barriers in securing identity documents, making them vulnerable to statelessness.[17] The division between the Muslim-majority north and Christian-majority south has

17 **International Commission of Jurists**, *The Situation of Stateless Persons in Africa* (ICJ 2011) https://www.icj.org accessed 20 April 2025.

led to cases where people from minority religious groups are denied citizenship rights. For example, the Igbo community in the north may face challenges proving nationality due to religious tensions.[18] Nigeria's nationality laws have historically favoured certain groups, and as such, marginalized ethnic and religious communities often struggle to prove their nationality, leaving them at risk of statelessness.[19]

Border Communities and State Succession

Geopolitical factors, such as border disputes and state succession, significantly contribute to statelessness in Nigeria, particularly in areas like the Bakassi Peninsula and other border communities. The Bakassi Peninsula dispute between Nigeria and Cameroon led to the displacement of Nigerian citizens following the International Court of Justice's (ICJ) ruling in 2002, which awarded the peninsula to Cameroon. Displaced individuals faced challenges in establishing their nationality, effectively becoming de facto stateless.[20] Areas such as Katsina, Borno, and Yobe are also at risk, as their residents frequently face uncertainty regarding nationality due to their proximity to border regions. These individuals may not have access to the legal infrastructure of either Nigeria or neighbouring states, leading to statelessness.[21] People affected by state succession, particularly in cases of border adjustments or territorial disputes, may find themselves without nationality after the shifting of borders or when national identities become contested.[22]

Gender Discrimination and Transmission of Nationality

Gender-based discrimination remains a prominent factor in statelessness, as women in Nigeria do not always have the right to pass on their nationality to their children in the same way as men. Historically, under the 1960 Nationality Act, Nigerian women did not have the same rights as men to transmit nationality to their children. Although there have been legal reforms, these discriminatory laws left many children born to Nigerian mothers in stateless situations, particularly if their fathers were foreigners or stateless.[23] Women from rural areas, internally displaced persons (IDP) camps, or migrant communities may face difficulties in proving their nationality due to lack of documentation or restricted access to birth registration. These challenges increase the likelihood of children being born stateless.[24]

Lack of Birth Registration or Identity Documents

The lack of birth registration and identity documentation is one of the most significant causes of statelessness in Nigeria. Birth registration is often inadequate, particularly in remote, conflict-affected, and marginalized areas. According to the National Population Commission (NPC), a significant proportion of children born in Nigeria are not registered at birth, particularly in the northern and south-eastern regions. This lack of registration prevents individuals from accessing citizenship rights and legal identity documentation.[25] Limited access to government

18 **Human Rights Watch**, *Nigeria: The Plight of Statelessness and Marginalization of Minorities* (HRW, 2015) https://www.hrw.org accessed 20 April 2025.
19 **OlusegunAkinyemi**, 'Statelessness in Nigeria: A Legal and Policy Analysis' (2019) 45(3) *African Journal of International and Comparative Law* 45-59.
20 **International Court of Justice**, *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria* (ICJ Reports 2002) https://www.icj-cij.org accessed 20 April 2025.
21 **UNHCR**, *Statelessness in Africa* (UNHCR 2018) https://www.unhcr.org/stateless accessed 20 April 2025.
22 **National Population Commission**, 'Birth Registration in Nigeria: Key Statistics and Challenges' (NPC, 2024) https://www.nationalpopulation.gov.ng accessed 20 April 2025.
23 **United Nations Human Rights Office**, *Discriminatory Nationality Laws and Gender Equality* (OHCHR, 2016) https://www.ohchr.org accessed 20 April 2025.
24 **KehindeOyesomi**, 'Gender and Statelessness in Nigeria: A Legal Review' (2020) 52(1) *Journal of Nigerian Law* 65-78.
25 **National Population Commission**, 'Vital Statistics and Birth Registration in Nigeria' (NPC 2023) https://www.nationalpopulation.gov.ng accessed 20 April 2025

services, especially in rural areas, and poor infrastructure contribute to the low registration rates. In addition, internally displaced persons (IDPs), particularly in conflict zones like Borno and Yobe, face significant obstacles to birth registration, which increases their vulnerability to statelessness.[26] Without essential documents like birth certificates, national identity cards, or passports, individuals cannot prove their Nigerian nationality, leaving them vulnerable to statelessness. Migrant communities and refugees are especially affected by this issue, as they often lack proper documentation that would otherwise secure their citizenship.[27]

Migration, Displacement, and Refugee Status Complications

Migration and displacement, both internal and external, play a significant role in the creation of statelessness in Nigeria. Displacement due to conflict, climate change, or economic reasons often leaves individuals without proper documentation, thus preventing them from accessing nationality or citizenship.

- Refugees: Individuals fleeing conflict or persecution from neighbouring countries such as Cameroon or Chad may have difficulty obtaining refugee status or nationality in Nigeria. Without proper legal recognition, many remain stateless for prolonged periods.[28]
- Internally Displaced Persons (IDPs): The crisis in north-east Nigeria has left millions of people displaced, many of whom face challenges in registering their births or obtaining official documents due to displacement. As a result, IDPs often face statelessness because they lack the legal recognition of their nationality.[29]
- Migrant Workers: Nigerian migrant workers who return home after working abroad often face difficulties proving their nationality, particularly if they do not have birth certificates or passports. This situation creates a significant risk of statelessness, as they cannot be easily reintegrated into the nationality system.[30]

Statelessness in Nigeria is a multifaceted issue driven by ethnic, religious, gender-based, legal, and geopolitical factors. Legal frameworks such as nationality laws and birth registration systems are critical areas that need reform in order to address the causes and risk factors of statelessness. Stateless persons in Nigeria face barriers to accessing basic rights and citizenship, leaving them vulnerable and marginalized. Addressing these issues requires comprehensive legal reforms, including gender-equal nationality laws, improved birth registration systems, and inclusive policies for border communities.

6. Human Rights Implications of Statelessness in Nigeria

Statelessness in Nigeria leads to significant violations of human rights, affecting access to fundamental services such as education, healthcare, and employment. The right to vote and participate in public life is also often denied to stateless individuals. Further, statelessness exposes individuals to risks of arbitrary detention and deportation, as they are often not recognized by any country. Moreover, statelessness has psychological and intergenerational impacts, as individuals affected by statelessness often face long-term societal exclusion.

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26 **Amnesty International**, 'Human Rights and Statelessness in Nigeria's Conflict Zones' (AI 2022) https://www.amnesty.org accessed 20 April 2025.

27 **UNHCR**, *Statelessness in Nigeria and Its Impact on Citizenship* (UNHCR 2017) https://www.unhcr.org/stateless accessed 20 April 2025.

28 **International Organization for Migration (IOM)**, *Migration and Statelessness in Africa: A Regional Overview* (IOM 2023) https://www.iom.int accessed 20 April 2025.

29 **UNHCR**, *The Plight of Stateless Persons in Nigeria's Displaced Communities* (UNHCR 2021) https://www.unhcr.org/stateless accessed 20 April 2025.

30 **World Bank**, 'Statelessness and the Nigerian Migrant Worker: Challenges and Solutions' (World Bank 2020) https://www.worldbank.org accessed 20 April 2025.

Access to Education, Healthcare, and Employment

Stateless individuals in Nigeria often face severe barriers to accessing basic human rights, including education, healthcare, and employment. These barriers stem from the lack of official recognition, which prevents stateless persons from obtaining identity documents, essential for accessing services and exercising their rights. In many cases, children born to stateless parents are denied access to education, as they cannot prove their nationality or secure birth certificates required for school enrollment. Without national identity cards, children face obstacles to registering in schools or obtaining government scholarships, which further marginalizes them. For instance, children in internally displaced persons (IDP) camps or remote areas are often excluded from formal education systems due to lack of documentation.[31] Stateless individuals face barriers to healthcare services, as they are often not eligible for national health insurance programs or are excluded from public health initiatives. Healthcare providers often require identification to access state-run health services, but stateless persons lack these essential documents. This exclusion can lead to worsened health outcomes for stateless persons, particularly in rural or conflict-affected areas.[32] Stateless individuals are frequently denied formal employment because they cannot prove their identity or nationality. Employers often require national identification or proof of citizenship for hiring, which stateless individuals cannot provide. This leaves them at risk of poverty and exploitation in the informal sector. Without formal recognition of their nationality, stateless people face limited opportunities for social mobility and economic independence.[33]

Right to Vote and Participate in Public Life

Statelessness also significantly affects the political rights of individuals. In Nigeria, voting and participating in public life is linked directly to citizenship. Stateless persons, who are not recognized by any state, are effectively disenfranchised and unable to participate in the democratic processes of the country. Stateless persons in Nigeria are ineligible to vote in elections because they cannot prove their citizenship. This exclusion prevents them from exercising their right to vote and participate in democratic processes. Without the right to vote, stateless individuals are effectively excluded from public decision-making, which limits their ability to influence policies that directly affect them.[34] In addition to the right to vote, stateless individuals are also excluded from holding public office or engaging in political activism. As non-citizens, they are not allowed to participate in political campaigns or run for elected positions. This exclusion results in the political marginalization of stateless persons, leaving their concerns unheard in national discourse.

Arbitrary Detention and Risk of Deportation

Stateless individuals in Nigeria face the constant threat of arbitrary detention and deportation due to their lack of legal status. Stateless persons are not recognized by any state and may be detained by authorities under the assumption that they are in the country illegally. Stateless individuals are at risk of detention without charge, as they do not have recognized documentation to prove their legal status in the country. Nigerian authorities may perceive them as undocumented migrants or illegal aliens, subjecting them to arbitrary detention. This detention often occurs without a formal legal process, which violates their right to liberty and due process. As stateless

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31 **UNHCR**, *Statelessness in Africa* (UNHCR, 2018) https://www.unhcr.org/stateless accessed 20 April 2025.

32 **OlusegunAkinyemi**, 'Statelessness in Nigeria: A Legal and Policy Analysis' (2019) 45(3) *African Journal of International and Comparative Law* 45-59.

33 **International Commission of Jurists**, *The Situation of Stateless Persons in Africa* (ICJ 2011) https://www.icj.org accessed 20 April 2025.

34 **Human Rights Watch**, 'Nigeria: The Plight of Statelessness and Marginalization of Minorities' (HRW, 2015) https://www.hrw.org accessed 20 April 2025.

persons have no diplomatic protection, they may remain detained for long periods without recourse to legal remedy.[35]

Stateless individuals also face the risk of being deported to countries they have no ties to. Given that they are not recognized by any state, stateless persons may be deported to places where they are not welcome, leading to further displacement. The absence of a citizenship status leaves them vulnerable to being removed from the country without any means of re-entry, further destabilizing their lives.[36] The human rights implications of statelessness in Nigeria are profound, leading to discrimination, exclusion, and marginalization of stateless individuals. They face barriers to education, healthcare, employment, and political participation. Moreover, statelessness exposes them to the risk of arbitrary detention and deportation, while also contributing to psychological distress and intergenerational harm. Addressing these issues requires urgent legal reforms to ensure that all individuals, regardless of their nationality status, have access to basic human rights and social protection.

7. Nigeria's International Obligations and Implementation Challenges

Nigeria's response to statelessness involves a complex interplay of international obligations, regional commitments, and domestic barriers. While Nigeria is a signatory to several international and regional instruments on human rights and citizenship, the country faces significant challenges in translating these obligations into effective national laws and policies. Despite the international and regional legal frameworks, Nigeria has yet to ratify key conventions aimed at addressing statelessness, and several obstacles hinder effective implementation at the national level.

Nigeria's Non-Ratification of the 1954 and 1961 Conventions

Nigeria has yet to ratify two fundamental international statelessness treaties: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These treaties are pivotal for ensuring the rights of stateless individuals and for addressing the global issue of statelessness.

1. 1954 Convention: The 1954 Convention offers critical protections to stateless individuals, including the right to work, education, and access to public assistance. The Convention provides a legal framework to ensure the human rights of stateless persons and sets out measures to determine statelessness. However, Nigeria's failure to ratify this Convention means that stateless individuals in the country do not have guaranteed rights under this international treaty.[37]
2. 1961 Convention: The 1961 Convention aims to prevent statelessness by establishing international standards for acquiring nationality. The Convention provides measures for reducing statelessness through procedural safeguards and the prevention of discriminatory nationality laws. Nigeria's non-ratification of this treaty impedes its ability to implement effective measures for the reduction of statelessness within its borders. It also leaves stateless individuals in Nigeria without the legal tools needed to assert their nationality rights under international law.[38]
3. Implications: Nigeria's non-ratification of these Conventions reflects a broader lack of political will to

35 **Amnesty International**, 'Statelessness and Detention in Africa' (AI, 2020) https://www.amnesty.org accessed 20 April 2025.
36 **United Nations Human Rights Office**, *Discriminatory Nationality Laws and Gender Equality* (OHCHR, 2016) https://www.ohchr.org accessed 20 April 2025.
37 **United Nations High Commissioner for Refugees (UNHCR)**, *Statelessness in Africa* (UNHCR 2018) https://www.unhcr.org/stateless accessed 20 April 2025.
38 **International Commission of Jurists**, *The Situation of Stateless Persons in Africa* (ICJ 2011) https://www.icj.org accessed 20 April 2025.

address statelessness comprehensively. While international pressure continues to mount for the country to align its legal framework with these global standards, the absence of ratification limits Nigeria's responsibility to protect stateless persons within its territory.[39]

Domestic Barriers to Legal Reform and Policy Enforcement

Nigeria faces several domestic barriers to effectively addressing statelessness through legal reforms and policy enforcement. While the country has taken some steps to align its legal framework with international norms, significant gaps remain.

1. Inadequate Legal Framework: Despite constitutional provisions on citizenship, Nigeria's nationality laws are fragmented and inadequate in addressing the issue of statelessness. Stateless individuals often cannot establish citizenship under Nigerian law, especially in cases where their birth was not registered or where their nationality is contested. The legal framework lacks clear procedures for determining statelessness and providing protection to stateless persons.[40]
2. Lack of Political Will: The lack of political will in addressing statelessness is a significant challenge. Legislators and government officials have shown limited interest in ratifying key international instruments such as the 1954 and 1961 Conventions or in enacting laws that would provide for the identification and protection of stateless persons. The issue of statelessness is often overshadowed by other pressing national issues, and without sustained political pressure, it remains a marginalized concern in Nigeria's policy agenda.[41]
3. Institutional Challenges: The absence of a dedicated national institution responsible for the identification and protection of stateless individuals exacerbates the issue. While institutions like the National Population Commission (NPC) and Nigerian Immigration Service (NIS) play roles in birth registration and immigration control, there is no centralized mechanism for addressing statelessness or ensuring that stateless individuals receive the protections afforded by international law. Additionally, limited resources and training hinder these institutions' ability to address statelessness effectively.[42]

Limited Data and Documentation on Stateless Populations

One of the major obstacles to addressing statelessness in Nigeria is the lack of data on the stateless population. This data gap complicates efforts to develop targeted policies and programs to assist stateless individuals. Nigeria's national census and birth registration systems are often incomplete, with many stateless individuals not being counted or officially recognized. This lack of data collection leads to the invisibility of stateless populations in national statistics, making it difficult to design effective interventions and allocate resources. The National Population Commission has acknowledged the challenges in accurate registration and documentation of marginalized populations, including stateless persons.[43] There is a dearth of empirical research on statelessness in Nigeria, and non-governmental organizations (NGOs) and international organizations are often the primary sources of information. The UNHCR and other human rights bodies have noted that data collection on statelessness

39 **Human Rights Watch**, *Nigeria: The Plight of Statelessness and Marginalization of Minorities* (HRW, 2015) https://www.hrw.org accessed 20 April 2025.

40 **OlusegunAkinyemi**, 'Statelessness in Nigeria: A Legal and Policy Analysis' (2019) 45(3) *African Journal of International and Comparative Law* 45-59.

41 **International Commission of Jurists**, *The Situation of Stateless Persons in Africa* (ICJ 2011) https://www.icj.org accessed 20 April 2025.

42 **National Population Commission**, 'Birth Registration and National Identity in Nigeria' (NPC, 2020) https://www.npc.gov.ng accessed 20 April 2025.

43 UNHCR, *Statelessness in Africa: Addressing Legal and Institutional Gaps* (UNHCR, 2016) https://www.unhcr.org/stateless accessed 20 April 2025.

is often fragmented and lacks coherence, making it difficult to estimate the full scale of the issue.[44]

While Nigeria is bound by international and regional human rights instruments that call for the protection of stateless persons, challenges persist in the ratification, implementation, and enforcement of these obligations. Nigeria's non-ratification of key conventions, combined with domestic barriers such as weak legal frameworks, lack of political will, and limited institutional capacity, has hindered progress in addressing statelessness. Moreover, the absence of comprehensive data on stateless populations further complicates efforts to provide protection. Addressing these challenges requires a multifaceted approach, including legal reforms, improved data collection, and greater political commitment to ensuring the rights of stateless persons.

8. Prospects and Recommendations

Tackling statelessness in Nigeria requires a multidimensional approach that combines legal, institutional, administrative, and advocacy reforms. Drawing from international best practices and local realities, the following recommendations aim to guide policy reform, legal development, and institutional strengthening to effectively address statelessness and its human rights implications.

1. Legal Reforms to Recognize and Prevent Statelessness

A foundational step in combating statelessness is to reform Nigeria's legal framework to clearly recognize stateless persons and provide them with legal protection. This involves introducing a legal definition of statelessness aligned with the 1954 Convention, distinguishing between de jure and de facto stateless persons; establishing procedures for the determination of statelessness status, which are currently absent in Nigerian law; amending nationality laws to remove discriminatory provisions, especially those affecting women's ability to confer nationality to their children. Such reforms would ensure that stateless persons have access to nationality, documentation, and legal redress.

2. Ratification and Domestication of International Conventions (1954 and 1961)

Nigeria's ratification and domestication of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are critical. These conventions provide legal status, civil, economic, and social rights for stateless persons; and frameworks for reducing statelessness, particularly in relation to children's nationality, nationality loss, and state succession. Domesticating these treaties into Nigerian law would fulfill international obligations and bridge the current normative gap in national legislation.

3. Capacity Building for Relevant Institutions

To effectively address statelessness, institutions such as the National Population Commission, Nigerian Immigration Service, Ministry of Interior, and civil registry offices must be equipped with the necessary tools and training. Recommendations include training on international legal standards related to nationality and statelessness; development of guidelines for statelessness identification and referral procedures; and resource allocation to support mobile registration, documentation services, and outreach to vulnerable communities.

4. Strengthening Civil Registration Systems

The absence of comprehensive birth registration contributes significantly to the risk of statelessness in Nigeria. Strengthening the civil registration and vital statistics (CRVS) system involves universal and free birth registration,

44 **Amnesty International**, 'Human Rights and Statelessness in Nigeria's Conflict Zones' (AI, 2022) https://www.amnesty.org accessed 20 April 2025.

particularly in rural and conflict-affected areas; digitization of civil records and decentralization of services to reach underserved communities; and integrating statelessness risk assessments into registration practices and data collection. A strong CRVS system enhances legal identity and is vital for protecting against statelessness, especially among children and displaced populations.

5. Collaborations with International and Regional Organizations

Partnerships with bodies such as UNHCR, UNICEF, the African Union, and ECOWAS can facilitate technical assistance for legal and institutional reform; funding and logistical support for documentation and data initiatives; and cross-border cooperation in addressing statelessness in border communities and among migrants and refugees. Such collaborations also enable Nigeria to participate in regional strategies, such as the African Union's Action Plan to End Statelessness in Africa (2017-2024).

6. Public Awareness and Advocacy

Public perception plays a significant role in how stateless persons are treated. Advocacy and awareness campaigns can combat stigma and discrimination against stateless communities; educate the public on the importance of legal identity and birth registration; and influence political will by raising awareness among lawmakers, civil society, and traditional authorities. Civil society organizations and the media must be engaged to advocate for reforms and monitor government accountability.

Conclusion

Statelessness remains one of the most pressing yet underexplored human rights and humanitarian challenges globally, and Nigeria is not exempt from its implications. As this study has demonstrated, statelessness not only deprives individuals of a legal identity but also undermines their access to basic rights, social protections, and dignity. Despite international legal developments, including the 1954 and 1961 Statelessness Conventions, and complementary instruments such as the UDHR, ICCPR, and regional charters like the African Charter on Human and Peoples' Rights, Nigeria has yet to fully incorporate these norms into its domestic legal system. The Nigerian legal framework, as it currently stands, lacks a comprehensive system for the recognition, determination, and protection of stateless persons. Gaps in constitutional and statutory provisions, institutional capacity, and civil registration infrastructure contribute significantly to the persistence of statelessness. Moreover, socio-political issues such as ethnic discrimination, weak documentation systems, displacement due to conflict, and gender-based nationality transmission restrictions exacerbate the problem.

While the challenges are considerable, the prospects for reform are equally significant. With the right political will, Nigeria can begin by ratifying and domesticating the core international instruments on statelessness, while also undertaking vital legal reforms to align national laws with international standards. Strengthening civil registration and identification systems, enhancing institutional capacities, promoting public awareness, and engaging regional and international partners are essential steps toward prevention and resolution. Eradicating statelessness in Nigeria is not only a legal necessity but a moral and humanitarian imperative. Ensuring that every person has a legal identity, and a sense of belonging is fundamental to the realization of human rights, national development, and social cohesion. A coordinated, inclusive, and rights-based approach will be indispensable in achieving a future where no one is left legally invisible.

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THE IMPACT OF INTERNATIONAL HUMAN RIGHTS LAW ON THE APPLICATION OF CHAPTER II OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

AKINTUNDE JUSTUS IFEOLUWA*
NANLOH PRECIOUS NANNA**

ABSTRACT

This paper examines the transformative influence of international human rights law on the interpretation and application of Chapter II of the Constitution of the Federal Republic of Nigeria 1999, with particular emphasis on socio-economic rights. Chapter II contains the Fundamental Objectives and Directive Principles of State Policy, which articulate key socio-economic rights such as the rights to education, health, and social welfare. However, these provisions are generally regarded as non-justiciable under section 6(6)(c) of the Constitution, resulting in limited enforcement and a significant gap in the protection of socio-economic rights in Nigeria. The paper analyses how international human rights instruments, especially the African Charter on Human and Peoples' Rights, which has been domesticated in Nigeria through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, have influenced judicial attitudes toward the enforcement of socio-economic rights. By examining relevant judicial decisions and legal principles, the study demonstrates that international human rights norms can serve as interpretive tools for expanding the scope of constitutional rights and strengthening accountability for socio-economic obligations. To enhance the realization of these rights, the paper proposes a multi-dimensional strategy involving proactive judicial interpretation, stronger governmental commitment to policy implementation, sustained advocacy by civil society organizations, and targeted legislative reforms. Such coordinated efforts are essential for advancing a more just and equitable Nigerian society in which socio-economic rights are effectively respected, protected, and fulfilled.

Keywords: *International Human Rights Law, Non-Justiciability, Constitution, Socioeconomic Rights, African Charter, Enforceability*

INTRODUCTION

The acceptance of a universal approach to human rights protection was influenced by historical events, including the atrocities committed by despots who exploited sovereignty to justify their actions. The two World Wars highlighted the need to prevent such atrocities from happening again, leading to the creation of the Universal

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Declaration of Human Rights, a landmark document that internationalized human rights norms[1]. Since then, human rights norms have expanded rapidly, with numerous international instruments now enforceable beyond domestic jurisdictions. Despite challenges in Nigeria, including socio-economic, political, judicial, and other factors, significant progress has been made in enforcing human rights[2].The international human rights instruments have had a profound impact, transforming human rights from a solely domestic concern to a global standard. In today's interconnected world, the Universal Declaration serves as a dynamic and evolving benchmark for all nations and peoples to strive towards[3]. As a result, the global community, through the United Nations and regional organizations, is invested in promoting and upholding this universal human rights standard worldwide, transcending local laws and regulations.

Nigeria has ratified numerous international human rights treaties, both universal and regional, and is also a signatory to the United Nations Charter. The UN Charter's Preamble emphasizes the organization's commitment to human rights, affirming the importance of fundamental human rights, human dignity, and gender equality. This commitment obliges the UN to promote universal human rights and fundamental freedoms for all individuals, regardless of race, gender, language, or religion. Furthermore, all member states, including Nigeria, have pledged to work together with the UN to achieve the goals outlined in Article 55, which includes the promotion of human rights and fundamental freedoms[4].

Nigeria has long grappled with the challenge of recognizing and enforcing socioeconomic rights within its legal system. This issue largely stems from the structural divide in its Constitution, which distinguishes enforceable civil and political rights from non-justiciable socioeconomic entitlements. Judicial reluctance, especially from the Supreme Court, has contributed to the prevailing assumption that socioeconomic rights fall outside the scope of legal adjudication.

A global shift is underway, impacting the dynamics of human rights protection, even in countries like Nigeria, where socioeconomic rights are not explicitly recognized in the constitution. Nigeria's situation is particularly intriguing.

Understanding the legal challenges posed by Chapter II of the Nigerian Constitution requires close attention to Section 6(6)(c), which effectively prevents courts from deliberating on matters concerning the directive principles unless explicitly allowed by law. This clause limits judicial engagement with socioeconomic issues, reinforcing the perception that these rights are merely aspirational and not legally binding.

This has led to the isolation of Chapter II rights from those in Chapter IV (civil and political rights), based on the misconception that Nigeria lacks the capacity to address socioeconomic rights.[5] The global landscape of human rights has undergone a significant transformation, with international human rights law playing a pivotal role in shaping the contours of constitutional protections.[6] In Nigeria, this evolution has had a profound impact on the interpretation and application of Chapter II of the Constitution, which enshrines the Fundamental Objectives and Directive Principles of State Policy. For decades, these provisions have been relegated to the periphery of judicial scrutiny, deemed non-justiciable and devoid of enforceable rights. However, the increasing influence of

1 Nzeribe Ejimnkeonye Abangwu, Adekunbi Imosem, Nigeria,Progressive Enforcement of International Human Rights Norms in Nigeria: The Question of Access to Justice, IJISET – International Journal of Innovative Science, Engineering & Technology, Vol 6 Issue 9, September 2019 ISSN (Online) 2348 – 7968 | Impact Factor (2019) – 6.248 www.ijiset.com

2 Ibid

3 Ibid

4 UN CHARTER, Art 55

5 ibid

6 ibid

international human rights law has challenged this narrative, injecting new life into the dormant provisions of Chapter II. The winds of change have brought into sharp focus the interconnectedness of human rights, exposing the artificial dichotomy between civil and political rights on the one hand, and economic, social, and cultural rights on the other. As we delve into the complexities of Chapter II, it becomes evident that the judicial arm of government can no longer ignore the imperatives of socioeconomic rights, nor can it turn a blind eye to the transformative power of international human rights law in shaping the constitutional landscape of Nigeria.

2. INTERNATIONAL HUMAN RIGHTS LAW

Human rights may be conceptualized either as universal moral entitlements or as codified legal rights that establish obligations for governments. The former originates in ethical philosophy and traditions, while the latter forms the foundation of human rights law, providing mechanisms for redress and legal enforcement, especially in societies that value constitutionalism and the rule of law.

The concept of human rights originates from the inherent nature of humanity, as expressed in various religions and moral philosophies.[7] In contrast, human rights law is a more recent development closely tied to the emergence of liberal democratic states[8]. In these states, the majority's power can sometimes disregard the rights of minority groups, such as marginalized communities, indigenous peoples, and vulnerable individuals. To address this, a constitutionally entrenched bill of rights is established, containing basic human rights for all and creating a legal framework superior to ordinary law and executive action. This bill of rights gives rise to human rights law, which becomes an integral part of the legal system, protecting the rights of numerical minorities and the powerless[9].International human rights law is a legal framework that safeguards and promotes fundamental rights, transcending national laws and practices. Its primary objective is to provide legal protection for human rights globally by implementation of laws and treaties on human rights. Although the concept of human rights has been explored within national contexts for centuries, international human rights law is a relatively recent development. The Universal Declaration of Human Rights (UDHR), adopted in 1948, further solidified this commitment by outlining 31 articles that serve as a model for human rights entrenchment and protection worldwide[10]. This declaration established a universal standard for achieving human rights, emphasizing their inalienable nature and setting a common goal for all nations and people to strive for[11].

The Europeans took the lead in codifying and enforcing human rights by adopting the European Convention on Human Rights in 1950, which incorporated many provisions from the Universal Declaration and established a regional human rights charter. Building on the 1948 Declaration, the United Nations Human Rights Commission developed two covenants on human rights, adopted by the General Assembly in 1966. This momentum inspired other regional human rights instruments, including the American Convention on Human Rights in 1969 and the African Charter on Human and Peoples' Rights in 1981, which drew influence from the Universal Declaration and further advanced human rights protection globally[12].The international human rights instruments have had

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7 Frans Viljoen, International Human Rights Law: A Short History,< https://www.un.org/en/chronicle> accessed 13/05/202

8 ibid

9 ibid

10 General Assembly Resolution 217A(111)

11 Ezejiofor, G., Protection of Human rights Under the Law, 1964, p.86, cited in Ezejiofor, G, Text for Human Rights Teaching in Schools publishers?

12 Nzeribe Ejimnkeonye Abangwu, Adekunbi Imosem (2019). Progressive Enforcement of International Human Rights Norms in Nigeria: The Question of Access to Justice. International Journal of Innovative Science, Engineering & Technology (IJISET), 6(9), [ISSN (Online) 2348 – 7968]. Doi: https://www.ijiset.com

a profound impact, transforming human rights from a solely domestic concern to a global issue. In today's era of globalization, the Universal Declaration is viewed as a dynamic and evolving benchmark for human rights, applicable to all nations and peoples worldwide. As a result, the international community, through the United Nations and regional organizations, is committed to upholding this universal human rights standard, superseding individual countries' municipal laws and provisions[13].

3. ENFORCEMENT AND APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN NIGERIA

The relationship between international law and municipal law is a complex and contentious issue, with various theoretical approaches attempting to clarify their intersection. The dualist and monist doctrines represent the two primary perspectives, with dualists advocating for a clear distinction between international and municipal law based on their distinct functions, and monists asserting the supremacy of international law over municipal law. Additionally, monist-naturalist and co-ordination theories offer alternative viewpoints[14].

In Nigeria, scholars are divided on this issue, with some supporting the incorporation doctrine and others advocating for the transformation theory. The latter approach recognizes the growing interdependence of states and the need for international law to complement municipal law[15]. However, Nigeria's Constitutions have not explicitly addressed this relationship, leading to ambiguity and challenges for national courts in resolving cases involving international law[16]. Treaty relations form a significant aspect of Nigeria's international engagements, and understanding the country's stance on the relationship between international and municipal law is crucial. International law encompasses treaties and custom, reflecting express agreements and tacit assent among states. Examining Nigeria's constitutional provisions regarding treaty practice can provide insight into its approach to this complex issue. In essence, the relationship between international law and municipal law is a multifaceted and nuanced issue, with various theoretical perspectives and practical implications[17]. Nigeria's approach to this issue will have significant consequences for its international relations, treaty obligations, and domestic legal framework. A comprehensive understanding of this relationship is essential for navigating the complexities of international law and promoting global cooperation and justice. For international human rights norms to be truly upheld, they must be enforced. However, there are various challenges to enforcement, including the availability of human rights instruments, the existence of effective machinery, and a conducive environment[18]. Unless these norms are enforceable, recognition and entrenchment remain mere political rhetoric. While there have been progressive efforts to enforce rights, there is still a significant gap in access to justice, particularly for the poor, who continue to be marginalized and denied concrete access to human rights protections. Human rights norms require explicit empowerment through pertinent and binding legal instruments to be enforceable. This can take the form of either domestic legislation or international treaties that have been ratified and incorporated into domestic law, providing a legally binding framework that courts can enforce and uphold[19].

13 Ibid
14 Okeke, Christian , (Year of publication unknown). International Law in the Nigerian Legal System. Golden Gate University School of Law. GGU Law Digital Commons.
15 Ibid
16 Ibid
17 Ibid
18 Nzeribe Ejimnkeonye Abangwu, Adekunbi Imosem (2019). Progressive Enforcement of International Human Rights Norms in Nigeria: The Question of Access to Justice. International Journal of Innovative Science, Engineering & Technology (IJISET), 6(9), [ISSN (Online) 2348 – 7968]. Doi: https://www.ijiset.com
19 Ibid

National Constitutions serve as the primary reference point for human rights norms recognized and protected by law within a state. The Universal Declaration of Human Rights (UDHR)[20] has significantly influenced the inclusion of human rights provisions in many national constitutions. In Nigeria, the history of human rights entrenchment and the content of the rights regime can be traced back to international human rights instruments. While international human rights norms enshrined in national constitutions are enforceable, subject to local limitations, local factors such as dictatorships or military regimes can impact the content and enforcement of these norms. In Nigeria, the Supreme Court acknowledged that human rights under military rule may be aberrations, as seen in the case of *Lekwot v. Tribunal*[21], where it was held that Decrees of the military were superior to the Constitution. However, the courts later held that the African Charter provisions took precedence over the Decrees, providing a last resort for enforcing international human rights norms in Nigeria, as seen in the case of *Attorney General of Botswana v. Unity Dow*[22].

For international human rights instruments to be enforced within a country's legal system, they must overcome certain domestic legal obstacles. Otherwise, they remain persuasive but non-binding instruments. Countries typically establish procedures for implementing treaties into municipal law. In Nigeria, for example, Section 12(1) of the Constitution[23] stipulates that treaties have no legal force unless enacted into law by the National Assembly.

In the landmark case of *Fawehinmi v. Abacha*[24], the Court underscored that international treaties, once incorporated into Nigerian law by legislative enactment, carry the weight of a binding law. This decision, especially in relation to the African Charter on Human and peoples' Rights (Enactment) Act[25], confirmed the judiciary's role in enforcing rights outlined in such treaties, including those addressing social and economic well-being a local Act of the National Assembly. Since then, domestic courts have enforced the treaty provisions. This contrasts with other international human rights treaties that have not been incorporated into Nigerian law. Although ratified, these treaties are not enforceable in the Nigerian legal framework until they are incorporated.

Enforcement Mechanisms:

While we've discussed the scope of instruments enabling human rights enforcement, it's crucial to examine the limitations of the existing machinery. The courts are the most effective enforcement mechanism. Domestic courts, in particular, have been active in enforcing international human rights law in Nigeria. However, there are political constraints and constitutional limitations. For instance, the 1999 Nigerian Constitution only enforces entrenched rights and domestic laws, compartmentalizing civil and political rights as fundamental rights, while economic, social, and cultural rights are deemed non-justiciable[26]. This raises concerns about the divisibility of human rights. Furthermore, national courts have limited power to enforce international human rights law, and treaties are not directly enforceable unless incorporated into domestic law through legislation. In *Fawehinmi v. Abacha*[27], the Court of Appeal emphasized that treaties without enactment cannot be justiciable in municipal courts. These limitations hinder the effective enforcement of human rights norms.

20 Universal Declaration of Human Rights (1948)
21 (1993) 2 N.W.L.R(part 276) 410
22 [1998] 1 HRLRA 1; See also the Nigerian case of Lakanmi & Anor. V. Attorney General (Western State) (1971) 1 U.I.L.R 20, and Adeniran & Anor. V. Interlard Transport Ltd.(1991) 9 N.W.L.R (part 214) 155
23 1999 of the Constitution of the Federal Republic of Nigeria (as amended)
24 (1996) 9 N.W.L.R (Part 475) 710
25 Cap.A9 LFN 2004 ed.
26 Section 6(6)(C) 1999 Constitution(as amended)
27 Supra

The international system faces a significant constraint in enforcing human rights due to the lack of a coercive mechanism, which is particularly concerning since states and government agencies are often the perpetrators of human rights violations. An effective international enforcement mechanism is crucial to provide redress to victims who are denied justice through national courts. While ad hoc international criminal courts have been established to address extreme cases, their effectiveness is questionable, and they fail to address the root issue of human rights enforcement[28]. Establishing a permanent international human rights court with jurisdiction over cases against governments and leaders is essential. This court could provide an objective standard for assessing states' actions and justify interventions in cases of gross human rights violations[29]. The current practice of interference based on subjective assessments by intervening powers poses a threat to global peace and stability. Regional courts like the European Human Rights Court have made progress in promoting international human rights enforcement, but more needs to be done to establish a coercive international enforcement machinery that operates beyond domestic and national legal systems to provide genuine redress to victims of human rights violations.

Recognizing, entrenching, and enforcing international human rights norms is crucial, but it's only half the battle. Creating an enabling environment where individuals can actually enjoy these rights is a separate and equally important challenge. In Nigeria, political and socio-economic factors pose significant obstacles to the practical realization of human rights, going beyond the limitations of entrenched norms and enforcement mechanism.

4. CHAPTER II OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

Nigeria's 1999 Constitution (as amended) is the supreme law of the land, and its preamble prioritizes the wellbeing of citizens. However, it is puzzling that Chapter 2 of the Constitution, which addresses social, economic, and developmental welfare, is declared non-justiciable by Section 6(6)(c) of the same Constitution. This contradiction raises questions about the commitment to prioritizing citizens' welfare[30].

5. RIGHTS CONTAINED IN CHAPTER 2 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA:

Chapter 2 of the Constitution, comprising Sections 13-26, outlines the "Fundamental Objectives and Directive Principles of State Policy". To understand the significance of this Chapter, it's essential to note the opening section, Section 13, which mandates all government organs, authorities, and persons exercising legislative, executive, or judicial powers to conform to and apply the Constitution's provisions. This means that the sections in this Chapter serve as guiding principles for the government to uphold natural justice and prioritize citizen welfare. Additionally, Section 16(1)(a) emphasizes the need to harness national resources to establish a self-sufficient economy, manage the national economy to ensure maximum welfare, liberty, and contentment for each citizen, and uphold principles of social justice and equality in status and opportunities. The State is mandated to direct its policies towards achieving specific objectives, including: (a) promoting balanced economic development; (b) efficient harnessing and distribution of resources for collective benefit; (c) preventing wealth concentration and

28 Nzeribe Ejimnkeonye Abangwu, Adekunbi Imosem (2019). Progressive Enforcement of International Human Rights Norms in Nigeria: The Question of Access to Justice. International Journal of Innovative Science, Engineering & Technology (IJISET), 6(9), [ISSN (Online) 2348 – 7968]. Doi: https://www.ijiset.com

29 Ibid

30 Nwauzi, Linus "How Fundamental are the Fundamental Objectives and Directive Principles Under Chapter II of the Constitution of Nigeria 1999." (2017):. *Donnish Journal of Law and Conflict Resolution* 3, (no. 3) (029-034).

ensuring fair control over production and exchange; and (d) providing citizens with basic needs like housing, food, minimum wage, elderly care, and support for the vulnerable Section 16. The State order is founded on principles of freedom, equality, and justice Section 17, emphasizing equal rights, just working conditions, and adequate facilities for leisure and social life. Furthermore, the State is directed to prioritize education, aiming to eradicate illiteracy through free and compulsory primary education, free secondary and university education, and adult literacy programs Section 18. Section 19 outlines the guiding principles for Nigeria's foreign policy, which include: (a) promoting and protecting national interests; (b) supporting African integration and unity; (c) fostering international cooperation for global peace and respect; (d) upholding international law and resolving disputes through peaceful means; and (e) promoting a just world economic order. Additionally, Section 20 focuses on environmental objectives, Section 21 on preserving Nigerian cultures, Section 22 on the responsibilities of the mass media, and Section 23 on establishing national ethics. While these provisions are crucial for realizing the envisioned Nigeria, they are unfortunately non-justiciable and unenforceable, meaning they cannot be legally enforced or upheld.

THE NON-JUSTICIABILITY OF CHAPTER 2 OF THE CONSTITUTION:

Section 6 (6)(c) of the 1999 Constitution on the powers vested in the judiciary provides that these powers:

> *"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."*

The explicit language of this Section explicitly excludes the Court's jurisdiction over the Fundamental Objectives in Chapter 2, raising the question: why bother enshrining rights if they can't be enforced? This creates a paradox, where constitutional principles exist without the means for legal redress, leaving one wondering about the purpose of including such unenforceable rights in the first place[31]. This provision starkly contrasts with Section 13, which explicitly requires all government organs, including the judiciary, to conform to, observe, and implement the fundamental objectives and directive principles of state policy. This departure raises questions about the coherence and consistency of the legal framework, as Section 13 emphasizes the importance of upholding these principles, while this provision seemingly undermines their enforceability. The legal enforceability of a law is what gives it its binding power, making it a potent force for compliance. Without this enforceability, a law becomes a mere paper tiger, lacking the teeth to bite. In the case of Chapter 2 of the Nigerian Constitution, its non-justiciable nature means that while the objectives and principles outlined are important national goals and moral guidelines, they lack the legal muscle for direct enforcement. As a result, the government's adherence to these principles relies on political will and the accountability of elected officials, rather than a legal imperative.

It is a trite principle of law that every general rule has an exception. The principle of non-justiciability of Chapter 2 of the 1999 Constitution is no exception, as it is subject to certain exceptions. Notably, the National Assembly can enact specific legislation that gives legal force to any of the directive principles, making these laws justiciable. This means that when a law is passed to implement a particular directive principle, individuals can challenge the government's compliance with that law in court, providing a crucial check on the government's actions[32].The

31 Jadasola Akande, Introduction to the constitution of Nigeria (2000) 271
32 Ibid

case of *Olafisoye v. Federal Republic of Nigeria* lends a judicial backing to this exception[33].

The establishment of the Economic and Financial Crimes Commission Act is a prime example of legislation enacted in pursuit of Section 15(5) of the 1999 Constitution, which mandates the state to eradicate corruption and abuse of power. While the National Assembly has made limited efforts to enact legislation that enforces the provisions of Chapter 2, they have been more prolific in passing laws that enforce citizens' duties outlined in the chapter, such as the Personal Income Tax Act and other tax legislations. However, some elements within Chapter 2 have been incorporated into other parts of the Constitution, making them enforceable through the courts, such as Section 42, which protects against discrimination as provided for in Section 15(2) of the Constitution.

6. THE IMPACT OF INTERNATIONAL HUMAN RIGHTS LAW ON THE APPLICATION OF CHAPTER II OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

A sensible interpretation of item 60(a) of the Second Schedule Part 1 of Exclusive Legislative list of Constitution of Nigeria suggests that it empowers the National Assembly to grant justiciability status to the Directive Principles in Chapter II of the Constitution.[34] This means that through legislation, the National Assembly can override the limitation imposed by Section 6(6)(c) and enable courts in Nigeria to enforce the Directive Principles. By combining Section 4(1) & (2) and item 60(a) on the Exclusive Legislative List, it becomes clear that the National Assembly has the authority to enact a law that declares some or all provisions of Chapter II as legal entitlements or human rights, thereby making them enforceable by the courts. Therefore, making them justiciable. The National Assembly has two options to make Chapter II enforceable: (a) confer justiciability status on the Directive Principles, which can be done through either (i) enacting a new statute or (ii) domesticating a ratified treaty, or (b) repeal Section 6(6)(c), granting courts jurisdiction over Chapter II cases. Regardless of the approach chosen, the legal outcome is the same. Both domesticated treaties and statutes enacted through the regular legislative process create enforceable rights, making the Directive Principles actionable in court. According to Uwaifo J.S.C, the inclusion of the Directive Principles in the Exclusive Legislative List under item 60(a) was intended to indicate that they can be transformed into enforceable laws within the National Assembly's competence, as far as possible, when the need arises[35].

7. IMPACT OF AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (RATIFICATION AND ENFORCEMENT) ACT IN THE ENFORCEMENT OF CHAPTER II OF THE CONSTITUION OF FEDERAL REPUBLIC OF NIGERIA

Exercising its authority, the National Assembly passed the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act in March 1983, effectively incorporating the Charter's provisions into Nigerian domestic law. As stated in the Act's commencement section, this domestication gives the Charter's provisions "the force of law in Nigeria, with full recognition, effect, and applicability by all authorities. Notably, the African Charter Act incorporated all the rights specified in the Charter without distinguishing between categories, effectively importing all of them into Nigerian domestic law. This means that all rights enshrined in the Charter, including civil and political rights (like those in Chapter IV of the Constitution), socioeconomic

33 (2005) 51 WRN 62
34 Obiajulu Nnamuchi, 2008, p. 19
35 Attorney General of Ondo State, at 408-409, paras. H-A

rights (previously considered Directive Principles in Chapter II), and solidarity rights (third-generation rights), are now fully integrated into Nigeria's domestic legal framework.

The comprehensive incorporation of the African Charter into Nigerian law led the Supreme Court to declare in *Abacha & Others v Fawehinmi*[36] that when a treaty is enacted into law by the National Assembly, as was the case with the African Charter, it becomes binding and enforceable by the courts, just like any other law. The courts must give effect to it, as it falls within their judicial power. By enacting the African Charter on Human and Peoples' Rights into domestic law, Nigeria granted it the full force of national legislation. The judiciary has affirmed this stance in several cases like in *Nemi v. The State*[37] which stated that 'the Charter has become part of our domestic law' asserting that once a treaty like the African Charter is domesticated, it is enforceable in Nigerian courts, thereby enhancing the protection of socioeconomic rights that might otherwise be deemed non-justiciable as provided by the Constitution and other relevant laws. These cases are significant for establishing the jurisdiction of courts, both domestic and foreign, to hear matters related to Chapter II of the Constitution, as long as the rights in question are also recognized by the African Charter. Through these cases, the legal precedent is growing to support the position that courts can exercise jurisdiction in such matters, providing a stronger foundation for the enforcement of these rights.

In the landmark case of *SERAP v Federal Republic of Nigeria (2012, para. 36)*, the Court of Justice of ECOWAS ruled that when a right is protected by an international instrument binding on a Member State, that right takes precedence over domestic legislation, including the State's own Constitution, and cannot be overridden by it. The Government of Nigeria's claim that the International Covenant on Economic, Social and Cultural Rights (ICESCR) is non-justiciable is unfounded (2012, para. 38), as the same right is recognized in the African Charter, which is binding on the country. Despite the Nigerian Constitution declaring the right to a healthy environment as non-justiciable, the Court ruled that Article 24 of the African Charter confers justiciability on this right (2012, para. 120).

The ECOWAS Court of Justice reached a similar decision in *SERAP v Federal Republic of Nigeria and Universal Basic Education Commission (2009)*, ruling that despite Chapter II of the Constitution, the right to education is enforceable under Article 17 of the African Charter, and therefore, enforceable in Nigeria. These decisions effectively override the jurisdictional limitation imposed by Section 6(6)(c) of the Constitution, which attempts to restrict the courts' power to hear matters related to Chapter II rights. The ECOWAS Court of Justice's cosmopolitan approach, a departure from the restrictive approach of the past, has been adopted domestically. For example, in the case of *Attorney-General of Ondo State v Attorney-General of the Federation & 35 Ors (2002) 9 Sup. Ct. Monthly 1*, the Supreme Court of Nigeria was asked to determine whether the National Assembly had the authority to legislate on matters contained in Chapter II of the Constitution, specifically Sections 13 and 15(5), which were previously considered non-justiciable. Section 13 mandates that all government organs and authorities must conform to and apply the provisions of Chapter II, while Section 15(5) requires the State to eliminate corrupt practices and abuse of power. The second issue before the Court was whether the Corrupt Practices and Other Related Offences Act No. 5 of 2000 and its enforcement agency, the Independent Corrupt Practices and Other Related Offences Commission (ICPC), were constitutionally valid, given that they were established pursuant to Section 15(5). The Court held that the National Assembly has the power to legislate on matters in Chapter II of the Constitution, making them enforceable in court. The Court emphasized that interpreting the Constitution,

36 (2000) 6 NWLR (Pt. 660) 228
37 (1994) 1 LRC 376

which is the foundation of our legal system, requires a broader approach, unlike interpreting statutes. A narrow interpretation would contradict the Constitution's purpose and spirit.

There have been several legislative actions similar to the Corrupt Practices and Other Related Offences Act, which have boldly recognized socioeconomic rights in Chapter II as human rights, despite the limitations imposed by Section 6(6)(c). A notable example is the Child's Rights Act (2003), which domesticates the UN Convention on the Rights of the Child (1989). This law confers a wide range of human rights on children in Nigeria, including the right to survival and development, leisure, recreation, and cultural activities, health, education, and many other socioeconomic rights, explicitly recognizing and protecting these rights for the first time.

Further examples of legislative actions that recognize socioeconomic rights in Chapter II as human rights include the Compulsory, Free Universal Basic Education Act (2004) and the National Health Act (2014). The former mandates the government to provide free and compulsory education for all children of primary and junior secondary school age (Section 2), while the latter aims to "protect, promote, and fulfil the rights of Nigerians to access healthcare services" (Section 1(1)(e)). These laws explicitly confer human rights status on Chapter II provisions, demonstrating a significant shift in thinking and a growing awareness of the importance of socioeconomic rights for human development and well-being in the country.

Local cases illustrate a significant shift in approach, as seen in *Odafe & Ors v Attorney-General & Ors*,[38] where the Court departed from the restrictive approach and held that HIV-positive prisoners in Nigeria have the right to medical care under Article 16 of the African Charter on Human and Peoples' Rights (1981). This ruling affirmed that socioeconomic rights are enforceable, despite Chapter II of the Constitution declaring them non-justiciable. The Court's decision aligns with the precedent set in *Ubani v Director SSS*, recognizing the African Charter as part of Nigerian law (Cap 10) and emphasizing the Court's role in protecting these rights (paras 37-38).

The obligations under Section 16 of the Constitution are strengthened by the provisions of Articles 15-18 of the African Charter on Human and Peoples' Rights, which is part of our domestic law, as well as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. With Nigeria's domestication of the African Charter and ratification of the International Bill of Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, along with the Optional Protocols, the judiciary is poised to play a crucial role in transforming Nigeria from a political democracy to an economic democracy. The judiciary is now positioned to take steps towards ensuring Nigeria's economic prosperity by enforcing the implementation of economic and social rights contained in the International Bill of Rights, which Nigeria has ratified, in addition to its obligations under the Constitution and other legislation.

The court's reference to the International Bill of Rights signifies a significant development in the adjudication of socioeconomic rights in Nigeria, indicating a growing cosmopolitan approach in the judiciary. This shift is attributed to the domestication of the African Charter in 1983 and the enactment of the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules) by then Chief Justice Idris Legbo Kutigi, pursuant to Section 46(3) of the 1999 Constitution.

38 (2004) AHRLR 205 (NgHC)

8. THE EFFECT OF FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES (2009) ON INTERNATIONAL HUMAN RIGHTS LAW IN THE APPLICATION OF CHAPTER II OF THE CONSTITUTION OF NIGERIA

There are three instances under section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 when any person may invoke the Fundamental Right (Enforcement Procedures) Rules, 2009 to seek redress in a court, namely when it is alleged that any of the provisions of Chapter IV has been or is being or likely to be contravened in any state in relation to him.[39] This is similar to the provision of the FREP Rules however with a fundamental addendum by inclusion of the African Charter on Human and People's Rights (Ratification and Enforcement) Act. Order II Rule 1 of the 2009 Rules provides:

> *"Any person who alleges that any of the fundamental Rights provided for in the Constitution or African Charter on Human and people's Rights (Ratification and Enforcement) Act and to which he is entitled, has been , is being or is likely to be infringed, may apply to the Court in the State where the infringement occurs or likely to occur, for redress".*

The inclusion of the Charter in Order II Rule I and other parts of the new Rules now underlines the importance which the Charter is expected to play in the implementation and enforcement of human rights.[40] Notably, the FREP Rules require the court to respect and consider municipal, regional, and international bills of rights, including the African Charter, Universal Declaration of Human Rights, and other instruments in the African and United Nations human rights systems, as well as regional and municipal human rights regimes. This provision is extensive and progressive, obliging the court to recognize and protect human rights and freedoms without artificial barriers or distinctions based on the genre of rights.

In the 2012 case of *Ndubuisi Abanah and Ors v Inspector General of Police & Ors*, the court reinforced this approach, embracing a broad and inclusive understanding of justiciable rights. By embracing international and regional human rights instruments, the judiciary has signalled a new era in the enforcement and protection of socioeconomic rights in Nigeria.

In light of the African Charter's comprehensive definition of human rights, which encompasses both civil and political rights (CIPO rights) and socioeconomic rights, and the absence of any distinction in the Fundamental Rights (Enforcement Procedure) Rules (FREP Rules), it is reasonable to conclude that no segregation of rights was intended. Consequently, the Court of Appeal's decision in *Alhaji Sani Dododo v Economic & Financial Crimes Commission and Others*[41] elevated socioeconomic rights to the same status as CIPO rights. The African Charter, now an integral part of Nigeria's laws, safeguards citizens' social and economic rights. The 1999 Constitution recognizes and protects the African Charter, which must be relied upon to uphold both political and socioeconomic rights.

To clarify, the African Charter, which is now a part of Nigeria's laws, safeguards citizens' social and economic rights. The 1999 Constitution upholds the African Charter, which must be referenced to recognize both political and socioeconomic rights. Notably, the African Charter explicitly states that civil and political rights are inextricably linked with economic, social, and cultural rights, and that the fulfilment of the latter is essential for the enjoyment of the former (African Charter, Preamble, paragraph 7). In other words, the African Charter

39 Uwechia V. Savage (1972) 3 SC 213
40 Ikechuwu Uzo, Guide to Fundamental Rights Litigation (2nd Edn), Law Digest Publishing Co.
41 (2013) 1 NWLR (Pt. 1336) 468.

emphasizes the interconnectedness and interdependence of all human rights, and Nigeria, as a State Party, is obligated to implement them in a holistic and integrated manner.

A careful analysis of the impacts suggests that invoking Section 6(6)(c) to dismiss socioeconomic rights in Chapter II of the Constitution would be a judicial misstep. This understanding marks a significant shift from prioritizing one type of right over another to recognizing their equal importance, aligning with the universal human rights framework that emphasizes the interconnectedness and indivisibility of all rights. This progressive approach is in line with global and regional human rights trends, including the African human rights system, which promotes a comprehensive and inclusive protection of human rights including that of Chapter II of the Constitution. Consequently, it is worthy to posits that the International Human Rights has its limitations as it relates to it's impact on Chapter II of the constitution which include but not limited to Political Interference, Lack of proper enforceability by local Courts.

Notwithstanding these, the International Human Rights Law has immensely been impactful in Application and justiciability of Chapter II of the constitution.

9. CONCLUSION AND RECOMMENDATION

The discussions have unequivocally demonstrated the profound impact of International Human Rights Law on the application of Chapter II of the 1999 Constitution. The domestication of international human rights instruments, such as the African Charter, has significantly enhanced the justiciability and enforceability of socioeconomic rights in Nigeria. The judiciary's evolving approach, as seen in landmark cases, has embraced the universality and indivisibility of human rights, recognizing the interconnectedness of civil, political, economic, social, and cultural rights. This shift has empowered citizens to claim their rights, holding the government accountable for ensuring their enjoyment.

To further strengthen the application of Chapter II of the 1999 Constitution, it is recommended that:

1. The judiciary continues to adopt an expansive and inclusive approach to human rights, recognizing their universality and indivisibility.
2. The government takes concrete steps to implement and enforce socioeconomic rights, aligning with international human rights standards.
3. Civil society and human rights organizations intensify advocacy and awareness campaigns to educate citizens about their rights and available remedies.
4. The National Assembly considers legislative reforms to explicitly recognize and protect socioeconomic rights, aligning with international best practices.
5. Nigeria continues to engage with international human rights mechanisms, fostering cooperation and learning from global experiences to enhance the enjoyment of human rights for all citizens.

12

BRIDGING THE IMPLEMENTATION GAP BETWEEN LAW AND PRACTICE IN WOMEN'S LAND AND HOUSING RIGHTS IN NIGERIA

MUHIBAT JADESINMI OLADOJA MOHAMMED*
OLAYIDE OLADIPO DARA**

Abstract

Women's land and housing rights in Nigeria remain significantly constrained by legal, cultural, and socio-economic barriers. Despite constitutional guarantees and international commitments, discriminatory customary and religious practices continue to restrict women's access to property ownership. This paper critically examines the legal and institutional frameworks governing women's land and housing rights, analyzing the impact of statutory laws, customary laws, and judicial attitudes on gender equity in property ownership. The study identifies key challenges, including male-dominated inheritance systems, limited financial access due to restrictive lending practices, and weak enforcement of existing legal protections. Landmark judicial decisions, such as Ukeje v Ukeje and Mojekwu v Mojekwu, have contributed to progressive legal reforms, yet significant gaps remain in implementation. The paper further explores the role of international treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in advocating for stronger gender-inclusive policies. To bridge the gap between law and practice, the paper recommends legislative reforms, enhanced judicial activism, gender-sensitive housing policies, and increased financial inclusion for women. Public awareness campaigns and community engagement are also emphasized as crucial strategies to challenge patriarchal norms and promote women's land and housing rights. The findings underscore the need for a multi-faceted approach to achieving gender equity in property ownership, fostering socio-economic empowerment, and ensuring sustainable development in Nigeria.

Keywords: *Women, land rights, housing, property ownership, gender equity, legal framework.*

1. INTRODUCTION

Women frequently encounter considerable obstacles to ownership and property management, including laws and practices that discriminate against them as well as social attitudes and beliefs that treat them less favourably than men. Land and housing rights are constituents of fundamental human rights to live in dignity by women and men, which are universally accepted components of international human rights law. Their ability to negotiate access to

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land therefore needs to be strengthened via legal and institutional mechanisms.[1] Despite legislative advancements, societal and cultural practices that favour male control over property continue to undermine women's property rights in many nations.

The powerlessness of Women in land ownership is reinforced by the legal system as well as the inheritance and succession systems, with its attendant problems. The result is that "the law administered by the courts of the country is neither English law, simpliciter nor customary law.[2] Rather, an admixture of English law, Customary law, Islamic law, and the rules derived from elsewhere are administered. By virtue of Section 32(2) of the Interpretation Act, 1964 "imperial laws were to be applied in Nigeria so far only as the limits of the local jurisdiction and local circumstances shall permit and subject to local law".[3] In an attempt to provide a solution to the conflict of laws, the High Court laws of each state make provision that no person who is not normally subject to customary law is to be deprived of its benefit unless there is an express or implied agreement that English law is to govern or the transaction in issue is unknown to customary law.[4] Women who are married under the Marriage Act are entitled to all the advantages offered by the English Law as they are expected to be treated equally like their English Counterparts.[5] This position however has little benefit for womenfolk in Nigeria as custom or customary law is a major clog in the wheel of women's progress.[6]

Generally, there are five modes of acquiring ownership of or title to land under customary law. These are by settlement, conquest, partition, gift, and sale. Settlement however seems to be the oldest mode of acquisition of land, unfortunately, women are usually not at the forefront of this. Migration from one land to the other was usually led by men. So also, was conquest which was dominated by male warriors.[7] However, any member of an African family including a female member[8] may ask for partition of land which could not be refused without good reason. Again, only very few women could benefit from this since the capability to build up such land depends on the level of personal economy. The same factor also affects acquisition of land by sale. As for gift of land, the most feasible is a father giving such to a daughter or the husband giving it to a wife. Although there are no statistics of this for the purpose of this paper, general observation of the pattern of ownership of landed property in Yoruba land, South-West of Nigeria does not lend credence to any positive practice of the above. In other words, landed properties are still largely held by the male folk.

The paper explores statutory and customary laws' impacts on women's land and housing rights in Nigeria. It identifies cultural, legal, and socio-economic obstacles barriers to Women's Land and Housing Rights hindering women from acquiring and retaining property. These include financial barriers, discriminatory lending practices, and patriarchal norms affect women's access to land and housing. Some key judicial decisions and their impact on women's property rights are reviewed. The paper also establishes discrepancies between existing legal provisions

1 BT Aluko and A Amodu, 'Women and Land Rights in Nigeria' (Paper presented at the 5th FIG Regional Conference, Accra, Ghana, 8–11 March 2006)

2 AJ Akande, 'Women's Legal Right to Land and Settlement' in J Akande and others (eds), *Women and Housing in Nigeria: Issues, Problems and Prospects* (Report of the National Workshop, Lagos, in preparation for the 2nd UN Conference on Human Settlement, Habitat II, Women Law and Development Centre, Lagos 1996)

3 A Emiola, *Emiola's African Customary Law* (Emiola Publishers, Ogbomosho 2011) 246

4 Eastern Nigerian High Court Law s 20(1); Northern Nigerian High Court Law s 29

5 O Fatula, *Succession and Inheritance in Nigeria: Fundamentals of Nigerian Property Law* (Afribic Press, Ile-Ife 2012) 126

6 Some customary rules have been used to subject some class of people to the status of servitude, prejudice women in inheritance and labour matters. See also A Sanni, *Introduction to Nigerian Legal Methods* (2003) 12

7 A Emiola, *Emiola's African Customary Law* (Emiola Publishers, Ogbomosho 2011). What constitutes acceptable methods of proving customary ownership of land is traditional history of ownership. Where evidence is found to be inconclusive, then proof of the act of occupation and use of land over a considerable period without challenge from any other claimant and where the above fails, proof of exclusive possession without permission. See *Umeh v Okpalaila (2016) AFWLR (Pt 865) 112, 185 (D–E)*

8 *Lopez v Lopez* (1924) 5 NLR 50

and their implementation in practice. The paper is structured as follows. The first section deals with clarification of key concepts, followed by women's land rights in Nigeria, challenges to women's land rights, women's housing rights in Nigeria, legal framework for women's housing rights in Nigeria, challenges of women's housing rights in Nigeria, judicial interpretations of housing in Nigeria.

2. CLARIFICATION OF CONCEPTS

Property

A combination of legal rights and interests connected to material or immaterial assets are referred to as property. It includes a wide range of assets, including financial, personal, intellectual, and real estate assets. Many legal systems are built around the idea of property, which is essential to contemporary cultures. The word "property" has two main definitions. The first definition refers to people's physical or tangible assets, such as their land, homes, vehicles, and other personal belongings. These assets are frequently referred to as "real property" or "real estate" and are typically acquired through formal legal processes including sales, leases, and mortgages. The second definition of the word "property" refers to intangible assets like intellectual property, which includes trade secrets, patents, trademarks, and copyrights. The owner of the intellectual property has the sole right to use and control these assets, which are frequently produced through creative works or innovations.[9]

Property comprises the rights and legal claims individuals hold over assets, whether tangible (physical—such as land, homes, and personal items) or intangible, including intellectual creations like trademarks and patents. These rights are essential for both personal independence and financial well-being. Yet, women continue to encounter considerable challenges in accessing and owning such assets, especially in the field of intellectual property, where they remain significantly underrepresented, as observed by the World Intellectual Property Organization (WIPO).[10]

Understanding the Nature and Categories of Legal Rights

Rights in law exist in various forms and serve as foundational elements of both legal and social justice systems. They may be categorized as natural rights, which are inherent; statutory rights, established through legislation; customary rights, rooted in traditional practices; and constitutional rights, protected by the nation's constitution. These rights include core freedoms such as the right to life and freedom of expression, as well as legal entitlements like contract and property rights. Moral rights, though based on ethical standards, lack formal legal enforcement. Proprietary rights, specifically, concern the ownership and use of property.[11] Collectively, these rights ensure individuals can claim their legal entitlements and seek redress where necessary. According to John Austin (1869), a legal right is an interest recognized and protected by law, which places a corresponding obligation on others.

Land

Land refers to the soil and any fixtures, buildings, and natural resources attached to it. The definition of land includes ownership rights, interests, and obligations associated with it under the Nigerian law. Section 3 of the Interpretation Act, provides that land includes the "earth, water, and all things attached to the earth naturally or artificially." Nigerian courts have provided several interpretations of the concept of land in various cases. In the

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9 'Laws of Property Under Jurisprudence" available at https://blog.ipleaders.in/laws-of-property-under-jurisprudence/ Accessed 12th August 2024.

10 'Women and IP', available at https://www.wipo.int/women-and-ip Accessed 12th August 2024.

11 See Land Use Act 1978, s 1

case of *Abioye v Yakubu*[12], the Supreme Court held that land includes any permanent structures affixed to it with the holder of a right of occupancy having exclusive use of such land. Judicial decisions have also confirmed that land ownership is subject to government control and customary practices.[13]

Housing

Housing means provision of shelter, that is residential buildings and accommodations for individual persons and families. Housing rights include the rights, obligations, as well as government policies governing the acquisition, ownership, tenancy, and development of residential properties. Housing laws in Nigeria regulate access to housing, landlord-tenant relationships, property rights, and government interventions in housing development. Under the 1999 Constitution of Nigeria, housing is recognized as a fundamental necessity linked to property rights.[14] The National Housing Policy (2012) and Land Use Act of 1978 also apply to housing rights, with emphasis on affordability, accessibility, and security of tenure.[15]

3. THEORETICAL FOUNDATION

Property has been described by several scholars in terms of ownership and incidental rights. Some scholars contend that ownership is a person's relationship to the right that is invested in them, while others say that ownership is a person's relationship to the thing that is the subject of ownership.[16] Property could also mean anything that is capable of being owned, or something a person can exercise ownership over.[17] According to Austin, ownership is a limitless right in point of use that is unrestricted in point of object disposition and unbounded in point of duration. He defines a legal right as "a legally protected interest that imposes a duty on another person."[18] Arinze noted Holland's view on ownership, as having complete control over and enjoyment of an object.[19] Salmon defines ownership as the relationship between an individual and the right that is bestowed on him. According to Salmond, "a right is an interest recognized and protected by the law, respect for which is a duty, and disregard of which is a legal wrong."[20] But the truth is that ownership and possession are impossible without property. The Supreme Court of India acknowledged this when it declared that "a sum of a bundle of rights and in case of tangible property would include the right to possession, the right to enjoy, the right to destroy, the right to retain, the right to alienate."[21] In essence, the notions of possession and ownership go hand in hand with the well-defined concept of property.

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12 *Abioye v Yakubu* (1991) 5 NWLR (Pt 190) 130

13 Nkwocha v Governor of Anambra State (1984) 6 SC 362, reinforced the idea that, under the Land Use Act, land is held in trust by the government, and no individual has absolute ownership while Madubuike v Madubuike (2001) 9 NWLR (Pt 719) 689, confirmed that land ownership in Nigeria can be subject to both statutory and customary tenure, depending on the circumstances of acquisition.

14 Constitution of the Federal Republic of Nigeria 1999, s 43, guarantees every citizen the right to acquire and own immovable property anywhere in the country.

15 Land Use Act 1978, Cap L5 Laws of the Federation of Nigeria (LFN) 2004

16 Ownership in Jurisprudence: Meaning, Kinds, Incidents and Relevance in Contemporary Times' *LawBhoomi* https://lawbhoomi.com/ownership-in-jurisprudence-meaning-kinds-incidents-and-relevance-in-contemporary-times/ accessed 12 January 2025

17 O Fatula (2012) *Op cit* page 1

18 Austin, Lectures on Jurisprudence, 1869

19 VC Arinze, 'An Assessment of the Meaning and Context of Ownership and the Role of the Legal System in its Determination: Prospects and Challenges' (2022) 9(2) *Journal of Commercial and Property Law* (Nnamdi Azikiwe University, Awka)

20 PJS Salmond, *Jurisprudence* (12th edn, Sweet & Maxwell 1966)

21 *Guru Dutt Sharma v State of Bihar (1961) SC 1684*

4. WOMEN'S LAND RIGHTS IN NIGERIA

Land rights refer to the legal or customary entitlements that individuals or groups have over land, including rights to own, use, inherit, and transfer land. In Nigeria, women's land rights are often limited due to cultural, customary, and statutory legal constraints that favour male ownership and inheritance. Despite constitutional protections, traditional practices continue to hinder women's full access to land ownership. The courts have recognised that rights can be Customary, Statutory, or Constitutional in a number of cases bothering on women's rights to property in Nigeria.

In the case of *Mojekwu v Mojekwu*[22], the Court of Appeal declared the Oli-Ekpe customary practice, which prevented women from inheriting land, as discriminatory and inconsistent with natural justice. Similarly, in *Ukeje v Ukeje*[23], the Supreme Court ruled that the Igbo customary law, which disinherits female children, is unconstitutional and violates Section 42 of the 1999 Constitution. In the same vein, in *Anekwe v Nweke*[24], the Supreme Court invalidated a custom that prevented women from inheriting family property, stating that it was contrary to natural justice and human dignity. The court also condemned the customary position that deny women access to housing as unconstitutional in the case of *Mojekwu v Ejikeme*[25].

5. WOMEN'S HOUSING RIGHTS IN NIGERIA

Housing rights refer to the legal entitlements of individuals to acquire, own, and occupy residential property. In Nigeria, women's housing rights are often restricted due to legal, customary, and socio-economic barriers. While statutory laws recognize women's rights to own and inherit property, discriminatory cultural and religious practices frequently hinder their access to housing.[26]

Several Nigerian court cases have addressed the legal issues surrounding housing, ownership, and tenancy rights. In *Adebisi Akanmu v Oshodi*[27], the court ruled on the rights of tenants in housing disputes, emphasizing that due process must be followed before eviction. In *Fasoro v Beyioku*[28], the case reinforced the principle that property ownership must be legally transferred through proper documentation and compliance with statutory provisions. In *Yahaya v Gbadamosi*[29], the Court of Appeal held that a tenant cannot be evicted from housing without proper notice, highlighting the importance of due process in landlord-tenant relationships. In *Ihenacho v Uzochukwu*[30], the case clarified the legal obligations of landlords and tenants, affirming that a tenant's right to housing is protected under tenancy laws. In *Ejikeme v Okonkwo*[31], the Supreme Court ruled on disputes involving the illegal sale of housing property, emphasizing the need for proper documentation in real estate transactions.

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22 *Mojekwu v Mojekwu* (1997) *7 NWLR (Pt. 512) 283*
23 *Ukeje v Ukeje* (2014) 11 NWLR (Pt. 1418) 384
24 *Anekwe v Nweke (2014)* LPELR-22697(SC)
25 (2000) 5 NWLR (Pt. 657) 402
26 Federal Republic of Nigeria, *National Housing Policy* (Federal Ministry of Lands, Housing and Urban Development 2012); Land Use Act 1978, Cap L5 LFN 2004; Constitution of the Federal Republic of Nigeria 1999 (as amended), s 43, s 42.
27 *Adebisi Akanmu v Oshodi (1998)* 10 NWLR (Pt. 569) 290
28 *Fasoro v Beyioku* (1988) 2 NWLR (Pt. 76) 263
29 *Yahaya v Gbadamosi* (2012) LPELR-9846(CA)
30 *Ihenacho v Uzochukwu* (1997) 2 NWLR (Pt. 487) 257
31 *Ejikeme v Okonkwo* (1994) 8 NWLR (Pt. 362) 266

6. LEGAL FRAMEWORK FOR WOMEN'S LAND AND HOUSING RIGHTS IN NIGERIA

Any reference to property under any system of customary law means landed property. Land therefore constitutes a very significant element in the lives of the people. The word 'property' may be used in one of two senses. It may be used to indicate a physical object capable of ownership (i.e. right in rem) or rights held by a person in respect of that object. Thus, English law distinguishes between corporeal rights such as land and houses and incorporeal rights (things that have no physical existence) such as choses in action. These concepts are not recognized under customary law. Only two classifications of property are recognized under customary law, these are (i) movables and (ii) immovable.[32] It should he noted that land can be acquired under custom or statute in Nigeria. Under customary law, there is an interplay of the law of property and succession with the underlining philosophy of promoting family cohesion, thus the laws of most African societies ensure that males derive rights to property and succession in the family and deny females succession rights to land in particular.[33]

Under Customary Law of the Yorubas for instance, inheritance follows the blood and not marriage. Hence a married woman is not entitled to inherit the property of the late husband on her own. She can only benefit indirectly from the inheritance by her children if she had any.[34] In the case of *Sogunro Davies v Sogunro Davies*[35] the Court, amongst other things held that a wife was deprived of inheritance rights in her deceased husband estate. In the case of *Suberu v Sunmonu*,[36] the court noted that under the native law and custom of Yoruba people, a wife cannot inherit her husband's property, since she herself is like a chattel to be inherited by a relative of her husband.[37] In the same vein, Sowemimo J, in *Bolaji v Akapo*[38], held that the persons entitled to a grant of the letters of administration under Yoruba Native Law and Custom were the plaintiffs i.e. four of the children of the deceased but not the wives who were regarded as part of the estate.

Similarly, in the case of *Nezianya v Okagbue (1963)*, the court's posture was to the effect that a wife could not inherit the property of her husband if he died intestate and that that was the customary law of most communities in Nigeria.[39] Remarkably, such uniformity exists in the customary law of so many people with different origins, histories and customs.[40]

The Nigerian Constitution

Successive Nigerian Constitutions provide for equality in ownership of property among other human rights. Section 43 of the 1999 Constitution of the Federal Republic of Nigeria provides: "Subject to the provision of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria" regardless of gender. The same Constitution prohibits discrimination on the basis of sex, reinforcing women's right to own and inherit property, including housing.[41]

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32 RA Onuoha. Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue. https://edojudiciary.gov.ng/wp-content/uploads/2016/10/Discriminatory-Property-Inheritance-Under-The-Customary-Law-In-Nigeria.pdf accessed 6 March 2025

33 Akande (1996), *Op. Cit.*

34 Okunola, M. (1990): Relationship Between Islamic Law and Customary Law of Succession in Southern Nigeria (Being a Paper delivered at All Nigerian Judges Conferences, 1991).

35 *Sogunro Davies v Sogunro Davies* (1929) 2 NLR 79 at 80

36 *Suberu v Sunmonu* (1959) 2 F.S.C, 31.

37 *Suberu v Sunmonu* (1959) 2 F.S.C, 31.

38 (1968) NMLR 203, See also the cases of *Akinnubi v Akinnubi* (1997) 1 SCNJ 202; (1997) 2 NWLR (Part 486) 144.

39 *Nezianya v Okagbue* (1963) – 1 All NLR, 352.

40 Omiyi, S. (2005), *Op Cit.*

41 Section 42(1) thereof.

The Constitution further provides that:

> *No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law.*[42]

Despite the above provisions, the practice in ownership of landed property is still largely discriminatory against women in Nigeria. Foremost reason for the continuing discrimination in land acquisition in land matters is the fact that land still continues to change hand outside government regulatory mechanism but in accordance with native law and customs of the people.[43]

The Land Use Act

The Land Use Act of 1978 is a major legislation regulating the acquisition of' land in Nigeria.

The Land Use Act of 1978, which governs land ownership in Nigeria, vests all land in each state in the Governor, who holds it in trust for the people. The law introduced four major types of occupancy thus; statutory right of occupancy granted by the Governor under the Act (Section 50), the deemed grant under Section 34, customary right of occupancy granted by the local government and the deemed grant.

The effect of the provisions above is that all interests in land are now regarded as rights of occupancy. Thus, a learned Justice of the Court of Appeal, Ademola JCA affirmed that "communal and individual title ownership is now a thing of the past. The conception of land in the family for the past, present and future members of it are no longer valid".[44]

Under the Land Use Act, all land is now vested in the Governor of each state as a trustee for the use and common benefit of every Nigerian. Acquisition of land must therefore be with the consent of the governor.[45] The Land Use Act has suffered various criticisms, of most importance is the dispossession of original owners the title to their land and the delay and frustration encountered in securing Certificate of Occupancy for the use of land. The latter criticism has greater implication for women's land rights. The provisions of the Land Use Act relating to the system of land ownership, allocation and use appear to be gender neutral in theory, therefore, the Act does not exclude a woman from ownership of land. The 1978 Land Use Act of Nigeria established a state-owned land system that allowed similar opportunities for men and women to acquire or inherit land. The Land Use Act 1978 does not explicitly provide specific protections against cultural biases that limit their housing rights. However, only legally married women could benefit from this Act, so it did not necessarily improve the ownership or inheritance rights for women in Nigeria.[46] Transfer of land ownership is still largely guided by customary practices that discriminate against women, especially because the average citizen has poor knowledge of the statutory laws with respect to land.

Furthermore, there are various instruments under international law which guarantee freedom from discrimination and the right to own property. Article 7 of the Universal Declaration of Human Rights, (1948) provides: "all are equal before the law and are entitled to equal protection of the law...". Quite germane to the issue at hand is the

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42 Constitution of the Federal Republic of Nigeria 1999 (as amended), Sec. 44.

43 Aluko & Amidu, (2006): *Op Cit.*

44 *LSDPC v. Foreign Finance*, (1987)

45 J Mohammed *et al*, *Basic Law in Nigeria*, (OAU Press Ltd, Ile-Ife, 2011).

46 Land Use Act 1978, Cap L5 Laws of the Federation of Nigeria (LFN) 2004; see also 'A Quick Look at Women's Land and Inheritance Rights in Nigeria' (Landesa, 12 August 2024) https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria accessed 12 August 2024

provision of Article 17 of the same instrument states that everyone has the right to own property alone as well as in association with others. It also states that no one shall be arbitrarily deprived of his property. Although, on the face, the language of the provision is not gender-neutral, it does not preclude its application to women. In the same vein, the African Charter on Human and Peoples' Rights 1981 provides for equality in ownership of property. Article 14 states that "the property right shall be guaranteed. It may only be encroached upon in the interest of the public need or the general interest of the community and in accordance with the provisions of appropriate laws."[47] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (ratified by Nigeria in 1985) also provides for gender equality in housing and property rights. A safe inference therefore is that housing is a basic human right for both genders (i.e. men and women) imbibing the spirit of the above international instrument.

The Marriage Act[48]

The Act defines marriage as the voluntary union for life of one man and woman to the exclusion of all others.[49] The law relating to intestate succession in respect of a person married under the Act vary from State to State. The Act varies inheritance after marriage has been contracted under the Act even though a testator is subject to customary law. Section 36 of the Marriage Act provides as follows:

i. a person who is subject to customary law contracts a marriage in accordance with the provisions of the Act and dies intestate after the commencement of the Act leaving a widow or husband or any issue of such marriage OR
ii. any person who is an issue of a marriage under the Act dies intestate subsequent to the commencement of the Act, real and personal property left by the intestate which might have been disposed of by will shall be distributed in accordance with the law of England relating to the distribution of the personal estates of the intestates, any customary law to the contrary notwithstanding.

From the foregoing, ordinarily the estate of a person who would be subject to customary law by virtue of his manner of life, would not be distributed under customary law in the event of his demise intestate, where he has subsequently entered into a marriage under the Act[50] but not outside jurisdiction.[51] Fortunately, the above notion has been adopted by several states in to their law[52] Matrimonial Causes Act 1970 governs the division of matrimonial property upon divorce, allowing women legal claims to shared housing.

7. LACK OF HOUSING POLICY AND DELIVERY SYSTEM FOR WOMEN IN NIGERIA

Housing in Nigerian law is a broad concept that includes not just physical shelter but also the legal rights and obligations associated with acquiring and living in residential property.[53] Experts attribute lack of housing policy for women, to lack of desegregated data to determine the specific housing needs of women. Dearth of knowledge

47 African Charter on Human and Peoples' Rights 1981, Art. 14.
48 The Marriage Act of 1914
49 Lord Penzance's dictum in the case of *Hyde v Hyde* (L.R) 1 P. &. D. 130, also cited in Fatula O. (2012) *Op cit* page 129
50 Course Guide for Land Law 1, a publication of the National Open University of Nigerian, page 170.
51 However, provisions of Customary Law or Marriage Act does not affect succession of persons married outside jurisdiction. See *Cole v Cole*, 1898 NLR 15
52 Some western states and mid-western states have adopted the Section 36 in their Administration of Estate Law with slight variations as necessary. For instance, see Section 49(5) Administration of Estate law of Bendel State (now Edo and Delta states) 1976
53 Federal Republic of Nigeria, *National Housing Policy* (Federal Ministry of Lands, Housing and Urban Development 2012); Land Use Act 1978, Cap L5 LFN 2004; Constitution of the Federal Republic of Nigeria 1999 (as amended), s 43.

about differential impacts of housing projects on women and lack of financial and administrative resources to direct programmes to the specific needs of women are also responsible. This is so both for relevant government agencies as well as among women themselves. Hence, the needs of vulnerable group of women such as widows, divorcees etc. heading households have not been adequately considered as to necessitate policy reforms. This position also holds sway in Nigeria.[54]

A Nigerian woman often faces dissatisfaction and economic hardship due to limited access to opportunities, particularly in the housing sector.[55] These opportunities include homeownership, land acquisition, and property development, yet many women can only access them through marriage (Agbola, 1989).[56] Housing challenges disproportionately affect women, as they not only head a significant portion of low-income households but also bear primary responsibility for household welfare (UNCHS, Habitat, 1986).

Okewole[57] noted that in Yoruba tradition, a woman, whether single or married, is expected to reside only in her parents' or husband's home. In addition, cultural inheritance practices favour male children, who are typically granted family property under the assumption that they will maintain in the ancestral homes, whereas female children are seen as likely to transfer property to non-family members through marriage[58]. As a result, housing decisions are traditionally reserved for men, reinforcing patriarchal norms (Agbola, 1990).[59]

Women who attempt to secure independent housing often encounter resistance within a male-dominated society, where such aspirations are viewed as overly ambitious. Furthermore, rapid urbanization in Nigeria has led to skyrocketing rental costs, forcing many low-income earners, especially women, into substandard housing with poor infrastructure and inadequate amenities.[60]

Although CEDAW has been ratified in Nigeria via Nigeria treaties in force from 1970-1990, however, there is no specific legislation made to be able to enforce the provisions of the convention in Nigeria.[61] Hence, its provisions cannot be directly enforced in our law courts. Recent judicial activism in Nigeria is however commendable.

8. CHALLENGES TO WOMEN'S RIGHTS TO LAND AND HOUSING IN NIGERIA

A major constraint in the actualization and realization of women's right to land and housing is cultural norms, all other identifiable constraints fall out of this. It is an age-long norm in many societies in Africa that women do not inherit or own land or property because only men can own them.[62] Legal systems and patriarchal gender norms often create barriers that prevent women from acquiring and retaining land. These challenges are particularly

54 UN-Habitat, *Policy Makers Guide to Women's Land, Housing and Property Rights* (United Nations Human Settlements Programme 2007); Federal Republic of Nigeria, *National Housing Policy* (Federal Ministry of Lands, Housing and Urban Development 2012).

55 Adeoye DO. Housing Development and Ownership by Women: A Review (2021) ACTA TECHNICA CORVINIENSIS – Bulletin of Engineering, Tome XIV, Fascicule 2

56 T Agbola, *An Assessment of the Effectiveness of Housing Finance Arrangements in Nigeria* (Department of Urban and Regional Planning, University of Ibadan 1989).

57 MA Okewole, 'Women and Housing Development in Nigeria: A Case Study of Ile-Ife' (1997) 1(1) *Ifedapo Journal of the Faculty of Environmental Design and Management, Obafemi Awolowo University* 34

58 *Ibid*

59 T Agbola, *Institutional Constraints on Housing Development in Nigeria* (University of Ibadan 1990).

60 UN-Habitat, *Policy Makers Guide to Women's Land, Housing and Property Rights* (United Nations Human Settlements Programme 2007); A Ikejiofor, 'Access to Land, Housing and Services in Nigerian Cities: Problems of Regulatory Guidelines and Enforcement' (2006) 20(3) *Habitat International* 383.

61 Shelter Rights Initiative (1998)

62 B Walker, *Pied Pipers of Sheltering: Privatisation, Politics and the Discourse of Shelter Reform in Nigeria* (IFRA–Institut Français de Recherche en Afrique 2002); C Nyamu-Musembi, 'Towards an Actor-Oriented Perspective on Human Rights' (2002) 9(2) *IDS Working Paper* 169.

pronounced in Sub-Saharan Africa, where colonial-era laws continue to restrict women's legal rights to land.[63]

Customary land tenure, the dominant system of land ownership in the region, is also based on traditional practices and unwritten rules rather than formal statutory law. While this system can promote social cohesion and local governance, it often limits women's ability to secure land ownership.[64] Even when statutory laws guarantee equal land rights for men and women, cultural norms and social traditions frequently prioritize male inheritance and limit women's authority in property-related decisions.[65] As a result, women often face additional hurdles when asserting their land rights. Further compounding the issue, limited awareness of legal protections and weak enforcement mechanisms prevent women from fully exercising their rights. Patriarchal power structures and gender inequalities within communities further restrict women's access to and control over land.[66]

In a study drawing on data from the Women, Business and the Law (WBL) project, factors constituting legal barriers to women's economic participation across eight key areas were identified. These include Mobility, Workplace, Pay, Marriage, Parenthood, Entrepreneurship, Assets, and Pension. A pilot study covering 55 economies, representing 79% of the global population, including 17 FCS economies analyses how governments institutionalize, operationalize, and enforce gender equality laws in practice. Despite global commitments to strengthening women's property rights and evidence of the socioeconomic benefits of secure land tenure, 76 economies still legally discriminate against women in accessing assets, with 31 of these economies located in Sub-Saharan Africa.[67] Moreover, even where strong legal protections exist, many countries lack the necessary frameworks to ensure these rights are effectively enforced in practice.[68]

In Nigeria, women have no right to inherit property under Yoruba customary law and Bini customary law (Edo State). In the latter, the firstborn son has all rights to property which he may distribute according to his discretion to his younger ones.[69] "It is an established legal fact that a woman cannot own landed property in classical customary law in her personal capacity".[70] Where a wife acquires property with her own resources, she cannot deal with it in any manner without the consent of the husband.[71]

Under the Islamic law, a specific portion of a husband's property should be given to the widow(s). Unfortunately, very few Muslims who are truly practicing abide by the Quranic provisions, when it comes to inheritance, the customary law is usually embraced by the majority.[72] Moreso, there are no Islamic Family Courts to adjudicate on this specialized issue, especially in the Southwest.[73] A Muslim wife is entitled to own property and put it into any use she likes. However, some Muslim husbands do not permit their wives to engage in any meaningful economic

63 World Bank Group. Women's Land Rights in Sub-Saharan Africa: Where do we stand in practice? (2023). Global Indicators Brief, No. 23

64 Behr DM, Groussard H, Khaitina V and Shen L, *Women's Land Rights in Sub-Saharan Africa: Where do we Stand in Practice?* (World Bank Group, Global Indicators Briefs No 23, 2023) https://documents1.worldbank.org/curated/en/099432211092367495/pdf/IDU0afeba6800588804d2a0ad290368a53e64004.pdf accessed 27 March 2025.

65 Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42; UN Women, *Realizing Women's Rights to Land and Other Productive Resources* (United Nations and OHCHR 2013); C Eze-Onyekwena, 'Gender, Land Rights and Inheritance Laws in Nigeria' (2019) 4(2) *Nigerian Journal of Gender Studies* 45.

66 UN Women, *Realizing Women's Rights to Land and Other Productive Resources* (United Nations and Office of the High Commissioner for Human Rights 2013); UN-Habitat, *Policy Makers Guide to Women's Land, Housing and Property Rights* (United Nations Human Settlements Programme 2007).

67 World Bank, *Women, Business and the Law 2023* (World Bank Group 2023) 15.

68 UN Women, *Realizing Women's Rights to Land and Other Productive Resources* (United Nations and OHCHR 2013) 21.

69 BAOBAB for Women's Human Rights, NGO CEDAW Report for Nigeria, (2001).

70 A Emiola, *Principles of African Customary Land Law* (OAU Press 2011) 112.

71 Ayua M., (2003), Land and Property. Rights of Women in the Northern States of Nigeria in Bowman C. G. & Kuenyehia A. (eds) (2003), Women and Law in Subharan Africa, Ghana, Sedco Publishing Ltd.; Hon. Justice Oputa (1989), Women and Children as Disempowered Group in Women and Children under Nigerian Law, Federal Ministry of Justice.

72 Women and Law Project Field Report from Osun State organized by Baobab, for women's rights, (1995).

73 Abass O. & Mohammed J. (2009) *Op. Cit.*

activity or to work at all, so no meaningful income or no income at all.[74]

Consequent upon the above, women are potentially and perpetually fixed in the vicious cycle of poverty. Compounding the problem is lack of tradeable skills and educational deficiencies due to preference for male training and development. According to a report, more females than males have never attended school (40 percent females compared with 28 percent males). Over half of women population in Nigeria completed no formal education at all and only one-third attained a primary or higher education.[75] The net result is that most women lack the required financial means and resources to acquire landed property. Egeruoh-Adindu & Mmakwe[76] called for the improvement on women's legal rights such as to serve in public office, own land or a business, or to have rights of inheritance. Imagine the position of a housewife with no visible income or a petty trader whose trade can hardly sustain a meal a day; there is little or no hope for this group of women. The case of *Mojekwu v Mojekwu* only materialized because of pro bono service by human right lawyers.[77]

Even where women are engaged in gainful economic venture, they are trailed by their orientation and societal belief that they do not need a separate house of their own, whereas the same reason why a man owns two or more landed properties should be sufficient for a woman to own at least one, it is a major form of investment.

Acquisition of statutory landed property is also fraught with problems. The procedure for this is formal and therefore needs some measure of education. It is on record that the educational level of the average woman is lower than that of an average man. There is also evidence that some women have been duped of their allocation by men in the pretence that they were offering assistance.[78] Inadequate financing is a challenge to housing generally in Nigeria. For women, it is more challenging because they cannot participate in home building as much as their male counterparts due to access to building credit limitation.[79] Also, on rare occasion when credit is granted to a woman, she must have a male guarantor.[80] Many women are also unaware of their legal rights to land.[81]

9. JUDICIAL ATTITUDE TO MATRIMONIAL PROPERTY UPON DIVORCE

A woman married under the Marriage Act has her rights in a land governed by common law, equity and legislation. She is entitled to acquire, hold and dispose of property. Where she jointly acquires with her husband, the principle of equity will apply i.e. the husband holds the property in trust for himself and the wife. Such a rule of equity will not apply to development on land subject to customary law of the husband.[82]

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74 A Ayalew, 'Women's Property Rights in Muslim Communities in Africa' in L Cotula (ed), *Land and Legal Pluralism in Africa: State, Custom and the Politics of Land Tenure* (Routledge 2007) 145; A Oba, 'Islamic Law as Customary Law: The Changing Perspective in Nigeria' (2002) 51(4) *International and Comparative Law Quarterly* 817.

75 National Demographic and Health Survey, 2008; cited in Yusuf & Yusuf; (2010), *Op. Cit.*

76 Egeruoh-Adindu I and Mmakwe A, 'Women, Social Development and Law in Nigeria: A Review of 25 Years Post Beijing Conference' (2020) 7 *Benin Journal of Public Law* 127.

77 Omiyi, 2005, *Op. Cit.*

78 Akande, T. (1996), *Op. Cit.*

79 Afolabi AO and Akinlolu IR. Evaluation of women's access to building credits from banks in Nigeria. (2021) *Banks and Bank Systems,* 16(4), 45-60. doi:10.21511/bbs.16(4).2021.05

80 Oyedokun TB, Adewusi AO, Bello MO. Impact of Borrower's Attributes on Mortgage Default: Evidence from Nigeria Lending Market (2015). *Pacific Rim Property Research Journal, Vol. 21(3), 259-274;* Metu AG and Nwogwugwu UCC. Challenging Factors Affecting Access to Finance by Female Micro Entrepreneurs in Anambra State, Nigeria (2022). *Journal of African Business*, Vol. 25(1), 142-154: These studies collectively emphasize that socio-economic factors, such as the requirement for male guarantors, play a crucial role in limiting women's access to mortgage finance in Nigeria. To overcome these barriers, policy measures should focus on enhancing financial inclusion and ensuring gender equity within the housing finance sector.

81 See B Ononiba, 'Gender Inequality and Women's Access to Land in Nigeria' (2016) 5(3) *Journal of African Law and Policy* 87; Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42; Land Use Act 1978, Cap L5 LFN 2004.

82 Mohammed J, Divorce Cases; Between Legal Principles and Reality (Delivered at National Workshop on Women's Human Rights, Organized by BAOBAB for Women's Rights- Nov. 2005. Abuja).

Upon divorce, the court is empowered to settle matrimonial properties on application by a spouse. However, the courts usually require proof of contribution.[83] If the property was given as a gift by a husband to a wife before the divorce or death of the husband, such a property cannot be withdrawn.[84] This should be encouraged.

Trends in early judicial attitude to the settlement of matrimonial property upon divorce however show gender insensitivity on the part of the courts. Some examples of decided cases will suffice. This aspect of matrimonial dispute usually poses a problem for the courts. The attitude of the court is anything but stable. The popular attitude of the Courts in Nigeria is to demand proof of contribution to such matrimonial properties[85]. In an earlier case of *Kafi Vs Kafi*[86], a full-time housewife was held to be entitled to settlement of property in her favour because there was evidence that she contributed to the development of the property. This attitude has been decried by progressive minds. There should be a new equity in property re-allocation bearing in mind that the relationship of husband and wife is a special one in which every contribution to the home especially by the woman is often not receipted. In addition, special recognition should be given to the role of the woman in Nigeria. "Her invisible contributions as a homemaker and provider of goods and services consumed within the home must give her some substantial rights into the marital assets.[87] To be demanding for documents or any form of evidence in settling matrimonial property is to close eyes to the reality of husband/wife socio-economic relationship in a developing country such as Nigeria. The net effect of this is the promotion of poverty amongst the womenfolk; this surely must change.

It is amazing that even among the so-called educated women elites, gainfully employed or even at top management positions, when chips are down, they probably can only point to their kitchen utensils as theirs and someone wants to ask 'what do you do with your money'? Lord Denning L.J. appreciated the answer to such questions when he stated as follows:[88]

> *In the present case, it so happened that the wife went out to work and used her earnings to help run the household and buy children's clothes, whilst the husband saved. It might very well have been the other way round….*
>
> *The title to the family assets does not depend on the mere chance of which way round it was. It does not depend on how they happened to allocate their expenditure. The whole of their resources was expended for their joint benefit… and the product should belong to them jointly. It belongs to them in equal shares.*

Our Court of Appeal quoting the above dictum upheld the settlement of property by the High Court of Ondo State in the case of *Akinbuwa v Akinbuwa*.[89] The Court emphatically stated, quoting the Supreme Court in the case of *The State v Gwonto & four Others*[90] that "Justice can only be done if the substance of the matter is examined. Reliance on technicalities leads to injustice". This decision beams a ray of hope for divorced women and it is hoped that the entire judiciary will embrace this realistic approach to dispensing family justice, especially as regards settlement of matrimonial property.

83 See *Essien v Essien* (2009) 9 NWLR (Pt. 1146) 477; *Ogunmefun v Ogunmefun* (1931) 10 NLR 82; C Nwogugu, *Family Law in Nigeria* (Heinemann Educational Books 2014) 208.

84 See *Okoya v Santilli* (1994) 4 NWLR (Pt. 338) 256; T M Akanni, *Law of Succession* (Babcock University Press 2012) 134; A Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 177.

85 Nwogwugwu, *Selected Matrimonial Cases* (1987) Vol. 1 (by Funmi Quadri) pp. 52 & 53; *Amadi v. Nwosu* (1989) 3 NWLR 697.

86 (1986) 3 NWLR Pt. 27 p. 175

87 O.A. Ipaye, *Op. Cit.* p. 78.

88 *Fribance v. Fribance* (1957) All ER 357 at 360 C.A.

89 *Akinbuwa v Akinbuwa* (1999), Selected Matrimonial Cases, Vol. 1, edited by Funmi Quadri.

90 *The State v Gwonto & Four Others* ((1983) 3 S.C 62 at 76; 1983/SCNLR 142).

10. CONCLUSION AND RECOMMENDATION

Women's land and housing rights in Nigeria remain significantly constrained by a complex interplay of statutory, customary, and religious laws, as well as deeply rooted patriarchal norms. Despite constitutional guarantees and international commitments, discriminatory inheritance practices, financial exclusion, and socio-cultural biases continue to hinder women's access to property. The legal framework, including the Constitution, Land Use Act and Matrimonial Causes Act, provides some protections, but enforcement remains weak, and customary laws often override statutory provisions in practice.

While Nigerian law provides formal protection for women's land and housing rights, customary and religious practices still impose significant limitations. Landmark court cases such as *Ukeje v Ukeje* and *Mojekwu v Mojekwu* represent progress in affirming women's property rights, but further reforms and enforcement mechanisms are needed to ensure equitable land access for women. The gains also need to be reinforced through stronger legislative reforms, more judicial activism, and policy implementations that prioritize gender equity. Access to mortgage finance also remains a major challenge, with requirements such as male guarantors and limited financial literacy disproportionately affecting women.

In order to bridge the gap between law and practice, a multi-pronged approach is necessary. Legal reforms must explicitly safeguard women's property rights, while public awareness campaigns should educate women about their rights. Institutional frameworks must also be strengthened to improve access to financial resources and equitable housing policies. It is imperative that government develops and implements national housing policies to cater specifically for women, widows and single mothers inclusive. Strengthening mediation and arbitration mechanisms to resolve land and housing disputes affecting women in particular is also necessary as well as aligning national laws and policies with international standards. Addressing these systemic challenges is essential to ensure and secure women's land and housing rights for sustainable development in Nigeria. Without meaningful reforms and active enforcement, Nigerian women will continue to face marginalization in property ownership, limiting their ability to fully participate in national development.

13

AN ANALYSIS OF THE ADEQUACY OF THE LAW IN ADDRESSING THE RISING INCIDENTS OF ARMED BANDITRY IN CENTRAL NIGERIA

OYESOLA ANIMASHAUN

ABSTRACT

Incidents of armed banditry escalated significantly in Nigeria since 2015 and seems to have a profound effect on central Nigeria due to its location as the buffer zone between the far north and southern Nigeria. The article viewed the issue of armed banditry, the phenomenal destruction of life and properties from the prism of the adequacy and efficacy of the law in the crystalisation, escalation, resolution and eradication of banditry in central Nigeria. The article found that the federal government which has the monopoly of the control of state security apparatus seems biased and has partial disposition towards the protection of the bandits against their victims. The presidency sometimes manipulates the media, the law and the law enforcement agencies resulting in the bandits operating virtually unchallenged. The article recommends the tightening of the laws such as the Terrorism (Prevention) Act, 2011, efficient enforcement of the extant laws and the creation of state police to confront this armed bandits. The article concludes that states in central Nigeria need to create a common agenda, policies and enact new laws to eradicate banditry and reintegrate the internally displaced persons from their respective states into their ancestral homes.

Introduction

In recent times, Nigeria has been enmeshed in manifold security challenges, such as Boko Haram terrorism, Fulani-herdsmen militancy and widespread banditry.[1] The Global Terrorism Index for Nigeria in 2019 and 2024 were 8.6/10 7.66/10 respectively, which means that Nigeria was ranked among the list of countries with highest impact of terrorism in the same category with Syria, Afghanistan and Iraq.[2] Armed banditry which started as cattle rustling maraud in the largely ungoverned forests in northern Nigeria soon escalated to human rustling"

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1 P Onuh, and others, ''Engagement in Licit Ventures by Terrorist Organisations and Terrorism Financing in the Lake Chad Region", *Cogent Social Sciences,* 7 (2020): 1; U Sambo, and B Sule, ''Financing as a Livewire for Terrorism: The Case of North-Eastern Nigeria", In *Money Laundering and Terrorism Financing in Global Financial Systems,* edited by A Rafay, (Hershey: IGI Global, 2021): 158; JS Ojo, ''Governing "Ungoverned Spaces" in the Foliage of Conspiracy: Toward (Re)Ordering Terrorism, from Boko Haram Insurgency, Fulani-Militancy to Banditry in Northern Nigeria", *African Security*, 13 (2020): 78; O Ajala, ''New Drivers of Conflict in Nigeria: An Analysis of the Clashes Between Farmers and Pastoralists", *Third World Quarterly*, 41 (2020): 2048-2066; KH Chukwuma, ''Constructing the Herder–Farmer Conflict as (In)Security in Nigeria", *African Security,* 13 (2020): 54-57; EN Lenshie, and others, ''Desertification, Migration, and Herder-Farmer Conflicts in Nigeria: Rethinking the Ungoverned Spaces Thesis", *Small Wars & Insurgencies*, 1-3(2020): 1-2; A Olaniyan and A Yahaya, ''Cows, bandits, and violent conflicts: understanding cattle rustling in northern Nigeria", *Africa Spectrum*, 51(2016): 96-97.

2 Trading Economics Nigeria Terrorism Index https://tradingeconomics.com/nigeria/terrorism-indexJ accessed 24 April 2025; Cusack, and S Abiakalam, ''Financial Crime Threat Assessment-Nigeria.'' https://the financial crimenews.com/wp-content/uploads/2020/06/Nigeria-2020-Deep-Dive-Pbd-1.pdf accessed 24 April 2025.

in both the rural and urban areas of central Nigeria.[3] The prevalence of banditry in Nigeria appears to have been high and has grown in scale and viciousness since the current Buhari administration.[4] Banditry refers to the prevalence of armed robbery and violent crimes such as kidnapping, rape, cattle rustling, and village or market raids leading to the widespread destruction of lives and property.[5] Kidnapping which include kidnapping for ransom and ritual kidnapping is a successful enterprise have increased by 'geometrically dimension between 2014 and 2021; kidnappers make no distinction between the downtrodden, government officials, politicians and kings - everyone is subjected to kidnap.[6] The situation has deteriorated to the extent that there is no distinction between being on the road or at home, being in a rural or urban area. Recently, bandits entered the premises of the University of Abuja, located in the federal capital territory, and abducted six employees of the university and members of their families from the staff quarters- in their own homes.[7] Banditry involves the use of force, or threat to that effect, to intimidate a person with the intent to rob, rape or kill.[8] Banditry is motivated by economic or political interests, that is, material gains or the quest to rob, to assault or to liquidate a person or a group of persons based on political or ideological considerations.[9] For instance, bandits finance their outfit through collection of ransom from Nigerian governments, the families and principals of kidnapped victims.[10] There has also been accusation that the bandits which are predominantly Muslim and Fulani,[11] are responsible for most Christian deaths occurring in the Middle Belt, where there are overlapping quarrels over land and water use, ethnicity and religion.[12] Although the bandits kill, maim and destroy the properties and lives of some Muslims as well.[13] There were allegations that banditry was an invention sponsored by the Federal Government of Nigeria.[14] Apart from kidnapping for ransom, terrorists and bandits in Nigeria commit other predicate crimes to kidnapping such as smuggling of goods, drug trafficking, bank robberies and collection of tax or 'protection fees' from residents under its control.[15] The revenue derived from these predicate crimes are then laundered and used in financing

3 I Onwuzuruigbo, "Enclaves of Banditry: Ungoverned Forest Spaces and Cattle Rustling in Northern Nigeria", African Studies Review, 64 (2021):168-190.

4 I Robert, "Nigeria: Elections and Continuing Challenges" in Beyond Humanitarianism: What you Need to Know about Africa and why it Matters, edited by Princeton N. Lyman, and Patricia Dorff, (New York: Brookings, 2007): 33.

5 Al Chukwuma Okoli and Anthony Chinedu Ugwu, "Of Marauders and Brigands: Scoping the Threat of Rural Banditry in Nigeria's North West" Brazilian Journal of African Studies 4 (2019): 202.

6 Kingsley Emeka Ezemenaka "Kidnapping: A Security Challenge in Nigeria" Journal of Security and Sustainability 8 (2018): 234; Muritala Ahmed Rufa'I "I am a Bandit: A Decade of Research in Zamfara State" UDUS 15th University Seminar (9th September 2021): 8-30.

7 Danielle Paquette, "Gunmen Kidnap Six in Rare Attack on University in Nigeria's Capital", Washington Post, November 2, 2021, https://www.washingtonpost.com/world/2021/11/02/nigeria-abuja-university-kidnapping accessed 7 July 2025.

8 Al Chukwuma Okoli, and Francis Okpaleke, "Banditry and Crisis of Public Safety in Nigeria: Issues in National Security Strategics" European Scientific Journal 10 (2014): 350.

9 Okoli and Ugwu, (n 5) 202.

10 I Mohammed, ''No End in Sight for Insecurity and Banditry in Northwestern Nigeria", Terrorism Monitor, 19 (2021): 5; EN Lenshie and others, ''Desertification, Migration, and Herder-Farmer Conflicts in Nigeria", 11-12; YK Ibrahim and AA Ahmad, ''The Causes of Kidnapping and its Implications on Nigeria", Liberal Arts and Social Sciences International Journal, 4 (2020): 5-7; J Zenn, ''Militants Target Chinese Nationals in the Sahel and Nigeria", Terrorism Monitor, 19 (2021): 2; OOP Ajakaiye, and others, ''Media, Terrorism Reporting and Lessons in Awareness Sustenance: The Nigerian Newspapers' Coverage of the Chibok Girls Abduction", Brazilian Journalism Research, 17 (2021): 125-128; Okoli and Ugwu (n 5) 201-202; B Ibrahim and JI Mukhtar, "An Analysis of the Causes and Consequences of Kidnapping in Nigeria", African Research Review, 11 (2017): 136-139; CE Attah, ''Financing Terrorism in Nigeria: Cutting off the Oxygen", Africa Development, XLIV (2019): 6; O Guitta and R Simcox, Terrorism in Nigeria the Threat from Boko Haram and Ansaru, (Henry Jackson Society, London, 2014):2-10; K Caulderwood, "Fake Charities, Drug Cartels, Ransom And Extortion: Where Islamist Group Boko Haram gets its Cash". International Business Times, May 16 2014, https://www.ibtimes.com/fake-charities-drug-cartels-ransom-extortion-where-islamist-group-boko-haram-gets-its-1585743 accessed 7 July 2025.

11 Kayode Oyero "Most bandits are Fulani who profess same religious beliefs as me –Masari", The Punch, 6 September, 2021, https://punchng.com/most-bandits-are-fulani-who-profess-same-religious-beliefs-as-me-masari/ accessed on 29 June 2025.

12 John Campbell "Conflict in Nigeria is More Complicated than "Christians vs. Muslims" Foreign Affairs Newsletter, May 1, 2019, https://www.cfr.org/blog/conflict-nigeria-more-complicated-christians-vs-muslims accessed on 29 June 2025.

13 Ibid.

14 Kevin Clarke, "Are Nigeria's Christians the target of a genocide?" The Jesuit Review, July 02, 2020, https://www.americamagazine.org/politics-society/2020/07/02/are-nigerias-christians-target-genocide accessed on 29 June 2025.

15 M Tiwari, A Gepp and K Kumar, "A Review of Money Laundering Literature: The State of Research in Key Areas", Pacific Accounting Review, 32 (2020): 272; Attah (n 10) 7.

terrorism, banditry and other crimes.[16] Thus, this paper reviews the efforts at combating banditry in Nigeria. It also analyses the adequacy of the legal regime in combating banditry and identifies the challenges ahead as well as the measures which will mitigate the wave of banditry in Nigeria.

The Nexus Between Banditry And Terrorism in Central Nigeria

North central Nigeria, also known as the Middle Belt, consists of the Federal Capital Territory (FCT) and six other states of Benue, Plateau, Kogi, Nasarawa, Niger and Kwara.[17] Central Nigeria has turned into a war zone, gory stories of the wickedness of the bandits such as ripping the bellies of pregnant women, mass killings and mass dislocation of the indigenous people are widely reported in the media. President Buhari seems complicit with his utterances and action, most reports claimed that the president (and by extension the presidency) is favourably disposed to the herdsmen who are his kinsmen.[18] The connivance of the security agents with the bandits make the problem of kidnapping, armed robbery and similar crimes intractable in Nigeria.[19] Communities in Central Nigeria are locked in a worsening cycle of violence and banditry. One of the variants, which is by far most prevalent, is the conflict between largely Christian/animist farming communities and predominantly Muslim herdsmen, most of whom are ethnic Fulani.[20] The migrant herdsmen usually vandalise the indigenous farmers' farmland, maim, kill and displace the indigenous population with the aim of claiming their farmland for grazing the herdsmen' cattle.[21] North central Nigeria is especially vulnerable to banditry and farmer-herders' clashes because of its location as a buffer zone between the far north and the southern states. The dispersion of the notorious Boko Haram from the north eastern Nigeria which was the bastion of terrorism in Nigeria to the nearest and more vulnerable zones in the north central and north west regions adversely affect the residents of these regions who were forced to vacate their ancestral homes, endure indignation such as rape, maiming, killing, payment of taxes and levies to the bandits, among others.[22]

Terrorism is difficult to define, because sometimes it is challenging to draw a line between a terrorist and a freedom fighter, however the Nigerian variant seem to be pure case of terrorists.[23] However, terrorism has been defined as a premeditated, illicit and indiscriminate use of violence, by non-state actors usually against non-combatant and innocent civilians, public or private property in order to generate an atmosphere of terror, to further achieve religious, ideological or political objectives.[24] On the other hand, banditry refers to the incidences

16 GIABA, Research and Documentation Report, Money Laundering/Terrorist Financing and the Smuggling of Goods in West Africa-Typologies Report, (Dakar, GIABA, 2020): 1-29; C Obi,"Challenges of Insecurity and Terrorism in Nigeria: Implication for National Development", OIDA International Journal of Sustainable Development, 8 (2015), 11-14; Guitta and Simcox (n 10) 9-11.

17 Oluwole Ojewale, "**Violence is endemic in north central Nigeria: what communities are doing to cope." Accessed November 6 2021. https://theconversation.com/violence-is-endemic-in-north-central-nigeria-what -communities-are-doing-to-cope-157349** accessed on 29 June 2025**.**

18 Magnus Onyibe "Buhari, Bandits and the Law" ThisDay, April 2, 2021 https://www.thisdaylive.com/ index.php/2021/04/02/buhari-bandits-and-the-law/ accessed on 29 June 2025.

19 T Ezemenaka, "Kidnapping: A Security Challenge in Nigeria," 242; Daily Trust, "Military Colluding with Armed Bandits – TY Danjuma", Daily Trust, March 25 2018.

20 Chom Bagu and Katie, Smith Past is Prologue: Criminality & Reprisal Attacks In Nigeria's Middle Belt 1st ed. (Washington DC: Search for Common Ground, 2017): 5; International Crisis Group, Stopping Nigeria's Spiralling Farmer-Herder Violence Africa Report N°262 (Brussels, International Crisis Group, 2018): i.

21 Ibid.

22 Oyeniyi, "He that Pays the Piper…": Funding the Monster, Boko Haram" Presented at the National Conference in Honour of Prof. Toyin Falola, Lokoja, on November 10 2021.

23 C Meserole, and D Byman, ''Terrorist Definitions and Designations Lists: What Technology Companies Need to Know Global Research Network on Terrorism and Technology'', Working Paper No. 7, London, Royal United Services Institute for Defence and Security Studies, 2019) 3; C Chuku, and others, ''Growth and Fiscal Consequences of Terrorism in Nigeria, Working Paper Series No 284, (Abidjan, African Development Bank, 2017): 4; JM Sorel, ''Some Questions About The Definition of Terrorism and the Fight Against its Financing,'' *European Journal of International Law*, 14 (2003): 368.

24 Meserole and Byman, ''Terrorist Definitions and Designations Lists, 4-5; D Imhonopi and MU Urim, ''The Spectre of Terrorism and Nigeria's Industrial Development: A Multi-Stakeholder Imperative'', *African Journal of Criminology and Justice Studies*, 9 (2016): 22; G Bruce, ''Definition of Terrorism Social and Political Effects'', *Journal of Military and Veterans' Health*, 21(2013) 27; FC Onuoha, ''Terrorism and Transnational

of armed robbery or allied violent crimes, such as kidnapping, cattle rustling, and market raids, which is motivated mainly by economic reasons.[25] Bandits maraud largely in ungoverned forests in northern Nigeria and create their own governance structures. The upswing in crimes such as cattle rustling may be attributed to poor forest governance, whereby government presence in terms of infrastructure and security agents is non-existent in these forests. Thus, inclusive forest governance is one path toward addressing banditry and cattle rustling in northern Nigeria.[26] Terrorism is fundamentally driven by an ideological belief for regime change, while banditry is generally considered as an organized crime with a focus on economic gains.[27] Thus, the act of terrorism can be differentiated from banditry in the following ways. First, the motivation behind terrorism is shaped by ideological inspiration while banditry is driven by economic gains. Second, the terrorists' objective is confined within the context of socio-political change while bandits are apolitical. Notwithstanding these distinctions, the actions of both the bandits and terrorists have detrimental implications for security, lives and properties in Nigeria.[28] Daily Trust newspapers in its editorial maintained that there is no difference between bandits and terrorists in Nigeria, and that the bandits are just the financial wing of Boko Haram.[29] This chapter agrees with the position of the Daily Trust, as the manifestations of bandits and terrorists are identical in Nigeria. Similarly, under sections 1(2)(c)(ii) and 11 of the Terrorism (Prevention) Act 2011, anyone who engages in kidnapping is deemed to have engage in an act of terrorism. Thus, kidnappers are deemed terrorists under the Nigerian anti-terrorist Act. An example of a terrorist group is the Boko Haram. Boko Haram is a radical Islamic terrorist group, engaged in an unending guerrilla warfare with Nigerians and the Nigeria Armed Forces.[30] The word Boko Haram is derived from Hausa language, which translates literally to 'western education is a sin or forbidden'. The formal name of Boko Haram is Jama'atu Ahlus-Sunnah Lidda Awati wal Jihad which means the 'Association of people committed to the propagation of the Prophet's teaching and Jihad'.[31] The Boko Haram group intends to create an Islamic state in north-east Nigeria based on Sharia or the Muslim law.[32] Although, there are multiple, mostly nameless bandit groups, who are not as organised as the terrorist groups, the devastating effect of the former is no less threatening; and unlike terrorists that are restricted to a certain section of Nigeria, bandits are ubiquitous-present in all parts of Nigeria, though mostly entrenched in the central and north-western Nigeria. Both Boko Haram and the bandit groups kidnap for ransom and need to launder the cash derived from ransom to continue in their criminal enterprise.[33] Terrorists and bandits finance their activities in various ways. First, through trade and other lucrative activities. Second, terrorism and banditry are financed through Non-government organizations (NGOs), consulting firms and charity organizations.[34] Third, terrorism and banditry are financed through various crimes such as smuggling, kidnapping

Organised Crimes in West Africa: A Regional Exposé'', *African Journal for the Prevention and Combating of Terrorism*, 4 (2013):71-72; Sorel, ''Some Questions about the Definition of Terrorism,'' 371; see also section 1(3) of Terrorism (Prevention) Act No. 10, 2011.

25 Okoli and Ugwu (n 5) 202.

26 Ifeanyi Onwuzuruigbo, "Enclaves of Banditry: Ungoverned Forest Spaces and Cattle Rustling in Northern Nigeria", African Studies Review, 64 (2021): 168-191.

27 Ojo, (n 1) 97.

28 Ibid 98.

29 Daily Trust, ''They are Terrorists, Not Bandits'', Jul 26, 2021: 1, 16; D Inwalomhe, ''Banditry as Financial Wing of Boko Haram'', The Guardian, July 29 2021: 20.

30 D Imhonopi and MU Urim, ''The Spectre of Terrorism and Nigeria's Industrial Development: A Multi-Stakeholder Imperative'', *African Journal of Criminology and Justice Studies*, 9 (2016): 25.

31 A Inyang, and M Hanson, ''The Nigerian State and Terrorism: Exhuming the Legal Lacunae'', IOSR Journal of Humanities and Social Science, 24 (2019): 26; TJ Ike, "Reconceptualising the Role of Law in Countering Terrorism: A Case Study of Boko Haram in Nigeria", *Journal of Law and Criminal Justice*, 6 (2018): 108.

32 Ojo, ''Governing Ungoverned Spaces,'' 87.

33 Daily Trust, ''They are Terrorists, Not Bandits'', 1, 16; Inwalomhe, ''Banditry as Financial Wing of Boko Haram'', 20; N Ayitogo, ''NIDCOM 'Aware' of Conviction of Six Nigerians by UAE for Boko Haram funding'' The Premium Times, November 9 2020:7; H Tofangsaz, ''A New Approach to the Criminalization of Terrorist Financing and its Compatibility with Sharia Law,'' J*ournal of Money Laundering Control,* 15 (2012): 399.

34 FMJ Teichmann, ''Money Laundering and Terrorism Financing Through Consulting Companies'', *Journal of Money Laundering Control*, 22 (2019): 33-34.

for ransom, drug trafficking and other crimes.[35] Additionally, there were reports that terrorism and banditry are financed or sponsored in Nigeria by Politically Exposed Persons (PEPs) such as the erstwhile governor and senator in Borno State, Nigeria, Ali Modu Sherrif who was linked as a financier of Boko Haram.[36] Emirs and other prominent persons have also been indicted as sponsors of banditry and terrorism, to the extent that certain Emirs and Chiefs were deposed by the different state governments because of involvement in banditry.[37] The methods and techniques enumerated above such as proceeds from kidnapping, taxation, cross-border smuggling are laundered through cash couriers and bureau de change in Nigeria.[38] Security officers seized large sum of money from Boko Haram and bandits' couriers in Burkina Faso, Chad and along the Nigeria-Niger border.[39] This chapter reasonably suggests that the funds seized by security officers from bandits' operatives in Burkina Faso, Chad and along the Nigeria-Niger border is likely to be the proceeds from ransom payments. Thus detecting and cutting off terrorists and bandits' sources of funding are critical steps in destroying their organisations.[40] Apprehending, investigating, and prosecuting the financiers of terrorism and banditry; confiscating and seizing of terrorists' assets will have a deterring effect on the perpetrators of terrorism and banditry.[41]

Critical Drivers of Banditry in Central Nigeria

Various reasons were attributed for the emergence and proliferation of the different types of banditry. For instance, environmental degradation, population growth, and regional instability was attributed to be the major factor responsible for herders-farmers clashes in central Nigeria.[42] Limited access to arable land and water sources have increased natural resource pressures, resulting in blocked grazing routes and destruction of farmland by Fulani-herdsmen cattle.[43] In addition, the commercial value of cattle has drastically increased resulting in larger herds being handled by an increasingly professionalized and weaponized herding community, in response organized gangs of cattle rustlers.[44] Political opportunism plays an important role in the conflict as well, as local traditional, political, and religious leaders often manipulate public sentiments and encourage violence for political expediency. Land and rustling disputes have a deadly tendency to spark self-perpetuating cycles of indiscriminate reprisal attacks playing out along ethno-religious fault lines.

Another variant of banditry is purely economic, that is, to make money from the criminal enterprise. These bandits are not interested in displacing the residents. Some of these bandits have established territorial jurisdictions

35 Okoli and Ugwu (n 5) 202-210.

36 A Thurston, ''The Disease is Unbelief': Boko Haram's Religious and Political Worldview," (Washington, DC, The Brookings Project on U.S. Relations with the Islamic World, 2016): 6.

37 Olalekan Bilesanmi "Zamfara report on banditry: Two Ex-Govs Indicted, Another for trial, 15 Emirs to be Removed" The Punch (26 September 2021) https://www.vanguardngr.com/2021/09/zamfara-report-on-banditry-two-ex-govs-indicted-another-for-trial-15-emirs-to-be-removed/ accessed on 29 June 2025.

38 KD Maza, U Koldaş and S Aksit, ''Challenges of Combating Terrorist Financing in the Lake Chad Region: A Case of Boko Haram", SAGE Open: 6; C Nelson, ''BDCs in 'No Error Mode' As FATF Visit Beckons", The Guardian, September 2 2019: 12; FATF and GIABA, ''FATF Report- Terrorist Financing in West Africa." Available online at https: //www.fatf-gafi.org /media/fatf/documents/reports/TF-in-West-Africa.pdf (accessed 25 June 2025).

39 FATF and GIABA (n 38) 17, 24-25.

40 Attah (n 10) 5-25.

41 FATF and GIABA (n 38) 24-25.

42 Millicent N Ele, "Transhumance, Climate Change and Conflicts: Reflections on the Legal Implications of Grazing Reserves and Ruga Settlements in Nigeria," Journal of African Law, 64 (2020): 199–213; Surulola Eke, "Nomad Savage' and Herder–Farmer Conflicts in Nigeria: The (Un)making of an Ancient Myth," Third World Quarterly, 41 (2020): 745-763; Nneka Perpetua Oli, Christopher Chimaobi Ibekwe and Ignatius Uche Nwankwo, "Prevalence of Herdsmen and Farmers Conflict in Nigeria," International Journal of Innovative Studies in Sociology and Humanities 3 (2018): 30-40; Ningxin Li "Nigeria's Fulani Herdsmen-Farmers Conflict and Peace Building," Global Journal of Agricultural Research 6 (2018): 1-15; Oyinloye Olaoluwa Babatunde, "The Nigerian Army and Rural Banditry: Issues and Challenges" Journal of Advances in Education and Philosophy (2020): 500-516; Chom Bagu and Katie, Smith Past is Prologue: Criminality & Reprisal Attacks In Nigeria's Middle Belt 1st ed. (Washington DC: Search for Common Ground, 2017): 5.

43 Ibid; Okoli and Ugwu (n 5) 206.

44 Ibid.

whereby they levy taxes and rates on the inhabitants, this is a characteristics of a failing state which is defined by the declining capacity of the Nigeria state to govern.[45] Factors that are responsible for the prevalence of banditry in Central Nigeria include influx of Small Arms and Light Weapons (SALWs) into Nigeria from the fall of the North African dictatorial regimes after the "Arab spring" uprising in the region, which ended up in the hands of terrorists and bandits, who are using these SALWs to terrorize individuals and communities.[46] Similarly, increase in incidences of bandit attacks is due to the followings, among others, opportunity to commit crime without detection or punishment, poor law enforcement, pervasive corruption, social injustice and oppression, poverty, greed, crass materialism and moral decay.[47] Other factors include unemployment, outdated school curriculum and radical religious indoctrination which make most of the youth unemployable, thereby accessible and amenable to recruitment as bandits and terrorists. These factors will be discussed in some details hereunder. The notion of ''social injustice'' in the aforementioned statement connotes glaring socio-economic inequality and inequity between the privileged class and the poor in Nigeria. Pervasive corruption has encouraged ostentatious lifestyle of the noveau rich, which incited a culture of greed and perverse materialism in Nigeria, a culture that is also associated with property crimes such as banditry. Similarly, the issue of criminal impunity has been reiterated by analysts as one of the most fundamental factors engendering crimes in Nigeria.[48] Thus, the inability of the Nigerian criminal justice system to identify criminals and effectively sanction crime is responsible for the prevalence of bandits in the Nigeria. Further, the high inflationary trends, high cost of living, and high unemployment rate create survival crises and the susceptibility of certain persons to embrace criminal enterprise.[49]

An Historical Evolution of Banditry in Central Nigeria

Banditry is not new in Northern Nigeria, it dated back to precolonial era. There was reports of the Argungu raiders as constituting headache for the Sokoto Caliphate, such that relatives of ex-President Shehu Shagari was kidnapped among other persons by these Argungu mauraders and sold into slavery.[50] In pre-colonial days wayfarers and merchants travelling usually faced the threats and dangers of ambush from bandits. Armed bandits and criminals targeted goods ferried on human head, donkeys, camels and ox carts, dispossess traders of their goods and disappear into the bush. In other instances, the bandits sometimes raid communities and villages, kidnap able bodied men, women and children, forcefully marry some, keeping some as slaves and selling others as slaves.[51] These raids were accompanied by willful killing and wanton destruction of properties. This subculture has been in existence even before the coming of British colonialists to the territories of northern Nigeria. The first recorded case occurred somewhere between "western Hausa land" and the Niger border in 1901, when a 12,000-strong camel train "laden with assorted grains" was attacked and 210 merchants killed".[52] With reference to the middle belt, the peoples in this region were passive victims of predatory action by their powerful neighbours such as the Sokoto Caliphate and its satellite emirates.[53] The middle belt or central Nigeria who are predominantly non-

45 Ibid; Bukola Adeyemi Oyeniyi, "He that Pays the Piper…": Funding the Monster, Boko Haram" Presented at the National Conference in Honour of Prof. Toyin Falola, Lokoja, on November 10 2021.

46 Ibid

47 Okoli and Okpaleke (n 8) 352.

48 K Odeku and OAnimashaun, "Poverty, Human Rights and Access to Justice: Reflections from Nigeria," African Journal of Business Management 6(2012): 6754-6764; O Animashaun, "Poverty and Unequal Access to Justice by the Poor in Nigeria: Lessons from other Jurisdictions" in Nationalism and Economic Justice in Nigeria, edited by Yunusa Kehinde Salami and others, (Ile Ife, OAU Press, 2014): 138-165.

49 O Animashaun, "Entrepreneurship and the Legal System: The Law's Response to Unemployment" Kogi State University Confluence Journal of Jurisprudence and International Law 7 (2014): 97-105; BE Arinze, "Armed Evaluation of the Effect of Armed Robbery on Nigerian Economy," Journal of Research in National Development 8 (2010): 352-353.

50 Shehu Shagari, *Beckoned to Serve: An Autobiography* (Ibadan: Heinneman): 54.

51 Ibid.

52 Okoli and Ugwu (n 5) 208-209.

53 Jonathan Mamu Ayuba, Social and Economic Change in Colonial North-Central Nigeria: The History of Akwanga Division, 1911-1960 (PhD thesis, University of London) 35.

Muslim were at a disadvantage due to Uthman Dan Fodio order that non-Muslim communities that had entered into formal treaty with the Sokoto Caliphate: "to make war upon the heathen to whom peace has been granted is unlawful by assent; wrongfully to devour their property is unlawful by assent, and to enslave them is unlawful by assent".[54] Slave raiding on the non-centralised communities of the central Nigeria was a pastime of the different emirates during the precolonial era, the raid however became more organised on an individual warlords' basis as the emirates were thrown out of psyche after the conquest by the British Army.[55] Slavery and banditry continued even during the early period of colonial rule, though on a much smaller scale in comparison with the precolonial era.[56]

Although banditry is as old as Nigeria, it has nonetheless incrementally transformed overtime since the inception of Buhari Administration (2015 till date) from the rudimentary phase, as stated above, to a complex and complicated pattern of criminality.[57] The modern transformation of banditry must be understood against the backdrop of the prevailing national security dialectics in Nigeria.[58] Thus, thugs and criminals from farming and herding communities and local bandits or urban/ foreign bandits, took advantage of the growing insecurity, fear and cyclical attacks to loot villages, engage in highway robbery, and rustle cattle for personal gain.[59] Contemporary narrative on banditry in Nigeria presents a pathetic humanitarian scenario, whereby bandits kidnap, robbing people of their valuables on the highway or in their homes, rustling cattle, looting, laying siege in markets, killing and maiming innocent people.[60]

Legal framework for combating Banditry in Nigeria

There are a number of statutes aimed at combating banditry in Nigeria. The major statutes include the Criminal and Penal Code Acts; Money Laundering (Prohibition) Act, 2011('MLA, 2011'), as amended, Terrorism (Prevention) Act, 2011, as amended, and the Economic and Financial Crimes Establishment (EFCC) Act, 2004. We shall examine the adequacy of these Acts in combating banditry in Nigeria *seriatim.*

Criminal Code Act and Penal Code Act

Criminal Code Act,[61] and Penal Code Act,[62] punishes different infractions that is classified as offences or crimes and applies to the southern and northern states of Nigeria respectively. Section 7 of the Criminal Code Act provides that the following are principal offender entitled to the same punishment for any offence committed- first, every person who actually does the act or makes the omission which constitutes the offence; second, every person who enables or aids another person to commit the offence. Third, any person who counsels or procures any other person to commit the offence. The Criminal and Penal Code Acts criminalizes the behaviours related to banditry such as being a member of an unlawful society, is punishable by 3 years imprisonment.[63] This is in contrast with the Terrorist Prevention Act, 2011 which prescribed two or more persons as the minimum while the Criminal Code Act prescribed 10 or more persons. The import of this is that, it is easier to punish the bandits under the Terrorist Prevention Act, 2011, should bandits be declared as terrorists. Criminal and Penal Code Acts

54 DH Bivar, "Manifesto of the Fulani Jihad" *Journal of African History* (1961): 235-243.

55 MA Klein, "The Slave Trade and Decentralized Societies" *Journal of African History,* 42 (2001): 49-65; Hubbell, "View of the Slave Trade from the Margin" *Journal of African History,* 42 (2001): 25-47.

56 C Larrymore, *The Resident's Wife in Nigeria* (London, 1908): 47.

57 Okoli and Ugwu (n 5) 208-209.

58 Ibid.

59 Ibid.

60 Ibid.

61 Cap C38 LFN, 2004.

62 Cap P3 LFN, 2004.

63 Section 62 of Criminal Code (CC).

provide different penalties for different crimes such as kidnapping (10 years),[64] murder (death),[65] stealing (3 years),[66] slave dealing (14 years),[67] robbery (21 years),[68] and others. Penal Code Act further criminalizes alcoholic consumption, adultery and fornication under sections 403, 387 and 388 of the Code respectively.[69] Consumption of alcoholic beverages, adultery and fornication are not regarded as crimes or offences in Southern Nigeria under the Criminal Code Act.

However in a curious twist the Supreme Court of Nigeria dismissed the appeal of a farmer who was attacked by a herdsman on his farm.[70] The Appellant, Sunday Jackson, was arraigned on a one-count charge of culpable homicide punishable with death contrary to Section 221(a) of the Penal Code.[71] In 2015, the Appellant was alleged to have caused the death of one Ardo Bawuro by stabbing him twice on the neck. Ardo, the owner of the knife, stabbed the appellant in the leg twice, the appellant overpowered him, fatally wound him with the knife and pleaded self defence in the court. The Supreme Court however held in a 4-1 majority decision that the appellant disregarded the principle of proportionality in self-defense. While acknowledging Jackson's initial right to defend himself, the court opined that after disarming the deceased, the appellant had the option of running away. The court also dismissed the defense of provocation, stating that self-defense and provocation are mutually exclusive and cannot be raised simultaneously.[72] The decision has been criticised by legal practitioners and other social commentators, particularly regarding the perceived failure to properly consider the psychological state of someone experiencing a near-death attack.[73] Some argue that the court imposed unrealistic expectations on Jackson, expecting him to act run away after being stabbed twice in the leg. A dissenting opinion argued that a man who has been stabbed twice is not expected to calmly assess the proportionality of his actions. Others are alarmed because the decision highlights a broader issue with the interpretation and application of self-defense laws in Nigeria.[74] The paper submits that with this new development, the herdsmen are likely to be more emboldened with continuing the mayhem and rampage while the victims remains cowed and disheartened.

Terrorism (Prevention) Act, 2011

Terrorism (Prevention) Act, No. 10 of 2011 ('TPA, 2011') expressly prohibits the funding of terrorism and terrorist acts (section 1 (1)), in order to inhibits the capacity of terror groups, such as Boko Haram and the bandits to carry out attacks in Nigeria.[75] Section 13 of the TPA, 2011 specifically criminalizes the provision of funds for terror groups in or outside Nigeria. Section 1(3) of the TPA, 2011 defines an "act of terrorism" as an act which is deliberately done with malice aforethought and which may seriously harm or damage or is intended to unduly compel a country or an international organization to act otherwise from its original intent. It is curious that the

64 Section 364 CC.
65 Section 319 CC.
66 Section 390 CC.
67 Section 369 CC.
68 Section 402 CC.
69 See also VLK Essien, "The Northern Nigerian Penal Code: A Reflection of Diverse Values in Penal Legislation," *NYLS Journal of International and Comparative Law* 5 (1983): 96-100.
70 *Sunday Jackson v. The State* (2025-03) Legalpedia 85898; (SC)Suit Number: SC.CR/1026/2022
71 CAP 98 Laws of Adamawa State 1997
72 Ibid.
73 NedMedia 'Nigeria Supreme Court Backs Terrorist & Convicts Jackson In Clear Self Defense – Dangerous' (2025) https://www.youtube.com/watch?v=kWwvxGpG_aU accessed 7 July 2025.
74 SJ Apochi, 'A Critical Analysis of the Rights of Self Defence and the Legal Restriction on Citizens Right to Possession of Weapons' (2021) 8(5) JETIR 581-592. AWJAI 'The Right to Self Defence in Nigeria' https://awjai.org/self-defence/ accessed 7 July 2025; Ita & anor. v State (2013) LPELR-21392(CA); Mohammed v State (2020) LPELR-50919 (CA); OM Atoyebi, 'An Examination of Self-defence and Its Implications under the Nigerian Criminal Law (2025) https://omaplex.com.ng/an-examination-of-self-defence-and-its-implications-under-the-nigerian-criminal-law/accessed 7 July 2025.
75 Attah (n 10) 7.

TPA 2011 still adopts the common law concept of 'malice aforethought' when the Supreme Court of Nigeria in Nworie Nwali v the State76 has decided that it was no longer part of Nigerian law.77

TPA, 2011 provides no definition of terrorist funding, however the definition provided by a UK Act suffices- 'providing or collecting funds, by any means, directly or indirectly, with the intention or knowledge that they will be used to carry out an act of terrorism'.78 Since bandits engage in acts of terrorism, this chapter presume that there is no difference between these two groups or as stated in the editorial of the Daily Trust newspapers, bandits are the economic wing of the terrorist group. A distinction may be made between terrorist funding and money laundering. Money laundering presumes that there is a crime which generates proceeds that have to be disguised in order to conceal the illicit source while in the case of terrorist or bandit financing, the money utilised for terrorism or banditry could be from either legitimate or illegal sources.79 Thus, this article argues that terrorists and bandits in Nigeria are engaged in money laundering schemes as evident in convictions in and outside Nigeria relating to banditry, terrorism and financing of terrorists based in Nigeria.80 Thus, there is the need for a well worded laws which makes terrorist and banditry financing difficult. This article however agrees with the position of Unger that unlike money laundering, which is only purporting to avoid the detection of dirty money of past crimes, terrorist or banditry financing also emphasizes the attributes of money laundering as well as avoiding the detection of clean money to be used for future crimes.81

The wide powers granted the prosecutor and the Attorney General of the Federation (AGF) constitute a hindrance to the fight against terrorist finance, banditry and terrorism in Nigeria. Section 174 of the Constitution of the Federal Republic of Nigeria, (CFRN) 1999 vested powers in the AGF to prosecute and discontinue all criminal cases, irrespective of the initiator of the case.82 Authors such as Ulmer et al., maintained that there is a need for proper control on the exercise of discretion.83 It is instructive that the current AGF refused to prosecute about 400 sponsors and financiers of banditry and terrorism apprehended by the security agents in Nigeria on grounds regarded as political reasons, thus necessitating outcry from the general public.84 This chapter argues that the discretionary powers granted the AGF is too wide and capable of abuse in Nigeria because the AGF and the president are partisan and members of the same political party. Similarly, the prosecutor's discretion is wider in terrorist related cases, it was thus termed 'dual or double criminality'85 that is, acts of terrorism is usually a crime under an existing statute. For instance, in the exercise of his discretion, the prosecutor may decide to

76 (1991) 3 NWLR (Pt. 182) 663.

77 See A Omolaye-Ajileye, A. ''Legal Framework for the Prevention of Terrorism in Nigeria'', *National Judicial Institute Law Journal,* 11 (2015): 35.

78 Article 1(4) U.K. Proceeds of Crimes Act.

79 Omolaye-Ajileye (n 72) 37; CL Mwazighe, ''Legal Responses to Terrorism: Case Study of the Republic of Kenya'', (MA-dissertation, Naval Postgraduate School Monterey, California): 81.

80 Federal Republic of Nigeria v Mustapha Fawaz & Ors., Unreported Appeal No: CA/A/197C/2014; Eniola Akinkuotu, and others, ''FG deploys 9,100 Corpers In North-West, Gunmen Kill 344, Abduct 430", The Punch, July 28 2021, 2; Ayitogo, "NIDCOM 'Aware' of Conviction of Six Nigerians",7; State v Okah (CCT 315/16; CCT 193/17); 2018 (4) BCLR 456 (CC)

81 B Unger and den Hertog "Water Always Finds its Way: Identifying New Forms of Money Laundering" *Crime, Law and Social Change*, 57 (2012): 287–304; B Unger, and others, *The Amounts and the Effects of Money Laundering Report for the Ministry of Finance* (Canberra: Australian National University Centre for Tax System Integrity, 2006): 28.

82 *State v Ilor*i (1983) All NLR p. 84; see sections 160 and 174 of the CFRN, 1979 & 1999 respectively.

83 JT Ulmer, MC Kurlychek and JH Kramer, 'Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences'', *Journal of Research in Crime and Delinquency,* 44 (2007): 428. See also Taiwo Oshipitan and A Odusote, ''Nigeria: Challenges of Prosecution and Defence Counsel in Corruption Prosecution'', *Acta Universitatis Danubius Juridica,* 10 (2014): 71-94.

84 D Daniel, ''Prosecute 400 Arrested Terror Sponsors Now' – Falana writes AGF Malami'', *PoliticsNigeria*, August, 3 2021: 12; H Ojielu, ''Falana writes AGF Malami, Demands Prosecution of 'Arrested' 400 Sponsors of Terrorism'', Vanguard, 3 August, 2021. https://www.vanguardngr.com/2021/08/ falana-writes-agf-malami-demands-prosecution-of-arrested-400-sponsors-of-terrorism/ accessed on June 29 2025.

85 AI Chukwuemerie, ''International Legal War on the Financing of Terrorism: A Comparison of Nigeria, UK, US and Canadian Laws'', *Journal of Money Laundering Control*, 9 (2006): 74-75.

charge a kidnapper under sections 364 or 272 and 273 of the Criminal Code or the Penal Code Law respectively or the Anti-Kidnapping Law of the various states such as section 3 of the Ebonyi Internal Security Enforcement and Related Matters Law.[86] Prosecutorial discretion could be exercised indiscreetly for political reasons. For instance, a bandit with affiliation to the ruling political party may be arraigned for pipeline vandalism or acts likely to cause breach of the peace under the criminal code, while a suspect affiliated to opposition party may be charged under the TPA. The prescribed punishment under the criminal code is lighter than those prescribed under the TPA.

In addition, section 28 of TPA provides that where a person arrested under the Act is granted bail by a court within the 90 days detention stipulated by the Act, the accused person may, on the approval of the head of the relevant law enforcement agency be placed under house arrest and shall be deprived of access to phones or communication gadgets and speak only to his counsel until the conclusion of the investigation. This chapter however argues that to keep anyone at the pleasure of the head of a law enforcement agency, without a valid court order is illegal and a violation of the fundamental human right of the affected person under Chapter IV of the CFRN, 1999.

EFCC Act

The EFCC was created by virtue of EFCC Act and designated the Financial Intelligence Unit, charged with the responsibility of coordinating the various institutions involved in the fight against illegal acquisition of wealth and financial crimes in Nigeria.[87] Section 14 of the TPA imposes an obligation on financial institutions or designated non-financial institutions (DNFI) to report suspicious transactions relating to banditry, terrorism and any other illegal act to EFCC. The nexus between the EFCC and banditry revolves around illegal acquisition and use of financial resources for personal gain and for furthering banditry. The EFCC also plays a critical role in the fight against banditry by virtue of the powers vested in the Commission under section 7(2) of the MLA, 2011. section 7(1) of the EFCC Act stated that the Commission has power to cause investigations to be conducted as to whether any person, corporate body or organization has committed any economic and financial crimes and cause investigations to be conducted into the properties of any person if it appears to the commission that the person's lifestyle and extent of the properties are not justified by his source of income. Thus, EFCC officials could investigate bandits or their sponsors even on suspicions that those persons are living above their income.

This chapter advocates that the Federal Government of Nigeria should declare bandits as terrorists as the provisions of TPA is more stringent and easier to get the bandits convicted than under the Penal or Criminal Codes Acts. For instance, in *Federal Republic of Nigeria v Mustapha Fawaz & Ors.*, it was held that although the accused admitted to being members and financiers of Hizballah, but membership of Hizballah was not a crime in Nigeria. Therefore the first and second accused were discharged and acquainted. This article suggests that there is a need for the Nigerian government to designate foreign groups such as Al-Qa'ida and Hizballah as terrorist organizations, such that financiers of such organizations will not be absolved of their crime on mere technicalities. It is noteworthy that the federal government of Nigeria has declared certain local organizations as terrorists- then why not foreign terrorist groups such as Hizballah which are financing the Nigerian cells or bandits who are killing and maiming persons on a daily basis? In *AGF v Indigenous People of Biafra (IPOB)*[88] and *Federal Republic of Nigeria v Jama'atu Ahlus-Sunnah Lidda Awati wal Jihad (Boko Haram) & Jama'tu*

86 Chapter 55 of 2009.
87 Sections 1, 6(b) & (d) EFCC Act.
88 Unreported Charge No FHC/ABJ/CS/871/2017.

Ansarul Musulumina Fi Biladis Sudan,[89] the Federal Government of Nigeria approached the Federal High Court to declare IPOB and Boko Haram as terrorist organisations. Consequent upon the declaration, these organisations were proscribed and in compliance with Section 9(4) and (7) of the TPA, 2011, the Federal Government proceeded to Gazette the same in the Federal Republic of Nigeria Official Gazette No. 34, Volume 100.

Money Laundering (Prohibition) Act, 2011

Section 15 of the MLA, 2011 refers to concealing or disguising the illicit origin of resources or properties derived from illicit traffic in banditry, narcotics, terrorism, terrorist financing, smuggling, tax evasion, illicit arms and others as financial crimes. An offence committed under this section attracts a penalty of imprisonment ranging from five to ten years. Sections 3, 5 and 24 of MLA, 2011, made provisions for DNFI, which include dealers in jewelries, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing companies and legal practitioners. Other DNFI includes hoteliers, casinos, super markets and such other businesses as the appropriate regulatory authorities may designate. Sections 3, 5 and 24 of MLA, 2011 suffered a major blow with the case of *Nigerian Bar Association (NBA) v Federal Government of Nigeria & Central Bank of Nigeria*.[90] In the NBA case, it was held that lawyers could not contravene the provisions in the Rules of Professional Conduct 2007 (RPC) and the Legal Practitioners Act, 1975 (LPA) by disregarding the duty of confidentiality between a client and a lawyer. Thus sections 3, 5 and 24 of MLA, 2011 and section 24 of the EFCC Act as it affects legal practitioners was held to be inconsistent with the provisions of section 37 CFRN 1999, the LPA and section 192 of the Evidence Act, 2011. With this judgement, sections 3 and 5 of the MLA, 2011 which mandates lawyers to report their activities to the EFCC is inapplicable to lawyers.[91] Ali[92] contended that there are basically two groups with regards to the designation of legal practitioners as DNFI, - the European Commission (EC) group which subsumed legal practitioners under DNFI while the North-American group (Canada and USA) aligns with the Nigerian position. This chapter agrees that legal practitioners in Nigeria should not be part of DNFI as their activities are regulated by the strict rules in RPC, 2007, the LPA, 1975 and the confidentiality rule between lawyers and clients. However, similar claims for removal from the DNFI list by the car dealers were rejected by the court in *Yakubu Lekjo and others v EFCC,*[93] whereby the high court held that the EFCC was in the proper exercise of the powers under section 24 of the MLA, 2011 by demanding information on their financial activities.

Similarly, section 2(1) and (2) of the MLA, 2011, imposes a duty to report any international transfer of funds and security exceeding US$10,000.00 or its equivalent to the CBN, Securities and Exchange Commission or the EFCC within seven days from the date of such transaction. However, the MLA failed to specify whose duty it is to make the report-the sender, receiver or the financial institution? This lacuna can easily be exploited by parties desirous of evading this disclosure provision, while hiding under the cover that they had expected the other parties to make the report. However, section 2(3) & (4) of the MLA, 2011 specifically provides that the Nigerian Customs Service must report the transportation of cash or negotiable instruments in excess of US$10,000 or its equivalent by individuals in or out of the country to the CBN and the EFCC. This chapter recommends that 2(1) and (2), should be properly worded like the succeeding subsections. It is pertinent to state that the well defined

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89 Unreported Charge No. FHC/ABJ/CS/368/2013 on 24/05/2013.

90 Unreported Suit No: FHC/ABJ/CS/173/2013.

91 See also N Ahiauzu and T Inko-Tariah, ''Applicability of Anti-Money Laundering Laws to Legal Practitioners in Nigeria NBA v. FGN & CBN'' *Journal of Money Laundering Control* 19 (2016): 330-337.

92 NT Ali, ''States' Varied Compliance with International Anti-Money Laundering Standards for Legal Professionals'' *Nordic Journal of International Law*, 88 (2019): 280-307.

93 Unreported Suit No: FHC/KD/CS/117/2209.

section 2(3) & (4) of MLPA is yielding result due to relatively high conviction rate.[94] In addition, the MLA, 2011 makes no provision for the protection of whistle-blowers who disclose information which could lead to the apprehension of persons engaged in money laundering or financing of banditry. This chapter suggests that there is a need to provide for the protection of whistle-blowers especially when the disclosure is against their employer.

State Laws

The inability of the Federal Government of Nigeria to protect the life and properties of the Nigerians and the perceived partial disposition of the President Buhari's government towards bandits has led to the growth of self defence, creation of ethnic militias and vigilantees by individuals, groups and state governments. The lapse on the part of the federal authorities has also led to the development of state or regional police such as the Amotekun in some South Western states of Nigeria. Some observers have observed that Amotekun is more effective in South Western Nigeria than the Nigerian Police Force, as it has apprehended more bandits than the Nigerian Police. In addition, some states in Central Nigeria such as Benue and Taraba, have prohibited open grazing by enacting law in order to arrest herdsmen- farmers conflicts arising from open grazing.[95] Some states such as Benue State have also sued the Federal Government of Nigeria with regards to herdsmen-farmers conflicts and bandits induced insecurity.[96] Further, most states have made new laws on predicate crimes of banditry such as kidnapping with more stringent punishment than what is provided for under the Criminal and Penal Code Acts.

Recommendations

The chapter recommends that Fulani-herdsmen and bandits who commit mayhem daily should be declared as terrorists under section 9(4) and (7) of the TPA, 2011. Second, international organisations such as Al-Qa'ida and Hizballah should be proscribed in Nigeria as terrorist organizations because it is difficult to convict known members and financiers of such organizations tried in Nigeria due to insufficient evidence and the non-proscription of these organisations. Third, the phrase 'Notwithstanding anything to the contrary in any law' should be deleted from section 10 of MLA, 2011 as it creates an impression of supremacy over the constitution or that the section should be made subject to the provision of the CFRN, 1999. Four, there is a need to include whistle-blowers' protection in the amended MLA. Further, the Act should be amended to prohibit retaliation by employers against employee-whistle-blowers, and provide such employees with a private cause of action in the event of discrimination or unfair dismissal by the employers. Five, section 2(1) & (2) of the MLA, 2011 to be tighten to include the person charged with responsibility of reporting transactions as neatly provided in section 2(3) MLA. Six, Legal Practitioners should be removed from DNFI's list in subsequent amendment to sections 3, 5 and 24 MLA, 2011. Seven, the states in the middle belt should create their own local police like the South Western Nigeria's Amotekun in order to minimize the banditry and probably to ginger the Federal Government of Nigeria to act appropriately in dealing decisively with banditry. Lastly, section 150 of the CFRN, 1999 should be amended to restrict the appointment of the AGF to legal practitioners duly called to the bar for a minimum of ten years and who are not members of any political party, because the partisan involvement of the incumbent is affecting the prosecution of the suspects involved in banditry, terrorism and banditry or terrorist financing cases.

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94 Federal Republic of Nigeria v Bashir Abdu (Unreported FHC/KN/CR/210/2012); Federal Republic of Nigeria v Umar Musa Kibiya (Unreported FHC/KN/CR/193/2012) and Federal Republic of Nigeria v Idris Hamza (Un reported FHC/KN/CR/196/2012).

95 Open Grazing Prohibition and Ranches Establishment Law, Benue State, No. 21, vol. 42 of May 2017; The Open Grazing Prohibition and Ranches Establishment Law of Taraba State, 2018.

96 *Attorney General Benue State & 1 Or. v Attorney-General Federation & 2 Ors.* Unreported Suit No. PHC/MKD/CS/56/19.

Conclusion

Terrorist groups such as the bandits, marauding Fulani-herdsmen and Boko Haram have wrecked incalculable havoc on Nigeria and its citizens.[97] Kidnapping for ransom, armed robbery, smuggling, drug trafficking are some of the crimes committed to make the banditry self-sustaining. These bandits also launder money realized from nefarious activities. The chapter found that finance is the heartbeat of bandits and that effort must be expended to stave these bandits of funds. Nigeria, in the bid to eradicate crimes such as banditry, has enacted many laws, such as Criminal Code Act, Penal Code Act, TPA, 2011, MLA, 2011 and the EFCC Act, 2004. This article thus examines the above stated statutes and found that there are certain gaps therein which made it difficult to convict those accused of banditry under these Acts. For instance, failure to declare the marauding Fulani-herdsmen who commit mayhem daily as terrorists under section 9(4) and (7) of the TPA, 2011, make these herdsmen to take lesser punishment whenever they are apprehended. Therefore, the article made certain recommendations to tighten the provisions of the identified statutes in Nigeria. Moreover, the federal authorities while offering no protection for the victims of bandit attacks, punish them in most cases for embarking on self defence. The Supreme Court of Nigeria considered sections 1(1)(b) and 2(a) of the Supreme Court Practice Direction 2013 and held that banditry, terrorism and other offences such as rape, kidnapping, money laundering and human trafficking cases takes precedent over other cases.[98] Thus, financial crimes and terrorist related cases are prioritized in Nigerian courts. For instance, it took the high court and the court of appeal less than a year to dispose a terrorist financing case.[99] The stance of courts is commendable as it took the issue of banditry, terrorism, insecurity and its predicate crimes seriously and prioritize it in the practice direction. The chapter advocates that the Executive arm of the Federal Government of Nigeria, consisting of the presidency, Ministries, Departments and Agencies (MDAs), including all the security agencies take the issue of insecurity in Nigeria serious and deal with victims and bandits without undue favour to any of these groups. The chapter further advocates that the proper enforcement of TPA, 2011, MLA, 2011 and the EFCC Act, 2004, when amended along the lines recommended in this article will help in curbing banditry and terrorism in Nigeria.

97 Sambo and Sule (n 1)158.

98 *Charles Ododo v Peoples Democratic Party* (2015, LPELER 24738.

99 *Federal Republic of Nigeria v Mustapha Fawaz & Ors.* (Unreported Charge No: FHC/ABJ/ CR/112/2013) and *Federal Republic of Nigeria v Mustapha Fawaz & Ors*. Unreported Appeal No: CA/A/197C/2014).

