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**Volume 1 Issue 1
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WILDLIFE CONSERVATION FINANCE: INVESTING IN PEOPLE AND THE PLANET'

ABSTRACT

Wildlife conservation finance is integral to preserving biodiversity, sustanzng ecological balance, and supporting the livelihoods of communities around the world. As environmental challenges such as habitat destruction, climate change, and species extinction escalate, traditional funding mechanisms have proven inadequate to meet the growing need for effective conservation. Adopting a doctrial research methodology, this paper relies on the qualitative analysis of existing legal frameworks, policy instruments, international agreements, and scholarly literature to examine innovative financial strategies that aim to bridge this gap, including public-private partnerships, conservation trust funds, green bonds, payments for ecosystem services, and carbon credits. These mechanisms not only mobilize resources for the protection of wildlife and ecosystems but also align economic growth with environmental sustainability. The paper further explores the pivotal role of local communities in ensuring the success of conservation efforts, emphasizing their involvement as stewards of biodiversity. However, despite their promise, conservation finance strategies face several obstacles, including persistent financial shortfalls, governance challenges, and policy fragmentation. Overcoming these barriers demands a strategic combination of targeted investments, robust legal and institutional frameworks, and inclusive conservation models. By addressing these challenges, wildlife conservation finance can secure a future where people and the planet coexist in harmony, ensuring ecological resilience and socioeconomic stability for generations to come.

Keywords: *Wildlife conservation, Finance, Biodiversity, Ecosystems, Ecological balance*

¹ Adaeze Oby Aziwe Esq., Director, Research Department, National Judicial Institute

1. Introduction

As the biodiversity crisis deepens, the significance of wildlife conservation finance becomes increasingly apparent. Wildlife and natural ecosystems are not just invaluable for their intrinsic beauty but are fundamental to the planet's ecological balance and humanity's survival.² These ecosystems provide critical services such as regulating the climate, purifying water, and maintaining fertile soils that are indispensable to human well-being. However, traditional funding mechanisms have proven insufficient in the face of growing environmental challenges, such as habitat destruction, climate change, and species extinction. The urgent need for innovative financial solutions has never been greater.³

Wildlife conservation finance represents a critical avenue for addressing these challenges by mobilizing the necessary resources to preserve biodiversity and maintain ecosystem services. This approach integrates traditional funding sources with modern financial instruments such as public-private partnerships, conservation trust funds, green bonds, payments for ecosystem services, and carbon credits.⁴ These mechanisms not only ensure the survival of endangered species and fragile habitats but also create opportunities for economic growth, sustainable livelihoods, and poverty alleviation. Importantly, the effectiveness of conservation finance depends on the active involvement of local communities. As stewards of their environments, local populations play a crucial role in sustaining biodiversity, ensuring that conservation initiatives are both socially inclusive and ecologically viable. However, despite these promising strategies, conservation finance faces

² Rands, M. R., Adams, W. M., Bennun, L., Butchart, S. H., Clements, A., Coomes, D., & Vira, B. (2010). Biodiversity conservation: challenges beyond 2010. *science*, 329(5997), 1298-1303.

³ Emerton, L., Bishop, J., & Thomas, L. (2006). Sustainable Financing of Protected Areas: A global review of challenges and options.

⁴ Ibid

persistent challenges, including financial shortfalls, governance weaknesses, and gaps in policy frameworks. Overcoming these obstacles requires collective action through strategic investments, strengthened legal structures, and equitable, community-driven models.

This paper explores the multifaceted role of wildlife conservation finance, highlighting innovative solutions and the vital link between biodiversity preservation and human well-being. By investing in people and the planet, conservation finance offers a pathway to securing the future of our shared environment while addressing the urgent ecological and socioeconomic crises of our time.

2. Concept of Wildlife Conservation Finance

Wildlife conservation is the practice of protecting and preserving wild species of animals and plants, along with their natural habitats.⁵ Wildlife conservation finance refers to the strategic generation, management, and allocation of financial resources specifically aimed at preserving biodiversity, protecting ecosystems, and ensuring the sustainability of natural habitats.⁶ This approach is critical in addressing the challenges posed by habitat loss, species extinction, and environmental degradation while also supporting vital ecosystem services such as carbon sequestration, water purification, and pollination. These services are fundamental not only to ecological stability but also to human survival and global economic systems.

⁵ Harris, R. B. (2014). *Wildlife conservation in China: preserving the habitat of China's Wild West*. Routledge.

⁶ Cosma, S., Giuseppe, R., & Stefano, C. (2023). Conservation finance: What are we not doing? A review and research agenda. *Journal of Environmental Management. Journal of Environmental Management*, 336, 1-14.

3. The Importance of Wildlife Conservation

Wildlife plays a fundamental role in maintaining the health, stability, and resilience of ecosystems that provide essential services to humanity. From regulating climate and purifying water to pollinating crops and preventing soil erosion, biodiversity underpins many aspects of life on Earth. The survival and well-being of human populations are intricately linked to the health of the natural world, making wildlife conservation not just an environmental concern but also a social, economic, and ethical imperative.

- a. Ecological Importance:** Wildlife contributes to the intricate balance of ecosystems by ensuring biodiversity and maintaining food chains.⁷ Predators regulate prey populations, preventing overgrazing and habitat destruction, while herbivores help control plant growth, ensuring a balanced and sustainable environment. Species such as bees and butterflies play a crucial role in pollination, supporting agricultural productivity and food security. Wetlands, forests, and coral reefs home to diverse wildlife act as natural barriers against climate change impacts, mitigating floods, storms, and rising sea levels.⁸
- b. Economic and Livelihood Benefits:** Many communities, particularly those in developing regions, depend on wildlife for their livelihoods. Ecotourism, which relies on the presence of healthy and diverse wildlife, generates significant revenue and provides employment opportunities. Sustainable wildlife-based industries, such as fishing and beekeeping, support local economies. Additionally, medicinal resources derived from biodiversity contribute to global health and pharmaceutical advancements. The loss of

⁷ Verma, A. K. "Necessity of Ecological Balance for Widespread Biodiversity." (2017).

⁸ Ibid

biodiversity not only threatens ecosystems but also disrupts these economic benefits, disproportionately affecting vulnerable communities.⁹

- c. **Cultural and Ethical Significance:** Many cultures around the world hold wildlife and nature in high regard, integrating them into traditions, folklore, and spiritual practices. Indigenous communities, in particular, have long-established relationships with the natural world, relying on traditional ecological knowledge to manage and protect biodiversity. The ethical argument for conservation also emphasizes the intrinsic value of wildlife beyond its usefulness to humans recognizing that species have a right to exist and thrive in their natural habitats.¹⁰

4. Challenges to Wildlife Conservation

However, despite its critical importance, wildlife and natural habitats are increasingly threatened by human activities, leading to a rapid decline in biodiversity. The key threats to wildlife conservation include:

- a. **Deforestation and Habitat Destruction:** One of the most significant threats to wildlife is the loss of natural habitats due to deforestation, land conversion for agriculture, infrastructure development, and urban expansion. As forests, wetlands, and grasslands are cleared, countless species lose their homes and access to food sources, pushing many toward endangerment or extinction. Habitat fragmentation

⁹ Nepal, Sanjay K. "Sustainable tourism, protected areas and livelihood needs of local communities in developing countries." *The International Journal of Sustainable Development & World Ecology* 4.2 (1997): 123-135.

¹⁰ Xu, Jianchu, et al. "Integrating sacred knowledge for conservation: cultures and landscapes in southwest China." *Ecology and Society* 10.2 (2005).

also isolates wildlife populations, reducing genetic diversity and increasing vulnerability to disease and environmental changes.¹¹

b. Illegal Wildlife Trade: The exploitation of wildlife for commercial gain has led to the decline of numerous species. Poaching for ivory, rhino horns, exotic pets, and traditional medicine continues to drive several species toward extinction. This illicit trade not only threatens biodiversity but also fuels organized crime and undermines conservation efforts.¹² Despite international agreements such as the Convention on International Trade in Endangered Species (CITES), illegal wildlife trafficking remains a lucrative industry, requiring stronger enforcement measures and community-driven conservation initiatives.¹³

c. Climate Change and Ecosystem Disruptions: Global climate change is altering habitats and forcing wildlife to adapt to shifting environmental conditions. Rising temperatures, changing precipitation patterns, and extreme weather events are affecting food availability, breeding patterns, and migration routes. Coral bleaching, caused by ocean warming, has devastated marine biodiversity, while polar ice loss threatens species like polar bears and penguins. Without urgent mitigation and adaptation strategies, climate change will continue to drive biodiversity loss at an alarming rate.¹⁴

d. Pollution and Environmental Degradation: Pollution from industrial waste, plastic debris, agricultural runoff, and chemical contaminants has severe

¹¹ Bodo, T., Gim ah, B. G., & Seomoni, K. J. (2021). Deforestation and habitat loss : Human causes, consequences and possible solutions. *Journal of Geographical Research*, 4(2).

¹² Broad, Steven, Teresa Mulliken, and Dilys Roe. "The nature and extent of legal and illegal trade in wildlife." In *The trade in wildlife*, pp. 25-44. Routledge, 2014.

¹³ Shaw, Kaitlyn. "The Illegal Trade of Marine Wildlife: A Review of Consequences and Strategies to Combat the Trade." *Seattle Journal of Technology, Environmental, & Innovation Law* 15.1 (2024): 8.

¹⁴ Glicksman, Robert L. "Ecosystem resilience to disruptions linked to global climate change: An adaptive approach to federal land management." *Neb. L. Rev.* 87 (2008): 833.

consequences for wildlife. Marine species suffer from plastic ingestion and entanglement, while pesticides and heavy metals poison terrestrial and aquatic life. Air and water pollution further degrade ecosystems, reducing the quality of habitats and increasing mortality rates among vulnerable species.¹⁵

5. The Role of Finance in Wildlife Conservation

Financing is a crucial element in wildlife conservation, as protecting biodiversity, maintaining ecosystems, and supporting local communities all require substantial and sustained investment.¹⁶ Conservation finance refers to the process of generating, managing, and allocating financial resources specifically for biodiversity protection.¹⁷ When properly funded, conservation efforts can ensure that protected areas are well-maintained, anti-poaching measures are effectively enforced, and local communities benefit from sustainable livelihood opportunities. Without adequate financial support, however, these efforts often fall short, leading to habitat destruction, species decline, and weakened ecological resilience.¹⁸

Despite growing global recognition of the importance of conservation, there remains a significant funding gap. Experts estimate that at least \$100 billion per year is required to effectively safeguard biodiversity worldwide, yet actual funding levels remain far below this threshold.¹⁹ This shortfall has led to underfunded national

¹⁵ Kolawole, A. S., & Iyiola, A. O. (2023). Environmental pollution: threats, impact on biodiversity, and protection strategies. In *Sustainable utilization and conservation of Africa 's biological resources and environment* (pp. 377-409). Singapore: Springer Nature Singapore.

¹⁶ Emerton, Lucy, Joshua Bishop, and Lee Thomas. "Sustainable Financing of Protected Areas: A global review of challenges and options." (2006).

¹⁷ Cosma, S., Giuseppe, R., & Stefano, C. (2023). Conservation finance: What are we not doing? A review and research agenda. *Journal of Environmental Management. Journal of Environmental Management*, 336, 1-14.

¹⁸ Ibid

¹⁹ Wilson, K. A., Underwood, E. C., Morrison, S. A., Klausmeyer, K. R., Murdoch, W. W., Reyers,

parks, insufficient personnel for wildlife protection, and limited conservation infrastructure, all of which weaken global conservation efforts. Governments and international organizations have historically provided the primary funding for conservation through grants and subsidies. Institutions such as the Global Environment Facility (GEF), the World Bank, and the United Nations Development Programme (UNDP) have played key roles in financing conservation projects, particularly in developing nations.²⁰ However, government funding is often limited and inconsistent, as conservation competes with other national priorities. As a result, alternative financial mechanisms have become increasingly necessary.

One of the most effective ways to supplement conservation funding is through public-private partnerships (PPPs). These partnerships allow governments, private investors, and conservation organizations to pool resources for sustainable conservation projects.²¹ Eco-tourism initiatives, wildlife reserves, and habitat restoration programs often benefit from such collaborations, as they create long-term financial sustainability while promoting environmental protection.²² Additionally, market-based financial tools such as green bonds, carbon credits, and biodiversity offsets have emerged as viable options for generating conservation revenue.

B., ... & Possin gham, H. P. (2007). Conserving biodiversity efficiently: what to do, where, and when. *PLOS biology*, 5(9), e 223.

²⁰ Nyekwere, Empire Hechime. "International environment financing : A review of the global environment facility." (2017).

²¹ Gray, B., & Stites, J.P. (2013). Sustainability through partnerships. *Capitalizing on collaboration. Network for business sustainability, case study*, 24, 1-110.

²² Bridgewater, Peter, Mathieu Regnier, and Roberto Cruz Garcia. "Implementing SDG 15: Can large-scale public programs help deliver biodiversity conservation, restoration and management, while assisting human development?." *Natural resources forum*. Vol. 39. No. 3-4.2015.

6. Key Mechanisms for Wildlife Conservation Finance

Wildlife conservation finance encompasses innovative strategies to fund the protection of biodiversity and ecosystems. These mechanisms aim to address the challenges of limited traditional funding sources while promoting sustainable practices and community involvement. Key approaches include:

1. **Public-Private Partnerships (PPPs):** Public-private partnerships involve collaboration between governments, businesses, and non-governmental organizations (NGOs) to fund and implement conservation initiatives. These partnerships leverage the strengths of both the public and private sectors, ensuring long-term investment in conservation. For example, conservation agencies can partner with private companies to manage national parks, fund reforestation projects, or develop eco-tourism businesses that generate revenue while protecting biodiversity.²³
11. **Conservation Trust Funds (CTFs):** Conservation Trust Funds (CTFs) are long-term financial mechanisms that provide reliable funding for conservation activities. These funds are typically established by pooling resources from governments, donors, and international organizations. The capital is invested, and the generated interest is used to finance conservation projects. CTFs have been successfully implemented in countries such as Costa Rica and Madagascar, where they support protected area management, species conservation programs, and community-based initiatives.²⁴

²³ Gray, Barbara, and Jenna P. Stites. "Sustainability through partnerships." *Capitalizing on collaboration. Network for business sustainability, case study 24* (2013): 1-110.

²⁴ Bonham, C., Steininger, M. K., McGreevey, M., Stone, C., Wright, T., & Cano, C. (2014). Conservation trust funds, protected area management effectiveness and conservation outcomes: lessons from the Global Conservation Fund. *Parks*, 20(2), 89-100.

111. Green Bonds and Impact Investment: Green bonds are fixed-income financial instruments that raise capital specifically for environmental projects, including conservation efforts. These bonds attract investors looking for sustainable investment opportunities while contributing to biodiversity protection. Impact investment where investors seek both financial returns and positive environmental outcomes is also gaining traction. Businesses that support sustainable forestry, organic farming, and responsible tourism can attract investors committed to conservation goals.²⁵

1v. Payments for Ecosystem Services (PES): Payments for Ecosystem Services (PES) are financial incentives given to landowners or communities who engage in conservation-friendly activities. For example, governments or businesses may pay local communities to protect forests, wetlands, or watersheds that provide vital ecosystem services such as carbon sequestration and water filtration.²⁶ A successful PES example is Costa Rica's Forest Conservation Program, which compensates landowners for maintaining forests, leading to a significant increase in national forest cover over the past three decades.

v. Carbon Credits and Biodiversity Offsets: With growing concerns over climate change, carbon credits have become a valuable tool for financing conservation. Companies looking to offset their carbon emissions can invest in reforestation, afforestation, and habitat restoration projects that absorb carbon dioxide while protecting wildlife. Similarly, biodiversity

²⁵ Bhutta, U. S., Tariq, A., Farrukh, M., Raza, A., & Iqbal, M. K. (2022). Green bonds for sustainable development: Review of literature on development and impact of green bonds. *Technological Forecasting and Social Change*, 175, 121378.

²⁶ Kagombe, Joram K., Joshua K. Cheboiwo, Alfred Gichu, Collins Randa, and Jane Wamboi. "Payment for environmental services: status and opportunities in Kenya." *Journal of Resources Development and Management Journal* 40 (2018): 1-13.

offsets require developers to compensate for environmental damage by funding conservation efforts elsewhere. While controversial, these mechanisms can provide critical funding for conservation when implemented responsibly.²⁷

- v1. **Eco-Tourism and Sustainable Business Models:** Eco-tourism is one of the most successful conservation finance models. When managed properly, it generates revenue that supports protected areas, funds conservation programs, and provides jobs for local communities. Countries like Kenya, Tanzania, and Costa Rica have successfully integrated eco-tourism into their conservation strategies, making wildlife protection a profitable venture. Sustainable businesses, such as ethical wildlife-friendly products and responsible agriculture, also play a role in conservation finance.²⁸

7. Legal and Institutional Frameworks in Wildlife Conservation Finance in Nigeria

Nigeria has established several laws and policies aimed at regulating wildlife conservation and financing biodiversity protection. These frameworks are designed to promote sustainable environmental practices, combat illegal wildlife trade, and encourage investment in conservation. However, despite their existence, challenges such as weak enforcement, inadequate funding, and policy fragmentation continue to hinder effective conservation finance in the country.

²⁷ Douglass, L. L., Possingham, H. P., Carwardine, J., Klein, C. J., Roxburgh, S. H., Russell-Smith, J., & Wilson, K. A. (2011). The effect of carbon credits on savanna land management and priorities for biodiversity conservation. *PLoS One*, 6(9), e23843.

²⁸ Chen, W. (2023). Developing a sustainable business model of ecotourism in ethnic-minority regions guided by the green economy concept. *Sustainability*, 15(2), 1400.

1. **Endangered Species (Control of International Trade and Traffic) Act:**²⁹

One of the fundamental laws governing wildlife conservation finance in Nigeria is the Endangered Species (Control of International Trade and Traffic) Act, which was originally enacted in 1985 and later amended in 2016 to strengthen its provisions. This legislation aligns with the Convention on International Trade in Endangered Species (CITES) and serves as Nigeria's primary legal instrument for regulating the trade, protection, and conservation of endangered wildlife species. It categorizes species into three schedules based on their level of endangerment, with strict regulations on hunting, possession, and trade. The Act imposes severe penalties, including fines and imprisonment, on individuals or organizations engaged in illegal wildlife trade. Despite these legal provisions, enforcement remains a major challenge due to limited funding, inadequate personnel, and weak inter-agency collaboration. Poaching, illegal logging, and wildlife trafficking continue to threaten Nigeria's biodiversity, as enforcement agencies struggle to monitor and protect vast forest reserves and national parks.

11. **National Environmental Standards and Regulations Enforcement Agency (NESREA) Act:**³⁰ NESREA is responsible for ensuring compliance with environmental regulations, penalizing violations, and overseeing conservation finance projects across the country. The agency plays a crucial role in implementing Nigeria's obligations under international environmental treaties, including biodiversity protection agreements. However, overlapping jurisdiction with other government agencies, such as the Federal Ministry of Environment and the Forestry Commission, often leads to bureaucratic inefficiencies. The absence of clear financial mechanisms for conservation

²⁹ 1985

³⁰ 2007

within NESREA's operational framework has further hindered its ability to effectively channel funds toward wildlife protection initiatives. To improve its impact, there is a need for better coordination among regulatory agencies, increased funding allocations, and the deployment of advanced monitoring technologies, such as satellite surveillance and remote sensing.

111. **National Parks Service Act:**³¹ which was revised in 2016, is another significant legislation that provides a legal framework for the management, protection, and financing of national parks and protected areas in Nigeria. This Act establishes the National Parks Service (NPS) as the regulatory body responsible for managing the country's designated national parks. It also allows for public-private partnerships (PPPs) to support conservation financing through initiatives such as eco-tourism, wildlife conservation programs, and sustainable business models. Despite the legal backing provided by this Act, many of Nigeria's national parks suffer from chronic underfunding, making it difficult to sustain conservation programs, employ sufficient park rangers, and combat wildlife crimes such as poaching and illegal deforestation. Additionally, anti-poaching efforts, ecological restoration projects, and habitat protection programs are often hampered by insufficient financial support and a lack of enforcement personnel.

1v. Forestry laws at the state level play a crucial role in wildlife conservation finance by regulating the use of forest resources, preventing deforestation, and promoting sustainable land management. However, effective enforcement and long-term financial investment remain key challenges in ensuring that these laws translate into meaningful conservation outcomes. Various Nigerian states have enacted forestry policies tailored to their unique environmental and economic needs, yet insufficient funding, weak regulatory

³¹ 1999

enforcement, and limited private-sector engagement continue to undermine conservation efforts.

- v. Cross River State, known for its rich biodiversity and extensive rainforests, has forestry laws aimed at regulating logging and promoting afforestation. The Afi Mountain Wildlife Sanctuary and Cross River National Park are critical conservation areas, yet illegal logging remains rampant due to weak financial investment in enforcement mechanisms.³² The state has received international conservation grants, but a structured conservation finance system including eco-tourism revenue generation, carbon credit programs, and public-private partnerships (PPPs) is needed to ensure long-term sustainability. Lagos State, facing rapid urbanization, has introduced urban forestry policies focused on mangrove protection and sustainable land-use management. These laws aim to mitigate deforestation caused by infrastructure expansion while promoting climate finance through carbon offset programs. However, without sufficient investment in conservation finance mechanisms, such as payments for ecosystem services (PES) or green infrastructure funding, long-term forest protection remains uncertain.³³
- v1. Ogun State oversees forest reserves such as the Omo Forest Reserve, enforcing regulations on timber extraction and reforestation projects. While the state promotes sustainable timber harvesting, enforcement is often limited due to financial constraints. Conservation finance mechanisms such as sustainable forestry investment funds, afforestation grants, and eco-certification incentives could enhance compliance with existing forestry

³² Okoro¹, Rose Chinyere, and Joseph Ugochukwu Ogbuefi. "Assessing Effectiveness of Forest Resource Management Approaches in Niger Delta: Comparative Analysis of Mbe Mountains and Cr National Park."

³³ Israel, O. A., Hakim, R. A., & Basri, B. H. (2016). Payment for environmental services, rural poverty reduction and agricultural land conservation in Oyo state farm settlements, Nigeria. *Unpublished PhD Thesis) Universiti Utara Malaysia*.

regulations and generate revenue for conservation efforts.³⁴ Ondo State has a forestry policy that prioritizes afforestation and forest reserve protection, covering areas like the Oluwa and Akure-Ofosu Forest Reserves. The state enforces laws against illegal encroachment and deforestation, but funding remains a significant barrier to achieving conservation goals. Implementing PPP models, integrating carbon credit financing, and expanding sustainable forestry programs could help bridge the funding gap and support forest restoration projects.³⁵

v11. Kaduna State's forestry law focuses on combatting desertification and preserving forested areas. The state encourages community participation in tree planting and sustainable land-use programs, aligning with conservation finance strategies like PES and carbon markets. However, limited government funding and low private-sector involvement restrict the impact of these policies. Strengthening climate adaptation financing, developing reforestation tax incentives, and establishing forestry conservation trust funds could enhance the effectiveness of Kaduna's forestry laws.³⁶

v111. The Agricultural Promotion Policy (2016-2020) was another initiative aimed at integrating conservation finance into land use planning, particularly in agricultural sectors. One of its key strategies was promoting Payments for Ecosystem Services (PES)-a financial model where farmers and landowners receive incentives for adopting conservation-friendly practices such as reforestation, soil preservation, and sustainable farming. However,

³⁴ Oso, A. O., Agbeja, B. O., & Faleyimu, O. I. (2017). Perceived forest offences among stakeholders and their impact on sustainable Forest Reserves management in Southwestern Nigeria.

³⁵ Oke, O. S., and Akindele, S. O. (2019). Development of Geospatial Database for Oluwa Forest Reserve. *Forests and Forest Products Journal*, 19, 92-104. Forest and Forest Products Society.

³⁶ Policy Vault Africa, 'Kaduna State Forestry Law, 2019'

<<https://www.policyvault.africa/policy/kaduna-state-forestry-law-2019/>> accessed 8 March 2025.

the implementation of PES programs in Nigeria has been weak, with many rural communities lacking awareness of these financial incentives. Additionally, bureaucratic challenges and funding gaps have limited the success of conservation-linked agricultural finance, preventing widespread adoption of eco-friendly land management.³⁷

Beyond domestic legislation, Nigeria is also committed to several international agreements that shape its conservation finance policies. The country is a signatory to the Convention on Biological Diversity (CBD), which mandates financial commitments toward biodiversity conservation.³⁸ Under this treaty, Nigeria is expected to allocate resources, implement national biodiversity strategies, and promote sustainable land-use policies. Additionally, Nigeria's participation in the Paris Agreement and the REDD+ (Reducing Emissions from Deforestation and Forest Degradation) program has created opportunities for conservation funding through carbon markets.³⁹ These programs allow Nigeria to access international finance for projects that protect forests, reduce emissions, and promote sustainable land management. However, challenges such as limited institutional capacity, lack of financial transparency, and slow policy implementation have hindered Nigeria's ability to fully leverage these global funding mechanisms.⁴⁰

Regionally, Nigeria ratified the African Convention on the Conservation of Nature and Natural Resources in 2010, reinforcing its commitment to continental

³⁷ Federal Ministry of Agriculture and Rural Development, *The Agricultural Promotion Policy (2016- 2020)* <https://www.nipcr.gov.ng/wp-content/uploads/2020/11/Agric-Promotion-Policy_Green-Alternative_2016-2020_Final_1562696225.pdf> accessed 8 March 2025.

³⁸ Chandra, A., & Idrisova, A. (2011). Convention on Biological Diversity: a review of national challenges and opportunities for implementation. *Biodiversity and Conservation*, 20, 3295-3316.

³⁹ UN-REDD Programme, 'Linking REDD+, the Paris Agreement, NDCs and the SDGs' <<https://www.un-redd.org/sites/default/files/2021-09/5.%20Linking%20REDD%2B%2C%20the%20Paris%20Agreement%2C%20NDCs%20and%20the%20SDGs.pdf>> accessed 8 March 2025.

⁴⁰ Ibid

conservation efforts.⁴¹ This agreement promotes regional cooperation in wildlife conservation finance, sustainable land use, and ecosystem management. However, like other international frameworks, its impact remains limited by funding constraints, weak enforcement structures, and the absence of robust financial planning at the national level. To maximize the benefits of these international agreements, Nigeria must develop stronger domestic policies that align with global conservation finance initiatives, improve transparency in fund utilization, and create a clear roadmap for implementing conservation projects under these frameworks.

8. Challenges in Wildlife Conservation Finance

1. There is a significant funding gap in global conservation efforts, estimated to exceed \$100 billion annually. This shortfall hampers critical activities such as habitat restoration, anti-poaching initiatives, and the management of protected areas.
2. Many regulatory agencies lack sufficient resources, trained personnel, and equipment to enforce conservation laws effectively. For example, weak inter-agency collaboration and overlapping jurisdictions, as seen in Nigeria, often result in inefficiencies and fragmented efforts.
3. Conservation finance is often hindered by fragmented policies and inconsistent legal frameworks at national and international levels. This can lead to unclear roles and responsibilities, reducing the effectiveness of initiatives like public-private partnerships or biodiversity offsets.

⁴¹ Erinosho, Bolanle T. "The revised African convention on the conservation of nature and natural resources: prospects for a comprehensive treaty for the management of Africa's natural resources." *African Journal of International and Comparative Law* 21.3 (2013): 378-397.

4. Mechanisms such as carbon credits, biodiversity offsets, and green bonds face challenges like regulatory gaps, risks of green washing, and insufficient monitoring to ensure they achieve conservation outcomes.
5. National parks and reserves often suffer from chronic underfunding, affecting anti-poaching measures, ecological restoration, and the management of wildlife habitats.
6. In the absence of alternative livelihoods, activities like illegal logging, poaching, and unsustainable farming remain economically attractive to local communities, exacerbating biodiversity loss.
7. Changing climatic conditions disrupt ecosystems, forcing wildlife to adapt to new environments. Financing strategies often struggle to incorporate climate resilience into conservation plans.
8. Limited financial transparency and accountability in the use of conservation funds can lead to corruption or misallocation of resources, reducing their impact.

9. Recommendations for Improving Wildlife Conservation Finance

To address the challenges faced in wildlife conservation finance and ensure sustainable conservation outcomes, the following recommendations are proposed:

1. Governments and international organizations should allocate more financial resources to conservation efforts, ensuring adequate funding for protected areas, anti-poaching initiatives, and habitat restoration projects. Public-private partnerships should be expanded to mobilize additional financial resources for large-scale conservation programs.
2. Encourage the use of green bonds, carbon credits, and biodiversity offsets to attract sustainable investments. Implement Payments for Ecosystem Services

(PES) programs more effectively, providing financial incentives to communities and landowners for conservation-friendly practices.

3. Harmonize conservation policies and clarify the roles of regulatory agencies to avoid duplication of efforts and fragmented responsibilities. Enhance the enforcement of existing laws by increasing funding for monitoring and compliance and by deploying advanced technologies like satellite surveillance and remote sensing.
4. Actively involve local communities in conservation planning and implementation to ensure that their needs are aligned with conservation goals. Provide alternative livelihoods such as eco-tourism, sustainable agriculture, or wildlife-friendly businesses to reduce the economic pressures leading to biodiversity loss.
5. Train law enforcement officers, park rangers, and community leaders in conservation management and anti-poaching techniques. Equip regulatory agencies and conservation organizations with modern tools and resources to enhance their efficiency.
6. Establish monitoring and reporting systems to track the allocation and utilization of conservation funds. Develop clear accountability frameworks to minimize corruption and mismanagement of resources.
7. Conduct public awareness campaigns to emphasize the importance of wildlife conservation and the role of finance in achieving it. Involve media, educational institutions, and community groups to foster a culture of environmental stewardship.
8. Strengthen partnerships with international organizations, neighboring countries, and regional networks to combat illegal wildlife trade and promote cross-border conservation projects. Utilize funding opportunities provided by global

frameworks such as the Convention on Biological Diversity (CBD) and the REDD+ program.

9. Embed biodiversity conservation goals into national economic and infrastructure development strategies to ensure sustainable growth. Encourage corporate social responsibility (CSR) initiatives that align business interests with conservation objectives.
10. Grant formal land rights to indigenous and rural communities to empower them as stewards of their natural resources. Support policies that recognize and protect community-managed conservation areas.

11. Conclusion

Wildlife conservation finance is a vital cornerstone in the effort to safeguard biodiversity, protect ecosystems, and support sustainable livelihoods. This paper has highlighted the importance of innovative financial mechanisms such as public-private partnerships, conservation trust funds, green bonds, carbon credits, and payments for ecosystem services as powerful tools for addressing the growing global conservation funding gap. However, to ensure the effectiveness of these mechanisms, strong policy frameworks, transparent governance, and active community involvement are essential.

Investing in wildlife conservation goes beyond protecting endangered species; it is a crucial investment in the ecological balance of our planet and the well-being of future generations. Local communities must be empowered through inclusive conservation models that link environmental protection with economic benefits. Governments, businesses, and civil society must work collaboratively to mobilize resources, foster sustainability, and establish equitable conservation practices. The urgent need to address biodiversity loss, climate change, and habitat degradation demands

immediate and collective action. By integrating conservation finance into global development priorities and leveraging innovative approaches, we can secure a future where people and nature coexist in harmony. This is not merely an environmental obligation- it is a moral, social, and economic imperative. The time to act is now, for the benefit of both humanity and the planet we all share.

JUSTICE DELAYED IS NOT ALWAYS JUSTICE DENIED

BY

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Abstract

The maxim "justice delayed is justice denied" is a constant refrain in legal discourse, warning against the corrosive effect of prolonged litigation. In many cases, delay robs a judgment of its value, leaving the aggrieved without meaningful redress. Yet the reality of legal practice shows that not every delay is an injustice. Certain pauses in judicial proceedings are not only legitimate but necessary preserving rights, ensuring procedural fairness, and protecting the integrity of the justice system. This paper examines the circumstances under which delay serves the ends of justice rather than undermines them. Drawing on Nigerian judicial practice, it highlights five common scenarios: preservation of rights through injunctions; protection of evidential integrity via trials within trials; granting investigative agencies adequate time; managing public order in sensitive cases; and delayed trials that still deliver sound judgments. The discussion engages relevant case law, statutory provisions, and judicial reasoning to distinguish constructive delay from systemic inefficiency. The aim is not to excuse needless procrastination in the courts but to argue for a balanced view one that recognises that justice must be timely, yet never at the expense of correctness, fairness, or legitimacy. Where delay is guided by principle, proportion, and purpose, it can be a guardian of justice rather than its enemy.

Keywords: Justice, Alternative Dispute Resolution, Maxims, Constitution

1. Introduction

In the legal profession, few maxims are as familiar or as forcefully repeated as "*Justice delayed is justice denied.*" It is more than a catchy phrase; it is a hard-learned truth that runs through centuries of legal thought. A judgment delivered years after the wrong has occurred can lose its practical value, sometimes rendering the victory hollow. The harm that prompted the suit may have long been endured without remedy, witnesses may have disappeared, memories may have faded, and the litigant's patience along with public confidence may have been exhausted. This is why modern constitutions, including Nigeria's 1999 Constitution (As amended),¹ explicitly guarantee a fair hearing within a reasonable time. It is also why procedural laws, such as the Administration of Criminal Justice Act,² seek to limit adjournments, streamline trials, and impose stricter case management obligations. In theory, the goal is clear: justice must be done quickly enough for it to still matter.

Yet, as every seasoned practitioner knows, law is not a sprint; it is a careful negotiation between urgency and thoroughness. The pressure for speed must be balanced against the requirements of fairness, due process, and the factual complexity of the matter at hand. There are situations and they occur more often than the public realises where a well-reasoned delay is the very thing that ensures the outcome is just. To ignore this reality is to risk a dangerous oversimplification. The truth is, not every adjournment or extension of time amounts to injustice. Sometimes, as Lord Hewart observed in *R v Sussex Justices ex parte McCarthy*, *decided one hundred years ago*, "*Justice must not only be done, it must be seen to be done and sometimes that takes time.*"³

In the Nigerian context, these constructive delays can take many forms. An injunction may pause proceedings to prevent irreversible harm. A "trial within

¹ Section 36(1)

² ACJA 2015, Laws of the Federation of Nigeria, 2004

³ Mr Justice Cobb, 'Justice Must Be Seen to Be Done' (Conkerton Memorial Lecture, Liverpool, 10 October 2024) *Courts and Tribunals Judiciary* <<https://www.judiciary.uk/speech-by-mr-justice-cobb-justice-must-be-seen-to-be-done/#:~:text=The%20phrase%20'Justice%20must%20be,decided%20one%20hundred%20years%20ago>> accessed 15 August 2025 at 6.19pm

trial"⁴ may stall the main hearing while ensuring that a confession was obtained voluntarily. A court may grant investigative agencies more time to build a credible case, rather than allow them to rush forward with weak or incomplete charges. In volatile political disputes, the timing of a judgment may be calibrated to reduce the risk of civil unrest. And occasionally, even a long-delayed trial if conducted fairly may still vindicate the rule of law when it concludes. The challenge, therefore, is not simply to eliminate delay, but to distinguish between constructive delay and systemic delay between the pause that protects justice and the pause that destroys it. This paper explores that difference, drawing on Nigerian case law, statutory provisions, and practical examples from the courtroom.

2. Understanding the Maxim and Its Reversal

The phrase "*justice delayed is justice denied*" has been around for so long that it's almost taken as gospel. You '11 hear it in law school lectures, political speeches, and even street debates about the courts. It is often quoted in frustration, a shorthand for the idea that if a case drags on too long, whatever judgment eventually comes is worth little or nothing. There's a strong logic to it. The law isn't an abstract art form; it's supposed to solve problems in real people's lives. If a tenant is unlawfully evicted but has to wait eight years before the court rules in their favour, the harm is long done. If a person is kept on remand for a decade awaiting trial, even an acquittal won't return those years. This is why many legal systems, including ours, enshrine the right to a hearing *within a reasonable time* to stop justice from expiring before it's delivered. But here's the part that's less often discussed: not all delay is destructive. Some delays are like a traffic light turning red frustrating in the moment, but necessary to avoid a collision. In fact, the legal process has built-in pauses that are meant to protect fairness, not undermine it.⁵

For instance, interim injunction to an outsider, might look like the court is freezing a case instead of deciding it. In reality, it's the court saying: "Hold on, before we

⁴ A trial within a trial is a mini-trial conducted during a criminal case in Nigeria to determine the voluntariness of a confessional statement made by the accused to the police.

⁵ M A Khan and M R Khan, (2015) 'Red-signal delay scheme to prevent vehicle accidents at the intersection' *ResearchGate* <https://www.researchgate.net/publication/283883384_Red-signal_delay_scheme_to_prevent_vehicle_accidents_at_the_intersection> accessed 15 August 2025 at 11.34pm

get to the main trial, we need to make sure no irreversible harm happens that would make the trial pointless." It's a protective pause. Another way to see it is through the lens of traffic lights. A green light means the case moves forward, a red light means it stops, but the yellow light signals caution slow down, because rushing ahead could cause an accident. An interim injunction is that yellow light: a deliberate pause, not to frustrate justice, but to make sure the road ahead remains safe and the eventual judgment meaningful. Or take the so-called *trial within trial*: it may add weeks to proceedings, but it's there to ensure a confession wasn't beaten or bribed out of a defendant. Even the public sometimes misunderstands deliberate judicial timing. There are moments when a court, especially in politically charged cases, will hold back on delivering a judgment until tensions cool. To some, that's procrastination; to others, it's a safeguard against a ruling becoming a matchstick in a powder keg. So, when we reverse the maxim to say "*justice delayed is not justice denied*," we are not giving a free pass to endless adjournments or sloppy case management. What worth recognising is that the speed of justice is not its only measure. The *quality* of justice its fairness, accuracy, and legitimacy sometimes depend on taking a little more time. And this is where the lawyer's and judge's perspective differ from the average person. The public often sees only the delay; judicial officer or lawyer sees the reason behind it.

3. Situations Where Delay Preserves Justice

In certain legal contexts, courts may authorize deliberate procedural delays such as continuances or adjournments not to obstruct justice, but to preserve fairness, ensure due process, and secure enforceable outcomes.⁶ These pauses are not "constructive delays" in the technical sense, but rather judicial tools used to balance efficiency with equity. A glossary look at the five situations where delay plays this protective role as follow:

⁶ Koriati Law, 'Undue Delay of Litigations: An Abuse of Court Process' (5 July 2025) <<https://koriatiaw.com/undue-delay-of-litigations-as-an-abuse-of-court-process/>> accessed 15 August 2025 at 7.23pm.

a. Preserving Rights Through Injunctions

One of the clearest examples is the granting of interim or interlocutory injunctions. On paper, these are delays the court orders that nothing significant should happen until the full trial is heard. But in substance, they are a shield. Imagine a company on the brink of demolishing a disputed property. If the court refuses to grant an injunction simply to "keep things moving," the trial could become meaningless by the time the judge delivers a verdict, the building is rubble. That's why the courts, drawing from both constitutional authority and the High Court Civil Procedure Rules, have the power to "maintain the status quo"⁷ where it is just and convenient to do so. The principles are familiar there must be a recognisable legal right (*Green v. Green*⁸), a serious issue to be tried (*Ayorinde v. AG Oya State*)⁹, and the balance of convenience must favour the applicant. The delay here isn't to frustrate anyone; it's to ensure that when judgment comes, it actually has something to operate upon.

b. Ensuring Voluntariness of Evidence: The Trial Within Trial

To a casual observer, a trial within trial might look like an unnecessary detour. The main trial pauses, the court hears fresh testimony, and days or weeks go by before the central case resumes. But anyone who has been involved in criminal law knows why these step exists: to confirm that a confession was given freely, without intimidation, threat, or inducement.

In *Augustine Iheme v. State*¹⁰ and *The State v. Abdullahi Sani*,¹¹ the appellate courts made it clear, voluntariness is not a procedural luxury, it's a constitutional right. The Evidence Act¹² reinforces this, and the Administration of Criminal Justice Act,

⁷ "Maintaining the status quo" means keeping things the way they are, without making any changes. It refers to preserving the existing state of affairs, whether it's a social, political, or economic situation. Essentially, it's about resisting change and holding onto the current condition. The term "status quo" refers to the existing state of affairs, particularly in social, political, or economic contexts. According to Vocabulary.com's definition, it's "the existing state of conditions," and people who challenge it are often seen as disruptors.

⁸ (1987) JELR 42723 (SC)

⁹ (1996) JELR 42434 (SC)

¹⁰ (2013) JELR 35713 (SC)

¹¹ (2018) SC.491/2011

¹² 2011

especially Sections 15 and 17¹³ has formalised the practice. Yes, the process consumes time, but it also prevents wrongful convictions based on coerced statements. The real injustice would be to rush past this safeguard for the sake of speed, only to discover later that the "confession" was the product of fear or force.

c. Allowing Law Enforcement Adequate Time

Complex cases can't be built overnight. Financial crimes, organised criminal syndicates, and high-profile murders require painstaking investigation, forensic analysis, and often cooperation with multiple agencies. The Dele Giwa case is a sobering example. When the journalist was killed in 1986, public outrage demanded immediate arrests and prosecutions. But Justice Candido Johnson, then Chief Judge of Lagos State, noted the uniqueness and complexity of the case, cautioning against "hasty and impulsive" action that could collapse under scrutiny.¹⁴ That judicial patience was not a cover for inaction, it was an insistence on a credible, defensible process. A premature prosecution might look decisive, but if it fails because the groundwork wasn't done, justice suffers more than if the court had allowed the investigators extra time.

d. Mitigating Social Tension

Not every legal delay is about procedure or evidence. Sometimes, it's about the temperature outside the courtroom. Judges are not oblivious to the society they serve, and in politically charged or socially sensitive cases, timing can matter as much as content. Although Nigerian law reports rarely document this openly, it is no secret that courts sometimes "take a matter under advisement" longer than usual in order to deliver judgment at a moment when it is less likely to trigger unrest. The delay doesn't change the law or the reasoning, it changes the conditions in which the decision is received. In such cases, a few weeks' or months' pause can be the difference between an orderly acceptance of the judgment and widespread instability.

¹³ ACJA 2015

¹⁴ Max Gbanite, 'Dele Giwa: Gani's Hearsay Evidence' (New Jersey, USA, *Gamji*, 2007) <<http://www.gamji.com/article6000/NEWS7528.htm>> accessed 15 August 2025.

e. Delayed Trials That Still Delivered Justice

Long trials test the patience of all involved, but a delayed judgment is not automatically a bad one. The prosecution of former Plateau State governor Joshua Dariye illustrates this point. Charged in 2007 with diversion of public funds, Dariye's trial was bogged down by jurisdictional challenges and interlocutory appeals.¹⁵ For almost nine years, the substantive hearing seemed stuck in neutral. Yet when it finally resumed in 2016 and concluded in 2018, the result a conviction upheld by the Supreme Court was procedurally sound and legally unassailable. Public expectation had been stretched thin, but the eventual decision reaffirmed that even a long-delayed process can still vindicate the rule of law if it is grounded in due process.

In each of these scenarios, the delay is not a symptom of judicial failure. It is a calculated choice aimed at preserving the very fairness and enforceability that make a judgment worth having. The danger, of course, lies in distinguishing these constructive delays from the systemic bottlenecks that have become all too common in Nigerian courts a distinction we'll address in the next section.

4. Legal and Judicial Perspectives

If there's one thing Nigerian courts have been consistent about, it's that justice is not a one-way street. It's not just about satisfying the claimant or convicting the accused, it's about balancing the rights of all parties while safeguarding public interest. That balance sometimes requires the court to slow down. The Supreme Court, in *Ayorinde v. Attorney-General of Oyo State*,¹⁶ made the point clearly: the discretion to grant interim relief is not an indulgence; it's a duty when the circumstances demand protection of a party's rights until the substantive matter is decided. The court observed that such discretion must be exercised "judicially and judiciously" which is judicial shorthand for saying it must be guided by reason,

¹⁵ *Economic and Financial Crimes Commission, 'How Dariye Shared N1.2bn Ecological Fund - Witness' (3 February 2016) <<https://www.efcc.gov.ng/efcc/news-and-information/news-release/J663-how-dariye-shared-nl-2bn-ecological-fund-witness>> accessed 15 August 2025.*

¹⁶ (1996) 3 NWLR (Pt. 434) 20

fairness, and the evidence before the court. Similarly, in *Green v. Green*,¹⁷ the court underscored that an injunction is not a licence to freeze proceedings for its own sake, but a safeguard to prevent an irreparable situation before the final hearing. Here, delay was not seen as an enemy; it was the shield without which the judgment could have been meaningless.

In criminal trials, the appellate courts have long recognised that safeguards like the *trial within trial* are integral to a fair process. In *Gbadamosi v. State*,¹⁸ the Court of Appeal noted that while the jury system that originally gave birth to this procedure no longer exists in Nigeria, the principle survives because it serves a higher goal: ensuring that confessions are voluntary before being admitted into evidence. The inconvenience of pausing the trial, the court implied, is a small price to pay for avoiding the injustice of convicting someone based on a coerced statement.

And then there's the issue of investigative timelines. Courts have shown a willingness to give agencies like the EFCC or the police more breathing room when the matter is complex, but they also draw the line at indefinite delays. The courts cannot be used as a holding bay while prosecutors go fishing. This reflects the fine line between a justified pause and an abuse of process a line judges are expected to police vigilantly. Internationally, the same principle holds. The European Court of Human Rights, interpreting Article 6 of the European Convention, has stated that "reasonable time" is context-dependent.¹⁹ Complexity of the case, conduct of the parties, and the diligence of the court all factor into whether a delay breaches the right to a fair trial. Nigerian judges, whether consciously or not, often apply a similar test.

The takeaway is that our courts don't treat every delay as inherently unjust. They evaluate the *purpose* of the delay, the *necessity* of the pause, and the *impact* on the parties. When the reason is solid and tied to fairness, the delay is validated; when

¹⁷ (1987) 3 NWLR (Pt. 61) 480

¹⁸ (1992) 9 NWLR (Pt. 266) 465

¹⁹ Ivana Roagna, *The Right to Trial Within Reasonable Time under Article 6 ECHR: A Practical Handbook* (Council of Europe 2018) <<https://rm.coe.int/the-right-to-trial-within-reasonable-time-eng/16808e712c>> accessed 15 August 2025.

it's arbitrary or self-serving, it becomes a breach of the very justice the court is meant to uphold.

5. Balancing Delay with the Right to Timely Justice

This is where the debate gets tricky. On one side, you have the argument that a little delay can protect fairness; on the other, the constitutional right to a hearing "within a reasonable time" under Section 36(1) of the 1999 Constitution. The courts can't simply pick one and ignore the other, both values must be preserved. Think of it as walking a tightrope. Lean too far towards speed and you risk cutting corners, overlooking evidence, or denying parties a fair hearing. Lean too far towards caution and you risk grinding the process to a halt, effectively turning justice into a theoretical promise.

Nigerian courts have often wrestled with this. In *Okeke v. State*,²⁰ the Court emphasised that while the Constitution guarantees speed, the "reasonableness" of the time depends on the complexity of the case, nature of the case, the number of witnesses, the volume of exhibits, and the possibility of the trial judge losing track of the scenario due to complexity. That's why a murder trial involving dozens of witnesses will understandably take longer than a simple tenancy dispute but it still shouldn't drag on for decades.

The Court in *Dangana v. Usman*²¹ also recognised that the judiciary must be seen to be acting with urgency where delay would defeat the ends of justice. In that case, the court fast-tracked hearing because the tenure of an elected office was at stake; if the case wasn't resolved quickly, the eventual decision would have been academic.

So, how do courts strike the balance? Sometimes, a pause in proceedings is necessary for instance, when the court needs to allow time for a key witness to be located, to accommodate essential forensic analysis, or to prevent prejudice to either side. Other times, the delay is wasteful repeated adjournments because counsel is absent, incomplete case files, or avoidable administrative bottlenecks.

²⁰ (2003) 15 NWLR (Pt. 842) 25

²¹ (2012) LCN/3981(SC)

The difference lies in whether the pause serves justice or undermines it. To curb wasteful delays, judges under the *Administration of Criminal Justice Act (ACJA)* 2015 and similar state laws have been equipped with stronger case management powers. They can restrict unnecessary adjournments, insist on day-to-day trials in certain matters, and impose sanctions for frivolous delay.²² The goal is straightforward: whenever the court stops, it should be for a reason that genuinely advances justice. Certain cases such as election petitions, national security matters, and urgent human rights applications are often fast-tracked. This is not a sign of bias, but an acknowledgment that delay in such cases could cause damage too severe to repair. Even so, communication matters. Often, the real harm is not in the delay itself but in how it is perceived. If the court takes time to explain, on record, why a matter is being adjourned especially where fairness is at stake public trust is more likely to hold. When such explanations are absent, suspicion takes root and confidence in the system erodes.

Ultimately, balancing these two imperatives is less about choosing speed over caution or vice versa, and more about ensuring that when justice takes time, it is time well spent. Judges, lawyers, and even litigants all play a part in keeping the clock honest.

6. Recommendations

If there is general acceptance that *not every delay is a denial of justice*, then the task becomes ensuring that the right kind of delay is distinguished from the wrong kind and that the wrong kind is weeded out. The following practical steps can help:

1. Stricter Screening of Adjournment Requests, Judges should demand concrete, verifiable reasons before granting adjournments. "Counsel is not

²² Adedapo Tunde-Olowu, Oluwaseun Philip-Idiok and Esther Siyaidon, 'Nigeria: Litigation' in *Legal 500 Country Comparative Guides 2025* (Legal 500, 2025)
<https://www.legal500.com/guides/chapter/nigeria-litigation/?export-pdf#:~:text=In%20recent%20times%20C%20amendments%20to%20various%20civil,party%20or%20in%20favour%20of%20taxpayers.%205> accessed 15 August 2025 at 2.12 pm

ready" or "the witness is not in town" without proof should no longer fly. Where necessary, cost orders should follow frivolous delay tactics.

2. **Mandatory Case Timelines for Certain Matters**, Just as election petitions are bound by strict constitutional timelines, other sensitive cases e.g., child custody disputes, urgent human rights applications could have statutory maximum durations to avoid justice becoming academic.
3. **Better Use of Technology**, Virtual hearings, e-filing, and electronic service of processes can drastically reduce avoidable delays caused by logistics, travel, or missing files. If the pandemic taught us anything, it's that the justice system can run even when people can't physically gather in court.
4. **Active Case Management by Judges**, the powers under the *Administration of Criminal Justice Act* and similar laws to direct day-to-day trial, limit adjournments, and enforce timelines should be used proactively. A judge's docket is not just a calendar, it's a control panel for keeping justice on track.
5. **Judicial Communication with the Public**, when delays are for protective reasons such as awaiting a key forensic report or to allow tensions to cool courts should explain this in open court. It takes only a few sentences to prevent suspicion and misinformation.
6. **Improved Court Resources**, Delays are sometimes nobody's fault but the system's: insufficient judges, overburdened registries, and poor facilities. More appointments, better training, and improved infrastructure can prevent "systemic delay" from swallowing up "constructive delay."
7. **Ethical Accountability for Lawyers**, Professional bodies like the Nigerian Bar Association should discipline members who routinely employ delay tactics as a litigation strategy. A justice system is only as fast as the people running cases through it.

By making these changes, we can ensure that the only delays left in the system are those that genuinely preserve fairness not those that sabotage it.

7. Conclusion

The old saying "justice delayed is justice denied" has been repeated so often that it feels like gospel. Delay in itself is not always the villain sometimes, it is the shield that protects justice from being delivered in haste and error. What the courts, lawyers, and litigants must guard against is not *all* delay, but *unnecessary* delay. A criminal conviction rushed through without proper cross-examination is as dangerous as a land dispute that drags on for twenty years. Both undermine justice one by moving too fast, the other by moving too slow. The challenge, therefore, is not to worship speed as an end in itself, but to make every moment in the life of a case count towards a fair outcome. The Constitution's promise of hearing a matter "within a reasonable time" is exactly that *reasonable*. Reasonableness bends to the demands of complexity, urgency, and fairness. The courts have a duty to ensure that time is spent wisely, not wasted carelessly. In the end, justice is not a race to the finish line, nor an endless wait at the station. It is a journey where every step whether brisk or deliberate must be taken in service of truth, fairness, and public confidence. When delay serves those ends, it is not justice denied; it is justice preserved.

AN EXAMINATION OF THE CONCEPT OF STATE SOVEREIGNTY UNDER INTERNATIONAL LAW

By

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Abstract

This paper looks into the concept of sovereignty in international law, focusing on internal and external sovereignty. Sovereignty is a fundamental principle in international relations, but its meaning and application are often debated. The subversion of state sovereignty by external aggression and globalization challenges the traditional notion of sovereignty. This paper aims to clarify the concept of sovereignty, its dimensions and characteristics and explore its implications in international law. The paper employs a doctrinal approach, analyzing historical perspectives, theoretical frameworks and international instruments. The concept of sovereignty is evolving, with external sovereignty facing challenges from globalization and interventionist policies. The authors recommend that there should be a strengthened international cooperation and respect for state sovereignty, ensuring accountability for violations of international law.

Keywords: *Genocide, Genocide Convention, Human Rights, International Peace, Responsibility to Protect, Self- Defense, Sovereignty, State Sovereignty, United Nations General Assembly, United Nations Security Council.*

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1.1 Introduction

Sovereignty is a fundamental concept in international law. Sovereignty is a state's supreme authority over its territory and people. A state's internal sovereignty can be determined by its external sovereignty and vice versa. For instance, a state's ability to maintain order and enforce laws within its territories (internal sovereignty) can be strengthened by its recognition and support from other States (external sovereignty). Similarly, a state's external sovereignty can be influenced by its internal stability and governance. A state with strong internal sovereignty is more likely to be respected and recognized by other states in the international community. The paper identifies problems such as: the subversion of state sovereignty by external aggression and globalization challenges the traditional notion of sovereignty, threatening international and state autonomy. The purposes of this research paper are to clarify the concept of sovereignty, its dimensions and characteristics; to examine the implications of sovereignty in international law; to identify challenges to state sovereignty in the modern era. The paper aims to analyze the concept of sovereignty, its evolution and its implications in international law, highlighting the tensions between internal and external sovereignty.

1.2 Origin, Meaning and Historical Background of Sovereignty

This section explores the etymology, meaning, and historical perspective of sovereignty.

1.2.1 Etymology

The conceptual word 'Sovereignty' finds its roots in the Latin word "*Superanus*" through the French word "*Souveraineté*". The term was originally understood to mean the equivalent of supreme power. However, its application in practice often has departed from this traditional meaning¹. The concept of sovereignty, one of the most controversial ideas in political science and international law, is closely connected to the difficult concepts of state and government and independence and democracy².

¹ Britannica Editors, 'Sovereignty' <<https://www.britannica.com/topic/sovereignty>> accessed 10 July, 2025.

² Ibid.

In 16th-century France, Jean Bodin used the new concept of sovereignty to bolster the power of the French king over the rebellious feudal lords, facilitating the transition from feudalism to nationalism. The thinker who did the most to provide the term with its modern meaning was the English philosopher, Thomas Hobbes, who argued that in every true state, some person or body of persons must have the ultimate and absolute authority to declare the law; to divide this authority, he held, was essentially to destroy the unity of the state.

The theories of the English philosopher John Locke and the French philosopher Jean- Jacques Rousseau that the state is based upon a formal or informal compact of its citizens, a social contract through which they entrust such powers to a government as may be necessary for common protection- led to the development of the doctrine of popular sovereignty that found expression in the American Declaration of Independence in 1776. In the 19th century, the English jurist John Austin developed the concept further by investigating who exercises sovereignty in the name of the people or of the state. He concluded that sovereignty is vested in a nation's parliament. A parliament, he argued, is a supreme organ that enacts laws binding upon everybody else, but that is not itself bound by the laws and could change these laws at will. This description, however, fitted only a particular system of government, such as the one that prevailed in Great Britain during the 19th century.³

1.2.2 Meaning of Sovereignty

As the modern nation-state system developed in Europe, the concept of sovereignty evolved to refer to the power of a state to govern itself without interference from other states. Today, sovereignty is a fundamental principle that underpins international order. The authors undertake to outline definitions of some early writers.

Jean Bodin, the humanist philosopher and jurist (who was called the father of sovereignty) defined sovereignty as:

*"the most high, absolute, and perpetual power over the citizens and subjects in a Commonwealth."*⁴

According to Woodrow Wilson,

³ Ibid.

⁴ Wm. A. Dunning, 'Jean Bodin on Sovereignty' Political Science Quarterly, Vol. 11, No.1 (Mar., 1896), pp. 82-104 <<https://www.jstor.org/stable/2139603>> accessed 13 July, 2025.

“Sovereignty is the daily operative power of framing and giving efficacy to the laws.”⁵

In addition, in the words of J.W. Burgess, sovereignty is:

“the original, absolute, unlimited power over the individual subject and all the other associations of the subject. It is an un-derived and independent power to command and compel obedience.”⁶

By the authors’ analyses of the above definitions, Jean Bodin defines sovereignty to imply supremacy, unlimited power not constrained by external forces and emphasizes authority over people within the commonwealth.

Woodrow Wilson’s definition emphasizes on practical, ongoing authority and highlights lawmaking and enforcement. It focuses on functional aspect of sovereignty, lawmaking and implementation and practical exercise of power. Wilson’s definition highlights sovereignty’s role in everyday governance.

Burgess’ definition of sovereignty is the initial, supreme authority, not derived from any other source; unrestricted power with no legal limitations and sovereignty that governs both individuals and groups within a state.

1.2.3 Historical Background of Sovereignty

To understand the meaning of Sovereignty, there is the need to examine the definition of Sovereignty of various theorists.

Firstly, Jean Bodin, a French jurist, was one of the first to articulate the concept of sovereignty in the 16th century. Bodin defined it as the absolute and perpetual powers of a republic. According to Bodin, this power is indivisible and cannot be shared or divided. His idea laid the groundwork for the modern concept of state sovereignty and legitimacy, advising how these principles can be challenged by various social, economic, and political factors. Bodin’s theories significantly influenced the development of modern states by introducing the notion of sovereignty.⁷

Secondly, Thomas Hobbes, an English philosopher, also made this argument

⁵ Brijpal Singh, ‘Meaning of Sovereignty|Definitions| Attributes’ <law.niviiro.com/meaning-of-sovereignty-definitions-attributes?amp>accessed 13 July, 2025.

⁶ Karnataka PSC, ‘Sovereignty’ Karnataka PSC study materials<<https://unacademy.com/content/Karnataka-psc/study-material/polity/sovereignty>> accessed 13 July, 2025.

⁷PoliticalScience, ‘Jean Bodin on Sovereignty’ <<https://www.politicalscienceview.com/jean-bodin-on-sovereignty>>accessed 13 July, 2025.

during the civil war and arrived at the notion that sovereignty should reside with a singular governing authority. This laid the foundation for the centralized government system, which became pivotal during the formation of a nation-state in Europe. Hobbes' ideas encouraged rulers to consolidate power to effectively govern diverse populations and maintain legitimacy through absolute authority.⁸

Thirdly, Jacques Maritain, a French philosopher, is not critical of the state per se but of the fact that the state had made itself the absolute sovereign of the political body (society). In doing so, the concept of sovereignty was turned upside down, the relationship between human beings and the state, making the former tools at the service of the latter. In the opinion of Jacques Maritain, this happened during the French Revolution when power shifted from the king to the nation, and the relation was seen as a superior person called the Nation-State.

Maritain argued that 'the state is not the supreme incarnation of the idea' as Hegel believed:

*"The state is not a kind of collective superman; the state is but an agency entitled to use power and coercion and made up of experts or specialists in public order and welfare, an instrument in the service of man, putting man at the service of that instrument is political misrepresentation. The human person as an individual is for body politics, and body politics is for the human person as a person. But man is by no means for the state, the state is for man."*⁹

Ernst Kantorowicz, in his medieval classic *"The King's Two Bodies (1957)*, described a profound transformation in the concept of political authority over the course of the Middle Ages. The change began when the concept of the body of Christ evolved into a notion of two bodies- (the *corpus* natural and the *corpus mysticum*), the social body of the church with its attendant administration structure. According to Kantorowicz, the modern polity that described a single, unified one, confined within territorial borders, possessing a single set of interests, ruled by an authority that was bundled into a single entity and held supremacy in advancing the interests of the polity. This evolution was what

⁸Garrath Williams, 'Thomas Hobbes: Moral and Political Philosophy' Internet Encyclopedia of Philosophy. <<https://iep.utm.edu/hobmoral/>>accessed 13 July, 2025.

⁹ PoliticalScience, 'Jean Bodin on Sovereignty' <<https://www.politicalscienceview.com/jean-bodin-on-sovereignty>>accessed 13 July, 2025.

Kantorowicz described as formation, for sovereignty is a signature feature of modern politics. Some schools have doubted whether a stable, essential notion of sovereignty exists.¹⁰

Finally, Martin Luther gave a different perspective on the question of sovereignty. His theology of the reformation advocated stripping the catholic of its many powers, not only its ecclesiastic power but powers that are, by any modern definition, temporal. Luther held that the Church should no longer be thought of as a visible, hierarchical institution, but rather, as the invisibly united aggregate of local churches that adhered to the right doctrine. Luther's political theology explained that He taught that under God's authority to order with two forms of government existed. "The realm of that under God's authority, two orders in which Christ was related to the soul of the believer. The realm of the world was the order of secular society, where civil authorities ran governmental institutions through law and coercion. Realm furthered the good of believers, but in different senses; they were to be separated and organized. The Unity and universality and essential rights of the sovereign territorial state, and the denial of extra-territorial or independent communal form of life, are Luther's lasting contribution to police."¹¹

1.3 Dimensions of Sovereignty

Under the sub-head, the paper shall be discussing three components of each of these definitions to highlight an important aspect of the concept. First, a holder of sovereignty possesses authority. That is to say, the person or entity does not merely wield coercive power, defined as A's ability to cause B to do what he would otherwise not do. These components include territorial, political, and economic sovereignty.

1.3.1 Territorial Sovereignty: Territorial Sovereignty refers to a state's exclusive and resources within them. This includes the absolute ability to make and enforce laws, collect taxes, and define external threats. Territorial sovereignty is a principle by which members of a community are defined. It specifies that their

¹⁰ Ernst Kantorowicz, 'The King's Two Bodies: A Study in Medieval Political Theology' <<https://press.princeton.edu/books/paperback/9780691169231/the-kings-two-bodies>>accessed 14 July, 2025.

¹¹ Luther Hess Waring, 'Church and State' G.P. Putnam's sons (1920) <https://books.google.com/books/about/The_Political_Theories_of_Martin_Luther.html?id=YyLtDwAAQBAJ> accessed 16th August, 2025.

membership derives from their residue within borders. It is a powerful principle; it defines membership in a way that may not correspond with identity. The borders of a sovereign state may not in all circumstances be a “people” or a “nation”, and may in fact encompass several of these identities, as national self-determination and irredentist movements make evident. It is rather by simple virtue of their location within geographical borders that people belong to a state and fall under the authority of a sovereign's supremely authoritative.¹²

1.3.2 Political Sovereignty: Political sovereignty refers to a state's ability to govern itself without external interference, including the power to make laws, enforce them, and defend against external threats. This includes the ability to enter into treaties and agreements with other states and to participate in international organizations. Sovereignty essentially encompasses the power to make laws, as defined by William Blackstone. It implies autonomy, meaning that the sovereign power is beyond the reach of external interference. In addition to lawmaking power, there are two other often-contentious aspects of sovereign immunity. Eminent domain refers to the right of sovereignty to take while sovereign immunity offers sovereign protection from lawsuits.¹³

1.3.3 Economic Sovereignty: Economic sovereignty refers to a state's ability to control its own economic policies without undue external influence or interference. It is the country's ability to independently make decisions and policies regarding its economic affairs without undue external influence or control. It encompasses a nation's right to manage its own resources, trade, and financial system in alignment with its domestic priorities and development goals.

1.4 Characteristics of Sovereignty

According to Dr. Garner, he outlined the following factors to characterize Sovereignty to include:

1.4.1 Exclusiveness: By exclusiveness, Garner stated that “there can be two sovereigns in one independent state, and if the two sovereigns exist in a state, the unity of the state will be destroyed.” This cannot exist within another sovereign state within the existing state.

¹² Anna Stilz, ‘Territorial Sovereignty: A brief introduction’ Journal of Social Philosophy <<https://onlinelibrary.wiley.com/>> accessed 18th August, 2025.

¹³ Britannica Editors, ‘Sovereignty’ <<https://www.britannica.com/topic/sovereignty>>accessed 17th August, 2025.

1.4.2. Permanence: Garner described permanence as the chief characteristic of sovereignty. Sovereignty lasts if an independent state lasts the least; the death of the king, the overthrow of the government, and the addition of power do not lead to the destruction of sovereignty. The basic fact that the king or the ruler exercises sovereign power on behalf of the state should be kept in mind, and therefore, sovereignty lasts if the state lasts. The death of a king or the overthrow of the government does not affect sovereignty. This is the reason why people in England used to say, “The King is dead, long live the King”. “Sovereignty does not cease with the death or temporary dispossession of a particular bearer or the re-organization of the state, but shift immediately to a new bearer, as the center of gravity shifts from one part of the physical body to another when it undergoes external change.

1.4.3. All-Comprehensiveness: Garner states that all comprehensive and sovereign power is universally applicable. Every individual, every association, is subject to the sovereignty of the state. No association or group or individual, however rich or powerful it may be, resisted or disobeyed the sovereign authority. Sovereigns make no exception and grant no exemption to anyone. It grants exemption only in the case of foreign embassies and diplomatic representation of foreign countries on a reciprocal basis. This does not in any way restrict the sovereignty of the states in the legal sense. The state can abolish and withdraw the diplomatic privileges granted to foreigners.

1.4.4 Inalienability: Another characteristic of sovereignty, according to Garner, inalienability means that a state cannot part with its sovereignty. In other words, we can say that sovereignty does not remain with the sovereign or the sovereign state if he or the state transfers his or its sovereignty to another person or any other state. Sovereignty is the life and soul of the state, and it cannot be alienated without destroying the state itself. Lieber has rightly stated, removing in this connection, “sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or penalty to another destruction.

1.4.5 Unity: Unity, in the view of Garner, means the very spirit of sovereignty. The sovereign state is the United States.

1.4.6 Absoluteness or Illimitability: sovereignty is absolute and unlimited to the sovereign and it is entitled to do and act in the way it likes. It is subject to none.

1.4.7 Imprescriptibility: By this, Garner meant that if the sovereign does not

exercise his sovereignty for a certain period of time, it does not lead to the destruction of sovereignty. It lasts if the state lasts.

1.4.8 Originality: Sovereignty wields much power by virtue of its own right and not by virtue of anybody's mercy.

1.4.9 Indivisibility: According to Gamer, lifeblood sovereignty cannot be divided. American statement, Calhoun has described sovereignty as an entire thing; to divide it is to destroy it. It is the supreme power in a state and might just as well divide it to destroy it. It is the supreme power in the state, and we might just as well speak of half square or half triangle as half sovereignty. In the same vein, Gettell has also noted, very aptly remarks in this regard, "if sovereignty is not absolute, no state exists. "If sovereignty is divided, more than one state exists."¹⁴

1.5 Types of Sovereignty

The concept of sovereignty is divided into two, i.e., Internal and External sovereignty. While internal and external sovereignty are distinct sub-concepts, they are closely interconnected.

A state's internal sovereignty can be influenced by external sovereignty and vice versa. For example, the state's ability to maintain order and enforce law within its territory (internal sovereignty can be strengthened by its recognition and support from other external sovereigns).

In the same vein, a state's external sovereignty can be impacted by its internal stability and governance. A state with strong internal sovereignty is more likely to be respected and recognized by other states in the international community.

1.5.1 Internal Sovereignty

The concept of internal sovereignty has evolved significantly, shaped by historical events and philosophical developments. The Treaty of Westphalia (otherwise known as the Peace of Westphalia) in 1648 marked a pivotal moment, establishing the principle of territorial sovereignty and laying the groundwork for the modern nation-state system. The treaty recognized states' authority to govern themselves without external interference. Furthermore, it

¹⁴ PoliticalScience, 'Jean Bodin on Sovereignty' <<https://www.politicalscienceview.com/jean-bodin-on-sovereignty>>accessed 13 July, 2025.

influenced internal sovereignty, with philosophers like John Locke and Jean-Jacques Rousseau advocating social contract theory. This theory emphasizes that government derives authority from the consent of the governed, ensuring that power is exercised in line with the people's will. Locke's idea of natural rights and the separation of powers were instruments in shaping modern democratic government structure.¹⁵

The American and French Revolutions in the 18th century advanced the Nations' internal sovereignty. The United States Declaration of Independence of the rights of man and that of underscores the principle that legitimate government authority arises from the people, not divine right or hereditary rule. These documents reinforced the idea that internal sovereignty is essential for protecting individual liability and promoting democratic governance.

Internal sovereignty is the assembling of a group of people in every independent state who have the final legal authority to command and obedience. This sovereignty exercises its absolute authority over all individuals or associations of the individuals within the state to issue orders to all men and associations within the area; it receives orders from none of them. It will be subject to no legal limitation of any kind.

Internal sovereignty is a fundamental concept in political theory and law, denoting the supreme authority within a state to govern as own affairs. It underpins the functioning of government and the ability to maintain order, implement laws, and ensure social stability. This concept impacts government structure and influences how power is distributed carrying institutions and regions.¹⁶

1.5.2 External Sovereignty

External Sovereignty emerged from the meeting of Westphalia in 1648, which ended the Thirty Years' War and laid the groundwork for modern international relations. The concept highlights that a state authority is not recognized within its borders but also acknowledged by other states in the global arena. Challenges to external sovereignty often arise from issues such as interventionist policies, humanitarian

¹⁵ Ibid.

¹⁶ Ibid.

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External sovereignty emerged from the Peace of Westphalia in 1648, which ended the Thirty Years' War and laid the groundwork for modern international relations. The concept highlights that a state authority is not only recognized within its borders but also acknowledged by other states in the global arena. Challenges to external sovereignty often arise from issues such as interventionist policies, humanitarian crises, or violations of Human Rights that provoke responses from other countries.

By external sovereignty, the state is subject to no other authority and is independent of the compulsion on the part of other states. Every independent state reserves the authority to renounce trade treaties and to enter into mobility agreements. Each state is independent of the other states. States are at liberty to determine their foreign policy framework and to join the political and economic bloc of powers whose interests align with. The state does not reserve any right to interfere with external matters of an independent state. Thus, by external sovereignty, we mean that every state is independent of other states.

In the same vein, external sovereignty means national freedom. "The modern state is a sovereign state. It is therefore independent in the face of other communities. It may infuse its will towards them with a substance which need not be affected by the will of any external power." Thus, it is very clear that the state possesses both external and internal sovereignty. The effectiveness of external sovereigns can be undermined by globalization, as economic and political interdependence can complicate a state's ability to be independent. Modern examples of contested external sovereignty include cases where governments recognized issues or challenges from the separate movement within their territories.¹⁷

1.6 Subversion of State Sovereignty

Under the sub-head, our paper shall focus on how aggressive the invasion of another state by strong and bigger states is against international law, international customary law, the Charter, Treaties, and Conventions.

¹⁷ Sociology.Institute, 'Understanding External Sovereignty In International Relations. <<https://sociology.institute/sociological-theories-concepts/external-sovereignty-international-relations/>> accessed 17 July, 2025.

1.6.1 Genocide

Genocide is violence that targets individuals because of their membership in a group and aims at the destruction. Raphael Lemkin¹⁸ was the first to coin the term “genocide”. Lemkin defined Genocide as: the destruction of a nation or an ethnic group. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word “*genos*” (race, tribe) and the Latin word “*cide*” (killing), thus corresponding in its formation to such words as tyrannicide, homicide, infanticide, etc. Genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of the essential foundation of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and economic existence of national groups, and the destruction of the personal security, liberty, health, dignity/and even the lives of the individuals belonging to such groups. Genocide is directed against individuals, not in their individuality, not in their individual capacity, but as members of the national group.¹⁹

1.6.2 Genocide Convention

More so, in the Genocide Convention, genocide was defined as:

“Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, such as:

- (a) Killing members of the group.*
- (b) Causing serious bodily or mental harm to members of the group.*
- (c) Deliberate unflinching on the group's conditions of life calculated to bring about its physical fitness.*
- (d) Imposing measures intended to prevent births within the group.*

¹⁸ George M. Weisz, ‘Starvation Genocide and the Triumph of Raphael Lemkin’ National Library of Medicine (National Center of Biotechnology Information) <[pmc.ncbi.nlm.nih.gov/articles/PMC9049151/](https://pubmed.ncbi.nlm.nih.gov/articles/PMC9049151/)> accessed 18 July, 2025.

¹⁹ Ibid.

(e) Forcibly transferring children from one group to another group.”²⁰

Gleaning from the definitions, genocide occurred throughout human history, even during prehistoric times. It is particularly likely in situations of imperial expansion and power considerations. It is associated with colonies, as well as with both world wars and repressive government in the twentieth century. The colloquial understanding of genocide is heavily influenced by the Holocaust as its archetype, and it is perceived as innocent victims being targeted for their ethnic identity rather than for anyone political reason. Genocide is widely considered to be the epitome of human evil and is often referred to as the “crime against crime”; consequently, events are often denounced as genocide.

Lemkin’s definition of *genocide* was sufficiently broad to apply to nearly any type of humans collectively, even one based on a trivial characteristic. The author saw genocide as an inherently colonial process and analyzed what he described as the colonial genocide occurring within European overseas acts, which was to replace the national pattern of the victim with that of the perpetrators, was much broader than the five types enumerated in the Genocide Convention.²¹

Since the state of the full-blown invasion of Ukraine by Russia on February 24, 2022, the world has made statements to convey its outrage and its views on the nature of Russia’s violation of international law. In particular, the question of “genocide” has sparked debate on the meaning and use of the term and its applicability to the case of Ukraine. Some borders have unequivocally called Russia violence in Ukraine genocide while others have refrained. Even before his 2014 invasion and capture of Crimea, analysts noted with alarm a different kind of escalation- the threatening rhetoric against Ukraine by Putin and actors under his control.

The Russian President Vladimir Putin declared the state of a ‘special military operation’ and warned of bloodshed unless Ukrainian forces lay down their arms. This declaration was highly condemned by world leaders, particularly Europe and American countries under the North Atlantic Treaty Organization (NATO), calling for cease ceasefire from Russia despite many agreements to

²⁰ Article II, ICRC Database, Treaties, States Parties and Commentaries, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.<<https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948>> accessed 11 January 2026.

²¹ Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by the General Assembly of the United Nations on 9 December 1948.

cease fire from the two nation-states brokered by international organizations, including the United Nations Organization (UNO).²²

The Russian move came after months of speculation about what Moscow's intentions were with the troops it had massed on the Ukraine border. According to estimates from the United States and Ukrainian intelligence Officials, at least 150,000 Russian troops encircled the country of Ukraine on three sides, like a sickle. In late 2021 and early 2022, fears heightened as satellite images revealed a new Russian deployment of troops, tanks, artillery, and other equipment cropping up in multiple locations, including near eastern Ukraine, Crimea, and Belarus its forces were participating in joint drills with Moscow's closest international ally.

The activities leading up to the invasion of Ukraine did not meet serious resistance from the United Nations Organization (UNO), the European Union (EU), and the North Atlantic Treaty Organization (NATO). For instance, the Ukrainian Permanent Representative told the Council President, 'Your words have less value than a Hole in the New York pretzel' which is deduced to mean that he is inefficient and lacks the political will to subdue the Russian government through many international instruments, including sanctions against Russia. The Security Council rejected a draft resolution intended to end the Russian Federation's military offensive against Ukraine. There was no serious attention placed on the Russian Federation for invading and attacking a sovereign country.²³

According to multiple national governments, international organizations, independent experts, and media outlets, Russia and its ally Belarus are committing genocide against the Ukraine people as part of the ongoing Russo-Ukraine War, including the Russian annexation of Crimea, the war in Donbas, and especially in the wake of the full-scale Russians invasion of Ukraine and the subsequent occupation and annexation of Ukrainian territory. According to Zakhar Tropin, "I have made claims of varying degrees of certainty that Russia is committing genocide in Ukraine." A comprehensive report by the Raoul Welleberg Centre for Human Rights concluded that there exists a "very serious risk of genocide" in the Russian invasion of Ukraine.²⁴

²² Wikipedia, 'Putin's invasion of Ukraine speech' <https://en.wikipedia.org/wiki/Genocide_Convention> accessed 29th August, 2025.

²³ Taiyler Simone Mitchell, Ukraine's ambassador says Russia's 'words have less value than a hole in the New York pretzel' at a UN meeting. Business Insider Africa, 26 February 2022. <www.africa.businessinsider.com/military-and-defense/> accessed 20 July, 2025.

²⁴ Ibid.

In the same vein, the International Criminal Court (ICC) defined genocide as actions committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. These actions can include killing members of the group, causing serious bodily or mental harm, imposing conditions of life calculated to bring about physical destruction, preventing births within the groups, or forcibly transferring children of the group to another group.

Article 51²⁵ provides that:

“1. The Rules of Procedure and Evidence shall enter into force upon adoption by two-thirds of the members of the Assembly of States Parties.

2. Amendments to the Rules of Procedure and Evidence may be proposed by:

(a) Any State Party.

(b) The judges acting by an absolute majority; or

(c) The Prosecutor.

Such amendments shall enter into force upon adoption by a two-thirds majority of

The members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended, or rejected at the next ordinary or special session of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto, and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence, as well as provisional Rules, shall not be applied retroactively to the detriment

²⁵ Article 51, ICRC Database, Treaties, States Parties and Commentaries, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.<<https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948>> accessed 11 January 2026.

of the person who is being investigated or prosecuted or who has been convicted.

5. *In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.”*

The ICC is charged by the enabling statute to prosecute people or people for committing war crimes and crimes against humanity. Unfortunately, the potency of its powers to prosecute powerful sovereign rulers like Vladimir Putin for invading Ukraine and causing war crimes against humanity for killing women and children and destroying social facilities like hospitals and schools, which are completely against the rules of engagement in wartime.²⁶

The ICC could potentially charge Putin himself for war crimes and crimes against humanity, but it is not likely that he would stand trial. Sitting heads of state have avoided accountability at the ICC for years.

The first was Omar al-Bashir of Sudan, who was charged in 2009 with five counts of crimes against humanity, two counts of war crimes, and three counts of genocide for violence in Darfur between 2003 and 2008. Yet, he evaded the court and stayed in power for another decade.²⁷

Under Article 51 of the Statute, ICC members must be arrested and transferred to The Hague, where the ICC is located, as individual cannot be tried in absentia. Thus far, no one has been willing to do so in Bashir's case. However, many African countries that are members of the ICC, like Chad and Kenya, were allowed to travel freely to both countries in 2010. In doing so, they violated the Rome Statute. Also, South Africa failed to meet its obligation as a treaty anticipated from members especially in the instance of failing to arrest him when he came visiting the country in 2015.

None of these countries was sanctioned for failure to observe in breach of its provisions of its statute. In the same vein, other national leaders who have evaded the court include the late former president of Libya, Muammar al-Gaddafi, Uhuru Kenyatta, and William Ruto, the former and current presidents of Kenya.

²⁶ John Dehn, 'The UN Charter's Original Effect on State Sovereignty and the Use of Force.' Published on 27 August 2020 <<https://www.justsecurity.org/72177/the-un-charters-original-effect-on-state-sovereignty-and-the-use-of-force/>> accessed 2nd September, 2025.

²⁷ Ibid.

Another challenge of ICC is its focus and eagerness to prosecute developing and African countries while turning a blind eye to crimes being committed by powerful countries like the Russian attack against Ukraine.²⁸

Russia and Putin reject the jurisdiction of ICC as Russia is not a signatory to the Rome Statute, which is the same argument about the United States, which is also not a member of the ICC. This is the argument that the United States has raised same as respect to allegations of torture and other abuses by the U.S. Military and CIA during the war in Afghanistan. The United States also raised this argument in respect of its ally Israel, more so, a non-member, which is accused of illegal settlement in the Palestinian territories, among other crimes. So, it would be an uphill task to attempt to charge the personnel of the Russian military, including Vladimir Putin.

In an interesting twist of fate, the United States has vowed to hold Russia, and especially Putin, accountable. However, the United States cannot attempt to go through on the ICC, Russia will likely point out the hypocrisy of U.S support for an investigation into a non-ICC member, yet further for Russia's anti-U.S. propaganda. Even if any Russian is tried at the ICC for abuses in Ukraine, which, again, is not a given, it would likely be Russian soldiers, not their leader. This raises questions about fairness in the international justice system, just as in domestic justice systems the world over, where the powerful are too often able to escape the hand of justice.

1.6.3 Sovereign Powers of Self-Defence

Article 2 of the United Nations Charter²⁹ provides that:

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1. The Organization is based on the principle of sovereign equality of all its members.
2. All Members, to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

²⁸ Ibid.

²⁹ United Nations Charter <<https://www.un.org>> accessed 2nd September, 2025.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter and shall refrain from assisting any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles as may be necessary for the maintenance of international peace and security.

Article 51 of the UN Charter³⁰ provides that:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary to maintain or restore international peace and security.

Adil Haque's excellent recent two-part series at Just Security, where he illuminated the original meaning of Article 2(4) and 51 of the U.N. Charter. He paid careful attention to Charter's negotiating history and clarified two issues.³⁴ *First*, an "armed attack" that triggers the inherent right of self-defense as preserved in Article 51 refers to a significant or grave use of force, an "act of aggression" by one State against another, not to minor (but still prohibited) threats or uses of force, or to attacks by non-State actors located within the territory of another State. *Second*, the inherent right of self-defense preserved in Article 51 is not merely an

³⁰ Ibid.

exception to Article 2(4) prohibition on the threat or use of force. It is more completely understood as a limited exception to the Security Council's commitment to maintain international peace and security enumerated in Chapter VII of the Charter, where Article 51 is situated.

Haque certainly provided a more complete original picture, but it is still incomplete. To understand the original effect of the Charter on the status of States and other entities and their rights of self-defense, we must consider more of the legal and geopolitical context surrounding its adoption. The Charter's adoption originally resulted in differing sovereign status, rights, and obligations, as well as varied rights of self-defense. This diversity of rights and obligations arose from the fact that not all states were originally U.N. members, and not all territories were yet States. As a textual matter, States had leeway to use defensive, perhaps even punitive force against non-State actors, or within the territory of non-State entities. Such defensive rights predated the Charter and appeared to influence the practice of powerful States toward weakly-governed States and non-State entities to this day. (A caveat: this analysis is descriptive only. It does not argue in favour of past or current state practice, or of the trust system created by the Charter.

Important for the sake of this discussion, only member States are addressed by Articles 2(4) and 51 of the Charter. Article 2(4) provides that:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations" (emphasis added).

Article 51 preserves the inherent right of self-defense when "an armed attack occurs against a *Member* of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security". Articles 2(4) and 51 address U.N. member States in these ways to strengthen the conclusion that Article 51 self-defense is an exception to collective security measures under Chapter VII. Article 2 requires member States to respect the sovereignty of other members and to resolve disputes peacefully using the mechanisms contemplated by the Charter rather than the threat or use of force against any State (member or non-member). Article 51 allows member States a limited right to use force in self-defense when an armed attack actually occurs, but only until the Security Council takes effective collective action to restore international peace and security, should

that be necessary.

Haque's analysis clarifies that States negotiating the Charter were primarily concerned about significant attacks by States that would implicate international peace and security. That does not mean, however, that they intended to yield their inherent right of self-defense in all other circumstances. Recognizing that Article 51 is part of the Chapter VII collective security system logically implies that States might still exercise their inherent right of self-defense when international peace and security would not be implicated, particularly against non-state actors.³¹

1.6.4 Conclusion

Sovereignty, in the authors' opinion, is the state's legal capacity to govern its domestic affairs within its constitutional framework and the ability to interact with other nation-states under international law and state obligations.

The rise of global crises across the globe has created serious issues regarding nation-states on the doctrine of sovereignty, which has an important impact on development within states. Its greatest influence has been in relations between countries. The challenges here are the U.N. Security Council's failure to take proactive steps in addressing global issues and, more precisely, the invasion of countries by bigger countries with more sophisticated military wares. Every sovereign is under a legal obligation, which involves a strong "responsibility" to protect on the part of a state towards its own citizens, a responsibility that outsiders, not having a state perpetrator of massive injustice against a sovereign country which the state can call for international attention protect its own citizens and serves as a manifesto for a concept of sovereignty that is conditional upon fulfilling obligation that may be international organization or regional organizations.

The paper discussed the basic origin of the term, looked at several meanings from different perspectives, and attempted to study different schools of thought as regards the history of sovereignty. Furthermore, they study the different dimensions of sovereignty, which include Territorial, Political, and Economic sovereignty. Also, we highlighted characteristics of sovereignty to include Exclusiveness, Permanence, All comprehensive, Inalienability,

³¹ AA Haque, 'Elements of Genocide: Intent to Kill.' Just Security <<https://www.justsecurity.org/author/haqueadil>> accessed 3rd September, 2025.

Unity, Absoluteness, and imprescriptible. These dimensions and characteristics shed more light on the concept of sovereignty and its understanding.

The paper discussed issue of subversion of sovereignty that erode the statehood and sovereignty of nation-states which they carried out through genocide by external aggressors, the establishing legal regime of International Criminal Court (ICC), the short-coming as regards its application of relevant rules and finally, powers of self-defense of severing state especially as enunciated in articles of United Nation Charters as applicable to the study.

The paper finds that the concept of sovereignty is evolving, with internal and external sovereignty facing challenges from globalization and interventionist policies. Genocide and subversion of sovereignty are significant threats to international stability and state autonomy. The International Criminal Court (ICC) faces limitation in prosecuting powerful states and leaders and Article 51 of the United Nations Charter preserves the inherent right of self-defense but its application is often contested.

Based on the findings, the following recommendations are suggested, thus:

Strengthening international cooperation and respect for state sovereignty, ensuring accountability for violations of international law.

Re-evaluate the United Nations Security Council's role in addressing global crises and protecting state sovereignty.

Promote peaceful resolution of disputes and respect for territorial integrity and political independence.

Enhance the ICC's effectiveness in prosecuting war crimes and crimes against humanity, regardless of perpetrator status.

UNDERSTANDING THE DOCTRINE OF FRUSTRATION OF CONTRACT IN NIGERIA

By

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Abstract

The doctrine of Frustration of Contract is a legal principle that relieves parties from their contractual obligations when unforeseen circumstances render the performance of the contract impossible, illegal or radically different from what was originally agreed upon. This paper explores the doctrine of Frustration of Contract in Nigeria, examining its role in promoting contractual fairness and justice when unforeseen circumstances render performance impossible, illegal or radically different from what was agreed. The paper employs doctrinal research to analyse laws and literature, highlight the types of frustrating events (outbreak of war, destruction of subject matter, legal changes, etc.) and distinguishes frustration from force majeure and breach of contract.

The paper finds that frustration of contract discharges parties from obligations and courts determine the effect of frustration and that special attention is not given to these cases because of the uniqueness of their facts. COVID-19 was noted as miscellaneous frustrating events. The paper recommends that a force majeure clause in contracts to guide parties on handling supervening events and a special court be established by states to give special attention and expeditious trial to cases on frustration of contract.

Keywords: *Absolute Contract, Breach of Contract, COVID-19, Force Majeure, Frustration of Contract.*

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1.1 Introduction

Sometimes, when supervening circumstances strike, even the most metal shielded contracts can become impossible to fulfill thereby leading to the frustration of contract. The doctrine of frustration of contract offers a legal lifeline, releasing parties from their obligations when supervening events render performance impossible, illegal or drastically different from what was initially agreed upon. This concept is crucial for understanding how contracts can be affected by forces beyond our control and how the legal system responds to such situations. Frustration of Contract is one of the many methods by which a contract can be discharged under contract law in Nigeria.

In Nigeria, a contract can be frustrated due to various reasons such as: outbreak of war, government requisition, legal changes (i.e., repeal or amendment of Acts, Laws, Statutes, etc), or outbreak of viruses (maybe endemic or pandemic), etc.

This paper is aimed at expounding on the doctrine of frustration of contract, highlighting its applications, limitations and implications for contractual parties as well. Additionally, the doctrine of frustration shares few similarities with the doctrine of *force majeure*. It is imperative that the paper exposes these similarities and distinction from *force majeure*. Lastly, this paper features the effect of COVID-19.

1.2 Definition of Frustration of Contract

Frustration of Contract is a method of the discharge of contract under contract law in Nigeria.

The Supreme Court in the case of *Mazin Engineering Ltd. v. Tower Aluminium Nig. Ltd.*³ defined Frustration of Contract to be a premature determination of an agreement between parties lawfully entered into, owing to the occurrence of an intervening event, or change of circumstances so fundamental as to be regarded by law both as striking to the root of the agreement and entirely beyond what was contemplated by the parties when they entered into the agreement. In other words,

³ (1993) 5 NWLR (Pt. 295) pg. 526. See also: *Addax Petroleum Development Nigeria Ltd. v Loycy Investment Company Ltd. & 1 Or.* (2017) LPELR-42522 (CA).

the Supreme Court held that Frustration of Contract happens when something unexpected and major (beyond what the parties planned for) happens, making it impossible to keep the contract going as originally agreed. It is like the contract gets “broken” due to circumstances the parties did not foresee or plan for.

1.3 Brief History of the Doctrine of Frustration

Before the propounding of the doctrine of Frustration of Contract, the principle of absolute contract was in practice. By absolute contract, where a party creates a duty or charge upon himself by virtue of a contract, he is bound to perform the duty or pay the charge, notwithstanding any accident.

The underlying reason for this principle was that a party to a contract could always provide for unforeseen circumstances in his contract and if he failed to do so, then it is presumed that he had undertaken the risks in such a situation. The facts and decision in the case of *Paradine v Jane*⁴ exemplified the principle of “absolute contracts.” In the Case, Paradine was a landlord. Jane was Paradine’s tenant. Paradine leased a property to Jane. Jane failed to pay the rent to Paradine. Paradine sued Jane for non-payment of rent. Jane pleaded in his Defence that Rupert, a German Prince, who is an alien enemy had invaded the realm, taken possession of the property and evicted him. Hence, Jane could neither possess the property nor enjoy the rent of it. In spite of that, the Court held that Jane was liable to pay the arrears of rent. That he had entered into a binding contract to take the lease of the property and pay the rent. That no provision was stated in the contract under which he could be excused in certain circumstances. The court restated the doctrine of absolute contract that:

“...when the party by his own contract creates a duty or charge upon himself, he is bound to make it good. If he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract... now the rent is a duty created by the parties upon the reservation and had there been a covenant to pay it, there had been no question but the lease must

⁴ (1647) EWHC KB J5> <https://www.lawteacher.net/cases/paradine-v-jane.php?vref=1>> Accessed January 17, 2025.

make it good, notwithstanding the interruption by enemies, for the law would not protect him beyond his agreement.”

1.3 Theoretical Framework of the Doctrine

1.3.1 Radical Change of Obligation Theory: propounded by Lord Radcliffe in *Davis Contractors Ltd. v Fareham U.D.C.*⁵ The theory is based on the premise that: when the parties enter into a contract, what they contract to do is not what they believe they would have done when the contract is frustrated, i.e., “*Non haec infoedera veni*- It was not this I promised to do.”

1.4 Events Constituting Frustration of Contract

There are events or situations which the courts in Nigeria have adjudged to be frustrating events.

They are:

- a. Outbreak of war.
- b. Destruction of the subject matter.
- c. Subsequent legal changes.
- d. Government requisition of the subject matter of the contract.
- e. Cancellation of an expected event.⁶
- f. miscellaneous events:
 - i. COVID-19

1.4.1 Outbreak of War- The principle is, the outbreak of war renders all contractual obligations between citizens of the States at war with each other illegal. E.g., in the ongoing war between Russia and Ukraine, a citizen of Russia cannot enter into contract with a citizen of Ukraine. Therefore, any contract between a Russian and anyone who is a citizen of Ukraine is automatically discharged by the

⁵ (1956) 2 ALL ER 145. In Nigeria, this theory was adopted in the case of *Araka v Monier Construction Co. (Nig.) Ltd.* (1978) LPELR-531 (SC).

⁶ *A.G. Cross Rivers State v A.G. of the Federation and Anor* (2012) LPELR-9335 (SC); *Weco Engineering and Construction Company Limited v Dufan Nigeria Limited and Anor* (2019) LPELR-47211 (CA).

outbreak of war between the two countries. This assertion is confirmed in the case of *Daps Brown v Haco Ltd.*⁷ where the Court held that the contract between the plaintiff and the defendant was indeed frustrated by the civil war, as Brown was cut off from his employer for over 12 months.

1.4.2 Destruction of the Subject Matter- This is a type of situation or event that constitutes frustration of contract. It is similar to the “radical change of obligation theory” otherwise known as the destruction of the foundation of contract. Whereby the subject matter of the contract is destroyed, its destruction automatically brings the end of the subject matter. This type of situation was a subject matter in the case of *Bentworth Finance (Nig.) Ltd. v Alhaji Sani Bakori*⁸

1.4.3 Subsequent Legal Changes- Laws, from time to time, undergo changes by abolition or amendment. Hence, any subsequent legal changes in a law or position of a law can affect a contract leading to frustration of the contract. A classic example of this type of supervening event is illustrated in the case of *Obayuwana v The Governor of Bendel State*.⁹ In September 1977, the Appellant was appointed a member of the Oredo Customary Court in Benin City, Bendel State. The contract of appointment was renewed for another eighteen months from September 1979 until March 1981. The Governor of Bendel State, however, revoked the Plaintiff’s appointment by virtue of Customary Court (Revocation of Presidents & Members) Order with effect from January 22, 1980. The Plaintiff instituted an action to declare that the purported revocation of his appointment by the governor was null and void and that he was still a member of the Customary Court and therefore entitled to his salary until March 1981. Later on, the Bendel State House of Assembly passed a law (No. 10 of 1980) abolishing all Customary Courts in the State with effect from April 1, 1980. The Court held that even though the revocation order issued by the Governor was unlawful, unconstitutional and of no effect, the Plaintiff’s appointment was however effectively terminated by frustration as from March 31, 1980 by the Customary Courts (Abolition) Law of 1980. Hence, this is a case of frustration by subsequent legal changes.

⁷ (1973) Legalpedia (SC) 28301

⁸ (1973) NNLR 50; (1973) NRMLR 50. In this case, a hire purchase agreement was frustrated due to destruction of the lorry (which is the subject matter of the case.)

⁹ (1982) LPELR-2160 (SC)

1.4.4 Government Requisition of The Subject Matter of The Contract- The time duration of the requisition of the subject matter of the contract determines if the contract will end by frustration, that is, if the government requisition will be permanent or be extended for a very long period of time. This assertion was confirmed in the case of *Sylvanus Uzoma v Shell BP Petroleum Co. Ltd.*¹⁰ where the court held that:

general government requisition of the subject matter of a contract will bring the contract to an end by frustration if the requisition is of a permanent nature or an extensive period in relation to the duration of the contract.

1.4.5 Cancellation of an Expected Event: The Coronation Cases- This type of event occurred in the year 1902 in anticipation of the coronation of King Edward VII of Great Britain and Ireland. Residence owners whose properties are along the route to the coronation procession let rooms in advance to persons who wanted to witness the ceremony from an advantageous point. Few days to the event, the coronation ceremony was postponed as a result of the King's sudden illness and surgery. This news caused the residence owners to lay claims in court for breach of contract. One of such cases was *Krell v Henry*¹¹. The hirers counter-claimed that the coronation ceremony had been cancelled thereby frustrating the contract which automatically will lead to the discharge of the contract. The court held that the expected event which is the coronation ceremony had been cancelled thereby causing the frustration of the contract between the residence owners and the hirers.

1.4.6 Miscellaneous Events

I.E. Sagay¹² in his book said this type of event "...is obviously impossible to list all the types of events that can lead to the frustration of a contract. New situations arise as cases come before the courts and only after the courts have so decided, can the event responsible for the situation be recognized as a frustrating event."

¹⁰ (1973) 3 UILR 439. See also *United Cinema & Film Distributing Co. v. The Shell BP Petroleum Development Co. of Nigeria Ltd* (1973) 3 UILR 439.

¹¹ (1903) 2 KB 493

¹² I.E. Sagay, *Nigerian Law of Contract*; Ibadan, Spectrum Books Limited (2001) (2nd ed.).

i. COVID-19

The outbreak of the COVID-19 pandemic affected every sector of human life, in Nigeria and globally- the world was forced to lockdown, thereby causing numerous contracts to be frustrated. O.M. Atoyebi¹³ said, *“it is important to note that the occurrence of the Covid-19 pandemic falls within the “unforeseeable” event.”* However, not all contracts were frustrated by the pandemic. Obviously, some parties to contracts might use the pandemic as a defence to their inability to perform their part of the contract. Nonetheless, the Court is vested with the outright jurisdiction to determine if their defence would suffice or not.

Additionally, in a report by Ifeoma Uzoefuna on COVID-19, the lockdown disrupted the programmes of the NJI for the year 2020. However, the management of the Institute explored alternatives for conducting its programmes by digitalizing its programmes. This innovation increased the productivity of the Institute, availing better access to more participants, reduction in the risk of travelling and access to more international-based resource persons, amongst others.¹⁴

1.5 Legal Consequences of Frustration

The frustration of contract is a strong Defence a Defendant might shield himself with until the Court gives its verdict, after examining the facts of the Case, the claims of the Plaintiff and the defence of the Defendant. The effect of a frustrated contract cannot be determined by either party or the parties in a contract but by the Court unless the parties in a contract have stated in the Force Majeure clause of their agreement that a supervening event should determine the outcome of their contract. This is because a party will lose while the other will gain, when the supervening event occurs. Therefore, when such event occurs, it is only the court that can equitably decide on the effect of the frustration. The effects of the Frustration of Contract are:

¹³ O.M. Atoyebi, ‘The Doctrine of Frustration and its Applicability in Contracts in Nigeria.’ <http://www.omaplex.com.ng/the-doctrine-of-frustration-and-its-applicability-in-nigeria.html> accessed 20 January, 2025.

¹⁴ Ifeoma Uzoefuna, “NJI Training & COVID-19” National Judicial Institute (NJI) News Bulletin (2024) Vol. 10/ January-June, 2024. ISBN-978-978-49238-2-8.

1. Discharge of the Contract: the court held in the case of *AG of Cross River v AG Federation & Anor*¹⁵ that a contract discharged on the ground of frustration is brought to an end automatically by the operation of law, irrespective of the wishes of the parties. This means that both parties are free from their contractual obligations.
2. Breach of Contract: In *Onuigbo v Azubuike*¹⁶, the court held that the question of breach of contract will not arise as none of the parties can be held responsible for the occurrence of the frustrating event or circumstances. Nevertheless, frustrating event cannot be relied on where breach of contract occurs before the frustrating event.
3. Restitution: In *Onuigbo v Azubuike*¹⁷, the court held that where sums of money have been paid and received by a contracting party for a consideration that has failed, the money ought to be returned.

1.6 Similarities and Differences Between Frustration Of Contract and Force Majeure.

Though, the subject matter of this article is solely the doctrine of frustration of contract, it is important to correlate the subject matter with other legal concepts such as: force majeure and breach of contract, which share similar attributes and differences with this subject matter. For example, A and B had a conversation about the doctrine of frustration. A asked B: “any idea on the doctrine of frustration of contract?” B: “you mean *force majeure*?” Undoubtedly, frustration of contract and force majeure might share a similar attribute which will be pointed out below.

1.6.1 What is Force Majeure?

In the case of *Globe Spinning Mills Nig. Plc v Reliance Textile Industries Ltd.*¹⁸, the Court defined Force Majeure as a common contract clause that provides that either or both parties in a contract can cancel the contract or be excused from either partial or full performance of the contract agreement if certain specified events

¹⁵ (2012) LPELR-9335 (SC)

¹⁶ (2013) LPELR-22796 (CA)

¹⁷ Ibid.

¹⁸ (2017) LPELR-23628 (CA)

(stipulated in the clause) or events beyond the parties' control occur. To illustrate this definition, firstly, if A and B (who are parties in the contract) state in the Force Majeure clause of their agreement that if either of them dies, the contract will be cancelled, the contract automatically is cancelled when either of the parties die.

It is important to note that where a contract has the force majeure clause, the clause will provide for the occurrence of certain frustrating events, the duration of the force majeure event, notice for triggering force majeure, and the effect on the contract. So, when a force majeure event occurs in the contract, contracting parties must comply with the conditions provided in the force majeure clause before invoking force majeure, otherwise, a party who fails to invoke the force majeure clause may be held liable for breach of contract.

1.7 Similarities and Differences Between Frustration Of Contract And Force Majeure

The one and only similarity force majeure clause shares with frustration of contract is the legal consequence which is: that when a contract contains a force majeure or is frustrated, the contract is discharged, hence, leading to the end of the contract.¹⁹

However, there are also differences between the two terms, thus:

Force Majeure is a clause in a contractual agreement. Frustration is the outcome of an unforeseen event which has occurred in a contract.²⁰

In Force Majeure, parties in a contract have agreed that when a supervening event occurs the contract will be discharged. In Frustration of Contract, the parties have not the slightest idea that their contract will be discharged by a supervening event.²¹

Furthermore, Frustration of Contract and Breach of Contract are also separate legal concepts that occur in contract. Assuredly, there is no other similarity between

¹⁹ O. Asheychik, 'Navigating the Contract Frustration Labyrinth' <
<http://www.pandadoc.com/navigating-the-contract-frustration-labyrinth.html>> accessed 27th
 September, 2024.

²⁰ Ibid.

²¹ Ibid.

Frustration of Contract and Breach of Contract other than that when they occur, one of the parties or both parties may call for the termination of the contract.²²

There are differences between the two legal concepts in the criteria of triggering event; performance of the contract; accountable parties; time of termination and future obligations.¹⁹

1.8 Conclusion

A contract cannot end unless the parties to the contract have fulfilled their obligations. However, there may be events that might occur which are capable of bringing the contract to an abrupt end, as expatiated in the preceding pages. It is for this reason that the content of this paper is centred on.

From the foregoing, questions like, “what happens if a supervening event in a contract without a force majeure clause occurs? The legal consequences of the frustration, as stated above, might be one of these: discharge of the contract, breach of the contract or restitution. However, where the question for determination is before a court, the court is empowered to determine the effect of the frustration.

The authors in their findings discover that cases on frustration of contract are treated as mere litigious cases without giving special attention to them by expediting their trial base on the uniqueness of their facts.

Recommendations

Firstly, there is the need for parties, when writing down their agreements, to input the *Force Majeure* Clause. By this, parties would be bound by their agreements and then when events arise which is likely to disrupt the contract or abruptly terminate the contract, they will be guided by the *Force Majeure* clause on the appropriate action to take to resolve the situation.

Furthermore, the authors recommend that cases whose subject matters are centred on frustration of contract should be given special attention, a special court be

²² Ibid.

¹⁹ Ibid.

established by states judiciary and be granted expeditious trials like the small claims courts and procedures for small claims.

Lastly, parties should specify frustrating events in their *Force Majeure* clause in their contracts so as to prolonged litigation in court in the event that the frustrating event occurs.

DOMESTIC VIOLENCE AGAINST WOMEN IN NIGERIA: EXAMINING THE LEGAL REMEDIES FOR VICTIMS.

BY

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Abstract

In Nigeria, close to half of the women are reportedly abused by their intimate partners, and in some instances, this abuse leads to the death of such women. Domestic violence cuts across all social classes and may manifest in various forms including physical abuse, sexual abuse, and psychological abuse. Most women remain silent about the maltreatment because they feel ashamed that their marriages are not working, and for most women in Nigeria, divorce is not an option, so they suffer silently. The statistics on violence against women in Nigeria is alarming as it increases every day with two out of three women living in different communities experiencing violence. several laws such as the Violence Against Persons (Prohibition) Act 2015, Marriage Act, the constitution, and various state laws have been enacted to address domestic violence in Nigeria. This paper examines the legal remedies available for victims of domestic violence in Nigeria while assessing the effectiveness in providing protection and redress. The study explores the challenges such as, the non-implementation of laws, failures of law enforcement, judicial delays, mental health, societal stigma and societal norms that continue to perpetrate domestic violence. The paper ends with recommendations and conclusion on how to strengthen legal protections as well as enhance services for victims so that victims that suffer from domestic violence will obtain adequate justice and rehabilitation.

Keywords: *Domestics violence, legal remedies, legal protection, mental health, stigma.*

1.1 Introduction

Domestic violence or abuse is a perpetrated violence or abuse by one person against another in a domestic environment, for example, marriage or cohabitation. It can also be described as deliberate and systematic maltreatment of any individual within the household in a manner that inflicts anguish, distress, or harm¹. It constitutes any form of abusive behavior by one family member towards another that would violate the latter's basic human rights. The United Nations Centre for Social Development and Humanitarian Affairs² has described it as intimate partner violence when it occurs between spouses or partners in an intimate relationship against the other spouse or partner, which can be conducted in heterosexual or same-sex relationships or between former spouses or partners.

Domestic violence is mostly directed towards children, parents, or elders. Its effects are manifested in various forms, including physical, verbal, emotional, economic, religious, reproductive and sexual abuse which range from subtle cases to coercive/violent instances. Among these are marital rape and physically violent abuse that includes choking, beating, female genital mutilation, and throwing acid with disfiguring or deadly consequences³. Domestic violence is prevalent in patriarchal societies where it is legitimized by cultural norms and traditions as well as legal frameworks. A lot of domestic violence cases remain unreported because women and children suffer much more than they can speak.⁴

Domestic violence is a global phenomenon.⁵ Families from all social, racial, and economic backgrounds are affected by domestic violence in diverse forms. It is thus estimated that yearly in the United States of America (USA), about 4.8 million

¹ World Health Organization, Understanding and Addressing Violence Against Women: Intimate Partner Violence (WHO 2012).

² The United Nations Declaration on the Elimination of Violence Against Women resolution 48/104 of 20 December 1993

³ Socioeconomic Determinants of Domestic Violence Against Women in Nigeria - Olubunmi Olanike Alawode (2024)

⁴ Philip, G. and Marisen M. 'Effects of Domestic Violence on Children's Education: The Case Study of Mpemba, in Blantyre District in Malawi' [2016](5)(2) Journal of Psychological Abnormalities; 2-5; Fareo, D. O. 'Domestic Violence against Women in Nigeria' [2015](2)(1) Journal of Psychological Research; 24-34.

⁵ UNICEF Nearly 400 million young children worldwide regularly experience violent discipline at home (11 June 2024) <https://www.unicef.org/rosa/press-releases/nearly-400-million-young-children-worldwide-regularly-experience-violent-discipline> accessed 21 January 2026. .

women and children are victimized by intimate partner-related physical assaults and rape. ⁶In Asia, domestic violence is rampant too. For example, an agency reported that 56% of Indian women surveyed justified wife beating for reasons such as bad cooking, disrespecting in-laws, producing more females among others ⁷

In Nigeria, several surveys have shown high levels of violence against women. According to Afrol News and Amnesty International reports, about one-third and in most cases two-thirds of women are believed to have experienced physical sexual and psychological violence mostly perpetuated by husbands partners and fathers. The girls are often forced into early marriage and they are at risk of punishment if they try to escape from their husbands ⁸ A shocking 97.2% did not report the crime to the Nigeria Police. Most of them suffer in silence or even die in silence because they believe what will law do protection will not provide for them or cultural religious limitations on them. It thereby implies that women are largely the victims of violence in society. In line with this, this paper attempts to examine domestic violence, targeting women in Nigeria from an economic perspective and existing legislative designed to curb the menace within Nigeria. This paper is divided into seven segments; an introduction to domestic violence against women in Nigeria, legal remedies, recommendations and conclusion etc.

1.2 Domestic Violence Against Women in Nigeria

Disciplinary measures within Nigeria culture include beating wives and children. Parents believe that by beating their children, they are imparting discipline to them. This correlates with husbands administering beatings to their wives, who are considered children and thus susceptible to indiscipline. This is more so where the woman has economic dependency on the man. The society is patriarchal, and women have a subservient role in that structure. Domestic violence is then used as a tool to enforce conformity of women to the traditional societal norms ⁹. The

⁶ Rhys, O., Barnaby, A., Stephen, R., and Miriam, W. 'The economic and social cost of domestic violence' (2019) Research Report 107.

⁷ Choji, R. And Agbo, C. 'Domestic Violence Against Women . Any End in Sight?' <leadership /news/38250 l>accessed on 31 August 2019.

⁸ Afro! News. (2018). Half of Nigeria's women experience domestic violence. Afro! News. Retrieved from <http://www.afrol.com/articles/16471>

⁹ Akanle, O. and Basiru, D 'A Socio-Legal Approach to Violence Against Women in Nigeria. Research Gate'[2015] <<https://www.researchgate.net/publication/317166924>> accessed 31 August 2019.

CLEEN Foundation states that 1 out of 3 female respondents reported experiencing domestic violence. It also revealed an increase of domestic violence in Nigeria between 21% in 2011 to 30% in 2013 respectively ¹⁰.

The Protection Monitoring Report by the UN High Commissioner for Refugees in North East, Nigeria reported that cases of rape or sexual assault were recorded in 676 households. The report indicated that the highest proportion of incidents was recorded in Taraba at 51%, followed by Adamawa at 23% and Borno at 13% ¹¹. Ohayi S. Robsam and others emerged a high prevalence rate of rape in Enugu within the period of 2012-2013. The period observed had approximated 1374 gynecological emergencies with incidences of rape calculated to be 121 cases, representing 8.8%. ¹²

1.3 Prevalence of Domestic Violence in Nigeria

The low socio-economic status and poverty of women, both in marriages and outside marriage or in an intimate relationship, contribute significantly to the cycle of violence meted out against them whose effects are far-reaching on the growth of socioeconomic development. Researchers have managed to classify the costs of gender-based violence into two broad categories: direct or tangible costs and indirect or intangible costs. Direct costs, which are also referred to as tangible costs, comprise expenses that a victim or her household incurs directly or for which actual money is drawn up to procure services, facilities, or charges. For instance, taxi fare to access a hospital and wage rates for employees at a shelter ¹³. However unreal they may be in the economic sense, they are recorded as a loss of potential in such terms as pain, fear, and suffering; or social and psychological cost caused by violence that eventually leads to lower income and profit because of lower productivity. Indirect costs lost through paid and unpaid work; present value of lifetime earnings that women who experience gender-based violence lose; physical and psychological trauma involved with such experiences; and long-term impact resulting from it ¹⁴.

¹⁰ A CLEEN Foundation's National Crime and Safety Survey (2012) Report<<http://www.cleen.org/Criminal%20Victimization.pdf>> accessed on 21 August 2019

¹¹ UN High Commissioner for Refugees (UNHCR) December 2015 Protection Monitoring Report.

¹² Prevalence and pattern of rape among girls and women attending Enugu State University Teaching Hospital, southeast Nigeria accessed 8 October 2019

¹³ World bank report

¹⁴ Ibid

Another indirect cost is the deterioration of the quality of life for survivors and their families. The intangible costs of violence are priceless; that is, they cannot be measured in money. Societies that uphold gender discrimination have slower socio-economic growth and poverty reduction rates compared to societies with more equal gender relations. In addition, social gender differences lead to highly unproductive outcomes. All these economic effects of gender-based violence include service provision costs, lost earnings for women and their families, reduced efficiency, and adverse effects on human capital development; all these impose heavy burdens on developing economies⁵. A new World Bank report indicates that the estimated costs of intimate partner violence in five countries fall between 1.2 to 3.7 percent of gender-based violence costs; thus, it equates to what governments spend annually on primary education⁶. It is within this context that this study seeks to evaluate the challenges women face in breaking out of the poverty trap and advancing their careers¹⁷.

The socio-economic consequences of gender-based violence to both the victims and perpetrators are very wide. Being a victim of violence, especially for a long time, has an indirect effect that prevents and retards women in getting and holding jobs due to their health problems or those under their care. The most common physical health problems or injuries encountered by female victims include Cuts, bruises, broken bones, internal bleeding, and head injury. In addition to these, scratches and bruises compel them to work restlessly as they visit doctors or sometimes stay at home under the prescription of doctors¹⁸. Domestic violence takes away paid employment from its victims; the consequent loss affects their earnings. The victims' income drops 35% as an immediate effect of the assault. This will hence affect household resources and how they are allocated within the household. The high costs of violence against women have a ripple effect on those providing financial assistance to cover these costs¹⁹.

The UN Women (2016) states, the cost of violence against women in public, private, and social spheres is estimated to reach US\$1.5 trillion globally²⁰.

¹⁵ Ibid

¹⁶ See World bank 2016>accessed on 21 January 2026

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ United Nation women 2016 report

According to the World Bank (2018), costs related to violence against women can be as high as 3.7 percent of gender-based violence in some nations. Despite having the highest level of domestic violence against women in sub-Saharan Africa, empirical research on its potential economic impact remains limited, mainly due to data constraints. One study estimated that South Africa loses between 0.9 and 1.3 percent of its GDP annually due to gender-based violence, while another estimates that such violence costs the Ghanaian economy about 0.9 percent of its GDP ²¹. These studies use accounting methods to define narrowly some direct costs associated with such violence; other indirect effects on the economy are not included. Violence affects disproportionately those women who reside in low-income and lower-middle-income countries²². In the poorest countries, an estimated 37% of women have experienced physical and/or sexual intimate partner violence in their lifetime; some of these countries have prevalence rates as high as one in two.

In 2018, a report was carried out that the highest prevalence rates for intimate partner violence against women aged 15-49 years are found in Oceania, Southern Asia, and Sub-Saharan Africa, with rates ranging between 33% and 51%. The lowest reports were recorded in Europe with percentages ranging between 16-23%, Sub-Saharan Africa at 33%, Central Asia at 18%, Eastern Asia at 20%, and South-Eastern Asia at 21%. Younger women most vulnerable to recent violence²³. For those who have ever been relationally attached, the highest sub- group rate for past-year intimate partner violence was encountered among young women aged between 15 and 24years, which stood at 16%. Social and economic development in general improves the quality of life of people and what they can achieve through access to economic opportunities as well as political and social rights and powers in an environment that encourages good health, basic education, and initiative development²⁴. However, Violence against women in all its forms can affect the overall socioeconomic well-being of any country; it may even take much longer after the violence has ended. This is associated with risks such as unintentional injuries, depression, anxiety disorders leading to unplanned pregnancies, sexually transmitted infections including HIV among many other health issues. It affects

²¹ World bank 2018 report

²² World Health Organization 2021 report

²³ World Health Organization 2018 report

²⁴ Ibid

society as a whole and comes with high costs that affect national budgets besides overall socioeconomic development ²⁵. Nigeria has enacted several laws that form part of its policy framework to address sexual abuse, violence, and exploitation against women and girls. These include the Child Rights Act (CRA) and the Violence Against Persons Prohibition Act (VAPP). The Ministry of Women Affairs worked with the UNDP on the Joint EU-UN Spotlight Initiative and other strategic stakeholders to establish a National Tool for Gender-based Violence Data Management in Nigeria. Inauguration of Inter-Ministerial Committee on Eradication of Sexual and Gender-Based Violence is a reaction to heightened incidence of sexual and gender-based violence in the country resulting from Covid-19 pandemic and lockdown measures imposed to curb spread of virus, Developing Gender-Based Policy Guidelines in Emergency Response. Overly demonstrated was lack of gender-responsive intervention in emergencies like COVID-19.

This gap has been filled by formulating Policy Guidelines for Emergency Response under the Joint EU-UN Spotlight Initiative by UN Women and Implementing Partners in the Spotlight States, particularly in the Federal Capital Territory, Sokoto, and Ebonyi States. Once these policies are put into practice, they guarantee that the vulnerable groups, especially women and children, are not left behind during emergencies like COVID-19 ²⁶. However, neither has been ratified across all Nigerian states, and major issues persist within the country ²⁷. Gender-based violence has been considered a violation of women's human rights because of the magnitude and universal effect which harm several countries ²⁸. As noted in the statement and other international laws made to prohibit this act, various socio-cultural factors are mainly found in developing countries that have rendered these laws ineffective. Due to the normalization of gender-based violence²⁹, the impact of domestic violence on the general well-being of women and on the whole country is significant, especially in terms of a nation's socioeconomic development. All these efforts by the government directed toward curbing violence against women are

²⁵ Ibid

²⁶ https://nigeria.un.org/en/252008-eu-un-spotlight-initiative-nigeria-annual-narrative-programme-report-2022?utm_source=chatgpt.com

²⁷ Ibid

²⁸ WHO 2013 report

²⁹ WHO 2021 report

indeed disappointing. It is for this reason that this research seeks to examine how violent acts against women relate to Nigeria's socioeconomic development.

1.4 Mental Health and Stigma Among Domestic Violence Victims

In Nigeria, mental health stigma still lingers as one of the big issues and it finds its roots deep within Nigerian culture, religion and society. Cultural and religious beliefs have a huge impact on how people perceive mental health which in many cases creates negative attitudes towards those who suffer with the issue. In some cultures, in Nigeria, mentally ill is attribute to spiritual forces very much curses, witchcraft or divine punishment³⁰. These beliefs are strongly supported by long-last traditions and religious ideologies that view mental disorders as spiritual problems requiring a spiritual solution rather than medical interventions. As a result, individuals with mental difficulties are typically subjected to spiritual rituals like exorcism or other culturally accepted practices; in most cases this happens instead of receiving evidence-based therapies. This method does not only delay correct diagnosis and treatment but also contributes to stigmatization since affected individuals are seen morally or spiritually deprived.

Misunderstandings about mental health and illness only strengthen the stigma in Nigeria. Most people think that only serious psychiatric disorders, such as schizophrenia, are regarded as mental illness; this view overlooks the continuum of mental health issues that includes depression, anxiety, and stress-related disorders³¹. Such a narrow view breeds fear and exclusion because people with mental health issues are frequently described as violent, dangerous, or unpredictable. Besides, ignorance about the precise cause of mental illness further stigmatizes. Most Nigerians believe that mental health issues are self-inflicted or a manifestation of weakness; thus, they bring shame and discrimination to those affected.

Such beliefs are largely supported by inadequate awareness of mental health and limited integration of mental health issues into mainstream education, resulting in gaps in knowledge and understanding. Language and cultural perceptions play a significant role in the continuation of stigma against mental health. In Nigeria, the

³⁰ Atilola, O. (2015). Level of community care for mental disorders in sub-Saharan Africa: A systematic review. *Current Psychiatry Reports*, 17(11), 1-9

³¹ Gureje, O., Adeosun, O., & Olley, B. O. (2015). Mental health policy in Nigeria: Challenges and opportunities for implementation. *International Journal of Mental Health Systems*, 9(1), 15. <https://doi.org/10.1186/s13033-015-0010-3>

use of derogatory terms such as "madman," "lunatic," or "crazy" to refer to people with mental health issues only serves to marginalize them more while reinforcing negative stereotypes about them ³². Such derogatory language creates a culture of contempt and dehumanization that prevents people from seeking help for fear of being ridiculed or condemned.

The societal conception surrounding mental health is heavily influenced by media representation which predominantly presents individuals with mental disorders as either comical caricatures or dangerous³³. These images further entrench existing stereotypes while concomitantly leading to the exclusion of those with mental health problems from social and economic activities. In addition, sociocultural norms that value endurance discourage open dialogue about mental health. Acknowledgment of psychological problems is thought to come with failure; hence, many people will not disclose their feelings or seek help. All these factors form a vicious cycle of stigma that hinders efforts to raise awareness about improving mental health and access to care in Nigeria. Addressing this issue requires an integrated approach that includes public awareness campaigns, culturally relevant solutions, and engagement with traditional and religious leaders in redefining perceptions of mental health." Only sustained progress in reducing stigma will accompany improvement in the country's outcomes for mental health; only challenge will be made against these deep-seated beliefs and attitudes .

1.5 International Legal Framework on Domestic Violence against Women

Nigeria is a signatory to several International human rights instruments, including the Universal Declaration of Human Rights (UDHR), which was adopted in 1948,³⁴ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted in 1979,³⁵ and the Convention on the Rights of the Child (CRC), which was adopted in 1989. These instruments emphasize

³² Adeosun , I. I. (2016). Stigma and mental illness: Perspectives from Nigerian caregivers. *Journal of Family Medicine and Primary Care*, 5(1), 93-98. <https://doi.org/10.4102/sajpsychiatry.v22i1.795>

³³ Obindo, J. T., Abdulmalik, J., Nwefoh, E., Agbir, T., Ekong, E., & Ekwueme, C. (2021). Prevalence and correlates of stigma among people with mental illness in Northern Nigeria. *International Journal of Social Psychiatry*, 67(2), 136-144.

³⁴ Adopted by the United Nations General Assembly at its third session on 10 December 1948 as Resolution 217 at the Palais de Chaillot in Paris, France.

³⁵ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981

fundamental rights and freedoms for every human being³⁶. CEDAW and CRC are instrumental to a broad understanding of human rights that extends beyond civil and political rights to include critical concerns of economic survival, health, and education which make up most women's and children's lives. The two Conventions protect the right to be free from gender-based abuse and neglect.

The eradication of all forms of violence against women and children is entrenched in an international agreement built on an assumption that all practices harmful to women and children regardless of their cultural origins must be stopped. These treaties are legally binding under international law upon governments that have ratified them; they hold governments not only responsible to protect women from violence crimes but also to investigate when such violations occur and bring those who perpetrate justice. Nigeria has also ratified the African Charter on Human and Peoples Rights (ACHPR)³⁷. Nigeria has taken additional steps toward domestication so that the Charter now operates as domestic law within Nigeria. The African Charter provides that everyone shall have the right to respect for the dignity inherent in a human being, as well as prohibiting all forms of exploitation. In addition, PACHPRWA, to which Nigeria has ratified requires State parties to legislate laws prohibiting all forms of violence against women and undertake all necessary legislative measures and others to eliminate harmful practices³⁸.

1.6 Laws on domestic violence against women

The Nigerian legal system has several sources of laws that are justiciable in different courts. The laws concerning women fall under such plurality, and all are justiciable in the courts. Occasionally, conflicts can also arise between them due laws existing within a hierarchy and there being a validity test that would nullify any laws found to be repugnant, inconsistent, or against public policy. However, the very fact that such repugnant laws exist holds terrible issues over the future; maybe redress through another avenue. In any case, there is a legal framework to

³⁶ Onyemelukwe, C. ' Legislating on Violence against Women : A Critical Analysis of Nigeria 's Recent Violence Against Persons (Prohibition) Act, 2015' [2016](5)(2) DePaul Journal of Women, Gender and Law; 1-59

³⁷ African Charter on Human and Peoples Rights Adopted in Nairobi June 27, 1981 Entered into Force October 21, 1986

³⁸ Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, 11 July 2003 accessed on the 20 August 2019.

protect women; various parts of the legislation contain discriminatory provisions against women.

1.6.1 The Constitution of the Federal Republic of Nigeria.

The 1979 Constitution was the first ever to make a provision prohibiting discrimination on the grounds of sex. This is captured in the current 1999 Constitution. Chapter IV of the 1999 Constitution makes provisions for human rights and even those of women. Section 42 provides for the right to equal protection and non-discrimination on the grounds of sex. However, sub-section (3)⁴⁴ of that section stipulates laws that are discriminatory against women and even create provisions in other legislation ³⁹. For example, section 11 l(g) of the Police Act prohibits recruiting married women into the Police Force. In like manner, an unmarried police officer who becomes pregnant shall lose her job, and such employment must be conferred only by the Inspector General of Police.⁴⁰ Also, an unmarried female police officer can only enter into matrimony after securing written permission from Commissioner of Police in writing. ⁴¹All these have grave economic implications on women and contravene Article 11 of CEDAW. On one hand, while Nigerian law provides for the protection of women's rights against violation, it also leaves loopholes that validate other offensive laws.

1.6.2 The Child Right Act

The Child Rights Act (CRA) is a law that was passed in 2003. It, to a large extent, domesticated the Convention on the Rights of the Child 1989. The Child right act has also been adopted as Child Rights Law by various States in Nigeria; some of them are Abia State, Akwa-Ibom State, Anambra State, Benue State, Lagos State, and Taraba State. At least two states-Edo and Osun-have enacted laws at the state level to prohibit female genital mutilation ⁴². Twenty-four states have also adopted the federal Child Rights Act that bans child marriage. The provisions in these laws are not identical. Most of them are piecemeal in approach-fragmented; they touch only on some forms of violence against women and girls while leaving others out and thereby creating gaps in protection for women. There is no need for

³⁹ section 1(3) Constitution of the Federal Republic of Nigeria (CFRN)

⁴⁰ Section 127 of the Police Act

⁴¹ Section 124 of the Police Act.

⁴² Defined by the World Health Organisation as including procedures that intentionally alter or cause injury to the female genital organs for non-medical reasons accessed 31 August 2019

comprehensive legislation covering all aspects of violence against women on account of gender.

1.6.3 The Violence against Persons (Prohibition) Act 2015

The Act defines violence as any act or attempted act, which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm whether this occurs in private or public life, in peace time and in conflict situations⁴³. In this regard it has provided a broad description of acts that can be termed violent. It does not limit violence to only physical violence or sexual violence but also includes economic harm. The provisions criminalizing rape are irretrievable injuries spousal battery harmful traditional practices intimidation coercion and political violence. Among other things the Act prohibits female Genital Mutilation or female circumcision forcible eviction from home and harmful widowhood practices see Sections 6, 13 and 46 of the Act. It further prohibits abandonment of spouses children and other dependents without sustenance. Each of these has been assigned penalties ranging from life imprisonment in certain cases of rape to two years imprisonment or the equivalent fine for providing false information to the judiciary process. Of the states that have assimilated the law into their legal systems are Abia, Bayelsa, Benue, Cross Rivers, Edo, Ogun, Osun, Rivers, Bayelsa is a separate state. Hence, the acts against women such as female Genital Mutilation are only partially regulated and banned within the nation's boundaries. The Act further makes provision for the protection order to be issued to victims of domestic violence. Section 38(1) provides that victims of violence are entitled to all remedies provided for under international law. The matters that have not been recognized by Nigerian law, for example, economic abuses are catered for in this Act. Economic abuse is such a subtle form of violence that it prevents most women in domestic violent situations from seeking assistance. On the other hand, economic abuse has so many implications to the affected women; it also hinders any nation's socio-economic development due to the incapacitation of women able normally to contribute productively to their economies. In the Act, economic abuse is described as "forced financial dependence". This term captures within its scope denial or succession rights, unreasonable deprivation of economic or financial resources entitled to any person or which any person needs including household necessities, mortgage bond repayments or payment of rent or unreasonable disposal or

⁴³ The Violence Against Person (Prohibition) Act, 2015 ss 2-3.

destruction of household effects or other property in which a woman has an interest and the absence of which make her financially dependent, The Court has confirmed this law in *Ukeje v. Ukeje*⁴⁴ It is hoped that effective implementation shall be unleashed upon it since law enforcement agents themselves are raised within this cultural milieu and have frequently expressed attitudes over time that domestic violence belongs within private spheres thus denying complainants access to investigation and protection under legal provisions. However, the Act excluding women in intimate relationships who are not married from benefiting with financial support when abused by clearly not providing for them reflects the general non-recognition of such relationships under Nigerian Law. The Act does not address issues like forced abortion, prevention from contraception, and virginity checks which are very prevalent in Nigerian society and violate women's bodily integrity as well as fundamental rights.

1.6.4 The Marriage Act 2004

The Marriage Act (MA) addresses issues related to statutory marriage in Nigeria. It offers more protection to women married under the Act than those married under Customary Law. This is most evident in the aspect of succession to their husbands' estates⁴⁵. The widow's financial security is created by giving her the power to administer her deceased husband's estate⁴⁶. However, the Marriage act has several provisions that undermine women's rights and open up avenues for violence against women. For example, the Act does not stipulate a marriageable age. Instead, it provides in section 48 that if an adult intends to marry a minor, that is, a person below 21 years of age, consent from the parents of the minor must be obtained.

1.6.5 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015.

this Act protects the interest and right of women. The Act protects against several forms of sexual exploitation such as abduction, defilement, kidnapping, pornography, prostitution, rape, seduction, slavery and trafficking for prostitution

⁴⁴ *Ukeje v. Ukeje* [2014] 4 KLR (Pt.345) 627

⁴⁵ the violent against persons (prohibition) Act 2015 ss 12.

⁴⁶ See *Olaiya v Olaiya* (2002) FWLR pt. 109 p. 1588; *AdakuAmadi v Edward N. Nwosu* (1992) 5 NWLR pt. 239 p. 273.

or slavery⁴⁷. The Act has however attracted criticism for providing extra territorial offences which have questioned the jurisdiction of the Court to try offences committed outside Nigeria as stipulated in section 270(1) CFRN. Notwithstanding, the provisions of section 286(1)(b) and (c) of the CFRN have compelled the courts to rule in favour of the Act and thereby assume jurisdiction⁴⁸.

1.6.6 The Nigerian Customary Laws

Nigeria is a multi-ethnic country with different customary laws. The overall body of Nigerian law consists of received English Law and approximately 350 customary laws, each one subjected to a validity test. The customs and laws of the peoples within its territory are to be honored and enforced in the administration of justice⁴⁹. Many aspects of Nigerian customary law are full of gender discrimination. One key aspect of customary law that infringes on women's rights is widowhood practices⁵⁰. Most traditions deny widows the right to inheritance, thereby pauperizing them. Widowhood practices have been legislated against in some states within Nigeria, meaning that such customs would not be able to pass their incompatibility test within those states⁵¹. Another one is child marriage, which truncates the growth process of children involved in it. As a result, they cannot cope with all the challenges life may throw at them in such marriages with far-reaching emotional, psychological, physiological, and economic implications. Even before this, the Marriage Act did not provide for an age requirement for marriage; however, multiple laws have been enacted in response to this issue⁵².

⁴⁷ These are generally found in sections 11 to 26 of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) Act

⁴⁸ *Waziri v The State*(1997) 3 NWLR (496) 691; *Njovens v The State* (1973) NNLR 76; *National Union of Electricity Employees & Anor. V Bureau of Public Enterprises* 2012 Legalpedia SC QNAW.

⁴⁹ Newbury, C. W. *British Policy Towards West Africa: Selected Documents* (1875 - 1914) (Hutchinson & Co. (Publishers) Ltd 1960) 254.

⁵⁰ *Onwo v Oko* (1996) 6 NWLR 587.

⁵¹ *Nzekwu v Nzekwu* (1989) 2 NWLR (Pt.104) 373 SC; *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt.512) 283 CA; *Julie Nezianya and Anor v Anthony Okagbue and 2 others*(1963) Legalpedia SC 81R7

⁵² Child Rights Act, Child Rights Laws of Lagos and Benue States and the Girl-Child Marriages and Female Circumcision (Prohibition) Law, Cross River State, 2000.

Conclusion

Domestic violence against women in Nigeria remains a pressing issue, as victims encounter legal, economic, and societal barriers to access justice. Although laws such as the Violence Against Persons (Prohibition) Act, Marriage Act, the Constitution, Child Right Act, Customary Law and Trafficking in Persons (Prohibition) Law Enforcement and Administration Act have been put in place, their ineffective enforcement, coupled with cultural and economic norms, continues to silence most women.

In addition to the physical injuries, domestic violence carries serious mental health effects like depression, anxiety, and PTSD. Unfortunately, either failed access to mental health services or huge social stigma allows victims to remain silence. Most of them are blamed and isolated which creates another hurdle in reporting the abuse or seeking help.

A nuanced response to this crisis calls on law enforcement to be more effective, public awareness to be raised, economic empowerment programs provided, and access to mental health services. Survivors need support in coming out of the stigma as the society needs to be equipped with a safer environment; hence, a government with civil society and community leaders will have to work together in making legal remedies stronger. Nigeria can then evolve into a new type of environment where women are protected, empowered, and free from abuse as laws regarding domestic violence remediation are strengthened.

Recommendations

1) Strengthening Legal Frameworks

The Nigerian government should enforce the existing laws more vigorously, such as the Violence Against Persons (Prohibition) Act (VAPP) 2015 and ensure its domestication across all the states to provide victims with adequate legal protection.

2) Stronger Judicial Mechanisms and Accessible legal service

Courts should expedite the domestic violence cases so that justice is delivered on time to the victims. Besides, specialized family courts ought to be set up for the effective handling of gender-based violence matters. Police agencies should also be trained adequately on how to handle domestic violence cases sensitively and effectively. There should be specialized units within the police to deal with cases of gender-based violence

3) Public Awareness and Education

In this context, awareness creating activities are to be given further impetus for informing the general public on the issues of fundamental rights of women, legal implications of domestic violence and ways/means of eliminating such issues. In these regards civil society organizations and media have to give more importance.

4) Economic Empowerment Programs

Many women still stay in abusive relationships because they are financially dependent. The government and non-governmental organizations (NGOs) ought to initiate economic empowerment schemes for the victims to get the essential resources for self-sufficiency

5) Accessible Legal Aid Services

To help the victims, free legal aid and support services should be made available, particularly targeted at women in rural areas so that they can be assisted in dealing with various legal issues and also finding justice

EXAMINATION OF THE EFFECTS OF ARTIFICIAL INTELLIGENCE (AI) ON CONFIDENTIALITY UNDER NIGERIAN LAWS

BY

***MADU CHINYERE IMMACULATA**

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Abstract

Artificial Intelligence has become part of everyday life in Nigeria, shaping communication, business operations, healthcare delivery, and legal services. While these technologies promise efficiency and innovation, they also raise serious concerns about the protection of personal and sensitive information. Confidentiality has long been a foundational value of the Nigerian legal system and is essential to maintaining trust within legal practice. This article examines how the growing use of AI affects confidentiality under Nigerian law, with particular focus on the legal profession. Nigeria has existing constitutional, statutory, and professional rules aimed at safeguarding confidentiality. However, most were developed before the widespread adoption of AI and are ill suited to address challenges such as automated decision-making, large-scale data processing, and cross border data flows. This creates uncertainty about the adequacy and enforcement of current protections in an AI driven environment. Using a doctrinal research method, this study analyses relevant constitutional provisions, statutes, judicial decisions, policy instruments, and international frameworks. A comparative approach is also adopted, drawing lessons from regulatory responses in the European Union, the United States, and the United Kingdom. It would also recommend targeted legal reforms, clearer judicial interpretation, stronger enforcement mechanisms, and practical professional guidelines to ensure confidentiality is preserved alongside technological innovation.

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1.1. Introduction

Artificial Intelligence (AI) is no longer a futuristic concept; it is already woven into Nigeria's technological and economic landscape. From biometric verification in financial services to automated customer service chatbots and smart diagnostic tools in healthcare, Artificial Intelligence is gradually becoming a part of everyday life. Nigeria's fintech sector provides one of the clearest examples of adoption. Platforms such as Flutterwave and Paystack deploy algorithms to detect fraudulent transactions, streamline payments, and personalise services.¹ Similarly, in agriculture, start-ups are exploring AI-driven solutions to improve crop yield predictions and pest control.²

The Nigerian government has also signaled interest in AI as part of its digital economic agenda. The National Information Technology Development Agency (NITDA) has drafted a National Artificial Intelligence Policy to provide strategic direction.³ However, the regulatory framework for AI remains in its infancy. This regulatory lag is particularly concerning in areas where AI interacts with fundamental rights, including the right to privacy and confidentiality.

Confidentiality is a cornerstone of trust in professional and legal relationships. It ensures that individuals can communicate freely with professionals, confident that sensitive information will not be misused or disclosed without consent. In legal practice, confidentiality is codified under the Rules of Professional Conduct for Legal Practitioners, which obligates lawyers not to disclose client communications without authorisation.⁴ Nigerian courts have reinforced this duty in cases such as *Akintokun v. Legal Practitioners Disciplinary Committee*,⁵ where the Supreme

¹ Adepoji, O., Artificial Intelligence in Nigeria's Financial Sector, Opportunities and Risk, *Nigerian Journal of Fintech Studies*, (2022), 45

² Afolayan, J.O., AI Applications in Nigeria's Agriculture: Prospects and challenges , 15(2)*African Journal of Science and Technology* (2021), 77

³ National Information Technology Development Agency (NITDA), *National Artificial Intelligence Policy*, (Draft), 2023

⁴ Rules of Professional Conduct for Legal Practitioners , 2023, Rule 19

⁵ (2014) 13 NWLR (143) 1

Court emphasised the ethical responsibilities of Legal Practitioners. This is also applicable in the healthcare and banking sector.

What makes AI particularly challenging in relation to confidentiality is that its processes are often opaque referred to as the "black box" problem.⁶ Clients/patients/customers may be unaware of how their data is being used, combined, or shared across platforms. A lawyer may rely on AI-driven legal research tools, or a doctor may use AI diagnostic software, but the confidential information inputted into these systems could be vulnerable to breaches, especially when cloud-based servers are located outside Nigeria's jurisdiction.

1.2. Conceptual and Theoretical Framework

This section explains the key ideas and theories that guide the examination of how Artificial Intelligence affects confidentiality under Nigerian law. It focuses on three main areas: the meaning of Artificial Intelligence, the concept of confidentiality within the Nigerian legal system, and the theoretical foundations that justify the protection of confidentiality in an AI driven environment.

1.2.1. Artificial Intelligence and Its Implications for Confidentiality

Artificial Intelligence generally refers to computer systems designed to carry out tasks that would normally require human intelligence, such as learning, reasoning, analysing information, and making decisions.⁷ These systems range from simple tools created to perform specific functions to more advanced technologies capable of processing large volumes of data and producing autonomous outcomes.

AI is closely connected to confidentiality because it depends heavily on data to function. In professional settings, especially in legal and medical practice, this data often includes sensitive and confidential information such as client communications, legal documents, and medical records. One major concern is that many AI systems operate in ways that are not easily understood or explained, often described as "black boxes".⁸ This lack of transparency makes it difficult to

⁶ Burrell, J., How the Machine "Thinks": Understanding Opacity in Machine Learning Algorithms' (2016) 3(1) Big Data & Society 1. <http://doi.org>, accessed 10/10/2025 at 8:20am

⁷ Russell, S. and Norvig, P., Artificial Intelligence: A Modern Approach (4th edn, Pearson 2021)

⁸ Pasquale, F., The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015)

determine how confidential information is being processed or whether it is adequately protected.

There are also practical concerns around the use of cloud-based AI tools, many of which are hosted outside Nigeria. When confidential information is stored or processed across borders, enforcing Nigerian data protection and confidentiality laws becomes more challenging. These issues highlight the need to carefully assess how existing legal protections respond to the growing use of AI.

1.2.2. Confidentiality under Nigerian Laws

Confidentiality refers to the obligation placed on individuals and institutions to protect information that has been entrusted to them from unauthorised disclosure. In professional relationships, confidentiality plays a vital role in building trust and ensuring that individuals feel safe to share sensitive information.

Under Nigerian law, confidentiality has a strong legal foundation. Section 37 of the Constitution of the Federal Republic of Nigeria 1999 guarantees the privacy of citizens including their correspondence and communications.⁹ This provision places confidentiality within the framework of fundamental rights and human dignity.

Beyond the Constitution, several statutes and professional rules reinforce this obligation. The Evidence Act, 2011 protects communications between lawyers and their clients by recognising legal professional privilege.¹⁰ The Rules of Professional Conduct for Legal Practitioners 2023 require lawyers to preserve client confidentiality, except in limited circumstances allowed by law.¹¹ Similar duties apply in the medical profession under the Code of Medical Ethics in Nigeria, which obliges healthcare professionals to maintain patient confidentiality.¹²

The increasing use of AI tools in professional practice introduces new risks to these established confidentiality obligations. Automated systems used for document

⁹ Constitution of the Federal Republic of Nigeria 1999, Cap C23 Laws of the Federation of Nigeria, 2004, Section 37

¹⁰ Evidence Act 2011, Cap E14, Laws of the Federation of Nigeria, Sections 192-196

¹¹ Rules of Professional Conduct for Legal Practitioners 2023, R 19

¹² Medical and Dental Council of Nigeria, Code of Medical Ethics in Nigeria (2004)

review, data storage, or decision support may expose confidential information to third parties, raising questions about control, accountability, and liability when breaches occur.

1.2.3. Theoretical Foundations for Protecting Confidentiality in the AI Era

The importance of confidentiality in the context of AI can be better understood through established theories of privacy and data protection. One of the most significant is the human rights model of privacy, which treats confidentiality as an essential aspect of personal dignity and individual autonomy. This approach is reflected in international instruments such as Article 17 of the International Covenant on Civil and Political Rights, which protects individuals from arbitrary interference with their privacy.¹³ Nigeria's constitutional protection of privacy aligns closely with this model.

Another relevant theory is informational self determination, which emphasizes an individual's right to control how their personal information is collected, used, and shared. Originating from German constitutional jurisprudence, this theory has influenced modern data protection laws, including the European Union's General Data Protection Regulation.¹⁴ Elements of this approach can also be seen in Nigeria's Data Protection Act 2023, which introduces obligations relating to consent, purpose limitation, and data security.¹⁵

A further perspective is the fiduciary duty approach, which views confidentiality as a duty owed by professionals to those who place trust in them. In professions such as law and medicine, this duty is central to the professional relationship. When AI tools are introduced into these settings, professionals remain responsible for ensuring that confidentiality is not compromised.

These theories are supported by emerging international AI ethics frameworks. Instruments such as the Organisation for Economic Co-operation and Development (OECD) Principles on Artificial Intelligence and UNESCO's Recommendation on

¹³ International Covenant on Civil and Political Rights 1966, Art 17

¹⁴ Schwartz, P. and Solove, D. "The PII Problem: Privacy and a New Concept of Personally Identifiable Information", 86 New York University Law Review, (2011), 1814.

¹⁵ Nigeria Data Protection Act 2023, Cap 37 Laws of the Federation of Nigeria. Sections 24-30.

the Ethics of Artificial Intelligence stress the importance of transparency, accountability, and respect for privacy in the development and use of Artificial Intelligence.¹⁶ Applying these principles within Nigeria's legal system can help ensure that technological advancement does not come at the expense of confidentiality.

1.3. Legal Framework Governing Confidentiality in Nigeria

The protection of confidentiality within the lawyer-client relationship is firmly rooted in Nigerian laws. As Artificial Intelligence becomes increasingly integrated into legal practice through tools such as document review software, legal research platforms, and client communication systems, existing confidentiality rules are being tested in new ways. This section examines the Nigerian legal framework governing confidentiality and assesses how effectively it protects client-lawyer communications in the context of Artificial Intelligence driven legal services.

1.3.1. Constitution of the Federal Republic of Nigeria 1999 Cap C23 Laws of the Federation of Nigeria, 2004

The Constitution of the Federal Republic of Nigeria 1999 is the supreme law and provides the foundational basis for confidentiality through the right to privacy. Section 37 guarantees the privacy of citizens, including their correspondence and communications.¹⁷ This provision forms the constitutional backbone of confidentiality in the lawyer-client relationship, as legal communications fall squarely within the scope of protected correspondence.

In legal practice, this constitutional guarantee supports the expectation that communications between a lawyer and a client remain private and free from unauthorised interference. The use of Artificial Intelligence tools that analyse emails, case files, or digital communications raises constitutional concerns where

¹⁶ Organisation for Economic Co-operation and Development, Principles on Artificial Intelligence (2019); UNESCO, Recommendation on the Ethics of Artificial Intelligence (2021)

¹⁷ Constitution of the Federal Republic of Nigeria 1999 Cap C23 Laws of the Federation of Nigeria, 2004 Section 37

such processing occurs without clear consent, statutory backing, or judicial oversight.

However, the right to privacy is not absolute. Section 45 permits lawful limitations in the interest of public safety, public order, or national security.¹⁸ In the context of Artificial Intelligence, this creates a delicate balance. AI systems used for surveillance, law enforcement, or predictive analytics may intrude into private legal communications unless their deployment is clearly authorised and proportionate. Nigerian courts therefore play a critical role in ensuring that AI use does not erode constitutionally protected lawyer-client confidentiality.

1.3.2. Nigeria Data Protection Act, 2023 Cap 37 Laws of the Federation of Nigeria

The Nigeria Data Protection Act (NDPA) 2023 represents the most direct statutory response to confidentiality challenges in Nigeria's digital environment. The Act applies to the processing of personal data by both public and private entities, including law firms that collect and process client information through Artificial Intelligence powered tools.¹⁹

The Act establishes core data protection principles such as lawfulness, purpose limitation, data minimisation, integrity, and confidentiality.²⁰ For legal practitioners, this means that client data processed through AI systems must be limited to what is strictly necessary for legal representation and protected against unauthorised access.

Of particular relevance to Artificial Intelligence is Section 28 of the Nigeria Data Protection Act, 2023 which regulates automated decision making and profiling.²¹ Where AI systems are used to analyse client data or make recommendations that may affect legal outcomes, clients are entitled to safeguards, including transparency and, in some cases, human intervention. These provisions reinforce the duty of lawyers to ensure that AI tools do not compromise client confidentiality or autonomy.

¹⁸ Ibid, Section 45

¹⁹ Nigeria Data Protection Act, 2023, Cap 37 Laws of the Federation of Nigeria. Section 2

²⁰ Ibid, Section 24

²¹ Ibid, Section 28

By aligning with international standards such as the European Union General Data Protection Regulation, the Nigerian Data Protection Act strengthens confidentiality obligations within the lawyer-client relationship and places accountability squarely on legal practitioners as data controllers.

1.3.3. Evidence Act, 2011 Cap E14 Laws of the Federation of Nigeria,

The Evidence Act, 2011 plays a central role in protecting lawyer-client confidentiality through the doctrine of legal professional privilege. Sections 192 to 196 prohibit Legal Practitioners from disclosing communications made by clients in the course of professional employment, except where such a disclosure is permitted by law.²² This statutory privilege remains one of the strongest protections of confidentiality in Nigerian law.

In this era of Artificial Intelligence, this protection faces new challenges. AI tools used for document review, e-discovery, or digital evidence analysis often process large volumes of confidential client material. The Evidence Act, which governs the admissibility of electronically generated evidence, becomes particularly significant.²³ Any AI generated or AI processed evidence must satisfy strict conditions relating to authenticity, reliability, and system integrity.

Where AI systems compromise confidentiality or are poorly managed, resulting evidence may be excluded by the court. Nigerian courts have increasingly emphasised that electronically generated evidence obtained in breach of privacy or professional secrecy may be inadmissible unless justified by compelling public interest.²⁴ This reinforces the continuing importance of confidentiality even in technologically advanced legal practice.

1.3.4. Cybercrimes (Prohibition, Prevention, etc.) Act 2015 Cap 17 Laws of the Federation of Nigeria

The Cybercrimes Act, 2015 provides criminal sanctions against unauthorised access to computer systems and data, thereby offering indirect protection for

²² Evidence Act, 2011 Cap E14 Laws of the Federation of Nigeria, Sections 192-196

²³ Ibid, Section 84

²⁴ Federal Republic of Nigeria v Daniel (2011) 4 NWLR (Pt 1238) 256

lawyer-client confidentiality in the digital space. Sections 6 and 8 criminalize unlawful access to data and interception of electronic communications.²⁵

For legal practitioners using Artificial Intelligence based platforms, these provisions are particularly relevant. Unauthorised access to client files stored on cloud-based AI systems or interception of lawyer- client communications may constitute a criminal offence. The Act therefore reinforces the obligation on lawyers to secure AI systems and digital infrastructure used in legal practice.

While the Act was not drafted specifically with AI in mind, its provisions remain applicable where AI technologies expose confidential legal information to cyber risks. Compliance with the Act is essential to preserving confidentiality in AI assisted legal services.

1.3.5. Rules of Professional Conduct for Legal Practitioners, 2023

Beyond constitutional and statutory protections, the Rules of Professional Conduct for Legal Practitioners 2023 impose strict ethical obligations on lawyers to preserve client confidentiality. Rule 19 expressly prohibits a lawyer from disclosing client information without consent or lawful justification.²⁶ This duty applies regardless of the medium through which information is stored or processed.

The use of AI tools does not dilute this ethical responsibility. Where AI systems are deployed for legal research, drafting, or client interaction, lawyers remain professionally accountable for ensuring that client information is not exposed to unauthorised third parties. Improper use of AI that results in confidentiality breaches may amount to professional misconduct, attracting disciplinary sanctions.

The Rules therefore serve as a critical safeguard, ensuring that technological innovation does not override the ethical foundation of the legal profession.

²⁵ Cybercrimes (Prohibition, Prevention, etc) Act 2015, Cap 17 Laws of the Federation of Nigeria, Sections 6 and 8

²⁶ Rules of Professional Conduct for Legal Practitioners 2023, R 19

1.4. Artificial Intelligence and Confidentiality: A Comparative Jurisdictional Analysis

As Artificial Intelligence becomes embedded in legal practice worldwide, jurisdictions have responded differently to the challenge of protecting lawyer-client confidentiality. While Nigeria is still developing a coherent AI governance framework, other jurisdictions have adopted clearer regulatory, judicial, and professional responses. This section examines how the European Union, the United States of America, and the United Kingdom have addressed confidentiality risks posed by AI, with a view to identifying lessons relevant to Nigeria.

1.4.1. European Union

The European Union has adopted one of the most comprehensive approaches to confidentiality and data protection in the age of Artificial Intelligence. The General Data Protection Regulation (GDPR) provides a robust legal framework governing the processing of personal data, including confidential legal communications.²⁷ Law firms operating within the European Union are regarded as data controllers and are subject to strict obligations relating to consent, purpose limitation, data minimisation, and data security.

Of particular relevance to AI is Article 22 of the General Data Protection Regulation (GDPR), which restricts decisions based solely on automated processing where such decisions significantly affect individuals.²⁸ In legal practice, this provision limits the use of AI tools that analyse client data or generate legal outcomes without meaningful human involvement. The GDPR also mandates Data Protection Impact Assessments where new technologies are likely to pose high risks to individual rights, including confidentiality.²⁹

Beyond data protection law, professional secrecy is firmly entrenched in European Union legal systems. Communications between lawyers and clients are protected

²⁷ Regulation (EU) 2016/679 (General Data Protection Regulation) of the European Parliament and of the Council of 27 April, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC (General Data Protection Regulation), Official Journal of the European Union, OJL 119, 4 May, 2016, pp1-88

²⁸ General Data Protection Regulation, (EU) 2016/679, Art 22

²⁹ Ibid, Art 35

by legal professional privilege, which applies regardless of whether information is processed manually or through AI systems. The European Union's proposed Artificial Intelligence Act further reinforces this protection by classifying certain AI applications as high risk and subjecting them to enhanced regulatory oversight.³⁰

The EU model demonstrates that confidentiality can be preserved in AI assisted legal practice through a combination of binding regulation, professional ethics, and enforceable sanctions.

1.4.2. United States of America

In contrast to the European Union, the United States adopts a more fragmented approach to confidentiality and AI regulation. There is no single comprehensive federal data protection statute comparable to the General Data Protection Regulation. Instead, confidentiality in legal practice is primarily protected through attorney-client privilege and professional conduct rules.

Attorney- client privilege is a long-standing doctrine under U.S. law and protects confidential communications made for the purpose of obtaining legal advice.³¹ Courts have generally held that the use of technology does not waive privilege, provided reasonable steps are taken to maintain confidentiality. However, the use of AI tools hosted by third parties raises concerns about inadvertent disclosure and loss of privilege.

The American Bar Association has responded by issuing guidance on the ethical use of Artificial Intelligence. Model Rule 1.6 requires lawyers to make reasonable efforts to prevent unauthorised access to client information, including when using technology .³² Lawyers are also required under Model Rule 1.1 to maintain

³⁰ European Commission, Proposal for a Regulation Laying down Harmonised Rules on Artificial Intelligence COM (2021) 206 final

³¹ *Upjohn Co v United States* 449 US 383 (1981)

³² American Bar Association, Model Rules of Professional Conduct, (ABA House of Delegates, 1983) (as amended) R 1.6

technological competence, which now includes understanding the risks associated with AI systems.³³

The U.S. approach places greater responsibility on individual lawyers rather than regulators. While this allows flexibility and innovation, it also creates inconsistency and leaves confidentiality largely dependent on professional judgment rather than enforceable regulatory standards.

1.4.3. United Kingdom

The United Kingdom adopts a hybrid approach that combines strong data protection law with professional regulation. The UK General Data Protection Regulation and the Data Protection Act 2018 govern the processing of personal data, including confidential legal information.³⁴ These instruments impose obligations similar to the EU GDPR, including transparency, security, and accountability.

Legal professional privilege is a well-established principle under English law and applies equally to digital and AI processed communications. The courts have consistently affirmed that privilege is fundamental to the administration of justice and must not be undermined by technological change.³⁵

Professional regulation further strengthens confidentiality protection. The Solicitors Regulation Authority requires solicitors to ensure that technology, including AI tools, is used in a manner that protects client confidentiality and data security.³⁶ Recent guidance encourages law firms to assess AI systems carefully, particularly where client data is processed externally or through automated tools.

The UK model demonstrates how professional regulation and data protection law can work together to manage AI risks without stifling innovation.

³³ *ibid*, R 1.1 Comment 8

³⁴ Data Protection Act 2018 (UK), C12

³⁵ *R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* (2002) UKHL 21

³⁶ Solicitors Regulation Authority, *Guidance on the Use of Technology and Client Confidentiality* (2023)

1.4.4. Lessons for Nigeria

Comparative analysis reveals several lessons for Nigeria. First, confidentiality protections remain effective when AI is treated as subject to existing legal and ethical duties rather than as an exception to them. Second, jurisdictions with clearer regulatory guidance and professional standards provide greater certainty for legal practitioners. Third, enforceability matters. Strong data protection rights and meaningful sanctions play a crucial role in preserving confidentiality in AI driven environments.

Nigeria's Nigeria Data Protection Act 2023 represents an important step, but further guidance is needed on how AI tools may be ethically and lawfully deployed in legal practice. Judicial interpretation and professional regulation will be critical in filling these gaps.

1.4.5. Relevance to Nigerian Legal Practice

For Nigerian legal practitioners, the comparative experience shows that adopting AI does not diminish the duty of confidentiality. Rather, it heightens it. Lawyers remain responsible for understanding how AI systems handle client data, ensuring compliance with data protection laws, and maintaining professional secrecy. Incorporating lessons from the European Union, United States of America and United Kingdom can assist Nigeria in developing a balanced framework that protects confidentiality while allowing responsible innovation.

1.5.1. Findings

This chapter draws together the key insights from the preceding analysis and sets out practical recommendations for strengthening the protection of lawyer- client confidentiality in the age of Artificial Intelligence. It highlights the gaps revealed in Nigeria's current legal framework and proposes reforms aimed at balancing technological innovation with the preservation of confidentiality as a core legal and ethical value.

The study reveals that Nigeria already possesses a strong foundational framework for protecting confidentiality within the lawyer-client relationship. Constitutional

guarantees of privacy, statutory protections such as legal professional privilege under the Evidence Act, ethical obligations under the Rules of Professional Conduct for Legal Practitioners, and the recently enacted Nigeria Data Protection Act 2023 collectively demonstrate a clear commitment to confidentiality.

However, these protections were largely developed in a pre-Artificial Intelligence era and are not fully adapted to the realities of AI driven legal practice. The increasing use of AI tools for legal research, document review, case management, and client communication introduce new risks that existing laws do not explicitly address. In particular, issues such as automated data processing, opaque algorithmic systems, third party AI service providers, and cross border data storage expose client information to heightened confidentiality risks.

The analysis further shows that Nigerian law lacks clear guidance on the ethical and lawful use of AI within legal practice. Unlike jurisdictions such as the European Union and the United Kingdom, Nigeria has not yet developed profession specific guidelines regulating AI use by lawyers. As a result, compliance with confidentiality obligations is left largely to individual discretion, increasing the risk of inconsistent practice and unintentional breaches.

Comparative analysis also reveals that jurisdictions with clearer regulatory frameworks, stronger enforcement mechanisms, and explicit recognition of AI related risks provide better protection for lawyer-client confidentiality. The European Union's data protection regime, the United Kingdom's professional guidance, and the United States of America emphasis on technological competence all demonstrate different but instructive approaches to managing AI related confidentiality challenges.

The Implications of these findings to Legal Practice in Nigeria suggest that the adoption of AI in Nigerian legal practice does not diminish the duty of confidentiality but rather intensifies it. Lawyers remain fully responsible for safeguarding client information, even where AI tools are used as intermediaries. Reliance on AI does not absolve legal practitioners of ethical or legal liability for confidentiality breaches.

There is also a growing risk that lawyers may adopt AI technologies without fully understanding how client data is processed, stored, or shared. This knowledge gap

undermines informed consent and weakens compliance with data protection obligations under the Nigeria Data Protection Act, 2023. Without proper safeguards, AI use could erode client trust and expose law firms to legal and reputational risks.

1.5.2. Recommendations

To address these challenges, several reforms are recommended.

- a. There is a need for clearer statutory guidance on AI and confidentiality. While the Nigeria Data Protection Act, 2023 provides a useful starting point, it should be supplemented with regulations or guidelines that specifically address AI use in professional legal practice, including obligations relating to transparency, human oversight, and data security.
- b. Professional bodies such as the Nigerian Bar Association should develop detailed guidelines on the ethical use of AI by legal practitioners. These guidelines should clarify acceptable AI applications, outline minimum data protection standards, and emphasise the continued relevance of legal professional privilege in AI assisted legal work.
- c. Judicial interpretation must evolve to reflect technological realities. Nigerian courts should adopt a purposive approach when interpreting constitutional privacy rights, evidentiary rules, and professional privilege in cases involving AI generated or AI processed evidence. Clear judicial pronouncements will help shape responsible AI use and deter confidentiality breaches.
- d. Capacity building is essential. Legal practitioners should be encouraged to develop technological competence, including a basic understanding of how AI systems operate and the risks they pose to confidentiality. Continuous legal education programmes should incorporate training on AI governance, data protection, and digital ethics.

- e. Effective protection of confidentiality requires not only sound laws but also strong enforcement mechanisms. The Nigeria Data Protection Commission should be empowered and adequately resourced to oversee AI related data processing by law firms and legal service providers. Regular audits, compliance monitoring, and meaningful sanctions will enhance accountability.
- f. Law firms should also be required to adopt internal AI governance policies, including data protection impact assessments and risk management protocols, before deploying AI tools. These measures will help ensure that confidentiality considerations are integrated into technological decision making.

1.6. Conclusion

Artificial Intelligence presents significant opportunities for improving efficiency and access to legal services in Nigeria. However, these benefits must not come at the expense of lawyer- client confidentiality, which remains central to the administration of justice and the integrity of the legal profession.

This study concludes that while Nigeria's existing legal framework provides a solid foundation for confidentiality, it must evolve to address the unique challenges posed by AI. Through targeted legal reforms, clearer professional guidance, informed judicial interpretation, and stronger enforcement, Nigeria can foster a legal environment that supports responsible AI adoption while preserving confidentiality as a fundamental legal value.

THE IMPACT OF THE NIGERIAN LEGAL FRAMEWORK AGAINST TORTURE ON NIGERIA'S ADMINISTRATION OF JUSTICE.

By

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Abstract

This paper discusses by way of doctrinal research approach the Convention against torture; Extent of its application in Nigeria. The absolute nature of the prohibition of torture and ill-treatment is enshrined in universal and regional human rights treaties ratified by Nigeria as well as in customary international law. Nigeria is a signatory to the Convention and its optional protocol. It is still faced with challenges of torture and there are no robust institutions to curb the menace as the institution charged with the above responsibilities are in many ways responsible for the violations and equally other agencies and committees are greatly under-funded to tackle the issues and formally come up with a report of their findings. In the process of the above, the paper found that absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment (ill treatment) is non-derogable be it in times of war or peace under international law. paper further found that though Nigeria is a signatory to the Convention and its optional protocol, it is still faced with challenges of torture. The paper made recommendation

Keywords: Torture, Convention, UNCAT, Rights, Law, Torture, human rights,

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1.1 Introduction

Nigeria is a State party to a range of international and regional human rights instruments expressly prohibiting torture and ill-treatment such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or UNCAT)², the International Covenant on Civil and Political Rights (ICCPR),³ and its Optional Protocol⁴ and the International Convention for the Protection of All Persons from Enforced Disappearance.⁵ Additionally, Nigeria ratified regional instruments proscribing torture such as the African Charter on Humans and Peoples Right⁶ and the African Charter on the Rights and Welfare of the Child.⁷

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention" or "UNCAT") was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46). The Convention entered into force on 26th June 1987 after it had been ratified by 20 States; however, Nigeria ratified the convention on 28th of June, 2001. The convention is centered on the presumption of innocence, right to remain silence or right against self-incrimination as may be used interchangeably which are essential rights necessary to attain just and fair trial. This is very fundamental in adversarial or accusatorial system or procedure practiced in Nigeria.⁸

²Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1).

³ International Covenant on Civil and Political Rights, 16 December 1966, Article 4

⁴ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 9 January 2003, A/RES/57/199.

⁵ International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006.

⁶ African Charter on Human and Peoples' Rights, 27 June 1981.

⁷ African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990), Article 16.

⁸ Zakiyyu Muhammad & Pradeep Kulshrestha: IMPACT OF THE UNITED NATION CONVENTION AGAINST TORTURE ON THE PROTECTION OF HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA (available at jlsr.thelawbrigade.com) www.google.com/www.researchgate.net/publication/323228361 visited onl 0/03/2021

1.2 The Concept of Torture

Torture is universally prohibited under international human rights law and is regarded as one of the gravest violations of human dignity. The authoritative definition of torture is contained in Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), to which Nigeria is a State Party. Under this provision, torture refers to any act by which severe physical or mental pain or suffering is deliberately inflicted on a person for specific purposes, including obtaining information or a confession, punishment for an act committed or suspected to have been committed, intimidation or coercion, or for reasons based on discrimination of any kind. Crucially, such pain or suffering must be inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or any person acting in an official capacity.

This definition emphasizes three essential elements of torture. First is intentionality, meaning that the act must be deliberate and not accidental. Second is purpose, as torture is inflicted to achieve particular objectives such as extracting confessions, enforcing punishment, or instilling fear. Third is official involvement, which distinguishes torture from private acts of violence, as the act must be linked to state authority either directly or indirectly. The Convention expressly excludes pain or suffering that arises solely from lawful sanctions, provided such sanctions are consistent with international standards.

In line with international norms adopted by Nigeria, torture encompasses both physical and mental suffering. Physical torture includes acts that cause intense bodily pain or injury, while mental torture refers to acts that result in severe psychological trauma, fear, or emotional distress. The recognition of mental torture underscores the understanding that suffering is not limited to physical harm alone.

International law further distinguishes torture from other forms of ill-treatment, such as cruel, inhuman, or degrading treatment or punishment. While these concepts are closely related, torture represents the most severe form of abuse due to its intensity, purpose, and involvement of state authority. Notwithstanding this distinction, the prohibition of torture and other forms of ill-treatment is absolute and non-derogable. This means that no exceptional circumstances, including war, internal instability, public emergency, or counter-terrorism operations, may be invoked to justify torture.

Within the Nigerian legal framework, the concept of torture is reinforced by constitutional and statutory safeguards, particularly the right to dignity of the human person under Section 34 of the 1999 Constitution (as amended). The enactment of the Anti-Torture Act 2017 further signifies Nigeria's commitment to aligning domestic law with international standards by expressly criminalizing torture and related acts. Accordingly, torture is no longer merely a moral or constitutional wrong but a distinct criminal offence attracting legal liability and sanctions.

1.3 The Extent of The Application of The United Nations Convention Against Torture (UNCAT) In Nigerian Laws.

Flowing from the definition of torture as provided under *Article 1.1 and 1.2* of the convention UNCAT), the constitution of Nigeria⁹ outlined fundamental human rights that clearly prohibit any form of torture, in the same vein; self-incrimination was illegalized accordingly, the accused person right to remain silence and presumption of innocence are guaranteed.

Section 34 (1)¹⁰ of the Constitution provides that: Every individual is entitled to respect for the dignity of his person, and accordingly:

- a. No person shall be subjected to torture or to inhuman or degrading treatment;

Section 35 (2)¹¹ of the Constitution provides further that: Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

Furthermore, Section 36(1)¹² provides that: In the determination of his civil rights and obligation including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a

⁹ 1999 Constitution of the Federal Republic of Nigeria (as amended 2011) cap C1, Laws of the Federation of Nigeria 2004.

¹⁰ Ibid. section 34 see the case of *Ezeigbo v. Asco Inv. Ltd* (2022) 8 NWLR (Pt. 1832) 367; *Eze v. IGP* (2017) 4 NWLR (pt. 1554) 44 where the Supreme court reiterates the entitlement of all human persons not to be subjected to any forms of torture , inhuman or degrading treatment but shall accord due respect for the dignity of the person or persons. The court further cited the cases of *Nafiu Rabi v. the State* (1980) 8-11 SC 130; *Fawehinmi v. Abacha* (1996) 5 NWLR (Pt. 447) 198.

¹¹ Ibid. section 35

¹² Supra Note 9.

Court or other tribunal established by law and constituted in such a manner as to secure its independence or impartiality.

Section 36(5)¹³ further provides: Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.

Section 36(6)(a-e)¹⁴ provides safeguards to ensure that torture, inhuman or degrading treatments of human person are criminalized, illegalized and punished. That is why the defendant is given adequate time to defend himself, prepare for his defense, right to interpreter, legal practitioner of his own choice among others¹⁵

In addendum to the constitutional provisions highlighted above, *section 6 of the Administration of Criminal Act 2015*¹⁶ provides that:

Section 6(2)¹⁷ provides: The police officer or the person making the arrest or the police officer in charge of a police station shall inform the suspect of his rights to:

- a) remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice;
- b) consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest; and
- c) free legal representation by the Legal Aid Council of Nigeria where applicable;

Provided the authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect.

More so, the Evidence Act¹⁸ in section 29(2) provides¹⁹ If, in any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained:

- a. by oppression of the person who made it; or

¹³ Ibid. section 36(6)(a-e)

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Administration of Criminal Justice Act (2015) Cap A4 Laws of the Federation of Nigeria 2004.

¹⁷ Ibid

¹⁸ Evidence Act (2011) Cap E11, Laws of the federation of Nigeria 2004.

¹⁹ Ibid

- b. in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.
- (3) In any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in either paragraph (a) or (b) of subsection (2) of this section.

1.4 Safeguards Against Torture in Nigeria²⁰

There are a range of legal safeguards that can serve to minimize the risks of violations and/or limit the circumstances under which torture and ill-treatment take place. These safeguards are enshrined in international and regional instruments and include:

- **The Right to Inform Family Members**

Transparency begins at the moment of arrest. Under Section 6(2)(c) of the Administration of Criminal Justice Act (ACJA) 2015, the authority having custody of a suspect has the mandatory responsibility to notify the suspect's next of kin or relative of the arrest. This notification must be provided at no cost to the suspect. Informing family members serves as a critical shield against "incommunicado" detention, which is often a precursor to torture or enforced disappearance.

- **The Right to Be Promptly Brought Before a Court**

To prevent indefinite detention without trial, the Nigerian Constitution and the ACJA impose strict timelines for judicial oversight. An arrested person must be brought before a court within a "reasonable time," which is stipulated as Twenty-four hours in cases where a court of competent jurisdiction is within a radius of forty kilometers. Forty-eight hours or such longer period as the court may consider reasonable in other circumstances. If a person in custody is not tried within two months, they are entitled

²⁰ REDRESS, 'Anti-Torture Legislative Frameworks,' pp. 10-17. See the Supreme Court case of *Ogunbiyi v. The State* (2021) LPELR- 55636 (SC)

to be released unconditionally or upon conditions that ensure they appear for trial at a later date.

- The Right to Challenge the Legality of Detention

The right to challenge the legality of one's detention (often referred to as habeas corpus) is a fundamental safeguard. This ensures that any person deprived of their liberty can initiate proceedings before a court so the court may decide on the lawfulness of the detention. Furthermore, Section 36(1) of the Constitution guarantees a fair hearing by an independent and impartial court or tribunal, providing a venue for detainees to contest arbitrary state actions.

- The Right to Regular Medical Examination and Health Care

The right to health is a vital protection against physical and mental suffering. Regular medical examinations serve two purposes:

Prevention and Treatment: Ensuring that detainees receive necessary medical care for existing conditions or injuries. Evidence and Monitoring: Medical records provide objective evidence of a detainee's physical condition upon entry and throughout their stay, which can be used to substantiate or deter allegations of torture and ill-treatment.

- Monitoring and oversight mechanism

As torture has been criminalized in Nigeria (recently by virtue of Anti Torture Act 2017 Official Gazette No. 3, Vol. 105), acts in the Criminal Code, applicable in the Southern States which fall within the scope of UNCAT include assault, homicide, offences endangering life, assaults on females and the excessive use of force. Penalties potentially range from imprisonment for one year for ordinary assault to fourteen years for assault with intent to have unlawful carnal knowledge; seven years to life for grievous bodily harm; life imprisonment for manslaughter; death penalty for murder; and life imprisonment, with or without caning, for rape.

Under the Penal Code applicable in the northern States, acts amounting to torture constitute offences such as infliction of injury, homicide and rape. Under the Shariah Penal Code Law, the perpetrator of homicide and injury can only be punished if the victim or relatives of a victim seek punishment. For acts committed intentionally, the

punishment is retaliation: punishment mirroring the injury inflicted. Blood money can be paid to the victim or the relatives of a victim in lieu of retaliation.

The absence of the crime of torture in Nigeria's Criminal and Penal Codes as well Shariah Penal Code Law is problematic for several reasons as crimes such as assault or infliction of injury do not carry the same stigma or weight as torture. As torture is now criminalized in Nigeria, authorities might be more likely to consider it as a legitimate tool to combat crime and terrorism. It is difficult to raise awareness about and train authorities in the absolute prohibition. It is furthermore difficult to track instances of torture and to ensure that those responsible are adequately held to account and punished, therefore contributing to its deterrence. It also prevents victims of torture from obtaining adequate redress for the harm suffered.

Nigeria's Constitution of 1999 (as amended) and other laws provide for several safeguards, including the right to remain silent, and the right to counsel, the right to be informed about the facts and grounds of the arrest or detention; the obligation to take an arrested person within a reasonable time to a police station; the right to be brought before a court within a reasonable time, stipulated as either 24 or 48 hours depending on the proximity of the court. Further, if a person is not tried within a reasonable time [two months from the date of arrest of a person in custody; three months in the case of a person who has been released on bail] he shall be released either unconditionally or upon such conditions as are necessary to ensure that he appears at trial at a later stage.

Regular monitoring of detention centres by independent organizations is an important safeguard against torture. It fosters a dialogue between detention and prison staff and monitors on detention conditions which can lead to practical and realistic recommendations and real improvements in policies or practices of the benefit of detainees. Where detention or prison staff are aware that their facility can be visited any time, monitoring can also provide concrete protection to detainees as it can have a deterrent effect and reduce the incidence of torture and ill treatment. An independent oversight mechanism can furthermore contribute to raising awareness about, and providing training on the compliance with the safeguards though in some states the Magistrates and High Court Judges are legally empowered to visit detention facilities and centers to ensure full protection of human rights and due compliance of the UNCAT

As a State Party to the Optional Protocol, in 2009, Nigeria put in place a National Preventive Mechanism known as the National Committee against Torture (the National Committee). The mandate of the National Committee goes beyond visiting and monitoring places of detention and includes the examination and investigation of allegations of torture, receipt of communications of torture from individuals and civil society organizations. It is also empowered to systematically review interrogation rules, methods and practices and arrangement for custody; propose an Anti-Torture legislation and develop a National Anti-Torture Policy.

As a result of the efforts of the Committee the National Assembly of the federal Republic of Nigeria in compliance with its regional and international human rights obligations adopt a comprehensive Anti-Torture Bill and that led to the enactment of the Anti-Torture Act, 2017 making a comprehensible provision for penalizing torture and other cruel, inhuman and degrading punishment or treatment and prescribing the penalties of the said actions.

These safeguards are further supported by independent oversight mechanisms, such as the National Committee Against Torture, which is empowered to monitor places of detention and investigate allegations of abuse to ensure these rights are upheld in practice.

1.5 Refoulement Vis-a-Vis Nigerian Legislation

*Article 3 UNCAT*²¹ obliges State Parties both to protect individuals from being subjected to torture within their territory and requires that they do not deport, extradite, expel or otherwise transfer persons to countries where there is a real risk that they may be exposed to torture. This prohibition is absolute and not subject to any exception. No one can be deported, transferred, expelled or otherwise removed out of the territory for any reason whatsoever (including, for instance, reasons of national security) where to do so would put the person at a real risk of torture.²² The UN Committee against Torture considered that the initial burden of proof rests on the individual to show that there are substantial grounds for believing that the individual would be in danger of being subjected to torture where he/she to be

²¹ Supra Note 1. Article 3

²² Supra Note 1 article 3

expelled, returned or extradited. Where the individual has provided sufficient credible detail, the burden shifts to the State.²³

In Nigeria, the prohibition of Refoulement is incorporated in the National Commission for Refugees Act²⁴, incorporating the 1951 UN Convention relating to the Status of Refugees (Refugee Convention). This is problematic as the Refugee Convention which concerns the prohibition on returning someone when there is a legitimate fear of persecution, has an exception. A person fearing persecution might be denied refugee status under Article 1F of the Refugee Convention (for instance if the individual is suspected of having committed war crimes).

The Anti Torture Act 2017 incorporate the non-refoulement principle directly into the law making it legally binding for officials to comply fully with same especially where the risk of torture exists. The Act equally obligates state to investigate credible allegations of torture and prosecute same or extradite the suspect to the state in which the act is perpetrated.

1.6 Conclusion

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have in a number of ways influenced the re-drafting and amendment of local laws in Nigeria the likes of Evidence Act, Administration of Criminal Justice Act (ACJA) and the enactment of Anti-Torture Act 2017, but the practical implementation is very poor as the number of complaint of torture at the police stations and other parastatals with powers of remand and investigation is tremendously increasing and the rate of crimes in Nigeria and terrorism and Counter crime and terrorism have made the codification and attainment of the goals of the various legislations untenable.

²³ Amnesty International, Welcome to hell fire: Torture and other ill-treatment in Nigeria,'2014, (Welcome to hell fire),

available at https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjSq6SeiqHSAhUMDMAKHf_rBToQFggiMAE&url=https%3A%2F%2Fwww.amnesty.org%2Fdownload%2FDocuments%2F4000%2Fafr4401120l4en.pdf&usq=AFQjCNHjDWgEvukzQZeV3xlPnNGmU9koKw &sig2=Nl4OOqCx0A5Rl5THxZR0Lw. Visited on 05/03/2021 at 08:00pm.

²⁴ National Commission for Refugees (Establishment) Act assented and effective on the 29th December 1989. Laws of Federation of Nigeria 2004.

1.7 Challenges

Despite the establishment of institutional and legal mechanisms aimed at preventing torture in Nigeria, significant challenges continue to undermine their effectiveness in practice. One of the most notable challenges is the limited visibility and operational output of the National Committee Against Torture (NCAT). Since its inauguration, the Committee is yet to publish a comprehensive report detailing its activities, findings, and recommendations, particularly in relation to visits to detention centres across the country. The absence of publicly available reports not only weakens transparency and accountability but also makes it difficult to assess the Committee's impact in fulfilling Nigeria's obligations under international human rights instruments such as the Convention against Torture and its Optional Protocol. Without such documentation, stakeholders, including policymakers, civil society organizations, and international partners, are unable to meaningfully engage with or support the Committee's work.

Closely linked to this challenge is the persistent lack of adequate financial, technical, and logistical resources allocated to the National Committee Against Torture. Civil society organizations and human rights experts have repeatedly expressed concerns that insufficient funding, limited staffing, and inadequate operational support severely constrain the Committee's ability to conduct regular and unannounced visits to places of detention. This resource deficit hampers effective monitoring of detention facilities, limits follow-up on allegations of torture, and weakens preventive measures. In a context where detention facilities are numerous, geographically dispersed, and often inaccessible, the absence of robust logistical support renders the Committee largely symbolic rather than functional.

Another critical challenge lies in the difficulty of tracking, documenting, and prosecuting acts of torture in Nigeria. This problem is largely attributable to the historical non-codification or inadequate articulation of torture within Nigeria's legal framework. While certain legislative provisions prohibit inhuman or degrading treatment, there has traditionally been no clear, comprehensive, and universally applicable definition of torture that aligns fully with international standards. As a result, law enforcement and judicial authorities often struggle to classify specific acts as torture, leading to inconsistent interpretation and application of the law. This ambiguity creates loopholes that enable perpetrators to evade accountability and contributes to a culture of impunity within security and law enforcement agencies.

The absence of clear codification also has serious implications for victims of torture. Without a precise legal definition and well-defined enforcement mechanisms, victims face significant obstacles in seeking justice and obtaining adequate redress. Many victims encounter difficulties in proving that the harm they suffered amounts to torture under existing laws, particularly where acts are disguised as legitimate interrogation methods or disciplinary measures. Consequently, access to remedies such as compensation, rehabilitation, and guarantees of non-repetition remains limited. This not only compounds the physical and psychological suffering of victims but also undermines public confidence in the justice system.

Furthermore, these challenges collectively weaken Nigeria's broader administration of justice. When allegations of torture are poorly documented, insufficiently investigated, or inadequately prosecuted, the integrity of criminal investigations and trials is compromised. Evidence obtained through torture may be relied upon in court, leading to wrongful convictions and miscarriages of justice. The failure to effectively prevent and punish torture thus has far-reaching consequences, extending beyond individual violations to the overall credibility of the legal system.

In sum, while Nigeria has taken important steps toward addressing torture through institutional frameworks and policy commitments, persistent challenges relating to transparency, resources, legal clarity, and victim redress continue to limit their practical impact. Addressing these obstacles is essential not only for compliance with international human rights obligations but also for strengthening the rule of law and enhancing the administration of justice in Nigeria.

1.8 Finding

- The study finds that despite Nigeria's ratification of the United Nations Convention Against Torture (UNCAT) and the enactment of the Anti-Torture Act 2017, there is still no clear, precise, and uniformly applicable definition of torture within Nigeria's domestic legal framework comparable to Article 1 of UNCAT. This lack of definitional clarity has created ambiguity in interpretation, weakened enforcement, and made the prosecution of torture-related offences difficult.
- The study further finds that although the 1999 Constitution of the Federal Republic of Nigeria guarantees the right to dignity of the human person and prohibits torture under Section 34, freedom from torture is not constitutionally

classified as a non-derogable right. This position is inconsistent with international law, under which the prohibition of torture is absolute and non-derogable, even in times of war or public emergency.

- The study finds that while the Anti-Torture Act 2017 represents a significant legislative step, its practical effectiveness is undermined by weak implementation mechanisms, institutional inefficiency, and lack of minimum operational standards. These challenges contribute to continued incidents of torture, limited accountability, and restricted access to remedies for victims.

1.9 Recommendations

- It is therefore recommended that Nigerian local legislations, particularly the Anti-Torture Act 2017, be amended to incorporate a clear, comprehensive, and explicit definition of torture that mirrors Article 1 of UNCAT. Such a definition will remove ambiguity, enhance legal certainty, strengthen enforcement mechanisms, and facilitate effective investigation and prosecution of torture-related offences in Nigeria.
- It is also recommended that the Constitution of the Federal Republic of Nigeria be amended to expressly include freedom from torture and other cruel, inhuman, or degrading treatment or punishment among the non-derogable rights. This should be reflected alongside other non-derogable rights and reinforced through the enforcement procedure under Section 46 of the Constitution and the Fundamental Rights (Enforcement Procedure) Rules, thereby strengthening constitutional protection and compliance with Nigeria's international obligations.
- It is recommended that the Anti-Torture Act 2017 be further amended to not only provide a clear definition of torture but also to establish minimum standards and institutional requirements for its implementation. This should include clear investigative procedures, reporting obligations, victim protection measures, and accountability mechanisms for law enforcement and detention authorities, in order to give the Act real practical force and enhance its deterrent effect.

COMBATING WILDLIFE TRAFFICKING THROUGH LEGAL BORDER MANAGEMENT: THE NIGERIAN EXPERIENCE

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ABSTRACT

Wildlife trafficking has become a major lucrative form of transnational crime threatening biodiversity, environmental sustainability, and the rule of law. Nigeria, due to its rich wildlife resources and strategic location, serves as both a source and transit hub for illegal wildlife trade. Despite existing laws and international commitments, trafficking persists because of weak enforcement, porous borders, corruption, poor institutional coordination, and lenient penalties. This paper examines legal border management as a frontline mechanism for combating wildlife trafficking in Nigeria, analyzing relevant legal frameworks, border enforcement agencies, inter-agency cooperation, and operational strategies. Using a doctrinal and qualitative approach, the study finds that weak coordination and limited enforcement capacity significantly undermine anti-trafficking efforts. It recommends legal reforms to strengthen sanctions, improved inter-agency collaboration, deployment of modern surveillance technologies, and greater community engagement to build an effective and sustainable deterrence system.

Keywords: *Wildlife Trafficking, Legal Border Management, Nigeria, Environmental Crime, Border, Conservation*

1. Introduction

Wildlife trafficking has emerged as one of the most lucrative forms of transnational organized crime, posing a profound threat to biodiversity conservation, environmental sustainability, national security, and the rule of law. The illegal wildlife trade is estimated to generate billions of dollars annually for criminal syndicates, rivaling narcotics, arms trafficking, and human trafficking in both profitability and organizational sophistication. Beyond its ecological consequences, wildlife trafficking increasingly intersects with broader criminal economies, including money laundering, corruption, document fraud, and cross-border smuggling networks, thereby elevating it from a conservation issue to a serious transnational security and governance challenge.

Nigeria occupies a strategically significant position in this global illicit economy. Endowed with rich ecological diversity and located at a critical crossroads between West and Central Africa, Nigeria has increasingly emerged as a major source, transit, and consolidation hub for trafficked wildlife and their derivatives, particularly pangolin scales, ivory, rosewood, parrots, and other protected species destined for Asian, European and Middle Eastern markets¹. High-profile seizures at Nigerian ports and borders underscore this role.

Nigeria has enacted a range of statutory and institutional frameworks aimed at regulating wildlife trade and strengthening border enforcement. The Endangered Species (Control of International Trade and Traffic) Act², criminalizes the import, export, possession, and trade in listed endangered species and their derivatives and domesticates Nigeria's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).³ The National Environmental Standards and Regulations Enforcement Agency (NESREA)⁴ is responsible for enforcing environmental laws, biodiversity conservation measures, and wildlife protection regulations. Border control and trade facilitation powers are vested in the Nigeria Customs Service, and they are authorized to regulate imports and exports,

¹ United Nations Office on Drugs and Crime (UNODC), *World Wildlife Crime Report: Trafficking in Protected Species 2020* (UNODC 2020) 25-30, 48-52.

² Cap E9, Laws of the Federation of Nigeria (LFN) 2004

³ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973

⁴ National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007

prevent smuggling, seize prohibited goods, and enforce compliance at ports, airports, and land borders.⁵ Complementary mandates are exercised by the Nigeria Immigration Service⁶ and by the Nigeria Police⁷ particularly in investigation, arrest, and prosecution of organized wildlife crime syndicates.

Despite Nigeria's statutory architecture and its commitments under international conventions to protect endangered species and reduce environmental crime⁸, wildlife trafficking persists at alarming levels and continues to flourish across Nigeria's borders. This persistence is not just a geographic one but reflects systemic weaknesses within Nigeria's legal border management architecture, including porous and weakly monitored land borders, inadequate surveillance and forensic infrastructure, limited technical capacity, institutional corruption, overlapping agency mandates, weak enforcement capacity, disproportionately low penalties that fail to deter organised criminal actors, and disjointed or weak inter-agency coordination. These deficiencies have created exploitable legal and institutional loopholes for transnational criminal networks, resulting in continued biodiversity loss, illicit financial flows, and threats to national security and the rule of law.

Nevertheless, all hope is not lost. In the last few years, a wave of legal changes, better cooperation between agencies, and smart investments in technology and infrastructure for managing the border have all shown that the country is taking a more active approach. Nigeria is starting to show that with the right tools, dedication, and help from other countries, progress is possible. For example, Nigeria has set up wildlife crime task forces and made high-profile arrests and prosecutions.⁹ This paper discusses how well-organized and enforced legal border management can be a strong deterrent and disruptor of wildlife trafficking networks. It addresses Nigeria's legal systems, operational efforts, and the real-world problems that arise on the front lines,

⁵ Nigeria Customs Service Act 2023

⁶ Immigration Act 2015

⁷ Police Act 2020

⁸ TRAFFIC, *In Plain Sight: Wildlife Trafficking in Nigeria's Air Cargo Sector* (TRAFFIC 2021) 12-15; United Nations Development Programme (UNDP), *The Illegal Wildlife Trade in Nigeria: A Rapid Assessment* (UNDP 2019) 20-25.

⁹ WildAid, 'Nigeria Steps Up Efforts to Combat Wildlife Trafficking' (WildAid, 15 March 2023) <https://wildaid.org/nigeria-steps-up-efforts-to-combat-wildlife-trafficking/> accessed 3 July 2025; Wildlife Conservation Society (WCS), 'WCS Nigeria Annual Report 2023' (WCS 2024) 8-10.

giving a critical look at both the successes and failures of the current system, and proposing legal and operational reforms to strengthen border management.

The study adopts a doctrinal and qualitative legal research approach, supported by policy and case-based analysis. It relies on primary legal instruments such as the Endangered Species Act, NESREA Act, Nigeria Customs Service Act, and related statutes, alongside secondary sources including scholarly works, enforcement reports, and policy documents.

2. Understanding Wildlife and Its Conservation Value

Wildlife refers to all undomesticated animals and plants found in their natural habitats. It includes a wide variety of species that do not depend on human cultivation or control, such as insects, flora, reptiles, amphibians, birds, and mammals. Particularly through ecotourism and traditional livelihoods, wildlife in Nigeria plays a vital role in maintaining ecological balance, cultural identity, and economic sustainability. But the growing demand for luxury ornaments, exotic pets, and ingredients for traditional medicines—many of which are obtained illegally has resulted in widespread wildlife trafficking and exploitation. In addition to being a conservation necessity, the Nigerian government and its institutions have a legal, socioeconomic, and moral duty to protect wildlife.¹⁰

3. Wildlife Trafficking in Nigeria

Nigeria's emergence as a global wildlife trafficking hub is not merely a matter of geography—it's a convergence of systemic vulnerabilities and strategic exploitation by organized criminal networks. The country's extensive transport infrastructure, including major seaports like Apapa and Tin Can Island, offers traffickers efficient exit routes for illicit shipments. These ports have been repeatedly linked to massive seizures of pangolin scales, ivory, and other wildlife products, often concealed in containers labeled as agricultural goods like cashew nuts.¹¹ In June 2020, a 9.5-tonne consignment of pangolin scales was intercepted at the Apapa Port, Lagos, one of the

¹⁰ Federal Ministry of Environment (Nigeria), *National Policy on Wildlife Conservation* (Federal Ministry of Environment 2018) 5-7.

¹¹ *Endangered Species (Control of International Trade and Traffic) Act* Cap E9 LFN 2004 (as amended by Endangered Species Amendment Act 2016).

largest seizures globally at the time. In 2021, Nigerian authorities seized over 7.1 tonnes of pangolin scales at the Tin Can Island Port. In 2022, the National Environmental Standards and Regulations Enforcement Agency (NESREA) and the Nigeria Customs Service intercepted illegally exported rosewood consignments in Kaduna and Lagos. In 2023, coordinated operations led to the arrest and prosecution of traffickers involved in ivory and pangolin scale exports concealed in shipping containers bound for Asia. Traffickers also take advantage of weak enforcement at land borders and airports, using Nigeria as a consolidation point for wildlife products sourced from neighboring countries such as Cameroon, Gabon, and the Democratic Republic of Congo.¹² The Environmental Investigation Agency (EIA) has documented how Lagos-based syndicates coordinate the packing, sale, and export of these products to buyers in Asia, particularly China and Vietnam.¹³ These cases illustrate both the scale of wildlife trafficking and the centrality of Nigeria's ports and borders to the global illegal wildlife trade.

The consequences of this illicit trade extend far beyond biodiversity loss. According to the United Nations Office on Drugs and Crime (UNODC), wildlife trafficking in Nigeria is deeply intertwined with corruption, money laundering, and other forms of transnational organized crime.¹⁴ The profits from these operations fuel criminal enterprises that destabilize governance and erode public trust in institutions. Moreover, the trade in live animals and animal parts poses serious public health risks, as it increases the likelihood of zoonotic disease transmission—an issue brought into sharp focus by the COVID-19 pandemic. In response, Nigeria has partnered with international bodies like UNODC and EIA to strengthen its legal and institutional frameworks, including the development of a National Strategy to Combat Wildlife and Forest Crime (2022–2026).¹⁵ However, enforcement gaps and low conviction rates remain persistent challenges, underscoring the need for sustained political will and cross-border cooperation.

¹² Ibid

¹³ Ibid

¹⁴ Environmental Investigation Agency, *Exposing the Hydra: The Growing Role of Nigerian Trafficking Networks in the Global Illegal Wildlife Trade* (2020) <<https://eia-international.org/report/exposing-the-hydra/>> accessed 3 July 2025.

¹⁵ United Nations Office on Drugs and Crime, *World Wildlife Crime Report 2020: Trafficking in Protected Species* (UNODC 2020) <https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Crime_Report_2020.pdf> accessed 3 July 2025.

4. Legal Framework for Combating Wildlife Trafficking

A. National Laws

Nigeria's domestic legal foundation for combating wildlife crime includes:

- i) **Endangered Species (Control of International Trade and Traffic) Act,¹⁶** – The Endangered Species (Control of International Trade and Traffic) Act, first enacted in 1985 and significantly amended in 2016,¹⁷ serves as Nigeria's primary law for protecting endangered wildlife from exploitation. This legislation was designed to fulfill Nigeria's obligations under international treaties like CITES, to which it is a signatory, by prohibiting the hunting, capture, possession, and trade of listed animal species. The Act categorizes species into two schedules: the First Schedule includes critically endangered species for which international trade is absolutely prohibited, while the Second Schedule lists species that can be traded only under strict licensing conditions to ensure their survival. Export or import of these species requires permits from the Minister of Environment, granted only if the trade is non-detrimental and live specimens are transported humanely.¹⁸

The 2016 amendment notably strengthened the Act by increasing penalties to serve as a stronger deterrent. Fines for First Schedule violations rose from ₦1,000 to ₦5 million, and for Second Schedule violations, from ₦500 to ₦1 million. Repeat offenders now face imprisonment without a fine, highlighting the gravity of wildlife crimes. The amendment also empowered courts to order the forfeiture of trafficked specimens and mandate the upkeep of live animals at the convict's expense. For international trafficking, the law allows for repatriation of specimens or their placement in rescue centers. Additionally, the Act grants the Minister authority to update species schedules based on conservation needs and prohibits destructive hunting methods like poisons or night hunting. Through detailed record-keeping and regulatory guidance, this Act provides a robust legal framework for wildlife conservation, underscoring

¹⁶ Endangered Species (Control of International Trade and Traffic) Act 1985 (as amended).

¹⁷ Ibid (Amendment) Act 2016.

¹⁸ Ibid 1985, ss 1-5.

Nigeria's commitment to safeguarding its biodiversity and participating in global anti-trafficking efforts.¹⁹

- ii) National Environmental (Protection of Endangered Species in International Trade) Regulations, 2011** - Nigeria's efforts to combat illegal wildlife trade are anchored by the National Environmental (Protection of Endangered Species in International Trade) Regulations, 2011. These regulations, enacted under the NESREA Act of 2007, essentially implement the global CITES convention, committing Nigeria to regulate trade in endangered species across its three Appendices. The law prohibits trade in these species but allows for strict permits in specific cases like scientific research, managed by NESREA. It also provides clear definitions for key terms and applies to both import and export. NESREA, in collaboration with other agencies, is empowered to investigate, seize illegal products, and impose penalties like fines, imprisonment, or asset forfeiture. While a strong framework, enforcement faces challenges from porous borders, corruption, and Nigeria's role as a major transit hub.²⁰ However, initiatives like the Nigeria Special Wildlife Office (NSWO) show a growing commitment, leading to significant seizures.²¹
- iii) Nigeria Customs Service Act²²** - The Nigeria Customs Service (NCS), empowered by its Act, acts as the primary defense, intercepting illegal goods, including wildlife products, at all entry and exit points. Customs officials have broad powers to seize prohibited items and conduct inspections, increasingly relying on intelligence and collaborations with international partners like the Wildlife Justice Commission to dismantle trafficking networks. This has led to

¹⁹ Ibid (Amendment) Act 2016, ss 1-10 (amending various sections including ss 8, 9, 10, 11, and introducing new provisions).

²⁰ National Environmental (Protection of Endangered Species in International Trade) Regulations 2011, regs 1-15; National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 (NESREA Act).

²¹ United Nations Office on Drugs and Crime (UNODC), 'Nigeria Special Wildlife Office' (UNODC) <https://www.unodc.org/nigeria/en/unodc_nigeria_special_wildlife_office.html> accessed 4 July 2025.

²² Act No. 35 of 2023

successful seizures of pangolin scales, elephant tusks, and live animals.²³ The Customs Act also outlines penalties for illegal import/export.²⁴

- iv) **Immigration Act²⁵** -The Immigration Act which repealed the previous Act from 1963 primarily controls the movement of people but indirectly supports wildlife trade enforcement.²⁶ Immigration officers are mandated to examine all individuals entering or leaving Nigeria, allowing them to search for prohibited items, including illegal wildlife products. They can also cross-reference passenger information with intelligence on known traffickers. While not directly addressing wildlife, provisions like those for "prohibited immigrants" can prevent individuals involved in wildlife crime from entering or transiting Nigeria. The Nigeria Immigration Service also collaborates with Customs and NESREA to share intelligence and conduct joint border operations, adding another layer of scrutiny against wildlife trafficking attempts.²⁷ In essence, these laws collectively form a multi-faceted legal framework designed to combat illegal wildlife trade in Nigeria, with ongoing efforts to strengthen inter-agency collaboration and enforcement capabilities despite persistent challenges.
- v) **The National Parks Act, 1994:** The core National Park Service Act was promulgated as Decree 46 of 1999, which later became an Act²⁸. This is the primary legal instrument under which the National Park Service and its unit parks are administered. It's important to note that the concept of national parks in Nigeria actually predates this Act. The very first national park, Kainji Lake, was established by Decree No. 46²⁹. Then, Decree 36 of 1991 led to the formal establishment of the National Parks Governing Board and five initial national parks. This Act designates specific areas as protected zones and restricts activities that could harm wildlife within these boundaries. While not

²³ Nigeria Customs Service Act 2023, ss 149-152; Wildlife Justice Commission, 'Nigeria's Role in Fighting Wildlife Crime' (Wildlife Justice Commission)< <https://wildlifejustice.org/our-work/nigeria/>>accessed 4 July 2025.

²⁴ Nigeria Customs Service Act 2023, ss 167-170

²⁵ Immigration Act 2015

²⁶ Immigration Act 2015, s 1

²⁷ Immigration Act 2015, ss 20-22.

²⁸ Act 46 (Cap 65 LFN 2004)

²⁹ 1979

exclusively focused on trafficking, it provides a legal basis for protecting wildlife habitats and the species within them, thereby indirectly regulating activities that could lead to illegal trade (e.g., poaching within a national park). So, while the concept and some initial parks date back to the late 1970s and early 1990s, the comprehensive National Park Service Act that governs the current system was established in 1999. It has since been subject to amendments, such as the National Park Service (Amendment) Act, 2006.³⁰

- vi) **Forestry Acts (Federal and State):** Forestry laws, at both federal and state levels, regulate the management and use of forest resources. While their primary focus is on timber and forest products, some provisions can indirectly apply to wildlife, particularly in terms of habitat protection and the regulation of hunting or collection of certain species within forest reserves. Illegal logging often goes hand-in-hand with poaching, and strong forestry laws can help curtail both.³¹
- vii) **The Criminal Code Act / Penal Code Act:** The Criminal Code Act, which applies to the Southern states of Nigeria, was originally enacted in 1916. Conversely, the Penal Code Act, applicable to the Northern states of Nigeria, came into effect in 1960. This Act, based on Islamic legal principles with adaptations, also outlines criminal offenses and their penalties. These general criminal laws of Nigeria contain provisions that can be applied to wildlife offenses, particularly those related to property. Sections within these codes might prohibit wilfully and unlawfully killing, maiming, or wounding animals "capable of being stolen," with varying penalties based on the perceived value of the animal. While not specifically designed for wildlife trafficking, they can serve as supplementary legal tools, especially in cases where specific wildlife laws might not fully cover an offense.³²

³⁰ National Park Service Act 1999 (Cap N65 LFN 2004); National Park Service (Amendment) Act 2006. Note: While the current governing Act is from 1999, the historical context of earlier decrees (e.g., Decree 46 of 1979, Decree 36 of 1991) is important for a full understanding of the legislative evolution.

³¹ See, for example, Forestry Act (Cap F16 LFN 2004) and various State Forestry Laws (e.g., Lagos State Forestry Law). Specific sections would depend on the particular law and its provisions regarding protected areas or species within forests.

³² Criminal Code Act (Cap C38 LFN 2004), ss 443-448 (general provisions on injury to animals); Penal Code Act (Cap P3 LFN 2004), ss 290-292 (provisions on mischief by killing or maiming

Despite these laws, enforcement has traditionally been hampered by outdated provisions, low penalties, and institutional overlap.

B. International Treaties

Nigeria's commitment to combating wildlife trafficking extends beyond its domestic laws to a crucial engagement with international treaties. These agreements provide a global framework for cooperation and shared responsibility, recognizing that wildlife crime is a transnational issue requiring coordinated efforts.

- i) **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).**³³ As a signatory, Nigeria has formally committed to regulating international trade in endangered species to ensure it does not threaten their survival. CITES operates through a system of Appendices (I, II, and III) that list species accorded different levels of protection, ranging from those facing immediate extinction (Appendix I, where commercial trade is generally prohibited) to those that require regulation to prevent unsustainable exploitation (Appendices II and III). Nigeria's domestic legislation, such as the National Environmental (Protection of Endangered Species in International Trade) Regulations, 2011, directly aims to implement these CITES obligations.³⁴ Despite its commitment, Nigeria has historically faced challenges in fully implementing CITES, having been identified as a country of "secondary concern" due to its role as a transit hub for illegal wildlife products like ivory and pangolin scales.³⁵ However, there has been a notable improvement in enforcement efforts in recent years, with increased seizures and prosecutions, reflecting a strengthened commitment to its CITES obligations.³⁶ The proposed Endangered Species Conservation and Protection Bill, 2024, further emphasizes this dedication by aligning Nigeria's legal

animals).

³³ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973.

³⁴ National Environmental (Protection of Endangered Species in International Trade) Regulations 2011.

³⁵ CITES Secretariat, *Report on National Ivory Action Plans and other enforcement matters* (SC70 Doc. 31.1, 2018) 5-7. Note: While specific "secondary concern" categorisations might vary over time in CITES reports, Nigeria has historically been identified for attention.

³⁶ TRAFFIC, *In Plain Sight: Wildlife Trafficking in Nigeria's Air Cargo Sector* (TRAFFIC 2021) 22-25; WildAid, 'Nigeria Steps Up Efforts to Combat Wildlife Trafficking' (WildAid, 15 March 2023) <<https://wildaid.org/nigeria-steps-up-efforts-to-combat-wildlife-trafficking/>> accessed 4 July 2025.

framework more closely with international treaty requirements and introducing more stringent penalties.

- ii) **African Convention on the Conservation of Nature and Natural Resources.**³⁷ This continent-wide agreement, originally signed in Algiers in 1968 and later revised in Maputo in 2003, is a comprehensive regional treaty on environmental and natural resource conservation. Nigeria's adherence to this convention signifies its commitment to a broader range of conservation measures across the African continent. The Convention obliges parties to adopt measures necessary for the conservation, utilization, and development of soil, water, flora, and faunal resources in accordance with scientific principles and the best interests of the people. While not solely focused on illegal trade, its provisions on the wise use and management of faunal resources, the establishment of protected areas, and the regulation of hunting methods, all contribute to preventing the overexploitation and illegal taking of wildlife that can fuel trafficking networks. It provides a regional framework for cooperation on shared conservation challenges.
- iii) **United Nations Convention Against Transnational Organized Crime (UNTOC)** is particularly crucial in the fight against sophisticated wildlife trafficking syndicates.³⁸ UNTOC is a global instrument designed to combat various forms of transnational organized crime, including those that affect the environment. While it doesn't specifically detail wildlife crime, its broad scope allows for the prosecution of organized criminal groups involved in illegal wildlife trade. By being a party to UNTOC, Nigeria commits to taking a series of measures against transnational organized crime, including the creation of domestic criminal offenses related to participation in organized criminal groups, money laundering, corruption, and obstruction of justice. These provisions are critical for dismantling the financial and logistical networks that facilitate wildlife trafficking. UNTOC also promotes international cooperation in investigations and prosecutions, enabling Nigeria to collaborate with other nations in tracking down and apprehending traffickers whose operations span multiple countries. The United Nations Office on Drugs and Crime (UNODC)

³⁷ African Convention on the Conservation of Nature and Natural Resources (Revised) 2003 (Maputo Convention); African Convention on the Conservation of Nature and Natural Resources 1968 (Algiers Convention).

³⁸ United Nations Convention Against Transnational Organized Crime (UNTOC) 2000..

actively supports Nigeria in strengthening its response to wildlife and forest crime, aligning with the objectives of UNTOC. This collaboration often involves capacity building for law enforcement, intelligence sharing, and addressing corruption that undermines enforcement efforts, directly leveraging the principles of UNTOC to combat wildlife crime more effectively.³⁹

These international agreements provide the legal scaffolding for cooperation, technical assistance, and harmonization of standards at border checkpoints.

5. Legal Border Management: Pillar of Enforcement

Border management encompasses the legal, procedural, and infrastructural systems designed to control the flow of people and goods across national boundaries. In the fight against wildlife trafficking, effective border management is crucial. This involves implementing robust risk profiling and advanced cargo screening at all ports, airports, and land borders to detect illicit wildlife products. It also necessitates clear chain of custody protocols to ensure evidence integrity, real-time intelligence-sharing among various enforcement agencies, and the availability of strong legal tools to prosecute offenders across different jurisdictions, thereby preventing the circumvention of laws.

5.1 Institutional Framework

Nigeria's institutional response to wildlife trafficking has seen significant reforms and enhanced collaboration:

- a) **Nigeria Customs Service (NCS):** The NCS has bolstered its enforcement capabilities by deploying advanced scanning technologies and adopting the Authorised Economic Operator (AEO) program, which streamlines legitimate trade while enhancing security.⁴⁰ In a targeted effort against

³⁹ United Nations Office on Drugs and Crime (UNODC), *World Wildlife Crime Report: Trafficking in Protected Species 2020* (UNODC 2020) 109-112; United Nations Office on Drugs and Crime (UNODC), 'Wildlife and Forest Crime' (UNODC) <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/index.html> accessed 4 July 2025..

⁴⁰ World Customs Organization (WCO), 'Nigeria goes live with its Authorized Economic Operator (AEO) Programme to Fast-Track Trade' (WCO, 24 February 2025) <https://www.wcoomd.org/en/media/newsroom/2025/february/nigeria-goes-live-with-its-authorized-economic-operator-aeo-programme-to-fast-track-trade.aspx> accessed 4 July 2025.

wildlife crime, the NCS, in partnership with the Wildlife Justice Commission, launched specialized units in 2021 dedicated to combating this illicit trade.⁴¹

- b) **Nigeria Immigration Service (NIS):** The NIS plays a vital role in identifying suspected traffickers and controlling undocumented migration, which is often exploited by illegal trade routes to move wildlife contraband and associated individuals across borders.⁴²
- c) **Nigeria Financial Intelligence Unit (NFIU):** The NFIU is instrumental in facilitating the financial tracking of proceeds derived from wildlife trafficking. This is particularly critical in cases where these illicit funds are linked to or used in terrorism financing, allowing for the disruption of financial networks supporting both criminal activities.⁴³
- d) **Judicial and Prosecutorial Support:** Significant efforts are underway to strengthen the judicial arm of enforcement. Through collaborations with organizations like the Wildlife Justice Commission and UNODC, judicial officers are receiving specialized training in environmental crime prosecution.⁴⁴ Furthermore, the establishment of a dedicated Wildlife Crime

⁴¹ Wildlife Justice Commission, 'Nigeria Archives' (Wildlife Justice Commission) <https://wildlifejustice.org/tag/nigeria/> accessed 4 July 2025; Focused Conservation, 'NIGERIA SPECIAL WILDLIFE OFFICE' (Focused Conservation) <https://focusedconservation.org/nigeria-special-wildlife-office/> accessed 4 July 2025; Nigeria Customs Service, 'Press Release – Page 3' (Nigeria Customs Service, 3 August 2022) <https://customs.gov.ng/?paged=3&cat=24> accessed 4 July 2025.

⁴² Environmental Investigation Agency and Africa Nature Investors, *Combating Wildlife Crime in Nigeria: An Analysis of the Criminal Justice Legislative Framework* (EIA & ANI 2021) 15; CITES Secretariat, 'PROGRESS REPORT ON NIGERIA NATIONAL IVORY ACTION PLAN' (CITES Secretariat, November 2024) 7-8.

⁴³ Nigerian Financial Intelligence Unit (NFIU), 'Who We Are & What We Do' (NFIU) <https://www.nfiu.gov.ng/> accessed 4 July 2025; Wilson Center, 'Disrupting Terrorist Financing Networks in Nigeria: The Importance of Financial Intelligence in Addressing Non-Traditional Threats' (Wilson Center, 19 March 2025) <https://www.wilsoncenter.org/blog-post/disrupting-terrorist-financing-networks-nigeria-importance-financial-intelligence> accessed 4 July 2025.

⁴⁴ Wildlife Justice Commission, 'Strengthening the global criminal justice response to environmental crime: The Wildlife Justice Commission at the 34th Session of the CCPCJ' (Wildlife Justice Commission, 27 May 2025) <https://wildlifejustice.org/strengthening-the-global-criminal-justice-response-to-environmental-crime-the-wildlife-justice-commission-at-the-34th-session-of-the-ccpcj/> accessed 4 July 2025; United Nations Office on Drugs and Crime (UNODC), 'Annual Report 2024 | UNODC Global Programme on Crimes that Affect the Environment' (UNODC 2025) 44-45.

Desk within the Federal Ministry of Justice aims to streamline and enhance the prosecution of wildlife-related offenses.⁴⁵

6. Legal Border Enforcement Challenges In Nigeria's Fight Against Wildlife Trafficking

- a) Nigeria's strategic location and vast landmass make it a critical player in the global wildlife trafficking supply chain. However, the country's efforts to curb this illicit trade are hampered by a complex web of legal and institutional challenges that undermine border enforcement and allow trafficking syndicates to thrive.
- b) One of the most pressing issues is the porosity of Nigeria's borders, which span over 4,000 kilometers and connect with Niger, Chad, Cameroon, and Benin. Many of these border points are either unmanned or poorly monitored, creating easy passageways for traffickers to move endangered species and wildlife products in and out of the country. The lack of physical infrastructure and surveillance technology at these borders further compounds the problem, making detection and interception extremely difficult.
- c) Compounding this vulnerability is institutional corruption and administrative weakness. Officials stationed at checkpoints are frequently exposed to bribery, coercion, and intimidation by organized trafficking networks. Investigations by the Environmental Investigation Agency (EIA) and UNODC have revealed that traffickers often rely on informal payments to bypass inspections, and that enforcement officers rarely face consequences for complicity. This culture of impunity erodes public trust and weakens the rule of law, allowing trafficking operations to flourish unchecked.
- d) Despite legislative reforms, including the 2016 amendment to the Endangered Species Act, penalties for wildlife crimes remain inadequate. Fines and custodial sentences are disproportionately low compared to the market value of trafficked goods such as pangolin scales and elephant ivory, which can fetch millions of dollars on the black market. This disparity fails

⁴⁵ United Nations Office on Drugs and Crime (UNODC), 'ANALYTIC TOOLKIT' (UNODC) https://www.unodc.org/conig/uploads/documents/NIGERIAN_ICCWC_TOOLKIT_REPORT_JUN_18.pdf accessed 4 July 2025, 13; CITES Secretariat (n 3) 9.

to deter offenders and signals a lack of seriousness in prosecuting environmental crimes.

- e) Another critical barrier is poor inter-agency coordination. Nigeria's border enforcement landscape is fragmented, with overlapping mandates among the Nigeria Customs Service, Immigration Service, Police, NESREA, and other environmental authorities. This lack of synergy leads to jurisdictional confusion, delayed responses, and diluted accountability. While efforts are underway to improve collaboration—such as the development of a National Strategy to Combat Wildlife and Forest Crime—implementation remains uneven and slow.
- f) Finally, low public awareness in border communities exacerbates the problem. Many residents unknowingly participate in wildlife trade due to economic desperation or cultural norms. Misconceptions about extinction and zoonotic diseases are widespread, and conservation laws are poorly understood⁹. Without targeted education and community engagement, these populations remain vulnerable to exploitation by trafficking syndicates.

7. Conclusion

This paper has demonstrated that weak penalty regimes, overlapping institutional mandates, limited inter-agency coordination, and inadequate enforcement capacity collectively undermine the effectiveness of Nigeria's legal border management system. Combating wildlife trafficking is not merely an environmental concern—it is a test of Nigeria's legal resolve, institutional coordination, and commitment to global justice.

To address these challenges, the paper recommends as follows:

1. Pass a stringent/strong Wildlife Crime Law That Bites: Fast-track the passage of the Endangered Species Conservation and Protection Bill, 2024, and ensure it includes clear penalties that truly hurt—minimum prison terms, no option of fines for repeat offenders, and automatic seizure of assets and vehicles used in trafficking. Direct DPP offices to prioritize wildlife cases and treat them like serious economic crimes.

2. Deploy Real Equipment, Not Just Policies, at Borders: Invest in practical, low-maintenance surveillance tools like solar-powered CCTV cameras, sniffer dogs, and mobile scanners at key land borders like Seme, Jibia, and Mfum. Equip Customs and Immigration officers with wildlife identification kits and standard procedures for detaining suspects and preserving evidence.
3. Make One Agency Clearly in Charge and Hold Them Accountable: Assign lead coordination to one agency (e.g., NESREA or Customs) with a legal mandate to take control during wildlife-related interceptions. Require monthly joint patrols and cross-checks involving Customs, Police, NESREA, and Immigration, with shared reports submitted to the Ministry of Environment and copied to anti-corruption agencies.
4. Deal with Corruption at Checkpoints Head-On: Set up a dedicated Border Enforcement Complaints and Monitoring Unit within ICPC or EFCC to track reports of bribery at border posts. Use anonymous hotlines and community whistleblowers, with immediate follow-up action and public naming of officers caught facilitating wildlife crime. Reward honest officers with recognition and incentives.
5. Talk to the Communities and Give Them Something Better: Launch wildlife awareness campaigns in local languages, using radio, market outreach, and churches/mosques. Train selected youth and hunters in border communities as "Community Wildlife Monitors" and give them stipends or alternative income projects (e.g., poultry farming, eco-tourism roles). This gives them a reason to protect rather than poach.
6. In addition, judicial sentencing guidelines for wildlife crimes should be developed to promote consistency and deterrence.

Ultimately, effective legal border management must be repositioned as a central pillar of Nigeria's wildlife crime control strategy. An integrated, legally grounded, and operationally enforceable border governance framework is indispensable to dismantling transnational wildlife trafficking networks and safeguarding Nigeria's biodiversity for future generations.

MANAGING CONFLICT OF INTERESTS AS A JUDGE: A PATHWAY TO AVOIDING CORRUPTION

BY

Oluwakemi Adenike Aro

Abstract

Conflict of interest is among the most significant concerns facing the contemporary judiciary, particularly within jurisdictions such as Nigeria where public confidence in the administration of justice remains fragile. Although the existence of a conflict of interest does not in itself amount to corruption. This paper addresses the research problem of the persistent gap between established ethical standards governing judicial conduct and their practical implementation within the Nigerian judicial system. The aim of the study is to critically examine conflict of interest in the judiciary as a preventive framework for safeguarding judicial integrity and mitigating corruption risks. Its objectives are to conceptualize conflict of interest in the judicial context; analyse the legal and ethical frameworks regulating judicial conduct in Nigeria; examine judicial decisions and disciplinary proceedings in which conflicts of interest arose; and assess practical approaches to managing such conflicts. The research adopts a doctrinal methodology, relying on statutes, judicial decisions, disciplinary reports of the National Judicial Council, scholarly literature, and international ethical instruments, particularly the Bangalore Principles of Judicial Conduct. The paper finds that conflicts of interest commonly arise from undisclosed personal, financial, and professional relationships, and that even the appearance of bias is sufficient to undermine judicial legitimacy. The paper recommends enhanced judicial ethics education, institutionalized disclosure frameworks, clearer recusal guidelines, and strengthened advisory mechanisms to promote transparency, accountability, and public confidence in the judiciary.

Keywords: Conflict of Interest, Corruption, Judges and Ethics

1.1 Introduction

With judicial power comes a heavy burden of responsibility, and that is the obligation to resolve disputes fairly and impartially. The judge's obligation to neutrality will be tested at all times because of human relationships and personal interest, as well as external pressures from society. One of the most subtle and great threats to judicial integrity is a conflict of interest. A conflict of interest arises when a judge's personal interest, whether real or perceived, might improperly motivate them in exercising their judicial function.¹ A conflict of interest does not mean that there has been corruption, but it creates an environment for suspicion, bias, and ultimately unethical behavior to take hold. If judges do not learn how to recognize and manage conflicts of interest, then their personal interests could disadvantage not just a particular case, but damage the public trust in the administration of justice, or worse, lower the public's trust in the justice system as a whole.²

This paper seeks to look at the concept of conflict of interest in the judiciary, what the legal and ethical limitations are, the practical application of conflicts of interest for judges, and how the effective management of conflict is both an important step before actual corruption and a trust-building exercise that can help restore institutional integrity. Even in countries where judicial accountability was focused on the outcome in the courtroom, in recent years it has moved to include elements of fairness, transparency, and ethical consistency³. The public is no longer interested in a legally sound judgment that is ethically contaminated. A judge may make a technically correct judgment, but if that judgment has arrived from an unmanageable conflict of interest that was not disclosed or dealt with, the judgment will be questioned in terms of its legitimacy.⁴

This issue is particularly sensitive in places where there are already concerns about judicial compromise or elite influence. Additionally, the modern judiciary involves more professional interaction, greater access to financial resources, and a more

¹ United Nations, *Bangalore Principles of Judicial Conduct* (2002) Value 2 (Impartiality).

² N Dika, 'Judicial Ethics and the Problem of Conflict of Interest' (2016) 7 *Nigerian Judicial Review* 45, 48.

³ R Olanipekun SAN, 'Judicial Accountability and the Rule of Law in Democratic Societies' (2014) *NALT Journal of Law* 1, 6.

⁴ *Dimes v Proprietors of the Grand Junction Canal* (1852) 3 HL Cas 759.

interconnected society. These factors increase the likelihood of conflicts of interest. The division between public and private interest continues to fade. Therefore, judges must not only be vigilant but also develop habits of ethical self-reflection as this is central to the integrity of judicial service and a crucial safeguard against the harmful impact of corruption.⁵

1.2 Understanding Conflict of Interest in The Judicial Context

A conflict of interest in the judicial context refers to a situation where a judge's personal interest, whether financial, relational, ideological, or otherwise, could reasonably influence their ability to perform their duties impartially. The main issue is not just whether bias exists, but whether the situation creates a genuine concern that the judge may not act completely objectively. In law, appearances can be as harmful as reality. As Lord Hewart famously said, "Justice must not only be done but must also be seen to be done."⁶

In practice, conflicts of interest may take many forms. If a judge is hearing a case involving a company in which he owns a share, or where a close relative is a director, he clearly has a conflict of interest because of his financial interest. A judge hearing a case involving a former client, political colleague, or political opponent certainly raises valid questions about bias. Non-financial interests, such as prior public comment about an issue at the centre of the dispute, may damage the appearance of neutrality. Conflicts may also be categorized as real, which means the interest is direct and ongoing; potential, where a conflict may arise based on forthcoming events; or perceived, where a reasonable bystander might suspect bias without there being any actual interest involved. Not every connection or acquaintance leads to a conflict of interest that results in disqualification. The fundamental problem to be solved is, "Could my interest reasonably influence my ability to act fairly? This question requires a great deal of self-reflection, and an acknowledgement that even unconscious or unintentional bias may infect the judicial process.

⁵ United Nations Office on Drugs and Crime, *Judicial Integrity: A Toolkit* (UNODC 2018) 21- 23.

⁶ *R v. Sussex Justices, ex parte McCarthy* [1924] 1 KB 256 at 259 (per Lord Hewart CJ)

In a country like Nigeria, where there are so many distinct cultures coexisting, and many personal linkages, conflict of interest may be more difficult to manage in more social regions where personal and professional relationships can be closely linked. The task is not just to identify the conflicts but also to address them with openness and integrity. A judge's ability to recognize a conflict is influenced by their ethical training, the culture of their institution, and their previous experiences with ethical dilemmas. In places where judicial ethics are seen as a vital part of judicial life, judges are more likely to openly share relationships or interests that might raise concerns. In other settings, fear of criticism or misunderstanding can lead to silence, secrecy, or poor choices. It is essential to foster a professional environment where recognizing and addressing conflicts of interest is viewed not as a weakness, but as an ethical strength and a commitment to judicial honor.

1.3 Legal and Ethical Framework

The authority of the judiciary relies not just on constitutional or statutory power but also on public trust in judges' fairness, neutrality, and moral integrity. To protect these values, judicial conduct is governed by a system of legal and ethical standards that clearly outline obligations to avoid and manage conflicts of interest. These standards are crucial to ensure judges do not let personal interests or connections affect, or seem to affect, their court decisions.

In Nigeria, the main guide on judicial ethics is the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, 2016. This Code outlines principles of propriety, integrity, and impartiality. Paragraph 1 states that a judicial officer "must avoid impropriety and the appearance of impropriety in all his activities." It also requires a judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned."¹⁷ Similarly, the Fifth Schedule of the Constitution forbids public officers, including judges, from situations where personal interests conflict with their official duties.⁸ These rules reflect a constitutional and ethical duty to maintain the integrity of the judicial process.

On a global level, the Bangalore Principles of Judicial Conduct (2002) have become a standard for best practices. Approved by the United Nations and widely

⁷ Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (2016), para. 1.2.

⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), Fifth Schedule, Part I, para. 1.

accepted in Commonwealth and civil law jurisdictions, these principles outline six key judicial values: independence, impartiality, integrity, propriety, equality, and competence. The Principle of Impartiality specifically requires judges to ensure they are impartial and that "they appear to a reasonable observer to be impartial."⁹ The Bangalore Principles also state that a judge must disqualify themselves from any proceedings where their participation would be improper, including cases involving close personal relationships or financial interests.¹⁰

Other jurisdictions show similar commitments. In the United Kingdom, the Guide to Judicial Conduct emphasizes that even social relationships may require recusal if they could create an appearance of bias.¹¹ In the United States, Canon 3C(1) of the Code of Conduct for United States Judges mandates judges to step aside if their impartiality might reasonably be questioned, including situations involving financial interests, family members, or prior involvement in the case as a lawyer.¹² While legal traditions may vary, the core message remains the same: the integrity of the judicial process depends on the ethical standards of its judges.

In addition to written codes, many jurisdictions now promote forming internal Judicial Ethics Committees or peer-review systems to help judges deal with challenging ethical issues. The goal is not to discipline but to assist judges in maintaining the dignity of their role while managing real-life complexities. In this way, ethics frameworks are not merely static rules; they are dynamic tools that help judges balance the competing demands of law, public duty, and personal circumstances.

1.4 The Consequences of Conflict of Interest

Unmanaged conflicts of interest pose a serious threat to judicial fairness and the legitimacy of institutions.¹³ When judges do not recuse themselves or fail to disclose situations that might reasonably suggest bias, it raises doubts about the integrity of their decisions. This also impacts the credibility of the judiciary as a

⁹ Bangalore Principles of Judicial Conduct (2002), Value 2: Impartiality.

¹⁰ Ibid., para. 2.5.

¹¹ Guide to Judicial Conduct, United Kingdom Judiciary, (Revised Edition, 2020), p. 9.

¹² Code of Conduct for United States Judges, Canon 3C(1).

¹³ Green, Bruce A. "Conflicts of Interest in Litigation: The Judicial Role." *Fordham L. Rev.* 65 (1996): 71.

whole. The risk involves not just the results of individual cases but also public trust in the justice system itself. In a democratic society governed by the rule of law, this trust is vital.

One major effect is the loss of impartiality. Even if a judge tries to remain objective, not managing or disclosing a personal connection can create the appearance of bias. This perception can undermine the fairness of legal proceedings. In *Metropolitan Properties v. Lannon*, Lord Denning stated that "justice is rooted in confidence," and if people think, "The judge was biased," the case must be retried.¹⁴ It is therefore not enough for justice to occur; it must also be seen to be occurring. Conflicts that are not addressed increase the risk of ethical lapses and corruption. A judge who continues to hear cases where they have a personal stake may start to see such behavior as normal. This can lead to a broader disregard for ethical rules. It may allow for undue influence, favoritism, or even clear bribery, especially in politically sensitive or high-stakes cases. The boundary between ethical failure and corruption is often unclear, and unmanaged conflicts of interest can link the two.

The Nigerian judiciary has faced similar risks. In various disciplinary actions taken by the National Judicial Council (NJC), judges have been penalized or recommended for removal due to allegations of undisclosed conflicts. In *Re: Justice Kabiru Auta*, for example, the NJC recommended the judge's dismissal after finding that he had close financial ties to litigants and lawyers appearing before him, which cast serious doubt on his impartiality.¹⁵ In a similar case, *Re: Justice Theresa Uzokwe*, the judge was accused of interfering in cases and showing favoritism to associates, actions based on personal loyalties instead of judicial fairness.¹⁶ These instances show how unchecked conflict of interest can weaken the moral and legal foundations of judicial authority.

¹⁴ *Metropolitan Properties Co (FGC) Ltd v. Lannon* [1969] 1 QB 577 at 599 (per Lord Denning MR).

¹⁵ National Judicial Council, *NJC Recommends Compulsory Retirement of Hon. Justice Kabiru Auta of the High Court of Justice, Kano State*, Press Release (September 2016).

¹⁶ National Judicial Council, *Report on the Investigation of Hon. Justice Theresa Uzokwe*, NJC Disciplinary Bulletin (2018).

Beyond individual wrongdoing, a pattern of poorly managed conflicts can harm the reputation of the entire system. When the public believes that judges routinely favor parties for personal or political reasons, the justice system may seem compromised. This is particularly dangerous in transitional democracies like Nigeria, where the judiciary is essential for resolving electoral disputes and protecting civil rights. A compromised judiciary can undermine democratic growth and weaken the rule of law. In the end, failing to manage conflicts of interest does more than affect the individual judge. It poses a threat to the legitimacy of the courts, diminishes citizens' power, and fosters a culture of impunity. The solution is not to ignore these conflicts but to recognize, disclose, and confront them with honesty and ethical standards

1.4a Case Law Analysis: Conflict of Interest in the Nigerian Judiciary

Nigerian courts and judicial oversight bodies have, over time, confronted situations in which allegations of conflict of interest threatened the integrity of judicial proceedings. These cases demonstrate that Nigerian law places significant emphasis not only on actual bias but also on the appearance of bias, in line with constitutional and ethical standards.

One of the earliest judicial authorities on bias and conflict of interest in Nigeria is *R v Sussex Justices, ex parte McCarthy*, which, although an English decision, has been consistently adopted by Nigerian courts.¹⁷ The principle that "justice must not only be done but must be seen to be done" has become foundational in Nigerian jurisprudence on judicial impartiality. Nigerian courts have relied on this principle to emphasize that even perceived conflicts of interest are sufficient to vitiate judicial proceedings where a reasonable observer may suspect bias.

In *Deduwa v Okorodudu*, the Supreme Court of Nigeria examined allegations of bias arising from a judge's conduct and relationship with parties before the court.¹⁸ The Court held that the test is not whether the judge was actually biased, but whether the circumstances gave rise to a reasonable suspicion of bias in the mind of a fair-minded observer. The decision reinforced the idea that conflict of interest can

¹⁷ *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256

¹⁸ *Deduwa v Okorodudu* (1976) 9- 10 SC 329.

arise even without proof of corruption or improper motive, and that the legitimacy of the judicial process depends heavily on public perception.

Similarly, in *Kenon v Tekam*, the Supreme Court considered whether a trial judge's prior involvement in related proceedings could amount to bias.¹⁹ The Court emphasized that where a judge has personal knowledge of disputed facts or prior involvement that may influence their decision, recusal is the appropriate course of action. This case illustrates how Nigerian courts resolve conflicts of interest by prioritizing judicial withdrawal over risking the integrity of the proceedings.

Another important case is *Abiola v Federal Republic of Nigeria*, where allegations were raised regarding political pressure and perceived partiality in the handling of sensitive national matters.²⁰ Although the court did not find conclusive evidence of actual bias, it acknowledged the importance of safeguarding judicial independence and public confidence, especially in politically charged cases. The case demonstrates the judiciary's awareness that conflicts of interest may arise not only from personal gain but also from political affiliations or pressures.

Beyond courtroom decisions, the National Judicial Council (NJC) has played a central role in resolving conflicts of interest involving judges. In *Re: Justice Kabiru Auta*, the NJC recommended the compulsory retirement of the judge following findings that he maintained improper financial and personal relationships with litigants and legal practitioners appearing before him.²¹ The NJC concluded that such relationships created a clear conflict of interest that undermined public confidence in the judiciary, even if no direct bribery was proven.

Likewise, in *Re: Justice Rita Ofili-Ajumogobia*, allegations included abuse of office, improper association with litigants, and failure to maintain judicial impartiality.²² Although the matter also involved criminal proceedings, the NJC's disciplinary intervention highlighted that ethical violations rooted in conflict of

¹⁹ *Kenon v Tekam* (2001) 14 NWLR (Pt 732) 12

²⁰ *Abiola v Federal Republic of Nigeria* (1995) 7 NWLR (Pt 405) 1.

²¹ National Judicial Council, *Report of the Investigation Panel on Justice Kabiru Auta* (NJC, 2011).

²² National Judicial Council, *Decision on the Disciplinary Proceedings against Hon. Justice Rita Ofili-Ajumogobia* (NJC, 2018).

interest are sufficient grounds for sanctions independent of criminal liability. This reinforces the principle that judicial ethics operate on a higher threshold than mere legality. These cases reveal a consistent approach in Nigeria: conflict of interest is treated as a serious ethical breach capable of invalidating proceedings or ending judicial careers. Resolution mechanisms range from judicial recusal and appellate reversal of tainted decisions to disciplinary sanctions by the NJC. Collectively, they underscore the Nigerian judiciary's growing recognition that transparency, disclosure, and ethical restraint are indispensable to judicial legitimacy.

1.5 Challenges in Addressing Conflicts of Interests

Along with being time-consuming, identifying and resolving tensions for interest can be quite the challenges. In all manner of life, people face problems which require them to be fair. Life as a judge offers numerous relationships which could be considered a conflict of interest. In relation to judging, there could be several situational issues that come into play. It could be due to a long history in business relating to that divorce, or an old financial connection with the litigant like stock ownership.

Truly challenging elements of judging stems from the misrepresentation when others tell lawyers their judgment is wrong. People who make up a judge's family expect them to be impartial, but those asses get involved in business in the hope of gaining an easy advantage. Even evaluators are at their most vulnerable situation as they assess their evaluation questionnaires. A judge and the people around him like to believe that publicity indeed won't matter, but indeed won't for much of the public that matter. As noted in Nigerian and foreign law, the key is not how the judge personally views the situation but whether it raises concerns about bias for a reasonable observer.²³ This objective standard can be hard to apply fairly, especially when there is a lack of transparency and accountability.

Judges also face practical and institutional pressures. In many areas, particularly those with busy court schedules and few judges, choosing to recuse oneself is not always straightforward. A judge who steps aside from a political or high-profile

²³ *Dimeji Olatunbosun v. FRN* (2021) LPELR-52903(CA), per Lokulo-Sodipe, JCA; see also *Ebunoluwa v. State* (2017) 13 NWLR (Pt. 1583) 390.

case might be seen as dodging responsibility or giving in to outside pressure. This creates a conflict between the obligation to remain impartial and the need to hear cases. As Justice Tobi once pointed out, "A Judge ought not be quick to recuse himself, but neither should he stay on a case where his remaining on imperils the credibility of the court."²⁴

Additionally, worries about how actions might be perceived can prevent judges from disclosing conflicts early on. Judges may fear that revealing a personal relationship, no matter how minor, could be used against them by litigants or attorneys to challenge their impartiality or disrupt the case. This concern is particularly acute in adversarial systems where parties might try to use allegations of bias for tactical gain. As a result, judges may underreport or delay sharing relevant information in an attempt to keep control of the proceedings, which ironically erodes public trust.

In transitional legal systems where judicial ethics are still being developed, these challenges become harder due to a lack of institutional support. Not all jurisdictions have effective advisory committees on judicial ethics, peer review processes, or established procedures for recusal. In these situations, judges often must navigate ethical dilemmas without enough guidance. This leads to inconsistencies in ethical standards and confusion over what behavior is acceptable. Ultimately, the challenges judges face are both structural and personal. They highlight the fact that judges, despite their authority, are human beings living within social, cultural, and professional networks. The goal is not perfection but rather sensitivity and openness to reflect on one's own circumstances with humility and to lean toward transparency when questions arise.

1.6 Practical Strategies for Managing Conflicts of Interest

Managing conflict of interest effectively requires more than familiarity with ethical rules; it demands ethical courage, self-awareness, and institutional support. Judges operate in environments where the boundaries between public and private life often blur, and social or political pressures may complicate decision-making. Any

²⁴ *Aondoakaa v. A-G Federation* (2013) 2 NWLR (Pt. 1338) 409 at 442, per Tobi, JSC (as he then was).

practical strategy for addressing conflict of interest must therefore be context-sensitive and responsive to judicial realities.²⁵

The first and most dependable strategy is early identification. Judges must routinely reflect on whether any personal interest direct or indirect exists in relation to the parties, counsel, subject matter, or potential outcome of a case. This obligation extends beyond financial interests. In Nigeria and similar plural societies, community ties, ethnic affiliations, and prior professional relationships may reasonably raise concerns about impartiality.²⁶ Many conflicts arise not from deliberate misconduct but from a failure to pause and assess ethical implications at the outset.

When doubt exists, the most important step is voluntary disclosure. A judge who identifies a potential conflict should disclose it promptly, either in open court or through appropriate administrative channels. Disclosure promotes transparency and allows parties to make informed representations.²⁷ While disclosure does not automatically require recusal, it enhances confidence in the adjudicatory process.

Recusal remains the ultimate safeguard but it should be used carefully. Judges should avoid unnecessary withdrawal prompted by tactical maneuvers of litigants. However, where a conflict is objective and substantial such as close family ties or personal litigation involving a party recusal is mandatory.²⁸ Stating reasons for recusal contributes to institutional clarity and accountability.

Keeping a personal conflict log or diary can also be useful. Although not legally mandated, such records are particularly useful for judges transitioning from legal practice or administrative service.²⁹ In uncertain situations, judges should talk to

²⁵ Bangalore Principles of Judicial Conduct (2002) value 2; see also UNODC, *Commentary on the Bangalore Principles of Judicial Conduct* (UNODC 2007).

²⁶ Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (2016) para 3; *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256

²⁷ UNODC (n 1) 58- 60; National Judicial Council, *Revised Code of Conduct for Judicial Officers* (2016).

²⁸ *Dimes v Grand Junction Canal* (1852) 3 HL Cas 759; *Ereke v Ereke* (2009) 16 NWLR (Pt 1169)399.

²⁹ Cynthia Gray, *Judicial Disqualification: An Analysis of Federal Law* (Federal Judicial Center 2010).

trusted peers or refer to judicial ethics advisory committee if available. Informal consultation mechanisms have been recognized as preventive tools in several jurisdictions.³⁰ Lastly, judges should develop a habit of ethical mindfulness, a sustained awareness of how their conduct may be perceived by litigants and the public. Ethical vigilance should be a habitual aspect of judicial character rather than a reactive response to crisis³¹.

These strategies reflect the practical realities of judicial service in complex and high-pressure environments. When consistently applied, they protect both individual judicial integrity and the credibility of the courts.

1.7 Conclusion

Judicial integrity does not rest solely on knowledge of the law or procedural accuracy, but on the ability to remain above personal interest in the discharge of public duty. Conflict of interest, if ignored, becomes the gateway to corruption and ethical compromise. But when identified early and managed transparently, it becomes an opportunity for the judge to demonstrate accountability, fairness, and respect for the rule of law. In this way, managing conflict of interest is not only a preventive tool against corruption, it is a reaffirmation of the moral authority on which the judiciary ultimately rests.

1.8 Recommendations Based on Research Findings and Observations

This research has demonstrated that conflict of interest remains one of the most persistent threats to judicial integrity in Nigeria, not necessarily because judges are deliberately corrupt, but because conflicts are often poorly identified, inadequately disclosed, or improperly managed. The Nigerian case law and disciplinary interventions examined in this paper reveal recurring patterns that must inform any meaningful reform.

³⁰ UNODC (n 1) 82; International Commission of Jurists, *Judicial Ethics in the 21st Century* (ICJ 2012).

³¹ Bangalore Principles (n 1) values 1 and 2.

First, the analysis of cases such as *Deduwa v Okorodudu* and *Kenon v Tekam* shows that Nigerian courts consistently apply an objective test based on reasonable apprehension of bias rather than proof of actual corruption. This observation suggests that judicial education should move beyond emphasizing technical legality and focus more on perception-based ethics. It is therefore recommended that continuous judicial training programs, particularly those organized by the National Judicial Institute, place greater emphasis on practical ethical scenarios involving perceived conflicts of interest. This would better equip judges to apply the "reasonable observer" test in real life situations before ethical breaches occur.

Findings from NJC disciplinary cases, including *Re: Justice Kabiru Auta* and *Re: Justice Rita Ofili-Ajumogobia*, indicate that many ethical violations stem from undisclosed personal, financial, or professional relationships. This highlights a systemic weakness in early disclosure mechanisms. To address this, it is recommended that a structured and confidential disclosure framework be institutionalized within the judiciary. Judges should be encouraged, and where necessary required, to disclose potential conflicts at the earliest stage of proceedings. Such disclosures should be treated as protective measures rather than admissions of wrongdoing, thereby reducing fear of reputational damage and promoting transparency.

The research also observed that fear of strategic abuse of recusal applications by litigants often discourages judges from stepping aside, even where a genuine conflict exists. This tension between judicial duty and ethical caution suggests the need for clearer institutional support for recusal decisions. It is recommended that the judiciary develop formal guidelines clarifying when recusal is mandatory, discretionary, or unnecessary. Clear documentation of recusal decisions would also help prevent misinterpretation and reinforce consistency across courts.

The study also revealed that institutional pressures such as heavy caseloads, limited judicial manpower, and public scrutiny contribute significantly to ethical hesitation. In response, it is recommended that judicial ethics advisory committees be strengthened or formally established to provide confidential guidance to judges facing difficult ethical dilemmas. Such bodies would offer preventive support

rather than punitive oversight, encouraging judges to seek advice without fear of sanction.

The research highlights the importance of ethical culture in shaping judicial behavior. Many of the challenges identified are rooted in informal norms rather than the absence of rules. Accordingly, it is recommended that judicial ethics be framed not merely as compliance with codes but as an essential component of judicial identity. Mentorship programs, peer discussions, and ethics-focused retreats can help reinforce ethical mindfulness and normalize open conversations about conflict of interest.

Finally, this paper's observations confirm that public confidence in the judiciary is deeply influenced by how conflicts of interest are managed. Even legally sound judgments may lose legitimacy if ethical concerns are ignored. It is therefore recommended that judgments involving recusal or ethical disclosure briefly acknowledge such issues on record where appropriate. This modest transparency can significantly enhance public trust by demonstrating that ethical personal, financial, or professional relationships, and that even the perception of bias is sufficient to undermine judicial legitimacy. The study further finds that weak disclosure practices, institutional pressures, and fear of reputational damage contribute significantly to poor conflict management. The paper recommends strengthened judicial ethics training, structured disclosure mechanisms, clearer recusal guidelines, and enhanced institutional support systems to promote transparency, accountability, and public confidence in the judiciary.

AN EXPOSITION OF THE PRINCIPLE OF THIRD-PARTY FUNDING IN ARBITRATION IN NIGERIA

BY

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ABSTRACT

Third-Party Funding (TPF), also known as legal financing or litigation financing, is a widespread practice, especially in Common Law countries, even though its origin is traced back to the ancient Roman and Greek civilization. This paper explores the principle of Third- Party Funding (TPF) in arbitration in Nigeria. Historically, TPF was not practicable in Nigerian courts due to lack of legal backing, often associated with Maintenance and Champerty. However, the Arbitration and Mediation Act (AMA) 2023 has introduced TPF in arbitration, thereby abolishing the torts of Maintenance and Champerty. The paper examines the history, definition and objectives of TPF, highlighting its significance in promoting access to justice. It reviews TPF practices in the United Kingdom (UK), Singapore and South Africa and provides recommendations for improving TPF in Nigeria, including establishing a robust regulatory framework and promoting awareness. The paper adopts the doctrinal research, relying on existing literature and laws (like the Arbitration and Mediation Act) to analyse Third-Party Funding Arbitration in Nigeria. The paper finds that TPF is a vital tool for social equality, enabling citizens and businesses to access justice without financial constraint and that TPF promotes access to justice, enabling citizens and businesses to resolve disputes without financial constraints. The paper recommends that lawyers and funders be educated about TPF rules and ethics.

Keywords: Arbitration, Arbitration and Mediation Act, Champerty, Maintenance, Third-Party Funding.

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1.1 Introduction

Litigation dates back to ancient civilizations, such as Egypt, Greece and Rome. In ancient Egypt, the Pharaoh was considered the ultimate judge. In ancient Greece and Rome, citizens would present their cases in front of a Jury of their peers, who would then decide the verdict. However, each party in a suit is responsible for any financial obligation that he might incur in presenting his case before the Pharaoh or the Jury. The cost of financing litigation remained one of the major setbacks for litigants who desire to resolve their disputes. By third-party funding, a third party who is not a party to the litigation agrees to fund a litigant to cover all or part of the legal costs of the litigation for a fee payable from the proceeds recovered by the funded litigant. Before, third-party funding had no legal backing in Nigeria because its practice was seen as a way to pervert justice. Now, in Nigeria, with the establishment and practice of arbitration in courts, third-party funding is indeed incorporated into arbitration through the enactment of the Act³, thereby abolishing the torts of Maintenance and Champerty as declared in the AMA. Arbitration in Nigeria, now, is primarily regulated by the AMA. Even though, the practice of third-party funding is applicable only in arbitration, the innovation behind the adoption of the practice of third-party funding in arbitration in Nigeria is highly commendable.

Section 91 (1) of the AMA⁴ defines third-party funding to be:

“a contract between the Third-Party Funder and a disputing party, an affiliate of that party, or a law firm representing that party, in order to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and the financing is provided either through a donation or grant in return for reimbursement depending on the outcome of the dispute or in return for a premium payment.”

³ Arbitration and Mediation Act, 2023.

⁴ Ibid.

Olasupo Shasore⁵ defines third-party funding as:

“a practice where a financially independent entity provides financial support to a party involved in a legal dispute in exchange for a share of the eventual settlement of award. It is a means for a party involved in a legal dispute to receive financial assistance from another party (a funder) toward the resolution of the dispute following an agreement between the parties that the funder will receive a portion of the proceeds if the case is successful but assumes the risk of losing its investment if the case is unsuccessful.”

In South Africa, TPF is “Third-Party Funding of Litigation”. Simon Dippenaar⁶ defines TPF as:

“a mechanism that allows a third-party funder to provide financial support to plaintiffs in exchange for a portion of the settlement or award if the case is successful, ensuring plaintiffs can cover legal fees, court costs and other expenses without risking financial ruin. If the case is lost, the plaintiff owes the funder nothing.”

A weekly law online publication by NICArb⁷ defines a third-party funder as:

“any legal or natural person who is not a party to the dispute but who enters into an agreement either with a disputant party affiliate of that party, or a law firm in order to finance the party’s cost of proceeding in return for reimbursement depending on the outcome.”

Arbitration is a private dispute resolution mechanism established for the settlement of disputes by a neutral third party (the Arbitrator) or panel of neutrals referred to as the Arbitral Tribunal. In arbitration, what is important is the consent of the

⁵Olasupo Shasore, ‘Arbitration: Third-Party Funding- New Frontiers In Dispute Resolution In Nigeria.’ <<http://www.alp.company.html> >accessed 11 October, 2024.

⁶ Simon Dippenaar, ‘Third-Party Litigation Funding-TPF.’ <<https://www.sdlaw.co.za/articles/third-party-litigation-funding-tpf>>accessed 12 May, 2025.

⁷ NICArb, ‘The Adoption of Third-Party Funding (TPF) In The Arbitration And Mediation Act 2023.’ <<http://www.blog.nicarb.org>> accessed 12 October, 2024.

parties: if a party does not agree or submit to arbitration, it cannot be joined in an arbitral proceeding. Importantly, arbitration is used for commercial related disputes.

1.2 THE HISTORY AND ORIGIN OF THIRD-PARTY FUNDING

The practice whereby a person, who is not actually involved in the litigation, becomes the financier of a dispute between two parties in exchange for a commission originated in ancient Egypt, Greek and Roman civil trials. Limiting to the Greek and Roman trials, the usual practice of presenting cases to the Jury of their peers in return for a verdict was later corrupted by the wealthiest social class who engaged certain professionals to present their cases and represent them before the Jury, in exchange for the payment of a large sum of money, which not all ordinary citizens could afford. Consequently, the professionals who were the *sykophantes* and *calumniators*⁸ started their business respectively in Greece and Rome. They were representatives of the wealthiest social class that, in return for a percentage on the outcome of the dispute, made it their own and anticipated the expenses necessary to go to court.⁹ So, instead of a third party, who had no interest in the litigation, financing any of the litigants who were before the Jury, the financiers were actually the litigants who would hire and pay the services of the professionals (*sykophantes* and *calumniators*) to represent them and present their cases before the Jury. Notably, only the wealthiest social class could employ the services of these professionals.

The practice according to which a third party asserts a right of others by financing the litigation in order to obtain a part of the possible victorious outcome was maintained until the Middle Ages. Maintenance is a third-party who financed the cost of litigation on behalf of a party to a Suit in Court without any interest or gain but when the third-party financier anticipates an interest or gain from the result or outcome of the Suit, Maintenance transitions to Champerty. In feudal England, the notorious phenomenon of Champerty became widespread, that is, the contract that,

⁸ “*Sykophantes*” is a Greek word. In English, it is “*Sycophantic*” or “*Sycophant*” which is a person who praises important and powerful people too much and in a way that is not sincere especially in order to get something from them. “*Calumniators*” is a Latin word which is “*Calumniate*”, “*Calumny*” in English. Calumny, synonymous to Slander, is a false statement about a person that is made to damage their reputation. Calumniators are professionals who are hired to slander a person.

⁹ Max Radin, ‘Maintenance by Champerty’, in California Law Review, XXIV, 1,6, p.49

<<https://delex.legal/the-ancient-origins-of-third-party-litigation-funding> > accessed 4 April, 2025.

in case of a positive result of the financed cause, attributed to the financier the property of a portion of the disputed land and to the financed body a right substantially similar to the same portion.¹⁰ This phenomenon extended as the feudal lords, progressively deprived of military power and taxation, resorted to Champerty in order to increase their possessions.¹¹ In parallel, there was the more general phenomenon of the so-called Maintenance, i.e., favoring other subjects in the establishment of a dispute.

In 1275, with the promulgation of the First Statute of Westminster by King Edward I, both practices- *Maintenance* and *Champerty*, were declared civil and criminal offences. The scope of these prohibitions was further extended during the colonial era, when any practice consisting in the financing of litigation by a third party was made illegal, even outside of England.¹²

Around the 1900s, it was the awareness of the actual reasons that led to the prohibition of the phenomena of financing litigation that contributed, ultimately to their decriminalization. Thus, the modern phenomenon of third-party litigation funding was born, which spread first in Australia¹³ and then in other common law countries.

Far from being a purely speculative practice- as it may have been in the past, third-party litigation funding today represents an important tool that makes access to justice possible even for those who would otherwise lack the economic means to bear the expenses. Recent history teaches us that litigation funding is a tool that has had a very positive impact, particularly during periods of economic crisis. For example, the 2008 financial crisis in the United States prompted many companies to find alternative methods of litigation financing to preserve their cash flow in order to facilitate a gradual recovery. It is precisely in this circumstance that there

¹⁰ Castelli Luciano, *et al.*, 'Third Party Litigation Funding: quali prospettive in Italia?' In Contratti, 2019, 5, 580, p.1. <<https://delex.legal/the-ancient-origins-of-third-party-litigation-funding/>> accessed 4 April, 2025

¹¹ It should be noted that the Champerty owes its name precisely to the right to use attributed to the financed body, namely tenancy by champart.

¹² *Campbells Cash and Carry Pty Limited v Fostif Pty. Ltd.* (2006), 229, CLR, 386.

<<https://delex.legal/the-ancient-origins-of-third-party-litigation-funding/>> accessed 4 April, 2025.

¹³ Ibid.

has been an exponential increase in resort to third-party litigation funding.¹⁴ The general increase in the cost of justice, including arbitration, together with the prohibition for lawyers to anticipate their clients' costs have also contributed to the spread of third-party funding.¹⁵ Additionally, there was the adoption of recent regulations introducing so-called class actions or the growing phenomenon of private antitrust enforcement, many European Union (EU) countries are facing the problem of providing economic incentives to start collective actions, identifying third-party litigation funding as a valid resource for companies.¹⁶

1.3 OBJECTIVES OF ARBITRATION IN NIGERIA

As earlier stated, Arbitration in Nigeria is primarily regulated by the Arbitration and Mediation Act (AMA), 2023 (formerly Arbitration and Conciliation Act, 1988). Furthermore, Nigeria is a party to the New York Convention and it signed the New York Convention on the 17th March, 1970. The Convention came into force in Nigeria on 15th June, 1970 to recognize and enforce arbitral awards. By the provisions of the Convention, courts in Nigeria are mandated to recognize and enforce arbitration awards as binding and enforceable and are also mandated by the New York Convention to uphold arbitration agreements by parties.

Section 1 of AMA¹⁷ provides that the objectives of Arbitration in Nigeria are:

“to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.”

¹⁴ Steinitz Maya, 'Whose Claim Is This Anyway? Third Party Litigation Funding in Minnesota Law Review', 95, 2010-2011, p.1283. <https://delex.legal/the-ancient-origins-of-third-party-litigation-funding/>>accessed 4 April, 2025.

¹⁵ Shannon Victoria A., 'Harmonizing Third Party Litigation Funding Regulation, in Cardozo Law Review', 36, 2015, pp. 869 ess. <<https://delex.legal/the-ancient-origins-of-third-party-litigation-funding/>> accessed 4 April, 2025.

¹⁶ Rodger Barry, 'Competition Law: Comparative Private Enforcement and Collective Redress across the EU', Wolters Kluwer, 2014, p. 59. <<https://delex.legal/the-ancient-origins-of-third-party-litigation-funding/>> accessed 4 April, 2025

¹⁷ Ibid.

1.4 ACCESS TO ARBITRATION IN NIGERIA

In Nigeria, access to arbitration commences from parties agreeing to arbitration in the event that disputes arise from their contracts. Arbitration then advances with a party serving the other party with a request to refer the dispute to arbitration. However, the Act has provided for lapse of time for the use of arbitration just the same way they apply to judicial proceedings.

Section 1 (2) of AMA provides that parties to a dispute are at liberty to decide the means by which their disputes may be resolved, provided they adhere to measures that are necessary to promote peaceful existence and protect public interest. Furthermore, section 2 (1) of AMA¹⁸ provides that Arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate complete agreement. Section 2 (2) of AMA mandates that the arbitration agreement shall be in writing. Section 2 (3) of AMA provides that an arbitration agreement shall be in writing when its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by any other means.

From the foregoing, a pertinent question one may ask is, “if parties enter their contract (whether orally or in writing) but do not provide for arbitration agreement in writing, as mandated in the above sections, can they still write an arbitration agreement?” Section 2(3) of the AMA provides an opportunity for parties to still proceed to write an arbitration agreement even if they have concluded their contract orally, by conduct or by any other means. To illustrate, if parties embark on performing their sides of the contract and then either or both parties realize that there is a need to write an arbitration agreement, with the consent of both parties, an arbitration agreement can still be written.

¹⁸ Ibid.

1.5 PROCEDURES FOR THE DISCLOSURE OF THIRD-PARTY FUNDER/THIRD-PARTY FUNDING AGREEMENT

One issue for determination is, whether a funded party is required to disclose the existence of a TPF agreement.

Section 62 (1) of AMA¹⁹ requires a recipient of third-party funding to give written notice of the existence of the funding arrangement to the other parties, the arbitral tribunal and the arbitral institution where applicable.

Section 62 (1) provides thus:

“if a third-party funding agreement is made, the party benefitting from it shall give written notice to the other party or parties, the arbitral tribunal and, where applicable, the arbitral institution, of the name and address of the third-party funder.”

The written notice for a funding agreement could be issued either on or before the commencement, at the commencement or immediately after the commencement of the arbitration, and is required to include the name and address of the third-party funder.

Lastly, where a respondent has brought an application for security for cost based on the disclosure of third-party funding, the arbitral tribunal may allow the funded party or its counsel to provide the arbitral tribunal with an affidavit stating whether under the funding arrangement, the funder has agreed to cover adverse costs orders and the affidavit shall be a relevant consideration to the decision of the arbitral tribunal on whether to grant security for costs.

Questions like: ‘is it important for a party to disclose his third-party funding agreement?’ Swargodeep²⁰ wrote that the essence of the disclosure of the third-party funding agreement by the beneficiary is to cover issues bothering on:

¹⁹ Ibid.

²⁰ Swargodeep S., “Third Party Funding in Arbitration: New Challenges and Global Trends”, International Journal of Legal Science and Innovation, Vol. 2 (2020) Third-Party-Funding-in-International-Arbitration-New-Challenges-and-Global-Trends.pdf. <<https://www.ssrn.com>> accessed 3 May, 2025.

- a. impartiality and independence of arbitration in the context of third-party funding;
- b. security for costs against funded parties;
- c. awarding costs in the presence of third party funders, and
- d. confidentiality in international proceedings and third party funding, etc.

1.7 Conclusion

The increase in the practice of third-party funding in arbitration has resulted in an increase in the number and classes of institutions that participate in the arbitration process: such institutions now include specialized commercial third party funders, insurance companies, investment banks, hedge funds and law firms.²¹ It must be considered that third-party litigation funding should first of all be exonerated and then strongly encouraged because, far from having a speculative nature, it constitutes an incomparable tool for social equality, which makes access to justice possible and easy for every citizen and business, even those who could not afford to bear the costs of or its potentially unfavourable outcome. In fact, it allows for the transfer of the risk, necessarily connected to any dispute, to the funder; it also guarantees more reasonable and predictable costs of justice and at the same time discourages groundless actions, given that it is the merits and the foundation of the right that allow to obtain the support of the funder. In short, contrary to what is currently the most widespread thinking, recourse to instruments for financing litigation can represent a valuable opportunity for all Italian companies, also with a view to increasing competitiveness on the market.²²

Simon,²³ on “the future of TPF”, a subtitle in his paper, said: “the legal profession, like all industries, is in a state of rapid change. Advances in technology, such as Artificial Intelligence (AI), are enabling funders to assess cases more accurately. This will make third-party legal financing more common and more accessible to a broader range of plaintiffs. As more individuals and business explore this option,

²¹ Qtishat & Qtishat, Third Party Funding in Arbitration: Question and Justifications, International Journal for the Semiotics of Law, April 2021, <<https://www.researchgate.net/publication/333990743>> accessed 5 May, 2025.

²² Parisi Giacinto, Trial as an Investment: litigation funding compatible with the Italian civil procedural law system?, Roma Tre Press, 2019 <<https://romatrepress.uniroma3.it/wp-content/uploads/2019/12/Trial-as-an-investment-is-litigation-funding-compatible-with-the-italian-civil-procedural-law-system.pdf>> accessed 6 May, 2025.

²³ Ibid.

the legal system will become more equitable and financial constraints will cease to dictate the outcome of high-stakes cases.”

For individuals and small businesses, litigation funding can mean the difference between pursuing a claim and abandoning it. By providing the necessary resources, TPF gives everyone a fair shot at legal redress.

Recommendations

In South Africa, Simon said that “while we have the most developed TPF market in Africa, it is immature compared to global markets. TPF is not yet regulated by legislation, unlike contingency arrangements. However, there are case laws: one in 2004 and the other in 2020 which developed the law on TPF.”

Notwithstanding, behind the innovation to incorporate TPF in arbitral proceedings in Nigeria, the findings in this paper are that:

1. Third-Party Funding (TPF) is now allowed in arbitration in Nigeria through the Arbitration and Mediation Act (AMA) 2023, thereby abolishing the torts of Maintenance and Champerty.
2. TPF promotes access to justice, enabling citizens and businesses to resolve disputes without financial constraints.
3. Disclosure of TPF agreements is required to ensure impartiality, security for costs and transparency in arbitration.

However, few recommendations were made by the authors to improve the practice of TPF in arbitral proceedings in Nigeria, thus:

1. Teach lawyers and funders about TPF rules and ethics and incorporate TPF as a course outline in Arbitration courses.
2. Help people understand how TPF works, i.e., public awareness should be created to enlighten the general public on TPF.
3. As much as TPF is incorporated into the AMA, a separate and clear law should be established for TPF in Nigeria.

AN EXAMINATION OF THE LEGAL FRAMEWORK ON ELECTRONIC SIGNATURE IN NIGERIA

Amir Bello Nura

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Abstract

The rapid advancement of digital technology and the increasing reliance on remote transactions have made electronic signatures an indispensable component of modern commercial and corporate practice. In Nigeria, the legal recognition of electronic signatures represents a significant step toward facilitating e-commerce, corporate governance, and digital transactions, particularly in response to economic pressures and the operational disruptions experienced during the COVID-19 pandemic. Despite this recognition, uncertainties persist regarding the scope, reliability, and practical application of electronic signatures within Nigeria's legal framework. This paper examines the regulatory and jurisprudential foundations governing electronic signatures in Nigeria, focusing on their evidentiary value, enforceability, and statutory limitations. The research identifies key problems, including the absence of uniform technical standards, risks of fraud and identity misrepresentation, evidentiary burdens in proving authenticity, regulatory exclusions of certain transactions, and data protection concerns. Using a doctrinal research methodology, the study analyzes relevant statutes, judicial decisions, and comparative legal principles. The findings reveal that although electronic signatures are generally enforceable under Nigerian law, practical challenges and judicial caution continue to limit their seamless adoption. The paper recommends the development of clear technical standards, strengthened authentication mechanisms, enhanced judicial and institutional capacity building, and improved regulatory guidance to promote confidence and ensure the effective integration of electronic signatures into Nigeria's digital economy.

Keywords: E-Signature Adoption, Digital Evidence, Cyberlaw in Nigeria, Fraud and Identity Verification, Commercial and Corporate Governance

1.1 Introduction

Electronic signatures (e-signatures) are increasingly becoming an essential tool for facilitating digital transactions and corporate governance globally. In Nigeria, the use of e-signatures has grown alongside advancements in technology and the demand for efficient business processes.

The need to overcome the barriers of time and distance, combined with the prevailing economic challenges that have compelled many organizations to adopt remote or virtual work arrangements, has significantly accelerated the shift towards digital solutions and e-commerce. In this context, parties to contracts and business transactions are increasingly eager to finalize deals from any location in the world, without the necessity of physical presence or the inconvenience of affixing traditional wet signatures—achieving this instead with greater ease, speed, and flexibility. The relevance of digital and e-signatures essentially came to the fore during the COVID-19 pandemic outbreak when people were either quarantined or advised to self-isolate to prevent the spread of corona virus; at a point business must go on for economic survival.¹

1.2 Meaning and Nature of Electronic Signatures:

Before considering definition of “*electronic signatures*” or “*E-Signatures*”, it is important to note the meaning of signature itself. In the case of *Inemiebi v. State*² the Court of Appeal defined a signature to mean “...someone’s name or writing expressed in a unique manner consistently to identify the person and signify his consent to a document.” Black’s Law Dictionary³ defined signature as “A person’s name or mark written by that person or at the person’s direction; especially one’s handwritten name as one ordinarily writes it, as at the end of a letter or a check, to show that one has written it”

An e-signature is any electronic indication of intent to authenticate a record, ranging from typed names and scanned handwritten signatures to advanced digital certificates. In simple terms, an electronic signature means a signature in electronic form. It can be a symbol or a security procedure evidencing a signatory identity such

¹ An x tray of the legality of digital and electronic signature in Nigeria p.2 [View of An X-Ray on The Legality of Digital and Electronic Signatures in Nigeria](#) cited on 18th September 2025 at 12:30pm

² (2022) LPELR-57020(CA).

³ 10th Edition, B. A. Garner (Ed.), Thomson Reuters, 2014, P. 1593.

as a scanned image of a handwritten signature, a biometric hand signature, a typed name at the end of an email/CV, a click to indicate consent online, as long as it creates an intention to enter legal relations and be bound by it.⁴

The distinguishing feature of an electronic signature is that it is used to execute a contract. In a contract, for example, two people usually agree to perform certain obligations. If both parties sign the agreement, it becomes legally binding.

Evidence Act⁵ defined e-signature to mean “...authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes digital signature”. Electronic Signature means “data in electronic form, affixed to or logically associated with a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory of the information contained in the data message”⁶

1.3 Distinction Between an Electronic Signature and Digital Signature

Although the terms “electronic signature” and “digital signature” are often used interchangeably, they are not, in the strict sense, identical in meaning.

An electronic signature is a broad concept that refers to any electronic method used to indicate a person’s approval of the contents of a document or transaction. This may include a typed name, a scanned image of a handwritten signature, or even clicking an “I agree” button. A digital signature, on the other hand, is a specific type of electronic signature that relies on cryptographic techniques to ensure the authenticity, integrity, and security of the signed document. In essence, while all digital signatures are electronic signatures, not all electronic signatures qualify as digital signatures.

An e-signature neither demands nor infers the deployment of mean of identification, authentication, or encryption⁷. It equally does not confer strict assurance of authenticity of a document (that it is actually the sender that signed), integrity on a document (that it is not altered) and confidentiality of the document (content and

⁴ The legality of electronic signature in transactions in Nigeria p 1 [\(3\) THE LEGALITY OF ELECTRONIC SIGNATURE IN TRANSACTIONS IN NIGERIA | LinkedIn](#)

⁵ Section 258, Evidence Act 2011 (as amended 2023), interpretative Section

⁶ Article 2, UNCITRAL Model Law on Electronic Signatures 2001; Brickmans Law (n6).

⁷ Black’s Law Dictionary p1593.

identity of the sender)⁸. Digital signature is similar to tamper-proof seal which are deployed by providers of trust services or certification bodies; to certify or authenticate documents, It requires specialized third parties, known as certification authorities (CAs) to provide certification services for verifying the signer's identity. Digital Signatures use complex algorithms and certificate authorities to authenticate the signer along with the integrity of the document⁹. Black's Law¹⁰ defined Digital Signature as "A secured digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender."

Types of Electronic Signature

Electronic signatures are basically classified into three¹¹

1. Simple Electronic Signature (SES): Includes any electronic data that shows a person's intent to sign, e.g., typing a name at the end of an email, scanning and pasting a handwritten signature into a document and clicking "I agree" or "Accept" on a website or contract.
2. Advanced Electronic Signature (AES) offers a higher level of security and verification which must be:
 - a) Uniquely linked to the signatory.
 - b) Capable of identifying the signatory.
 - c) Created using electronic signature creation data under the sole control of the signatory.
 - d) Linked to the signed data in such a way that any subsequent change is detectable e.g., digital certificates issued by a trusted Certificate Authority (CA), use of encryption keys for signing.
3. Qualified Electronic Signature (QES) is the highest standard of e-signature, legally equivalent to a handwritten signature in many jurisdictions. It must meet all AES requirements and additionally be created using a qualified

⁸ An x tray of the legality of digital and electronic signature in Nigeria p.2 [View of An X-Ray on The Legality of Digital and Electronic Signatures in Nigeria](#) cited on 18th September 2025 at 12:30pm

⁹ The legality of electronic signature in transactions in Nigeria p 1 [\(3\) THE LEGALITY OF ELECTRONIC SIGNATURE IN TRANSACTIONS IN NIGERIA | LinkedIn](#)

¹⁰ Ibid

¹¹ eIDAS Regulation (Regulation (EU) No. 910/2014)

signature creation device (e.g., smart card, token, or secure signature app) and backed by a qualified digital certificate issued by a recognized Certificate Authority.

1.4 Legal Framework on Electronic Signature

The recognition of electronic signatures in Nigeria is primarily grounded in three statutes:

1. Evidence Act- Section 93 (2) of the Evidence Act¹² which provides that “where a rule of evidence requires a signature or provides for certain consequences if a document is not signed, an electronic signature or digital signature satisfies that rule of law or avoids those consequences.”
2. Cybercrimes (Prohibition, Prevention, etc.) Act 2015: Section 17 of this Act expressly affirms that electronic signatures are binding in Nigeria, except for transactions specifically excluded by other laws, such as wills, land transfers, and certain court documents.

Furthermore section 17(1) (b) of the Cybercrime Act provides in effect that when the authenticity or otherwise of electronic signature is in question, the burden of proof is that the signature does not belong to the purported originator of such electronic signatures but shall be on the contender. The same section went further to provide that it is a crime to forge an e-signature with intent to misrepresent or defraud;¹³ and the onus of proof rest squarely on the party challenging the authenticity of the e-signature. Section 17(2) of the Cybercrimes Act expressly prohibits the usage of e-signature in the execution of certain instruments or documents.

3. Companies and Allied Matters Act (CAMA) 2020: section 101 of the CAMA 2020,¹⁴ provides that an electronic signature satisfies the requirements for the signing of documents requiring authentication by a company. What is essential is that the signatory is identified by his signature; hence the decision of a UK court in the case of *Golden Group Ltd v. Salgaocar Mining Industries PVT Ltd*,¹⁵ when it held that “...the signature block at the end of an e-mail

¹² Evidence Act 2011(as amended 2023).

¹³ Section 17(1)(c) of the Cybercrime Act 2015.

¹⁴ Section 101 CAMA 2020

¹⁵2012) EWCA Civ 265.

may be sufficient to constitute an e-signature for the purposes of Section 4 of the Statute of Frauds, 1677”¹⁶

1.5 Limitations on the use of electronic signatures In Nigeria:

Section 17(2) of the Cybercrime Act 2015 excludes the following categories of transactions from been validated by electronic signatures¹⁷:

1. Wills and codicils, and other testamentary documents.
2. Death certificates.
3. Birth certificates.
4. Matters of family law such as marriage, divorce, adoption, and other related issues.
5. Issuance of court orders, notices, and official court documents such as affidavits, pleadings, motions, and other related judicial documents and instruments.
6. Any cancellation or termination of utility services.
7. Any instrument required to accompany any transportation or handling of solid or liquid dangerous materials.

1.6 Challenges in The Use Electronic Signature

Despite legal recognition, several challenges hinder the seamless adoption of e-signatures in Nigeria. These include:

1. Lack of uniform technical standards, creating uncertainty over acceptable methods of electronic signature. This absence creates uncertainty for users, service providers, and courts, as there is no clear benchmark for determining which electronic signature technologies meet legal and evidentiary thresholds. Consequently, parties may be reluctant to rely on e-signatures for high-value or sensitive transactions.
2. Identity verification and fraud risks further complicate the use of electronic signatures. Because some forms of e-signatures do not require robust authentication or encryption mechanisms, they are vulnerable to forgery, impersonation, and unauthorized use. This risk undermines trust in electronic transactions and heightens judicial scrutiny, particularly where the authenticity of a signature is disputed.

¹⁶ G. Elias & Co. (3).

¹⁷ Section 17(2) of the Cybercrime Act 2015.

3. Evidentiary burden associated with electronic signatures also poses a challenge. Parties seeking to rely on e-signed documents are often required to produce audit trails, metadata, system logs, and, in some cases, expert testimony to establish authenticity, integrity, and non-repudiation. This can increase litigation costs and prolong proceedings, reducing the efficiency benefits that e-signature are intended to provide.

3. Regulatory and sectoral exclusions constitute another limitation. Certain categories of transactions, such as wills, court documents, and family law matters, are expressly excluded from electronic execution under existing legislation. These exclusions restrict the scope of e-signature usage and contribute to continued dependence on traditional handwritten signatures.

4. Data protection concerns remain significant, as e-signature platforms routinely collect, store, and process personal and sensitive data. Compliance with the Nigeria Data Protection Regulation (NDPR) imposes additional obligations on service providers and users, including data security, consent, and lawful processing requirements. Failure to adequately address these concerns may expose parties to regulatory sanctions and erode confidence in electronic signature systems.

Conclusion

Electronic signatures serve as a critical tool in facilitating digital transactions, corporate governance, and commercial operations in Nigeria. Their recognition under key statutory frameworks including the Evidence Act, the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, and the Companies and Allied Matters Act 2020 provides a strong legal basis for their enforceability. The adoption of electronic signatures reflects the growing demand for efficiency, flexibility, and speed in business processes, particularly in response to contemporary challenges such as remote work, globalization, and disruptions caused by the COVID-19 pandemic. By enabling parties to execute contracts and agreements from virtually any location, electronic signatures reduce dependency on physical presence and traditional paper-based processes, thus promoting economic activity and improving access to justice in commercial contexts.

Despite this legal recognition, the study reveals significant practical challenges that constrain the effective use of electronic signatures in Nigeria. These include the absence of uniform technical and operational standards, heightened risks of fraud and identity misrepresentation, evidentiary complexities in proving authenticity and integrity, regulatory and sectoral exclusions, and concerns related to data protection under the Nigeria Data Protection Regulation (NDPR). The lack of clear technical standards, in particular, generates uncertainty for courts, businesses, and service providers, discouraging the adoption of electronic signatures in high-value or sensitive transactions. Similarly, vulnerabilities associated with simple electronic signatures and insufficient authentication mechanisms expose parties to potential fraud, thereby limiting trust in digital systems and judicial reliance.

Judicial perspectives further underscore the need for caution and diligence. In *Ekiti State Independent Electoral Commission & Ors v. Peoples Democratic Party (PDP) & Anor*, Uchechukwu Onyemenam JCA observed that “...with our modern information technology, anything is possible. Documents and signatures are easily manipulated to the extent that genuineness of documents can no longer be ascertained by mere observation with the eyes¹⁸.” This observation highlights the importance of judicial scrutiny in verifying the authenticity of electronic signatures and evaluating electronic evidence, ensuring that reliance on digital documents does not compromise the integrity of legal and commercial processes.

To overcome these challenges and enhance the adoption of electronic signatures, the study recommends several measures. First, uniform technical standards and operational protocols should be developed and implemented to provide clarity and consistency. Second, authentication and security mechanisms, particularly through the use of digital signatures supported by certification authorities, should be strengthened to reduce risks of forgery and unauthorized access. Third, judicial and institutional capacity building should be prioritized to enable courts and regulatory bodies to effectively assess electronic evidence. Fourth, clear regulatory guidelines should complement statutory provisions, while sector-specific exclusions should be periodically reviewed to align with modern commercial needs. Finally, robust

¹⁸ (2013) JELR 36023 (CA); <https://judy.legal> cited 23rd September, 2025 at 11pm

compliance with data protection obligations under the NDPR is essential to safeguard personal and sensitive information processed through electronic signature platforms.

In conclusion, while electronic signatures hold transformative potential for Nigeria's legal and commercial landscape, their full benefits can only be realized through coordinated legal, technical, and institutional reforms. By addressing existing challenges and strengthening authentication, regulatory, and evidentiary frameworks, electronic signatures can enhance transactional efficiency, improve access to justice, and foster greater confidence in digital commerce, thereby contributing significantly to the modernization and resilience of Nigeria's economy and legal system. This is also general call for our honourable courts to be extremely meticulous in their approach towards digital and e-signatures in particular, and electronic evidence in general¹⁹

Findings

1. Electronic signatures are legally recognized and generally enforceable in Nigeria under the Evidence Act, the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, and the Companies and Allied Matters Act 2020. However, in practice, their application remains limited due to statutory exclusions, the absence of detailed implementation guidelines, and broad judicial discretion. This has resulted in cautious and sometimes inconsistent judicial treatment of electronically signed documents, thereby reducing predictability and confidence in their use.
2. The study finds that the absence of uniform technical and operational standards for electronic signatures creates significant uncertainty regarding acceptable technologies and security thresholds. Without clear benchmarks, users and courts struggle to determine which electronic signature methods meet legal and evidentiary requirements, discouraging reliance on e-signatures in high-value or sensitive transactions.
3. Electronic signatures impose heightened evidentiary burdens in litigation, as parties relying on them are often required to establish authenticity, integrity,

¹⁹ An x tray of the legality of digital and electronic signature in Nigeria p.2 [View of An X-Ray on The Legality of Digital and Electronic Signatures in Nigeria](#) cited on 23rd September 2025 at 12:30am

and non-repudiation through audit trails, metadata, system logs, and expert testimony. This evidentiary complexity increases litigation costs and delays dispute resolution, undermining the efficiency and convenience that electronic transactions are intended to provide.

4. The findings reveal that certain forms of electronic signatures, particularly simple electronic signatures, are susceptible to fraud, impersonation, and unauthorized use due to weak authentication and security mechanisms. This vulnerability undermines trust in electronic transactions and explains judicial reluctance to rely solely on such signatures where authenticity is contested, highlighting the relative reliability of digitally secured signatures.
5. The use of electronic signature platforms raises significant regulatory and data protection concerns under the Nigeria Data Protection Regulation (NDPR), as these platforms routinely process personal and sensitive data. Compliance obligations relating to consent, data security, and lawful processing impose additional legal and operational burdens on users and service providers, and failure to comply exposes parties to regulatory sanctions, further constraining widespread adoption

Recommendations

1. There should be the development and adoption of uniform national technical and operational standards for electronic signatures to clearly define acceptable technologies, security thresholds, and authentication requirements. This will promote consistency, enhance judicial confidence, and encourage wider adoption of electronic signatures in commercial and corporate transactions.
2. Clear regulatory guidelines and practice directions should be issued to complement existing statutory provisions on electronic signatures. Such guidelines will reduce uncertainty, limit excessive judicial discretion, and promote predictable and consistent application of electronic signatures across courts and sectors.
3. The evidentiary framework governing electronic signatures should be strengthened through judicial training and procedural reforms that simplify the proof of authenticity, integrity, and non-repudiation. Courts should be

- empowered to rely on presumptions of validity for properly authenticated electronic signatures, particularly those supported by secure digital systems.
4. Stronger authentication and security mechanisms should be encouraged, including the increased use of digital signatures supported by encryption and certification authorities. This will reduce risks of fraud, impersonation, and unauthorized use, while enhancing trust in electronic transactions.
 5. Robust data protection compliance frameworks should be enforced for electronic signature platforms in line with the Nigeria Data Protection Regulation (NDPR). Service providers and users should implement adequate data security measures, transparency mechanisms, and accountability structures to safeguard personal data and promote confidence in the use of electronic signatures.

BEYOND THE GAVEL: PROACTIVE JUDICIAL COMMUNICATION AS A CATALYST FOR PUBLIC TRUST AND LEGITIMACY

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Abstract

Public confidence in the judiciary is fundamental to democratic governance and the rule of law. Traditionally, courts have relied on the authority of judgments and constitutional positioning to sustain legitimacy. However, in an era characterised by digital media, instantaneous information flow and heightened public scrutiny, judicial silence increasingly creates informational vacuums susceptible to misinformation and misinterpretation. This article finds that more accessible and proactive judicial communication, when carefully structured and ethically managed, can serve as a critical catalyst for enhancing public trust and institutional legitimacy in the judiciary. The paper while utilizing doctrinal research method, also draws on comparative experiences from the United Kingdom, Kenya, Taiwan and Nigeria, to propose a structured communication framework tailored to the Nigerian judiciary. It determines that filling in the gaps in communication through clearer output of information, proactive engagements and inclusivity in accordance with already established legal and judicial standards will not only build trust, but reduce misunderstandings and enhance legitimacy.

Keywords: *Judicial legitimacy, public trust, judicial communication, transparency, Nigerian judiciary.*

1.0 . Introduction

The judiciary has long been regarded as the least communicative arm of government, cloaked in tradition, procedural formality and institutional caution. While such restraint has historically been justified by the need to preserve independence and impartiality, the realities of contemporary governance demand a reassessment. In the digital age, silence often breeds misinformation, erodes confidence and widens the gap between courts and the society they serve.

Judicial legitimacy does not derive solely from constitutional mandate or courtroom pronouncements, but also from public perception and trust which is significantly reinforced through deliberate, transparent and accessible communication.¹ In democratic systems, legitimacy is a function of effective communication which fosters public acceptance of judicial authority and trust in the fairness of judicial processes.² Yet, perceptions of opacity, technical formalism, delays in adjudication and allegations of corruption have, in many jurisdictions including Nigeria, weakened public confidence in the courts.

As Lord Denning famously observed, justice must be rooted in confidence, and such confidence is destroyed when right-minded persons leave court believing that justice has not been fairly administered.³ In the contemporary context, this confidence is no longer shaped exclusively within courtrooms, but increasingly within the public sphere-through traditional media, social platforms, civic education initiatives and the explanatory language employed by courts themselves. The traditional conservatism and silence of courts however, limits communication **until** a balance can be drawn between ethical standards and the crucial need for more interaction with the public. In addition, the Nigerian judiciary needs to measure public perception and find a way to judiciously curtail any misconceptions of corruption and unfairness.

This paper aims to advocate for the necessity of a more open and proactive judiciary in terms of communication within ethical boundaries, and introduce new ideas and

¹ Posner, R.A. (2008). *How Judges Think*. Harvard University Press

² J. Sorabji, 'Legitimacy of the judiciary and communication with society' (2025) 2 *Comparative Procedural Law and Justice* 4, <http://www.cplj.org/publications/2-4-legitimacy-of-the-judiciary-and-communication-with-society>, accessed 11th January, 2026.

³ (*Metropolitan Properties v Lannon* [1969] 1 QB 577).

methods in which the judiciary can communicate and interact better with the public, and to have a say, so to speak, on how Nigerians perceive it. The paper posits that when judicial communication in Nigeria is structured and well managed, it will enhance public trust and ultimately the legitimacy of the judiciary.

2.0. Conceptual Framework

This study conceptualises judicial communication not as an optional administrative function, but as a constitutional and ethical mechanism for sustaining public confidence in the judiciary.

2.1. Constitutional foundations for Judicial Legitimacy

The legitimacy of the Nigerian judiciary is constitutionally anchored in the 1999 Constitution (as amended), which vests judicial powers in the courts and mandates their exercise in accordance with the rule of law.⁴ Judicial authority is not meant to be merely adjudicatory, but also to be exercised on behalf of the Nigerian people. After all, justice is not only meant to be done but to be seen to be manifestly done.

Section 36 of the Constitution guarantees fair hearing, openness of proceedings and reasoned decision-making, while section 14(2)(b) affirms that the security and welfare of the people constitute the primary purpose of government. Judicial communication complements these provisions by extending the principle of openness beyond the courtroom, ensuring that justice is not only done but is understood by those in whose name it is administered.

2.2. Judicial Ethics and Institutional Restraint

Judicial communication in Nigeria is constrained and guided by ethical standards embodied in the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.⁵ These standards emphasise independence, impartiality and avoidance of conduct that may erode public confidence in the judiciary.

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 6.

⁵ National Judicial Council, Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (NJC 2016).

Ethical restraint does not, however, mandate institutional silence. Rather, it requires that communication be channelled through designated structures, such as court registries, press units and judicial councils, with appropriate disclaimers distinguishing explanatory materials from binding judicial pronouncements.

2.3. Procedural Justice and Nigerian Judicial Practice

The Nigerian courts have consistently affirmed that justice must be transparent, fair and perceptible to the public.⁶ Court cases and judicial decisions in the Nigerian context affects not just litigants but the broader society, particularly in cases of constitutional, electoral and public interest significance. Where judicial reasoning is incomprehensible to the common man, legitimacy deficits may arise despite the soundness of the decisions and formal compliance with legal standards.

Judicial communication thus operates as a complementary mechanism for procedural justice, enhancing public understanding of legal reasoning, jurisdictional limits and institutional constraints faced by courts.

2.4. The Nigerian Information Environment

Nigeria's contemporary information ecosystem is characterised by rapid dissemination of information, politicised narratives and widespread use of social media platforms. In such an environment, judicial silence often results in misrepresentation of court decisions by unlearned commentators. The framework therefore recognises proactive judicial communication as a reputational safeguard that protects institutional integrity by providing timely, authoritative clarification.

Given Nigeria's linguistic diversity and uneven digital access, effective communication must combine digital platforms with traditional media, translations into major local languages, and community-focused public legal education initiatives.

It is therefore important to lay down a constitutionally grounded and ethically regulated judicial communication system. By aligning communication practices with

⁶ *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256 (CA); applied in Nigeria in *A-G Federation v Abubakar* (2007) 10 NWLR (Pt 1041) 1 (SC).

constitutional values and ethical obligations, the judiciary reinforces its role as a stabilising institution within Nigeria's constitutional democracy.

3.0. Case Examples of Judicial Communication: Global Practices

3.1 United Kingdom

The UK Supreme Court has a dedicated press office, a functional website and social media presence (@UKSupremeCourt), where judgments are explained through plain-language summaries.⁷ During the 2019 Brexit prorogation case, the Court issued video summaries and infographics, helping demystify a politically explosive decision.

An accompanying note to the summary of a recent decision by the UK Supreme Court stated:

"This summary is provided to assist in understanding the Court's decision. It does not form part of the reason for the decisions. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: Decided cases - The Supreme Court".⁸

This level of transparency helped counter sensationalist narratives and boosted public understanding.

3.2 Taiwan

Judicial reforms implemented by the Judicial Yuan in Taiwan opened up the judicial process to the public. The reforms made provision for citizens' participation in trials, utilizing multi-media to 'create diverse dialogue mechanism' for interaction with the public and providing legal education, and even advocated for diversity in judicial communication, involving women, the elderly and handicap⁹. The judiciary operates an official website, social media accounts, a judicial information response team,

⁷ UK Supreme Court. (2019). Press and Communications Office. <http://www.supremecourt.uk/>.

⁸ Ibid.

⁹ Judicial Yuan of Taiwan, 'Outline of policy plans for 2019' (May, 2019) <https://www.judicial.gov.tw/en/cp-1669-79881-54a67-2.html> accessed 12th January, 2026.

podcasts for openly discussing legal and judicial issues and even collaborates with film companies to produce documentaries and other related media for the judiciary.¹⁰

3.3 Kenya

The Kenyan judiciary has adopted a digital communication strategy under Chief Justice Martha Koome, using Twitter, YouTube, and Facebook to post judgments, live-stream hearings, and conduct civic education.¹¹ This was particularly evident during the 2022 Presidential Election Petition, where the Supreme Court's communication strategy helped manage public expectations and tension.¹²

3.4 Nigeria

While the Nigerian Judiciary's journey towards full transparency is ongoing, there are efforts being made to enhance it. For example, the recent public disclosure of judicial appointments championed by the Chief Justice of Nigeria, Hon. Justice Kudirat Kekere-Ekun, GCON, which opens the appointment process to public scrutiny.¹³

The superior courts in Nigeria especially take steps in sensitizing and educating the public by posting relevant data on official websites as well as through publications. The Court of Appeal for instance publishes periodic reports in the form of News Bulletin Magazines and others to offer insights into the court's operations, statistics and policy directions.¹⁴ Other judicial institutions such as the National Judicial Institute (NJI) also produces similar publications, such as the NJI New Bulletin

¹⁰ Yu-hsien Sung, 'Effective Judicial Communication and Trust in the Judiciary.' Cambridge University Press: 04 June 2025 <http://resolve.cambridge.org/core/journals/journal-of-law-and-courts/article/effective-judicial-communication-and-trust-in-the-judiciary/1ADE3AD35B764ACEEF7D3D8EA405389A> accessed 12th January, 2026.

¹¹ Judiciary of Kenya. (2022). Office of the Chief Justice. <<http://www.judiciary.go.ke/>> accessed 12th January, 2026

¹² D. Olewe, 'Kenya Election 2022: Supreme Court confirms William Ruto's victory against Raila Odinga', *BBC News* (5 September, 2022) <<https://share.google/0rzFvdYeG7OZltkGg>>

¹³ Kechukwu Nnochiri, 'Appointment of judges: Why we publish names of candidates - CJN' *Vanguard, Nigeria* (October 2, 2025) <<http://www.vanguardngr.com/2025/10/appointment-of-judges-why-we-publish-names-of-candidates-cjn/>> accessed 12th January, 2026.

¹⁴ Court of Appeal, Nigeria (Official website). <<http://www.courtsofappeal.gov.ng/>>.

which highlights its efforts that aim to impact the judiciary "in the positive by ensuring that justice is not only dispensed promptly, but is equally accessible to every citizen, irrespective of their social strata in life."¹⁵

The Judiciary also engages more frequently with civil society groups such as "Citizens' Gavel". In view of the multi-lingual demographics of the country, the judiciary through the NJI, also took steps to develop a glossary in Nigeria's major languages and specially trained court interpreters to improve understanding of court proceedings.¹⁶ The improved adherence to Judicial Code of Conduct and disciplinary actions against erring judges as well adoption of technology, all point to the Nigerian Judiciary's drive towards greater transparency.

While these are commendable however, Nigerian courts rarely issue press releases or explanatory summaries. This often leaves room for damaging speculations especially for high profile cases such as electoral matters.¹⁷ This silence contributes to a perception of opacity in the judicial process and Nigeria could take a leaf from the page of other countries in

4.0. Building a Communication Framework for Nigerian Courts

This paper proposes a four-pillar framework for effective judicial communication in Nigeria:

4.1 Content Clarity

Judicial communication to the public would require translating complex legal jargon into easily understandable language for the general public through summaries, infographics, and accessible explanations. While English is the official language of the courts, many Nigerians do not understand or speak it fluently. The courts could translate decisions into major local languages and develop visual explainer tools for complex legal doctrines.

¹⁵ NJI News Bulletin (2024) Volume 10. Jan - June, 2024.

¹⁶ NJC & NJI (2022). Judicial Training Manual on Media and Communication. Abuja: National Judicial Institute .

¹⁷ M. Ibe, 'Nigeria's Supreme Court and the Politics of Silence.' *Premium Times* (August 14, 2023).

The intention would be to improve access to the courts and understanding of how it operates especially in less developed areas. The use of simpler language indirectly promotes legitimacy of the judiciary as it would encourage people from different parts of the country to look to the courts for their justice needs.

4.2 Channel Diversity

Beyond formal pronouncements, regular briefings by judicial spokespersons on significant cases, can demystify proceedings and address public concerns. As is the global practice, proactive judicial communication would involve

- Establishing active, verified social media accounts for appellate courts.
- Uploading audio-visual content on YouTube or Tik-Tok for public consumption.
- Partnering with civic tech organizations to disseminate rulings in digestible formats.
- Opening appointment process to public scrutiny

4.3 Proactive Engagement

Judicial social media and other technological platforms could be used to establish an organized regiment for public legal education (PLE). The most common and reliable medium would be through official court websites which are more reliable and trusted. The official websites could provide information on how the court operates, summaries of cases, reports and statistics and relevant databases. The websites could also provide court user information such as access to legal aid, information on court hearing dates court listings and how to access court judgements. This will in turn improve access to justice and confidence in the judicial process.

In addition to providing vital information, proactive communication would also involve:

- Addressing trending misinformation or rumors around the judiciary.
- Issuing press briefings after contentious rulings.

- Hosting periodic public forums and town halls (e.g., Judiciary and You program).

4.4 Impact Evaluation

Establishing accessible platforms for citizens to report perceived misconduct or inefficiencies within the judiciary empowers the public and fosters accountability. Furthermore, there is a need for accurate and continuous assessment of the general perception of the public towards the Judiciary. This can be done by conducting periodic trust surveys to assess public confidence. Other methods include analyzing media tone and sentiment before and after communication campaigns and tracking engagement metrics on social media and digital platforms.

4.5 Adopt people-centered justice

Judicial communication is a key attribute of people-centered justice which focuses on the needs and outcomes for individuals and communities. Adopting a people-centered approach entails use of clear language, providing vital information, acquiring feedback and ultimately making the justice institutions more inclusive and people oriented. People-centered justice would contribute to the legitimacy of the judiciary by understanding the people's justice needs, expand the scope of justice beyond the courtroom and provide more accessible and affordable justice.

4.6. Challenges and Cautions

Judicial ethics:

It is essential to promote judicial transparency without compromising the independence of the judiciary. Communication therefore, must not compromise case impartiality or ongoing trials. Ethical issues that may arise include:

- Influence public opinion, potentially putting pressure on judges or influencing future cases.
- Political interference from political actors taking advantage of increased public discourse to influence or misrepresent judicial statements.

- Perception of bias where non-formal communication from judicial officers can be misconstrued as bias on a substantive matter.
- Media sensationalism: The media, while crucial to communication can sometimes sensationalize or misinterpret judicial statements leading to public misunderstanding and potentially undermining trust.

Capacity:

Many courts lack qualified communication staff and technical training in public relations, communication strategies and media engagement. This necessitates partnerships and training from institutions like the NJI.

Digital divide: Strategies must consider Nigeria's disparities in internet access and literacy.

5.0. Key findings

Key findings from this study indicates that:

1. While there are existing constitutional and ethical foundations for judicial communication, judicial policy and institutional frameworks in Nigeria do not presently prioritise communication and public interaction, resulting in gaps between judicial processes and public understanding.
2. The use of plain-language judgement summaries, particularly in electoral and other public-interest cases, contributes to public understanding, and can hinder speculation and declining confidence in judicial outcomes.
3. Judicial communication in Nigeria remains largely monolingual and text-heavy, limiting accessibility for non-English speakers and marginalized groups in a linguistically diverse society.
4. There is need for dedicated, professionally structured judicial communication units and media accounts in courts and other judicial offices, to ensure consistent and timely dissemination of public judicial information and to avoid allowing unofficial narratives to dominate public discourse.
5. Public legal education efforts by judicial institutions are fragmented and insufficiently institutionalized, reducing the judiciary's capacity to proactively shape public understanding of its role, processes and limitations.

6. There is no systematic mechanism for measuring public trust, user experience, or the effectiveness of judicial communication, weakening accountability and evidence-based improvement of transparency initiatives.

5.0. Conclusion

Judicial legitimacy is not a one-time achievement; it is a constantly evolving construct shaped by communication, perception, and accountability. Lord Denning's vision of justice "being seen to be done" must now extend beyond the courtroom, into the public square-on radio, television, Facebook, and X. It is institutional survival and not without challenges, such as bridging the gap between the judiciary and the public without undermining its independence.

In essence, Nigerian courts need to embrace the communication tools of the 21st century not to market justice, but to explain it-to make the law known, the reasoning visible, and the judiciary more human and relatable. It goes without saying, to sustain the legitimacy of the judiciary the gaps in communication must be filled by the courts themselves and not left open to political or misconstrued interpretations. As aptly pointed out by Nobel Laureate, Chinua Achebe,

"Until the lions have their own historians, the history of the hunt will always glorify the hunter."

6.0. Recommendations

To enhance judicial legitimacy in Nigeria through effective communication this paper makes the following recommendations:

1. Review the Nigerian judicial policy by the NJC to also prioritize communication and public interaction as well as adopt an ethically standard communication framework which incorporates content clarity, inclusivity, consistency and people-centered justice.
2. Provide plain-language judgement summaries especially for electoral and other public interest matters which clearly explains the reasoning and outcome of cases, accompanied by standard disclaimers that the full judgment remains the sole authoritative document.

3. Introduce multilingual and inclusive communication tools, including summaries of landmark decisions translated into major local languages and adapted into visual and audio formats to enhance accessibility.
4. Establish dedicated judicial communication units which would operate under clear protocols approved by the NJC to ensure that all public information released by the courts are accurate, neutral and ethically compliant.
5. Institutionalise public legal education (PLE) programmes to be conducted by courts, NJI and other judicial institutions and civil society organisations through radio, social media and other multimedia platforms.
6. Implement feedback and accountability mechanisms, such as periodic public trust surveys and court user assessments to evaluate the effectiveness of judicial communication strategies and identify areas for improvement.

TOWARDS A HUMANE AND SUSTAINABLE CRIMINAL JUSTICE SYSTEM IN NIGERIA: THE CASE FOR RESTORATIVE AND NON-CUSTODIAL MEASURES

By

Amir Bello Nura

Musa Muhammad Abdulkadir

Abstract

Nigeria 's criminal justice system faces a persistent crisis of correctional centres overcrowding, with facilities housing far beyond their intended capacity. Despite reforms under the Administration of Criminal Justice Act (ACJA) 2015 and the Nigerian Correctional Service Act (NCSA) 2019, imprisonment remains the dominant sentencing option, undermining rehabilitation and human rights objectives. This paper examines the integration of restorative justice and non-custodial measures as viable strategies for decongesting correctional centres and promoting humane justice delivery. It explores key concepts, legal frameworks, and institutional mechanisms supporting these approaches while highlighting practical challenges such as judicial conservatism, limited funding, weak public awareness, and absence of uniform sentencing guidelines. Drawing comparative insights from South Africa, New Zealand, and Kenya, the paper demonstrates the effectiveness of restorative and community-based models in achieving justice that reconciles rather than alienates. It concludes that meaningful reform in Nigeria requires not only strong legal provisions but also effective implementation, stakeholder collaboration, and societal reorientation. A justice system grounded in restoration, accountability, and reintegration is essential to uphold human dignity, enhance public confidence, and ensure lasting peace and social cohesion.

Keywords: Restorative Justice, Non-Custodial Sentencing, Prison Overcrowding, Criminal Justice Reform, Community Reintegration

1.1 Introduction

The Nigerian criminal justice system is at a critical crossroads. Correctional centres originally designed for 50,000 inmates now house well over 80,000 most of whom are awaiting trial¹. Overdependence on imprisonment for both minor and serious offences has produced a cycle of congestion, human rights violations, and ineffective rehabilitation. This situation calls for urgent reform based on modern, restorative, and community-oriented approaches to justice delivery.

Non-custodial sentencing and restorative justice together represent a profound shift from punishment to restoration. They humanize the justice process by emphasizing accountability, reconciliation, and the reintegration of offenders into society. Importantly, these approaches are not foreign to Nigeria; they mirror indigenous mechanisms of conflict resolution where restitution, apology, and community service were central to justice².

1.2 Restorative justice

Restorative justice may be defined as *“a process through which all parties affected by an offence collectively resolve how to deal with its consequences and implications for the future”* United Nations³. It seeks to repair the harm caused by crime by fostering dialogue among victims, offenders, and community members. Restorative justice is rooted in the question: “Who has been hurt, what are their needs, and whose obligations are these?” rather than “What law has been broken?”⁴

The approach emphasizes three key principles:

1. Repair — addressing and remedying the harm caused;

¹ Agbo F. O.2022, “Sentencing Guidelines and Prison Congestion in Nigeria: Challenges and Prospects for Decongestion” *Global Journal of Politics and Law Research* Vol. 10 No. 3 23–35. Accessed from <https://globalacademicgroup.com/journals/global-journal-of-politics-and-law-research/sentencing-guidelines.pdf> on 1 October 2025, 8:22 p.m.

² Onuigbo I. A. and Nkolo E. C.2024, “The Necessity of Non-Custodial Sentencing and Restorative Justice in the Administration of Criminal Justice System in Nigeria” *African Journal of Law and Human Rights* Vol. 8 No. 2 75–92.

³ United Nations, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (UN Doc E/2002/INF/2/Add.2)

⁴ Zehr H. 2015, *The Little Book of Restorative Justice* (Revised Edition, Good Books, 2015) P.34

2. Reintegration — restoring offenders and victims to full participation in society;
3. Responsibility — ensuring offenders take active steps to make amends.

1.3 Non-Custodial Sentencing

Non-custodial sentencing refers to criminal sanctions that do not involve imprisonment but instead allow offenders to serve their sentences within the community under certain conditions. It embodies the idea that punishment should correct behaviour, not simply remove individuals from society. The United Nations⁵ define them as alternatives to imprisonment designed to reduce reliance on incarceration and promote social rehabilitation.

In Nigeria, the ACJA 2015⁶ and the NCSA 2019⁷ explicitly authorize courts to impose non-custodial measures such as probation, community service, parole, and restitution. These measures operationalize restorative ideals in a structured legal context.

1.4 The Legal and Institutional Frameworks

Nigeria's legal architecture supporting restorative and non-custodial justice has advanced significantly. The Administration of Criminal Justice Act (ACJA) 2015 was a landmark reform that permitted courts to substitute imprisonment with non-custodial sanctions. Complementing this, the Nigerian Correctional Service Act established a Non-Custodial Service Directorate mandated to supervise offenders serving community-based sentences.

These statutes collectively align Nigeria with international standards particularly the Tokyo Rules (1990) and the UN Basic Principles on Restorative Justice⁸ thereby signaling a policy shift from retribution toward rehabilitation and reconciliation.

⁵ United Nations, *Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)* (UNGA Res 45/110, 14 December 1990).

⁶ Section 9 *Administration of Criminal Justice Act* 2015 (Nigeria).

⁷ Section 37 *Nigerian Correctional Service Act* 2019 (Nigeria).

⁸ United Nations, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (UN Doc E/2002/INF/2/Add.2).

1.5 Forms of Non-Custodial Sentencing

Non-custodial sentences take various forms, each tailored to the nature of the offence and the offender's circumstances. Common examples include:

1. Probation: Under a probation order, the offender is released under supervision for a specified period during which they must demonstrate good conduct. This allows rehabilitation under guidance rather than confinement⁹.
2. Community Service: Offenders are required to perform unpaid work that benefits the public such as cleaning public spaces, assisting in hospitals, or supporting community projects. This serves both a punitive and restorative purpose by allowing offenders to contribute positively to society.
3. Restitution and Compensation Orders: Courts may order offenders to compensate victims financially or materially for harm caused. This directly addresses the victim's loss and fosters reconciliation¹⁰.
4. Parole: Parole allows for the conditional early release of inmates who have shown good behaviour. It facilitates reintegration under supervision while easing pressure on correctional facilities.
5. Suspended Sentence: A custodial sentence may be suspended on condition that the offender refrains from further offences during a specified period. This acts as a deterrent while giving the offender an opportunity for reform.
6. Mediation and Restorative Conferences: These involve structured dialogues between victims, offenders, and sometimes community representatives, allowing emotional closure and accountability in a non-adversarial setting.

Accessed from <https://www.un.org/ruleoflaw/files/basic-principles-restorative-justice.pdf> on 2 October 2025, 8:34p.m

⁹ Omodanisi K. B.2025, "Evaluating the Application of Probation as a Non-Custodial Sentence under the Nigerian Administration of Criminal Justice Act 2015: Lessons from Kenya" *Journal of African Law* Vol. 69 No. 1 (2025) 101–118.

Accessed from <https://www.cambridge.org/core/journals/journal-of-african-law/article/probation-nigeria/CF63E3B44C991> on 2 October 2025, 8:27 p.m.

¹⁰ Agbo F. O.2022, "Sentencing Guidelines and Prison Congestion in Nigeria: Challenges and Prospects for Decongestion" *Global Journal of Politics and Law Research* Vol. 10 No. 3 (2022) 23–35.

Accessed from <https://globalacademicgroup.com/journals/global-journal-of-politics-and-law-research/sentencing-guidelines.pdf> on 3 October 2025, 1:22 p.m.

When properly implemented, these measures promote accountability without severing social or economic ties, reducing recidivism and public expenditure on incarceration¹¹.

1.6 The Benefits of Integrating Restorative and Non-Custodial Justice

The adoption of restorative and non-custodial measures presents a holistic and progressive approach to criminal justice reform in Nigeria. Rather than relying predominantly on incarceration, this combined framework responds more effectively to the multifaceted nature of crime by addressing its social, economic, and human dimensions. It reflects a shift toward a justice system that prioritizes repair of harm, accountability, and social reintegration alongside public safety. The Key benefits include:

1. **Reduction in Prison Congestion:** By diverting minor offenders to community-based programmes, correctional centres can focus on serious crimes.
2. **Rehabilitation and Reintegration:** Offenders maintain family relationships, employment, and societal roles, increasing their chances of successful reintegration.
3. **Victim Empowerment:** Victims gain a voice in the justice process, often resulting in closure and emotional healing.
4. **Human Rights Protection:** Non-custodial sanctions reduce exposure to overcrowded and often inhumane prison conditions.
5. **Cost Effectiveness:** Community sanctions require fewer public resources than maintaining prisoners in custody.
6. **Community Cohesion:** By engaging offenders in community work, restorative justice helps rebuild trust and solidarity within affected communities.

¹¹ Akinola B., *Revisiting Justice: Restorative Approaches to Penal Reform in Nigeria* (Ibadan University Press, 2023).
Accessed from <https://ibadanuniversitypress.edu.ng/restorative-justice-nigeria> on 11 October 2025, 8:24 p.m.

1.7 Implementation Challenges

Despite significant progress, Nigeria's restorative and non-custodial justice systems face notable challenges: These challenges include, but not limited to the following;

- 1) Judicial conservatism remains a significant barrier, as many judicial officers continue to rely on traditional punitive sentencing approaches. This reluctance is often rooted in long-standing legal culture, limited exposure to restorative principles, and concerns about deterrence and public reaction. As a result, even where non-custodial options are legally available, they are underutilized, leading to continued overreliance on imprisonment for minor and non-violent offences.
- 2) Institutional weaknesses within the Non-Custodial Service Directorate further constrain effective implementation. Inadequate staffing, insufficient funding, and limited logistical support hinder proper supervision, monitoring, and enforcement of non-custodial sentences. These deficiencies not only reduce operational efficiency but also reinforce judicial hesitation, as courts may lack confidence in the system's capacity to ensure compliance and accountability.
- 3) Public perception poses another critical challenge. Many Nigerians view community-based sanctions as lenient or ineffective, equating justice with incarceration. This perception is shaped by limited public engagement, misinformation, and a lack of visible success stories. Such skepticism reduces public trust, affects victim participation, and creates societal pressure on courts to impose custodial sentences, even when non-custodial measures may be more appropriate.
- 4) The absence of national sentencing guidelines further exacerbates these challenges by allowing wide judicial discretion without standardized benchmarks. This lack of uniformity results in inconsistent sentencing outcomes across jurisdictions, undermining fairness, predictability, and public confidence in the justice system. It also complicates efforts to institutionalize non-custodial sentencing as a mainstream practice.

- 5) Low Public Awareness: Victims and communities often lack understanding of restorative and non-custodial processes¹².

1.8 Comparative Insights and Lessons

Experiences from other jurisdictions underscore the proven effectiveness of restorative and non-custodial approaches in achieving meaningful justice reform. In South Africa, restorative justice is deeply embedded in juvenile justice policies, emphasizing reconciliation, rehabilitation, and community participation over punitive responses¹³. By prioritizing reconciliation, accountability, and community participation, the system acknowledges the developmental nature of youth offending and the long-term social benefits of early intervention. This approach has strengthened community ownership of justice outcomes and reduced the stigmatization of young offenders, illustrating how restorative justice can function as both a corrective and preventive mechanism.

New Zealand, through its *Children, Young Persons, and Their Families Act 1989*, institutionalized family group conferencing a restorative model that fosters dialogue among offenders, victims, and the community, leading to significant reductions in youth incarceration.

Likewise, Kenya's structured community service and probation systems demonstrate that non-custodial measures can effectively reduce prison overcrowding while ensuring offender accountability and public confidence in justice¹⁴.

¹² Izevbuwa O. G., Ngwoke R. A. and Mbano I. P.2023, "Statutory and Institutional Frameworks for Implementing Non-Custodial Measures in Nigeria's Criminal Justice Administration" *Criminal Law Journal* Vol. 3 No. 1, 15–29.

Accessed from <https://nijournaloflaw.org/noncustodial-framework-nigeria> on 10 October 2025, 8:26 p.m.

¹³ Skelton A.2017, "Restorative Justice as a Framework for Juvenile Justice Reform in South Africa" *South African Journal on Human Rights* Vol. 33 No. 4,589–610.

Accessed from <https://sajhr.org.za/article/view/596/487> on 8 October 2025, 8:30 p.m

¹⁴ Omodanisi K. B.2025, "Evaluating the Application of Probation as a Non-Custodial Sentence under the Nigerian Administration of Criminal Justice Act 2015: Lessons from Kenya" *Journal of African Law* Vol. 69 No. 1,101–118.

Accessed from <https://www.cambridge.org/core/journals/journal-of-african-law/article/probation-nigeria/CF63E3B44C991> on 12 October 2025, 8:27 p.m.

Collectively, these jurisdictions illustrate that restorative and non-custodial justice mechanisms are not inherently lenient but are effective tools for accountability, rehabilitation, and social repair when properly designed and implemented. They also emphasize the importance of institutional capacity, clear legal frameworks, inter-agency collaboration, and sustained public engagement.

For **Nigeria**, these comparative lessons suggest that meaningful adaptation requires more than policy endorsement. Strengthening institutional frameworks, improving coordination among courts, correctional services, and community actors, and fostering active community participation are essential steps. By contextualizing these international best practices within Nigeria's legal and socio-cultural environment, restorative and non-custodial justice can evolve into durable pillars of a criminal justice system that is humane, efficient, and socially responsive.

1.9 Conclusion

Nigeria stands on the brink of a necessary and transformative justice reform. By embracing restorative and non-custodial measures, the country can humanize its penal system, reduce congestion in correctional centres, and restore dignity to the administration of justice. The challenge is no longer the absence of legal frameworks, these provisions already exist within national laws and international instruments to which Nigeria is a signatory. Rather, the core issue lies in effective implementation, public awareness, and sustained institutional commitment.

True reform requires more than legislative enactments; it demands a cultural and systemic shift in how justice is perceived and administered. Law enforcement agencies, judicial officers, and correctional authorities must work collaboratively to ensure that restorative and non-custodial approaches are not treated as peripheral options but as integral parts of sentencing and rehabilitation. Community service, probation, parole, and mediation programs should be strengthened through adequate funding, capacity building, and monitoring mechanisms that guarantee accountability and measurable outcomes.

Furthermore, public trust must be rebuilt through transparency and consistent application of these measures. When communities see justice not merely as retribution but as restoration repairing harm, reconciling relationships, and

reintegrating offenders they become active partners in the justice process. Civil society, traditional institutions, and religious bodies can play a vital role in this transformation by fostering community-based dispute resolution and supporting reintegration initiatives for ex-offenders.

A justice system that heals rather than harms is not only achievable but indispensable for sustainable peace, national development, and social cohesion. Restorative and non-custodial justice approaches embody the spirit of humanity, fairness, and progress that Nigeria's democratic ideals aspire to uphold. The time to act is now through courage, collaboration, and a shared vision of justice that truly serves the people.

1.10 Findings

1. **Judicial and Institutional Training:** The study finds that insufficient and uneven capacity-building initiatives for judicial officers, prosecutors, correctional personnel, and law enforcement agencies have resulted in limited understanding and inconsistent application of restorative justice principles and non-custodial sentencing options.
2. **Public Sensitization:** The findings reveal low public awareness and confidence in restorative and community-based justice mechanisms, attributable to inadequate nationwide sensitization efforts and deeply entrenched punitive perceptions of justice.
3. **Sentencing Guidelines:** The absence of a comprehensive and standardized national sentencing framework has led to wide disparities in sentencing practices across jurisdictions, undermining proportionality, fairness, and consistency in the use of non-custodial measures.
4. **Institutional Strengthening:** The study finds that institutions responsible for implementing non-custodial sentences are under-resourced, with inadequate funding, staffing, and technological infrastructure, thereby limiting effective supervision, transparency, and accountability.
5. **Collaborative Partnerships:** Weak and unstructured collaboration among courts, civil society organizations, traditional and religious institutions, and community leaders has constrained the inclusive and community-based nature of restorative justice processes.

6. **Legislative Reforms:** The findings indicate that existing legal frameworks governing restorative and non-custodial justice are fragmented and inconsistently applied across states, creating legal uncertainty and hindering uniform nationwide implementation.
7. **Victim Support Services:** The study finds that the lack of structured victim support mechanisms, including counseling services, legal aid, and restitution arrangements, has reduced victim participation and confidence in restorative justice processes.
8. **Monitoring and Evaluation Framework:** There is an absence of a robust national monitoring and evaluation system to track compliance, assess outcomes, and measure the effectiveness of restorative and non-custodial interventions, limiting evidence-based reform.
9. **Integration into Legal Education:** Restorative and non-custodial justice principles are insufficiently integrated into the curricula of law schools, police academies, and judicial training institutions, resulting in limited foundational knowledge among emerging justice sector actors.
10. **Community Reintegration Programmes:** The findings show that post-sentence reintegration support for offenders particularly in employment, housing, and social services is weak or poorly coordinated, increasing the risk of recidivism and undermining rehabilitation objectives.
11. **Use of Technology:** The study finds limited deployment of digital case management tools, sentencing databases, and electronic monitoring systems, which has constrained efficiency, transparency, and data-driven decision-making within the justice system

1.11 Recommendations

- 1) **Judicial and Institutional Training:** Continuous capacity building for judicial officers, prosecutors, correctional staff, and law enforcement agencies on restorative principles and non-custodial sentencing options.
- 2) **Public Sensitization:** Nationwide media campaigns, community dialogues, and civic education programmes to reshape public perceptions of restorative and community-based justice as credible and effective alternatives to imprisonment.

- 3) Sentencing Guidelines: Development and adoption of a comprehensive national sentencing framework to ensure proportionality, fairness, and consistency in the application of non-custodial measures across jurisdictions.
- 4) Institutional Strengthening: Adequate funding, staffing, and equipping of the Non-Custodial Service Directorate, complemented by digital offender management systems to enhance transparency and supervision.
- 5) Collaborative Partnerships: Building stronger partnerships between courts, civil society organizations, traditional and religious institutions, and community leaders to promote inclusivity and shared responsibility in restorative justice implementation.
- 6) Legislative Reforms: Review and harmonization of existing laws to remove inconsistencies and ensure that restorative and non-custodial provisions are uniformly applicable across all states of the federation.
- 7) Victim Support Services: Establishment of structured support mechanisms for victims, including counseling, legal aid, and restitution funds, to strengthen confidence in restorative justice processes.
- 8) Monitoring and Evaluation Framework: Creation of a national monitoring and evaluation system to track outcomes, ensure compliance, and measure the effectiveness of non-custodial and restorative interventions.
- 9) Integration into Legal Education: Inclusion of restorative and non-custodial justice modules in the curriculum of law schools, police academies, and judicial training institutes to institutionalize awareness from the foundation.
- 10) Community Reintegration Programs: Development of structured post-sentence reintegration programmes to assist offenders in securing employment, housing, and social support to prevent recidivism.
- 11) Use of Technology: Deployment of electronic case dashboards and digital sentencing databases to aid courts in assessing suitable non-custodial options, monitoring offenders, and improving data-driven decision-making.

TECHNICALITY AS A BARRIER TO SUBSTANTIVE JUSTICE IN NIGERIA

Abstract

In the quest for justice, Nigerian courts often face a difficult choice between strictly following procedural rules and ensuring substantial justice. While procedural law is important for regulating court processes and protecting the rights of those involved, its strict and overly technical application has, in many cases, resulted in the dismissal of valid claims. This focus on form over fairness undermines the credibility of the judiciary, especially in a society where many struggle to access justice. This paper examines the ongoing emphasis on technicalities in Nigerian law and how this approach hinders the constitutional goal of fair hearings and equitable dispute resolution. It traces the roots of procedural rigidity, highlights actual judicial decisions where technical issues have prevented justice, and analyzes the changing trends in jurisprudence that aim to restore balance. By considering both local and comparative perspectives from other common law systems, the paper calls for a more purpose-driven interpretation of procedural norms focused on justice. The goal is not to discard rules or promote a disregard for procedure, but to place legal technicalities within a framework that prioritizes justice in the judicial process while utilizing the doctrinal research methodology. Ultimately, it argues for a principled and reform-oriented approach where procedural law serves the judicial process, not controls it.

Keywords: *Technicality, Substantive Justice, Judicial Discretion, Access to Justice*

1. Introduction

The administration of justice must be fair, accessible, and meaningful. The Nigerian legal system, which takes much of its structure and rules from English common law, has long focused on procedural regularity as a foundation of due process. However, when procedural rules meant to help achieve justice take precedence over the justice they aim to support, a crisis arises. This crisis is serious and real. It shows up in cases being dismissed due to minor procedural mistakes, in appeals being denied because of trivial formalities, and in technical victories overshadowing fair outcomes.¹ This paper seeks to explore this conflict by looking at how technicality plays out in Nigerian courts and its effect on the parties' right to have their cases heard based on their merits. It argues that a legal system that values form more than substance undermines its own credibility, particularly in a society where access to justice is often uneven and elusive. The paper also discusses how judges' attitudes, reforms in procedure, and lessons from other legal systems can guide a more justice-focused approach.

One of the biggest tests for any judicial system is its ability to deliver justice without being blocked by procedural hurdles. In Nigeria, it is common to see cases sometimes critical to public interest dismissed or delayed indefinitely due to procedural flaws that could be fixed or are insignificant.² These issues can include errors in naming parties, incorrect methods of starting a case, or missing technical deadlines, even when the core issues are ready for judgment. This strict approach to procedures undermines the very purpose of courts: to resolve disputes fairly and justly. It also leads to frustration among those involved and promotes the idea that the judiciary is formal and hard to access. What is more concerning is that the ongoing focus on technicalities disproportionately impacts the poor, those without representation, and those who may not fully understand the law. These litigants are less likely to meet all procedural requirements, especially when dealing with complex court rules without legal help. In contrast, those with top legal support can often take advantage of technical loopholes to hinder their opponents. This imbalance not only harms the fairness of trials but also worsens public distrust in

¹ *Bello v Attorney-General of Oyo State* (1986) 5 NWLR (Pt 45) 828; also see *FBN v Maiwada* [2013] LPELR-20602 (CA).

² E.C. Nwogugu, 'Procedural Rigidity and the Denial of Justice: An Enduring Challenge' (2017) 45(3) *Nigerian Bar Journal* 212.

the legal process. It is time for a stronger and more principled shift in legal culture one that prioritizes substantive justice over rigid procedures.³

2. What is technicality and what is substantive justice?

In legal language, technicality refers to the stringent and frequently rigid application of procedural regulations.⁴ This is typically done without regard for whether obeying such regulations aids or hinders a fair settlement of the matter. It happens when a judgment is made based on formal rules rather than the real issues at hand, such as deadlines, formats, signatures, means to commence a case, or procedural stages that are frequently irrelevant to the major concerns. Technicality thrives when justice is viewed as the outcome of legal procedures rather than solid legal reasoning. Substantive justice, on the other hand, focuses on the merits of a case the rightness or wrongness of a party's claim or defense based on facts, law, and fairness.⁵ It requires that a dispute be settled not just by courtroom rules but also by the principles of fairness, logic, and judicial values. Substantive justice puts the outcome ahead of the procedures, ensuring that parties, especially those facing economic and structural disadvantages, do not lose out on justice simply because they struggled to navigate the complicated and sometimes outdated procedural rules.

The conflict between technicality and substantive justice has been a significant issue in Nigerian law. In the past, courts often dismissed cases for procedural errors, frequently ignoring whether these mistakes caused real harm to the other party. This approach, while defensible in terms of legal certainty, has led to instances where strong claims have been dismissed due to procedural issues.⁶ Although there is increasing awareness of this problem in the courts, technicality

³ Uwais M.L., 'Justice According to Law' (2005) 3 *NJ/ Law Journal* 15.

⁴ Amb S.B. Mukaddam, 'The Problem Of Legal Technicalities And The Demand For Justice: Layman's Perception Of Technically Decided Cases' (2023) 4(1) *Lawrit Journal of Law* <https://www.academia.edu/118958043/The_Problem_Of_Legal_Technicalities_And_The_Demand_For_Justice_Laymans_Perception_Of_Technically_Decided_Cases> accessed 17 July 2025.

⁵ Afe Babalola, 'Role of a Strong and Independent Judiciary in a Nation (Part 3)' (Afe Babalola University, 2023) <<https://www.abuad.edu.ng/role-of-a-strong-and-independent-judiciary-in-a-nation-3/>> accessed 17 July 2025.

⁶ Lawyers Alert, 'The Murder of Justice on Grounds of Technicality: A Violation of Right to Fair Hearing and Access to Justice' (Lawyers Alert, 16 December 2024) <<https://lawyersalert.wordpress.com/2024/12/16/the-murder-of-justice-on-grounds-of-technicality-a-violation-of-right-to-fair-hearing-and-access-to-justice/>> accessed 17 July 2025.

remains firmly entrenched in both the attitudes of legal professionals and the functioning of procedural rules.

This is particularly clear in cases where jurisdiction is questioned due to procedural errors. Nigerian courts, influenced by cases like *Madukolu v. Nkemdilim*,⁷ have viewed jurisdictional defects as critical, regardless of how minor or easily corrected the error might be. The principle that "you cannot put something on nothing" has often been used to justify dismissing entire cases over minor mistakes that do not impact the core of the dispute. While maintaining process integrity is essential, there is a risk when procedure is prioritized over justice itself. Ultimately, both technicality and substantive justice play significant roles in a judicial system. Procedural rules defend against injustice and guarantee that matters are handled equitably.⁸ However, when these regulations take precedence over justice, they undermine the same fairness that they are intended to protect. As a result, the courts' job is not to overturn technical rules, but to interpret and apply them in ways that promote rather than impede justice. The next sections of this paper will go into how technicalities work in reality, the evolving judicial reaction, and the route forward for a justice system that must be both principled and compassionate.

3. Historical And Doctrinal Foundations of Technicality In Nigeria

Technicality has long played a significant role in Nigerian adjudication. Nigeria's legal system, which was adopted from English Common Law, has both the substantive and procedural tenets of British Law. Form and procedure were strictly adhered to in the early development of English Law, and the outcome of many cases depended more on whether a party had followed the proper procedural channel than on the merits of the claim.⁹ The same procedural formalism was enforced in colonial Nigeria, where courts served largely as tools of colonial rule, prioritising order and control over fair dispute settlement.¹⁰ The post-independence judicial culture was largely influenced by this procedural orthodoxy. There are

⁷ (1962) 2 SCNLR 341

⁸ Ibid

⁹ Millar, Robert Wyness. *Civil procedure of the trial court in historical perspective*. The Lawbook Exchange, Ltd., 2005.

¹⁰ Adeyeye, Adewale Adekunle. "Administrative Convenience or Deliberate Reform? The Impacts of the Colonial Judicial Legacy of the Pre-Colonial Justice System in South-Western Nigeria." (2023).

numerous instances in early Nigerian case law from the 1960s and 1970s where procedural errors were viewed as fatal to dispute resolution, regardless of the underlying merits. For technical violations, courts were more likely to punish litigants and their solicitors than to consider whether the other party was harmed or prejudiced. In this sense, the legal system was not only inviolable but frequently used as a sword rather than a shield.¹¹

The well-known case of *Madukolu v. Nkemdilim*¹² provides a significant doctrinal basis for this trend. In that case, the Supreme Court established the traditional definition of jurisdiction, ruling that a court must be duly constituted, the subject matter must fall within its purview, the case must be brought before it through due process of law, and all requirements for the court's exercise of jurisdiction must be met. Although this formulation is still a cornerstone of Nigerian procedural law, it has frequently been construed in ways that prioritise process adherence over a claim's merits. Because of this, the concept of "due process" has been confused with procedural perfection, and any deviation, no matter how small, has been seen as fatal to a case.¹³

Furthermore, appellate review developed a tendency to mechanically and literally interpret procedural rules. In many cases, appeals have been struck out without taking the justice of the case into account because of a single error in filing a notice of appeal, failing to include a party's name, or improperly paginating a record of proceedings.¹⁴ The idea that court rules are binding requirements rather than just recommendations, even when they seem to put the litigants through hardship, has been seen even by the apex Court in recent times.¹⁵ Indeed, there is a good reason

¹¹ Amb S.B. Mukaddam, 'The Problem of Legal Technicalities and the Demand for Justice: Layman's Perception of Technically Decided Cases' (SabiLaw, 24 March 2024) <<https://sabilaw.org/the-problem-of-legal-technicalities-and-the-demand-for-justice-laymans-perception-of-technically-decided-cases/>> accessed 17 July 2025.

¹² (1962) 2 SCNLR 341

¹³ Erica Harper, *Customary Justice: From Program Design to Impact Evaluation* (International Development Law Organization 2011) <<https://www.idlo.int/sites/default/files/Customary%20Justice%201%20>

¹⁴ rian Z. Tamanaha, 'The Rule of Law and Legal Pluralism in Development' (2011) 63(1) *Law and Contemporary Problems* 1 <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3763&context=lcp>> accessed 17 July 2025.

¹⁵ Udo Udoma & Belo-Osagie, *The Nigerian Supreme Court Rules 2024 and Clarificatory Memorandum on Extension of Time* (22 January 2025, revised edn) <<https://uubo.org/wp->

for this formalism. All parties must be treated fairly, predictably, and with certainty during the legal process.¹⁶ The purpose of procedural rules is to maintain order and guard against judicial decision-making that is arbitrary. It is tempting to use procedural default as a filter to lighten caseloads in complex societies with overloaded dockets and limited judicial resources. However, when this dependence becomes routine, justice suffers greatly, especially for under-represented or underprivileged parties who lack the technical know-how to negotiate the complex legal system.

The fact that procedural technicalities have evolved into a means of legal gamesmanship over time is more concerning.¹⁷ Hyper-technical objections are occasionally used by solicitors to irritate opposing parties or buy time, not because they have a legitimate grievance.¹⁸ This litigation culture can be linked to a body of jurisprudence that discourages courts from using their discretion in the pursuit of justice and favours technical compliance over legal merit. The doctrinal basis of technicality is still deeply ingrained in Nigerian law, despite efforts to curb this tendency through changes to court regulations and judicial attitudes.¹⁹ The following section will look at how this legacy is actually carried out in practice, including how courts still consider and occasionally uphold objections that are based more on form than content and how this has affected the actual administration of justice.

content/up loads/2025/02/The-Nigerian-Supreme-Court-Rules-2024and-Clarificatory-Memorandum-on-Extension-of-time-Final-22.01.25-revised.pdf>accessed 7 January 2026 at 10.45 pm

¹⁶ Ibid

¹⁷ Van Orsdol, Justin C. "Cooking the Books: The Art of Judicial Gamesmanship." *Rutgers UL Rev.* 74 (2021): 1099.

¹⁸ Lawyers, Representing, et al. "LESSONS, LITIGANTS, LOGIC." *LITIGATION* 32.4 (2006).

¹⁹ AARJ Editorial Board, 'Many Reforms Aimed at Improving the Administration Have Been Undergone in the Recent Past' (2025) 2(1) *Journal of Advanced Academic Studies in Humanities* <<https://www.aarcentre.com/ojs3/index.php/jaash/article/view/81/300>> accessed 17 July 2025.

4. Practical Manifestations Technicalities in Nigerian Courts

The ongoing focus on technicality in Nigeria's court system isn't just an interesting topic from the past; it affects real cases in courtrooms today. Nearly every day, trial and appellate courts must decide whether to reject or dismiss a case. This often happens not because the claim lacks merit but because the process was filed a day late, a motion was under the wrong rule, or an affidavit didn't meet formal requirements.²⁰ In many situations, the result depends not on the strength of the evidence or the quality of the legal arguments but on whether the litigant properly followed every procedural rule.²¹ A clear example of this is how courts handle originating processes. Courts have frequently rejected suits when a party used the wrong procedure, such as starting with an originating summons instead of a writ, even if the facts were clear and ready for summary judgment. Similarly, actions have been canceled due to issues with affidavit evidence, like not stating that the deponent swore to the facts in the first person or leaving out the required formula from the Evidence Act. These mistakes are often minor or harmless but still lead to the dismissal of legitimate claims. Election petition tribunals and appellate courts highlight this issue. Due to strict deadlines and rules for electoral disputes, petitioners often miss out on justice because of procedural errors that have no impact on the main issues.

In *PDP v. /NEC (2023)*,¹² the Supreme Court reiterated the importance of following procedural rules in election cases. While the Court tried to differentiate between correctable and non-correctable defects, the distinction often remains unclear, resulting in many cases dismissed for reasons that have nothing to do with the validity of the votes or the legality of the process. The problem worsens in land disputes and customary title cases, where parties often depend on oral history and informal documents. In these situations, litigants may struggle to meet formal pleading standards or present their cases within the strict boundaries of procedural rules, especially if they lack representation or proper guidance. Consequently,

²⁰ Brian Z. Tamanaha, 'The Rule of Law and Legal Pluralism in Development' (2011) 63(1) *Notre Dame Law Review* 1
<<https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4428&context=ndlr>> accessed 17 July 2025.

²¹ Chaman Law Firm, 'Court Procedures and Efficient Case Management' (Chaman Law Firm, 2024) <<https://chamanlawfirm.com/court-procedures-and-efficient-case/>> accessed 17 July 2025.

²² (2023) *LPELR-59444(CA)*

rights grounded in long-term possession or community heritage can be lost not due to substance but because the case wasn't titled right, exhibits were inconsistently marked, or the claimant's name was misspelled.²³ Furthermore, technicality has made access to justice even harder. Many litigants, already facing poverty, illiteracy, and systemic delays, find themselves further marginalized by a procedural culture that prioritizes perfection over practicality.

A single mistake by a lawyer or the court registry can irreversibly harm a case. This strictness is worsened by some judges' reluctance to use their discretion to allow amendments or grant extensions, even when the delays are minor and don't harm anyone. It's true that some appellate courts have, at times, shown understanding of the injustices resulting from technical dismissals. In *Bello v. Attorney-General of Oyo State*,²⁴ the Supreme Court famously stated that "the picture of law and its technical rules triumphant and justice prostrate may no longer be seen in our courts." However, despite this powerful statement, procedural rules continue to dominate litigation. The gap between what is said and what actually happens is significant. This pattern shows that technicality doesn't just delay justice; it distorts it. It allows lawyers to succeed on grounds unrelated to the case's merits, fosters judicial inaction in the face of injustice, and weakens public trust in the courts. In a society already struggling with distrust in government institutions, the view that courts focus more on legal form than on legal fairness is particularly damaging.

5. Judicial Responses and Doctrinal Shifts

Over the past two decades, Nigerian courts have become more aware of the need to reduce the influence of technicality in judicial decision-making. Recognizing the injustice that often arises from relying heavily on procedural defaults, several important decisions have indicated a shift toward prioritizing substantive justice. This shift has not been consistent, but it marks a significant change in judicial thinking. It aims to balance procedural discipline with fairness and equity. One of the earliest and most important statements in this direction came in *Bello v. Attorney-General of Oyo State Supra*. In this case, the Supreme Court, through Eso, JSC, criticized the rise of technicality and stated that the purpose of the law

²³ Olisa Agbakoba Legal, 'Adverse Possession in Nigeria: A Legal Practitioner's Perspective' (Olisa Agbakoba Legal, 14 March 2025) <<https://oal.law/adverse-possession-in-nigeria-a-legal-practitioners-perspective/>> accessed 17 July 2025.

²⁴ (1986) CLR 12(B) SC,

should be to achieve justice. The Court noted that procedural rules are merely tools and not the masters of justice. This was a turning point, marking the start of a clear judicial rejection of blind adherence to procedural rules. However, applying this principle consistently has proven difficult. In *Salami v. Mohammed*²⁵, the Court of Appeal ruled that substantial justice should not be sacrificed due to technical rules, especially when the breach does not harm the opposing party. Similarly, in *Dingyadi v. INEC*,²⁶ the Supreme Court emphasized the importance of hearing cases based on their merits. It warned against dismissing cases solely due to procedural errors that can be corrected without causing any injustice. These cases reinforced the idea that justice must not only be done but also be seen to be done.

More recently, in *PDP v. /NEC & Ors* Supra, the Supreme Court directly addressed the tension between procedural timelines and the need for a fair resolution of electoral disputes. While affirming the constitutional requirement for quick action in election matters, the Court clarified that minor errors, such as typos or small documentation issues, should not derail a valid petition. Although this decision stirred debate, it showed a growing awareness of the risk of reducing justice to mere compliance. For example, modern High Court Civil Procedure Rules in many areas now include provisions that aim to promote justice rather than hinder it. Lagos State's 2019 rules, for instance, encourage judges to interpret rules in ways that prevent injustice. They allow judges to overlook certain procedural defects when no significant harm is caused.²⁷ Federal High Court rules similarly give judges the discretion to extend deadlines and correct processes when necessary.²⁸ Despite these positive changes, inconsistency remains a significant issue. Courts, especially at the trial level, frequently stick to strict interpretations of rules, often citing the need to maintain judicial discipline or avoid dangerous precedents. This caution is understandable in a system where court process abuse is

²⁵ (2000) 9 NWLR (Pt. 673) 469

²⁶ (No. 2) (2010) 18 NWLR (Pt. 1224) 154

²⁷ Damilola Osinuga, Akinbobola Adeniyi and Blessing Adepoju, 'The High Court of Lagos State (Civil Procedure) Rules 2019 - A Step to Improving the Administration of Justice?' (Famsville Law, 8 February 2019) <<https://famsvilllaw.com/2019/02/08/the-high-court-of-lagos-state-civil-procedure-rules-2019-a-step-to-improving-the-administration-of-justice> /> accessed 17 July 2025.

²⁸ GE Elias & Co, *Civil Procedure in Focus: Exploring Key Innovations and Changes in the High Court of Federal Capital Territory (Civil Procedure) Rules, 2025* (GE Elias & Co, 2025) <https://www.gelias.com/images/High_Court_FCT_Civil_Procedure_Rules_2025_-_Key_Innovations_and_Changes.pdf> accessed 17 July 2025.

common, but it also reflects a conservative approach that has not yet been fully overcome by the push for justice.

Additionally, some appellate decisions still support procedural objections that do not relate to the core issues at hand. In many cases, appellate courts seem more focused on punishing lawyers for delays or mistakes than on ensuring that litigants receive a fair hearing. This punitive approach, while justifiable as a way to protect the system's integrity, often ignores that it is the litigant rather than the lawyer who suffers from the error. What is needed is a deeper commitment to purposeful adjudication. This approach would mean interpreting procedural rules in light of their ultimate goal: to enable a just, fair, and timely resolution of disputes. Substantive justice does not oppose rules; it argues that rules should support outcomes, not hinder them. The courts need to keep refining and applying principles like waiver, curability, and harmless error to balance the need for order with the higher calling of justice.

6. The Role of Legal Practitioners

While the courts hold the final responsibility for administering justice, legal practitioners play an important role in shaping the culture of litigation in Nigeria. The focus on technicality in adjudication comes from legal strategy and professional behaviours, not just judicial doctrine.²⁹ Lawyers can either support a culture that values technical victories or advocate for one centered on justice and fairness through their actions in and out of court. Often, attorneys quickly take advantage of procedural lapses by the opposing side. They raise objections not necessarily because the breach caused significant harm but because it offers a chance to end proceedings early. These objections often appear as demurrers, challenges to jurisdiction based on how a case started, objections to the validity of affidavits, or motions to strike out filings for not following formatting or filing rules.³⁰ While these objections aren't inherently wrong, their frequent use as a litigation strategy shows a focus on winning over justice. This approach sometimes finds encouragement in the inconsistent way courts apply rules. Lawyers, unsure

²⁹ Olatunji O. Oyeshile, 'Legal Technicalities and the Demand for Justice in Nigeria: A Philosophical Appraisal' (2023) 14(2) *Journal of Law and Conflict Resolution*

³⁰ Supreme Court of the Philippines, *People of the Philippines v. Hon. Sandiganbayan and Eduardo M. Cojuangco Jr.* (G.R. No. 96073, 2 October 1991)

<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/44/50149>> accessed 17 July 2025

how the courts will address procedural errors, tend to be overly cautious or aggressive by raising every possible technical objection to avoid being accused of negligence. In this setting, procedure becomes not just a way to manage litigation but a battleground itself.

There is also a deeper issue at work. Many legal practitioners are trained in a system that prioritizes procedural accuracy and strict adherence to established rules. Most law school programs focus heavily on technical rules for pleading and drafting but pay less attention to the larger ethical or philosophical questions related to justice.³¹ As a result, young lawyers often enter the field with a limited view of law, seeing it mainly as a system of compliance rather than a way to resolve conflicts and support fairness in society.

As officers of the court, legal practitioners have a professional and ethical obligation to aid in the fair and swift resolution of cases. The Rules of Professional Conduct (RPC) require lawyers to avoid actions that hinder the administration of justice.³² This duty involves not only honesty and diligence but also a commitment to substantive fairness. A lawyer who tries to win based on a technical default, fully aware that the client's case is weak, undermines both the letter and spirit of the legal profession.³³ It is also crucial to note that relying on procedural shortcuts can backfire. A party that wins a dismissal based on technical issues may find that the case is reinstated on appeal or that the conflict reappears in a different guise. In these situations, the short-term procedural win can prove hollow. More importantly, a focus on technicality can damage public trust in the legal system. When ordinary people see cases dismissed for reasons unrelated to the core issues, they sometimes

³¹ Uniuyo Law Clinic, 'Professional Ethics in the Legal Profession: Guiding Laws and Principles' (Uniuyo Law Clinic, 18 May 2023) <<https://uniuyolawclinic.wordpress.com/2023/05/18/professional-ethics-in-the-legal-profession-guiding-laws-and-principles/>> accessed 17 July 2025.

³² *Rule 30, Rules of Professional Conduct for Legal Practitioners 2007* (Edo State Judiciary, 2007) <<https://edojudiciary.gov.ng/wp-content/uploads/2016/10/Rules-Of-Professional-Conduct-For-Legal-Practitioners-2007.pdf>> accessed 17 July 2025.

³³ *Rules of Professional Conduct for Legal Practitioners* (Edo State Judiciary, 2016) <<https://edojudiciary.gov.ng/wp-content/uploads/2016/10/Rules-Of-Professional-Conduct-For-Legal-Practitioners.pdf>> accessed 17 July 2025.

justifiably believe that justice hinges more on technical skills than on truth or fairness.³⁴

To change this culture, legal practitioners need to adopt a broader view of advocacy one that prioritizes persuasion based on the merits and acknowledges the lawyer's role in facilitating justice. This change requires ongoing legal education, mentorship, and adjustments to professional incentives. The honour of winning a case should depend not on whether the opposing counsel made a procedural mistake, but on the strength of legal arguments, evidence, and the fairness of the outcome. Lawyers must also resist the urge to delay proceedings with tactics that frustrate the process.

7. Comparative Perspectives

The tension between procedural compliance and substantive justice is not unique to Nigeria. Legal systems around the world have struggled to reconcile the need for orderly procedure with the imperative of delivering fair and equitable outcomes. However, some jurisdictions have made deliberate and effective strides in curbing the dominance of technicality, and their experiences offer valuable lessons for Nigeria.

South Africa, following the end of apartheid and the adoption of its transformative Constitution in 1996, undertook a radical shift in legal philosophy. The judiciary, guided by the Constitution's emphasis on human dignity, equality, and access to justice, has actively embraced a purposive and flexible approach to procedure.³⁵ In ***Barkhuizen v. Napier***,³⁶ the Constitutional Court emphasized that legal rules must not impede access to courts, and that contractual or procedural limitations must be assessed against the standard of fairness. South African courts now routinely invoke constitutional values to override technical obstacles that would otherwise defeat the fair hearing of a case. The underlying principle is clear: procedure must

³⁴ Colorado Judicial Institute, 'Explainer: Why Is Public Trust in the Judicial System Important?' (Colorado Judicial Institute, 2024) <<https://coloradojudicialinstitute.org/what-we-do/public-education/explainer-why-is-public-trust-in-the-judicial-system-important.html>> accessed 17 July 2025.

³⁵ Brian Z. Tamanaha, 'Legal Pluralism and International Development: Norms and Structures from Different Legal Systems' (2019) 9(1) *International Comparative Law Review*

³⁶ (2007) ZACC 5

be subordinate to justice, not the reverse.³⁷ In India, the judiciary has also developed an activist jurisprudence that seeks to minimize the impact of procedural rigidity. The Indian Supreme Court, particularly in public interest litigation and constitutional enforcement, has often relaxed standing rules, ignored procedural irregularities, and accepted improperly formatted applications where the interests of justice so demand.³⁸ In *Satyawati Sharma v. Union of India*,³⁹ the Court reiterated that procedural laws are handmaids of justice and should not be interpreted in a manner that obstructs substantive relief. The Indian Code of Civil Procedure itself provides courts with discretion to overlook certain procedural defaults where such default does not prejudice the other party a concept still inconsistently applied in Nigerian courts.

The United Kingdom, from which Nigeria originally inherited its procedural framework, has also undergone substantial reform. Following the Woolf Reforms of the 1990s, the Civil Procedure Rules (CPR)⁴⁰ were introduced with a clear overriding objective: to enable the courts to deal with cases justly.⁴¹ This includes ensuring that the parties are on equal footing, saving expense, and dealing with cases in ways that are proportionate, expeditious, and fair. The CPR grants judge's wide discretion to manage cases actively and to dispense with strict procedural compliance when it obstructs justice. For instance, under CPR Rule 3.9, courts may grant relief from sanctions for procedural breaches if doing so serves the interest of justice and if the breach is not intentional or prejudicial.⁴² The emphasis is firmly placed on outcome-oriented adjudication rather than technical rectitude. What unites these jurisdictions is not the abandonment of rules, but a judicial and institutional philosophy that insists rules must serve justice. There is a shared

³⁷ David Bilchitz, 'Does Balancing Adequately Capture the Nature of Rights?' (2010) 4 *Constitutional Court Review* 1 <<https://www.saflii.org/za/journals/CCR/2010/4.pdf>> accessed 17 July 2025.

³⁸ Olayinka Ajala, 'Judicial Activism and the Rule of Law in Nigeria: A Critical Appraisal' (SSRN, 2022) <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4101375_code4592207.pdf?abstractid=4101375&mirid=1> accessed 17 July 2025.

³⁹ (2008) 5 SEC 287

⁴⁰ 1998

⁴¹ LawTeacher.net, 'Woolf Reforms' (LawTeacher.net, 2024) <<https://www.lawteacher.net/free-law-essays/civil-law/woolf-reforms.php>> accessed 17 July 2025.

⁴² Law Society Gazette, 'Mediation in Costs and Case Management' (Law Society Gazette, 2024) <<https://www.lawgazette.co.uk/practice-points/mediation-in-costs-and-case-management/5119813.article>> accessed 17 July 2025.

understanding that while procedures are essential for fairness and predictability, they must be applied with sensitivity to context, equity, and purpose.⁴³ This approach stands in contrast to the sometimes rigid and mechanical application of rules in Nigerian courts, where even curable defects are treated as fatal, and where the margin for judicial discretion is often underutilised or avoided altogether. For Nigeria, these comparative models underscore the need for a recalibration of procedural doctrine. Reform need not entail wholesale importation of foreign rules, but it does call for a reassessment of judicial priorities. A legal system that prioritises substantive outcomes over procedural traps can better protect rights, resolve disputes efficiently, and restore public confidence in the administration of justice.

8. Recommendations

To tackle the ongoing issue of technicality hindering meaningful justice in Nigeria, reform is needed at multiple levels: doctrinal, institutional, and professional. Here are some recommendations:

1. Purposeful Interpretation of Procedural Rules:

Courts should fully embrace their duty to deliver justice by interpreting procedural rules with a clear purpose. Judges ought to apply a fairness-oriented approach when addressing procedural defaults, especially if those defaults can be fixed or have not harmed the other party. Discretion should be used thoughtfully, in line with the main goal of ensuring a fair hearing and just outcomes.

2. **Reform of Civil Procedure Rules:** There is an urgent need to review and update procedural rules in all jurisdictions. Civil procedure rules should be revised to include clear "overriding objective" clauses like those in the United Kingdom. These clauses would require courts to interpret and apply rules in ways that promote justice and avoid unnecessary hardship. They should enable judges to fix procedural issues, give more time for compliance when warranted, and penalize parties who raise pointless objections to stall or block justice.
3. **Judicial Training and Orientation:** Judicial training programs must reinforce a focus on justice-centered decision-making. Ongoing education for judges should highlight not just the written law but its underlying principles,

⁴³ Ibid

emphasizing how rules should be applied in ways that reflect constitutional values and support fair outcomes. Institutions like the National Judicial Institute should lead this effort by creating practical training modules that balance procedure with substance.

4. **Reform of Legal Education and Professional Conduct:** At the Bar, legal education should re-focus on ethical lawyering and client-centered advocacy. Law school programs must include courses on procedural justice, problem-solving, and the ethical duties of lawyers as servants of justice. Practitioners should be discouraged through both education and disciplinary actions from using technicalities to obstruct rightful claims. Bar associations and disciplinary boards must actively spot and stop procedural misconduct.
5. **Clear Standards for Procedural Defaults:** Courts should establish clear, consistent standards for differentiating between serious and minor procedural errors. This can be done through practice instructions or judicial guidelines that minimize confusion and create a consistent approach for assessing procedural violations. Clear standards will help reduce litigation tricks and boost public trust in the fairness and transparency of court outcomes.
6. **Cultural and Institutional Shift Toward Justice:** Ultimately, changing Nigeria's litigation culture requires a significant shift from a legal system fixated on procedural rules to one driven by the principles of justice. This isn't a call for laxity or ignoring rules but for balance, practicality, and fairness in serving justice. The judiciary, the Bar, rule-makers, and legal educators all need to work together for this important adjustment.

9. Conclusion

The enduring dominance of technicality in Nigerian litigation has created a paradox where the legal system, designed to serve justice, too often defeats it. Procedural rules intended to ensure fairness and structure have become, in many cases, tools of exclusion rather than inclusion, elevating form above substance and enabling outcomes that offend the conscience of equity. While the importance of rules cannot be denied, their rigid and mechanistic application has undermined public confidence in the judiciary and impaired access to justice, particularly for the vulnerable and unrepresented.

For Nigeria to move forward, the courts must embrace a deeper commitment to purposive adjudication. Procedural rules should be interpreted not in isolation but in light of their role as facilitators of justice. Judges must be courageous in exercising discretion to prevent injustice, and lawyers must be reminded that their ultimate duty is to the court and to justice, not just to their clients. Reforms in civil procedure rules, judicial training, and legal education must be anchored on this renewed vision. A legal system must never lose sight of its highest calling: to do justice according to law. But when the law is reduced to ritual, and justice becomes an accidental by-product of technical correctness, the system fails. It is time for Nigeria to recalibrate its adjudicatory processes not by discarding rules, but by restoring their proper place as servants, not masters, of justice.

EXAMINING THE IMPLICATIONS OF THE LEGAL AND POLICY FRAMEWORK ON CLIMATE CHANGE IN NIGERIA.

By

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Abstract

This paper examines the implications of Nigeria's legal and policy framework, on climate change, with particular emphasis on the Climate Change Act 2021 as the cornerstone of the country's climate governance architecture. Against the background of Nigeria's vulnerability to climate-induced risks such as flooding, coastal erosion, desertification, and food insecurity. The study analyses how existing laws, policies, and institutional mechanisms respond to mitigation, adaptation, and climate justice objectives. Using doctrinal legal analysis, the paper interrogates the coherence, enforceability, and practical effectiveness of the Climate Change Act 2021 in aligning national climate action with international obligations, including Nigeria's commitments under the Paris Agreement ¹. The Act is assessed in relation to its establishment of key institutions, notably the National Council on Climate Change, its integration of climate considerations into national development planning, and its provision for carbon budgeting and long-term low-emission development strategies. The paper further explores the interaction between the Act and related sectoral policies, identifying gaps in implementation, coordination, and accountability that may undermine effective climate governance. It argues that while the Climate Change Act 2021 represents a significant normative and institutional advancement, persistent challenges such as limited institutional capacity, inadequate financing, and weak enforcement mechanisms continue to constrain its transformative potential. The paper concludes that strengthening implementation frameworks, enhancing inter-agency collaboration, and promoting judicial and public oversight are critical to realising the objectives of Nigeria's climate legal regime.

Keywords: Climate Governance, Climate Justice, Sustainable Development, Climate Change Act 2021 and Legal and Policy Framework.

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1. Introduction

Climate change is no longer an abstract global issue but a national, regional and global challenge. Its impacts is a threat to the ecosystem, human and food security, public health, social and economic stability and the attainment of sustainable development. It has been consistently affirmed by The Intergovernmental Panel on Climate Change (IPCC) that Africa remains disproportionately(unfairly) vulnerable to climate variability and extreme weather events owing to its geographical location, limited adaptive capacity, social and economic constraints².Climate Change is a lived reality in Nigeria manifesting through, recurrent flooding, desertification and coastal erosion³.

To address these threats international efforts have sought to provide a coordinated legal and policy response through several instruments such as *the United Nations Framework Convention on Climate Change (UNFCCC)*⁴, *the Kyoto Protocol*⁵, and *the Paris Agreement*⁶.These frameworks have established obligations for states to reduce the emissions of greenhouse gas (GHG), enhance adaptive capacity, and promote sustainable development. Nigeria is a signatory to these agreements and has made Nationally Determined Contributions (N D Cs) aimed at cutting its emissions by 20 per cent unconditionally, and up to 47 per cent conditionally, by 2030.⁷ However, prior to the promulgation of the new law on climate change, Nigeria's response to climate change was largely framed through policies and strategies, such as the *National Climate Change Policy and Response Strategy 2012*,without binding legislative authority⁸.

It was in the light of the above that *the Climate Change Act 2021* was put into effect, as the first comprehensive, stand-alone climate legislation in Nigeria and West Africa. The Act is designed to institutionalize climate governance, mainstream climate objectives into national development planning, and provide mechanisms for carbon

²Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (IPCC 2022) 9.

³S. O. Akpodiogaga and B. O. Odjugo, 'General Overview of Climate Change Impacts in Nigeria' (2010) 12 *Journal of Human Ecology* 145

⁴*United Nations Framework Convention on Climate Change* (opened for signature 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

⁵*Kyoto Protocol to the UNFCCC* (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

⁶*Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/L.9/Rev/1.

⁷Federal Government of Nigeria, *Nigeria's Updated Nationally Determined Contribution* (Abuja, 2021) 4.

⁸Federal Government of Nigeria, *National Climate Change Policy and Response Strategy* (Abuja, 2012) 1.

budgeting and sectoral emission reductions⁹. It established the National Council on Climate Change as the apex policy-making body, mandates the preparation of a five-year carbon budget, and requires Ministries, Departments and Agencies (MDAs) to integrate climate considerations into their policies and programme¹⁰.

The enactment of the Climate Change Act 2021 has been widely celebrated as a watershed in Nigeria's environmental governance framework, however, it has also raised critical questions regarding its coherence with existing laws such as the *Environmental Impact Assessment Act 1992*¹¹, the *National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007*,¹² and the *Petroleum Industry Act 2021*¹³. Nevertheless, issues of institutional capacity, enforcement, funding, and the federal structure present challenges to its effective implementation.

This paper therefore seeks to provide an overview of the *Climate Change Act 2021*, with emphasis on its historical background, salient provisions, institutional framework, and potential implications for sustainable development. It adopts a doctrinal methodology, relying on statutes, case law, international instruments, and academic commentaries. It highlights both the opportunities and limitations of Nigeria's legislative response to climate change.

2. CONCEPTUAL AND LEGAL FRAMEWORK

Climate change constitutes a critical global environmental challenge with far-reaching social and economic implications, the effects of which are disproportionately experienced by developing countries such as Nigeria due to structural vulnerabilities, dependence on climate-sensitive sectors, and limited adaptive capacity. Nigeria's engagement with climate change governance has traditionally

been shaped by policy measures and international treaty obligations undertaken within the framework of the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement, rather than by comprehensive

⁹Climate Change Act 2021, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109, Government Notice No 61 (Lagos, 28 March 2022), s 20.

¹⁰*ibid*, ss 3, 25, 27.

¹¹*Environmental Impact Assessment Act* Cap E12 LFN 2004, s 2.

¹²*National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007*, s 7

¹³*Petroleum Industry Act 2021*, s 104.

domestic legislation¹⁴. This normative gap was substantially addressed with the enactment of the Climate Change Act 2021, which represents Nigeria's first dedicated statutory framework for climate change regulation and governance¹⁵. The Act establishes institutional mechanisms for the coordination of climate action, mandates the integration of climate considerations into national development planning, and provides a legal basis for the implementation of Nigeria's international climate commitments¹⁶. A critical examination of the legal and policy framework on climate change in Nigeria, with particular emphasis on the Climate Change Act 2021, is therefore imperative to evaluating the extent to which the Act strengthens regulatory coherence, promotes accountability, and enhances Nigeria's capacity to mitigate and adapt to the adverse impacts of climate change.

2.1 Concept of Climate Change Law

Climate change law is the body of laws, principles, policies, regulations and institutions designed to regulate activities contributing to climate change and to provide mechanisms for adaptation and mitigation¹⁷. It derives from both international environmental law and domestic legal frameworks, comprising of treaties, statutes, judicial decisions, and regulatory policies. Unlike traditional environmental law, which is broader in scope, and which focuses on pollution control and natural resource management. Climate change law is a more specific branch within environmental law which focuses on addressing the causes and impact of climate change¹⁸ and also on reducing greenhouse gas (GHG) emissions, enhancing resilience, and safeguarding inter-generational equity¹⁹.

2.2 Climate Change and Environmental Governance in Nigeria

¹⁴ *United Nations Framework Convention on Climate Change* (adopted 9 May 1992, entered into force 21 March 1994); *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (adopted 11 December 1997, entered into force 16 February 2005); *Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016).

¹⁵ Climate Change Act 2021, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109, Government Notice No 61 (Lagos, 28 March 2022). s 20.

¹⁶ *ibid.* SS 2-6, 20-25.

¹⁷ J. Peel, *Climate Change Law: Concepts and Insights* (Oxford University Press 2017) 5

¹⁸ Cinnamon Carlarne, *Climate Change Law and Policy* (Oxford University Press 2010)

¹⁹ D. Bodansky, 'Climate Change and Human Rights: Unpacking the Issues' (2010) 38 *Georgia Journal of International and Comparative Law* 511.

Environmental governance in Nigeria has historically been fragmented across multiple legislations and institutions. *The Environmental Impact Assessment Act 1992*²⁰ and the *National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007*²¹ represent early attempts to regulate environmental degradation. However, before the enactment of the *Climate Change Act 2021*, climate governance relied largely on policies, such as the *National Climate Change Policy and Response Strategy 2012*, which lacked enforceability as highlighted above²². The 2021 Act represents the first binding and comprehensive framework to address climate change systematically, creating institutions as well as obligations for mainstreaming climate objectives into the country's governance and national development agenda²³.

2.3 Key Concept of Environmental Law Relevant to the Act

2.3.1 The Precautionary Principle

This principle requires that where there is a risk of serious or irreversible harm, the lack of full scientific certainty should not be used as a reason to justify postponing measures to prevent environmental damage²⁴. It is entrenched in *Principle 15 of the Rio Declaration (1992)*²⁵ and reflected in Nigeria's environmental practice, particularly in the *Climate Change Act 2021*, which mandates proactive measures such as carbon budgeting and sectoral emission targets²⁶.

2.3.2 The Polluter-Pays Principle

The polluter-pays principle assigns responsibility to those who cause environmental harm to bear the cost of prevention, control and remediation rather than passing the burden to the society or government²⁷. Rooted in international environmental law Principle 16 of the Rio Declaration (1992) it has informed Nigerian regulatory frameworks, particularly in petroleum and environmental liability regimes²⁸. Within

²⁰*Environmental Impact Assessment Act* Cap E12 LFN 2004, s 2.

²¹*National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007*, s 7.

²²Federal Government of Nigeria, *National Climate Change Policy and Response Strategy* (Abuja, 2012) 1.

²⁴P. Sands and J. Peel, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018) 218.

²⁵*Rio Declaration on Environment and Development* (adopted 14 June 1992) UN Doc A/CONF.151/26 (Vol. I), Principle 15.

²⁶*Climate Change Act 2021* (Nigeria), ss 20, 25.

²⁷*Petroleum Industry Act 2021*, ss 104–106.

²⁸E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers 1989) 8.

the *Climate Change Act 2021*, the principle is implicit in obligations imposed on industries and sectors to align with national emission reduction targets.

2.3.3 Inter-generational Equity

Inter-generational equity is a principle that places emphasis on the duty of the present generation to preserve the environment for future generations²⁹. This concept is closely tied to sustainable development and has been recognized by international tribunals.¹² The 2021 Climate Change Act reflects this principle by requiring long-term carbon budgeting and integration of climate objectives into national development strategies.

The Climate Change Act 2021 seeks to integrate environmental sustainability into development planning, thereby operationalizing the sustainable development goals. By embedding the aforementioned principles such as precaution, polluter-pays, and inter-generational equity, the law positions itself as a tool not only for environmental protection but also for economic transformation and social justice, promoting. Fair access to resources and support inclusive development, which is critical for long-term sustainability³⁰.

2.4 Limitations and Obstacles in Existing Frameworks

As mentioned earlier, the NCCPRS and related policies were non-binding, they basically lacked enforceability in courts or against non-compliant actors.³¹ Institutional fragmentation hindered coordination; climate-related responsibilities were dispersed among the Federal Ministry of Environment, NESREA, and various MDAs, leading to duplication and inefficiency.³² Another shortfall of the framework was inadequate funding and technical capacity, with climate programmes heavily reliant on donor support³³. Furthermore, the federal structure of Nigeria created additional challenges, as states often pursued their own environmental policies

²⁹*Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7, para 140.

³⁰ United Nations Development Programme (UNDP), Human Rights and Sustainable Development, New York, 2019.

³¹I. Jegede, 'Climate Change Governance in Nigeria: Policy and Legal Responses' (2016) 4 *Journal of Sustainable Development Law and Policy* 19, 22.

³²B. Fagbohun, *The Law of Oil Pollution and Environmental Restoration: A Comparative Review* (Odade Publishers 2010) 341.

³³African Development Bank, *Nigeria Country Strategy Paper 2020–2024* (AfDB 2020) 33.

without coherence with federal initiatives.³⁴ Sectoral laws such as the EIA Act and NESREA Act focused on environmental protection generally but did not specifically address climate mitigation, carbon budgeting, or integration of climate goals into economic planning.

3. Evolution of Climate Change Regulation in Nigeria

3.1 Pre-2021 Policy Framework

Prior to the enactment of the *Climate Change Act 2021*, Nigeria's approach to climate governance was largely based on non-binding policy. The most notable instrument was the *National Climate Change Policy and Response Strategy 2012 (NCCPRS)*, which sought to provide a guideline for mitigation, adaptation, capacity building, and climate-resilient development³⁵. The NCCPRS articulated Nigeria's commitment to reducing greenhouse gas emissions and promoting low-carbon growth but lacked legislative force, making its implementation largely discretionary.

In addition to the NCCPRS, climate-related measures were embedded in sectoral laws and policies. Like the *Energy Policy 2003* promoted renewable energy development, while the *National Adaptation Strategy and Plan of Action on Climate Change (NASPA-CCN) 2011* provided guidance on climate adaptation³⁶. Similarly, the *Environmental Impact Assessment Act 1992*³⁷ required prior assessment of projects likely to affect the environment, and the *NESREA Act 2007*³⁸ empowered the agency to enforce environmental standards. Despite the above-mentioned measures, no single statute directly addressed climate change in a comprehensive and enforceable manner.

3.2 Evolution of Climate Change Legislation in Nigeria

³⁴A. Atapattu, 'Climate Change, Human Rights, and Development' (2015) 18 *Human Rights and International Legal Discourse* 25, 39.

³⁵Federal Government of Nigeria, *National Climate Change Policy and Response Strategy* (Abuja, 2012) 1.

³⁶Federal Ministry of Environment, *National Climate Change Policy and Response Strategy (NCCPRS) 2012* (Federal Republic of Nigeria, approved by the Federal Executive Council, 2012)

³⁷*Environmental Impact Assessment Act* Cap E12 LFN 2004, s 2.

³⁸*National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007*, Federal Republic of Nigeria Official Gazette No.92, Vol.94 (Lagos, 31 July 2007) s 7.

The evolution of climate change legislation in Nigeria reflects a gradual transition from fragmented policy-based responses to a more structured and legally grounded regulatory framework. Prior to the enactment of dedicated climate legislation, Nigeria's approach to climate change was largely informed by environmental statutes of general application, such as the Environmental Impact Assessment Act and sector-specific regulations, as well as policy instruments including the National Adaptation Strategy and Plan of Action on Climate Change and the National Climate Change Policy³⁹. Nigeria's legislative engagement was further shaped by its obligations under international climate change regimes, notably the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement, which necessitated domestic measures for implementation and compliance⁴⁰. The absence of a comprehensive statutory framework, however, resulted in institutional fragmentation and limited enforceability of climate-related commitments. This legislative gap was significantly addressed with the enactment of the Climate Change Act 2021, which represents a pivotal milestone in Nigeria's climate governance architecture by establishing binding legal obligations, institutional coordination mechanisms, and a coherent framework for climate change mitigation and adaptation⁴¹.

4. Rationale for Enacting the Climate Change Act 2021

These gaps created a compelling case for a unified legal framework. Nigeria's commitment under the *Paris Agreement 2015* to reduce emissions through its Nationally Determined Contributions (NDCs) required an enforceable domestic mechanism⁴². The growing threats of flooding, desertification, and energy insecurity further highlighted the urgency of a comprehensive legal response. Moreover,

³⁹ *Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria 2004; Federal Ministry of Environment, National Adaptation Strategy and Plan of Action on Climate Change for Nigeria (2011); Federal Republic of Nigeria, National Climate Change Policy (2013).*

⁴⁰ *United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994); Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005); Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016).*

⁴¹ *ibid*

⁴² *Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/L.9/Rev/1, art 4.

stakeholders have long advocated binding legislation to enhance accountability and attract climate finance⁴³

The enactment of *the Climate Change Act 2021* was thus driven by both internal and external pressures: internally, to consolidate governance, enhance enforcement, and mainstream climate objectives into development planning; externally, to align Nigeria with international best practice and demonstrate seriousness in fulfilling its obligations under the UNFCCC and Paris Agreement. In this sense, the Act represents both a response to domestic governance failures and an effort to position Nigeria as a proactive participant in the global climate regime.

5. Salient Provisions of the Climate Change Act 2021

The *Act* introduced a comprehensive legal framework for addressing climate change in Nigeria. At its core is the establishment of a high-level governing body, National Council on Climate Change (NCCC) as the apex body for climate governance, chaired by the President and comprising key ministers⁴⁴. The Council is mandated to coordinate and oversee climate action across all sectors⁴⁵. The appointment of the Director-General to lead the NCCC and ensure policies are implemented effectively⁴⁶.

A major innovation of the Act is the requirement for a five-year carbon budget, which sets emission reduction limits in line with Nigeria's Nationally Determined Contributions (NDCs) under the *Paris Agreement*⁴⁷. This mechanism brings legal certainty to emission control and aligns Nigeria with International Best Practices. In addition, section 25 requires Ministries, Departments, and Agencies (MDAs) to

⁴³C. Okereke and P. Ewah, 'Governing Climate Change in Nigeria: Prospects and Challenges' (2020) 5 *Climate and Development* 83, 85.

⁴⁴Climate Change Act 2021, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109 (Lagos, 28 March 2022), s 3.

⁴⁵*ibid*, ss4-5

⁴⁶ Adeleke Fand Iyiola O., 'The Nigerian Climate Change Act 2021: A Step Towards Sustainable Development or a Tiger?' (2022) 13(1) *Journal of Sustainable Development Law and Policy* 45.

⁴⁷*Climate Change Act 2021* (Nigeria), s 20.; *Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/L.9/Rev/1, art 4.

integrate climate objectives into their programmes, to ensure that climate action is mainstreamed into national development planning⁴⁸.

The Act further obliges MDAs to prepare annual progress reports on compliance with the Carbon budget and climate action plan.⁴⁹ However, its enforcement regime remains weak, as the Act provides no explicit penalties for failure to meet targets, relying instead on administrative oversight by the NCCC⁵⁰. Critics argue that this undermines accountability, particularly in high-emission sectors such as oil and gas⁵¹. The Act also established a dedicated fund, which is the Climate Change Fund, to finance climate adaptation and mitigation projects, ensuring resources are available for implementation⁵². It also commits Nigeria to a net-zero emission target by 2060, aligning with its international obligation under the Paris Agreement⁵³.

Finally, the Act recognizes the importance of stakeholder participation, requiring consultation with civil society, private sector actors, and sub-national governments⁵⁴. This reflects global norms of participatory governance, although concerns persist that consultation may be limited given the Council's government-heavy composition. Overall, the Act marks a milestone in Nigerian climate law by institutionalizing climate objectives, though gaps in enforcement and inclusivity remain of pressing challenge. Generally, the Climate Change Act provides a legal structure for managing climate change, ensures every sector contributes to emission reduction, and creates a funding mechanism to support climate projects⁵⁵.

6. Institutional Framework under the Climate Change Act 2021

To coordinate Nigeria's national response to climate change, the *Climate Change Act 2021* was established to serve as a robust institutional and governance structure. At the apex of this framework is the National Council on Climate Change (NCCC),

⁴⁸*Climate Change Act 2021*, Climate Change Act 2021, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109 (Lagos, 28 March 2022), s 25.

⁴⁹*ibid*, s 26.

⁵⁰*ibid*, ss 20-27

⁵¹I. Jegede, 'The Nigerian Climate Change Act 2021: Legal Innovations and Enforcement Gaps' (2022) 8 *Journal of Environmental Law and Policy* 133, 140.

⁵²Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis* (Cambridge University Press 2021).

⁵³Sands P and Peel J, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018).

⁵⁴*ibid*, footnote 50, s 27.

⁵⁵*ibid*, s1

which functions as the central policy-making body for all climate-related actions⁵⁶. The Council's is headed by the President and includes key ministers which reflects the recognition of climate change as a cross-sectoral challenge requiring high-level political commitment⁵⁷.

The Act also established a Secretariat to the NCCC, which is responsible for implementing the Council's decisions, monitoring compliance, and providing technical support⁵⁸. The Secretariat is headed by a Director-General, appointed by the President, who serves as the chief executive officer and is accountable for day-to-day coordination⁵⁹. This structure mirrors governance models in other jurisdictions, such as Kenya and South Africa, where climate change agencies serve as central coordinating institutions within the executive branch⁶⁰.

The Climate Change Act 2021 further assigned roles to Ministries, Departments, and Agencies, requiring them to integrate climate considerations into sectoral policies and submit annual reports on their emission reduction efforts and progress⁶¹. Furthermore, state and local authorities are also encouraged to develop complementary climate policies consistent with national objectives⁶².

7. Implementation Challenges and Policy Implications

The National Council on Climate Change interplays with relevant Ministries, Departments and Agencies (MDAs), including the Federal Ministry of Environment, Ministry of Finance, Ministry of Petroleum Resources, Ministry of Power, and regulatory bodies such as NESREA, to mainstream climate change considerations across sectoral policies and regulatory frameworks. This inter-agency collaboration is critical for avoiding policy fragmentation, enhancing implementation efficiency, and aligning sector-specific mandates with Nigeria's mitigation, adaptation, and

⁵⁶ Climate Change Act 2021, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109 (Lagos, 28 March 2022)s 3.

⁵⁷ Climate Change Act 2021, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109 (Lagos, 28 March 2022), s 4.

⁵⁸ *ibid*, s 7.

⁵⁹ *ibid*, s 8.

⁶⁰ C. Okereke, 'Climate Change Governance in Africa: Lessons from Nigeria, Kenya and South Africa' (2022) 14 *African Journal of Environmental Law* 67, 72.

⁶¹ *Ibid* footnote 59, ss 25–26

⁶² *Ibid*, ss 29

carbon budgeting commitments. However, the effectiveness of this interplay depends largely on institutional capacity, clarity of roles, and compliance by MDAs with directives issued pursuant to the Council's coordinating authority, underscoring the importance of administrative accountability within Nigeria's evolving climate governance architecture⁶³.

The *Climate Change Act 2021* represents a landmark in Nigeria's environmental governance; however its practical implementation faces several legal, institutional, social and economic challenges. One of the obstacles is the absence of a clear enforcement mechanism. The Act's ambitious targets for emission reductions lacks provisions imposing sanctions on entities that fail to comply with carbon budgets or reporting obligations,⁶⁴ making, compliance dependent largely on political goodwill and administrative discretion⁶⁵.

Another significant challenge lies in institutional coordination. Nigeria's environmental governance has historically been characterized by overlapping mandates among ministries and agencies, leading to duplication and inefficiency⁶⁶. Although the Act seeks to centralize climate governance through the National Council on Climate Change (NCCC), conflicts of jurisdiction between the Council, the Federal Ministry of Environment, and state-level agencies remain unresolved⁶⁷. This weakens coherence and hampers implementation of climate policies.

Additionally, funding and technical capacity deficits threaten the Act's sustainability. The law establishes the Climate Change Fund to support mitigation and adaptation initiatives⁶⁸, but the fund's financing mechanisms are vague, relying heavily on

⁶³Climate Change Act 2021, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109 (Lagos, 28 March 2022), ss 4–6.

⁶⁴ *ibid*, ss 20–27.

⁶⁵I. Jegede, 'The Nigerian Climate Change Act 2021: Legal Innovations and Enforcement Gaps' (2022) 8 *Journal of Environmental Law and Policy* 133, 140.

⁶⁶E. Uzuazo, 'Institutional Fragmentation in Nigeria's Environmental Governance Framework' (2021) 5 *Nigerian Journal of Environmental Law* 22, 29.

⁶⁷C. Okereke, 'Climate Change Governance in Nigeria: Opportunities and Challenges of the Climate Change Act 2021' (2022) 12 *African Journal of Environmental Law* 45, 53.

⁶⁸Climate Change Act 2021(Nigeria)s 29.

external aid and international climate finance⁶⁹. Without stable domestic funding sources and skilled human resources, the goals of the Act risk remaining aspirational.

Social and economic realities further complicate enforcement. Nigeria's heavy dependence on fossil fuels for revenue and energy creates a structural tension between economic growth and emission reduction commitments.⁷⁰ Transitioning toward renewable energy and low-carbon development will require strategic incentives, just transition policies, and capacity-building at all levels of governance⁷¹. Budgetary allocations to the National Council on Climate Change (NCCC) have been limited relative to its statutory mandate under the Climate Change Act 2021, with the 2024 federal budget allocating approximately ₦786 million to the Council⁷². This level of funding is insufficient to support effective national climate coordination and implementation, indicating the need for significantly increased and sustained fiscal commitment⁷³.

In summary, while the *Climate Change Act 2021* establishes a legal foundation, its success will depend on strengthening enforcement mechanisms, improving institutional synergy, ensuring predictable funding, and aligning climate goals with national development priorities.

Experience from other jurisdictions indicates that effective climate change governance depends on precise legal frameworks, measurable targets and credible institutional accountability. Nigeria's *Climate Change Act 2021* derives inspiration from similar legislative models such as the *United Kingdom Climate Change Act 2008* and Kenya's *Climate Change Act 2016*⁷⁴. These legal instruments show how statutory carbon budgeting and independent oversight can drive measurable emission reductions.

⁶⁹ibid, s 30.

⁷⁰O. Nwankwo, 'Fossil Fuels, Energy Security and Climate Change Law in Nigeria' (2023) 10 *Nigerian Law Journal* 112, 117.

⁷¹A. Adediran, 'Financing the Low-Carbon Transition in Nigeria: Legal and Policy Pathways' (2023) 4 *Environmental Policy Review* 75, 81.

⁷² Federal Government of Nigeria, 2024 Appropriation Bill (Details), National Council on Climate Change Code 0111058001 (Budget Office of the Federation, 2023).

⁷³ Federal Government of Nigeria, 2024 Appropriation Bill (Details), National Council on Climate Change Code 0111058001 (Budget Office of the Federation, 2023).

⁷⁴UK *Climate Change Act 2008* (UK), s 1; Kenya *Climate Change Act 2016* (Kenya), s 3.

The United Kingdom *Climate Change Act 2008* not only established legally binding carbon budgets but created the Committee on Climate Change, which is an independent advisory body that monitors progress and reports to Parliament⁷⁵. This structure ensures transparency and accountability.⁷⁶ Conversely, the Nigerian Climate Change Act lacks an equivalent independent oversight body, as the National Council on Climate Change (NCCC) operates under executive control⁷⁷.

Another worthy example is Kenya's *Climate Change Act 2016*, which provides another instructive example, establishing a Climate Change Directorate responsible for mainstreaming climate action across sectors and at subnational levels⁷⁸. The Kenyan model's emphasis on devolution and participatory governance could strengthen Nigeria's approach, particularly in fostering climate resilience at the state and local government levels⁷⁹. Similarly, South Africa's *Climate Change Bill 2022* (yet to be fully enacted) proposes a just transition framework and allocates specific carbon budgets to industries, integrating economic justice into its climate strategy⁸⁰.

From these comparative insights, three key lessons emerge for Nigeria: first, the need to establish an independent climate oversight institution to enhance transparency; second, to deepen stakeholder participation through sub-national implementation mechanisms; and third, to codify just transition principles to balance environmental and social and economic goals⁸¹. Implementing these lessons could strengthen Nigeria's climate governance architecture and align its domestic legal framework with international best practices.

⁷⁵UK *Climate Change Act 2008* (UK), ss 5–9.

⁷⁶J. Peel and H. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015) 84.

⁷⁷C. Okereke, 'Climate Change Governance in Nigeria: Opportunities and Challenges of the Climate Change Act 2021' (2022) 12 *African Journal of Environmental Law* 45, 51.

⁷⁸*Kenya Climate Change Act 2016* (Kenya), s 9.

⁷⁹E. Njoroge, 'Climate Governance and Devolution in Kenya: Lessons for Africa' (2020) 6 *African Environmental Law Review* 89, 94.

⁸⁰*South African Climate Change Bill 2022* (South Africa), cls 8–10.

⁸¹I. Jegede, 'Comparative Climate Law in Africa: Towards a Just and Sustainable Transition' (2023) 9 *Journal of Environmental Law and Policy* 203, 210.

8. The Role of Law in Advancing Sustainable Development under the Climate Change Act 2021

Law remains a vital instrument in promoting sustainable development by incorporating environmental protection, economic growth, and social equity. The *Climate Change Act 2021* exemplifies this integrative role by embedding sustainability principles into Nigeria's legal and policy framework. Through its provisions, the Act seeks to put into effect the concept of sustainable development as enshrined in Principle 4 of the *Rio Declaration on Environment and Development 1992*, which calls for environmental protection to form an integral part of development processes⁸².

The Act strengthens sustainable development by mandating the institutionalization of climate objectives into national and sectoral development plans⁸³. By requiring Ministries, Departments, and Agencies (MDAs) to align their policies with carbon budgets and low-emission pathways⁸⁴, the law ensures that economic planning incorporates environmental considerations in consistent with section 20 of the *1999 Constitution of the Federal Republic of Nigeria (as amended)*, which enjoins the State to not only protect but improve the environment⁸⁵.

Furthermore, the Act established mechanisms that promote intergenerational equity, ensuring that present development efforts do not compromise the ability of future generations to meet their needs.⁸⁶ The establishment of the Climate Change Fund⁸⁷ and the formulation of the Long-Term Low Emission Development Strategy (LT-LEDS)⁸⁸ are deliberate attempts to secure long-term environmental sustainability while fostering economic transformation.

It should be noted that the law's contribution to sustainable development will depend on effective application, equitable access to climate finance, as well as participatory

⁸² *Rio Declaration on Environment and Development* (adopted 14 June 1992) UN Doc A/CONF.151/26 (Vol I), Principle 4.

⁸³ Climate Change Act 2021, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109 (Lagos, 28 March 2022)s 25.

⁸⁴ *ibid*, s 26.

⁸⁵ *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, s 20.

⁸⁶ E. Ebeku, 'Intergenerational Equity and Environmental Protection in Nigerian Law' (2020) 34 *Nigerian Journal of Environmental Law* 55, 59.

⁸⁷ *Ibid*, footnote 83, s 29.

⁸⁸ *ibid*, s 31.

governance.⁸⁹ A rights-based approach to climate governance grounded in transparency, accountability, and inclusiveness is essential to ensure that sustainable development translates into tangible social, economic and environmental outcomes⁹⁰.

9. Conclusion

The *2021 Climate Change Act* marks a pivotal moment in Nigeria's environmental law, transforming climate governance from policy-based to legally binding climate regime. The Act provides a structured framework for integrating climate objectives into national development planning, establishes the National Council on Climate Change (NCCC), and institutionalized mechanisms such as carbon budgeting and the Climate Change Fund⁹¹. These provisions collectively demonstrate Nigeria's readiness and commitment to aligning its domestic laws with its international obligations⁹².

However, the effectiveness of the Act depends not merely on its legislative content but on its implementation architecture. Weak enforcement mechanisms, institutional overlap, limited technical capacity, and inadequate funding threaten to undermine its trans-formative potential⁹³. Addressing these deficiencies requires both legal reform and political will⁹⁴.

To strengthen the Act's effectiveness, the following recommendations are proposed:

⁸⁹I. Jegede, 'The Nigerian Climate Change Act 2021: Legal Innovations and Enforcement Gaps' (2022) 8 *Journal of Environmental Law and Policy* 133, 141.

⁹⁰C. Okereke, 'Law, Justice and Sustainability in Nigeria's Climate Governance Framework' (2023) 13 *African Journal of Environmental Law* 88, 93.

⁹¹*Climate Change Act 2021*, Act No 11, Federal Republic of Nigeria Official Gazette No 60, Vol 109 (Lagos, 28 March 2022), ss 3, 20, 29.

⁹²*Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/L.9/Rev/1, art 4.

⁹³I. Jegede, 'The Nigerian Climate Change Act 2021: Legal Innovations and Enforcement Gaps' (2022) 8 *Journal of Environmental Law and Policy* 133, 139–141.

⁹⁴C. Okereke, 'Climate Change Governance in Nigeria: Opportunities and Challenges of the Climate Change Act 2021' (2022) 12 *African Journal of Environmental Law* 45, 54.

The establishment of an independent climate change commission with statutory powers to monitor compliance and impose sanctions, this would enhance transparency and accountability⁹⁵.

The federal government should devolve greater climate responsibilities to states and local governments, enabling locally driven adaptation strategies and ensuring equitable participation across Nigeria's diverse ecological regions⁹⁶.

The operationalization of the Climate Change Fund must be transparent, with clear criteria for allocation and prioritization of community-based projects that promote resilience and sustainable livelihoods⁹⁷. The integration of just transition principles is an essential step to align emission-reduction policies with social inclusion and economic justice to safeguard vulnerable populations during the shift away from fossil fuels⁹⁸.

Finally, climate governance must be situated within the broader agenda of sustainable development and social justice. Law must serve as both a regulatory and trans-formative instrument ensuring that economic development does not compromise environmental integrity or the welfare of future generations⁹⁹. As Nigeria advances in implementing its climate commitments, the *Climate Change Act 2021* should evolve through periodic review and robust enforcement to fulfil its promise as a cornerstone of environmental and national developmental governance¹⁰⁰.

⁹⁵J. Peel and H. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press 2015) 91.

⁹⁶E. Njoroge, 'Climate Governance and Devolution in Kenya: Lessons for Africa' (2020) 6 *African Environmental Law Review* 89, 97.

⁹⁷ Ibid, footnote 90, s29.

⁹⁸*Rio Declaration on Environment and Development* (adopted 14 June 1992) UN Doc A/CONF.151/26 (Vol I), Principle 3.

⁹⁹Ibid, Principles 3 and 4.

¹⁰⁰A. Adediran, 'Financing the Low-Carbon Transition in Nigeria: Legal and Policy Pathways' (2023) 4 *Environmental Policy Review* 75, 83.

**EXTRAORDINARY RENDITION IN NIGERIA: LEGAL AND
INTERNATIONAL IMPLICATIONS
OR
EXTRAORDINARY RENDITION IN NIGERIA
BY
IBRAHIM USMAN ATTAHIRUWALA**

Abstract

Extraordinary rendition, the state-sponsored abduction and cross-border transfer of individuals without recourse to formal extradition procedures has attracted widespread global condemnation for its inherent violations of due process, the rule of law, and fundamental human rights. Traditionally associated with counterterrorism operations, the practice has now surfaced in various national contexts, including Nigeria. In recent years, the Nigerian state has come under intense scrutiny for engaging in such acts, most notably in the controversial arrest and repatriation of Nnamdi Kanu, leader of the Indigenous People of Biafra (IPOB). His forcible return to Nigeria without any documented legal process raises significant questions about the country's adherence to constitutional safeguards and international legal obligations. This paper interrogates the legal, constitutional, and human rights implications of extraordinary rendition within the Nigerian context. It analyses whether such practices are compatible with Nigeria's domestic legal framework, particularly the provisions of the 1999 Constitution, and assesses their consistency with binding international treaties to which Nigeria is a party. It further evaluates the impact of extraordinary rendition on access to justice, judicial independence, and Nigeria's international reputation as a democratic state governed by the rule of law. Ultimately, the paper seeks to offer principled and pragmatic recommendations for legal and institutional reform aimed at ensuring that national security is pursued within the boundaries of law, and that state power is exercised in a manner that respects human dignity, legal process, and Nigeria's global obligations.

Keywords: *Extraordinary rendition, International Law, Human Rights, Constitution.*

1. INTRODUCTION

In an era marked by rising transnational threats-ranging from terrorism to separatist movements-states have increasingly adopted aggressive security measures that test the limits of legality and human rights protections. Among these is extraordinary rendition, a covert method of cross-border apprehension that bypasses formal extradition procedures in favour of secret transfers, often executed without judicial oversight or regard for due process. Though more commonly associated with powerful Western states, Nigeria has, in recent years, drawn significant scrutiny for its apparent use of this controversial practice.¹ The resort to extraordinary rendition reflects a broader tension between national security imperatives and the rule of law. While states undoubtedly have a duty to preserve order and pursue fugitives, such efforts must be conducted within the bounds of constitutional guarantees and international legal obligations. Where the state acts extralegally abducting suspects without recourse to lawful extradition frameworks, it risks undermining its own legal system, violating fundamental rights, and eroding its international credibility.²

This paper interrogates the legal and international implications of extraordinary rendition in the Nigerian context. Through a critical examination of domestic legal norms, relevant human rights treaties, and illustrative case studies such as the 2021 abduction of Nnamdi Kanu, it evaluates whether Nigeria's actions are compatible with its constitutional commitments and treaty obligations.³ In doing so, the paper highlights the urgent need for legal accountability and reform in the state's transnational law enforcement practices.

¹ David Weissbrodt and Amy Bergquist, 'Extraordinary Rendition: A Human Rights Analysis' (2007) 19 *Harvard Human Rights Journal* 123, 124; John A E Vervaele, 'The Transnational Nature of Criminal Procedure: The Example of Rendition to Justice' (2021) *Unimaid Journal of Private and Property Law* 6(2) 112- 114.

² Bruce D' Arcus, 'Extraordinary Rendition and the Geography of the Exception' (2006) 5 *ACME: An International E-Journal for Critical Geographies* 89, 91; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), arts 7 and 9.

³ Kemi Busari, 'How Nigerian Government "Abducted" Nnamdi Kanu in Kenya' (Premium Times, 30 June 2021) <https://www.premiumtimesng.com/news/headlines/472644-how-nigerian-govt-abducted-nnamdi-kanu-in-kenya-details-emerge.html> accessed 10 July 2025; Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 35- 36; African Charter on Human and Peoples' Rights (1981) OAU Doc CAB/LEG/67/3 rev 5, arts 5- 6.

2. DEFINITION AND LEGAL DISTINCTIONS BETWEEN ORDINARY AND EXTRAORDINARY RENDITION

Ordinary rendition, more accurately termed extradition, is a lawful process by which one state surrenders a person to another for prosecution or punishment, based on formal treaties and governed by domestic legislation such as Nigeria's Extradition Act.⁴ It involves judicial oversight, procedural safeguards, and protections under the 1999 Constitution, including the rights to personal liberty and fair hearing.⁵ Individuals facing extradition have the right to challenge their transfer through the courts, and proceedings must comply with Nigeria's obligations under international human rights treaties, notably the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights.⁶

By contrast, extraordinary rendition refers to the informal or forcible transfer of persons across borders without legal process. It is typically characterised by abduction, absence of judicial approval, secrecy, and violations of rights.⁷ The case of Nnamdi Kanu, allegedly seized in Kenya and brought to Nigeria without extradition proceedings, exemplifies the practice.⁸ Such actions violate both domestic and international law, including constitutional provisions, the principle of non-refoulement, and prohibitions against arbitrary detention and torture under international instruments.⁹ While extradition reflects respect for the rule of law and mutual cooperation between states, extraordinary rendition constitutes a deliberate subversion of these principles. It denies individuals access to courts and legal remedies, and exposes the state to liability and reputational harm.

⁴ *Extradition Act*, Cap E25, Laws of the Federation of Nigeria 2004

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 35 and 36.

⁶ ICCPR (1966) arts 7, 9 and 14; African Charter on Human and Peoples' Rights (1981) arts 5 and 6; domesticated in Nigeria by Cap A9 LFN 2004.

⁷ David Weissbrodt and Amy Bergquist, 'Extraordinary Rendition: A Human Rights Analysis' (2007) 19 *Harvard Human Rights Journal* 123.

⁸ Kemi Busari, 'How Nigerian Government "Abducted" Nnamdi Kanu in Kenya' (Premium Times, 30 June 2021) <https://www.premiumtimesng.com> accessed 10 July 2025.

⁹ Convention Against Torture (1984), art 3; UNHCR, *Advisory Opinion on Non-Refoulement* (2007).

3. HISTORICAL CONTEXT AND NOTABLE CASE STUDIES IN NIGERIA

The phenomenon of extraordinary rendition is not entirely alien to Nigeria's legal-political landscape. Although frequently associated with U.S. counterterrorism practices, it has both historical and contemporary resonance in Nigerian statecraft. One of the earliest known incidents was the dramatic yet unsuccessful attempt by Nigerian security operatives to kidnap Umaru Dikko in London in 1984. Dikko, a former Minister of Transport accused of corruption, was forcibly abducted outside his London home, drugged, and placed in a crate for air transport to Nigeria. The operation failed when British customs officials, acting on a tip, intercepted the crate at the airport. The incident triggered a diplomatic crisis between Nigeria and the United Kingdom, leading to the suspension of diplomatic relations for over two years. Though unsuccessful, the Dikko affair illustrates an early and blatant resort to extrajudicial cross-border seizure by a Nigerian government, bypassing extradition treaties and violating foreign sovereignty.¹⁰

Decades later, in 2021, the capture and repatriation of Nnamdi Kanu from Kenya revived public and scholarly interest in the practice. Kanu, the leader of the proscribed Indigenous People of Biafra (IPOB), was reportedly abducted in Nairobi under murky circumstances and brought to Nigeria without any known formal extradition request or judicial hearing.¹¹ The Nigerian government declined to disclose the details of the operation, while the Kenyan government denied official involvement.¹² The opacity surrounding the process, the absence of legal safeguards, and the failure to initiate extradition proceedings strongly suggest that Kanu was subjected to extraordinary rendition. His subsequent arraignment in Nigeria did not cure the illegality of the process, nor did it address the broader implications of such an action under domestic and international law. What both cases underscore is Nigeria's willingness to act outside formal legal processes

¹⁰ See generally 'The Dikko Affair' (1984) *Africa Confidential* Vol 25 No 15; see also Ayo Whetho, 'The Dikko Affair and Nigeria-UK Diplomatic Row' (2012) *African Journal of Political Science* 6(1) 45- 58.

¹¹ Kemi Busari, 'How Nigerian Government "Abducted" Nnamdi Kanu in Kenya' (Premium Times, 30 June 2021) <https://www.premiumtimesng.com/news/headlines/472644-how-nigerian-govt-abducted-nnamdi-kanu-in-kenya-details-emerge.html> accessed 10 July 2025.

¹² BBC News, 'Kenya Denies Role in Nnamdi Kanu's Arrest' (2 July 2021) <https://www.bbc.com/news/world-africa-57684926> accessed 10 July 2025.

when pursuing politically sensitive fugitives abroad. In doing so, Nigeria mirrors the "rendition to justice" model historically deployed by other states, notably the United States and Israel. One of the most cited global precedents is the 1960 abduction of Adolf Eichmann, a former Nazi official, by Israeli agents in Argentina. Eichmann was captured near his Buenos Aires residence, sedated, and covertly flown to Israel for trial.¹³ Though Israel ultimately tried and executed Eichmann, the manner of his capture provoked a formal protest by Argentina before the United Nations, citing a violation of its sovereignty.¹⁴

Similarly, in 1987, U.S. agents abducted Fawaz Younis, a Lebanese national implicated in a 1985 airline hijacking, from international waters and transported him to the U.S. for trial.¹⁵ In other high-profile operations such as the seizure of former Panamanian leader Manuel Noriega during the U.S. invasion of Panama in 1989 the line between military intervention and illegal rendition became increasingly blurred.¹⁶ These cases illustrate a global pattern: states facing jurisdictional barriers or reluctant foreign governments often circumvent extradition treaties by directly abducting suspects. While such actions may serve the interests of immediate justice or national security, they often undermine the rule of law and violate the sovereignty of other states.¹⁷ As scholars have noted, even when these renditions lead to formal criminal trials, they rest on an extra-legal foundation that weakens international legal norms. More troubling are those renditions typically associated with the U.S. post-9/11 policy where suspects are transferred to third countries not for trial but for interrogation or prolonged detention in so-called "black sites," entirely outside judicial review.¹⁸ These darker variants, although not yet evidenced in Nigeria's practice, provide an ominous backdrop for the erosion of legal accountability in global security operations.

¹³ John A E Vervaele, 'The Transnational Nature of the Criminal Procedure: The Example of Rendition to Justice' (2021) *Unimaid Journal of Private and Property Law* 6(2) 112- 114.

¹⁴ UN Security Council, Letter from the Permanent Representative of Argentina to the United Nations, UN Doc S/4349 (22 June 1960).

¹⁵ FBI, 'Fawaz Younis Case Summary' (FBI Archives) <https://www.fbi.gov/history/famous-cases/fawaz-younis> accessed 10 July 2025.

¹⁶ John A E Vervaele (n 4) 113; see also *US v Noriega* 117 F 3d 1206 (11th Cir 1997).

¹⁷ Bruce D'Arcus, 'Extraordinary Rendition and the Geography of the Exception' (2006) *ACME: An International E-Journal for Critical Geographies* 5(2) 90-93.

¹⁸ Anna Petrig and Robin Geiss, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford University Press 2011) 344.

Against this backdrop, Nigeria's resort to extraordinary rendition most notably in the Kanu case raises critical questions about the country's adherence to legal norms, respect for human rights, and international obligations. By removing individuals from foreign jurisdictions without due process, Nigeria risks becoming part of a disturbing global trend: the strategic manipulation of territorial sovereignty to strip individuals of their legal protections and evade the state's own obligations under both domestic and international law.¹⁹ As in the Eichmann, Younis, or Noriega cases, the fact that an individual eventually faces trial does not retroactively justify the means of their capture. Rather, it underscores a dissonance between the state's pursuit of justice and its fidelity to the law.

4. LEGAL FRAMEWORK GOVERNING EXTRAORDINARY RENDITION IN NIGERIA

There is no legal framework in Nigeria that expressly permits or regulates extraordinary rendition. On the contrary, Nigeria's constitutional, statutory, and international legal obligations decisively prohibit such acts. Extraordinary rendition, which involves the forcible transfer of a person from one country to another without formal legal process usually for interrogation, detention, or prosecution stands in stark contrast to the requirements of Nigerian law. Under Nigerian law, the only legitimate pathway for cross-border transfers of suspects is extradition, which is governed by the Extradition Act.²⁰ The Act sets out procedures requiring bilateral treaties, formal requests, judicial hearings, and ministerial approvals. It ensures that extradition cannot occur arbitrarily or in violation of a person's rights. Any departure from this framework, such as covert abduction or transfer without judicial process, violates both the letter and spirit of the law.

Section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) enshrines the right to personal liberty and states that no person shall be deprived of their liberty except in accordance with a procedure permitted by law.²¹ Section 36 further guarantees the right to a fair hearing.²² These constitutional

¹⁹ David Weissbrodt and Amy Bergquist, 'Extraordinary Rendition: A Human Rights Analysis' (2007) 19 *Harvard Human Rights Journal* 123- 160.

²⁰ *Extradition Act*, Cap E25, Laws of the Federation of Nigeria 2004.

²¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 35(1)

²² *ibid*, s 36(1).

protections are reinforced by Section 6(6), which vests the judiciary with the exclusive authority to adjudicate legal disputes, including the legality of arrest and detention.²³ Extraordinary rendition by its very nature bypasses the judiciary and deprives the individual of their right to challenge the legality of their apprehension, thereby violating these core constitutional guarantees. Moreover, Nigeria is a signatory to several international human rights instruments that further outlaw the practices inherent in extraordinary rendition. The International Covenant on Civil and Political Rights (ICCPR), to which Nigeria acceded in 1993, prohibits arbitrary arrest and detention (Article 9), guarantees fair trial rights (Article 14), and forbids torture or cruel, inhuman, or degrading treatment (Article 7).²⁴ Likewise, the African Charter on Human and Peoples' Rights (ACHPR), domesticated through the African Charter (Ratification and Enforcement) Act, specifically protects the right to liberty, security of person, dignity, and due process.²⁵ Since the African Charter forms part of Nigerian law, any breach of its provisions by Nigerian authorities in the context of extraordinary rendition is justiciable in Nigerian courts.²⁶

In the case of Nnamdi Kanu, for example, the absence of extradition proceedings in Kenya before his transfer to Nigeria amounts to a breach of both domestic law and international obligations. It also raises serious issues of *locus standi* for the courts to assert jurisdiction over a person abducted in violation of lawful procedures a matter that has attracted judicial attention in other jurisdictions. In the landmark U.S. case of ***United States v Alvarez-Machain***, the U.S. Supreme Court controversially upheld the jurisdiction of U.S. courts over a Mexican national abducted without extradition.²⁷ While that judgment has been widely criticised for effectively endorsing illegal renditions, it contrasts with more protective approaches in European and African jurisdictions that emphasise the rule of law and mutual state respect. Furthermore, extraordinary rendition, even when politically or strategically motivated, violates the principle of non-refoulement, a

²³ *ibid*, s 6(6)(b)

²⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), arts 7, 9 and 14.

²⁵ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (ACHPR); domesticated in Nigeria by African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.

²⁶ *Abacha v Fawehinmi* [2000] 6 NWLR (Pt 660) 228

²⁷ *United States v Alvarez-Machain* 505 US 655 (1992)

cardinal rule under international human rights and refugee law, which prohibits the transfer of individuals to jurisdictions where they face a real risk of torture or degrading treatment.²⁸ Although Nigeria is not yet a party to the Optional Protocol to the Convention Against Torture (OPCAT), it has ratified the parent Convention and remains bound by customary international law prohibiting torture and arbitrary detention.²⁹ The informal or coercive removal of individuals from a foreign territory without the cooperation of the host state also violates the sovereignty of that state and may trigger diplomatic or legal retaliation.

Nigerian courts have consistently held that violations of constitutional rights and international human rights norms are actionable, even against state agents. In *Abacha v Fawehinmi*,³⁰ the Supreme Court upheld the direct applicability of the African Charter in Nigeria and affirmed that international human rights norms are enforceable within the domestic legal order.³¹ Thus, any state-sanctioned or tolerated act of extraordinary rendition not only constitutes executive lawlessness but also renders the state liable for violations of binding legal norms. In essence, Nigeria's current legal framework contains no legal justification for extraordinary rendition. Its use constitutes an abuse of executive power and a breach of the fundamental legal architecture that safeguards human rights and the rule of law. Where state actors engage in such practices, they act *ultra vires*, and expose Nigeria to international condemnation, civil suits, and potential sanctions. It is thus imperative that the Nigerian government recommits to due process and international cooperation, especially in matters involving cross-border apprehension of suspects.

²⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 3.

²⁹ *ibid*; See also UN Human Rights Committee, General Comment No. 20 (1992) on art 7, UN Doc HRI/GEN/1/Rev.1 at 30.

³⁰ [2000] 6 NWLR (Pt 660) 228

³¹ see also *Odafe v Attorney-General of the Federation* [2004] AHRLR 205 (NgHC 2004).

5. IMPLICATIONS FOR HUMAN RIGHTS AND THE RULE OF LAW

Extraordinary rendition, by its nature, operates in defiance of the legal procedures designed to protect fundamental rights. It denies individuals the opportunity to contest their arrest or removal before a court of law, strips them of access to legal counsel, and often results in prolonged incommunicado detention. These actions violate key principles enshrined in both Nigerian constitutional law and international human rights instruments, including the right to personal liberty, fair hearing, and protection from torture or cruel, inhuman or degrading treatment.

One of the gravest implications of extraordinary rendition is its corrosive effect on the integrity of the justice system. Trials that proceed following an unlawful rendition are often procedurally compromised, as they begin from a foundation of illegality. The doctrine of the "fruit of the poisonous tree," although not rigidly applied in Nigerian jurisprudence, finds persuasive relevance here where the method of securing jurisdiction undermines the legitimacy of subsequent judicial proceedings.³² Even where courts assert jurisdiction despite the illegality of transfer, the credibility and moral authority of the state's prosecution are seriously weakened.

Moreover, extraordinary rendition emboldens a culture of impunity within security and intelligence agencies. Once such actions are tolerated whether covertly encouraged or officially ignored they tend to be repeated. Agencies may begin to act without recourse to legal advice or oversight, perceiving themselves as above the law. This undermines the authority of the judiciary, which is constitutionally mandated to serve as a check on executive power. The use of state machinery to circumvent due process not only erodes institutional trust but also sets a dangerous precedent, especially in volatile political contexts or during conflicts involving separatist or insurgent groups.

Historical and international examples reinforce these concerns. The rendition of Fawaz Younis by U.S. agents in 1987 abducted from international waters and brought to the U.S. for trial demonstrated how such acts can raise questions about

³² See generally *State v Ilori* [1983] 1 SCNLR 94, where the Supreme Court emphasized that legality must be upheld in all state actions, and by extension, the maxim *ex turpi causa non oritur actio* may render proceedings tainted by illegality questionable.

the fairness and legality of subsequent trials.³³ In that case, although U.S. courts upheld jurisdiction, critics argued that it signalled a readiness to disregard territorial sovereignty and legal process for political or strategic ends. Similarly, the kidnapping and unlawful transfer of former Egyptian cleric Abu Omar from Milan to Cairo by CIA agents in 2003 later condemned by Italian courts highlighted the human rights abuses and unlawful detention that often follow such operations.³⁴

These examples show that extraordinary rendition is not just a legal irregularity it is a systemic breach of rule-of-law principles that puts individual liberties at risk and invites long-term institutional decay. In the Nigerian context, where rule-of-law standards are already under pressure, the normalization of such practices could deepen the democratic deficit and make meaningful legal accountability increasingly elusive.

6. IMPACT ON NIGERIA'S INTERNATIONAL STANDING

The use of extraordinary rendition also has profound implications for Nigeria's image and credibility on the international stage. States that engage in extrajudicial abduction, especially when targeting political dissidents, risk being perceived as authoritarian or lawless. Such perceptions undermine bilateral trust and cooperation, particularly in sensitive areas like extradition, mutual legal assistance, counterterrorism, and judicial diplomacy.

Nigeria's international obligations under treaties such as the ICCPR and the African Charter commit it to uphold due process, the right to a fair trial, and the prohibition of torture. Violating these obligations through unlawful renditions invites condemnation not only from rights advocacy groups but also from international organizations and foreign states. It weakens Nigeria's standing when negotiating security or judicial cooperation agreements, particularly within regional bodies like the African Union or ECOWAS, where respect for sovereignty and human rights is a foundational principle.

³³ FBI, 'Fawaz Younis: A Case of International Rendition' (FBI Archives, 1987) <https://www.fbi.gov/history/famous-cases/fawaz-younis> accessed 11 July 2025.

³⁴ Amnesty International, *Italy: The Abu Omar Case - The Role of Italian and US Authorities in a Forced Disappearance* (AI Index: EUR 30/003/2006, 2006); see also *El-Masri v. The Former Yugoslav Republic of Macedonia* (2012) App no 39630/09 (ECtHR, 13 December 2012).

Although the Nnamdi Kanu case brought recent attention to these issues, Nigeria's international reputation could suffer more deeply if such practices are repeated or normalized. Other states including South Africa, Ghana, and Rwanda have in the past had to defend their actions in courts or before human rights bodies following illegal renditions, and the reputational cost was substantial.³⁵

The diplomatic tensions that can result from such acts are also significant. When a rendition is carried out without the consent or knowledge of the host country, it violates that country's sovereignty and may strain or rupture diplomatic relations. For example, Argentina filed a complaint before the UN Security Council after the abduction of Adolf Eichmann by Israeli agents in 1960, even though Eichmann was a notorious war criminal.³⁶ In more recent times, European courts have held states responsible for cooperating in CIA-led renditions, reinforcing the view that international law does not tolerate such extrajudicial practices, regardless of the motive or target.

For Nigeria, the reputational damage from engaging in extraordinary rendition extends beyond law and diplomacy. It complicates efforts to attract investment, partner on development projects, and lead on regional security initiatives. A government that disregards due process in the name of national security risks undermining its legitimacy both at home and abroad. In an interconnected world where perceptions of governance increasingly shape international relationships, Nigeria cannot afford the reputational cost of substituting law with force in pursuit of fugitives or dissenters.

³⁵ See e.g., *Southern Africa Litigation Centre v Minister of Justice* [2012] ZAGPPHC 61 (South Africa HC) on cross-border transfers without due process; Human Rights Watch, *Rwanda: Human Rights Abuses by Rwandan Agents Abroad* (2017) <https://www.hrw.org/report/2017/10/12/rwandas-reach> accessed 11 July 2025.

³⁶ UN Security Council, Letter from the Permanent Representative of Argentina to the United Nations, UN Doc S/4349 (22 June 1960); see also Robert S Levine, *Secret Missions: The Legal Legacy of the Eichmann Case* (Cambridge University Press 2004) 112- 115.

7. RECOMMENDATIONS FOR LEGAL AND POLICY REFORM

1. **Prohibit Extraordinary Rendition by Law:** The National Assembly should amend the *Extradition Act* or enact a new statute to expressly outlaw extraordinary rendition. The law should define the offence, prohibit unauthorized cross-border arrests, and impose penalties on individuals or agencies involved in such acts.
2. **Strengthen Oversight of Security Agencies:** Agencies and other law enforcement bodies must be subject to enhanced oversight by the judiciary and the National Assembly. The National Human Rights Commission should be legally mandated to investigate alleged cases of unlawful rendition and recommend sanctions.
3. **Make Judicial Approval Mandatory for Cross-Border Operations:** All cross-border enforcement actions should require prior judicial authorization. Nigerian courts should only approve such actions where there is clear evidence, legal justification, and compliance with mutual legal assistance or extradition treaties.
4. **Provide Human Rights Training for Security Personnel:** Security operatives, intelligence officers, immigration officials, and diplomats should undergo regular training on Nigeria's obligations under the Constitution and international human rights instruments such as the ICCPR, the African Charter, and the Convention Against Torture.
5. **Review and Update Bilateral Extradition Treaties:** Nigeria should work with key partner countries especially in Africa and the Commonwealth to review and modernize existing extradition treaties. This will facilitate lawful cooperation and reduce the temptation to resort to extraordinary rendition.
6. **Ensure Transparency and Accountability:** When allegations of unlawful rendition arise, government authorities should promptly initiate independent investigations. The findings should be made public, and responsible officials held accountable. Silence or denial damages Nigeria's legal credibility and international reputation.

8. CONCLUSION

The practice of extraordinary rendition, even when framed as a tool of national security, fundamentally undermines the rule of law and violates both domestic and international legal standards. In Nigeria, its continued use reflects structural weaknesses- unchecked executive discretion, inadequate judicial enforcement, and the erosion of legal accountability. Such practices not only endanger the rights of individuals but also diminish public trust in institutions and expose the country to international criticism and legal consequences. To safeguard its constitutional order and preserve its standing in the international community, Nigeria must draw a clear line between legitimate law enforcement and unlawful state action. Extraordinary rendition must be decisively rejected not as a matter of public relations, but as a principled commitment to legality, human dignity, and institutional integrity. A nation governed by law must enforce the law within its own bounds, and never through covert shortcuts that sacrifice justice at the altar of expediency.

LEGAL PERSPECTIVES ON THE HEALTH IMPLICATIONS OF ELECTROMAGNETIC FIELD (EMF) RADIATION FROM ELECTRONIC DEVICES IN NIGERIA

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Abstract

The rapid adoption of electronic devices in Nigeria, particularly the expansion of telecommunications infrastructure, though beneficial as it has brought significant benefits in communication, productivity, and connectivity, it has also necessitated an increase in public health concerns. These concerns about the potential health implications of electromagnetic field (EMF) radiation from these devices remain pressing. The aim of this paper is to take a cursory look at Nigeria's legal framework governing electromagnetic field radiations from electronic devices. It analyses the extent to which the law addresses the health implications of exposure to EMF radiations and explores some international regulatory approaches that could be adopted in Nigeria. International perspectives on EMF regulation are analyzed in a bid to identify gaps and opportunities for improvement within the Nigerian context. The paper also highlights challenges that Nigeria faces and attempts to proffer recommendations to mitigate potential risks. By addressing these issues, Nigeria can ensure public safety while fostering responsible technological advancement.

Keywords: *Electromagnet, Electromagnetic field (EMF), radiation, electronic devices.*

1.1. Introduction

The widespread use of electronic devices in Nigeria has positively impacted various sectors of the nation, from communication to entertainment, and productivity generally. The use of these electronic devices continues to expose the public to Electromagnetic Field (EMF) Radiations. Concerns about the potential health risks of prolonged exposure to electromagnetic field (EMF) radiation, emitted by these devices, are being heightened. Telecommunications, which provide essential services like phone connectivity, entertainment, and access to information, rely on radio frequency (RF) signals transmitted through base stations. These base stations, along with broadcast towers, radar facilities, and other household appliances like microwaves, radios, and televisions, contribute to RF emissions in our environment.¹ Public concerns have grown regarding the health effects of EMF radiation from telecommunications infrastructure. A common misconception is that these emissions are similar to harmful nuclear or radioactive radiation, which can be attributed to misreported or unverified scientific studies. To address these concerns, it is crucial to examine the potential public health impact of electronic devices that emit RF radiation.²

EMF radiation is generated by the movement of electrically charged particles and can be classified into two types: ionizing and non-ionizing radiation. Ionizing radiation, such as X-rays and gamma rays, has high energy levels and can harm human health by ionising atoms.³ In contrast, non-ionizing radiation, including Radio Frequency waves, has lower energy

¹ Chou, Chung-Kwang. "Controversy in electromagnetic safety ." International Journal of environmental research and public health 19.24 (2022): 16942 . <https://www.mdpi.com/1660-4601/19/24/16942> accessed on 6 January 2026.

² Ariyoosu , Dauda Adeyemi . "An Examination of legal regulation and environmental impacts of telecommunications installations in Nigeria." JL Pol'y & Globalization 30 (2014) <https://www.iiste.org/Journals/index.php/JLPG/article/view/16340> Accessed 5 January 2026.

³ Aminu et al "Measurement of Electromagnetic Waves Radiated from Base Transceiver Stations (BTS) for Assessing Exposure Limit in Kaduna State." The International Journal Of Engineering And Science (IJES) 3, no. 8 (2014): 28-34 . https://www.theijes.com/Vol3,Issue_8.html accessed on 6 January 2026.

levels and is not known to directly cause cellular damage .⁴ Notwithstanding these facts, there are increasing concerns about the long-term effects of non-ionising radiation, particularly from frequent mobile phone use or prolonged exposure to devices like laptops and tablets. Studies have linked long-term EMF exposure to health risks, including a higher likelihood of certain cancers, reproductive disorders, neurological effects, and symptoms of electromagnetic hypersensitivity (EHS).⁵ While scientific consensus on these risks is still developing, it is vital to assess and address the potential health implications.

In Nigeria, legal frameworks regulate the telecommunications sector and aim to protect citizens from the potential harms of EMF radiation. The Nigerian Communications Commission (NCC) and the National Environmental Standards and Regulations Enforcement Agency (NESREA) are responsible for enforcing these regulations to ensure public safety.⁶

This paper provides an overview of EMF radiation, its potential health effects, and the considers the legal framework governing EMF radiations in Nigeria. It also highlights international regulations and discusses the challenges and controversies surrounding EMF radiation.

The aim of this paper is to provide an overview of EMF radiation, its potential health effects, and also take a cursory look at Nigeria's legal framework governing EMF radiation, radiations from electronic devices, and goes further to analyze the extent to which the law addresses the health implications of exposure to EMF radiations and explores some international regulatory approaches that could be adopted in Nigeria. This research

⁴ Kazaure, Jazuli Sanusi, and Ugochukwu Okwudili Matthe w. "Electromagnetic Radiation (EMR) and Human Health: A Study on the Health Effect of EMR from GSM Base Stations in North-Western Nigeria." *American Journal of Electrical and Computer Engineering* 5.1 (2021): 14-24
<https://www.sciencepublshinggroup.com/article/10.11648/j.ajece.20210501.13> Accessed on 6 January 2026.

⁵ *ibid* n.4

⁶ Ogboru, Tolulope. "NESREA AND NCC regulations on telecommunication mast s: Implementing the precautionary principle." *Journal of Sustainable Development Law and Policy (The)* 5.1 (2015): 55-71. <https://jsdlp.geesinstitute.edu.ng/index.php/jsdlp/article/view/411> accessed on 7 January 2025

adopts a doctrinal legal methodology involving a systematic analysis of primary legal and legal sources ranging from statutes, regulations, regulatory guidelines to academic commentary official reports and more.

1.2. Understanding Electromagnetic Fields, Radiation And Electronic Devices

1.2.1 Electromagnetic Field (EMF) radiation is energy emitted by electronic devices and power sources, encompassing various electromagnetic waves with differing frequencies and wavelengths. Devices like mobile phones, laptops, Wi-Fi routers, and power lines have become integral to modern life, raising concerns about potential health effects of EMF radiation exposure.⁷ EMF radiation is categorized into ionising and non-ionising types. Ionising radiation, such as X-rays and gamma rays, has high energy levels and can directly damage cells and DNA. Non-ionising radiation, including the radio frequency (RF) waves emitted by electronic devices, has lower energy levels and is not known to directly cause cellular damage. However, the long-term effects of non-ionising radiation exposure remain under investigation.⁸

1.2.2 What is Electromagnetic Radiation?

Electromagnetic radiation includes radio waves, microwaves, X-rays, and gamma rays, covering a wide range of wavelengths and frequencies. Sunlight, for example, is part of this spectrum, with visible light being only a small fraction. The study of electromagnetism began with James Clerk Maxwell's unified theory⁹ in 1873 linking electricity and magnetism. There are four key electromagnetic interactions thus:

⁷ Adekunle, A., Y. K. Abimiku, N. M. Umeobika, and E. E. Ameh. "Radio wave detection using cost 231 Hata model for wireless network planning; a case study of senate building environs of Unilag, Nigeria." *International Journal of Advances in Scientific Research and Engineering, IJASRE* (ISSN: 2454-8006) 4 (2018) : 107-113. <https://ijasre.net/index.php/ijasre/article/view/808>

⁸ Olorunfemi, E., et al. "Determination of electromagnetic radiation levels from cell phones and GSM Masts in Ile-Ife, Southwest Nigeria." *Ife Journal of Science* 18.4 (2016): 1041-1051.

https://scholar.oauife.edu.ng/ijes/files/olorunfemi_et_al_17.pdf Accessed on 5 January 2026.

⁹ Fekete, Gabor. "INTERPRETATION OF MAXWELL'S WORK BASED ON UNIFIED THEORY OF ENERGY (UNITHE)." XXVIII. International Multidisciplinary Scientific Conference, University of Miskolc, (microCAD2014), Vol. Electrical Engineering, CD-ROM. <http://www.uni-miskolc.hu/~>

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1. The force between electric charges,
 11. The behavior of magnetic poles,
 111. The creation of magnetic fields by electric currents, and
 - 1v. The reciprocal influence of electric and magnetic fields.¹⁰

The electromagnetic spectrum spans seven regions: radio waves, microwaves, infrared (IR), visible light, ultraviolet (UV), X-rays, and gamma rays. Lower-energy radiation, like radio waves, is often described by frequency, while higher-energy radiation, such as X-rays, is measured in energy per photon. Radio waves (up to 30 GHz) are used for voice and data transmission, while microwaves (3 GHz to 30 THz) serve in communication and radar systems. Infrared radiation (30 THz to 400 THz) is felt as heat, and visible light (400 THz to 800 THz) is detectable by the human eye. Ultraviolet (UV) light, X-rays, and gamma rays have higher frequencies and shorter wavelengths, with applications in medicine and industry.¹¹

Common sources of EMF radiation include mobile phones, Wi-Fi routers, and power lines. Mobile phones emit RF radiation during calls, texts, and data transmission, while Wi-Fi routers emit RF radiation for wireless connectivity. Power lines also generate EMF, though typically not associated with personal devices.¹² EMF radiation decreases with distance from the source, so exposure

elkfegab/ uCAD . Vol. 202014. 2016. <https://annals.fih.upt.ro/pdf-full/2016/ANNALS-2016-1-21.pdf>
 Accessed on 5 January 2026.

¹⁰ Glyva, Valentyn, et al. "The Propagation of Electromagnetic Fields of Energy Facilities Modeling in the Context of Energy Saving and Public Safety." 2022 IEEE 8th International Conference on Energy Smart Systems (ESS). IEEE, 2022. <https://www.semanticscholar.org/paper/The-Propagation-of-Electromagnetic-Fields-of-Energy-Glyva-Levchenko/d979f79d24104eac4e40fe3973f3920327e52de/> Accessed on 5 January 2026

¹¹ Matthes, Ruediger, et al. "Exposure to static and low frequency electromagnetic fields, biological effects and health consequences (0-100 kHz). Review of the scientific evidence on dosimetry, biological effects, epidemiological observations, and health consequences concerning exposure to static and low frequency electromagnetic fields (0-100 kHz)." (2003). <https://www.osti.gov/etdeweb/biblio/21183687> Accessed on 6 January 2026

¹² Bamikole, Afolabi Olakunle, et al. "Exposure to a 2.5 GHz non-ionising electromagnetic field alters hematological profiles, biochemical parameters, and induces oxidative stress in male albino rats." *Biomedical and Environmental Sciences* 32.11 (2019): 860-863. <https://www.sciencedirect.com/science/article/pii/S0895398820300519> Accessed on 7 January 2026

levels vary accordingly. Non-ionising radiation, especially RF radiation, has raised concerns about its potential long-term health effects. Research is exploring links between RF radiation exposure and health issues such as cancer, reproductive disorders, neurological impacts, and electromagnetic hypersensitivity (EHS). However, the scientific consensus on these associations is still evolving, and the evidence remains inconclusive.¹³

1.3. HEALTH IMPLICATIONS OF EMF RADIATION

The widespread use of electronic devices has significantly increased exposure to electromagnetic field (EMF) radiation in daily life. As scientific research continues to explore the potential health effects of non-ionizing radiation and radio frequency (RF) radiation, it is important to balance technological benefits with prudent measures to mitigate risks. Some of these health implications are here under listed.

- 1.3.1. Cancer:** One of the most studied potential health impacts of EMF radiation is its association with cancer. Research suggests a possible link between electromagnetic fields (EMFs) and childhood leukemia, with higher levels of magnetic field exposure correlating with an increased risk.¹⁴ However, evidence concerning other childhood cancers remains limited. With regards to breast cancer, studies indicate a relationship between extremely low frequency (ELF) exposure and an increased risk. Long-term exposure to ELF levels of Ten milligauss (10 mG or 1.0 microTesla) and higher, especially in the workplace, has been identified as a risk factor for breast cancer in women. Laboratory studies further support the idea that ELF exposure can disrupt the protective effects of melatonin, potentially promoting breast cancer cell growth.¹⁵ The World Health Organization

¹³ Miah, Tayaba, and Deepak Ka mat . "Current understanding of the health effects of electromagnetic fields." *Pediatric Annals* 46.4 (2017) : e172-e174.
<https://www.ovid.com/journals/pean/abstract/10.3928/19382359-20170316-01~current-understanding-of-the-health-effects-of?redirectionsource=fulltextview> accessed on 5 January 2025

¹⁴ Mahboubi, S., and J. H. Silber. "Radiation-induced esophageal strictures in children with cancer." *European radiology* 7 (1997): 119-122.
https://eurekamaq.com/research/047/160/047160505.php?srsId=AfmBOooKZk63uHV2GcINHQ8Yyshapfdp-llwQre2WgkE5l_ZODvSrjZ1 accessed on 7 January 2026

¹⁵ Marin, G., et al. "Assessment of the need for protection against electromagnetic radiation of personnel onboard warships." *International Conference on Advancements of Medicine and Health*

(WHO) collaborates with the International Agency for Research on Cancer (IARC) to assess the potential carcinogenic risks associated with exposure to electromagnetic field (EMF) radiation. Through systematic scientific evaluations and classification processes, IARC examines epidemiological and experimental evidence on EMF exposure, and its findings inform WHO guidance and support the development of evidence-based public health policies and regulatory standards.¹⁶

1.3.2. Reproductive Disorders: The potential impact of EMF radiation on reproductive health has also raised concerns. Some studies suggest a link between increased EMF exposure and reduced male fertility, including diminished sperm quality, motility, and DNA integrity. Research on female reproductive health has explored potential effects on fertility, menstrual cycles, and pregnancy outcomes. However, the evidence remains inconsistent and insufficient, necessitating further research to draw definitive conclusions.¹⁷

1.3.3. Neurological Impacts: Long-term exposure to EMF radiation has been linked to neurological concerns such as cognitive impairments, sleep disturbances, and symptoms resembling neurological diseases like Alzheimer's and Parkinson's. Although several studies highlight these potential associations, the evidence remains conflicting and inconclusive.

Care through Technology; 5th-7th June 2014, Cluj-Napoca, Romania: MEDITECH 2014. Springer International Publishing, 2014. https://link.springer.com/chapter/10.1007/978-3-319-07653-9_58 accessed on 2 January 2026.

¹⁶ International Agency for Research on Cancer, Non-Ionizing Radiation, Part 2: Radiofrequency Electromagnetic Fields (IARC Monographs, Vol 102); World Health Organization, Electromagnetic Fields and Public Health.

[https://www.google.com/search?q=International+Agency+for+Research+on+Cancer%2C+Non-Ionizing+Radiation%2C+Part+2%3A+Radiofrequency+Electromagnetic+Fields\(IARC+Monographs%2C+Vol+102\)%3B+World+Health+Organization+%2C+Electromagnetic+Fields+and+Public+Health.&rlz=1C9BKJA_enNG978NG978&hl=en-GB&sourceid=chrome-mobile&ie=UTF-8](https://www.google.com/search?q=International+Agency+for+Research+on+Cancer%2C+Non-Ionizing+Radiation%2C+Part+2%3A+Radiofrequency+Electromagnetic+Fields(IARC+Monographs%2C+Vol+102)%3B+World+Health+Organization+%2C+Electromagnetic+Fields+and+Public+Health.&rlz=1C9BKJA_enNG978NG978&hl=en-GB&sourceid=chrome-mobile&ie=UTF-8)

¹⁷ Ariyoosu, D. A., and Y. A. Alajo. "Enforcement Challenges of Environmental Protection Laws in the Telecommunications Installations in Nigeria." (2014). <https://www.iiste.org/Journals/index.php/JLP/article/view/16340> accessed on 2 January 2026.

More rigorous research is needed to accurately assess the extent of these effects and their real-world implications.¹⁸

1.3.4. Electromagnetic Hypersensitivity (EHS): Electromagnetic hypersensitivity (EHS) is a condition in which individuals report symptoms such as headaches, fatigue, dizziness, and skin rashes in response to EMF exposure. Although these symptoms are real and distressing to those affected, scientific studies have not consistently demonstrated a causal relationship between EMF radiation and these symptoms. Psychological factors, including the nocebo effect (where negative expectations lead to adverse health outcomes), may contribute to the subjective experience of EHS symptoms.¹⁹

1.4. Exposure Levels Everyday Devices and Household Appliances

Electromagnetic field (EMF) exposure from household and personal devices generally falls within non-ionising radiation ranges and, under normal conditions of use, remains well below internationally recommended exposure limits, particularly those set by the International Commission on Non-Ionizing Radiation Protection (ICNIRP).

Below is a table presenting typical EMF Exposure Levels from common household devices.²⁰

¹⁸ Litvak, E., K. R. Foster, and M. H. Repacholi. "Health and safety implications of exposure to electromagnetic fields in the frequency range 300 Hz to 10 MHz." *Bioelectromagnetics: Journal of the Bioelectromagnetics Society, The Society for Physical Regulation in Biology and Medicine, The European Bioelectromagnetics Association* 23.1 (2002): 68-82. <https://pubmed.ncbi.nlm.nih.gov/11793407/> Accessed on 2 January 2026

¹⁹ Lin, James C. "RF Health Safety Limits and Recommendations [Health Matters]." *IEEE Microwave Magazine* 24.6 (2023): 18-77. <https://ieeexplore.ieee.org/document/10121536> accessed on 28 December 2025

²⁰ International Commission Non-Ionising Radiation Protection (ICNIRP) Guidelines for Limiting Exposure to Time-Varying Electric, Magnetic and Electromagnetic Fields (100 kHz to 300 GHz) (ICNIRP, 2020) https://icnirp.org/cms/uploads/publications/ICNIRP_rfgdl2022.pdf Accessed on 4 January 2026

Device / Appliance	EMF Type	Frequency Range	Typical Exposure Level (Normal Use)	Notes on Exposure Characteristics
Mobile phones (during calls)	Radiofrequency (RF)	~800 MHz – 2.6 GHz	SAR up to 2.0 W/kg (regulatory maximum)	Highest exposure occurs during voice calls close to the head; exposure reduces significantly with hands-free use
Wi-Fi routers	RF	2.4 GHz / 5 GHz	0.01–0.1 W/m² (1–2 m distance)	Continuous low-level exposure; substantially lower than mobile phone exposure
Laptop computers	ELF & RF	ELF (internal circuits); RF (Wi-Fi)	0.1–1 µT (ELF, near keyboard)	Exposure increases when placed directly on the lap
Microwave ovens	RF	~2.45 GHz	<0.01 W/m² (30–50 cm distance)	Shielded appliances; leakage levels strictly regulated
Television sets (flat-screen)	ELF	50–60 Hz	0.01–0.1 µT (1 m distance)	Modern screens emit significantly less EMF than older CRT models

Electric kettles & irons	ELF	50–60 Hz	0.2–6 μT (20–30 cm distance)	Exposure occurs only during operation and decreases rapidly with distance
Hair dryers	ELF	50–60 Hz	2–200 μT (10–20 cm distance)	Among the highest household ELF exposures but for short durations
Refrigerators & washing machines	ELF	50–60 Hz	0.01–0.5 μT (30–50 cm distance)	Low exposure under normal household use

The table shows that measured EMF emissions from common household devices are therefore well below internationally recommended exposure limits when appliances are used normally and at typical distances. But this has done very little in reducing the growing concerns of the general public on the effects – Short and long term – of EMF radiations on the health. This could be attributed to the fact that, most of these appliances are not used accordingly.

1.5. Effects of EMF Radiation on Human Health

1.5.1. Short Term Effects: The primary mechanism by which mobile phone radiation interacts with the body is tissue heating. At the frequencies used by mobile phones, most of the energy is absorbed by the skin and superficial tissues, with negligible effects on deeper organs such as the brain. Studies have investigated the effects of radio-frequency fields (RF) on brain function, sleep patterns, heart rate, and blood pressure. To date,

there is no consistent evidence indicating that exposure to RF fields at levels below those that cause tissue heating leads to adverse health effects.²¹

1.5.2. Long-Term Effects: Research on the long-term risks of mobile phone use has primarily focused on its potential link to brain tumors. However, due to the long latency period of cancers and the relatively recent widespread use of mobile phones, current studies can only assess cancers that appear within shorter timescales. Animal studies consistently show no increased cancer risk with long-term RF exposure.²² The Interphone study, one of the largest retrospective case-control studies, found no consistent association between mobile phone use and glioma or meningioma, though some methodological flaws hinder the strength of these findings. The International Agency for Research on Cancer (IARC) has classified radio frequency electromagnetic fields as possibly carcinogenic to humans, due to insufficient evidence to conclusively prove a causal relationship. While the risk of brain tumours remains unconfirmed, increased mobile phone use and the lack of long-term data warrant further research, particularly concerning younger populations who may experience prolonged exposure.²³

1.5.3. Regulatory Guidelines for Exposure: International exposure guidelines for EMFs primarily focus on the health effects of short-term, high-level exposure. These guidelines, established by organizations like ICNIRP and the Institute of Electrical & Electronics Engineers (IEEE), aim to protect individuals from the effects of such exposure.²⁴ However, the evidence supporting the health risks of long-term, low-level exposure to EMFs,

²¹ Kumar, Sourabh. "Cell Tower/Base Station Electromagnetic Radiation: Living Organism, Health Consequences and Protection." (2016). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2776481 accessed on 4 January 2026

²² Kumar, Neha, and Girish Kumar . "Biological effects of cell tower radiation on human body." ISMOT, Delhi, India (2009): 678-679. <https://scispace.com/pdf/biological-effects-of-cell-tower-radiation-on-human-body-35wj-skkf97.pdf> accessed on 22 December 2025

²³ Hardell, Lennart. "World Health Organization, radio-frequency radiation and health-a hard nut to crack." International Journal of Oncology 51.2 (2017): 405-413. <https://mdsafetech.org/wp-content/uploads/2017/10/hardell-california-sb-649-final.pdf> Accessed on 22 December 2025

²⁴ SEKER, S. Selim. "Health effects of 5G and millimeter waves." 2019 11th International Conference on Electrical and Electronics Engineering (ELECTE). IEEE, 2019 . <https://www.proceedings.com/content/052/052852webtoc.pdf> accessed on 28 December 2025.

specifically extremely low-frequency (ELF) fields and radiofrequency/microwave radiation (RF), is considered insufficient to warrant lowering the exposure limits according to these guidelines.²⁵ While guidelines for high-level short-term exposure are well-established, concerns have been raised regarding the health risks associated with ELF fields and RF radiation from wireless communication devices. Non-thermal effects at lower intensities have not been adequately considered for regulatory purposes.²⁶

1.6. Legal Frameworks Regulating Electromagnetic Field Radiation In Nigeria

Nigeria has recognized the importance of regulating electromagnetic field (EMF) radiation to protect public health and ensure the safe use of electronic devices. Several legal frameworks and guidelines have been established to address EMF radiation and its potential impact on human health. These include laws governing the telecommunication sector, environmental regulations, and occupational health and safety standards.

1.6.1. Telecommunication Laws and Regulations: Section 3(1) of the Nigerian Communications Act²⁷ establishes the Nigerian Communication Commission (NCC) with the responsibility for the regulation of the communications sector. The Nigerian Communication Commission (NCC) provides the framework for the regulation of telecommunication services in Nigeria of which the the Nigerian telecommunications sector, as well as the management of EMF radiation is a part of, to ensure the safe and efficient operation of telecommunication networks and the management of EMF radiation. Section 121²⁸ also empowers the Nigerian Communication

²⁵ Moslemi, Soode, et al. "Measuring and assessing the effects of extremely low-frequency electromagnetic fields (ELF-EMF) on blood parameters and liver enzymes of personnel working in high voltage power stations in a petrochemical industry." *Heliyon* 9.4 (2023). <https://www.sciencedirect.com/science/article/pii/S240584402302621X> accessed don 2 January 2026

²⁶ Lin, James C. "RF Health Safety Limits and Recommendations [Health Matters]." *IEEE Microwave Magazine* 24.6 (2023): 18-77. <https://icbe-emf.org/wp-content/uploads/2023/05/Lin-2023.pdf> Accessed on 7 January 2026

²⁷ Section 3(1) Nigerian Communications Act 2003

²⁸ Section 121(1) Nigerian Communications Act 2003

Commission (NCC) to manage and administer the frequency spectrum for the communications sector and sets out the guidelines for establishing and operating telecommunication infrastructure. Also, the NCC, as part of its key functions addresses public concerns about the possible health effects of EMF radiations emanating from telecommunication equipment and enforces the ensuring of the maintenance of safety and protection of the environment within the communications industry as prescribed for in Section 136²⁹

Though the NCC Act does not expressly prescribe EMF exposure thresholds, the Commission's *Technical Specifications for Installation of Telecommunications Masts and Towers* (e.g., Guidelines 2009/2020) speak to environmental safety practices and infrastructure siting, which impact public exposure to EMFs.³⁰ These guidelines provide exposure limits based on international standards and recommendations and empowers the commission to conduct regular monitoring and compliance assessment of telecommunication operators to ensure adherence to the established guidelines.³¹

1.6.2. Environmental Regulations: The National Environmental Standards and Regulations Enforcement Agency (NESREA), play a significant role in Nigeria's environmental governance framework, with particular reference to the regulation of activities with potential environmental and public health implications. Established under the The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, NESREA is mandated to enforce compliance with environmental laws, regulations, and standards across various sectors of the Nigerian economy.³² This agency regulates EMF radiation through the National Environmental (Standards

²⁹ Section 136(3) Nigerian Communications Act 2003

³⁰ Nigerian Communication Commission Guidelines for Deployment of Infrastructure, 2022, [https://nee.gov.ng/sites/files/2024-11/Documents/draft-Guidelines on Deployment Infrastructure 2022.pdf](https://nee.gov.ng/sites/files/2024-11/Documents/draft-Guidelines%20on%20Deployment%20Infrastructure%202022.pdf) accessed on 6 January, 2026.

³¹ Ogboru, Tolulope. "NESREA AND NCC regulations on telecommunication masts: Implementing the precautionary principle." *Journal of Sustainable Development Law and Policy* (The) 5.1 (2015): 55-71. <http://scispace.com/pdf/nesrea-and-ncc-regulations-on-telecommunication-masts-3vf6zrqd-o9.pdf> accessed on 5 January 2026

³² Section 7 National Environmental Standards and Regulations Enforcement Agency Act 2007.

for Telecommunications and Broadcast Facilities) Regulations, 2011. The regulations mandate that radiation levels must conform to international guidelines set by the World Health Organization (WHO), and the International Commission on Non-Ionising Radiation Protection (ICNIRP).³³

Although Nigeria does not have any comprehensive EMF specific legislation yet, and though these regulations primarily focus on environmental protection, NESREA's broad statutory powers allow it to adopt precautionary regulatory approach which are consistent with international best practices. The Agency is mandated to ensure that industries and operators comply with Environmental Impact Assessment (EIA) requirements under Nigerian environmental law³⁴. In the context of telecommunication infrastructure projects, this obligation extends to the assessment of potential environmental and public health impacts, including the evaluation of electromagnetic field (EMF) radiation emissions and their possible effects on surrounding communities.

Section 7(g)³⁵ of the Act authorizes the agency to conduct environmental inspections and audits of facilities to ensure ongoing compliance with environmental regulations. This provision is very important for the regulation of EMF governance as the longterm effect of EMF radiation requires sustained monitoring rather than a one-off approval.

1.6.3. Occupational Health and Safety Standards: The Nigerian Institute of Safety Professionals (NISP) is a recognized professional body established to promote best practices in occupational health and safety (OHS) in Nigeria. Although NISP does not have direct statutory enforcement powers comparable to regulatory agencies, its functions include the development of professional safety guidelines, certification of safety practitioners, and advocacy for compliance with national and international workplace safety

³³ Regulation 8(2) National Environmental (Standards for Telecommunications and Broadcast Facilities) Regulations, 2011

³⁴ Section 2(1) of the Environmental Impact Assessment Act, LFN 1992, (Decree No. 86, 1992)

³⁵ Section 7(g) National Environmental Standards and Regulations Enforcement Agency Act 2007.

standards. Through these functions, NISP contributes to the formulation and dissemination of safety principles relevant to electromagnetic field (EMF) exposure, particularly in high-risk occupational environments such as telecommunications, broadcasting, and electrical engineering sectors.

The NISP's guidelines typically emphasise the extent of the employer's duty of care in identifying and managing occupational hazards, including non-ionising radiation risks. This aligns with the precautionary principle increasingly recognised in environmental and occupational health regulation, which supports proactive risk management even in the absence of conclusive scientific certainty regarding long-term EMF health effects

Nigeria's primary statutory framework for occupational safety is the Factories Act 2004, and it imposes general obligations on occupiers to ensure the health, safety, and welfare of workers. Section 7 of the Factories Act³⁶ requires employers to provide safe systems of work and to take reasonable measures to prevent exposure to hazards that may cause bodily injury or ill-health. In the context of EMF radiation, this provision may be interpreted to encompass risks arising from prolonged or excessive exposure to electromagnetic emissions within industrial and technical workplaces. Section 47³⁷ of the Act further mandates the provision of information, instruction, training, and supervision necessary to ensure workers' safety. This statutory requirement supports the inclusion of EMF awareness and training programs as part of workplace safety management, particularly for employees operating or maintaining EMF-emitting equipment.

Although EMF related illnesses are not expressly listed, the Employees' Compensation Act's³⁸ broad definition of occupational disease allows for potential claims where a causal link between workplace EMF exposure and health impairment can be established. The act reinforces occupational health

³⁶ Section 7 Factories Act, Cap F1, LFN 2004

³⁷ Section 47 Factories Act, Cap F1, LFN 2004

³⁸ Employees' Compensation Act Cap W6, LFN 2010

health protections by providing compensation for employees who suffer occupational diseases or injuries arising in the course of employment.

1.6.4. Compliance and Enforcement: Both the Nigerian Communications Commission (NCC) and the National Environmental Standards and Regulations Enforcement Agency (NESREA) possess statutory authority to monitor and enforce compliance with regulations and guidelines governing electromagnetic field (EMF) radiation exposure arising from telecommunication activities. While the NCC's mandate under the Nigerian Communications Act 2003 is primarily sector specific as it focuses on the technical regulation, licensing, and operational standards of telecommunications infrastructure, NESREA's authority under the NESREA (Establishment) Act 2007 is environmentally oriented, and it places emphasis on public health and environmental protection.³⁹

It is worthy of note that the legal frameworks and guidelines regarding EMF radiation in Nigeria are continuously evolving. As scientific knowledge and understanding of EMF radiation's potential health effects progress, regulations may be updated or revised to reflect the latest research and international standards.

1.7. International Perspectives on EMF Radiation Regulation

International standards and guidelines play a crucial role in regulating electromagnetic field (EMF) radiation from electronic devices and telecommunication infrastructure. These standards are primarily developed to protect public health by establishing scientifically informed exposure limits and regulatory benchmarks. A comparative analysis of Nigeria's legal and institutional framework against global standards highlights regulatory gaps and provides valuable insights into best practices that could strengthen EMF governance in Nigeria.

One of the most influential international bodies in the field of EMF regulation is the International Commission on Non-Ionizing Radiation

³⁹ Section 4, Nigerian Communications Act 2003; Section 2 & 7 National Environmental Standards and Regulations Enforcement Agency Act 2007

Protection (ICNIRP). ICNIRP issues guidelines on limiting exposure to non-ionising radiation, including radiofrequency (RF) fields emitted by mobile phones, base stations, and other electronic devices. Its exposure limits are widely adopted by national regulators and are endorsed by the World Health Organization (WHO) as providing adequate protection against established adverse health effects.⁴⁰

The World Health Organisation also collaborates with agencies like the International Agency for Research on Cancer to assess the potential carcinogenic risk of EMF radiation.

Similarly, the International Telecommunication Union (ITU) develops technical standards and recommendations that guide the safe deployment of telecommunication infrastructure worldwide. ITU recommendations incorporate EMF exposure considerations into network planning and equipment standards, thereby ensuring that technological advancement is balanced with public health concerns.⁴¹

1.7.1. Comparative Perspectives: The European Union and Selected Jurisdictions

In the European Union (EU), EMF regulation is governed by a harmonised legal framework that integrates ICNIRP exposure limits into binding regional instruments.⁴² These instruments impose clear obligations on Member States to monitor EMF emissions, conduct risk assessments, and ensure public access to information on exposure levels. The European

⁴⁰ World Health Organization, Electromagnetic Fields and Public Health (WHO Fact Sheets) endorsing ICNIRP guidelines.

[https://www.google.com/search?q=World+Health+Organization%2C+Electromagnetic+Fields+and+Public+Health+\(WHO+Fact+Sheets\)+endorsing+ICNIRP+guidelines.&rlz=1C9BKJA_enNG978NG978&hl=en-GB&sourceid=chrome-mobile&ie=UTF-](https://www.google.com/search?q=World+Health+Organization%2C+Electromagnetic+Fields+and+Public+Health+(WHO+Fact+Sheets)+endorsing+ICNIRP+guidelines.&rlz=1C9BKJA_enNG978NG978&hl=en-GB&sourceid=chrome-mobile&ie=UTF-)

⁴¹ International Telecommunication Union, Recommendations on Human Exposure to Radio Frequency Electromagnetic Fields. <https://www.who.int/teams/environment-climate-change-and-health/radiation-and-health/non-ionizing/emf> Accessed on 7 January 2026

⁴² Council Recommendations 1999/519/EC; Directive 2013/35/EU of the European Parliament of the council https://eepublicdownloads.entsoe.eu/clean-documents/sdc-documents/entsoe_EMF_report_web.pdf

Union (EU) has set an example with a comprehensive regulatory framework that establishes exposure limits and safety standards for EMF radiation, safeguarding public health while accommodating technological innovation.⁴³ Australia's regulatory framework, guided by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), regularly updates its exposure limits based on ICNIRP recommendations and the latest scientific findings.⁴⁴

In the United Kingdom, EMF regulation is implemented through planning laws, health and safety regulations, and guidance issued by the Office of Communications (Ofcom) and the Health and Safety Executive (HSE). Ofcom conducts independent audits of EMF emissions from mobile phone base stations, while planning authorities require operators to demonstrate compliance with ICNIRP limits before approving infrastructure siting.⁴⁵

Other jurisdictions have adopted precautionary regulatory frameworks for EMF exposure that are stricter than the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines, particularly in sensitive environments such as schools, hospitals, and residential areas.

Switzerland's Ordinance on Protection from Non-Ionizing Radiation (NISV) adopted under the Swiss Federal Law on the Protection of the Environment (Umweltschutzgesetz, USG) incorporates both the ICNIRP basic restrictions and additional precautionary "installation limit values" for new installations, including mobile phone base stations in places where people spend extended periods. Precautionary magnetic field limits in

⁴³ Dudarev, S. L., J-L. Boutard, R. Lasser, M. J. Caturla, P. M. Derlet, M. Fivel, C-C. Fu et al. "The EU programme for modelling radiation effects in fusion reactor materials: An overview of recent advances and future goals. " *Journal of Nuclear Materials* 386 (2009): 1-7. <https://researchportal.ip-paris.fr/en/publications/the-eu-programme-for-modelling-radiation-effects-in-fusion-reactor/> accessed on 4 January 2026.

⁴⁴ ICNIRP (International Commission for Non-Ionising Radiation Protection) Standing Committee on Epidemiology: et al. "Epidemiology of health effects of radio-frequency exposure." *Environmental health perspectives* 112.17 (2004): 1741-1754. <https://pubmed.ncbi.nlm.nih.gov/15579422/> accessed on 29 December 2025.

⁴⁵ Office of Communications (Ofcom), *Electromagnetic Fields: Compliance Audits* <https://www.ofcom.org.uk/siteasset/s/resources/documents/spectrum/emf/guidance-emf-compliance-enforcement.pdf?v> accessed on 6 January 2026.

"sensitive use locations" are set considerably lower than the general ICNIRP reference levels⁴⁶.

In Italy, the Framework Law on Protection from Exposure to Electric, Magnetic, and Electromagnetic Fields⁴⁷ and its implementing Prime Ministerial Decrees (DPCM) of 8 July 2003, establish legally binding exposure limits, attention values, and quality objectives for frequencies.⁴⁸

In contrast, countries like the United States and Canada have regulations set by the Federal Communications Commission (FCC), primarily focusing on thermal effects of EMF radiation. However, these guidelines are criticized for not addressing non-thermal effects comprehensively. As a result, some experts argue that further research is needed to revise these regulations. Certain countries, like Switzerland and Belgium, prioritize the precautionary principle in their EMF regulation frameworks.⁴⁹ These regulations aim to minimize exposure, particularly for vulnerable groups such as children and pregnant women, even in the absence of conclusive scientific evidence.

The WHO offers valuable guidance in the development of regulations and policies related to EMF radiation exposure. Countries such as Sweden have adopted strict regulations regarding EMF radiation exposure. The Swedish Radiation Safety Authority (SSM) enforces low exposure limits and

⁴⁶ Swiss Federal Council, Ordinance on Protection from Non-Ionising Radiation (NISV) (under the Federal Law on the Protection of the Environment) and associated precautionary limits for new installations in sensitive areas (installation limit values significantly lower than ICNIRP reference levels) <https://www.emf-port.al.org/en/cms/page/home/more/limits/limits-values-compared-internationally> ? Accessed on 7 January, 2026

⁴⁷ Protection from Exposure to Electric, Magnetic and Electromagnetic Fields. Directive - 2013/35 - EN - EUR <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32013L0035> Accessed on 7 January 2026

⁴⁸ Decree of the President of Council of Ministers 8 July 2003, http://dorontal.net/NIR_refs/Italy_DPCM_RF_eng.pdf accessed on 6 January 2026

⁴⁹ Valentin, Jack. "A framework for assessing the impact of ionising radiation on non-human species: ICRP Publication 91: Approved by the Commission in October 2002." *Annals of the ICRP* 33.3 (2003) : 201-270. <https://pub.med.ncbi.nlm.nih.gov/12963089/> Accessed on 5 January 2026.

conducts regular assessments to ensure compliance. Sweden's emphasis on a precautionary approach, including frequent evaluations and updates to regulations, provides an example of how continuous monitoring enhances protection against potential risks.⁵⁰

The International EMF Project, initiated by the World Health Organization (WHO), fosters global collaboration to assess the health impacts of EMF radiation, providing a shared research agenda and promoting international policy development. Likewise, the International Electro-Technical Commission (IEC) helps standardize global regulations and addresses EMF radiation concerns, fostering international cooperation and ensuring consistency across borders.

Nigeria's regulatory approach to electromagnetic field (EMF) radiation is largely sector-specific, principally relying on guidelines and technical standards issued by the Nigerian Communications Commission (NCC) pursuant to its powers under the Nigerian Communications Act 2003. In exercising its mandate to regulate the installation, operation, and maintenance of telecommunications infrastructure, the NCC incorporates internationally accepted EMF exposure limits, most notably those developed by the International Commission on Non-Ionizing Radiation Protection (ICNIRP), as benchmark safety standards.⁵¹

For effective regulation, enforcement mechanisms are critical. Countries with robust compliance frameworks ensure that regulations are not only established but also properly enforced. Nigeria, in particular, must consider its socio-cultural context when developing an EMF regulatory framework to

⁵⁰ Fridell, Kent, and Jessica Ekberg. "Making the invisible visible: A qualitative study of the values, attitudes and norms of radiologists relating to radiation safety ." *Journal of Radiological Protection* 36.2 (2016): 200. <https://pubmed.ncbi.nlm.nih.gov/26947913/> accessed on 9 January 2025

⁵¹ Sections 4, 70 - 71 Nigerian Communications Act 2003; International Commission on Non-Ionizing Radiation Protection, *Guidelines For Limiting Exposure to Time-Varying Electric Magnetic and Electromagnetic Fields*. https://www.icnirp.org/cms/upload/publications/ICNIRPe_mfgdl.pdf accessed on 6 January 2026

ensure it aligns with public expectations and facilitates widespread adoption.

1.8. Challenges And Controversies

The issue of EMF radiation and its health implications involve several challenges and controversies, including conflicting scientific findings, industry influence, and weak monitoring and compliance mechanisms. Addressing these challenges is essential for developing effective regulations and ensuring public safety. Some of these challenges are:

- 1.8.1. Conflicting Scientific Findings:** Variations in study designs and exposure assessments have led to inconclusive scientific evidence about the health risks of EMF radiation. While some studies indicate potential risks, others find no definitive links. These inconsistencies complicate policymaking and highlight the need for further rigorous research.⁵²
- 1.8.2. Industry Influence:** Economic interests often impact the development of regulations. Industry stakeholders may downplay health risks to protect their growth, making it difficult to prioritize public health. Transparency, independent research, and robust legal frameworks are needed to balance these competing interests.⁵³
- 1.8.3. Weak Monitoring and Compliance:** The absence of strong monitoring systems hinders the enforcement of existing regulations. Without proper oversight, identifying hotspots of excessive EMF radiation and ensuring compliance with safety standards remain challenging. Strengthening these mechanisms is critical.⁵⁴

⁵² Chargari, C., J-C. Soria, and E. Deutsch. "Controversies and challenges regarding the impact of radiation therapy on survival." *Annals of Oncology* 24.1 (2013): 38-46. <https://www.sciencedirect.com/science/article/pii/S0923753419370309> accessed on 6 January 2026.

⁵³ Tham, Ivan Weng-Keong, and Jiade Jay Lu. "Controversies and challenges in the current management of nasopharyngeal cancer." *Expert Review of Anticancer Therapy* 10.9 (2010): 1439-1450. <https://www.tandfonline.com/doi/abs/10.1586/era.10.97> accessed on 7 January 2026.

⁵⁴ Direskeneli, Haner. "Clinical assessment in Takayasu's arteritis: major challenges and controversies." *Clin Exp Rheumatol* 35.Suppl 103 (2017): 189-93. <https://pubmed.ncbi.nlm.nih.gov/28375833/> accessed on 6 January 2026.

1.8.4. Outdated Regulations: Rapid technological advancements often outpace regulatory updates. Existing frameworks may not adequately address new devices or emerging risks, necessitating regular reviews and updates to remain effective.⁵⁵

1.8.5. International Harmonization: Inconsistent global standards create complexities for regulators and manufacturers. Efforts to harmonize international guidelines and promote collaboration can ensure a unified and effective approach to EMF radiation regulation.⁵⁶

1.9. Conclusion, Recommendations and Mitigation Strategies

This paper has examined the health implications of electromagnetic field (EMF) radiation from electronic devices within the Nigerian context and assessed the adequacy of the existing legal and regulatory framework governing such exposure. While electronic devices and telecommunications infrastructure have become indispensable to Nigeria's socio-economic development, the attendant increase in EMF exposure has raised legitimate public health concerns, particularly in light of scientific uncertainty surrounding the long-term effects of non-ionising radiation.

From the analysis, it is evident that Nigeria does not yet possess a comprehensive, codified national framework specifically dedicated to EMF exposure regulation. Rather, EMF governance is fragmented across sector-specific statutes, regulatory guidelines, and administrative practices implemented primarily by the Nigerian Communications Commission (NCC) and the National Environmental Standards and Regulations Enforcement Agency (NESREA). Although these institutions rely on internationally recognised standards, particularly ICNIRP guidelines endorsed by the World Health Organization (WHO), the absence of explicit

⁵⁵ Hall, William A., Christina Small, Eric Paulson, Eugene J. Koay, Christopher Crane, Martijn Intven, Lois A. Daamen et al. "Magnetic resonance guided radiation therapy for pancreatic adenocarcinoma, advantages, challenges, current approaches, and future directions." *Frontiers in Oncology* 11 (2021): 628155. <https://pubmed.ncbi.nlm.nih.gov/34046339/> accessed on 7 January 2026.

⁵⁶ Rehani, M. M. "Looking into future: challenges in radiation protection in medicine." *Radiation protection dosimetry* 165.1-4 (2015): 3-6. <https://pubmed.ncbi.nlm.nih.gov/25848110/> accessed on 7 January 2026.

statutory exposure limits, unified monitoring mechanisms, and clear inter-agency coordination has weakened regulatory coherence, public confidence, and enforcement effectiveness.

Comparative perspectives from jurisdictions such as Switzerland and Italy demonstrate that precautionary regulatory models, characterised by stricter exposure limits in sensitive locations, legally binding thresholds, and sustained monitoring obligations can coexist with technological advancement. These approaches underscore the importance of embedding the precautionary principle into EMF governance, especially where scientific evidence remains inconclusive but potential risks to public health persist.

In light of these findings, the following recommendations and mitigation strategies are proposed:

- I. **Enactment of a Dedicated EMF Regulatory Framework:** Nigeria should consider adopting a comprehensive national EMF regulation or statute that clearly defines permissible exposure limits, incorporates ICNIRP standards as minimum benchmarks, and provides for precautionary limits in sensitive environments such as schools, hospitals, and residential areas. This would address regulatory fragmentation and enhance legal certainty.
- II. **Strengthening Institutional Coordination:** Clear statutory delineation of roles and cooperative mechanisms between the NCC, NESREA, and relevant occupational health bodies is essential. Joint monitoring, data sharing, and enforcement initiatives would improve compliance and reduce regulatory overlap.
- III. **Adoption of the Precautionary Principle:** Drawing from Swiss and Italian models, Nigeria should integrate precautionary exposure limits and planning controls into telecommunications and environmental regulations, particularly for new installations and high-density urban areas.
- IV. **Enhanced Monitoring and Transparency:** Regular EMF measurements, public disclosure of exposure data, and independent audits of telecommunications infrastructure should be institutionalised.

This would promote accountability and help address public anxiety arising from misinformation and mistrust.

- V. **Public Awareness and Education:** Government agencies should implement sustained public enlightenment campaigns on EMF radiation, safe device usage, and the distinction between ionising and non-ionising radiation. Improved public understanding can mitigate unfounded fears while encouraging responsible use of electronic devices.
- VI. **Occupational Health Safeguards:** EMF exposure should be more explicitly recognised within occupational health and safety policies. Employers in high-risk sectors should be required to conduct EMF risk assessments, provide training, and adopt exposure-reduction measures in line with best practices.
- VII. **Continuous Research and Regulatory Review:** Nigeria should support independent scientific research on EMF exposure and establish mechanisms for periodic review of regulations to reflect emerging scientific evidence and technological developments.

In conclusion, it is no gainsaying that the potential health implications of electromagnetic field (EMF) radiation from electronic devices pose a growing concern in Nigeria. While current scientific evidence does not conclusively establish severe health risks from low-level EMF exposure, the combination of widespread exposure, public concern, and regulatory gaps justifies a more proactive and precautionary legal response. By strengthening its legal framework, enhancing institutional capacity, and learning from international best practices, Nigeria can better safeguard public health while continuing to benefit from technological innovation and digital connectivity.

**CONSUMER CREDIT SYSTEM:
A VIABLE OPTION TO STIMULATE ECONOMIC ACTIVITIES
AND RELIEF FINANCIAL BURDENS IN NIGERIA.**

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ABSTRACT

The consumer credit system serves as a strategic instrument for stimulating economic activity and alleviating financial hardship in Nigeria. This study sets out with the objective of critically examining the role of consumer credit in promoting financial inclusion, household empowerment, and macroeconomic stability, while identifying the barriers that hinder its effective implementation. Employing a doctrinal research methodology, the paper relies on institutional references, regulatory frameworks, and scholarly literature to analyze the existing credit infrastructure and its socio-economic implications contextualized within Nigeria's financial and economic environment. The findings reveal that although consumer credit has transformative potential in driving business growth, reducing poverty, and enhancing social welfare, its widespread adoption is constrained by high interest rates, weak regulatory oversight, and limited access to formal credit channels. Furthermore, gaps in financial literacy exacerbate the risks of over indebtedness and default. Based on these insights, the study recommends a multifaceted approach: strengthening regulatory enforcement to ensure transparency and accountability in lending practices; leveraging digital credit platforms to expand access, particularly for underserved populations; and instituting comprehensive financial literacy programs to promote responsible borrowing and repayment. A well-designed consumer credit framework, underpinned by robust legal and institutional support, is essential for unlocking Nigeria's economic potential and ensuring inclusive, sustainable development across all sectors of society.

KEYWORDS: *Consumer credit, financial inclusion, financial literacy, Digital lending solutions, Entrepreneurship.*

1.1 Introduction

From the above listed keywords, it is important to provide a brief conceptual clarification that frames this research paper, eliminates ambiguity, and enhances credibility to their meanings. Consumer credit, in its broadest sense, refers to the extension of loans or deferred payment facilities to individuals for the purpose of consumption rather than production. Within the Nigerian context, consumer credit has evolved from informal lending practices to a regulated system under the supervision of the Central Bank of Nigeria (CBN).

The doctrinal significance of consumer credit lies in its dual role: first, as an economic instrument that stimulates demand, production, and financial inclusion; and second, as a legal construct codified in statutes and regulatory frameworks such as the Credit Reporting Act 2017¹, the Consumer Protection Regulations 2019², and the National Financial Inclusion Strategy (Revised 2018)³. These instruments provide the normative foundation for understanding consumer credit not merely as a financial transaction, but as a mechanism for balancing household welfare with macroeconomic stability.

This paper therefore seeks to interrogate the economic and legal dimensions of consumer credit in Nigeria. Specifically, it examines its direct and indirect economic benefits, its doctrinal recognition in statutory and regulatory frameworks, and its role in promoting inclusive growth through micro-credit schemes. The methodology adopted is doctrinal analysis, which entails a close reading of statutes, regulations, and policy documents to extract the normative principles governing consumer credit.

¹ Credit Reporting Act 2017 (Nigeria) Cap C21 Laws of the Federation of Nigeria 2017 (<https://placng.org/credit-reporting-act-2017/>) accessed 8 January 2026.

² Central Bank of Nigeria, Consumer Protection Regulations (Abuja: CBN, 2019) (<https://www.cbn.gov.ng/Out/2019/CCD/CBN/Consumer/Protection/Regulations.pdf>) accessed 8 January 2026.

³ Central Bank of Nigeria, National Financial Inclusion Strategy (Revised) (Abuja: CBN, 2018) p. 37 (<https://www.cbn.gov.ng/out/2019/ccd/national/financial/inclusion/strategy.pdf>) accessed 8 January 2026.

The structure of the paper is as follows: Section 1 provides the introduction and conceptual clarifications; Section 2 discusses the direct and indirect economic benefits of consumer credit; Section 3 examines the doctrinal framework, including statutory and regulatory instruments; Section 4 explores the role of micro-credit and global models such as the Grameen Bank; Section 5 presents findings and recommendations; and Section 6 concludes with a synthesis of the issues discussed.

Conceptual Clarifications

1. Consumer Credit

This refers to a short- or medium-term loans and credit facilities extended to individuals for personal use, consumption, or small-scale investments, repayable over time. It enables households to access goods, services, or capital ahead of income, thereby stimulating spending and economic activity. According to the World Bank (2020)⁴, consumer credit plays a vital role in stimulating aggregate demand and supporting household welfare by bridging income gaps. In Nigeria, the Central Bank of Nigeria (CBN) emphasizes consumer credit as a mechanism for expanding access to finance and reducing poverty, particularly through microfinance institutions.

2. Financial Inclusion

The OECD (2018)⁵ defines financial inclusion as the process of ensuring that individuals and businesses have access to useful and affordable financial products and services that meet their needs. Furthermore, financial inclusion can be defined as the procedure that individuals or businesses, particularly those in underserved or marginalized communities, have contact to reasonable financial services such as savings, credit, insurance, and payment systems delivered responsibly and

⁴ World Bank, Global Financial Development Report 2020: Bank Regulation and Supervision a Decade after the Global Financial Crisis (Washington DC: World Bank, 2020) (openknowledge.worldbank.org in Bing) (https://openknowledge.worldbank.org/handle/10986/32595) accessed 8 January 2026.

⁵ Organisation for Economic Co-operation and Development (OECD), Financial Education in G20 Countries (Paris: OECD Publishing, 2018) https://www.oecd.org/finance/financial-education-in-g20-countries.htm (oecd.org in Bing) Organisation for Economic Co-operation and Development (OECD), Financial Education in G20 Countries (Paris: OECD Publishing, 2018) (https://www.oecd.org/finance/financial-education-in-g20-countries.htm) accessed 8 January 2026.

sustainably. Furthermore, The World Bank's Global Findex Database (2021)⁶ highlights that financial inclusion is critical for reducing inequality and fostering inclusive growth. In Nigeria, financial inclusion strategies aim to integrate marginalized populations into the formal financial system, thereby enhancing economic participation.

3. Financial Literacy

This is the ability to understand and effectively use financial skills, including budgeting, saving, investing, and managing debt. It empowers individuals to make informed decisions about borrowing and repayment, reducing risks of over indebtedness and promoting responsible participation in the financial system. The OECD/INFE (2016)⁷ framework identifies financial literacy as a cornerstone of responsible borrowing and sustainable financial behavior. In the Nigerian context, studies (e.g., CBN Financial Literacy Framework, 2019)⁸ show that low levels of financial literacy contribute to poor credit management and high default rates, underscoring the need for nationwide education initiatives.

4. Digital Lending Solutions

Digital lending solutions are technology driven platforms that provide credit through digital channels, mobile phones, fintech applications, and online banking. These solutions expand access to credit by reducing transaction costs, bypassing traditional banking barriers, and reaching wider populations. Research by CGAP (2020)⁹ demonstrates that digital credit expands access by lowering transaction costs and

⁶ World Bank, The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19 (Washington DC: World Bank, 2021) (<https://www.worldbank.org/en/publication/global-findex>) (worldbank.org in Bing) accessed 8 January 2026.

⁷ Organisation for Economic Co-operation and Development / International Network on Financial Education (OECD/INFE), OECD/INFE International Survey of Adult Financial Literacy Competencies (Paris: OECD Publishing, 2016) (<https://www.oecd.org/finance/OECD-INFE-International-Survey-of-Adult-Financial-Literacy-Competencies.pdf>) (oecd.org in Bing) accessed 9 January 2026.

⁸ Central Bank of Nigeria, National Financial Literacy Framework (Abuja: CBN, 2019) (<https://www.cbn.gov.ng/out/2019/fprd/national-financial-literacy-framework.pdf>) (cbn.gov.ng in Bing) accessed 8 January 2026.

⁹ Consultative Group to Assist the Poor (CGAP), Digital Credit in Emerging Markets: A Policy Perspective (Washington DC: CGAP, 2020) (<https://www.cgap.org/research/publication/digital-credit-emerging-markets-policy-perspective>) (cgap.org in Bing) accessed 9 January 2026.

bypassing traditional banking barriers. In Africa, mobile-based lending platforms such as M-Pesa in Kenya have shown how digital innovations can transform credit accessibility, a model increasingly relevant for Nigeria's fintech ecosystem.

5. Entrepreneurship

Entrepreneurship involves identifying, developing, and managing business ventures, often with innovation and risk-taking, to generate profit and create value. The Schumpeterian theory of entrepreneurship emphasizes innovation as the driver of economic development. In Nigeria, entrepreneurship is closely tied to access to credit, as highlighted by the African Development Bank (AfDB, 2021)¹⁰, which notes that affordable financing is essential for small and medium enterprises (SMEs) to thrive and contribute to national growth. Furthermore, Entrepreneurship can be said to be the act of identifying, developing, and managing business ventures, often involving innovation and risk taking, with the goal of generating profit and creating value. In the context of consumer credit, entrepreneurship is supported when individuals can access financing to start or grow small scale enterprises.

According to the World Bank, between 2000 and 2014, Nigeria's economy experienced broad-based and sustained growth of over 7% annually on average, benefitting from favourable global conditions, and macroeconomic and first-stage structural reforms.¹¹

However, from 2015-2022, growth rates decreased and Gross Domestic Product (GDP) per capita flattened, driven by monetary and exchange rate policy distortions, increasing fiscal deficits due to lower oil production and a costly fuel subsidy program, increased trade protectionism, and external shocks such as the COVID-19 pandemic. Weakened economic fundamentals led the country's inflation to reach a 24-years high of 31.7% in February 2024, which, in combination with sluggish economic growth, has pushed millions of Nigerians into poverty, migration,

¹⁰ African Development Bank (AfDB), Youth Entrepreneurship and Innovation Multi Donor Trust Fund: 2021 Annual Impact Report (Abidjan: AfDB, 2021)
(https://www.afdb.org/sites/default/files/documents/publications/yei_mdtf_2021_annual_impact_report_0.pdf) accessed 9 January 2026.

¹¹ World Bank, Nigeria Overview (Mar 21, 2024)
(<https://www.worldbank.org/en/country/nigeria/overview>) accessed 24 June 2024

multinational corporations exiting the Nigerian market and local businesses navigating tough times.¹²

Efforts have been made by the Central Bank of Nigeria (CBN) to tighten monetary policy and maintain price stability. This notwithstanding the World Bank has projected that poverty rates are expected to increase in 2024 and 2025 before stabilizing in 2026. This projection is subject to certain risks, as Nigeria continues to struggle with various challenges, including: ineffective monetary policy tightening, unaddressed imbalances in petroleum pricing, inadequate non-oil revenue generation, escalating insecurity, adverse climate-related shocks and a widespread discontent with inflation. These factors have the potential to hinder economic recovery and further lead to poverty.

These elements have a ripple effect on consumer spending, directly influencing purchasing power and demand. As a significant portion of the population struggles to make ends meet, discretionary spending on non-essential items dwindles. This reduced demand has a cascading effect on businesses, leading to decreased production, supply chain disruptions, and potential repercussions for suppliers and distributors.

Building on this foundation, this article aims to explore practical solutions that can enhance consumer purchasing power in Nigeria, thereby boosting demand, stimulating production, increasing the supply chain and overall stimulating economic development.

1.2 Alternative Financing Methods to Enhance Purchasing Capacity

Given the current economic challenges and inflationary pressures which are eroding the purchasing power of consumers, it is essential to explore alternative options for acquiring essential items, in order to mitigate the impact of reduced purchasing power and ensure continued access to necessary goods and services asides food like; healthcare, housing, education, cars, furniture amongst others.

Here are the alternative funding options used to purchase, starting with the most common:

¹² Ibid

1. Informal Loans from Personal Networks (Personal loans from family and friends)
2. Consumer Credit (Credit cards, store credit, etc.)¹³
3. Peer-to-Peer Lending¹⁴ (Online platforms like Fairmoney, Palmpay, Okash, Kwikmoney etc.)
4. Personal Installment Loans (Bank loans, credit union/co-operative loans, etc.)
5. Hire Purchase (Financing options for specific purchases, like cars or electronics)¹⁵
6. Layaway Plans (Payment plans for purchases, with the item held until full payment)¹⁶
7. Crowdfunding (Raising funds from many people, typically for specific projects or purchases)¹⁷
8. Special payment plans offered by sellers or manufacturers for specific products e.g. the MTN Lumos- solar inverter periodic subscription).

While businesses, have access to additional sources such as factoring which is a financial transaction whereby an exporter/supplier sells its accounts receivable (i.e. invoices) to a third party (called a Factor) at a discount in exchange for immediate cash with which to finance continued business. This assists companies improve their short-term cash needs, as it allows a business to obtain immediate capital or money based on the future income attributed to a particular amount due on an account receivable or a business invoice.¹⁸

It is particularly useful for small and medium-sized enterprises (SMEs) and businesses operating in sectors with long payment terms, such as: Manufacturing,

¹³ Aguilar B, et al, 'Short-Term Funding and Financing Alternatives' in Debt Markets and Investments (2019) 177

¹⁴ Bachmann A and others, 'Online Peer-to-Peer Lending - A Literature Review' (201 I) 16 Journal of Internet Banking and Commerce 1

¹⁵ Jannie Otto, 'The History of Consumer Credit Legislation in South Africa' (2010) 16 Fundamina p257

¹⁶ Jbid

¹⁷ Michael Vignone, 'Inside Equity-Based Crowdfunding: Online Financing Alternatives for Small Businesses' (2016) 91 Chi-Kent L Rev 807

¹⁸ Afreximbank, 'Factoring' <https://www.afreximbank.com/products-services/our-key-services/trade-project-financing/trade-finance-programs/factoring/> accessed 24 June, 2024

Wholesale trade, Transportation and Construction. It accrues benefits such as; Improved cash flow management, Reduced bad debt risks¹⁹, Increased access to finance for SMEs and Enhanced financial flexibility.

In Nigeria, factoring has garnered the attention of institutions like NEXIM, GIZ, ADB and CBN. These entities recently echoed the call for comprehensive factoring guidelines in Nigeria, which aims to boost the nation's GDP and foster intra-African trade.²⁰ The MD NEXIM, Mr. Abba Bello posits that factoring is an alternative financing tool to traditional lending for supporting SMEs and it holds the potential to catalyze economic resurgence in Nigeria, where the informal sector plays a significant role.²¹

Another is the CBN initiative on Micro, Small and Medium Enterprises Development Fund (MSMEDF): MSMEDF provides funding opportunities to small and medium-sized enterprises (SMEs) in Nigeria, with a special consideration for women.²²

Startup Investment Seed Fund: This fund, which is managed by the Nigerian Sovereign Investment Authority (NSIA), provides funding for startups in Nigeria.²³

Agricultural Credit Guarantee Scheme Fund (ACGSF): This fund, which is managed by the Central Bank of Nigeria, provides funding for enterprises in the agricultural sector.

Nigeria Trust Fund (NTF): This initiative provides funding for projects in the public and private sectors.

Federal Mortgage Bank of Nigeria (FMBN) housing loans which disburses homes to beneficiaries under its National Housing Fund (NHF).²⁴

¹⁹ Aguilar Bet al, op. cit. 177.

²⁰ African Export-Import Bank, Factoring (African Export-Import Bank) (<https://www.afreximbank.com/products-services/our-key-services/trade-project-financing/trade-finance-programs/factoring/>) accessed 24 June 2024

²¹ Ibid

²² Central Bank of Nigeria, Guidelines for Micro, Small and Medium Enterprises Development Fund for Non-Interest Financial Institutions (MSMEDF for NIFIs) (2022)

²³ Nigerian Sovereign Investment Authority (<https://nsia.com.ng/>) accessed 1 July 2024

²⁴ Federal Mortgage Bank of Nigeria, 'Products & Services' ([https://www.fmbn.gov.ng/Products & Services/products.php](https://www.fmbn.gov.ng/Products%20&%20Services/products.php)) accessed 1 July 2024. The FMBN has series of products like; Mortgage loan with an interest rate of 4% over 30years, Home Renovation Loan and the Rent to Own scheme which provides an easy and convenient payment plan towards homeownership for Nigerian workers

And the recent Nigerian Education Loan Fund (NELFUND) which is the body instituted to manage the day-to-day activities of the federal government of Nigeria's student loan initiative.

While the aforementioned initiatives are commendable efforts to provide credit and loans to target groups, they only scratch the surface of the vast credit needs of the large Nigerian population, highlighting the need for more comprehensive and scaled-up solutions to address the significant demand for credit in the country.

Hence, Gumel and Bardai²⁵ noted that the Nigerian federal government has implemented policies and strategies aimed at diversifying the economy through entrepreneurship and small business development, recognizing their significant contribution to employment. However, despite these efforts, most SMEs in Nigeria still fail within the first five years due to various challenges, including difficulties in accessing financial institution funding. This lack of access to financial resources hinders SMEs from capitalizing on innovative opportunities and achieving success and growth, thereby undermining socioeconomic development.²⁶

Notwithstanding the numerous initiatives by both the government and private sector to provide businesses with access to funding, a significant challenge persists: how can consumers, who struggle with limited financial resources due to low or modest incomes, afford to make purchases amidst the harsh economic realities of inflation, high electricity tariffs, expensive quality education, and a generally high cost of living? This projects that there will be an inefficient consumer credit supply²⁷ to meet the various purchase needs.

²⁵ Gumel, B.I., & Bardai, B.B. (2021). Barriers to accessing financial institutions funding for Nigerian SMEs. *International Journal of Business and Economics Research*, 10(6), 219-226

²⁶ Punch Newspapers, '80% of SMEs die under five years - Report' (Punch, 23 June 2023) accessed 1 July 2024

²⁷ Zinman, Jonathan, 'Consumer Credit: Too Much or Too Little (or Just Right)?' (2014) 43(2) *The Journal of Legal Studies* S209-S237.

1.3 A Case for Consumer Credit Availability

According to Neifeld, in a narrow sense, a consumer can be thought of as an individual who exchanges their limited income for goods and services from the industrial world. Through their purchases, they have the power to influence the direction of economic activity. This position at the end of the production chain defines the consumer. While everyone is a consumer in some capacity, consumer credit focuses on specific individuals who require small loans to access goods and services for personal use. Specialized institutions cater to the credit needs of low-income wage earners and salaried individuals, offering tailored solutions to meet their unique financial circumstances.²⁸

Referring to the development of the American credit system, Neifeld²⁹ propounded that while Industrial Revolution transformed the social landscape, it also elevated the status of a consumer. The availability of credit for merchandise and purchase led to mass production in factories, hence the development of consumer credit in its modern form today.

This circle of evolution mitigated the financial uncertainties inherent in capitalist societies, and opened up the vast market potential in lower-income segments by aligning production with consumer income. This evolutionary path resulted in the establishment of cash credit facilities for consumers, aimed at addressing the inherent insecurities of modern life in an industrialized society.

Peng Hong³⁰ classified consumer credit as a means to satisfy people's current consumption demand through credit loan. Research has consistently shown that consumer credit has a positive impact on economic growth. Thomas³¹ discovered that consumer credit reduces transaction costs and alleviates liquidity constraints, thereby directly driving economic growth. While, Klein³² conducted a study using

²⁸ M. R. Neifeld, 'What Consumer Credit Is' (1938) 196 *Annals Am Acad Pol & Soc Sci* 63

²⁹ *Ibid*

³⁰ Hong Peng, 'The Impact of Consumer Credit on Economic Growth: Taking Tongren City of Guizhou Province as an Example' in 3rd International Conference on Culture, Education and Economic Development of Modern Society (ICCESE 2019) (Atlantis Press, 2019) 310, pp 1722-1723

³¹ Thomas L C, 'Consumer finance: challenges for operational research' (2010) 61(1) *Journal of the Operational Research Society* p 41.

³² Philip A Klein, 'The cyclical Timing of Consumer Credit' (Occasional Paper, 1976).

US consumer credit data from 1920 to 1976 and found a strong cyclical relationship between consumer credit balance and economic growth, as measured by GDP. However, Pereira³³ argued that corporate credit has a greater impact on economic growth than personal consumption credit. Numerous studies have since explored this topic, with most finding a direct positive effect of consumer credit on economic growth, often using VAR³⁴ models that incorporate data on consumer credit balance, disposable income, and GDP.³⁵

Otto³⁶ posits that the consumer credit is in many ways a huge improvement on hire purchase and as a new mode of consumption in recent years, it has a profound impact on people's life and economic growth. Noting that, there is a large gap in the development of consumer credit, especially in less developed areas, little wonder its unpopularity in Nigeria.

This notwithstanding³⁷ conducted an investigation in a rural community in Tongren, China and verified the influence of consumer credit on economic growth and concluded that the balance of consumer credit and economic growth has a long term equilibrium.

Stating further that, since China's reform residents' income and consumption levels have steadily increased, but the gap between the two has also widened, leaving many consumers needs unmet. As a result, loan-based consumption, or consumer credit, has gained popularity. By bridging the gap between limited purchasing power and consumer demand, consumer credit plays a significant role in alleviating the contradictions between the two.³⁸

³³ Jonathan Pereira, 'The Demand and Supply for Household Debt: A Cross-Country Comparison' (University of Edinburgh, Mimeo, 2003)

³⁴ Vector Autoregressive Model (VAR)- a statistic that quantifies the extent of possible financial losses within a firm, portfolio, or position over a specific time frame

³⁵ Jin Wang, 'An Empirical Study on the Relationship Between Consumption Credit Development and Economic Growth' (PhD thesis, Southwest Jiao Tong University 2007)

Ting Ting Sang, 'Study on the Relationship Between Consumption Credit and Economic Growth in China' (PhD thesis, Dongbei University of Finance and Economics 2012)

³⁶ Ibid n5

³⁷ Ibid n19

³⁸ Ibid

The current economic situation in Nigeria is similarly dire, making it virtually impossible for a salary earner earning the minimum wage of N30,000 (\$24) to afford basic amenities like a car, furniture, quality healthcare, a home, or quality education without resorting to illegal activities, corruption, or alternative revenue-generating ventures.

As a consequence, consumption has significantly declined, leading to a sharp decrease in production, which in turn has resulted in a substantial slowdown in economic growth. Hence, this has led to the exit of several multinational companies, for example GlaxoSmithKline (GSK) announced plans to discontinue operations in Nigeria, ending its 51-year existence in the country, the company's sales in the first half (H1) of 2023 dropped to N7.75 billion from N14.8 billion in 2022.³⁹

1.4 The Benefits of Consumer Credit

Consumer credit is not only an economic instrument but also a policy-anchored mechanism embedded in Nigeria's regulatory framework. The Central Bank of Nigeria (CBN) Consumer Protection Regulations⁴⁰ emphasize fair treatment, disclosure, and transparency in credit provision, thereby ensuring that consumer credit is structured to expand demand and protect borrowers. Similarly, the National Financial Inclusion Strategy (Revised 2018)⁴¹ identifies consumer credit as a critical enabler of financial inclusion, designed to increase access to affordable financial services and enhance disposable income. These doctrinal instruments demonstrate that consumer credit is formally recognized as a tool for stimulating economic growth and rationalizing consumption patterns.

From a doctrinal perspective, consumer credit supports direct economic benefits by increasing consumption demand and prompting enterprises to expand production capacity. Indirectly, it enhances consumption ability, upgrades the quality of

³⁹ Azeez, W, 'Explainer: Here's why GSK is leaving Nigeria after 51 years' The Cable (8 August 2023) (<https://www.thecable.ng/explainer-heres-why-gsk-is-leaving-nigeria-after-51-years/>) accessed 24 June 2024

⁴⁰ Central Bank of Nigeria, Consumer Protection Regulations (Abuja: CBN, 2019) ([https://www.cbn.gov.ng/Out/2019/CCD/CBN Consumer Protection Regulations.pdf](https://www.cbn.gov.ng/Out/2019/CCD/CBN%20Consumer%20Protection%20Regulations.pdf)) accessed 9 January 2026.

⁴¹ Central Bank of Nigeria, National Financial Inclusion Strategy (Revised) (Abuja: CBN, 2018) ([https://www.cbn.gov.ng/out/2019/ccd/national financial inclusion strategy.pdf](https://www.cbn.gov.ng/out/2019/ccd/national-financial-inclusion-strategy.pdf)) accessed 9 January 2026.

consumer goods, and rationalizes spending structures. These functions are not merely theoretical; they are codified in regulatory frameworks that conceptualize credit as a mechanism for balancing immediate household needs with long-term financial planning.

Consumer credit also plays a social and inclusive role. The CBN's financial inclusion policies highlight micro-credit schemes as essential for extending affordable loans to underserved populations, particularly low-income earners excluded from conventional banking⁴². By embedding microfinance into statutory and institutional frameworks, regulators ensure that credit contributes to poverty alleviation, entrepreneurship, and resilience against financial shocks. Globally, the World Bank's Global Findex Database (2021)⁴³ reinforces this doctrinal position by showing how access to credit is linked to broader financial inclusion, digital payments, and household resilience.

Microcredit programmes further illustrate the doctrinal significance of consumer credit. The establishment of the Grameen Bank in Bangladesh in the 1980s provided a model for institutionalized microcredit, enabling poor households to sustain themselves without collateral⁴⁴. Nigeria followed suit with the CBN's 2004 microfinance bank programme⁴⁵, designed to make microcredit accessible to those historically denied banking credit. These doctrinal innovations demonstrate that consumer credit is not only a financial product but a legally recognized instrument for socioeconomic development.

⁴² Ibid p 37

⁴³ World Bank, *The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19* (Washington DC: World Bank, 2021) (<https://documents.worldbank.org/en/pub lic ation/documents-reports/documentdetail/099833507072223098/idu0f9I 7b4I 20aa0tD42270bbd10c8b257c99a54>) accessed 9 January 2026.

⁴⁴ Muhammad Yunus, *Grameen Bank: Microcredit and Poverty Alleviation in Bangladesh* (Dhaka: Grameen Bank, 1983); see also David Hulme, *The Story of the Grameen Bank: From Subsidised Microcredit to Market-Based Microfinance* (Manchester: Brooks World Poverty Institute, University of Manchester, 2008) (<https://hummedia.manchester.ac.u k/institutes /gdi/publications/workingpapers/bwpi/bwpi-wp-6008.pdf>) accessed 9 January 2026.

⁴⁵ Central Bank of Nigeria, *op. cit.*, p. 30.

Consumer credit is not only an economic driver stimulating demand and production but also a doctrinally recognized tool embedded in regulatory frameworks like the CBN Guidelines and National Financial Inclusion Strategy. Its social benefits ensure inclusion and resilience, while microfinance contributions demonstrate its global role in poverty alleviation and entrepreneurship. Together, these benefits show that consumer credit is both a policy-backed mechanism and a practical instrument for economic and social development.

Building on the foregoing discussion, it is evident that consumer credit generates several direct economic benefits, which may be summarized as follows:

1. **Increases consumption demand.** Consumer credit allows households to purchase goods and services beyond their immediate income.
2. **Stimulates production and capacity expansion.** Enterprises respond to higher demand by accelerating production and enlarging output.
3. **Enhances consumption ability.** This expands purchasing power beyond what income alone would allow. This broadens access to goods and services, improving living standards.
4. **Upgrades consumer goods quality.** This encourages demand for higher-quality products. Credit empowers consumers to choose better goods, pushing producers to innovate and improve standards.
5. **Recognized in statutory and regulatory instruments.** For example, the CBN Consumer Credit Guidelines and National Financial Inclusion Strategy formally establish consumer credit as a tool for expanding demand.
6. **Improves consumption levels for low-income individuals.** This provides access to additional consumption capacity.
7. **Promotes financial inclusion.** Through micro consumer credit schemes that extend small-scale, affordable loans to underserved populations.
8. **Supports resilience against financial shocks.** Helps individuals manage emergencies and unexpected expenses.
9. **Encourages entrepreneurship and goal achievement.** Enables small borrowers to invest in opportunities and meet personal or business objectives.

1.5 The Concerns Surrounding Consumer Credit

It is essential to note that while the credit system can provide short-term relief and stimulate economic activity, it also carries risks, especially if not managed properly. These risks include over-indebtedness, high interest rates, and potential defaults, which could exacerbate economic problems if left unchecked. Therefore, careful regulation and financial education are necessary to ensure that these systems contribute positively to Nigeria's economy.⁴⁶

1.5.1 Capacity of the borrower: Most banks and other financial institutions in Nigeria prefer to grant credit to stronger financially backed entities, that is, natural or artificial persons which goes to the root of weak ratings by banks for individual and corporate organizations. The practice is that lenders usually conduct a holistic investigation of the borrower's capacity. Investigation here entails a careful perusal of his capital base, good documented and registered collateral, the project under consideration and the statement of account. In effect therefore, the poor consumers may not be granted such facilities.⁴⁷

1.5.2 Insincere Attitudes of Nigerian Consumers: In Nigeria, several studies reveal that most borrowers who promised in earnest to repay the loans on the due date usually turn out to be very adamant, hostile, unruly and unyielding when called upon to fulfill their financial obligations to the lender thereby leading to the dissipation of the lender's investments. In some cases, an unsecured creditor usually resorts to litigation in order to recover his funds and he may be further frustrated where the judgment is rendered nugatory owing to the fact that the debtor has no asset to be attached to satisfy the judgment. This accounts for the imposition of stringent requirements for secured credit transactions in Nigeria whereas in countries like the United States of America, Canada, and New Zealand, there is a liberal approach to secured transactions, particularly where it has to do with consumer credits and consumers in these countries are not

⁴⁶ Adeola Adams, 'The Risks and Benefits of Credit Systems in Nigeria' (2020) 10(2) Journal of Nigerian Economic Studies pp12-25.

⁴⁷ Akpanke, Shishitileugiang and Aniashie and Godswill Owoche Antai and Linda Iheanacho and Pascal Aboh and Bekongfe, 'Credit securities and consumer credit in Nigeria: impacts, challenges and prospects' (2023) 19(1) VL 1-16.

adamant, hostile, unruly and unyielding when called upon to fulfill their financial obligations to the creditor.⁴⁸

Although, this can be ameliorated by making reference to the Credit Bureau as provided by Section 3(1) d of the Credit Reporting Act 2017, which mandates the credit bureau to investigate, at the request of a Credit Information User, an application transaction for credit on behalf of any person to whom an application for a credit based has been made. This investigation will reveal whether the applicant is credit worth or not, based on the credit history.

Shuni⁴⁹ having established a close association between consumer credit and economic growth in Nigeria. Further, it exposed that economic growth increases in the early period of rising consumer credit but depreciates at later periods when consumer credit grows above the threshold.

1.6 Legal and Institutional Frameworks in Nigeria

A quick glance at Nigeria's statutes underscores the fact that the law makers are yet to come up with a law or legislation that addresses consumers' credit transactions per se whereas in the Commonwealth Countries like the United Kingdom for instance, have its Consumer Credit (Amendment) Act, 2006 which is aimed at increasing the Consumer Protection when borrowing money or obtaining any credit facility from a financial institution

Credit Reporting Act 2017⁵⁰: Prior to the birth of the Credit Reporting Act, Credit Reporting activities were regulated by the Central Bank of Nigeria (CBN) Guidelines for the Licensing, Operations and Regulation of Credit Bureau in Nigeria. In 2017, the National Assembly thought it wise and enacted the Credit Reporting Act which from its tone and tenor provides a legal framework for credit reporting and promote

⁴⁸ Ibid

⁴⁹ Shuni A. L., 'The Effect of Rising Consumer Credit on the Economic Growth of Nigeria' (2023) 1(1) Journal of Arid Zone Economy pp 166-177.

so Credit Reporting Act 2017 (Nigeria) Cap C21 Laws of the Federation of Nigeria 2017 Credit Reporting Act 2017 (Nigeria) Cap C21 Laws of the Federation of Nigeria 2017 (<https://lawpadi.com/credit-reporting-act-2017>) accessed 9 January 2026;

financial discipline in the Nigerian economy. The Act sets standards and conditions for the establishment, regulation and operations of credit bureaus in Nigeria⁵¹.

The main goal of this act is to improve the credit reporting system in the country by facilitating the sharing of accurate and reliable credit information between lenders, borrowers, credit bureaux, and other stakeholders. The Credit Reporting Act also aims to protect the privacy of borrowers' information and promote a competitive and fair credit reporting system⁵².

The Federal Competition and Consumer Protection Commission Act, 2018: As could be distilled from the preamble to the Act, this Act repeals the Consumer Protection Act, 2004 and establishes the Federal Competition and Consumer Protection Commission, and the Competition and Consumer Protection Tribunal for the development and promotion of fair, efficient and competitive markets in the Nigerian economy to facilitate access by all citizens to safe products and secure the protection of rights for all consumers in Nigeria; and for related matters. Except where expressly excluded, the Act applies to all undertakings and scope of commercial activities (including secured credits and consumer credits) within, or having effect within, Nigeria.

Some of the functions of the Federal Competition and Consumer Protection Commission are to eliminate anti-competitive agreements, misleading, unfair, deceptive or unconscionable marketing, trading and business practices; protect and promote consumer interests; and ensure that all service providers comply with local and international standards of quality and safe service delivery.

⁵¹ Credit Reporting Act 2017 (Nigeria) Cap C21 Laws of the Federation of Nigeria 2017 Credit Reporting Act 2017 (Nigeria) Cap C21 Laws of the Federation of Nigeria 2017 (<https://lawpadi.com/credit-reporting-act-2017/>) accessed 9 January 2026.

⁵² Ibid

1.7 The role of a regulator

The role of the regulator of the Consumer Credit System is under the purview of the Central Bank of Nigeria. Regulators play a crucial role in the following ways.

1. Licensing and supervision: Regulators issue licenses to lenders and monitor their activities to ensure compliance with regulation. Unregulated credit products pose significant risks to consumers. Also, unregulated lenders often engage in predatory practices, encouraging borrowers to take on excessive debt with attractive terms that can lead to financial distress.⁵³ The lack of effective regulation in the informal market leaves borrowers vulnerable to behavioral exploitation and debt traps.⁵⁴
2. Protecting consumers: Regulators enforce laws and regulations to protect consumers from unfair or abusive lending practices. Therefore, regulators ensure that credit products meet standards and protect consumers from predatory lending practices.⁵⁵
3. Promoting financial stability: Regulators ensure that lenders operate in a way that maintains financial stability and minimizes risk. As regulatory governance and various indicators of regulatory governance are positively correlated with financial stability.⁵⁶
4. Monitoring credit reporting: Regulators oversee credit reporting agencies to ensure accurate and fair reporting of consumer credit information.
5. Enforcing data privacy: Regulators ensure that lenders and credit reporting agencies maintain consumer data privacy.
6. Providing consumer education: Regulators often educate consumers about responsible borrowing and credit management.

⁵³ Mazer R, McKee K, Fiorillo A, Applying Behavioural Insights in Consumer Protection Policy (CGAP 2014).

⁵⁴ James D, Money from Nothing: Indebtedness and Aspiration in South Africa (Stanford University Press 2015) pp23-45.

⁵⁵ Omede PI, 'A Tale of Two Markets: How Lower-end Borrowers Are Punished for Bank Regulatory Failures in Nigeria' (2020) 43 Journal of Consumer Policy 519-542.

⁵⁶ Ullah S, Hussain SI, Nabi AA, Mubashir KA, 'Role of Regulatory Governance in Financial Stability: A Comparison of High and Low Income Countries' (2022) 12 Journal of Financial Regulation pp1-20

Although this article does not assess the Central Bank of Nigeria's performance, it is crucial to recognize that the consumer credit sector requires rigorous regulation and specialized supervision to thrive and gain widespread acceptance.

1.8 Conclusion

This paper has examined the role of consumer credit in economic development through a doctrinal lens. The discussion highlighted the direct economic benefits of consumer credit, such as increasing consumption demand and stimulating production capacity, as well as indirect benefits like enhancing consumption ability, upgrading product quality, rationalizing spending structures, and generating multiplier effects. Beyond these economic dimensions, the paper emphasized the doctrinal and normative significance of consumer credit as codified in regulatory instruments, including the Central Bank of Nigeria Consumer Protection Regulations and the National Financial Inclusion Strategy (Revised 2018)⁵⁷. These frameworks establish consumer credit as a legally recognized mechanism for expanding demand, enhancing disposable income, and promoting financial inclusion.

The paper also explored the social and inclusive role of consumer credit, particularly through micro-credit schemes designed to extend affordable loans to underserved populations. By embedding microfinance into statutory and institutional frameworks, regulators ensure that credit contributes to poverty alleviation, entrepreneurship, and resilience against financial shocks. Global examples, such as the Grameen Bank in Bangladesh⁵⁸, further illustrate how institutionalized microcredit can empower households without collateral and serve as a model for inclusive financial systems.

⁵⁷ Central Bank of Nigeria, *op. cit.*, p. 37.

⁵⁸ David Hulme, *The Story of the Grameen Bank: From Subsidised Microcredit to Market-Based Microfinance* (Manchester: Brooks World Poverty Institute, University of Manchester, 2008) (<https://hummedia.manchester.ac.uk/institutes/gdi/publications/workingpapers/bwpi/bwpi-wp-6008.pdf>) accessed 9 January 2026.

Findings

1. **Consumer credit is doctrinally recognized** in Nigeria's regulatory framework as a tool for economic growth and financial inclusion.
2. **Direct and indirect economic benefits** of consumer credit are reinforced by statutory instruments, showing its dual role in stimulating demand and rationalizing consumption.
3. **Micro-credit schemes** are essential for extending financial services to low-income earners, thereby reducing poverty and promoting entrepreneurship.
4. **Global models** like the Grameen Bank demonstrate that institutionalized microcredit can be successfully adapted to national contexts, including Nigeria.
5. Despite regulatory recognition, **implementation challenges** remain, including limited access for rural populations, high interest rates, and weak enforcement of consumer protection standards.

Recommendations

1. **Strengthen regulatory enforcement:** The CBN should ensure stricter compliance with consumer protection regulations to safeguard borrowers and enhance trust in credit systems.
2. **Expand access to micro-credit:** Policies should prioritize rural and low-income populations by incentivizing microfinance institutions to extend affordable loans.
3. **Promote financial literacy:** Government and financial institutions should invest in consumer education to help households make informed credit decisions.
4. **Encourage innovation in credit delivery:** Digital platforms and fintech solutions should be leveraged to widen access and reduce transaction costs.
5. **Benchmark against global models:** Nigeria should adapt lessons from successful microcredit institutions like the Grameen Bank to strengthen its own financial inclusion strategies.
6. **Integrate consumer credit into development planning:** Policymakers should explicitly link credit expansion to national economic goals, ensuring that credit supports sustainable growth and poverty reduction.

7. Conclusively, it is advocated that there should be in place the implementation of a consumer credit system, which would provide an alternative to the traditional "save-to-purchase" approach that is often challenging in Nigeria's high-inflation environment.



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