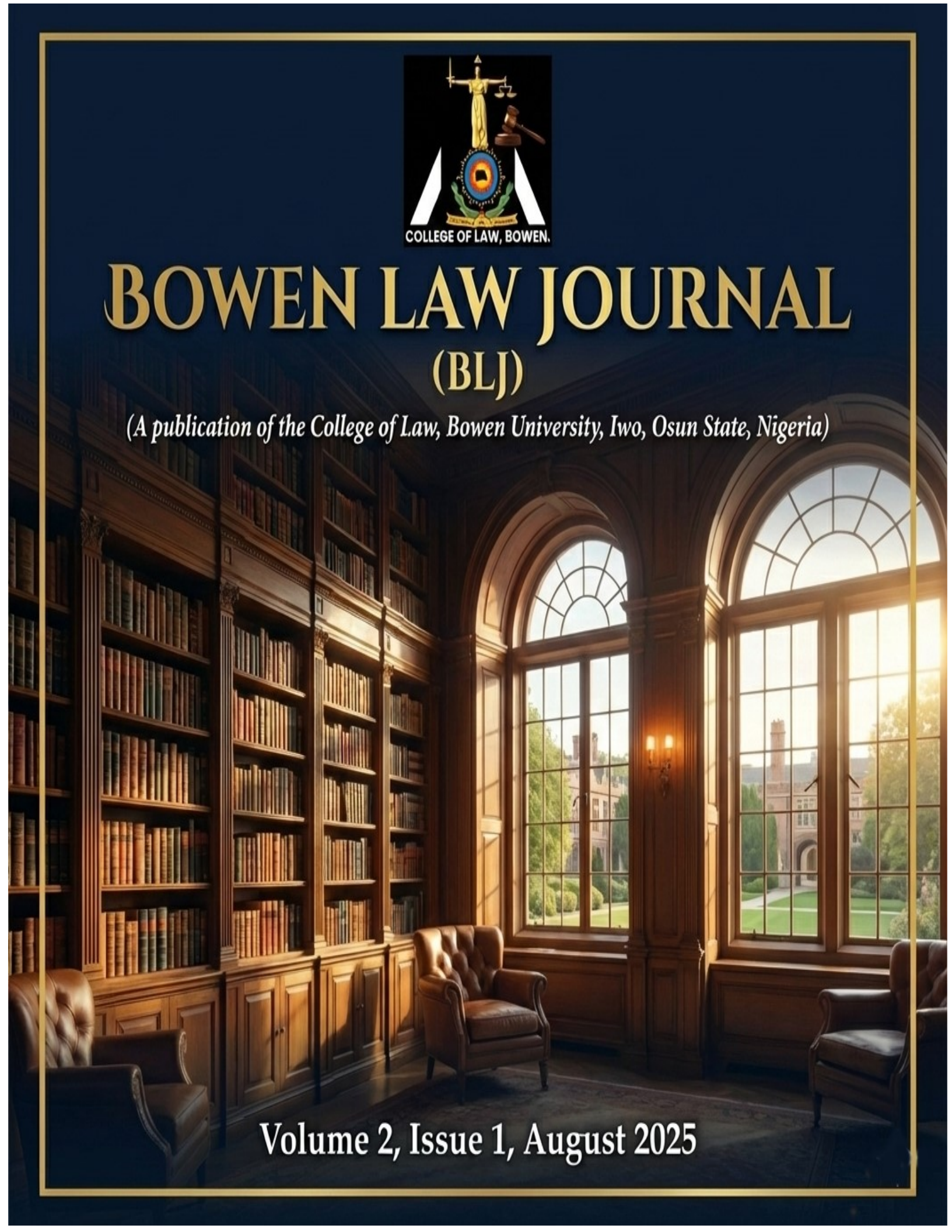
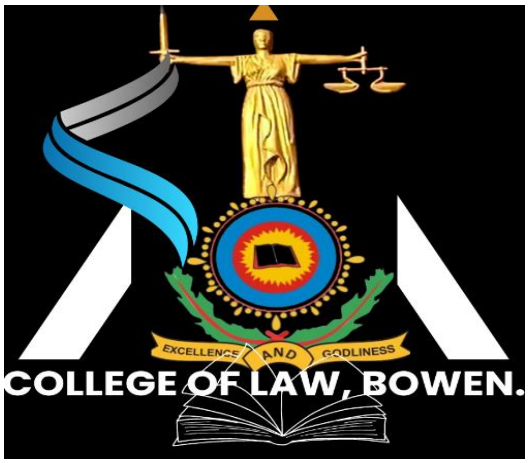

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Editorial

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This edition of *Bowen Law Journal* is not only a resuscitation of the publication but its first online edition. It is appearing at a time that the world has become a global village, interconnected and observable by technological means. The journal, the content of which is peer reviewed, is therefore purposed for global impact through the projection of the dignified visibility of its contributors.

The journal accepts contributions on all areas of the law as is apparent from the present contents that span the areas of criminal law and criminology, human rights, employment law, law and medicine, security, peace, and tourism as well as business law generally, including taxation.

The thematic coverage of this journal accommodates impactful and scholarly contributions towards the advancement of the knowledge of law and its application in society. Significantly, the journal is interested in contributions that ensure that law addresses the intricacies of human relations and dealings as well as order in the world we live in.

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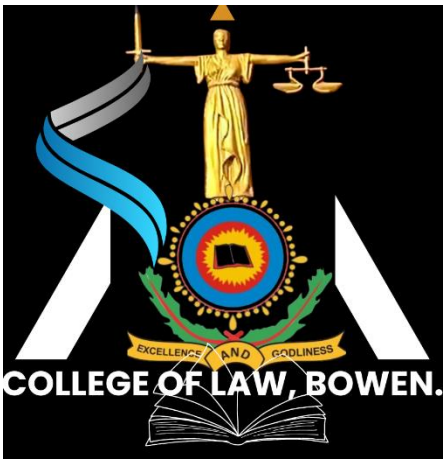
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BOWEN LAW JOURNAL

ASSESSMENT OF CORPORATE GOVERNANCE AND BUSINESS ETHICS IN NIGERIA

By

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ABSTRACT

Corporate governance and business ethics are pivotal to the sustainable development of any economy. This article appraises the concept and legal framework of corporate governance and business ethics in Nigeria. It highlights their interconnection and role in fostering sustainable business practices. Using a doctrinal methodology, the study evaluates the adequacy of Nigeria's frameworks, including the Companies and Allied Matters Act 2020 and the Nigerian Code of Corporate Governance 2018, while incorporating global best practices. It identifies key issues, such as: weak enforcement mechanisms, insufficient stakeholder education and inadequate penalties for violations of corporate governance principles. To address these challenges, the study proposes stricter enforcement of governance laws, targeted education for stakeholders, enhanced whistle blowing policy, increased shareholder engagement, and prioritisation of sustainability in corporate practices. It further advocates for the establishment of a specialised monitoring agency to enhance corporate governance and business ethics in Nigeria. By addressing these gaps, this article contributes to the discourse on strengthening corporate governance for economic sustainability and ethical business practices in Nigeria.

Keywords: *Business Ethics, Corporate Governance, Codes of Corporate Governance, Shareholder, Sustainability.*

1. INTRODUCTION

Corporate governance and business ethics are foundational pillars of organisational management, guiding how businesses are directed, controlled, and conducted in alignment with moral principles and societal expectations. Corporate governance ensures that shareholders receive a fair return on their investments while meeting the broader expectations of other stakeholders.[2] Business ethics complements this by fostering integrity and accountability in decision-making processes, thereby shaping organisational behaviour to align with societal values.[3] Together, they form the bedrock of sustainable business practices and stakeholder trust.

Nigeria has taken significant steps to strengthen corporate governance and business ethics through legislative reforms, most notably the Companies and Allied Matters Act (CAMA) 2020. A key feature of CAMA 2020 is the establishment of the Corporate Affairs Commission (CAC), which oversees corporate activities and safeguards the interests of shareholders and other stakeholders. The Nigerian Code of Corporate Governance (NCCG) 2018 provides best-practice guidelines to enhance governance standards across different sectors. In addition to CAMA 2020, Nigeria has implemented various regulatory frameworks designed to promote good governance and ethical practices.[4] These legal and regulatory advancements reflect Nigeria's commitment to fostering a transparent and ethical business environment. By examining the interplay between corporate governance and business ethics, this article highlights their combined role in promoting sustainable business operations and maintaining stakeholder trust. Understanding these dynamics is essential for developing actionable strategies to further enhance governance and ethical standards in the Nigerian corporate sector.

2. Conceptual Clarification of Corporate Governance and Business Ethics

Corporate governance is a system by which business corporations are directed and controlled.[5] It involves balancing the interest of the company's stakeholders, such as shareholders, management, consumers, suppliers, government and the community. Hence, corporate governance is concerned with matters such as: in whose interest is a company or business entity governed? Who has the power to make decisions for a company? For what aim and purpose are these powers used? Who else might influence the governance of the company? And how are risks managed? Hence, corporate governance are codes of practices by which a business entity or a company is held accountable to its capital providers, with the core objectives of strategic focus, predictability,

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[2] N Khalid, 'Corporate Governance and Business Ethics' <https://www.ripublication.com/gjmbs_spl/gjmbsv3n10_08pdf> accessed on 23 September, 2024

[3] R Nainawa and R Meena, 'Corporate Governance and Business Ethics (2013) 3(10) *Global Journal of Management and Business Studies* 1085-1090.

[4] These include the sectoral legal framework including Code of Good Corporate Governance for Public Companies, 2011, Code of Corporate Governance for Banks and Discount Houses, 2014, Code of Corporate Governance for Licensed Pension Fund Operators, 2008, Code of Corporate Governance for the Insurance Industry, 2009, Code of Corporate Governance for the Telecommunications Industry, Code of Corporate Governance for Capital Market Operators and their Employees, 2010 and Code of Corporate Governance for Other Financial Institutions in Nigeria, 2018

[5] A Cadbury. The Financial Aspects of Corporate Governance: A Report of the Committee on Corporate Governance. (1st ed. London: Gee and Co. 1992) p.15.

transparency, efficiency, and accountability.[6] Corporate governance is considered to be a means by which affairs of the firm are directed and controlled so as to protect the interest of all stakeholders.[7]

Business ethics refers to the principles, standards, and values that guide decision-making and behaviour in the business environment.[8] It entails applying ethical considerations to business practices and ensuring that actions align with societal norms and moral expectations. Business ethics encompasses the rules and guidelines that help individuals and organisations determine what is right or wrong in their professional conduct.[9] It involves implementing appropriate practices and policies in the workplace that promote accountability, fairness, and transparency. By adhering to ethical values, businesses can build trust with stakeholders, foster positive relationships, and enhance their reputation. Invariably, business ethics serves as a framework for achieving sustainable success while maintaining integrity and respect for societal and legal standards.

3 Nexus between Corporate Governance and Business Ethics

Corporate governance provides the structure and mechanisms that support ethical behaviour within a company, business environment or organisation.[10] Corporate governance also establishes the framework for decision-making, risk management, and the alignment of business objectives with ethical standards in a business environment. Corporate governance frameworks often includes codes of conduct and ethical policies that set out the expected behaviours and ethical standards for employees and managers. These standards outline principles such as integrity, transparency, social responsibility, fairness, compliance, and accountability, which all serves as the guiding principles for ethical decision-making. Stakeholder engagement is a crucial aspect of corporate governance and business ethics. When companies actively involve stakeholders, such as employees, customers, suppliers, investors and the local community in their decision-making processes, they enhance their ability to make informed and ethical choices.[11] Hence, ethical corporate governance fosters positive relationships with stakeholders by actively engaging them in decision-making processes. And any company that value stakeholder input and incorporate their perspectives into strategic planning are more likely to make ethical choices that align with broader societal values.

Effective corporate governance includes risk management mechanisms that identify, assess, and mitigate risks to the organization's reputation and ethical standing. By integrating ethical considerations into risks management processes, companies and other business entities can anticipate and address potential ethical dilemmas proactively.[12] Also, the board of directors plays a crucial role in corporate governance as well as business ethics by ensuring that ethical considerations are integrated into strategic decision-making. The board is responsible for

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[6] R Ruparelia and A Njuguna, The evolution of Corporate Governance and Consequent Domestication in Kenya (2016) 7(5) International Journal of Business and Social Science 153-163. At page 159.
[7] Ibid.
[8] M L Michael, 'Business Ethics: The Law of Rules' Working Paper No. 9 <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_19_michael.pdf > > accessed on 29 September, 2024.
[9] Cambridge Dictionary 'Business Ethics' <https://dictionary.cambridge.org/us/dictionary/english/business-ethics> accessed on 2 October, 2024.
[10] Ibid, (n7).
[11] Z. Othman and R.A Rahman, Exploration of Ethics as Moral Substance in the Context of Corporate Governance, (Asian Social Science Vol. 7, No. 8; August 2011) p.174. < www.ccsenet.org/ass >
[12] ibid, 175.

overseeing the actions of management and safeguarding the interests of various stakeholders.[13] Essentially, corporate governance serves as a critical foundation for promoting business ethics and responsible decision-making within organisations. Hence, companies and organisations that prioritise corporate governance and business ethics are more likely to thrive in the long run, as they build trust, enhance their reputation, and contribute positively to society.

4. Legal Framework for Corporate Governance and Business Ethics

The enforcement of corporate governance and business ethics in Nigeria is grounded in laws, corporate organs, regulatory institutions, and instruments. The primary legal framework are the CAMA 2020, the Nigerian Code of Corporate Governance 2018 and the sectoral corporate governance framework.

4.1 The Companies and Allied Matters Act 2020

The Companies and Allied Matters Act generally provides for the administration and governance of companies in Nigeria. It offers a number of mechanisms for effective corporate governance and business ethics, such as the company's appointment of directors, the ordinary resolution process for removal of directors, the responsibilities and liabilities of directors, provisions for the audit committee and auditors, disclosure requirements, and the requirement that shareholders participate in certain corporate decisions.[14]

The Companies and Allied Matters Act 2020 (CAMA) specifically outlined a number of directors' obligations in an effort to codify important common law principles. Important sections on this subject state that a director has a fiduciary duty to the company,[15] that he or she should always act in the best interests of the company,[16] that he or she should only use their authority for that purpose and not for personal gain,[17] that a director's duties should never conflict with their personal interests,[18] and that a director must carry out their duties honestly, in good faith, and with the level of skill and care that a reasonable and prudent director would use in a similar situation.[19] There is a common belief that a company's members in general meeting are its ultimate organ and that the board of directors is just the company's representative under their direction.[20] Subsequent decisions, however, seem to have reversed this position, stating that members at general meeting are no longer able to override the decisions of the directors unless they are in violation of the CAMA or the Articles.[21] This was the decision of the Court in *Longe v. F.B.N*[22] where it was held that while members in general meeting hold significant powers, including the removal of directors by ordinary resolution, their powers are subject to compliance with the articles of association and CAMA. Thus, the general meeting cannot override directors' decisions if such actions contravene

[13] ibid, 178.
[14] A O Akinpelu. *Corporate Governance Framework in Nigeria: An International Review* (1st ed. Bloomington: iUniverse, Inc. 2011) P.160.
[15] CAMA 2020, s. 305(1) and (2).
[16] CAMA 2020, s. 305 (3) and (4).
[17] CAMA 2020, s. 305 (5).
[18] CAMA 2020, s. 306.
[19] CAMA 2020, s. 308.
[20] Salomon v. Salomon & Co. Ltd. [1897] AC 22 (House of Lords)
[21] This is in line with the common law principle in *Automatic Self- Cleansing Filter Syndicate Co* v. *Cuninghame* [1906] 2 Ch.D, 34.
[22] (2010) 6 NWLR (pt 1189).

the articles or statutory provisions. Hence, the decision underscores that the board of directors exercises managerial powers and that members cannot interfere arbitrarily with these powers unless there is a breach of CAMA or the articles. The decision in Longe's case mark a clear evolution in Nigerian corporate governance, balancing the powers of shareholders and directors, and recognizing the board's critical role in company management subject to statutory and constitutional safeguards.

The articles of association, unless otherwise specified in the Act, establish the division of powers between the members of the companies and board of directors.[23] The board of directors of a corporation may exercise its management authority under section 87(3) of the CAMA 2020, even in cases where the articles of association remain silent on the subject. To put it another way, the board of directors is responsible for managing the day-to-day affairs of the company. Although the Companies and Allied Matters Act 2020 has true corporate checks and balances to prevent the board from acting arbitrarily, these checks are typically ineffective and fall short of their intended purposes.[24]

Section 87(5) CAMA specifically provides for the members' residual duties with regard to the board's decisions and acts. These include the ability of the members in general meeting to take action in the event that the board is unable to act due to a deadlock or is disqualified, the authority to file a lawsuit on the company's behalf, the authority to approve or validate any decision made by the board of directors, and the authority to suggest actions to the board. Although the aforementioned principles seem very admirable on the surface, it is challenging to implement in reality since a complete impasse is necessary for the court to exercise its authority under the just and equitable clause, which is not always the case.[25]

The importance of shareholders in corporate governance is maintained strongly by the Companies and Allied Matters Act. It requires directors, at most, to strike a balance between the conflicting interests of shareholders and employees. The general meeting of public firms however, rarely serves as a watchdog over daily management decisions.[26] Even in situations where certain shareholders have the opportunity to closely observe the company's operations, their minority ownership in publicly traded companies prevents them from mobilising the support necessary to make their opposition to corporate choices significant. Proxy voting and annual general meeting locations have frequently been utilised as tools to deny shareholders their rights in the Nigerian corporate sector.[27]

[23] CAMA 2020, s. 87(2) to s. 87(4).
[24] M O Sofowora, 'Shareholders, Directors, Corporate Managers and the Balance of Power' (2000) 4 *Law and Business Quarterly* 122.
[25] J E Abugu 'Issues and Problems in Corporate Governance in Nigeria' (2015) 6(3) *The Gravitas Review of Business and Property Law* 4.
[26] M C Liem 'Corporate Governance in Banking Industry: An Explanatory Study' (2016) 7(6) *Research Journal of Finance and Accounting* 30-48. P.30
[27] L Oso and B Semiu. 'The Concept and Practice of Corporate Governance in Nigeria: the Need for Public Relations and Effective Corporate Commission' (2002) 3(1) *Journal of Communications* 1-16. P.12.

4.2 The Nigerian Code of Corporate Governance, 2018

The Code has its commencement date as January 15, 2019. The Code is aimed at providing a set of benchmark corporate governance standard in Nigeria. The entities that are required to adopt and comply with the Nigerian Code of Corporate Governance are:

a. All public companies, whether a listed company or not;
b. All private companies that are holding companies of public companies or other regulated entities:
c. All concessioned or privatized companies; and
d. All regulated private companies being private companies that file return to any regulatory authorities other than the Federal Inland Revenue Services (FIRS) and the Corporate Affairs Commission (CAC)[28]

Sections 11c and 51c Financial Reporting Council of Nigeria Act[29] confer on the Financial Reporting Council, created by the Act, the powers to ensure good corporate governance in the public and private sectors of the Nigerian economy and to issue the code of corporate governance. The Nigerian Code of Corporate Governance was issued by the Financial Reporting Council in 2018 to institutionalise corporate governance best practices in Nigerian companies. The Financial Reporting Council of Nigeria adopts a principle-based approach in specifying minimum standards of practice that Nigeria companies should adopt. The Council urge companies to adopt the "apply and explain" approach, which requires companies to apply all the principles and also explain how the principles are applied.[30]

The Nigerian Code of Corporate Governance (NCCG) 2018 provides a structured framework that guides the enforcement of corporate governance principles across Nigerian companies. It is designed to promote transparency, accountability, and ethical business practices by setting minimum standards that organizations are expected to follow. Rather than imposing rigid, inflexible rules, the Code adopts a principle-based approach, encouraging companies to apply the governance principles in a way that suits their specific circumstances and to explain how they have done so. This "Apply and Explain" methodology allows for flexibility while maintaining high standards.[31] The implementation of the Code is overseen by the Financial Reporting Council of Nigeria (FRC), which acts as the central regulatory body. The FRC works alongside various sector-specific regulators, such as the Central Bank of Nigeria and the Securities and Exchange Commission, to ensure that the Code's principles are integrated into industry-specific governance frameworks. Companies are required to align their governance structures, policies, and practices with the Code, covering areas such as board composition, ethical conduct, risk management, and transparency in reporting.

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[28] Y H Bhadmus, *Bhadmus on Corporate Law Practice.* (5th ed. Enugu: Chenglo Limited. 2021) 150. Also on Business Regulations Data Card Nigeria, accessed on https://pwcnigeria.typepad.com/files/pwc-2022-business-regulations-data-card.pdf

[29] No. 6, 2011.

[30] Ibid, n (27).

[31] Financial Reporting Council of Nigeria (Federal Ministry of Industry, Trade & Investment) circular dated 27th January, 2021.p.1.\bvmm, mb

To monitor compliance, companies must submit annual reports detailing how they have applied the Code's principles. These reports are reviewed by the FRC, relevant regulators, and stock exchanges for listed companies. Additionally, companies are expected to make these reports publicly available, fostering openness and accountability. The FRC and sector regulators have the authority to assess these disclosures, conduct audits, and enforce sanctions where there is evidence of non-compliance or persistent governance failures. This system of oversight ensures that companies remain committed to upholding good governance practices. Under the 2016 Code of corporate governance, the "comply or else" approach was incorporated and companies are required to strictly comply with prescribed rules or face mandatory sanctions or penalties. This approach leaves little room for flexibility or explanation; non-compliance typically results in enforcement actions without consideration for company-specific circumstances.

In contrast, the Nigerian Code of Corporate Governance (NCCG) 2018 adopts a principle-based "Apply and Explain" approach rather than a strict "comply or else" regime. Under the NCCG 2018, companies are expected to apply all the governance principles but are allowed to tailor the practices to their particular context. They must explain how they have applied these principles to achieve the intended governance outcomes. This approach encourages transparency and accountability while providing flexibility for companies to adapt governance practices to their size, sector, and growth phase. Enforcement is carried out through monitoring by the Financial Reporting Council (FRC) and sectoral regulators, who can impose sanctions for deviations, especially if they recur, but the emphasis is on explanation and continuous improvement rather than rigid compliance alone. Thus, "comply or else" approach mandates strict adherence with direct penalties for non-compliance, whereas the NCCG 2018's "Apply and Explain" approach promotes adherence through principles with room for contextual adaptation, supported by transparent reporting and regulatory oversight.[32]The policies focus on building long-term shareholder value by ensuring that adequate systems and procedures are in place to safeguard the company. The principles are as follows: whistle blowing policy and procedure, risk governance policy, secure trading policy and business continuity management policy.[33] All stakeholders are expected to comply with these standards in the discharge of their duties.

5 Sectoral Legal Frameworks

Sectoral legal frameworks for corporate governance are legal instruments specifically made for some industries. They include: Code of Good Corporate Governance for Public Companies, 2011; Code of Corporate Governance for Banks and Discount Houses, 2014; Code of Corporate Governance for Licensed Pension Fund Operators, 2008; Code of Corporate Governance for the Insurance Industry, 2009; Code of Corporate Governance for the Telecommunications Industry; Code of Corporate Governance for Capital Market Operators and their Employees, 2010; and Code of Corporate Governance for Other Financial Institutions in Nigeria, 2018. While these sector-specific codes were designed to cater to the distinct regulatory and operational needs of their respective industries, their multiplicity has led to overlaps and inconsistencies. The Financial Reporting Council of Nigeria (FRCN), empowered by the Financial Reporting Council of Nigeria Act 2011, has sought to harmonize these codes through the Nigerian Code of Corporate Governance 2018 (NCCG 2018), which aims to institutionalize best practices across all sectors by

[32] Ibid.

[33] NCCG 2018, Part D, s. 24.

adopting an "apply and explain" approach, thereby allowing flexibility and scalability for companies of varying sizes and industries.

The SEC's Code for Public Companies, for example, emphasizes transparency, accountability, and alignment with international best practices but has been critiqued for certain shortcomings that necessitated its 2011 revision and continuous review to enhance enforceability and compliance. Similarly, the CBN's 2014 Code for Banks and Discount Houses was developed to address governance weaknesses in the banking sector but has since been superseded by the NCCG 2018, which the CBN has adapted for its regulated institutions to ensure consistency with national standards. The sectoral codes, while comprehensive within their domains, have been criticized for creating a fragmented regulatory environment. The Steering Committee on the National Code of Corporate Governance highlighted that no other nation has adopted such a multiplicity of sectoral codes, which often contain conflicting provisions on similar governance issues, thereby complicating compliance for companies operating across sectors.

Though the sector-specific codes were necessary responses to sectoral governance challenges, their adequacy is undermined by fragmentation and inconsistency. The move by the FRCN to unify these codes under the NCCG 2018 represents a critical step toward a more coherent, flexible, and effective corporate governance framework in Nigeria. This unified approach is expected to enhance corporate accountability, investor confidence, and economic growth by promoting consistent governance standards across all sectors. The Central Bank of Nigeria, in 2014, made the Code of Corporate Governance for Banks and Discount Houses and the Code of Corporate Governance for other Financial Institutions to govern corporate governance in the banking sector and other financial institutions in Nigeria. The National Pension Commission created that of the pension industry, which is the Code of Corporate Governance for Licensed Pension Fund Operators, 2008. The National Insurance Commission issued the Code of Corporate Governance for the Insurance Industry, 2009. The Nigerian Telecommunications Commission issued the Code of Corporate Governance for the Telecommunications Industry, 2014.

The Securities and Exchange Commission made the Code of Good Corporate Governance for Public Companies, 2011. The Code is applicable to: all companies whose securities are listed on any recognized securities exchange in Nigeria; all companies which seek to raise funds form the capital market through the issuance of securities or seek listing by introduction and all other public companies. Notably, based on the Code, the companies shall report for financial year ending after January 1, 2020 in the form and manner prescribed by the Financial Reporting Council of Nigeria.[34] The Nigerian Code of Corporate Governance 2018 (NCCG 2018) works as a general code of corporate governance across all sectors in Nigeria, however, where sectoral codes or guidelines exist, the approach is that the NCCG 2018 establishes the foundational principles and minimum standards, and sector regulators may publish additional guidelines in response to peculiar governance needs in their sectors. These sectoral guidelines are meant to augment the NCCG 2018 and are not to be inconsistent with its requirements. In the case of inconsistency between the general code and a mandatory sector guideline, the sector guideline shall override in respect of entities regulated within that sector. Hence, the Financial Reporting Council of Nigeria

[34] Paragraph 1(2) of the Regulation on the Adoption and Compliance with the Nigerian Code of Corporate Governance (NCCG) 2018.

promotes harmonization between the general code and sectoral guidelines to ensure consistency and eliminate potential for conflicting requirements where there is any inconsistency. Therefore, the NCCG 2018 serves as the basis, and sectoral guidelines complement it to address corporate specific issues, with mandatory sector guidelines prevailing in case of inconsistency.

6 OECD Principles of Corporate Governance

The G20/OECD Principles of Corporate Governance is the leading international standards for corporate governance. It aims to help policy makers and regulators evaluate and improve legal, regulatory and institutional frameworks for corporate governance, with a view to supporting market confidence and integrity, economic efficiency, and financial stability. This is primarily achieved by providing shareholders, board members and executives, the workforce and relevant stakeholders, as well as financial intermediaries and service providers with the right information and incentives to perform their roles and help to ensure accountability within a framework of checks and balances.[35] The Principles underwent a comprehensive review in 2021-2023 to be updated in the light of recent evolutions in corporate governance and capital markets.[36] The revised Principles was adopted by the Council of Organization for Economic Co-operation and Development (OECD) at Ministerial Level in June 2023. The Principles are embodied in the OECD Recommendation on Principles of Corporate Governance OECD/LEGAL/0413 and endorsed by G20 Leaders in September 2023.[37] The G20/OECD Principles of Corporate Governance are highly relevant, they offer internationally recognized standards for improving legal, regulatory, and institutional frameworks in corporate governance.

The Principles are pertinent and applicable to Nigeria as they present an internationally accepted framework that informs the development and implementation of good corporate governance practices. It is trite that Nigerian firms have a practice of offering shareholders rights such as sharing profit, voting at meetings, and access to information before purchasing shares, there remain sufficient areas of lacunae relating to full disclosure of capital structure, financial, and operating accounts.[38] Transfer of ownership between the shareholders is often not well facilitated, and minority shareholders are sometimes unfairly treated. Hence, the Nigerian corporate governance framework, including regulator-issued codes from the Securities and Exchange Commission (SEC) and Financial Reporting Council (FRC), has incorporated most of the OECD Principles to promote accountability, transparency, and board responsibilities. However, full implementation is still a work in progress, with observers noting that boards are likely to give highest priority to shareholder interests at the detriment of broader stakeholder interests. The OECD Principles provide a foundation for Nigeria to strengthen its corporate governance practices, restore investor confidence, and facilitate sustainable economic growth by supporting enhanced disclosure, fair treatment of shareholders, and more effective board oversight. The OECD instrument is therefore

[35] Harvard. 'Corporate Governance Factbook' <https://corpgov.law.harvard.edu/2024/02/03/the-2023-oecd-corporate-governance-factbook/> accessed 7 November 2024.

[36] OECD. 'G20/OECD Principles of Corporate Governance' <https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/09/g20-oecd-principles-of-corporate-governance-2023_60836fcb/ed750b30-en.pdf> accessed 6 November 2024.

[37] Harvard. 'Corporate Governance Factbook' <https://corpgov.law.harvard.edu/2024/02/03/the-2023-oecd-corporate-governance-factbook/> accessed 7 November 2024.

[38] O. Simon-Oke, O.Olugunwa, and T. Egbetunde, The Implementation of OECD Corporate Governance Principles in Nigeria: Evidence from Stakeholders' Perspectives, *International Journal of Business and Management Vol. VII, No. 1 / 2019* . P.90.

relevant to Nigeria and plays a significant role in informing reforms for the alignment of Nigerian corporate governance to best practice. Nigeria's growing corporate sector and capital markets can benefit from adopting these standards to improve governance practices. Implementing the OECD Principles can help Nigerian companies attract investment, protect investors, and foster sustainable business practices, which in turn supports economic development and financial stability. Therefore, the OECD Principles provide a valuable framework for Nigerian policymakers, regulators, and companies to align with international best practices and strengthen corporate governance in the country.[39] Notably, the OECD Principles for corporate Governance provides about six recommendations for the advancement and development of the corporate sector as follows:

6.1 Ensuring the Basis for an Effective Corporate Governance Framework[40]

The OECD Principles emphasize the role of corporate governance framework in promoting transparent and fair markets, and the efficient allocation of resources. It focuses on the quality and consistency of different elements of regulations that influence corporate governance practices and the division of responsibilities between authorities. In particular, new emphasis is placed on the quality of supervision and enforcement.

6.2 The Rights and Equitable Treatment of Shareholders and Key Ownership Functions[41]

The recommendation identifies basic shareholder rights, including the right to information and participation through the shareholders' meeting in key company decisions. Further also deals with disclosure of control structures, such as different voting rights. New issues in this chapter include the use of information technology at shareholder meetings, the procedures for approval of related party transactions and shareholder participation in decisions on executive remuneration.

6.3 Institutional Investors, Stock Markets and Other Intermediaries[42]

This addresses the need for sound economic incentives throughout the investment chain, with a particular focus on institutional investors acting in a fiduciary capacity. It also highlights the need to disclose and minimize conflicts of interest that may compromise the integrity of proxy advisors, analysts, brokers, rating agencies and others that provide analysis and advice that is relevant to investors. It also contains new principles with respect to cross border listings and the importance of fair and effective price discovery in stock markets.

6.4 Disclosure and Transparency[43]

This principle identifies key areas of disclosure, such as the financial and operating results, company objectives, major share ownership, remuneration, related party transactions, risk factors, and board members among others.

[39] Ibid, 95.
[40] G20/OECD Principles of Corporate Governance, p. 9
[41] Ibid, p. 14
[42] Ibid, p. 22
[43] Ibid, p. 27

6. 5 The Responsibilities of the Board[44]

It provides guidance with respect to key functions of the board of directors, including the review of corporate strategy, selecting and compensating management, overseeing major corporate acquisitions and divestitures, and ensuring the integrity of the corporation's accounting and

financial reporting systems. New issues include the role of the board of directors in risk management, tax planning and internal audit. There is also a new principle recommending board training and evaluation and a recommendation on considering the establishment of specialised board committees in areas such as remuneration, audit and risk management.

6.6 Sustainability and Resilience[45]

It also provides a framework to enhance transparency, accountability, and sustainability in corporate practices. They emphasise effective governance, equitable shareholder treatment, stakeholder engagement, and environmental, social and governance (ESG) alignment to strengthen trust and stability in financial markets.

7 Implication of Corporate Governance and Business Ethics

A good corporate governance and business ethics is a tool for socio-economic development.[46] It ensures the integrity of corporations, financial institutions, and markets which is particularly central to the health of our economies and societies and their stability.[47] Hence, good corporate governance practices have significant implications for companies. By its internal control mechanism, corporate governance helps to ensure that an adequate and appropriate control system exists in the company.[48] This ensures that transactions are properly recorded; assets are safe guarded and not misappropriated. The directors are responsible for the implementation of an appropriate internal control mechanism. Every year, a company has an annual audit and a key aspect of the auditor's job is to access whether the internal controls are properly functional.[49] The directors are responsible for ensuring that there are risk assessment procedures in place to identify the risks that companies face in today's business environment.

The Board of Directors by their position is to ensure that the company remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives. When the salaries/ wages of a company's workers are fair and commensurate with the labour they put in the company, this will no doubt lead to a better standard of living for the employees/ workers as well as motivate them to achieve higher performance.[50] Whereas the salaries of the employees/workers are poor, and not commensurate with the work they do, it leads to exploitation of the workers. Meetings are important platforms for the company and the board to engage shareholders to

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[44] Ibid, p.34
[45] Ibid, p. 44
[46] L R Mohamed Albdour, 'Principles of Corporate Governance and Ethics for Sustainable Business', (2017) 6(4) *International Journal of Business and Management Invention* 01-07.
[47] C C Itsede, 'The Challenges of Good Corporate Governance for Effective Risk Based Banking Supervision' (2008) 46(4) *CBN Economic and Financial Review* 169-181.
[48] N Uzoka, 'Corporate Governance and Socio-Economic Development in Nigeria: Tracing the Nexus' Nigerian Bar Journal <https://www.ajol.info/index.php/nba/article/view/254197/240186> accessed 30 November 2024.
[49] CAMA 2020, s. 377.
[50] Ibid, n (43).

facilitate greater understanding of the company's business and performance.[51] Meetings provide shareholders with an opportunity to exercise their ownership rights and express their concerns and views to the board on any area of concern.

The Companies and Allied Matters Act has made provisions for different meetings of companies to wit; statutory, annual general meeting and extraordinary general meetings. This is all geared towards establishing a system of regular dialogue and interaction with shareholders, so as to balance their needs, interests and expectations with the objectives of the company. Before now section 240(2) of CAMA made provisions for general meeting to be held electronically only by private companies. However, with the coming into effect of Business Facilitation Act of 2022 (BFA), all types of companies can now hold its general meeting electronically.[52] This provision will in no small measure facilitate the decision making process as well as increase efficiency and participation of all stakeholders. Before now the only valid means of voting at any meeting of the company was by show of hands or poll. This method has affected shareholder participation as well as limited the growth of some companies, as some foreign or institutional investors will not be willing to invest in Nigeria.

It is pertinent to note that for the body of shareholders who are so widespread and diversified, often across the globe, it may not be physically possible to oversee the management of activities. However, section 248(1) of CAMA was amended by the Business Facilitation Act 2022, to include electronic voting as a valid way of voting at general meeting of companies.[53] These provisions will attract quality foreign and local investors to invest in companies in Nigeria and ultimately improve the economy of the nation. Corporate governance and business ethics encourages both transparency and accountability, which investors are increasingly looking for in both corporate management and corporate performance. Good corporate governance facilitates access to capital (equity and debt capital) that consequently provides long term competiveness for the company.[54] Businesses that actively promote good corporate governance practice and that apply highest governance standards tend to attract more investors willing to provide capital at a lower cost, as a risk inherent to share investment is maximally reduced. The initiatives for self-governance at corporate level should include the following characteristic activities: make rules; regulations and procedures transparency; establish good information sharing system which should be well organised up to date; accurate content-wise internally and externally; benchmark and initiate business processes re-engineering; develop methods for continuous learning from experiences at internal; and international levels and establish rules on accountability among others.[55]

Corporate governance and business ethics helps the company to keep strategic interface with the external constituents like the State, the regulatory bodies, communities and the environment. Corporate bodies must clearly articulate in its policies and activities, their prime duty towards protecting the society and conserving the environment against the organisations' hazardous

[51] Ibid.
[52] BFA 2022, s.9(11).
[53] ibid, s. 13.
[54] International Finance Corporation, 'Corporate Governance' <https://www.ifc.org/en/what-we-do/sector-expertise/corporate-governance> accessed 20 December 2024.
[55] K B Ajide, 'Determinants of Economic Growth in Nigeria' (2014) 5(2) *CBN Journal of Applied Statistics* 147-170.

operations.[56] They use the natural resources of the community where they carry out the operations. Companies are no doubt, a source of strength for the society, because they provide opportunities for employment, they compensate handsomely for the jobs done and thereby contribute to the society's purchasing power. Health and well-being of a company has direct bearing on the social life of a nation. Hence, corporate governance and business ethics as practices influence investors' confidence, reduce compliance risks, and facilitate successful mergers and acquisitions.[57]On a more specific note, the following are the implications of corporate governance and business ethics in relation to business organisations in Nigeria:

7.1 Implication on Investors' Confidence

Strong corporate governance practices enhance investor confidence by ensuring transparency, accountability, and ethical conduct. Investors are more likely to invest in companies that demonstrate good governance practices, as these companies are perceived to be more stable and less risky. High standards of corporate governance provide assurance to investors that the company is well-managed and that their interests are protected.[58] Companies that adhere to robust governance practices are more likely to attract both domestic and foreign investment.

7.2 Implication on Compliance Risks

Effective corporate governance helps companies mitigate compliance risks by ensuring adherence to legal and regulatory requirements. Companies with strong governance frameworks are better equipped to identify and address potential compliance issues, reducing the likelihood of regulatory sanctions and reputational damage. By maintaining compliance with relevant laws and regulations, companies can avoid costly penalties and legal disputes. Proactive compliance management also helps companies build positive relationships with regulators and other stakeholders.[59]

7.3 Implication on Mergers and Acquisitions

In situation of mergers and acquisitions (M&A), corporate governance plays a crucial role by ensuring that transactions are conducted transparently and ethically. Companies with strong governance practices are more attractive targets for acquisition, as they are perceived to be well-managed and less likely to present unforeseen risks. Good governance also facilitates the due diligence process, making it easier for potential acquirers to assess the target company's operations, financial health, and risk profile.[60] M&A transactions involving companies with strong governance practices are more likely to succeed and deliver value to all parties involved. It is pertinent to state that the regulation of companies in Nigeria is central to solving antitrust matters that occur in the course of these mergers and acquisitions (M&A), pointing to the country's evolving legal and regulatory environment. The Federal Competition and Consumer Protection Act (FCCPA) of 2018, which governs antitrust matters in Nigeria, aims at preventing market dominance and anti-competitive conduct by ensuring that mergers do not effectively reduce competition or create

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[56] Ibid, n (43).

[57] K Akinsola, *Corporate governance and compliance in Nigerian business* <https://www.google.com/search?q=benefits+of+corporate+governance+and+business+ethics+in+Nigeria> accessed on 23 September, 2024

[58] D Meghan, *Why is Corporate Governance so important*? <https://www.diligent.com/resources/blog/why-corporate-governance-important-investors> accessed on 23 November, 2024.

[59] J Dhlamini, Corporate Governance and Business Ethics: An Assessment of Challenges and Developments (2023) 20(2) *Journal of Contemporary Management* 357-385.

[60] Ibid.

monopolistic settings. Hence, corporate governance provides the institutional provisions through which companies can coordinate their M&A strategy with compliance needs to safeguard shareholder interests and promote fair market competition. Therefore, the corporate governance bodies, including boards of directors and executive management, are charged with the responsibility of managing the due diligence process, where potential antitrust risks need to be evaluated carefully. This involves looking at market share thresholds where 40% or more of a market might constitute dominance under the FCCPA and reflecting on how the merger might affect competitive forces.[61] Thus, corporate governance in Nigeria is a critical conduit that mediates between the interests of business expansion and the stringent requirements of antitrust law. Through the introduction of effective oversight, ethical practices, and risk projection into the mergers and acquisitions cycle, Nigerian businesses are more likely to successfully steer intricate competition regulations, foster competitive markets, and build investor confidence in line with both local and international expectations. Importantly, Corporate governance protects against agency conflicts and managerial opportunism in M&A deals, first and foremost. Governance frameworks reduce the dangers of value degradation, conflicts of interest, and poor decision-making by creating explicit supervision procedures, outlining roles and duties, and encouraging moral behavior. Throughout the M&A process, boards of directors are crucial in overseeing governance, analyzing potential transactions, determining strategic alignment, and defending shareholder interests. Furthermore, governance best practices cover risk management, stakeholder engagement, CEO compensation, and shareholder rights in addition to the boardroom. Aims for long-term value creation and integration must be matched by executive remuneration plans, and shareholder rights provide responsibility, equity, and openness in the M&A process.[62] Strong risk management procedures assist businesses in identifying, evaluating, and reducing the risks connected to mergers and acquisitions (M&A) in order to protect shareholder value and foster long-term growth. Effective stakeholder engagement also improves governance effectiveness and integration outcomes by managing expectations, fostering trust, and reducing resistance during M&A transactions.

7.4 Implication on Corporate Reputation

A company's reputation is one of its most valuable assets, and good corporate governance is essential for maintaining and enhancing that reputation. Companies with strong governance practices are perceived to be trustworthy, ethical, and reliable. This positive perception can lead to increased customer loyalty, improved relationships with suppliers and partners, and greater overall competitiveness.[63] A strong corporate reputation also provides a buffer against negative events, as stakeholders are more likely to give the company the benefit of the doubt in times of crisis.

7.5 Implication on Operational Efficiency

Effective corporate governance can lead to improved operational efficiency by promoting clear decision-making processes, reducing the likelihood of conflicts of interest, and ensuring that resources are used effectively.[64] Companies with strong governance frameworks are better able to implement strategic initiatives, respond to market changes, and achieve their business objectives.

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[61] A. Rawat, and A. Kukreja, The Role of Corporate Governance in Mergers and Acquisitions, (*International Journal of Legal Science and Innovation Vol. 6 Iss 4; 49)*P.50

[62] Ibid, 55.

[63] Ibid.

[64] Ibid.

Operational efficiency contributes to the overall success and sustainability of the company, enabling it to compete effectively in the marketplace.

8 Challenges of Effective Corporate Governance and Business Ethics in Nigeria

Firstly, compliance and enforcement of corporate governance pose major challenges, especially in the Nigerian setting. Most institutions are beset with problems emanating from the shallow appreciation of corporate governance precepts and limited resources available for successful application of the precepts. The deficiency is further exacerbated by enforcement procedures that are either weak or lacking an appropriate punitive component, thus compromising the deterrent aspect of non-compliance.

Secondly, the Nigerian Code of Corporate Governance is the principal corporate governance code but does not have specific compliance and enforcement mechanisms, thereby hindering its efficacy. Furthermore, regulatory institutions such as the Securities and Exchange Commission (SEC) and Corporate Affairs Commission (CAC) are confronted with institutional capacity constraints. These institutions do not possess the requisite resources, specialized expertise, and autonomy necessary to effectively regulate and supervise corporate institutions. In some cases, political interference and the burden of multiple responsibilities can undermine their focus and effectiveness, as is the case with institutions like the Central Bank of Nigeria (CBN), which oversees a very wide range of functions beyond regulation, thereby reducing its ability to regulate efficiently.

Thirdly, lack of capacity building which is a must. This involves not only the provision of adequate funds and human resources but also institution-building in technical capacity and institutional independence, the two necessary for effective oversight. Without them, regulatory institutions lack the strength to strictly discipline governance codes, and therefore they reinforce existing governance deficits. Political intervention and governance institution weakness can also undermine corporate governance practices, especially in government or politically powerful-dominated industries.[65] Thus, it is important that industry players in the Nigerian corporate sector engage industrious experts to properly aid in the enforcement of corporate governance and business ethics in their establishments.

9 Conclusion

Corporate governance and business ethics are fundamental pillars that ensure businesses operate responsibly, transparently, and sustainably. Together, corporate governance and business ethics contribute to the creation of a corporate culture that values responsibility and sustainability. Companies with strong corporate governance structures and ethical standards tend to build trust with stakeholders, leading to stronger reputations, improved financial performance, and resilience in the face of challenges. Moreover, these principles are increasingly seen as essential in addressing contemporary global concerns, such as environmental, social, and governance (ESG) issues, and in responding to public expectations for corporate accountability. To this end, the following recommendations are proposed to enhance corporate governance and business ethics in Nigeria.

[65] O Makinde, 'The Nigerian Corporate Governance Challenge: Inadequacy of Laws or Question of Enforcement' (2020) 11(4) *The Gravitas Review of Business and Property Law* 35-59.

First, it is important that the Nigerian Code of Corporate Governance is revised and integrated with definite and enforceable compliance tools to make corporations accountable with clear sanctions and penalties. Enhancing the institutional capacity of regulatory bodies like the SEC, CAC, and CBN is vital; these bodies must have sufficient resources, technical capacity, and independence to effectively regulate corporate entities without political interference or distraction by foreign mandates.

Secondly, capacity development must go beyond finance and human resources to include developing technical competencies and institutional autonomy so that regulators can enforce codes of governance with stringency and reduce overwhelming governance weaknesses. Equally important is infusing a deeper appreciation of corporate governance principles within organizations through the engagement of experts and continuous training that will transcend the current superficial knowledge of governance principles.

Furthermore, firms ought to have boards made up of independent and qualified members who are chosen based on merit and not on political or personal affiliations in order to enhance the quality of monitoring. Transparency and accountability must be provided through enhanced disclosure mechanisms and enhanced protection for shareholders' rights, thereby fostering investor confidence and corporate integrity. Lastly, promotion of a whistleblowing mechanisms, when properly structured and protected, create friction within organizations that can alert boards and compliance officers to misconduct before it becomes public. Thus, integrating whistle-blowers into formal governance structures can enhance proactive oversight and improve the effectiveness of compliance programs to expose unethical practices and ensure accountability and transparency in corporate governance. By tackling these interrelated challenges, Nigeria can establish a stronger and more effective corporate governance system that supports sustainable business development and ethical practice.

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Appraisal of the Impact of Cybercrime Act on Electronic Taxation Practice in Nigeria

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Abstract:

Taxation is the imposition of mandatory fees on people or organisations, typically supported by legal mandates from governments worldwide. The main purpose of taxes is to create revenues for the government and raise funds for spending. The process of computing, accessing, and collecting taxes using electronic methods is known as electronic taxation. The Finance Act 2020, specifically Section 25 of the FIRS Establishment Act, as well as the Finance Act 2020, confer upon the Federal Inland Revenue Service (FIRS) the authority to leverage technology in automating tax administration processes, including assessment, collection, and information gathering. It will be intriguing to observe how the Finance Act 2023 reinforces this provision. Notably, the Finance Act 2023 has amended the FIRS Establishment Act to enable the FIRS to utilize third-party technology in automating tax administration. The increasing digitalization of tax administration systems, coupled with the preference for technological deployment in tax management, return filing, and tax payment in Nigeria and globally, has rendered the tax system susceptible to cybercrime, thereby giving rise to a novel category of criminal activity known as cyber tax crimes. The report noted the expansion of tax crimes to include cyber tax crimes in light of Nigeria's implementation of Electronic Taxation and the provisions of the Cybercrimes Act 2015 (as amended).

Keywords: *Taxation, Electronic Taxation, Cybercrime, Finance Act, Cybercrime Act*

1.0 Introduction:

One of the primary sources of funding for all governmental levels is still tax revenue. With the funds they get from taxes, governments can fund governance expenses and promote economic expansion by building attractive and appropriate infrastructure. A strong tax structure gives the government a great chance to raise the extra money it needs to pay for its urgent obligations.[66] Tax administration has encountered several challenges, such as dishonest collection practices, tax evasion and avoidance by taxpayers, and the misuse of tax revenues by dishonest tax authorities. However, for many tax offices, especially in Nigeria, tax compliance is a major concern. Avoiding or avoiding taxes is a common way for taxpayers to try to reduce their tax liability. The government may lose money as a result of tax return errors. Inaccurate tax returns and a loss of government revenue could result from this.

In order to overcome these challenges, the majority of nations have switched from traditional and conventional methods of tax computation and collection to more contemporary, efficient,

[66]Uguagu, Nkiru Gladys *E-Taxation and Tax Compliance in Nigeria: Periscoping Change Perspectives* *file:///C:/Users/PASCHAL/Downloads/ajol-file-journals_753_articles_260705_657185645561a%20(1).pdf*Accessed 20th November, 2024.

and effective methods. The use of information technology in a wide range of activities has advanced globally during the past few decades. States and nations all over the world have continued to use technology to ensure effective and efficient tax administration, so tax administration has not been left out. It is noteworthy that the majority of nations have higher tax revenue increases because to their adoption of electronic taxation, or e-taxation, which allows taxpayers to pay taxes, file returns, and obtain assessments from tax authorities without physically visiting tax offices.[67]

Over the past few years, scholars and practitioners within the global tax community have strongly supported the adoption of electronic tax (e-Tax) platforms and systems to improve and update tax administration processes via technical assistance programs. This support arises from the widespread use of e-tax systems in both advanced and emerging economies, driven by their proven efficiency, decreased compliance expenses, ease of access, adaptability to varying needs, and strengthened accountability measures. A recent survey indicates that more than 100 economies have now adopted computerized tax frameworks.[68] These electronic tax (e-Tax) solutions streamline the process, cutting down the time needed for tax payments and return filings. In recent times, the worldwide tax community has championed the integration of e-Tax platforms and systems to bolster and update tax administration practices through technical support initiatives.[69]

Nigeria participates in these discussions as part of the global community. In 2013, the Federal Inland Revenue Service (FIRS) introduced the Integrated Tax Administration System (ITAS). Furthermore, the State Internal Revenue Services (SIRS) have employed the e-Tax platform to enhance the efficiency of tax filing and payment procedures. The goal remains to foster effective tax administration throughout Nigeria and its various states.[70] Though electronic tax systems have bolstered the efficiency of tax administration, they have simultaneously presented fresh obstacles for both tax officials and taxpayers. Prominent among these challenges are concerns related to cybersecurity, cybercrime, and cyberfraud. Numerous countries operating sophisticated e-tax systems grapple with the persistent threat of cybercrime and face continual difficulties due to the actions of cybercriminals.[71]

Many nations with efficient electronic tax systems face ongoing struggles with cybercrime and are repeatedly challenged by the activities of cybercriminals. For example, an analysis conducted by the Online Trust Alliance revealed that only 46% of tax software websites in a US Inland Revenue Service (IRS) *I.C.C.L.R.* 48 program met cybersecurity standards.[72] Some of these websites lacked email authentication, enabling cybercriminals to distribute phishing

[67] *Ibid*
[68] Chikwendu Nneka Francisca, *EFFECTS OF ONLINE SYSTEM OF TAXATION ON ECONOMIC GROWTH IN NIGERIA (2005–2020) African Journal of Economics and Sustainable Development ISSN: 2689-5080 Volume 5, Issue 3, 2022 (pp. 23-40)*
[69] *Ibid*
[70] Nigeria's Electronic Tax Compliance System: So Far, So Good. Available at: https://www.forvismazars.com/ng/en/insights/forvis-mazars-insights/etcs Accessed 21st November, 2024.
[71] Newman U. Richards. Electronic taxation in Nigeria: challenges and prospects file:///C:/Users/PASCHAL/Downloads/NewmanandEkhator-ElectronictaxationinNigeria%20(1).pdf 23rd November, 2024.
[72] J. Schlesinger, "E-Filing Taxes? Watch out For Fraud" (2016) available at: https://www.cnbc.com/2016/02/26/e-filing-taxes-watch-out-for-fraud.htm Accessed 23rd November 2024

emails. Even with efforts from operators, personal data remains vulnerable to theft from other sites.[73]

2.0 Historical Evolution of E-taxation.

The IRS initially introduced e-taxation in the United States through a pilot program involving electronic filing with five tax preparers.[74] However, the Internal Revenue Service Restructuring and Reform Act of 1998 formally established electronic taxation across the country.[75] The IRS implemented measures to ensure that all returns prepared electronically could be submitted online, achieving an electronic filing rate exceeding 80% by 2012. Originating in the United States, e-taxation expanded globally; per the Paying Taxes: 2018 Report, 92 nations had fully adopted electronic tax filing and payment systems by 2016.[76]

Over the past two decades, the global shift from manual tax administration to electronic tax systems has occurred at a consistent pace across numerous regions. For instance, the Republic *I.C.C.L.R. 49* of Korea introduced an electronic taxation framework in 2012, Uruguay enforced mandatory electronic payments for national taxes in 2014, and China adopted electronic tax processes in 2015.[77] In India, electronic tax systems were initiated in September 2004 on a voluntary basis, before becoming obligatory for all taxpayers by July 2006.[78] Subsequently, Serbia implemented similar measures in 2014, followed by Namibia in 2016.[79]

In Africa, many governments have embraced the expansion of electronic tax systems in their operations. When the South African Revenue Service (SARS) implemented an electronic tax system in 2001, South Africa established itself as a leader in digital tax administration on the African continent.[80] Initially, the e-filing system, which enabled taxpayers to submit tax returns and declare income online, was limited to value-added tax (VAT) and pay-as-you-earn (PAYE) filings. This system underwent significant expansion in 2006 to include individuals earning basic incomes and those receiving assistance, with further enhancements in 2007 that extended its scope to encompass all individual taxpayers,[81] thereby broadening its accessibility and functionality. In recent years, SARS has introduced substantial improvements to enhance the e-filing system's usability and accessibility, notably through the development of the MobiSite

[73] *Ibid*
[74] Electronic Tax Filing: efile History in the US" available at: https://www.efile.com/efile-electronic-tax-filing-history/ Accessed 22nd November, 2024.
[75] S.E. Pippin and M.S. Tosun, "Electronic Tax Filling in the United States: An Analysis of Possible Success Factors" (2014) Electronic Journal of e-Government 22 available at: http://www.ejeg.com/volume12/issue1 Accessed 22nd November, 2024
[76] PricewaterhouseCoopers and the World Bank Group, Paying Taxes: 2018 Report (2018) available at: https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2018/world-bank-group-commentary.html Accessed 22nd November, 2024
[77] PricewaterhouseCoopers and the World Bank Group, Paying Taxes: 2018 Report (2018), p.15
[78] M. Kumar and M. Anees, "E-Filing Creating New Revolution in Taxation of India" (2014) *6 Global Journal of Finance and Management 379.*
[79] PricewaterhouseCoopers and the World Bank Group, Paying Taxes: 2018 Report (2018), pp.56–58
[80] R.W. Jankeeparsad et al, "Acceptance of the Electronic Method of Filing Tax Returns by South African Tax Payers: An Expository Study" (April 2016), p.121 available at: https://repository.up.ac.za/handle/2263/53252 Accessed 21st November 2024.
[81] Jankeeparsad et al, "Acceptance of the Electronic Method of Filing Tax Returns by South African Tax Payers" (2016), p.121

program, which allows taxpayers to file returns via mobile devices.[82] These advancements reflect a strategic effort to leverage technology to improve compliance and convenience, positioning South Africa's electronic tax filing system as one of the most effective and sophisticated in Africa.

Ethiopia introduced a computerized taxation system in 2012,[83] marking a significant advancement in its fiscal administration infrastructure. This initiative emerged from a collaborative effort between the Investment Climate Facility in Africa (ICF) and the Ethiopian Government, represented by the Ethiopian Revenue and Customs Authority (ERCA), aimed at enhancing the investment climate within the country.[84] As an integral component of Ethiopia's broader e-government strategy and implementation framework, electronic taxation was designed to improve the accessibility of tax services and enhance the efficiency of service delivery for taxpayers.[85] Since its inception, the computerized system has streamlined the tax filing process, enabling Ethiopian taxpayers to complete their returns in just three steps within a single day, thereby reducing administrative burdens and improving compliance efficiency.

In Mauritius, the Mauritius Revenue Authority (MRA) implemented an electronic taxation system in 2007, marking a pivotal shift toward digitalization in the country's fiscal administration. In addition to conducting public awareness campaigns, the Taxpayer Education and Communication Department (TECD) of the Mauritius Revenue Authority (MRA) has, since 2007, bolstered the capacity of its Information System Department (ISD) by providing essential logistical support. These efforts have significantly contributed to an increased adoption of electronic filing methods among taxpayers. By 2014,[86] approximately 92 percent of tax returns were submitted electronically, reflecting a substantial rise in the utilization of digital platforms for tax compliance. This growth is evidenced by the increase from 1,500 electronically filed tax returns in 2007 to 123,000 in 2014, highlighting the effectiveness of the MRA's initiatives in promoting electronic taxation. Within the Mauritius electronic tax system, taxpayers are afforded the convenience of filing returns, receiving tax assessments, and making payments through a variety of online banking platforms, thereby enhancing accessibility and efficiency in tax administration.[87]

Kenya initiated efforts to automate its tax administration in 2007 with the introduction of the Integrated Tax Management System (ITMS); however, this system failed to deliver the anticipated improvements in efficiency and effectiveness[88]. In response to these shortcomings,

[82]Jankeeparsad et al, "Acceptance of the Electronic Method of Filing Tax Returns by South African Tax Payers" (2016), p.121.
[83] M. Fikru, "Ethiopia: E-Taxing for a Speedy Tax Payment" (Addis Ababa: Ethiopia Press Agency, 2012), available at: https://allafrica.com/stories/201210090063.htm Accessed 22nd November, 2024
[84]ICF, "Ethiopia Develops an E-Tax Filing System" (22 February 2013) available at: https://pingpdf.com/pdf-ethiopia-develops-an-e-tax-filing-system.htm Accessed 22nd November, 2024.
[85] S.E. Tadesse, "The Practice, Challenges, and Prospects of e-Government: The Case of Ethiopian Revenue and Customs Authority (ERCA) Large Taxpayers Office (LTO)" (June 2015) available at: http://etd.aau.edu.et/handle/123456789/8775 Accessed 22nd November, 2024.
[86] "Mauritius Moves to E-Filing" (22 April 2014), ION News available at: http://ionnews.mu/mauritius-moves-e-filing-92-returns-submitted-electronically-2014-2204/ Accessed 21st November 2024.
[87] Mauritius Revenue Authority, "E-Filing 2017–2018" available at: https://eservices.mra.mu Accessed 21st November 2024.
[88] C.W. Kipkemoi, "iTax System and Service Delivery by Kenya Revenue Authority, Nairobi Stations", (University of Nairobi: Research Project, 2015), p.3 available at: http://erepository.uonbi.ac.ke/handle/11295/93788 Accessed 19th November, 2024.

the ITMS[89] online platform was replaced in 2011 by the iTax system, which represented a significant enhancement over its predecessor. The Kenya Revenue Authority (KRA) finalized the automation of the iTax system by 2014 and subsequently issued a directive mandating that all taxpayers utilize the iTax online services for filing returns, effective from *March 1, 2014*, at which point manual tax submissions were no longer accepted.[90]

3.0 Electronic Taxation and Nigeria Economy.

Nigeria's adoption of electronic taxes is still in its infancy. When the Fiscal Affairs Division of the International Monetary Fund (IMF) visited Nigeria in 2004, 2005, and 2006, it recommended the implementation of an Integrated Tax Administration System (ITAS), which helped the nation transition to a computerised taxing system[91].

In December 2010, the Federal Executive Council approved the acquisition, installation, and usage of the ITAS by the Federal Inland Revenue Service (FIRS)[92]. The ITAS intends to re-engineer and automate the FIRS tax administration processes in addition to purchasing, setting up, and implementing hardware infrastructure and the Standard Integrated Government Tax Administration Solution (SIGTAS).[93] In order to facilitate electronic tax payments in Nigeria, the FIRS teamed up with the Nigerian Interbank Settlement System (NIBBS) in 2015. Tax registration, assessment, return submission, and payment are all computerised processes. The objective was to put in place an electronic system that would enable online tax payments in the biggest cities in Nigeria.[94]

By launching six new electronic tax services (e-services) in June 2017, the FIRS reorganised the electronic tax system to function nationally. The e-services that are offered are:

i. E-Registration.
ii. E-Stamp Duty.
iii. E-Tax Payment.
iv. E-Receipt.
v. E-Filing
vi. Electronic Tax Clearance Certificates (E-TCC)

Section 25 of the FIRS Establishment Act and the Finance Act 2020 give the FIRS the authority to automate the assessment, collection, and information gathering steps of tax administration through the use of technology. It is important to note that the previously mentioned provisions are strengthened by the Finance Act of 2021. The Finance Act of 2021 revised the FIRS

[89] Kipkemoi, "iTax System and Service Delivery by Kenya Revenue Authority, Nairobi Stations" (2015), p.3
[90] Kenya Revenue Authority, "Electronic Filing of Tax Returns" available at: http://www.revenue.go.ke/notices Accessed 19th November 2024.
[91] I.O. Okauru (ed.), *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria (Ibadan: Safari Books Ltd, 2012),* pp.168–169.
[92] U.Y. Usman, "*The ITAS Solution Gathers Momentum", Gauge (quarterly publication of the Federal Inland Revenue Service)* (January–March 2013), p.8.
[93] *Ibid*
[94] A.O. Abdulrazaq, "*Overview of FIRS Electronic Tax Filing and Online Payment of Taxes"* (23 March 2015) available at: https://www.linkedin.com/pulse/overview-firs-electronic-tax-filing-online-payment-taxes-abdulrazaq; Nigeria Tax Update: "Recent Changes in Nigeria Tax Environment" available at: http://sobanjointernational.com/nigeria-tax-update-recent-changes-in-nigeria-tax-environment/ Accessed 24th November 2024.

Establishment Act to permit FIRS to automate tax administration through third-party technology.

The FIRS created TaxPro Max, an e-Tax platform for filing tax returns denominated in naira, with the goal of automating the tax administration system in order to increase accountability and enhance compliance, simplicity, and flexibility. The latest effort by the FIRS to digitise tax administration in Nigeria is the TaxPro Max platform. The platform, which will be fully operational in 2021, enables taxpayers to pay applicable taxes online or electronically, file tax returns (Value Added Tax, Tertiary Education Tax, and Companies' Income Tax), discover capital allowance carried forward, get tax clearance certificates, and receive instant credit for withholding tax and other credits to their accounts.

The website can be accessed using a specific link (www.taxpromax.firs.gov.ng). At the moment, the portal only allows tax returns denominated in Naira. With the exception of Nil returns, a Document Identity Number (DIN) will be generated at the time the tax returns are filed. After filing successfully, payment must be made using the DIN. Additionally, businesses can pay taxes on account with TaxPro Max. Future applicable taxes may be deducted from payments paid on account.

3.1 Features of the TaxPro Max Platform

FIRS' dedication to automating and enhancing tax administration and compliance procedures is demonstrated by the TaxPro Max platform. As a result, the following characteristics of the FIRS TaxPro Max platform are highlighted:

i. Convenience and Flexibility

Both taxpayers and their agents (tax consultants) can simply utilise the site. The website is easy to use, offers taxpayers a single view of all transactions, and is intuitive to explore. A taxpayer must complete the update form and submit it to the designated email address or in person at the registered tax office in order to be enrolled on the platform.

The taxpayer is enrolled in less than 48 hours and receives a message with the passcode, which the taxpayer can modify.[95]

ii. Saves Time and Cost

According to a World Bank publication on the ease of doing business in 2021, paying taxes in Lagos and Kano takes approximately *349 and 325* hours, respectively[96]. TaxPro Max is a fantastic place to start when it comes to saving time and money on compliance. The purpose is to simplify the tax system and increase compliance, allowing the country to have a high tax-to-GDP (Gross Domestic Product) ratio.[97]

The platform saves time and money for both the tax authority and the taxpayer because e-tax returns are typically considerably easier and faster to process than paper returns, saving both parties time and money.

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[95] https://www.forvismazars.com/ng/en/insights/forvis-mazars-insights/etcs Accessed 25th November, 2024
[96] Comparing Business Regulations in 190 Economies, *Economy profile Nigeria doing business in 2020* *https://www.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf Accessed 23rd November 2024*
[97] *Ibid*

iii. **Accuracy**

The technology reduces the number of errors in tax returns. For example, the TaxPro Max displays a dialogue window requesting the taxpayer to validate and ensure that all facts are correctly imputed. However, because people are not flawless, errors may occur with a limited frequency. Taxpayers can request that any inaccuracies be corrected in writing or during reconciliation sessions. The platform avoids record manipulation and promotes responsibility for both the tax authorities and taxpayers.

iv. **Revenue Growth**

The platform makes it simple for a variety of enterprises that are not subject to taxes to register and submit their tax returns. The chairman of the FIRS recently published a statement in which he clarified that the TaxPro Max has had a favourable effect on the nation's income generating. He claimed that the introduction of the TaxPro Max portal was the reason why the FIRS reported over N664 billion in June 2021. The platform's goals are to increase government revenue collection and enhance accountability and transparency in the tax administration system.

4.0 Challenges of electronic taxation in Nigeria

4.1 Compliance Level

The federal Inland Revenue Service (FIRS) implemented electronic taxation in 2013 as a result of the necessity to modernise and fortify Nigeria's tax administration system[98]. E-tax payment was also launched in 2015.

In order to fulfil this mandate, the Nigeria Revenue Authority (FIRS) established an electronic tax portal for filing naira-dominated tax returns via the integrated tax administration system (ITAS),[99] the e-tax platform (Tad Pro Max was fully engaged in 2021). This allowed taxpayers to file tax returns electronically, pay applicable taxes online, and enjoy instant credit of withholding tax as well as other credit to tax payers' accounts, ascertain capital allowance carried forward, and obtain a clearance certificate.[100] The FIRS establishment Act gives the FIRS the authority to deploy technology to automate the tax administration process, including assessment, collection, and information gathering. The website may be accessed using a specific link (www.taxpromax.firs.gov.ng), and only tax returns with a naira predominance can be submitted there.[101]

The use of electronic technology and chgrtal systems to improve and enforce tax-related procedures is known as e-taxation compliance[102]. Harmonising tax collection, reporting, and compliance for both taxpayers and tax authorities is the goal of this.[103]

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[98] S. 25 of the Act

[99] T. W. Nwoke and C. A. Onah , "A Legal Appraisal of E-Tax Payment in Nigeria" available at: 2664-3439-1-PB[1].pdf viewed on 12th December, 2024

[100] O. Olafaju and S. Olanyinka,"*Nigeria electronic tax compliance system so far so good "available at:*https://www.mondaq.com/nigeria/withholding-tax/1163892/nigerias-electronic-tax-compliance-system-so-far-so-good viewed on the 9th December, 2024

[101] I*bid*

[102] Asombaetal, "E- tax compliance in Nigeria: implications for company income tax and petroleum profit tax" available at: htttps://www.ajol.info/index.php/ngjsd viewed on 10th December, 2024

[103] *Ibid*

4.2 Challenges of Electronic Tax System in Nigeria

While electronic taxation aims to mitigate numerous issues within Nigeria's tax administration framework, it faces obstacles related to adoption and implementation, similar to those experienced by other systems. The adoption of electronic tax processes represents a notable step forward; however, it is accompanied by significant challenges. These difficulties are elaborated upon in the following discussion:

i. Cyber Security Threat

Cyber security is one of the most important aspects of electronic taxation in Nigeria. Electronic taxation involves the storing of extremely sensitive financial and tax data, leaving it vulnerable to cyber thieves who are continually developing new strategies to perpetrate cyber tax crimes. The financial sector is the foundation of any economy, facilitating transactions, investment, and growth. Nigeria's financial sector is under pressure. A new report from the Financial Institutions Training Centre (FITC) verifies this. The analysis finds an alarming increase in fraudulent activity, leaving banks and customers vulnerable in the first nine months of 2024. A bleak picture is presented in the FITC Fraud and Forgery Report for Q3 2024. The number of fraud cases recorded by Nigerian banks increased from 11,532 in Q2 to 19,007 in Q3, a startling 65% increase. The financial numbers are equally unsettling. Fraudsters tried to steal an astounding N115.9 billion in Q3, more than twice as much as the N56.6 billion that was reported in the previous quarter. This year is still concerning even if the actual losses in Q3 were reduced to N10.1 billion, a considerable decrease from N42.8 billion in Q2. Nigerian banks lost an estimated N53.4 billion to fraud in the first nine months of 2024, which is a significant increase from the N9.4 billion they lost in 2023[104]. According to the survey, this increase might be attributed to the growing digitisation of financial transactions, which has given fraudsters a larger playing field even as it has improved convenience. It is now evident that banks must deal with a changing cyber threat scenario as they scramble to implement cutting-edge technologies.[105]

ii. Cultural Divergence

Because the ordinary African man likes to interact with a human being and a computer, especially when it comes to money, many Nigerians still choose to attend tax offices to have their taxes processed, even after the advent of computerised taxation. They want to speak with you in person because they think that by doing so, their worries and issues would be addressed. Many of us are normally resistant to change. Because they are accustomed to doing things in the same way they have always done them and do not want to venture outside of their comfort zone, the majority of people have already decided that they will not respond to new systems before they even understand what they are about. Despite the fact that the manual tax system was notoriously laborious and difficult, taxpayers resisted change when electronic taxation was implemented.[106]

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[104]Businessday Monday 9th December 2024 available at:Addressing the alarming surge in financial fraud in Nigeria - Businessday NG viewed on the 9th December 2024

[105]*Ibid*

[106] Challenges of E- Taxation in Nigeria and the way forward available at:https://thenigerialawyer.com/legal-analysis-of-the-e-tax-payment-system-in-nigeria/undefined viewed on 9th of December 2024

iii. Lack of Technical Knowledge

The operation of a computer normally necessitates some amount of digital expertise. Many taxpayers are unaware of and do not grasp the processes and benefits of electronic taxation. They prefer the manual techniques they are already familiar with. Many tax payers may be hesitant to hire the services of a tax expert consultant due to the high expense of such engagements, and such individuals may struggle to submit their tax returns due to the competence necessary.

iv. Network Issues

Recent events have demonstrated that dependable internet connectivity is not always possible, particularly for people living in isolated areas. In the absence of a strong network, it is challenging for taxpayers to complete their tax procedures on time.

v. Absence of Constant Electricity Supply

Nigeria's electrical supply's epileptic state hasn't assisted the country's electronic taxation system in any way. This is due to the fact that electronic taxes cannot be properly applied in the absence of a steady supply of electricity. Tax revenue continues to fall short of the majority of collection agencies' targets, and the degree of compliance with electronic taxation has remained low over time. Comparing Nigeria to other countries across the world, the rate of compliance is still extremely low, despite the fact that computerised taxation has grown in popularity and is used extensively there.[107] Without a doubt, by eliminating the innate bureaucratic bottlenecks, computerised taxation has significantly improved the tax administration system. To achieve the goal of digitising the system, the tax authorities must resolve these issues.

4.2 Cyber Tax Crime

Cyber tax crimes, often referred to as electronic tax fraud, encompass any illegal activities perpetrated during the processes of tax registration, assessment, return filing, and payment through electronic systems or the internet. The implementation of electronic taxation introduces distinct challenges stemming from the unique characteristics of cyberspace. For instance, online tax payments are vulnerable to interception or redirection by automated systems, posing significant risks to the integrity and security of digital tax administration.[108]

Nigeria is still developing technologically, so there are many opportunities for cybercriminals to exploit. Cyber tax crimes provide numerous obstacles to electronic taxation, and they have in fact rendered online transactions unsafe and susceptible to manipulation by dishonest individuals who are not involved in the transaction. Lawmakers passed the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 (henceforth referred to as "the Act") in an effort to shield Nigerians from these cybercriminals. It is the first piece of legislation passed in Nigeria that specifically addresses regulating how people behave online. The Cybercrimes (Amendment) Act of 2024[109] significantly improved the Act. *Section 1* of the Act states its goals as follows:

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[107] *Ibid*

[108] A. O, Muhammadetal, 'Effect of e- taxation on revenue generation in Niger State' lampaiinternational journal of administration LIJAD VOL.3(3)2020

[109] The Act was signed into by Goodluck Jonathan on May 2015 and was amended in February 2024.

a. To guarantee the protection of vital national information infrastructure;
b. To establish a cohesive and efficient legal, regulatory, and institutional framework for the prevention, detection, prosecution, and punishment of cybercrimes in Nigeria;
c. To advance cyber security and the defence of computer systems and networks, electronic communications, data and computer programs, intellectual property, and privacy rights.

In addition to the aforementioned goal, lawmakers enacted the Nigeria Data Protection Act 2023,[110] which seeks to provide a legal framework for the protection of personal information and establishes the Nigeria Data Protection Commission to regulate the processing of personal information. In the same vein, the Electronic Transaction Act of 2023[111] was enacted to provide a legal framework for electronic transactions, protect consumer rights, and facilitate electronic commerce.[112] All of these laws were aimed at ensuring the safety of the cyber space/internet for electronic commerce and all types of electronic transactions, including electronic taxes. With the introduction of electronic taxes in Nigeria, cyber security concerns have risen to the forefront of tax administration, as electronic taxation is dependent on a safe and effective computer system and network.[113]

Broadly, the Cybercrimes Act prohibits offenses involving the use of computers and other electronic devices, with the primary objective of curbing computer-related crimes by criminalizing actions that undermine the cybersecurity measures of websites and infringe upon the privacy rights of internet users.[15] Despite these strong provisions, the Cybercrimes Act and other pertinent laws still have a number of gaps that these cybercriminals take advantage of to perpetrate what are now known as cyber tax crimes. There is no law that designates any of these transgressions as "cyber tax crimes," but they can only be committed with the use of information and communication technology gadgets, which serve as both the tool and the target of the crime. In this case, they are cyber-dependent tax crimes, which can reasonably be referred to as cyber tax crimes.

The following are some examples of cyber tax crimes in Nigeria:

i. Manipulation tax data and compromise of tax websites.

A person who intentionally or fraudulently does an act that hinders the proper functioning of the computer by inputting, transmitting, damaging, deleting, deteriorating, altering, or suppressing computer data or acts such other ways that causes interference with the computer system which prevents the computer system from function in accordance with its intended purpose, commits an offence under the act.[114]

ii. Fraudulent tax refund

The Act allows for computer-related fraud. As a result, any person working by or under the authority of a bank or other financial institution who diverts electronic mails with the intent to

[110]S. 1 of the Act and the explanatory memorandum.
[111] The Act was signed law in 2003 but it come into effect on July 1, 2024
[112] S.1 of Electronic Transaction Law (ETA)
[113] Newman U. Richards "Impact of the Nigeria cybercrimes (prohibition prevention, etc Act 2015 on the electronic taxation policy in Nigeria" in Eboibi ed *Handbook on Nigerian Cybercrime Law* (Benin City: Justice Jeco Pub. Co., 2018) 240-241.
[114] S. 8 see also S. 36 (1), S 28 (1) (a-b) S.13(1) S . 16 (16) (1) S.14 (14)

defraud, directly or indirectly, commits a crime punishable by imprisonment upon conviction[115]. *Section 14(4)(b)*[116] further states that any person who commits an offence under *subsection (4)(a)*[117] that causes material and/or financial loss to the bank, financial institution, or customer must, in addition to the term of imprisonment, refund the stolen money or forfeit any property to which it has been converted to the bank, financial institution, or customer.

iii. Online Filing of False Tax Returns

It is a crime to send an electronic message with the intent to defraud by materially misrepresenting any facts on which the recipient or others rely, causing damage or loss.[118] *S.22(3)*[119] further makes it an offence for a person to create or cause to be made any false statement as to a material fact in writing, knowing it to be untrue with the intent that it be relied on in relation to his financial situation.

iv Theft of Details of Personal Identity

Uthman Hambali made a distinction between identity theft and identity fraud, stating that identity theft is the deliberate acquisition of another person's identity with the intent to deceive or defraud, while identity fraud is the completion of the mens rea in identity theft, which involves using the acquired identity to commit a fraudulent act. According to s. 22(1)[120] of the Act, a person who works for any financial institution and, due to his special knowledge, commits identity theft of his employer, staff, service providers, and consultants with the intent to defraud, commits an offence and faces a sentence of seven years in prison, a fine of five million dollars, or both.[121]

Any act of computer-related forgeries, including wilfully accessing a computer or network with the intention of undermining the validity of the data it contains, is illegal under the Act[122]. Likewise, any deliberate and illegal alteration of data on any computer system or network has a maximum penalty of three years in prison, a fine of seven million naira, or both.[123]

v. Theft of Sensitive Data

According to the Act, it is illegal for someone to purposefully use technical tools to intercept private computer data, content, or traffic data without permission.[124]

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[115] Section 14(4)(a).
[116] Cybercrimes (Amendment) Act of 2024
[117] *Ibid*
[118] S.14(2)Cybercrimes (Amendment) Act of 2024
[119] *Ibid*
[120] *Ibid*
[121] Y. D. O.Hambali, prosecuting perpetrators of identity theft under the Nigerian Cybercrimes Act 2015: Lessons from Europe in Eboibi(ed)*Handbook on Nigerian Cybercrime Law* (Benin City: Justice Jeco Pub. Co., 2018) p. 381 -408
[122] S. 13
[123] S.16, Seealso S.162) which sets out the variousoperations to which the modifiactionwillapply
[124] S. 12(1)

vi. Obstruction of Tax System and Networks

Misdirecting electronic messages with the goal to impede a process in order to speed up or delay the messages in order to produce an omission that could undermine the messages' core is illegal under the act.[125]

Section 8 also makes it illegal for anyone to intentionally or fraudulently use a computer system in a way that seriously impairs the system's ability to function normally. Under the provisions of the Cybercrimes Act, an offender may be subject to a maximum penalty of two years' imprisonment, a fine not exceeding ₦5,000,000.00 (five million naira), or both, depending on the nature of the offense. Additionally, the unauthorized deletion or interruption of electronic mail or processes that facilitate the transmission of funds or critical information is punishable by a term of imprisonment of seven years for a first offense, escalating to fourteen years for a subsequent offense, reflecting the severity of such illegal actions within the digital domain.

vii. Tampering with Critical Infrastructure

According to *Section 5*, anyone who violates the rules pertaining to critical national information infrastructure faces a maximum prison term of 10 years; if the act results in bodily harm to another person, the offender faces a maximum of 15 years in prison without the possibility of a fine. If the criminal is a government or private employee assigned to work on essential infrastructure and the altered data is that infrastructure, they could be imprisoned for three years or fined ₦2,000,000.00 (two million naira).[126] Even if electronic tax hasn't been officially recognised as such, it qualifies for protection under this provision because it affects Nigeria's economy as a whole.

CONCLUSION/RECOMMENDATION

Nigeria's adoption of electronic taxes has, in fact, simplified tax collection, enhanced transparency, and made doing business easier by removing administrative roadblocks. To guarantee the efficacy and equity of the system, however, certain legal and social issues must be resolved. However, legislators, tax officials, and regulatory agencies must work together to create a strong legal framework that encourages taxpayer confidence in order to fully realize the promise of electronic taxes in Nigeria. This can be accomplished by:

1. Data Privacy and Security: Ensuring the protection of taxpayers' personal and financial information from cyber-attacks and data breaches is crucial. Implementing robust measures to prevent electronic fraud and ensure the integrity of the system is essential.
2. Equitable Access: Providing access to the system for those without reliable internet access is vital, considering the country's low digital literacy rate and limited internet penetration.
3. Legislative Support: Enacting enabling legislation to guide the digitization of tax administration and ensure effective implementation.
4. Education and Awareness: Conducting constant education and awareness programs to enlighten taxpayers on the benefits of digitized tax services.
5. Inclusive Design: Designing the system to accommodate diverse needs, including those with disabilities, and providing alternative channels for those who prefer paper-based options.

[125] S.11
[126] S. 10.

By addressing these challenges and concerns, Nigeria can harness the full potential of electronic taxation, promoting a more efficient, transparent, and equitable tax system electronic tax system.

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Reimagining Nigeria's Future: Legal Frameworks for Economic Diversification and Sustainable National Development

Oluwatosin Elufowoja/Adetutu D. Aina-Pelemo

Abstract

Economic diversification is crucial for Nigeria's national development, especially as the country seeks to reduce its over-reliance on oil revenues. The dependency of the country's economy on crude oil has had a major impact on its economic development, particularly in the Niger Delta region. The country has also made significant progress in diversifying its economy, but a number of obstacles prevent it from being implemented effectively. This paper examines the legal framework for economic diversification and national development in Nigeria. It interrogates the intricacies of the topic using a doctrinal legal approach. The paper identifies significant challenges in implementing legal frameworks (such as the 1999 constitution) for economic diversification, for instance: poor infrastructure; gaps in policy implementation; corruption; limited access to finance for SMEs; and a mismatch between education and industry needs. Additionally, political instability and over-specialisation in the oil sector have stifled efforts to develop other sectors like agriculture, manufacturing, and services. It concludes that Nigeria must strengthen its anti-corruption operations and strengthen its public-private partnerships (PPPs) in financing and implementing large-scale infrastructure projects that will attract investors and boost economic activities. Ultimately, Nigeria will not only ensure better livelihoods for its citizens but also strengthen its position in the global economy.

Key Words: Economic Diversification, National Development, Sustainable Development, Oil Dependency, Infrastructure Development

1.0 Introduction

Economic diversification is crucial for Nigeria's national development, particularly given its heavy reliance on oil revenues. Diversification can mitigate the adverse effects of oil price volatility and foster sustainable growth. The dependency of Nigeria's economy on crude oil has had a major impact, resulting in uneven growth patterns that are influenced by global oil prices.[127] Economic diversity promotes sustainable growth. Empirical data demonstrates a strong correlation between diversification initiatives and the Gross Domestic Product (GDP) growth.[128] Diversifying into sectors such as agriculture, manufacturing, and services is essential for reducing regional disparities and enhancing overall economic stability.[129] In order to boost local production and export potential, the government is advised to establish favourable conditions for investment in these areas.[130] To encourage diversification, effective policies must be put in place, such as improving fiscal transparency and accountability and

[127] Moses O. Ichime, Titus O. Awogbemi, and Chigoziem T. Ezi, 'Economic Diversification: As Panacea for Sustainable Economic Growth in Nigeria' (2024) 6 International Journal of Advanced Economics 65 <https://fepbl.com/index.php/ijae/article/view/1055> accessed 13 October 2024.

[128] F. F Adegbie, A. Ajayi, T. A. Aguguom, & E. D. Otitolaiye, Diversification of the economy, tax revenue and sustainable growth in Nigeria. *International Journal of Innovative Research and Scientific Studies*, (2023) *6*(1), 115–127. https://doi.org/10.53894/ijirss.v6i1.1114 accessed 13 October 2024.

[129] Department of Economics, Faculty of Social Sciences, University of Calabar and others, 'Diversification and Economic Development in Emerging Economies: The Nigerian Experience' (2022) 7 International Journal of Economics and Financial Management 48 <https://iiardjournals.org/abstract.php?j=IJEFM&pn=Diversification%20and%20Economic%20Development%20in%20EmergingEconomies:%20The%20Nigerian%20Experience&id=3090> accessed 13 October 2024.

[130] ibid.

maximising the use of tax income.[131] While the push for diversification is evident, challenges remain, including political factors that can hinder progress. Addressing these issues is vital for Nigeria to transition successfully to a post-oil economy.[132]

Economic diversity and development go hand in hand because the former offers options for employment, income growth, and development that the latter does not supply in an economy with only one product. Despite efforts to create a more diverse economy, factors such as: low market share, unskilled labour, insecurity, corruption, and other issues have prevented this from translating into equal employment, the provision of infrastructure, and steady improvements in the standard of living.[133] Economists have recently argued that economic diversification—that is, a more varied set of factors influencing employment and income—is essential to building sustainable growth and development.[134] It is the expansion of production over many sectors.[135] Another scholar puts it as the variation in the spread of a country's existing product mix.[136] Through compensatory employment development, stronger and more successful companies will help the economy maintain healthy growth through diversity, even if certain other industries operate less than the installed capacity. Because of this, some economists and decision-makers contend that diversification is employment insurance, with a more varied economy creating jobs during downturns. It is also up for dispute whether diversification increases resistance, particularly against external events and developments.[137]

Since gaining independence, Nigeria has seen a cocoon of economic crisis. Many people find it incomprehensible that Nigeria, with its vast human and material resources, is still mired in economic catastrophe. While some academics consider the issue to be a default, others perceive it as intentional.[138] This paper therefore interrogates the legal framework for economic diversification and national development in Nigeria. It is divided into five sections. Section one introduces the topic; section two delves into the historical context of Nigeria's economic

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[131] Festus Folajimi Adegbie and others, 'Diversification of the Economy, Tax Revenue and Sustainable Growth in Nigeria' (2022) 6 International Journal of Innovative Research and Scientific Studies 115 <http://www.ijirss.com/index.php/ijirss/article/view/1114> accessed 13 October 2024. Jose Luis Cortez Flores, 'Usman, Z. 2022. Economic Diversification in Nigeria: The Politics of Building a Post-Oil Economy: London, Bloomsbury Publishing, (2023) Pp. 313/28 Pensamiento Crítico 115 <https://revistasinvestigacion.unmsm.edu.pe/index.php/econo/article/view/25725> accessed 13 October 2024.

[132] Ibid 5.

[133] Innocent Chukwuka Ogbonna, 'Private Sector Development and Economic Diversification: Evidence from Nigeria' Advances in Social Sciences Research Journal (2018) 5 <http://scholarpublishing.org/index.php/ASSRJ/article/view/4129> accessed 14 October 2024.

[134] Ibid.

[135] J-C Berthélemy and C. Sophie, 'Structural Changes in Asia and Growth Prospects After the Crisis' (2000) <http://www.cepii.fr/PDF_PUB/wp/2000/wp2000-09.pdf>

[136] Ridwan Ali, Jeffrey Alwang and Paul B. Siegel, *Is Export Diversification the Best Way to Achieve Export Growth and Stability? A Look at Three African Countries* (World Bank 1991) https://documents1.worldbank.org/curated/en/635281468774612514/pdf/multi0page.pdf ; I. C. Ogbonna, 'Private Sector Development and Economic Diversification: Evidence from Nigeria'. Advances in Social Sciences Research Journal (2018). 5(3) 170-183 DoI:10.14738/assrj.53.4129 accessed 22 May, 2025.

[137] Ibid 7.

[138] Achterbosch Thom, United Nations. Economic Commission for Africa; United Nations. Economic Commission for Africa. African Trade Policy Centre (2004-08). Trade liberalization under the Doha Development Agenda: options and consequences for Africa. ATPC work in progress;no. 2, viii, 93 Addis Ababa:©UNECA. https://hdl.handle.net/10855/384 accessed 16 May 2025; Ibukunolu James, 'Nigeria's Rising Insecurity: Implications for the Nigerian Economy'. The BudgIT Foundation (2024). https://budgit.org/nigerias-rising-insecurity-implications-for-the-nigerian-economy/ accessed 16 May, 2025; Hammouda, H.B., Karingi, S.N., Njuguna, A.E., and. Jallab, S.M . Diversification: towards a new paradigm for Africa's development, African Trade Policy Centre (ATPC) Work in Progress, (2006)35 Economic Commission for Africa https://mpra.ub.uni-muenchen.de/13359/1/MPRA_paper_13359.pdf accessed 16 May, 2025.

dependency on oil. Section three examines the constitutional and institutional foundations for economic diversification. Section four evaluates the challenges in implementing legal frameworks for economic diversification and the latter sections gives the recommendation and conclusion to the findings of the paper.

2.0 Historical Context of Nigeria's Economic Dependency on Oil

Nigeria's history as a major oil producer began with the start of production in the late 1950s. Shell-BP made the first oil discovery in Nigeria in 1956 at Oloibiri in the Niger Delta. A key role in the nation's oil industry was performed by the Nigerian National Petroleum Company (NNPC), which was founded in 1977 as a result of the discovery. The discovery of oil had a profound impact on Nigeria's economy. Initially, it brought significant wealth and economic growth, transforming Nigeria into one of Africa's largest oil producers.[139] However, this reliance on oil also led to several challenges. Nigeria's economy became heavily dependent on oil revenue, making it vulnerable to fluctuations in global oil prices. This volatility has led to economic instability and periods of boom and bust. The focus on oil led to the neglect of other sectors such as agriculture and manufacturing. This phenomenon, known as the "Dutch disease", made other sectors less attractive and hindered diversified economic growth.[140] Oil exploration and production have caused significant environmental damage, particularly in the Niger Delta region. Oil spills, gas flaring, and other activities have led to pollution and de gradation of ecosystems.

Nigeria has a long history of being economically dependent on oil, dating back to its colonial past. After oil was discovered in the 1950s, the economy shifted from being dependent on agriculture to petroleum, which made it more vulnerable and volatile.[141] This overdependence on oil has exposed Nigeria to global price fluctuations, causing inconsistent economic growth and hindering long-term development. Previously, oil accounted for over 90% of exports, 25% of GDP, and 80% of government revenues[142] but in recent times, Nigeria's economic reliance on oil has diminished, yet the sector remains a significant component of the nation's economy,[143] leading to neglect of other sectors and fiscal instability. States that produce oil and the federal government are at odds over the current revenue-sharing arrangement. It is suggested that adopting stringent fiscal measures, diversifying the economy, and modifying the revenue-sharing formula in favour of derivation—possibly going back to a 50% retention model for states— is necessary in order to address these problems.[144]

[139] Adzraa Andira and Freya Harber, 'Colonial Legacy and Development: Reflection on Nigeria's Oil Dependency and Economic Resilience amidst the COVID-19 Pandemic' (2022) 3 Jurnal Sentris 168 <https://journal.unpar.ac.id/index.php/Sentris/article/view/6106> accessed 15 October 2024.

[140] Yakub Maaji Umar, 'The Impact of Oil on Nigeria's Economy: The Boom and Bust Cycles' (2008) 32 Central Bank of Nigeria, Abuja

[141] IA Paul, A Historical Perspective of Petroleum on Nigerias Economy Crisis since Independence (Global Journal of Human-Social Science Research (2015) Online ISSN: 2249-460x & Print ISSN: 0975-587X

[142] Agbaeze Udeh and IO Onwuka, 'Resolving Nigeria' s Dependency on Oil – The Derivation Model' (2015) 7 Journal of African Studies and Development <https://academicjournals.org/journal/JASD/article-full-text-pdf/D12F4AA49306>

[143] Foreign Trade in Goods Statistics (Q1 2024), National Bureau of Statistics (2025). Available at https://www.nigerianstat.gov.ng/elibrary/read/1241511 accessed 16 May, 2025

[144] ibid

3.0 Constitutional and Institutional Foundations for Economic Diversification

3.1 *Constitutional provisions for economic development*

A number of provisions in the 1999 Nigerian Constitution support economic development with the goal of securing a prosperous and sustainable future for all residents. These provisions, which are dispersed throughout several sections, demonstrate the government's dedication to promoting economic development, defending property rights, and guaranteeing a fair allocation of resources. Chapter II of the Constitution,[145] specifically Section 16,[146] outlines the economic objectives of the Nigerian state. It mandates the government to harness the resources of the nation and promote a planned and balanced economic development. The aim is to ensure that the material resources of the nation are harnessed and distributed to serve the common good and that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of a few individuals or of a group.[147]

Nigeria's federal system, detailed in Section 2,[148] allows for the distribution of powers and re sponsibilities between the federal and state governments. This decentralisation is intended to promote economic development by allowing states to tailor policies to their unique economic circumstances. The federal structure fosters regional economic growth and empowers states t o manage their resources effectively. Sections 44(3) and 162[149] provide for the control and management of natural resources. Section 44(3) states that the entire property in and control of all minerals, mineral oils, and natural gas in, under, or upon any land in Nigeria or in, under, or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly. Section 162 establishes the Federation Account, into which all revenues collected by the federal government are paid and then distributed among the three tiers of government—federal, state, and local governments—thereby ensuring equitable distribution of resources.

Section 16(2)[150] emphasizes the need for the federal government to implement national economic plans and policies aimed at achieving sustainable development. This includes the preparation of budgets and the allocation of resources to various sectors of the economy to ensure a balanced and equitable growth. Section 43 of the Constitution[151] guarantees the right to acquire and own property anywhere in Nigeria. This protection of private property is essential for economic development as it encourages investment and entrepreneurship, ensuring that individuals and businesses can securely hold and transfer assets. Section 16(1)(c)[152] encourages the promotion of local industries by fostering the development of small and medium-sized enterprises (SMEs). The objective is to diversify the economy, reduce dependence on oil, and create employment opportunities. Supporting local industries is seen as

[145] 1999 Constitution of the Federal Republic of Nigeria
[146] ibid
[147] Sam Aluko, 'Being an Excerpt of A Lecture Titled "Awolowo's Development Strategy During The Centenary Celebration of The Birth of The Late Chief Awolowo', Held At Trade Fair Complex, Adetiloye Hall, Ado-Ekiti, Ekiti State On Friday March 13, 2009. Organised By Afenifere Renewal Group In Ekiti State. Available at http://www.osundefender.org/?p=3626 accessed 22 May, 2025.
[148] Ibid 19
[149] ibid
[150] ibid
[151] ibid
[152] ibid

a crucial step towards achieving sustainable economic growth. Section 16(1)(b)[153] emphasizes the importance of social welfare programs. The Constitution requires the state to focus its policies on providing all people with appropriate and sufficient housing, appropriate and sufficient food, an acceptable national minimum living wage, pensions and care for the elderly, unemployment insurance, sick benefits, and assistance for the disabled. These programs aim to improve the quality of life and reduce poverty, contributing to a more stable and productive society. Section 20[154] underscores the state's responsibility to protect and improve the environment. This provision is crucial for sustainable economic development as it ensures that economic activities do not compromise the environmental health of the nation. Measures to prevent pollution and promote environmental conservation are integral to achieving long-term economic sustainability.

By adhering to these constitutional provisions, Nigeria aims to create a framework for economic development that is inclusive, sustainable, and equitable. These sections of the Constitution highlight the nation's commitment to fostering an environment where economic growth can thrive, benefiting all citizens and ensuring a prosperous future. However, these provisions are non-justiciable under section 6(6)(c), meaning they cannot be legally enforced in court. This poses a significant limitation to economic diversification efforts, as citizens and stakeholders lack legal recourse to compel compliance. Furthermore, the state's failure to translate these aspirational goals into binding obligations undermines policy coherence and accountability. Moreover, the broad and ambiguous language used in Chapter 2 creates interpretive gaps, which impede strategic implementation. Legal scholars argue that unless these provisions are elevated to enforceable rights, they will remain mere rhetorical commitments.[155] Thus, constitutional reform is essential to make economic diversification a legally actionable objective.

3.2 *Federal and state roles in economic policy and diversification.*

Nigeria's economic policy and diversification efforts are shaped by the collaborative roles of both the federal and state governments. The Constitution of Nigeria delineates the responsibil ities of each level of government, ensuring a balanced approach to economic development and diversification. The federal government plays a pivotal role in shaping the overall economic policy of the country. In order to achieve sustainable development, it is in charge of creating and carrying out national economic plans and policies. According to Sections 162 and 44(3) of the Constitution, the federal government is also in charge of managing the nation's natural resources. This involves allocating resources to different economic sectors in order to guarantee balanced growth.[156] Additionally, the federal government is tasked with promoting economic diversification to reduce the country's dependence on oil revenues. This involves implementing policies that support the development of non-oil sectors such as agriculture, manufacturing, and services.[157] The federal government also plays a crucial role in attracting

[153] ibid
[154] ibid
[155] Ogugua Ikpeze, Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development. Developing Country Studies. (2015)5. 48-56. https://www.researchgate.net/publication/282816601_Non-Justiciability_of_Chapter_II_of_the_Nigerian_Constitution_as_an_Impediment_to_Economic_Rights_and_Development accessed 16 May, 2025
[156] 'Economic Diversification in Nigeria: The Politics of Building a Post-Oil Economy' (*Carnegie Endowment for International Peace*) <https://carnegieendowment.org/research/2022/06/economic-diversification-in-nigeria-the-politics-of-building-a-post-oil-economy?lang=en> accessed 15 October 2024
[157] ibid

foreign investment and fostering international trade relations, which are essential for economic growth and diversification.[158]

Nigerian state governments are largely in charge of economic diversification and policy. They possess the authority to oversee their assets and execute policies customised to their distinct financial conditions. States are able to take advantage of local economic possibilities and problems because to this decentralised approach.[159] State governments are also in charge of helping small and medium-size enterprises (SMEs) and advancing regional sectors. States can contribute to economic diversity and generate employment opportunities for their residents by encouraging the growth of local enterprises. State governments also have a significant impact on infrastructure development and social welfare programs, both of which are necessary for economic development.[160]

In examining the economic roles of the federal and state governments within Nigeria's federal structure, a critical analysis of the legislative lists is pertinent. The Constitution divides legislative powers into three lists: Exclusive, Concurrent, and Residual. The Exclusive Legislative List grants the federal government sole authority over critical economic sectors such as banking, telecommunications, and natural resources.[161] This concentration of economic powers significantly restricts states' autonomy to legislate on and develop key sectors, thereby stifling economic diversity. For instance, despite possessing abundant mineral resources, states lack constitutional authority to regulate or exploit them independently, as control is vested in the federal government.[162] The Concurrent List allows both federal and state governments to legislate, but in cases of conflict, federal law prevails.[163] This often leads to a centralised policy regime that disregards regional economic specificities and impedes innovation at the subnational level. Consequently, states are unable to fully leverage local advantages, resulting in economic underperformance and fiscal dependency on federal allocations. In a true federalist economy, decentralisation fosters competition, efficiency, and inclusive development. Nigeria's current constitutional arrangement thus necessitates reform to empower states and promote balanced, diversified economic growth.

Achieving economic diversification and sustainable development requires cooperation between the federal and state governments. State governments carry out policies and initiatives according to their particular requirements, while the federal government provide the general framework and assistance. All areas of the nation will profit from comprehensive and inclusive economic development initiatives thanks to this alliance.[164] The roles of the federal and state governments in economic policy and diversification in Nigeria are complementary and essential for achieving sustainable growth. By working together, these levels of government can address economic challenges, promote diversification, and create a more resilient and prosperous economy for all Nigerians.[165]

[158] Adegboyo OS, Keji SA and Fasina OT, 'The Impact of Government Policies on Nigeria Economic Growth (Case of Fiscal, Monetary and Trade Policies)' (2021) 7 Future Business Journal 59 <https://doi.org/10.1186/s43093-021-00104-6> accessed 15 October 2024
[159] Ibid 26
[160] Ibid
[161] Sections 4(2) and Part I of the Second Schedule 1999 Constitution
[162] Section 44(3) 1999 Constitution
[163] Section 4(5) 1999 Constitution
[164] Ibid 28
[165] ibid

3.3 *Role of Key Institutions (National Assembly, executive, and regulatory agencies)*

Economic diversification is a critical goal for Nigeria, aiming to reduce the country's dependence on oil revenues and foster sustainable growth across various sectors. Key institutions, including the National Assembly, the executive arm, and regulatory agencies, play pivotal roles in driving this agenda. Diversification-promoting laws and economic policies are shaped in large part by the National Assembly, which is made up of the Senate and the House of Representatives. The National Assembly passes legislation using its legislative authority to foster investment in non-oil industries like manufacturing, technology, and agriculture. The National Assembly has enacted multiple bills with the objectives of augmenting the financing options available to small and medium-sized enterprises (SMEs), fostering the use of local content in diverse industries, and improving infrastructure. In order to guarantee that government policies and initiatives are carried out successfully, the National Assembly also performs oversight duties.[166]

The executive branch, led by the President and the Federal Executive Council, plays a crucial role in formulating and implementing economic policies that drive diversification. The administration of President Bola Tinubu has reaffirmed its commitment to economic diversification, focusing on sectors such as agriculture, manufacturing, and the digital economy. The Renewed Hope Agenda, introduced by President Tinubu, outlines strategies to boost economic growth, enhance competitiveness, and maintain stability. The executive branch also collaborates with international partners and the private sector to attract investments and create job opportunities.[167] Regulatory agencies in Nigeria are essential in ensuring compliance with laws and regulations that support economic diversification.[168] The Central Bank of Nigeria (CBN) plays a significant role in promoting financial inclusion and providing access to credit for businesses in non-oil sectors.[169] The CBN's policies aim to stimulate economic growth by supporting SMEs and fostering innovation in the financial sector.[170] Other regulatory agencies, such as the Nigerian Investment Promotion Commission (NIPC) and the Nigerian Export Promotion Council (NEPC), work to attract foreign investments and promote non-oil exports.[171] These agencies collaborate with the government and private sector to create a favorable business environment and enhance the country's export potential.

Recent efforts by these key institutions have shown promising results in advancing economic diversification. The Nigeria-Canada Trade and Investment Business Forum 2024, organized by the Ministry of Foreign Affairs, highlighted opportunities for collaboration in sectors such as

[166] Pai BH, 'The Role of the National Assembly in Sustenance of Democracy in Nigeria' (*Voice of Nigeria*, 2 October 2024) <https://von.gov.ng/the-role-of-the-national-assembly-in-sustenance-of-democracy-in-nigeria/> accessed 15 October 2024

[167] L. Usigbe, 'NESG: We Must Prioritise Economic Diversification to Move Forward — Tinubu' (*Tribune Online*, 14 October 2024) <https://tribuneonlineng.com/nesg-we-must-prioritise-economic-diversification-to-move-forward-tinubu/> accessed 15 October 2024

[168] A. Nlebem, 'Regulatory Bodies as Agents of Business Growth and Economic Development' (*Businessday NG*, 3 December 2019) <https://businessday.ng/opinion/article/regulatory-bodies-as-agents-of-business-growth-and-economic-development/> accessed 15 October 2024

[169] 'List of Financial Regulatory Bodies in Nigeria – Nigerian Finder' (22 November 2021) <https://nigerianfinder.com/list-of-financial-regulatory-bodies-in-nigeria/> accessed 15 October 2024

[170] ibid

[171] ibid

energy, agribusiness, fintech, and the blue economy.[172] This forum brought together stakeholders from both countries to discuss investment opportunities and strengthen economic ties.[173] Additionally, the World Bank's report on strengthening economic diversification through connectivity emphasizes the importance of spatial integration and sub-national specialization to create a nationally-integrated market for goods and services.[174] The National Assembly, the executive arm, and regulatory agencies play crucial roles in driving economic diversification in Nigeria. Their collaborative efforts, recent initiatives, and strategic policies are essential for reducing dependence on oil revenues and fostering sustainable growth across various sectors. By continuing to implement these measures, Nigeria can achieve a more resilient and diversified economy, benefiting all its citizens.

4.0 Challenges in Implementing Legal Frameworks For Economic Diversification

Nigeria confronts a number of obstacles when putting economic diversification legal frameworks into practice. These barriers make it more difficult for the nation to lessen its reliance on oil and promote sustainable growth in a number of industries. It is essential understand these obstacles in order to create successful solutions.

4.1 *Gaps in Policy Implementation*

The difference between policy creation and execution is one of the main problems. Although the Nigerian government has passed a number of laws to encourage economic diversification, these laws are frequently not effectively implemented. Insufficient funding, ineffective bureaucracy, and a lack of political will are the causes of this disparity. Even well-designed policies cannot accomplish their goals without being implemented effectively.[175] It is also essential to consider the institutional and systemic issues that perpetuate this gap. One such issue is the frequent disconnect between federal and state government priorities. While national policies may outline ambitious economic goals, inadequate coordination at sub-national levels often leads to inconsistent or stalled implementation. Additionally, poor data management and lack of evidence-based planning hinder effective monitoring and evaluation. Without accurate, timely data, it becomes difficult to assess progress, identify bottlenecks, or redesign failing initiatives. An example is the Agricultural Transformation Agenda (ATA) launched in 2011 to diversify the economy through agriculture. Despite its promise, the ATA faltered due to weak institutional capacity, inadequate extension services, and poor monitoring frameworks, leaving many smallholder farmers unreached.[176] Furthermore, policy reversals following political

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[172] N.M. Partners, 'Nigeria-Canada Business Sets Stage for Economic Partnership and Transformation' (*Nairametrics*, 15 October 2024) <https://nairametrics.com/2024/10/15/nigeria-canada-business-sets-stage-for-economic-partnership-and-transformation/> accessed 15 October 2024

[173] ibid

[174] 'Strengthening Economic Diversification in Nigeria through Connectivity' (*World Bank*) <https://www.worldbank.org/en/country/nigeria/publication/strengthening-economic-diversification-in-nigeria-through-connectivity> accessed 15 October 2024

[175] Odo Linus Ugwu , 'Challenges and Strategies for Effective Policy Implementation in Nigeria' International Policy Brief Series Social Science and Law Journal of Policy Review and Development Strategies (2015) 4 <Website: http://internationalpolicybrief.org/journals/social-science-and-law-journal-vol4-no1 > Felix Olamide, Ohunyeye, E Kalu Agbaeze, Omonona Solomon and Joseph, Obamen, Economic Diversification and National Development in Nigeria: Challenges and Prospects. International Journal of Mechanical Engineering and Technology (2019) 10(8), pp. 98-108., Available at SSRN: https://ssrn.com/abstract=3445930 accessed 15 October 2024.

[176] A.A. Coker, O. O. Alabi and C. O. Adebayo, 'A review of the existing agricultural policies in Nigeria and their implications for effective implementation of the Agricultural Transformation Agenda'. Journal of Agriculture, Forestry and the Social Sciences, African Journal Online (2012) Vol. 10 No. 2, eISSN: 1597-0906 https://www.ajol.info/index.php/joafss/article/view/98298 accessed 20th May, 2025, Angela Emodi, Restructuring the Agricultural Extension Service for Effective Agricultural Transformation Agenda in Nigeria. Greener Journal

transitions undermine continuity. New administrations often discard or underfund existing policies, regardless of their merit. Strengthening bureaucratic independence, enhancing intergovernmental coordination, and institutionalizing monitoring frameworks can help close these policy implementation gaps. Without addressing these structural deficiencies, even well-intentioned policies risk remaining mere aspirations.

4.2 *Corruption and Governance Issues*

Nigeria's economic diversification is yet severely hampered by corruption. The misappropriation of public funds, incompetence in resource management, and murky government practices impede the advancement of non-oil industries. To foster an atmosphere that is favourable to economic diversification, corruption must be addressed and governance must be strengthened.[177] Corruption and weak governance significantly obstruct Nigeria's economic diversification by misallocating resources, discouraging investment, and eroding public trust. Beyond financial misappropriation, corruption manifests through inflated contracts, nepotistic appointments, and regulatory capture, which collectively diminish institutional effectiveness. A poignant example is the audit of the Niger Delta Development Commission (NDDC), which revealed pervasive financial mismanagement and over 13,000 abandoned projects—despite billions in allocations. This not only stalled regional development but eroded investor confidence.[178]

Moreover, corruption distorts economic incentives, allowing unproductive sectors to thrive at the expense of innovation and entrepreneurship. Empirical studies confirm a strong negative correlation between corruption and foreign direct investment (FDI), indicating that investors perceive Nigeria as high-risk due to governance uncertainty.[179] The politicisation of economic institutions further entrenches inefficiency, as appointments are often based on patronage rather than competence. To close this gap, Nigeria must strengthen its anti-corruption framework, ensure judicial independence, and enforce transparency in public procurement processes.

4.3 *Poor Infrastructure*

Another important problem is inadequate infrastructure. Inadequate water and sanitation infrastructure, shoddy road networks, and unstable electricity supplies discourage investment and impede economic activity. Enhancing infrastructure is essential for fostering the expansion of non-oil industries and drawing in both foreign and domestic capital.[180] Nigeria's infrastructure deficit is profound, with the country's infrastructure stock constituting only 30% of its GDP, significantly below the World Bank's benchmark of 70%.[181] This shortfall hampers the growth of non-oil sectors such as agriculture, manufacturing, and services. A critical example is the unreliable power supply. Nigeria's national grid frequently collapses, leading to

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of Agricultural Sciences (2013) Volume 3. pp. 516-522. DOI:10.15580/GJAS.2013.3.061013660 accessed 20th May, 2025.

[177] Ibid 42&43

[178] Agency Report, 'NDDC Audit Uncovers Over 13,000 Abandoned Projects'. *Premium Times*. (2021) https://www.premiumtimesng.com/regional/south-south-regional/482667-nddc-audit-report-submitted-13000-projects-abandoned-in-niger-delta.html accessed 20 May, 2025.

[179] S. Olayiwola and L. Okodua, 'Foreign Direct Investment, Non-Oil Export and Economic Growth in Nigeria: A Causality Analysis'. Annual Conference on Africa, Lagos, (2009) 12-14 https://www.scirp.org/reference/referencespapers?referenceid=2700921 accessed 20 May, 2024

[180]Ibid 43; Bello M and Aliyu C, 'Diversification of the Nigerian Economy for Sustainable Development: Issues and Challenges' [2016] Journal of Economics, Business and Management <https://www.semanticscholar.org/paper/Diversification-of-the-Nigerian-Economy-for-Issues-Bello-Aliyu/6b8b3746f1fd47e8adf23bcc36fdae05d9862483> accessed 15 October 2024

[181] Agusto & Co, '2024 Infrastructure Industry Report: Overview of the Report' https://www.agustoresearch.com/report/2024-infrastructure-industry-report accessed 21 May, 2025

substantial economic losses estimated at $29 billion annually.[182] This instability forces businesses to rely on costly alternatives like diesel generators, increasing operational expenses and deterring investment. Moreover, the poor state of transportation infrastructure, including dilapidated roads and inadequate rail networks, escalates logistics costs and impedes market access, particularly for agricultural producers.[183] Addressing these infrastructural challenges is imperative for Nigeria's economic diversification. Strategic investments in power, transportation, and digital infrastructure are essential to create an enabling environment for the growth of non-oil sectors and to attract both domestic and foreign investments.

4.4 *Over-specialization and Lack of Diversification*

Due to Nigeria's historical reliance on oil, this industry has become overly specialised. Because there is frequently a shortage of the requisite infrastructure, expertise, and skills, this over-reliance makes it challenging to shift focus to other areas. Developing human capital and making investments in new industries are two key components of promoting diversification.[184] Nigeria's heavy reliance on the oil sector has rendered the economy vulnerable to external shocks, such as fluctuations in global oil prices. This mono-product dependency has led to neglect in other vital sectors like agriculture, manufacturing, and services, which are essential for sustainable economic growth and employment generation.[185] The overemphasis on oil has also resulted in the underdevelopment of the manufacturing sector, limiting the country's ability to add value to its raw materials and reducing competitiveness in global markets. Furthermore, the lack of diversification has impeded the development of human capital, as investments in education and skill acquisition tailored to other sectors have been insufficient. This scenario perpetuates a cycle where the workforce is ill-equipped to participate in or drive growth in non-oil industries.

Additionally, the focus on oil has led to environmental degradation, particularly in the Niger Delta region. Decades of oil extraction have caused significant ecological damage, affecting local communities and their livelihoods. This environmental harm further exacerbates the challenges of economic diversification, as it diminishes the potential for sustainable development in affected areas.[186] To address these Nigeria must implement policies that encourage investment in non-oil sectors, promote sustainable environmental practices, develop human capital to support diversification efforts, enhance infrastructure, and foster an

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[182] Isaac Anyaogu, 'Explainer: Why Nigeria's power grid is failing' Reuters 2024 https://www.reuters.com/world/africa/why-nigerias-power-grid-is-failing-2024-12-11 accessed 21 May, 2025

[183] Ibid

[184] Ibid 43

[185] M Anyaehie, & A. Areji 'Economic Diversification for Sustainable Development in Nigeria'. *Open Journal of Political Science* (2015) 5(2), 87-94. https://doi.org/10.4236/ojps.2015.52010SCIRP
A. Y. Obafemi, 'Specialization Versus Diversification as Alternative Strategies for Sustainable Growth in Resource-Rich Developing Countries: Case of Nigeria'. Studia Universitatis Vasile Goldis Arad – *Economics Series* (2022) 32(3), 1-47. https://doi.org/10.2478/sues-2022-0011ResearchGate+2IDEAS/RePEc+2Sciendo+2
L. O. Oyelami & P. O. Alege Economic Diversification in Nigeria: Lessons from Other Countries of Africa. Development Bank of Nigeria (2018).. https://dbn-bucket.s3.eu-west-2.amazonaws.com/publications/economic-diversification-in-nigeria-lessons-from-other-countries-of-africa-C0KJoln3LYOIEpzZitk.pdf accessed 21 May, 2025

[186] Godspower Omokaro, 'Oil Extraction and the Environment in Nigeria's Niger Delta: A Political-Industrial Ecology (PIE) Perspective' Asian Journal of Advanced Research and Reports (*2024)* volume 18, issue 11 *DOI:10.9734/ajarr/2024/v18i11784 accessed 21 May, 2025;* Faithwin Gbadamosi & Jared Aldstadt, 'The Interplay Of Oil Exploitation, Environmental Degradation And Health In The Niger Delta: A Scoping Review' A European Journal of Tropical Medicine & International Health, Wiley Online Library (2025) https://doi.org/10.1111/tmi.14108 accessed 21 May, 2025.

environment conducive to innovation and entrepreneurship. Such measures would not only mitigate the risks associated with over-specialization but also pave the way for a more resilient and inclusive economy.

4.5 *Inadequate Financial Access*

One of the biggest obstacles facing small and medium-sized businesses (SMEs) and entrepreneurs trying to diversify their businesses is getting access to financing. Many companies find it difficult to obtain loans and other forms of funding, which restricts their capacity to develop and expand. Overcoming this obstacle can be accomplished by bolstering the financial industry and offering focused assistance to SMEs.[187] Inadequate financial access remains a major barrier to Nigeria's economic diversification, particularly for micro, small, and medium enterprises (MSMEs). Despite their critical role in employment and GDP, many MSMEs lack access to credit due to high interest rates, stringent collateral requirements, and limited banking infrastructure, especially in rural areas. These factors have been identified as core barriers hindering SME financing in Nigeria.[188] Additionally, most financial institutions do not offer products tailored to the specific needs of MSMEs, resulting in a mismatch between demand and supply.[189] The World Bank reports that only 6.7% of Nigerian enterprises had an active loan or credit line as of 2014, reflecting low financial inclusion. Bridging this gap requires reducing lending constraints, developing SME-targeted financial products, expanding financial infrastructure, and improving financial literacy. These steps are essential to unlocking MSMEs' potential in driving economic diversification.[190]

4.6 *Regulatory and Legal Frameworks*

Nigeria's regulatory and legal frameworks present significant challenges to economic diversification. Frequent policy reversals and inconsistent enforcement create an unpredictable business environment, deterring both domestic and foreign investment. For instance, the lack of coordination among federal, state, and local authorities often results in overlapping regulations and multiple taxation, increasing operational costs for businesses and discouraging formal sector participation.[191] Additionally, bureaucratic inefficiencies and corruption within regulatory agencies further hinder the ease of doing business. The Companies and Allied Matters Act (CAMA) 2020 aimed to streamline business registration and promote transparency; however, its implementation has been slow and uneven, limiting its effectiveness in fostering a conducive business climate.[192] To address these issues, Nigeria must prioritize regulatory reforms that ensure policy consistency, reduce bureaucratic red tape, and enhance transparency. Strengthening institutional capacities and fostering inter-agency collaboration are also crucial steps toward creating a stable legal environment that supports economic

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[187] ibid

[188] Babandi Ibrahim Gumel & Barjoyal Bin Bardai 'Barriers to Accessing Financial Institutions Funding for Nigerian SMEs' International Journal of Business and Economics Research (2021) Vol. 10, No. 6, pp. 219-226. doi: 10.11648/j.ijber.20211006.12

[189] Ibid

[190] Sophie DongAndrej, Popovic Michael Wong & Michael Fuchs, 'Tackling Access to Finance for Micro, Small, And Medium Enterprises In Nigeria: The Development Bank of Nigeria - A Successful Venture into Uncharted Waters' Published on Africa Can End Poverty, The World Bank Group 2023 https://blogs.worldbank.org/en/africacan/tackling-access-finance-micro-small-and-medium-enterprises-nigeria-development-bank accessed 21 May, 2025

[191] Mridhu Khanna, 'Webinar Summary – Economic Diversification in Nigeria: The Politics of Building a Post-Oil Economy' Boston University Global Development Policy Center, Pardee School of Global Studies (2022) https://www.bu.edu/gdp/2022/12/22/webinar-summary-economic-diversification-in-nigeria-the-politics-of-building-a-post-oil-economy accessed 22 May, 2025

[192] Sections 18, 27, 29, 814 & 815 Companies and Allied Matters Act, 2020

diversification.[193] Economic diversification may not be supported by the current legal and regulatory frameworks. Businesses and investors face obstacles due to convoluted regulations, inconsistency in enforcement, and bureaucratic red tape. Establishing uniform enforcement and streamlining laws can contribute to the development of a more advantageous business climate.[194]

4.7 *Education and Skill Development*

Nigeria's education system faces significant challenges in aligning with the country's economic diversification goals. A lack of relevant skills and education is a significant impediment to economic diversification. The education system in Nigeria often does not align with the needs of emerging industries, leading to a skills mismatch in the labor market. Investing in education and vocational training programs can help bridge this gap and prepare the workforce for new economic opportunities.[195] Another critical issue is the mismatch between academic curricula and the practical skills demanded by emerging industries. Many graduates lack competencies in areas such as digital technology, renewable energy, and manufacturing, limiting their employability in non-oil sectors.[196] Technical and vocational education and training institutions, including polytechnics, are underfunded and often overlooked, despite their potential to equip students with industry-relevant skills. There is the need to redefine the mandate of polytechnic education to support economic diversification and sustainable development. Moreover, the absence of robust partnerships between educational institutions and industries hampers the development of curricula that reflect current market needs.[197] To address these challenges, Nigeria must invest in modernizing educational infrastructure, updating curricula to include practical and technological skills, and fostering collaborations between academia and industry. Such reforms are essential to produce a workforce capable of driving and sustaining economic diversification efforts.

4.8 *Political Instability and Uncertainty*

Political instability and uncertainty can deter investment and hinder economic diversification efforts. Frequent changes in government policies, political unrest, and insecurity create an unpredictable environment for businesses. Ensuring political stability and creating a predictable policy environment are essential for attracting investments and promoting diversification.[198] Although Nigeria has made progress in diversifying its economy, a number of obstacles prevent laws from being implemented effectively. A multifaceted strategy is needed to overcome these challenges, including better governance, infrastructure investment, more financial accessibility, and education that is in line with business demands. By addressing these issues, Nigeria may diversify and strengthen its economy, lessening its reliance on oil, and promote long-term, steady growth.

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[193] O. B Kenoll & E. C. Agedah, "The Need for Diversification of the Nigerian Economy through a Low-Carbon Energy Mix." Int'l J. of Energy and Environmental Research (2024) 12(2), 55–82. https://doi.org/10.37745/ijeer.13/vol12n25582 accessed 22 May, 2025

[194] Ibid 5

[195] Ibid 43

[196] M. K. Hazzan, 'Managing the Nigerian Education System: A Blueprint for Economic Diversification and Emancipation'. Preprints (2024) https://www.preprints.org/manuscript/202406.0802 accessed 22 May, 2025

[197] S. B. Kalagbor, 'Redefining the Mandate of Polytechnic Education for Economic Diversification and Sustainability in Nigeria'. *Journal of Social and Political Sciences* (2024) 7(1). https://ssrn.com/abstract=4733181 accessed 22 May, 2025

[198] Ibid 5

5.0 Conclusion

Nigeria's journey toward economic diversification is vital for ensuring sustainable national development, especially as the country seeks to reduce its over-reliance on oil revenues. Despite well-intentioned policies and legal frameworks, numerous challenges impede progress, including weak governance, corruption, poor infrastructure, and a lack of skilled labor. These issues must be addressed through a multi-faceted approach that prioritizes effective governance, infrastructure development, human capital improvement, and financial inclusion.

To achieve sustainable and inclusive economic growth, Nigeria must also streamline its legal and regulatory frameworks, reduce bureaucratic barriers, and foster political stability. By taking these steps, the country can create an enabling environment for the development of non-oil sectors, thereby enhancing national resilience and promoting long-term economic stability. Ultimately, Nigeria's success in economic diversification will not only ensure better livelihoods for its citizens but also strengthen its position in the global economy.

6.0 Recommendations

To overcome the challenges in implementing legal frameworks for economic diversification in Nigeria, several targeted strategies need to be adopted. There is a need for improved policy implementation mechanisms. This is because, the creation and implementation of policies differ significantly. It is recommended that the government institute monitoring and assessment structures to guarantee a rigorous adherence to policies. Nigeria can bridge the gap between policy formulation and practical application by establishing a specialised agency or task force to supervise the execution of laws and policies relating to diversification. Also, one major barrier to economic diversification is still corruption. Nigeria must strengthen organisations like the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) in order to step up its anti-corruption operations. Diversification will be encouraged by implementing transparent financial processes and enhancing resource management at all governmental levels.

In addition, addressing the inadequacies in infrastructure is essential for supporting the growth of non-oil sectors. The government should prioritize investments in critical infrastructure such as transportation networks, reliable power supply, and sanitation facilities. Public-private partnerships (PPPs) can play a key role in financing and implementing large-scale infrastructure projects that will attract investors and boost economic activities. The creation of a trained labour force is essential for effective diversification. Investments in education, especially on vocational and technical training, should take into account the demands of developing sectors of the economy like manufacturing, technology, and agriculture. The government must reform the education system to address skill mismatches and equip citizens with the competencies required for a diversified economy.

Also, strengthening financial institutions and creating more favorable lending conditions will support SMEs in expanding and contributing to economic growth. Government-backed initiatives, such as offering guarantees for SME loans and reducing interest rates, should be encouraged. There is also the need to reform regulatory and legal frameworks. Investors are discouraged and business growth is impeded by the bureaucratic red tape and onerous regulatory requirements. To create an atmosphere that is favourable to investment, it is imperative to simplify rules, guarantee uniformity in their implementation, and furnish firms with more explicit directives. Investor confidence will soar and company ease of doing business will be facilitated by a single, cohesive legal framework. Nigeria is capable of drawing in and keeping both foreign and domestic investors by fostering peace, security, and well-defined, long-term economic plans.

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Evaluation of the Effectiveness of the of United Nations Convention Against Corruption in Combating Corruption in Nigeria

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Abstract

This study undertakes a comprehensive evaluation of the effectiveness of the United Nations Convention Against Corruption (UNCAC) in combating corruption within Nigeria. Recognizing the Convention's status as the foremost global legal instrument against corruption, the research delves into its implementation within the Nigerian context, analysing its impact on the country's anti-corruption efforts. The study explores the key provisions of the UNCAC, focusing on areas such as preventive measures, criminalization of corrupt practices, international cooperation, asset recovery, and technical assistance. It further examines Nigeria's legal and institutional frameworks for combating corruption, assessing their alignment with the UNCAC's requirements. Through a combination of legal analysis, empirical data, and case studies, the research investigates the extent to which the UNCAC has influenced Nigeria's anti-corruption policies, legislation, and enforcement mechanisms. It also critically analyses the challenges and obstacles encountered in implementing the Convention's provisions, considering factors such as political will, institutional capacity, and socio-economic dynamics. By evaluating the UNCAC's effectiveness in curbing corruption in Nigeria, this study aims to provide valuable insights for policymakers, anti-corruption agencies, civil society organizations, and international stakeholders. The findings will contribute to the ongoing discourse on anti-corruption strategies, highlighting best practices and areas for improvement in strengthening the fight against corruption in Nigeria and beyond.

Keywords: *Anti-corruption, Anti-corruption laws, Provision, United Nations convention,*

Word count: *296*

Introduction

Corruption has long been a pervasive issue in Nigeria, hampering its growth, development, and stability. The country has suffered from decades of mismanagement of public resources, embezzlement, bribery, and other corrupt practices, which have severely undermined governance institutions, eroded public trust, and hindered foreign investment. Recognizing the urgent need to address corruption at both national and international levels, Nigeria ratified the United Nations Convention Against Corruption (UNCAC) in 2004. This multilateral treaty provided a comprehensive framework to prevent, investigate, and punish corruption, promoting international cooperation and the recovery of stolen assets.

In line with its commitment to combating corruption, the Nigerian government has enacted various legislation at the domestic level, including the Economic and Financial Crimes Commission (EFCC) Act, Independent Corrupt Practices and Other Related Offenses Commission (ICPC) Act, and the Money Laundering (Prohibition) Act, among others. These laws aim to align the country's legal framework with UNCAC obligations and strengthen its anti-corruption efforts. However, despite these legislative efforts, corruption continues to persist in various sectors of Nigerian society, including politics, public administration, law enforcement, and business. Implementation gaps, weak enforcement mechanisms, inadequate resources, and systemic challenges have hindered the effective implementation of the UNCAC provisions and Nigerian anti-corruption laws.

The United Nations Convention Against Corruption (UNCAC) is an international instrument for preventing and combatting corrupt practices globally and was adopted by the United Nations General Assembly in October 2003 and entered into force in December 2005[199]. Nigeria, a State Party to the UNCAC, signed the treaty on December 9, 2003, and ratified it on October 24, 2004, notwithstanding the fact that the UNCAC has yet to be domesticated in Nigeria in conformity with the provisions of the Constitution[200]. It is appropriate to highlight, however, Nigeria's legislative bodies, both at the national and state levels, have enacted numerous laws that align with various articles of the UNCAC. Houses of Assembly, and several implementation institutions have been established in light of such legislation[201]. The UNCAC is unique for its global coverage, the scope of its provisions, which includes but is not limited to preventive and punitive measures, its call on civil societies and non-governmental organizations to participate in the accountability process, and, most importantly, its provisions on international cooperation among State Parties by assisting each other in the fight against corruption. This paper sought to evaluate measures to effectively combat corruption in light of the provisions of the United Nations Convention.

Concept of Corruption

The term 'corruption' is a universal phrase that lacks a globally acknowledged definition. Interestingly, even the United Nations Convention Against Corruption, which was analyzed in this

[199] U4 Guide 2019 'A quick guide to the United Nations Convention against Corruption for donor agency and embassy staff' Available at, <https://www.u4.no/publications/uncac-in-a-nutshell-2019> accessed June 23, 2020.
[200] Constitution of the Federal Republic of Nigeria 1999 (Cap C23 /x LFN 2004) s 12.
[201] Corrupt Practices and Other Related Offences Act (Cap C31 LFN 2004), Economic and Financial Crimes Commission Act (Cap E1 LFN 2004) and code of Conduct Bureau and Tribunal Act (Cap C15 LFN 2004).

study and is one of the most important global anti-corruption tools, does not define corruption. The Convention simply enumerated and specified a range of offenses that should be criminalized by State Parties[202]. Regardless, so much ink has been spilled in an attempt to define corruption. "Corruption, as defined by Transparency International (TI), is 'the abuse of entrusted power for private gain,'[203] while the World Bank characterizes it as 'the abuse of public office for private gain.' These definitions, though concise, highlight the core concept of corruption as the misuse of authority for personal benefit." [204]

The definition of the World Bank restricts the definition of corruption to that involving public offices alone. While this may be true, since corruption largely involves public officials, it is also true however that corruption permeates through private institutions too. Uwais CJN (as he then was) captured it succinctly when he described corruption thus in *AG Of Ondo State V. AG Of the Federation & Ors*[205]: "Corruption is not a disease which afflicts public officers alone but society as a whole." statutory explanation of corruption is given by the Corrupt Practices and Other Related Offences Act when it defined corruption as that which includes bribery, fraud, and other related offenses[206]:

According to the Black's Law Dictionary in 2009, corruption is defined as:"an impairment of integrity, virtue, or moral principle; especially the impairment of a public official's duties by bribery or the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others"[207]. From the various definitions of corruption proffered above, this research seeks to adopt that of Transparency International,[208] which defines corruption as the abuse of entrusted power for private gain. This is premised on the understanding of the nature of corruption by this research, which is to the effect that all corrupt practices emanate from the abuse/wrong use of a particular form of power wielded. The power may take the form of physical power, political power, economic power, academic/intellectual power, spiritual power et cetera. This power, in whatsoever form, would provide the fertile ground for its possessor to perpetrate a corrupt practice, because a powerless man, literally and in the real sense, is indeed powerless and incapable of doing anything.

United Nations Convention Against Corruption

The United Nations Convention against Corruption (UNCAC) is a universal legal instrument to deal with the menace of Corruption including corruption at the global level. The UNCAC is a legally binding universal anti-corruption document that includes five major areas: preventive measures, criminalization and law enforcement, international collaboration, asset recovery, and

202. United Nations Convention Against Corruption (adopted October 2003, entered into force December 2005) (UNCAC) art 15-25.
203. <https://www.transparency.org/en/what-is-corruption#> accessed 21 July 2020.
204. <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> accessed 21 July 2020.
205. (2002) LPELR-623(SC).
206. Corrupt Practices and Other Related Offences Act 2000, section 2.
207. Garner Bryan A and Henry Campbell Black, Black's Law Dictionary (9th edn, St Paul Minnesota West2009) 397.
208 Transparency International is a global non-governmental organization that focuses on combating corruption. It is known for its Corruption Perception Index (CPI), which ranks countries based on perceived levels of public sector corruption.

technical aid and information exchange[209]. It addresses different forms of corruption in both the public and private sectors, including bribery, influence peddling, and function abuse. One of its key characteristics is the introduction of a particular chapter on asset recovery, which aims to return assets to their original owners, including countries from where they were illegally seized[210]. However, several scholars have noted shortcomings in the convention's provisions, particularly in terms of required language and ability to impact the domestic legal systems of its States Parties. Despite being a global treaty, UNCAC has been criticized for having weak and vague principles, which may restrict its usefulness in influencing domestic legal systems and preventing international collaboration in areas such as extradition and mutual legal assistance[211].

The UNCAC is a legally binding international treaty that aims to prevent and combat corruption in all its forms and the provision of the treaty include[212]:

1. **Preventive measures:** The Convention encourages countries to adopt and implement codes or standards of conduct for public officials, as well as to establish independent bodies to investigate allegations of corruption.
2. **Criminalization and law enforcement:** The Convention compels countries to outlaw several forms of corruption, including bribery, influence peddling, and abuse of functions. It also outlines processes for governments to recover assets that have been seized illegally.
3. **International cooperation:** The Convention promotes cooperation among countries in criminal matters related to corruption, including extradition, mutual legal assistance, and law enforcement.
4. **Asset recovery:** The Convention includes a chapter on asset recovery, which aims to return assets to their original owners, including countries from which they were taken illegally.
5. **Technical assistance and information exchange:** The Convention encourages countries to provide technical assistance and share information to help prevent and combat corruption.

The UNCAC has been ratified by the vast majority of United Nations Member States, making it a powerful tool in the global fight against corruption.

For 25 years, the United States stood alone in criminalizing the bribery of foreign public officials in international business transactions through the Foreign Corrupt Practices Act (FCPA). While many countries had some measures against domestic corruption, efforts to combat transnational bribery were particularly lacking. This inadequacy was compounded by several factors: underdeveloped internal control systems within companies, lax record-keeping requirements, and the allowance of tax deductions for bribes in many countries, including major capital exporters.[213] Furthermore, international cooperation was hampered by practical and legal obstacles. Bank

[209] Convention against Corruption <https://www.unodc.org/unodc/en/treaties/CAC/>.*
[210] Negotiating Peer Review of the UN Convention Against Corruption <https://www.jstor.org/stable/24526380>.
[211] The Limitations of the United Nations Convention against Corruption <https://academic.oup.com/book/36270/chapter-abstract/316512651?redirectedFrom=fulltext>.
[212] 2003 United Nations Convention against Corruption - UNTC <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=18&clang=_en&mtdsg_no=XVIII-14&src=IND>.
[213] This refers to the practice where companies could reduce their tax liability by claiming bribes as business expenses, effectively incentivizing corrupt behavior.

secrecy laws shielded illicit financial flows, and the requirement of dual criminality, meaning the offense had to be a crime in both countries involved, often hindered extradition and mutual legal assistance.[214] Adding to these challenges were the limited experience of prosecutors in handling complex transnational corruption cases and a general lack of political will in many nations to address the issue.

Early in the 1990s, a number of things happened that started to alter the political landscape both at home and abroad with regard to the corruption issue. Among other developments, the fall of the Berlin Wall and the Soviet Union, the expansion of democracy and more open societies (including a free press) throughout much of the world, globalization, and the predominance of market-based economic models created an environment that was favorable to openness, transparency, and merit-based. The costs of corruption were widely recognized by multinational corporations, and the distortions it caused were increasingly felt by governments and international organisations. The swift evolution of global anticorruption norms was accelerated by these developments. Almost a hundred nations have ratified treaties in the last ten years that mandate that they prosecute international bribery of foreign officials under the FCPA's anti-bribery provisions, that money laundering where the base offence is corrupt activity be prosecuted, and that they cooperate with other nations in their enforcement and investigation efforts. The development of international standards started with a regional convention in Latin America in 1996, spread to the major capital-exporting nations with the Organisation for Economic Co-operation and Development (OECD) Convention in 1997, gained regional traction with the adoption of the European Union Convention in the late 1990s, the Council of Europe Criminal and Civil Law Conventions, and the African Union Convention in 2003. To name a few of the most notable developments, the trend expanded to international financial institutions with the World Bank's adoption of new anticorruption rules in 1997[215].

The United Nations Convention Against Corruption (UNCAC), also known as the UN Convention or UN Corruption Convention, represents a significant step towards creating global anti-corruption norms. It aims to establish a shared set of duties for nations to collaborate on investigations and enforcement, addressing a critical gap in the fight against corruption. While advancements in anti-corruption measures were being made in various regions, these efforts remained largely haphazard. Following the conclusion of the Convention Against Transnational Organized Crime in November 2000, which included some anti-corruption measures, the United Nations recognized the need for a dedicated instrument to tackle corruption comprehensively. Negotiations for the UNCAC began in early 2002, culminating in the adoption of the Convention's text in the autumn of 2003. The Convention was opened for signature in Merida, Mexico, on December 9, 2003, and entered into

[214] Dual criminality mandates that an offense be recognized as a crime in both the requesting and requested countries for extradition or legal assistance to be granted. This can be problematic when countries have different definitions of corruption offenses.

[215.] Lucinda, A.L. 'The New Global Legal Framework: The OECD, OAS, and Council of Europe Antibribery Conventions: New International Standards and National Anti-Corruption Laws: Challenges for Effective Implementation And Enforcement, prepared for the IBA/ICC/OECD Conference on "The Awakening Giant of Anti-Corruption Enforcement," Paris 22-23 April 2004 ("2004 Paris Conference Comparative Paper"), IBA, <www.ibanet.org>.

force on December 14, 2005. By April 2006, 50 countries had ratified the Convention out of the 140 that had signed it.[216]

Important international players who are not signatories to any other international anticorruption convention are among the parties to the UN Convention. The People's Republic of China stands out in this respect. Furthermore, supporters of the Convention have already been drawn from almost every corner of the world. Its swift adoption by a significant number of nations, and the number is still rising, suggests that it has the ability to establish truly global norms and a global framework for government collaboration in the prosecution of corruption cases. Due to its universality, the Convention can fulfil a function that is not possible for any other international anticorruption agreement. Therefore, the UN Convention's importance to efforts to prevent corruption is undeniable. The Convention also breaks new ground by addressing topics not fully covered in other anti-corruption agreements, such as the OECD Anti-Bribery Convention[217] or the Inter-American Convention Against Corruption.[218] For instance, the UNCAC includes comprehensive provisions on asset recovery, a crucial aspect of combating corruption that was previously neglected in many international instruments. Additionally, its rules on collateral effects, such as the consequences of corruption convictions on public officials and businesses, are more expansive than those found in other agreements. This broader scope presents both opportunities and challenges. While the UNCAC provides prosecutors and other stakeholders with powerful new tools to fight corruption, it also carries potential risks, such as the possibility of misuse or unintended consequences.

Preventive Measures

The UNCAC, as the only legally binding universal anti-corruption instrument, is a powerful tool in combating corruption globally.[219] With 188 signatory states as of August 2021, its comprehensive framework addresses five key areas: preventive measures, criminalization and law enforcement, international collaboration, asset recovery, and technical aid and information exchange. Focusing on preventive measures, the UNCAC goes beyond previous conventions by promoting a proactive approach to combating corruption. It encourages state parties to: [220]

Develop and Implement Anti-Corruption Policies: The UNCAC urges countries to establish comprehensive and coordinated anti-corruption policies. This emphasizes the need for a holistic strategy that integrates anti-corruption measures across all sectors of government and society. By encouraging national ownership and tailored solutions, the UNCAC promotes sustainable anti-corruption efforts.

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216. The full text of the convention is available on the U.N. web site. <http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf. An index of signatories and parties is also available there. See http://www.unodc.org/unodc/crime_signatures_corruption.html>.

217 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).

218 Inter-American Convention Against Corruption (1996).

219. About the UNCAC <https://uncaccoalition.org/the-uncac/about-the-uncac/>.

220. United Nations Convention against Corruption <https://legal.un.org/avl/ha/uncc/uncc.html>.

Establish Independent Anti-Corruption Authorities: Recognizing the importance of independent oversight, the UNCAC calls for the establishment of specialized anti-corruption bodies with the authority and resources to investigate and prosecute corruption cases. These bodies play a crucial role in upholding the rule of law and ensuring accountability.

Improve Transparency and Objectivity in the Public Sector: The UNCAC promotes transparency and objectivity in public sector operations, including public procurement, hiring practices, and financial management. By advocating for open and competitive processes, the Convention aims to reduce opportunities for corruption and enhance public trust.

Engage Civil Society: The UNCAC recognizes the vital role of civil society and non-governmental organizations in preventing and combating corruption. It encourages their participation in monitoring government activities, raising public awareness, and promoting anti-corruption education.

These preventive measures, when effectively implemented, can significantly contribute to creating a culture of integrity and accountability. By addressing the root causes of corruption and promoting good governance, the UNCAC aims to prevent corruption before it occurs, rather than simply reacting to its consequences. This proactive approach is a significant advancement in the global fight against corruption, and its effectiveness is enhanced by the Convention's legally binding nature.

The UN Convention's preventative measures chapter goes beyond other anticorruption accords by emphasizing both public and private sector actions. It is noted that the private sector initiatives have the most potential to directly affect private businesses if they are put into place nationally.

Public Sector Measures

The public sector measures include requirements (subject to varying degrees of obligation, as previously noted) for nations to create anticorruption policies and practices, to establish independent anticorruption bodies, to select civil servants on the basis of merit and, in accordance with their level of development, to pay them appropriately, to establish codes of conduct for public officials that include measures to combat conflicts of interest, to implement transparent procurement systems, and to take other actions to enhance the transparency and accountability of public finances. Article 11 contains provisions that are fairly general in nature and pertain to the prevention of corruption in the prosecution and justice services.

In accordance with Article 10 of the public sector preventive measures, nations must also take steps to improve openness in public administration generally. These steps may include passing legislation granting freedom of information, streamlining administrative processes, and disseminating information. They mandate that nations take action to advance public access to information and opportunities for public participation in government decision-making, within their capacity and in compliance with core principles of domestic law (Article 13). If the United States' experience is any guide, the countries that implement these measures may find that they have a major effect.

Article 7(3) of the UN Convention, which addresses campaign money, is arguably the most contentious of the public sector preventive measures. According to this clause, nations must only

"consider" implementing "necessary legislative and administrative measures", compatible with the aims of this Convention and in line with the core values of their national legal systems, to improve transparency in the funding of political party campaigns and, where relevant, candidates for elected public office. This clause has drawn criticism for being so flimsy as to be completely useless due to the ambiguous nature of the "must consider" obligation. More vigorous action was anticipated, especially by those who believe that the U.S. system of campaign finance is crooked.

Private Sector Measures

The private sector-focused preventive measures in Chapter II urge nations to adopt a range of actions to stop corruption in the private sector, all while adhering to the core tenets of their own national legal systems. The quantity of preventive actions aimed at the private sector seems to indicate a shift in emphasis away from the public sector and a better understanding of the critical role that private sector performance and compliance play on the "supply side" of the corruption issue.

The UN Convention's clauses pertaining to the private sector mostly, but not exclusively, address the need to set up accounting and internal control requirements that roughly align with the FCPA's books and records regulations. These provisions also address measures to promote corporate transparency, such as those that help identify the legal and natural persons involved in the establishment and management of corporate entities; measures to restrict the activities of former public officials (also known as "revolving door" provisions); and the prohibition of bribes being tax deductible. Additionally, these provisions address the promotion of corporate codes of conduct, best practices, and compliance programs for business and professions. (Section 12).

Additionally, the UN Convention mandates that nations implement a range of preventive measures aimed at preventing money laundering (AML). Additional AML-related preventive actions are included in the asset recovery chapter and serve to supplement these efforts. (See, for example, Article 14; Article 52, as addressed in Section VI, below). It surpasses the AML requirements of previous treaties, which concentrate on criminality, in this regard. Financial Action Task Force (FATF) non-treaty-based standards are the basis for many new AML preventive measures, such as the creation of regulatory frameworks for bank and non-bank financial institutions, the creation of financial intelligence units (FIUs), and protocols to track cross-border cash transfers and the movement of negotiable instruments. Additionally, financial institutions are subject to softer requirements, such as origination to provide identifying information in relation to electronic funds transfers, and enhanced scrutiny obligations for transactions that do not meet the established transparency standards. These requirements state that financial institutions "must consider implementing appropriate and feasible measures" in relation to certain activities.

Criminalization and Law Enforcement

The UNCAC dedicates a significant portion of its framework to criminalization and law enforcement, requiring states to enact laws that address a wide range of corrupt activities.[221] This section, known as Chapter III, mandates the criminalization of various acts of corruption, including:

[221.] UNCAC. <https://star.worldbank.org/focus-area/uncac>.

Bribery: The UNCAC requires the criminalization of both active and passive bribery in both the public and private sectors. This includes offering, promising, giving, or accepting a bribe.

Trading in Influence: This offense involves the misuse of one's position or influence to obtain an undue advantage for oneself or another person.

Abuse of Functions: This covers situations where a public official uses their position for personal gain or to benefit others, even if no bribe is involved.

Illicit Enrichment: This offense targets the unexplained increase in the assets of a public official that cannot be reasonably explained by their lawful income.

Private Sector Corruption: The UNCAC also addresses various corrupt practices in the private sector, such as embezzlement, fraud, and money laundering.

Beyond these core offenses, the Convention also requires the criminalization of acts that facilitate corruption, such as money laundering and obstruction of justice.[222] This comprehensive approach ensures that all aspects of corrupt behaviour are addressed. While the UNCAC's criminalization provisions are ambitious, they also incorporate flexibility for states. The Convention utilizes a range of obligations, from mandatory ("shall adopt") to optional ("shall consider adopting"), allowing countries to tailor their implementation based on their specific legal and cultural contexts. This flexibility is further reflected in the possibility for states to express reservations to certain provisions, although within the limits of international law. [223]

Despite this flexibility, the UNCAC's criminalization requirements remain significant. The Convention's broad scope aligns more with regional conventions like the Council of Europe (CoE) Criminal Law Convention and the Organization of American States (OAS) Inter-American Convention Against Corruption than with the narrower focus of the OECD Anti-Bribery Convention. This broader approach reflects the UNCAC's aim to address corruption comprehensively, recognizing its diverse manifestations across different countries and sectors. The Convention also provides guidance on crucial aspects of enforcement, including the requirement of intent for most offenses and the possibility to infer knowledge and intent from circumstantial evidence. Additionally, it addresses contentious issues such as private rights of action and the collateral consequences of corruption convictions, demonstrating its comprehensive approach to combating corruption. [224]

However, implementing these provisions presents challenges for many countries. Limited resources, institutional capacity, and political will can hinder the effective enforcement of anti-corruption laws. The Convention's ability to influence domestic legal systems also faces

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[222.] Implementation of Chapter III (Criminalization and Law Enforcement) of the United Nations Convention Against Corruption. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/implementation-chapter-iii-criminalization-and-law-enforcement>

[223.] United Nations Office on Drugs and Crime. <https://www.unodc.org/ropan/en/AntiCorruptionARAC/united-nations-convention-against-corruption.html>.

[224.] Paragraph 2, Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions, Addendum, Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention Against Corruption, A/58/422/Add.1, note 38, 7 October 2003 (hereinafter, "Interpretive Notes").

limitations, as states retain sovereignty over their internal affairs. [225] Despite these challenges, the UNCAC's criminalization and law enforcement provisions represent a significant step forward in the global fight against corruption. By establishing a comprehensive framework and encouraging international cooperation, the Convention provides a powerful tool for holding corrupt actors accountable and promoting integrity across borders. [226].

Criminalization Requirements

The UNCAC's Chapter III on criminalization provides a detailed framework for addressing various corruption offenses. It expands upon existing definitions, such as "undue advantage," to encompass a broader range of corrupt practices, including those not traditionally covered by national laws. For example, the Convention's prohibition on trading in influence extends beyond direct interactions with public officials to include any transaction where undue influence is exerted. This broader approach aligns with the growing trend in international law to address all forms of corruption, regardless of the sector or actors involved.[227] The Convention also tackles complex issues like illicit enrichment, requiring states to consider criminalizing the unexplained increase in assets of public officials. This provision, while potentially raising constitutional concerns in some countries, underscores the commitment to holding corrupt officials accountable for their illicit gains. Additionally, the UNCAC encourages the criminalization of private sector bribery, recognizing the importance of integrity in both public and private spheres.[228]

Furthermore, the Convention addresses offenses related to money laundering and obstruction of justice, ensuring that all aspects of corruption are comprehensively addressed. It also provides flexibility for states by including both mandatory and optional provisions, allowing for tailored implementation based on national contexts. While some provisions, such as those related to domestic bribery and money laundering, are mandatory, others, like those addressing private sector bribery and trading in influence, are optional. This flexibility allows states to gradually implement the Convention's requirements while still upholding a core set of anti-corruption standards. [229] Overall, the UNCAC's criminalization chapter represents a significant step forward in the global fight against corruption. [230] By establishing a comprehensive framework and encouraging international cooperation, the Convention provides a powerful tool for holding corrupt actors accountable and promoting integrity across borders. While challenges remain in implementing these provisions, the UNCAC's detailed requirements and flexible approach offer a pathway for

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225. Revised Draft United Nations Convention Against Corruption, art. 21, U.N. Doc. A/AC.261/3/Rev. 4, May 12, 2003.

226. Where a government owns all or a majority of the equity of an enterprise, there is generally little disagreement that it should be treated as a public enterprise. Where, however, an enterprise has been partially privatized, or the government has only a minority equity interest but retains significant management or control authority, questions may arise about its status. The issue becomes even more difficult when the government stake is held through intermediate entities rather than directly. One would have expected a similar approach to this issue as the Convention took to the definition of official – establishing an autonomous standard that local law could expand but not contract.

227. Article 12, discussed in Section II.D.2, 2004 Paris Conference Comparative Paper, supra n. 1.

228. Lobbying Disclosure Act of 1995, P.L. 104-65, 109 Stat. 691, Dec. 19, 1995, codified at 2 U.S.C. § 1601, et seq.

229. Article 7; see Section II.D.2, id.

230 (2000) (D. Ut.), Case No. 2:00CR-0324S.

states to strengthen their anti-corruption efforts and contribute to a more transparent and accountable global environment.[231]

Law Enforcement in the United Nations Convention Against Corruption

The United Nations Convention Against Corruption (UNCAC) contains a chapter on criminality and law enforcement. This chapter requires member nations to create criminal and other charges to encompass a wide variety of corrupt conduct, including bribery, influence peddling, abuse of functions, and unlawful enrichment. It also targets offenses committed to promote corruption, such as money laundering and obstructing justice. The convention emphasizes the need for cooperation between national law enforcement authorities and with the private sector to effectively enforce these provisions. However, the implementation of these measures presents significant challenges for many countries, and there are concerns about the limited capacity of the convention to influence the domestic legal systems of its state parties[232]. Despite these challenges, the UNCAC remains the only legally binding universal anti-corruption instrument, with 188 state parties as of August 2021[6].

The other sections of Chapter III address pertinent matters pertaining to the scope, interpretation, and law enforcement of the criminal corruption offences that are to be formed, rather than the actual offences themselves. This covers the jurisdiction, statute of limitations, immunities, and standards of culpability for legal people (businesses) as well as how the knowledge and intent standards of the offences are to be understood. These clauses strengthen the fundamentals of these offences and ought to encourage consistency across the country's legal systems.

Article 26: Sanctions against corporations and liability of legal persons Although nations must hold legal persons (businesses) accountable for corrupt activities, this article does not mandate that they create corporate criminal liability, which is a feature of the US and certain other nations but has not traditionally been present in nations with civil law. It permits culpability to be of a criminal, civil, or administrative nature instead. Effective, proportionate, and dissuasive corporate sanctions are defined by the OECD, and this definition is adopted by the UN Convention as the standard worldwide.

Article 28: The Elements of an Offence May Be Knowledge, Intent, or Purpose: As mentioned in this section's opening, this article would let intent to be deduced from the circumstances. This aligns with the "willful ignorance" criteria applied in the United States in numerous criminal situations, including as money laundering and corruption. International anticorruption conventions now include this new clause. Similar to the "willful ignorance" threshold in the United States, this could have significant practical implications.

Article 29: Statute of Limitations: In accordance with the Convention, all offences defined under it must have a "long" statute of limitations imposed by the respective nation. Therefore, it would

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[231] 18 U.S.C. § 1956(a)(2) (prohibiting interstate or international transfers of monetary instruments with the intent to promote a specified unlawful activity. The United States has relied on this provision in recent anti-corruption enforcement actions. See, e.g., United States v. Giffen, Case No. 1:03- cr-00404-WHP, filed April 2, 2003 (S.D.N.Y.); United States v. Bodmer, Case No. 1:03-cr-00947-SAS, filed Aug. 5, 2003 (S.D.N.Y.).

[232] Full Text of the UN Convention against Corruption – UNCAC <https://uncaccoalition.org/the-uncac/united-nations-convention-against-corruption/>.

seem that even while a state might not be compelled to make some activities illegal, like bribery in the private sector, this Article would oblige it to give those crimes a lengthy statute of limitations. It is unclear what is meant by "long."

Article 30: Sanctions, Judgement, and Prosecution: Several key ideas are covered in this article, such as the fact that the seriousness of the crime should be considered when determining the appropriate punishment (such as parole or early release), that offenders should not be allowed to occupy public office, and that rights may be suspended or removed. However, paragraph 2, which addresses the subject of official immunities, will likely be the most problematic part of this article for the majority of people. All that is required is that states preserve, in conformity with [their] legal systems and constitutional principles, a suitable balance between any jurisdictional privileges or immunities granted to public officials for the discharge of their duties and the ability, when required, to pursue, prosecute, and decide cases pertaining to offences established at the Convention. It seems, then, to grant governments virtually unlimited latitude in determining immunity. The fact that immunities constitute a major obstacle to prosecution in many nations and are managed to protect even former politicians from legal action has been more and more evident in recent years. (For instance, by providing them with continuous immunity-granting figurehead roles in international organisations upon leaving national government)[233]. For sitting officials to carry out their obligations, there is undoubtedly a justifiable requirement for immunity from prosecution; nonetheless, these provisions don't appear sufficient. The note in favour of domestic law in paragraph 9 of this article further supports this worry. In the not-too-distant future, this will undoubtedly be a problem that has to be resolved on a global scale.

Article 31, Seizure, Confiscation, and Freezing: States must enact many confiscation-related laws in accordance with this article. Mandatory language is used in the duty, and the phrase "to the greatest extent possible within its domestic legal system" emphasises the significance of these steps. In addition to the proceeds of crime, it also covers property "destined for use" in offences as stated in 31(1)(b). The implementation of measures by countries to enable them to identify, trace, freeze, and confiscate proceeds and instrumentalities of offences related to corruption is necessary. In order to carry out the objectives of this article and specific asset recovery requirements of Chapter V, it further mandates in paragraph 7 that the courts of each state party have the authority to confiscate bank, financial, or commercial records, without taking bank secrecy into account. According to paragraph (8), it permits nations to demand that an offender a phrase that is not defined "demonstrate the lawful origin of such alleged proceeds of crime of other property subject to confiscation." But it says that these clauses "must not be interpreted in a way that would infringe upon the rights of legitimate third parties." They are by no means universal, even though they are already included in a number of national legislations. The broad implementation of such regulations may therefore have a substantial effect on enforcement agencies as well as corporate activities. The protection of victims, experts, and witnesses is outlined in Article 32. Required terminology is used in this article. The safeguarding of individuals who report:

Article 33. A clause protecting whistleblowers is this one. Interestingly enough, though, it is worded much softer and is not required, as opposed to the previous article: "shall consider

[233.] Latin Leaders' Legal Escape Hatch, washingtonpost.com, May 22, 2004, available at <http://www/washingtonpost.com/wp-dyn/articles/A47238-2004May22.html>.

appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds."

Article 37: Assistance to Law Enforcement Agencies: According to this provision, states must consider reducing the penalties or even giving immunity to individuals who have voluntarily disclosed their involvement in an offence, as well as encouraging voluntary disclosures from those who have committed the offence. Since it is impossible for disclosing parties to predict the extent to which penalties will be lowered, many feel that existing U.S. enforcement officials' procedures do not provide appropriate incentives for voluntary disclosures. However, this provision would not require any modifications to present U.S. legislation. Furthermore, this field does not frequently employ the practice of immunity grants, which is applied in several fields of federal enforcement.

Article 38: Cooperation Among National Authorities: This article promotes information sharing among national authorities, even on a nation's own initiative.

Article 39 focuses on promoting the reporting of offences by the private sector. It is titled Cooperation Between National Authorities and the Private Sector. Although reporting is encouraged even for private parties who are regular citizens of a country, it is worded more strongly for financial institutions. This fits with the way anti-money laundering rules have been policing the private sector, especially financial institutions, in recent years.

Article 40: Bank Secrecy: According to this article, nations must set up procedures to get over the restrictions imposed by bank secrecy on domestic criminal investigations of anticorruption offences. Bank secrecy has not been completely eradicated, despite recent efforts to weaken it due to other agreements that limit its application as a shield against criminal law enforcement. This makes the provision's inclusion possibly very significant. One of the primary reasons the United States ratified the OAS Convention was because it contained similar restrictions.

Article 41: Criminal Record: Under this clause, nations are permitted to consider convictions for anticorruption offences committed in other states.

Article 42: Jurisdiction: In general, the proposed requirements are consistent with those established in earlier treaties governing jurisdiction. They would apply to all of the offences listed in this section of the Convention and are therefore of great relevance. Most jurisdictional bases—such as nationality, habitual residence, and the protective principle—are optional, although some, like territoriality, are required (against a national of the state or the state itself). The term "the place" is used in all jurisdictional requirements to refer to the offence scene. Thus, it seems that these rules address the offence in a unified manner. If States Parties strictly adhere to these requirements to establish a single location where an offence can be committed, it may limit jurisdiction to the extent that offences under the Convention, especially the offence of transnational bribery, are complex and capable of being committed in more than one jurisdiction. The UN Convention's jurisdictional provisions could not turn out to be sufficiently developed in this regard.

The potential of several states having jurisdiction over a particular issue is discussed in paragraph (5). It does not, however, go beyond the OECD Convention's requirements for nations to confer in order to take coordinated action. Those cases that are prosecuted frequently result in proceedings

in various jurisdictions, despite the fact that questions regarding appropriate enforcement exist. Therefore, it might not be too soon to start outlining the standards for which a nation is primarily interested in pursuing legal action in the event of an alleged infringement. It could be argued that priority of interest should take precedence over prosecution priority in order to prevent numerous proceedings worldwide. Article 47 appears to be a step in the right direction in this regard, as will be covered in more detail in Part V.

The Role of the UNODC in Implementing the UNCAC

The United Nations Office on Drugs and Crime (UNODC) plays a crucial role in supporting the implementation of the UNCAC. As the custodian of the Convention, the UNODC provides technical assistance to states, promotes ratification and implementation, and facilitates international cooperation in the fight against corruption.[32]

Building on its expertise in combating transnational organized crime and illicit financial flows, the UNODC assists countries in developing effective anti-corruption strategies, strengthening their legal and institutional frameworks, and enhancing their capacity to investigate and prosecute corruption cases. The UNODC also conducts research and analysis on corruption trends, provides training to law enforcement officials and judges, and raises public awareness about the detrimental effects of corruption. The UNODC's work on the UNCAC complements its broader mandate to address drug trafficking, crime, and terrorism. By integrating anti-corruption efforts into its programs, the UNODC recognizes the interconnectedness of these challenges and promotes a holistic approach to achieving sustainable development and security.

Anti-Corruption Preventive Measures

This chapter begins with attempting to define corruption before moving on to discuss the many types and forms of corruption, corruption in Nigeria, the United Nations Convention Against Corruption, and Nigeria's ratification of it. Before coming to a conclusion, the chapter delves deeper into the concept of anti-corruption preventive measures and what they involve under the convention.

The United Nations Convention Against Corruption and its Ratification by Nigeria

The United Nations Convention Against Corruption (UNCAC) is a critical international treaty aimed at curbing corruption globally. Adopted in 2003 and in effect since 2005, it promotes measures to prevent and combat corruption, facilitates international cooperation, and advocates for integrity and accountability in public affairs. Nigeria, a signatory since 2003 and a party to the Convention since 2004, has demonstrated its commitment to the UNCAC's principles. [234] Although the Convention has not been fully domesticated into Nigerian law, [235] existing legislation aligns with many of its provisions, including the Corrupt Practices and Other Related Offences Act, the Economic and Financial Crimes Commission Act, [236] and the Code of Conduct Bureau and

234. <https://www.u4.no/publications/uncac-in-a-nutshell-2019> accessed July 20, 2020.
235. Constitution of the Federal Republic of Nigeria 1999 (Cap C23 LFN 2004) s 12(1).
236. (Cap E1 LFN 2004).

Tribunal Act.[237] [238] The UNCAC provides a comprehensive framework for anti-corruption measures, with a particular focus on prevention. Articles 5 and 6 highlight the importance of establishing anti-corruption policies and independent bodies to oversee their implementation. [239] These articles encourage state parties to develop coordinated policies that promote societal participation, transparency, and accountability. They also emphasize the need for periodic evaluation of legal and administrative measures to ensure their effectiveness in preventing corruption.

Furthermore, the UNCAC calls for the establishment of independent anti-corruption bodies with the authority and resources to implement anti-corruption policies, raise awareness, and promote knowledge about corruption prevention. These bodies play a crucial role in fostering a culture of integrity and ensuring effective oversight of public affairs. By outlining these preventive measures, the UNCAC emphasizes a proactive approach to combating corruption, aiming to prevent corrupt practices before they occur rather than simply reacting to their consequences. This focus on prevention is crucial for building a sustainable anti-corruption framework and fostering a culture of transparency and accountability in Nigeria[240].

Conclusion

In conclusion, the UNCAC stands as a vital international framework designed to prevent and combat corruption through the promotion of transparency, accountability, and robust international cooperation. Nigeria's commitment to these principles is evident in its adoption and ratification of the Convention. However, the true measure of success lies in the effective implementation and enforcement of its provisions, areas where Nigeria must strive for significant improvement.

While Nigeria has taken steps to align with the UNCAC, the fight against corruption requires a sustained and multifaceted approach. Strengthening cooperation with international organizations, such as the United Nations and regional bodies, is crucial for knowledge exchange, best practice sharing, and technical assistance. This collaboration can bolster capacity building, intelligence sharing, and mutual legal assistance, all of which are essential for enhancing Nigeria's anti-corruption efforts. Furthermore, the establishment of a robust transnational asset recovery mechanism would facilitate the return of stolen assets and promote transparency in fund disbursement. To achieve meaningful progress, Nigeria must prioritize the effective domestication of the UNCAC into its legal framework and ensure that existing legislation is rigorously enforced. A holistic strategy, encompassing legal frameworks, engagement with the business community, and the active involvement of civil society organizations and the media, is essential for fostering a culture of integrity and accountability. By consistently strengthenng these efforts, Nigeria can demonstrate its commitment to the UNCAC's principles and contribute to a more transparent and just society.

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237. (Cap C31 LFN 2004).
238. (Cap C15 LFN 2004).
239. United Nations Convention Against Corruption (adopted October 2003, entered into force December 2005) (UNCAC) art 1.
240. Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007.

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APPRAISIAL OF THE UNITED NATIONS PACT FOR THE FUTURE, 2030 AGENDA FOR SUSTAINABLE DEVELOMENT GOALS AND WOMEN'S CONTRIBUTIONS TO PEACE AND SECURITY.

Abstract

In 2015, United Nations unanimously adopted the 2030 Agenda for Sustainable Development, to provide a pointer for an enduring peace and prosperity in the planet. The 17 SDGs targeted diverse areas of development including gender equality as Goal 5 and respect for peace and security as Goal 16. The SDGs compliments existing norms for promotion of peace and security in the world. Despite this commitment of the UN Security Council on Women Peace and Security, through Resolution 1325 amongst others women are still marginalized in peace processes and their participation in the overall governance and development is still minimal in most countries in Africa. This paper x-rays the contributions of women in Africa towards peace and security, despite these obstacles and takes a cursory look at the recently adopted UN Pact for the Future for available opportunities towards inclusion and participation of women in peace building. As the world looks forward to Agenda 2030, the paper proposes the need to strengthen institutional frameworks, put in place concrete policy actions such as integrating gender mainstreaming in national prevention strategies, ensuring accountability for conflict-related gender-based issues, implementing gender quotas for political representation, and increasing investment in conflict prevention. It posited that these measures are essential to achieving the objectives of the UN Pact for the Future, the SDGs, and the Women, Peace, and Security agenda.

Keywords: *Africa, Women, Conflict resolution, Peace building, SDGs*

1.0. INTRODUCTION

The global quest for sustainable peace has been one of the hallmark challenges of the twenty-first century. Over the decades, responses to conflicts have become more complex, with the emergence of new concerns, like violent extremism, climate-related disasters, insurgencies and terrorism, manifesting in wider dimensions and scale.[241] These developments have further highlighted women's traditional participation in horizontal network and how their roles can contribute to conflict resolution, negotiations and peacebuilding.[242] Women had been positioned as change agents due to the established commonality and vibrancy in communities, as dated back through history to the pre-colonial period.[243] Since the first World War, women have been disproportionately affected by war, terrorism, conflicts, and their cascading consequences. They have suffered unquantifiable loss, and have been denigrated as booties of wars.

Basically, the post-World Wars global order and the establishment of the United Nations (UN) in 1945, led to the internationalization and conceptualization of peace as a human right, and an attribute necessary for the promotion of a just and equal society. In 1949, the UN adopted the Commission on the Status of Women to become an instrument for bringing issues of women to the front burner to ensure equality between men and women.[244] By 1970, women issues began to feature on global agenda. Thus in 1975, the '*United Nations Decade for Women'* was launched, which was propelled '*by the vision to promote the agency of women and their role for peace and equality*'.[245] The decade birthed three other international conferences in Mexico, Copenhagen and Kenya. During this period, there were discourses on the importance of women's participation, the significance of women's involvement in development projects and gender-responsive frameworks, and the adoption of gender mainstreaming as a strategy for inclusion of women in UN agendas, structures and institutions. The gender mainstreaming approach was adopted as a prominent strategy in peace negotiations, humanitarian efforts, and post-conflict governance, becoming a beacon of hope for inclusion. The demand for inclusion and participation through the approach culminated in the adoption of the United Nations Security Council's historic Resolution 1325 (2000) on women, peace, and security. UNSCR 1325 is a very significant resolution that takes into cognizance the role of women as peacebuilders and catalysts of change. It calls upon the UN, member states, civil society, and the international community to ensure enhanced women's participation in conflict prevention, peace negotiations, and all peace processes, including decision-making and reconstruction initiatives.

Since the adoption of this resolution, many national governments have adopted the National Action Plans (NAPs) on Women, Peace and Security (WPS) to ensure commitments to supporting the implementation of the UN Security Council Resolution 1325 and to respond to the issue of its slow implementation. In recent years, women activists have seized the opportunities presented by the UNSCR 1325 to reiterate their indispensability in the process of peace building and peace negotiations.[246] Nevertheless, the disjuncture between rhetoric and reality persists, as conflicting

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[241] Ibrahim A. Elbadawi and Nicholas Sambanis, 'How Much War Will We See? Explaining the Prevalence of Civil War', *Journal of Conflict Resolution* 46:3 (2002), pp. 307-334 in Akiyode-Afolabi, Abiola (2013) *Gender justice in post-conflict societies: an assessmentof Sierra Leone and Liberia.* PhD thesis. SOAS, University of London. DOI: https://doi.org/10.25501/SOAS.00016643

[242]UN Women (2022) Women's Meaningful Participation in Peace and Political Process in Fragile Context https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/What%20We%20Do/Peace-security/WPS-Brief-Womens-meaningful-participation-in-peace-and-political-processes-in-fragile-contexts-en.pdf (Downloaded on the 2nd March 2024)

[243] Shulika, Lukong S. Women and Peace Building: From Historical to Contemporary African Perspectives. Ubuntu Volume 5, Number 1 2016, pp7-31

[244] UN General Assembly, Commission on the Status of Women, A/RES/2587, UN General Assembly, 15 December 1969, https://www.refworld.org/legal/resolution/unga/1969/en/26728 [accessed 28 February 2025]

[245] UN General Assembly, Commission on the Status of Women, A/RES/2587, UN General Assembly, 15 December 1969, https://www.refworld.org/legal/resolution/unga/1969/en/26728 [accessed 28 February 2025]

[246] In Liberia women were mobilized by the Women in Peace Network (WIPNET) to advocate for peace and they through the Mano River Union Peace Network participated in the formal peace talk in Accra in 2003. In Sierra Leone women through their networks participated in Lome Peace Accord.

strategic goals, resource constraints, and wavering political will, continue to undermine the practicalities of the resolution and its initiatives. Bridging this gap demands not only a commitment to gender equality, but also a recognition of its inherent complexity, requiring multifaceted strategies that address the connecting layers of oppression experienced during conflict by the womenfolk in conflict-affected regions. While women have soared economically, they are still not visible in the political space as a result of systemic challenges related to patriarchy and traditional gender norms, which restricted women from right to education, owning properties particularly land and inclusion in decision making.[247]

Evidence from global data from the United Nations in 2024, shows glaring differences, with women making up only 9% of peace negotiators and having fewer leadership positions in areas affected by war. This exclusion not only undermines the effectiveness of peacebuilding efforts but also perpetuates cycles of inequality and instability. In 2015, the United Nations member states unanimously adopted the 2030 Agenda for Sustainable Development, which provides '*a shared blue print for peace and prosperity on the planet, now and in future*'[248] Within this agenda is the adoption of the 17 Sustainable Development Goals, representing global call and partnership for prosperity and tranquillity. In preparation for the 2030 Agenda and the realization of the SDG , the report of the United Nations on Sustainable Development Goals, shows that only 17% of the SDGs targets are on track; a huge number of the targets have been stalled and at the risk of retrogression.[249] With the current threats to the achievement of the SDGs, '*The Pact of the Future'* adopted by the UN General Assembly in September 2024, provides hope for a more sustainable growth that can further facilitate peace-building.

With the UNGA 2024 report, showing the threats to SDG 16, and the need for more institutional and structural frameworks for global peace and inclusive societies; this article provides a historical context on the role of women in peacebuilding, and the need for an intentional approach to ensure that women form a major part of the inclusive societies. As the world looks forward to Agenda 2030, the paper proposes the need to strengthen institutional frameworks, put in place concrete policy actions such as integrating gender mainstreaming in national prevention strategies, ensuring accountability for conflict-related gender issues, implementing gender quotas for political representation, and increasing investment in conflict prevention. It posited that these measures are essential to achieving the objectives of the UN Pact for the Future, the SDGs, and the Women, Peace, and Security agenda.

The first section of the paper provides an introduction to the connections between need for inclusive societies, peace building, how SDGs can frame a better place for women in the discourse of peace and the aspirations built around the UN Pact for the future. The second section, considers the contributions of women to peace and tranquility in Africa. The third se examines the normative and institutional framework on global peace and how this is connected with the SDGs commitment by world leaders. The fourth, takes a critical look at the opportunities provided by the adoption of the *2024 Pact of the Future*. The last section is the conclusion and recommendations for sustained political will for inclusive societies.

2.0. CONTEXT AND TRAJECTORY OF WOMEN'S ROLE IN PEACE BUILDING IN AFRICA

Wars and armed conflicts have impacted negatively on lives of women and girls. These have also deepened social exclusion as well as increased rural poverty, illiteracy and have exposed more women and girls to life threatening risks, higher maternal mortality and unquantifiable suffering.[250] Women and girls have become refugees and suffer from the effect of this war, losing their bodily integrity to

[247] Shulika Lukong (2016) (n3)

[248] UN Women, 'What we do: Peace and Security' https://www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures downloaded February 2 8th 2025.

[249] UN Sustainable Development Report 2024, https://unstats.un.org/sdgs/report/2024/The-Sustainable-Development-Goals-Report-2024.pdf downloaded on the 28th of February 2025.

[250] In post war Serra-Leone maternal mortality is very high, likewise in Nigeria (particularly in the north east) higher maternal mortality is recorded due to the insurgencies and conflict.

rape and other forms of sexual violence. They were warriors, spies and suffered debilitating emotional and psychological stress as a result of long and protracted armed conflict .[251] Women have also faced the untold adversities of sexual violence and bodily assault as part of the spoils of war.[252] For example, in Nigeria, over 80% of the people who are in need of humanitarian assistance are women and they face higher risk of sexual abuse and abduction.[253] Over 170 violent conflicts, with impact on about 612 million women and girls, were documented worldwide in 2023 alone.[254] In addition, Africa carries the highest burden of these wars. The conflicts range from gender-based violence and attacks on healthcare facilities to breakdown of educational institutions that disproportionately harm women and girls, with very severe repercussions.

The harsh reality of conflict environments in Africa underscores the critical importance of integrating gender-sensitive approaches into global peace and security strategies. The crisis of legitimacy of the African state has contributed to the break out of war and the challenge to the ruling powers' authority to security and welfare of their people in accordance to their constitutions.[255] It was in this context that peacebuilding is defined as the holistic strategy, designed to address conflicts in a non-violent manner; which also provides transformative spaces that can lessen possible violence by improving national capacities.[256] The story of conflict in the African regions has shown protraction; for example, a country like Rwanda took a decade to rebuild the ruins of war to be able to guarantee enduring peace after the systemic and genocidal attack on millions of people especially women and girls. The conflict in Sierra-Leone,[257]Liberia,[258] Sudan,[259] Uganda,[260] Democratic Republic of Congo (DRC) [261] and other parts of Africa[262] underscores the need for addressing these gigantic problems.

As noted by Olayode, in Nigeria and many other places where rape and sexual violence persisted, there is demonstrated urgent need to further improve the situation of women. Women and children needed to be protected from violence, especially in post-conflict situations, where police and other security sector's protection are often wanting. Sustainable peace could not be achieved without protecting the most vulnerable -- women and children.[263] The author argued that although, violent attacks from Boko Haram covered multiple locations, mass human displacements began in 2013 across the North East and parts of the North Central. Bornu, Bauchi, Gombe, Adamawa, Zamfara, Yobe, Taraba, Kogi and the FCT, all experienced waves of attacks that brought in its wake, a great number of displaced persons.

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[251] T. Sideris, 'Women and Apartheid; Collective Trauma and Social Reconstruction,' *The Way Supplement* 93 (1998), pp. 80-90.

[252] Karin Koen, 'Claiming Space: Reconfiguring Women's Roles in Post-conflict Situations,' ***Occasional Paper 121 (2006), p. 3.***

[253] See note 9 above

[254] OCHA 15th February 2023 'US 1.3 Billion Needed to Reach 6 Million People in North East Nigeria Humanitarian Assistance'. https://reliefweb.int/report/nigeria/us13-billion-needed-reach-6-million-people-north-east-nigeria-humanitarian-assistance-2023 downloaded

[255] Section 14 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

[256] Schirch, L & Sewak, M (2005), The Role of Women in Peacebuilding. Issue Paper, Global Partnership for the Prevention of Armed Conflict. European Center for Conflict Prevention, Utrecht.

[257] Sierra Leone Civil War 1991-2002

[258] Liberia 1989-1997

[259] Second Sudanese War 1983 to 2005, war still on going in some part of the country

[260] Uganda Bush war 1980-1986, still on going in some part of the country

[261]Amnesty International 2024, Why is the Democratic Republic of Congo Wracked by Conflict https://www.amnesty.org/en/latest/campaigns/2024/10/why-is-the-democratic-republic-of-congo-wracked-by-conflict/

[262] Wilson Center' Coups in Africa, Even in ECOWAS' Ambassador Mark A Green, September 2023 https://www.wilsoncenter.org/blog-post/coups-africa-even-ecowas In the last four years alone, there have been seven military coups in West and Central Africa.

[263] Olayode K.O and Funam, Y. (2024) 'Battlegrounds and Safe Havens: Gender Dynamics in Conflict, Peace and Security in Nigeria' In Aina Olabisi (Ed.) *Shifting Sands: Nigeria's Evolving Gender Landscape* (Ile-Ife, Obafemi Awolowo University Press), pp. 75-76

The number of internally displaced persons in Nigeria in a 2017 report was put at 1,899,830.[264] Understanding this complexity of war will help in post-conflict analyses and peace building proposals, which this chapter hopes to contribute. The gender implication of conflict has been at the center of the broader discourse on peace building and this has shaped the views of scholars, and feminist theorists on how to deconstruct power hierarchies that wedge throughout the society, making it difficult for women to enjoy internal and external peace even after conflict.[265]

As noted by scholars, the general opinion of peacebuilding is presented as a double-edged sword, towering on the challenges and successes.[266] Women's agency have been strong historically, playing very critical roles at various levels. However, women were also actors in wars, masterminds and fighters, with some supplying ammunitions, while others also instigated gender-based violence.[267] Women's role in Africa has been linked to pre-colonial ambiance; an oddity that changed with the dawn of colonialism.[268] The argument is that colonialism contributed immensely to the exclusion of women in decision making and subsequent marginalization in formal peace processes.[269] Established history of women in Africa[270] shows that they were the bedrock of stability in communities and contributed to the growth and development of their socio-cultural heritage, leading peace and harmony in their spaces of influence. To further affirm their roles, essentialist feminist still believe that women's innate abilities propel them as peace loving and put them at critical positions to peace building.[271]

Despite women's recognized role in communities and households as peace makers, and even though their vulnerability to insecurity and conflict is usually highlighted, women's actual and potential roles in peace building, conflict resolution and disaster management are often overlooked. The apparent marginalization of women on the peace negotiation table and the complexity arising as a result of conflict led to the adoption of the UN Resolution 1325[272] and 1820[273]. These resolutions highlight the need to both exploit women and girls' potential as peace and security agents and address the unique vulnerabilities they suffer in conflict.

In 2002 the UN adopted National Action Plan (NAP)[274] for effective implementation of UNSCR 1325. NAP is been implemented in several countries.[275] The integration of the National Action Plans into peace projects is a significant step for peace agenda.

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[264] International Organization for Migration (IOM) DTM Nigeria. (2017). *Nigeria—Round XIV Report*. https://drive.google.com/file/ /0B3CEVcVlpFxORmU4TDlLcEtBemM/view / International

[265] Goldstein J (2001) War and Gender , Cambridge University Press, see also Herbert S (2014) Conflict Analysis of Liberia, Government of Liberia /UN Joint Program on Sexual and Gender Based Violence (2011) See also Stop Rape Now http://stoprapenow.org/uploads/features/SGBVemail.pdf downloaded on the 20 December 2024

[266] Olayode K.O and Funam, Y. (2024) 'Battlegrounds and Safe Havens: Gender Dynamics in Conflict, Peace and Security in Nigeria' In Aina Olabisi (Ed.) *Shifting Sands: Nigeria's Evolving Gender Landscape* (Ile-Ife, Obafemi Awolowo University Press), pp. 75-76

[267] The Prosecutor V Pauline Nyiramasuhuko; ICTR -97-21-T https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Decision/NotIndexable/ICTR-98-42/MSC20581R0000548122.PDF

[268] St Clair's W. (1994) Imperialism and Traditional African Culture, Cambridge University Press cited Luckong (n9)

[269] Ibid.

[270] Ibid. Luckong (n6)

[271] Porter, Elisabeth (2003) 'Women, political decision-making, and peace-building', *Global Change, Peace & Security* 15(3): 245 Potter M (2004) Women Civil Society and Peace Building Paths to Pace through the Empowerment of Women . Belfast Training for Women Network p 4 in Luckong (n9)

[272] UN Security Council, Res. S/Res/1325/2000, 31 October 2000 (hereinafter referred to as UNSCR 1325)

[273] UN Security Council, Res. S/1820/2008, 19 June 2008 (hereinafter referred to as UNSCR 1325)

[274] Security Council 'Statement by the President of the Security Council att the 4641st meeting of the Security Council, held on 31 October 2002' S/PRST/2002/32

[275] Women International League for Peace and Freedom' National Action Plan (NAPs) www.peacewomen.org/naps/list-of- *downloaded 24 Dec 2024*

3.0 THE NEXUS BETWEEN WOMEN'S ROLE AND THE EXISITNG NORMS IN PROMOTING PEACE BUILDING.

Researches have questioned the role of human rights norms and laws to secure women's rights to political participation and voice. Feminist analysis of transitional justice processes, argue about the potency of laws to guarantee women's right. Since the state is the custodian of the law and the regulator of international treaties, feminist's arguments also question the ability of the state to provide solutions to injustices experienced by women during conflicts[276]. These arguments seem to be in line with Hillary Charlesworth and other feminist writers questioning the role of the UN in providing spaces for women to exercise their rights and ensuring state compliance in this regard. As such, it is critical in analyzing the effectiveness of the WPS Agenda that gender justice practitioners need to catechize the framework of law and analyze whether the state lacks the legitimacy to fulfill its promise on the norms. UNSCR 1325, placed its preamble in the assertion of the United Nations' commitment and willingness to effectively implement the Beijing Declarations[277] and other United Nations resolution documents.[278] Furthermore, UNSCR 1325 recognizes the burden women and children carry in war and the implications of an enduring peace, by bringing women on the negotiation in ensuring gender equality.[279]

There are four pillars enshrined in the UNSCR Resolution 1325: prevention, participation, protection and relief and recovery. Furthermore, the resolution amplifies the roles of women in preventing armed conflict; underscores their voice in peacebuilding negotiations; safeguard their rights where there is break out of war and conflict; and addresses women's needs during post-conflict reconstruction. The overarching approach of gender balance and gender mainstreaming has been questioned as fluid and lacks much practical examples to show that state actors have supported much participation of women in peacebuilding.[280]

Subsequent resolutions have expanded on Resolution 1325's pillars, addressing persistent gaps and emerging challenges. These includes: Resolution 1889 (2009) advocating for measurable progress through indicators and women's inclusion in all stages of peacebuilding; Resolution 2122 (2013), identifying the barriers to implementation and calls for a gender-responsive approach to peacekeeping and post-conflict recovery; Resolution 2242 (2015), which links the WPS agenda to counter-terrorism efforts, highlighting women's roles in preventing violent extremism; Resolution 2493 (2019, that demands full implementation of all WPS resolutions, emphasizing women's participation in peace processes. In addition, several resolutions have focused on sexual violence as both a weapon of war and a violation of international peace and security: Resolution 1820 (2008 recognizes rape as a potential war crime and an act of genocide; Resolution 1888 (2009) calls for mechanisms to address and monitor sexual violence; and Resolution 2467 (2019), which advocates survivor-centered approaches to combating sexual violence. These resolutions acknowledge the need for accountability and survivor-focused solutions, underscoring the importance of justice systems in addressing conflict atrocities.

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[276] Dianne Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International law over the Last Decade', *Melbourne Journal of International Law* 2 (2009); also, UN Security Council, 4208th mtg. at 24, UN Doc. S/PV .4208 October 24 2000, see also Scully, P. 2009, 'Enlightened Practice? Foucault, Western Feminism and Gender-based Violence', paper presented at gender violence and gender justice conference, Emory University, Atlanta, May.

[277] United Nations Specialized Conferences, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, -, United Nations, 27 October 1995, https://www.refworld.org/legal/resolution/un/1995/en/73680 [accessed 28 December 2024]

[278] Specific reference was made to the outcome document of the twenty-third special Session of the United Nations General Assembly entitled 'Women 2000: Gender Equality, Development and Peace for the Twenty First Century' A/S/-23/10/REV.1)

[279] See the preamble to the UNSCR 1325.

[280] Christine Chinkin and Hilary Charlesworth, 'Building Women into Peace: The International Legal Framework' *Third World Quarterly* 27:5 (2006), pp. 937-957.

3.1 Gender Equality and the Sustainable Development Goals (SDGs) 16

One of the ground breaking achievement of the SDGs goals is the inclusion of the stand-alone goal focusing on fostering peaceful, just and inclusive societies[281]. SDG 16 seeks to "*promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*"[282]

In the wake of developing the SDGs, there were other global development agreements which are expected to be complimentary to its achievement. [283] All the SDGs are linked and interconnected. This is because the main objective of the 2030 Agenda is to be inclusive, holistic, and globally applicable. These goals incorporate three dimensions of the agenda which includes society, environment, and the economy, which are multifaceted and incorporative. Inclusion is very critical in determining the efficiency of the SDGs because it can have a direct impact on the outcomes of other Sustainable Development Goals (SDGs). In addition, social, economic and environmental development play a vital role in creating the conditions necessary for peace, justice and inclusion.

Furthermore, the uniqueness of SDG 16+ resonates in the goal being one, which ensures that the foundational objectives of "leaving no one behind" and "reaching the furthest behind first" are upheld.[284] Thus peace, justice and inclusion, remain the conduit pipe for the achievement of other SDGs; without which other goals might be impossible. While fostering the active participation of women and inclusive societies, the nexus between goals 5 and 16 of the SDGs shows some significant interconnectedness. SDG 5 which is gender equality, focuses on eradicating discrimination and ending violence against women and girls; and ending harmful practices like female genital mutilation (FGM), trafficking, sexual exploitation and assaults., These align with the SDG 16 which aims at promoting equal access to justice and reducing violence, most especially against women and girls. These goals work together to create a safer environment which enables women to participate without hindrances and barriers.

Furthermore, while goal 5 majorly promotes women's full political and economic participation, SDG 16 places emphasis on the inclusiveness and participatory decision making at all levels. These goals (SDG 5 and 16) demonstrate the relevance of empowering women through leadership and decision making. The synergy in the goals ensures that the contributions of women are well recognized and valued and also ensures that peace processes governance are gender-responsive[285].

In strengthening legal and institutional frameworks, SDG 5 expects that institutional and structural reforms will provide women with equal rights to resources, property, and inheritance. This complement SDG 16's emphasis on building effective, accountable, and transparent institutions. These measures create systems that uphold women's rights, enhance their economic empowerment, and encourage their active engagement in society. Inclusion is central to women's role in peacebuilding, and failure to do so will impact expected outcomes. Resolution 1325 and other WPS agenda emphasize on participation and inclusion, by laying emphasis on recovery, which cannot be achieved without social, economic support, strong institutions and sustained political will as necessity for peaceful co-existence.[286]

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[281] UN General Assembly, transforming our world : the 2030 Agenda for Sustainable Development, A/RES/70/1, 21 October 2015, https://www.refworld.org/legal/resolution/unga/2015/en/111816 [accessed 27 December 2024]

[282] Ibid SDGs, 16 See UN General Assembly above

[283]Preamble "the interlinkages and integrated nature of the Sustainable Development Goals are of crucial importance in ensuring that the purpose of the new Agenda is realized."

[284] The Paris Agreement on Climate Change, the Sendai Framework on Disaster Risk Reduction, the New Urban Agenda and the Addis Ababa Action Agenda the latter which provides a global framework for financing sustainable development.

[285]S. Amulya Jeevanasai et all 'Shades & shines of gender equality with respect to sustainable development goals (SDGs): The environmental performance perspectives' https://www.sciencedirect.com/science/article/pii/S277280992300059X downloaded 27th December 2024

[286]IDLO' Gender and the Rule of Law; Synergies between SDG 5 &16 https://www.idlo.int/fr/news/highlights/gender-and-rule-law-synergies-between-sdg-5-and-16 , downloaded 28 February 2025

The need for a human rights approach to development is also important. UNSCR 1325 equally emphasizes protection, voice and participation. Human-rights based approach to development is founded on the principles of inclusivity, participation, rule of law, accountability and respect for human rights all key elements of SDG 16+[287]. However, Goal 16 supports the following advantage which includes; promotion of peaceful and inclusive societies, access to justice for all, and building of effective, accountable and inclusive institutions at all levels. As noted by a UN Report, there has been a retrogression in a bid to address the ongoing and new violent conflicts around the world and the global path to peace is threatened [288]. The report shows that '*the year 2022 witnessed more than 50 per cent increase in conflict-related civilian deaths – the first since the adoption of Agenda 2030 – largely due to the war in Ukraine.*'[289] While the role of peace as a precondition for societal development cannot be over emphasized, violence and instability continue to threaten peace. Furthermore, virile justice system is critical to sustainable peace as discriminatory laws and ineffective justice systems are threats to peaceful societies and full human rights enjoyment.[290] The normalization of violence extends beyond the duration of conflicts into the post-conflict period, perpetuating harmful societal norms that obstruct efforts to establish lasting peace. To address these complex challenges, peacebuilding efforts must focus on gender-sensitive principles such as justice, protection, and participation.

Without any doubt, there has been progress towards the attainment of peace and women have played prominent roles in this regard. Some of these visible roles have been documented. For example, initiatives such as the Elsie Initiative, which has advanced women's participation in peacekeeping missions, and focused campaigns to boost women's representation in national parliaments and the court are examples of efforts to rectify these inequities. However, as of 2024, only 27% of legislative seats were held by women globally, and their representation was lower in areas impacted by violence. In Africa, Rwanda towered above other countries, in women's representation in post-conflict society, dwarfing other countries of comparable post conflict experiences in the world with over 68% women in parliament.

3.2. Women's Contribution to peace processes

Across conflict-affected regions, women's active involvement in peacebuilding and negotiation processes has proven essential for fostering stability and long-lasting peace. The vital role that women play in resolving conflict and also in shaping the future of their communities and nations demonstrate their efforts in promoting peace. From grassroots mediation initiatives to formal peace agreements, women have been at the forefront of efforts to address key issues such as violence, land disputes, and political reconciliation.[291] This involvement helped in managing intercommunal tensions and contributed to local peacebuilding efforts. For example, in Burundi, nationwide network of 516 women mediators dealt with over 14,000 conflicts, including political, land-related issues, youth-related issues, and domestic violence between 2016 and 2018.[292] Community dialogues on peace and security, sexual and gender-based violence were organized by them as well as economic recovery, effectively preventing violence at the local level. Women in South Sudan played a key role in peace negotiations,

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[287] United Nations -Thematic Paper on the contribution of Human Rights to peace building and sustaining Peace https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/1._ohchr_thematic_paper_on_the_contribution_of_hr_to_sp_and_recommendations.pdf. Downloaded 28 February 2025

[288] See UN SDGs Report 2004, supra

[289] Ibid.

[290] UN WOMEN *'Women and the SDG 16 Peace Justice Strong Institutions'* https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-16-peace-justice-strong-institutions downloaded 28th February 2025

[291] UN Women. (2019). *Increasing women's participation in mediation processes: What roles for the United Nations, regional organizations, and member states?* UN Women. Retrieved Feb 28 2025, from https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2021/Increasing-womens-participation-in-mediation-processes-en.pdf

[292] Global Acceleration Instrument - Pilot Project -Women for Peace and Dialogues in Burundi- A Key Role in Conflict Prevention and Peace Mediator http://peacewomen.org/sites/default/files/Burundi%20Brief%20September%202016.pdf downloaded Feb 28th 2025

with five female representatives who participates in high-level talks and seven women signing the Revitalized Agreement on Conflict Resolution in the Republic of South Sudan (R-ARCSS) in September 2018.[293] The resilience demonstrated by Liberian women at the end of the war in 2003, is remarkable. Through social networking and effective organizing; women's contribution in the country have been institutionalized. Various stakeholders through women led organizations have continued to play leading role in post conflict reconstruction and stability in Liberia. One of the notable organization's Women. In Peace Network (WIPNET) was founded by a Noble Peace Laurate and the recognition of its founder in 2011 was viable evidence of their continued role in peace building in Liberia.[294] The adoption of the National Action Plan and the continued reforms in the country, have shown the willingness to ensure women's participation and representation at the highest levels. In the neighboring, Sierra Leone, the post conflict passage of gender laws and the parity law for women in local government are evidence of willingness for more participation of women in post conflict recovery.[295]

With over 60% women in Rwanda's Parliament, the country has demonstrated the importance of women's participation.[296] Without any doubt, this has demonstrated how women can participate effectively in decision making. The increased number of women to 6o%, is a testimony of the impact of women and role in ensuring stability in the state. Through local networks, women have led reconciliation, local negotiations, empowerment and ensure grassroot women participation in decision making.[297] Despite the above contributions of women to peacebuilding, there are several challenges affecting the realization of the SDG16+ framework. According to the 2019 SDG Report, some of these challenges include: lack of sustained political will and concrete commitments to ensuring the achievement of the goals; shrinking civic space across the globe, particularly to enable women rights organizations to lead and hold government accountable; lack of high-quality, accessible, timely and reliable disaggregated data; financial support for SDG16+ is severely lacking, and the negative impact of the COVID-19 pandemic.[298] Like other SDGs, goal 16 has made very marginal leap, leaving the achievement of the 2030 Agenda in the balance.

In terms of participation, the Gender Snapshot of the SDG 2024 report shows that war and conflict impact on the physical and mental health of women. For example, facts and figure show that 1.2 million pregnant women are expected to suffer malnutrition as a result of the conflict and that child marriage is more prevalent in conflict setting at 14.4% higher than in non- conflict setting; global maternal mortality ratio dropped by 34% 2000 to 2020 yet 800 women die every day due to preventable child birth and related causes[299]. Furthermore, rising conflict impairs women and girls and ignites sexual violence and other abuses against women.

Conflicts also impose intense psychological stress on women and girls. Women in countries affected by conflcits reported poor mental health, depression, sleep issues, anxiety and nightmares. Among Ukrainian refugee mothers in Poland, over 60 per cent claimed to have suffered severe distress[300].

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[293] UN Women (2019) (n51)
[294] Herbert S (2014), Conflict Analysis of Liberia, Birmingham, UK: GSDRC University of Birmingham
[295] Bah, M.S., 2011. Sierra Leone: opportunities, challenges and lessons learnt for women. *Women and Security Governance in Africa*, p.89.
[296] IPU, 'Women in parliaments: World classification', 1 January 2017, http://www.ipu.org/ WMN-e/classif.htm, accessed 27 February 2025.
[297] Mutamba J and Izabiliza J (2005) The role of Women in Reconciliaition and Peace Building in Rwanda; Ten years after Genocide (1994-2004-Contributions and Challenges, Way Forward.)
[298] UNSDGs Report 2024
[299] Gender Snapshot (2024) https://unstats.un.org/sdgs/gender-snapshot/2024/GenderSnapshot2024.pdf downloaded 28th February 2025
[300] ibid

Addressing systemic inequalities in conflict and post-conflict settings is critical to the attainment of the SDGs. Through SDG 10 (Reduced Inequalities), targets on education, health, justice, gender-sensitive justice systems, reparations, and support for survivors of violence will contribute to inclusive recovery and stability. Women continue to be underrepresented in peace processes, the percentage of women negotiators in UN-led or co-led peace procedures fell from 23% in 2020 to just 16% in 2022. Negotiation teams for wars in Sudan, Yemen, the Balkans, Ethiopia, and Myanmar did not include any women. Women only came close to equality in government and rebel negotiating teams in Colombia. Only one of the 18 peace accords signed in 2022 was signed by a woman. In peacekeeping operations, women make up only 15.8% of the police and 6.5% of the military.[301]

Women's leadership in decision making, peacekeeping and countering violent extremism will foster the desired trust and reduce conflict-related misconduct. Efficient and effective strategies for mobilizing resources for sustainable development, funding gender equality initiatives and women's organizations will contribute immensely to the attainment of peace.

4.0. TOWARDS THE PACT FOR THE FUTURE

In September 2024, the UN and other stakeholders gathered in New-York for the Summit of the Future, a post-covid idea mooted in 2021 to address some of the 21st century challenges. Post 2020, the UN Developed the report 'Our Common Agenda'[302], with policy briefs to guide understanding of the key critical areas identified to support the new global pathway. The brief analyses the effectiveness of the SDGs and presents 12 commitments for the protection of integrity and more inclusive and equitable world in preparation for the 2024 Summit.[303] The Policy Brief specifically proposes a new agenda for peace through a forward- looking approach to prevention of conflicts both traditional and potential new domains. It identifies 12 Actions to address the interlinked multidimensional drivers of violence and insecurity.

Action 4 on prevention on violence and sustaining peace applied a gender mainstreaming approach to conflict prevention, demanding that member states implement national prevention strategies and align funding mechanism towards gender mainstreaming in peace building.[304] In countries where there are national laws to support peace building, lack of resources continues to impact negatively on the protection of women from violence or recovery. Investment in conflict prevention will go a long way towards eradication of violence against women. It will also strengthen peace education, improved knowledge, early warnings and women's confidence to report violence or threats of violence. Furthermore, Action 5 brings to fore the intricacies in gender power dynamics and the need for full participation and representation of women as a prerequisite for addressing peace.

Action 6 addresses the linkage between peace and climate change as women have had to suffer from the effect of climate change. In the Sahel region, there are evidence of drought and other effect of climate change on women's health.[305] Other areas covered by the policy briefs include the need for partnership in peace operations peace enforcement, support for African Union and sub regional peace initiative. Africa is threatened by undemocratic governments and the rise in coups are potentials for violence and threats to peace.[306] Others include preventing the weaponization of emerging domain (Action11) on Artificial intelligence. There must also be a conscious effort in strengthening internal governance to enable the UN effectively play the role of peace governance. Policy 9 on the 'New Agenda for Peace' is wide and holistic; however, there must be a deliberate attempt to ensure gender integration in all the proposed actions., The fact that there is no specific mention of how gender dynamic will be operationalized, may also become a problem for its implementation. The opening statement of each brief would have been better positioned to emphasis the role that women will play in each of the

[301] Ibid.
[302] *UN Secretary General Report 'Our Common Agenda'* https://www.un.org/en/content/common-agenda-report/ downloaded on the 27th December 2024
[303] Ibid.
[304] Action 4; Policy Brief 9 'Our Common Agenda' https://www.un.org/en/common-agenda/policy-briefs
[305] Ibid Action 6
[306] Ibid Policy Brief

actions proposed. Nevertheless, the policy brief provides a good start for enthronement of global peace and inclusive societies.

The policy briefs no doubt shaped the outcome of the September 2024 Summit for the Future. The Summit was a pathway to a brighter future, for a dignifying humanity, peaceful equal and just. The Pact for the Future[307] commits itself to actions that were complimentary to 'Our Common Agenda'. The Pact developed 56 Actions, affirmed gender equality and empowerment of all women and girls as an essential prerequisite. It provides a forward-looking, bold, ambitious, accelerated, just and transformative agenda that will lead the world towards the achievement of the 2030 SDG Agenda. The Pact is expected to accelerate the achievement of the SDGs and address the failures of the past[308]. The Pact amongst other things placed the eradication of poverty and sustenance of economic growth, peace and security, climate and global governance as priorities towards the achievement of the SDGs. To this end, achieving gender equality and the empowerment of women and girls is seen as a crucial contribution to progress across all the SDGs. Like Our Common Agenda, the Pact demanded for additional funding and also that member states ensure more and sustained political will towards achieving these lofty ideas.[309] In conflict-affected countries with legislated gender quotas, women's membership in parliaments averaged 25%, compared to 15% in countries without such quotas.[310]

The Pact recognizes the need for human rights approach for the achievement of the 2030 Agenda, thus reaffirming the commitment to international law and other UN treaties in order to strengthen accountabilities and end impunity as provided in the challenges of new world order and the role of technology in international crimes (Action 13).[311] Efforts to redress injustice and reduce inequalities will build peace between countries, promote tolerance, embrace diversity and address all forms of discrimination in contemporary forms (Action 14).[312] The Pact equivocally asserts that none of the goals can be achieved without inclusion and economic emancipation of women. The Pact recognizes the contribution of Beijing Plan for Action.

However, the Pact has been criticized as vague, fluid and of language that is not firm and not capable of ensuring accountability. Gender mainstreaming in peace and security should have been integrated in the actions relating to peace and security. The call for participation and representation is important but gender still remains as a stand-alone and should have been integrated into all the actions.

5.0. CONCLUSION

A holistic approach to addressing the root causes of conflict will benefit the implementation of the UN Pact for the Future. The role of women in conflict prevention, as highlighted by UNSC Resolution 1325, is vital. Women's involvement in early warning systems, such as those seen in Kosovo and Sierra Leone, proves invaluable due to their access to crucial information through daily activities and local visibility. Moreover, empowering women in these roles can significantly enhance the ability of peacekeepers to identify and address emerging conflicts before they escalate[313]. Furthermore, member states of the UN should invest resources on prevention, protection, participation and recovery. The National Action Plan will remain a rhetoric without adequate funding investment to gender equality.

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[307] United Nations Summit of the Future https://www.un.org/en/summit-of-the-future/pact-for-the-future downloaded on the 24th of February 2024

[308] Ibid.

[309] Ibid

[310] UN Women Peace and Security; Facts and Figure https://www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures downloaded on the 24th of February 2025

[311] Action 13 UN Pact of the Future (n67) above

[312] Action 14 UN Pact of the Future (n67) above

[313] Wright, H., & Lyytikäinen, M. E. (2014). Gender and conflict early warning: Results of a literature review on integrating gender perspectives into conflict early warning systems. Retrieved February 28, 2025 from https://www.saferworld-global.org/resources/publications/810-gender-and-conflict-early-warning

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Medical Tourism in Nigeria: Challenges, Concerns, and Implications for Healthcare Policy and Practice

Onyegbule Kelechi G, Awoke Gabriel Ugota [314]

Abstract

Millions of individuals are currently visiting abroad for medical care, particularly, from developing to developed nations. We refer to this trend as "medical tourism." One of the profitable sectors that have grown quickly globally, including in Nigeria, is medical tourism. The desire for more affordable, high-quality medical care is one of the causes of the development. However, the growth of the sector has given rise to several medical, legal and socio-ethical dilemmas. These problems need to be resolved since they could have an impact on how medical tourism develops in the future. Among the legal issues covered in this study are the absence of legislative regulation and the absence of proper legal remedy. The quality of care given by medical professionals, the absence of follow-up care for patients in their home countries, the availability of care for locals in destination countries, and the problem resulting from treatment that is prohibited in patients' home countries are among the ethical concerns. The aim of this article is to analyse these medical, legal and socio-ethical dilemmas in order to support the industry's and the nation's future economic development. The foundation of this study is grounded on the doctrinal research method which makes use of secondary sources, including laws, textbooks, and journal articles that deal with medical tourism and the problems that have arisen as a result of its growth. The article concludes that unified medical tourism legislation can address medical, legal and socio-ethical concerns. The article recommends the enactment of a legislative instrument specifically made to govern medical tourism in Nigeria.

Keywords: Medical Tourism, Nigeria, Healthcare Policy, Healthcare Challenges, Medical Travel.

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Introduction

Anyika was loud and clear when he asserted that a nation's health system serves as the backbone of its economic expansion and advancement[315]. Many nations throughout the world believe that the development of health care is related to their people, institutions, and the laws that were put in place to combine resources for efficient and successful health management for the prevention and treatment of illnesses, injuries, and diseases. The availability of competent human resources for health, sufficient finance, and passionate health research, a standard structure, and effective governance that understand and meet the requirements of the populace are all necessary for a sustainable health care system. For it is impossible to separate health care services from the myriad needs of people in question. The production and consumption of health care services have increased over many decades due to the rapid growth in the flow of patients and health professionals, as well as advancements in medical technology, capital funding, and cross-border consumerism brought about by globalization. Through the implementation of bilateral and regional trade agreements among nations, the World Trade Organization's (WTO) recognition of the free movement of goods and services has advanced the liberalisation of the health care services industry. According to Lunt and numerous others[316], the provision of health care has rapidly changed as a result of the global commodity that is health care services, which is primarily a service industry that is traded.

Public health care services in Nigeria remain extremely weak and underfunded, and they have not received a significant share of the country's concrete inclinations across various sectors. Data from the Central Bank of Nigeria Statistical Bulletin reveal that the proportion of public health spending to total government expenditure in Nigeria has fluctuated over the years, with reported values of 7.05% in the mid-1990s, 4.22% in 2000, 6.41% in 2005, 4.3% in 2009, and 4.4% in 2010[317]. Examining the national budget allocation from 2011 to 2015 revealed that the health sector got under 6% of the entire budget[318]. More recent data from the World Health Organization's 2023 report on global health expenditure show that this trend of low allocation continues, with public health expenditure as a percentage of total government expenditure recorded at roughly 4.7% in 2020, 4.9% in 2021, 5.1% in 2022, and 5.2% in 2023[319]. Reflecting persistent difficulties in giving health spending top priority within Nigeria's national budget, these numbers still fall short of the Abuja Declaration goal of 15%.

Truly, the medical tourism sector is increasing around the world, judging from McKinsey & Company's estimation which shows that the global medical tourism sector earned approximately

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[315]EN Anyika, 'Challenges of Implementing Sustainable Health Care Delivery in Nigeria Under Environmental Uncertainty'. *Journal of Hospital Administration* [2014] 3(6), 113-126. Doi: 10.5430/jha.v3n6p113.

[316]N Lunt, R Smith, M Exworthy, ST Green, D Horsfall and R Mannion, *Medical Tourism: Treatments, Markets and Health System Implications: A Scoping Review* (Paris: OECD, 2011).

[317] Central Bank of Nigeria, 'Exchange Rates'. *Central Bank of Nigeria*, available at: https://www.cbn.gov.ng/rates/. accessed 16 April, 2025.

[318] *Ibid*

[319] World Health Organization, 'WHO Calls on Governments for Urgent Action to Invest in Universal Health Coverage.' December 11, 2023. Available at: https://www.who.int/news/item/11-12-2023-who-calls-on-governments-for-urgent-action-to-invest-in-universal-health-coverage. accessed 16 April 2025.

$60 billion in 2006, with a predicted increase to $100 billion by 2012[320]. Annually, about 60,000 persons (an average of 5,000 per month) travel abroad for various types of therapy that might have been provided in Nigeria[321]. Due to a lack of investment in the Nigerian health care system, Nigerians spend approximately US$1 billion a year on medical tourism for a variety of medical needs, with 60% of those visits occurring in four major specialties: cardiology, nephrology, orthopaedics, and oncology[322]. About 20% of all public health care spending goes towards medical tourism. This includes the salaries of physicians, nurses, and other healthcare professionals, the cost of primary care programs like HIV/AIDS, malaria, and mother/child care, as well as the operating and capital expenses of all healthcare facilities across the country. Medical tourism is a potential asset to the country's health sector and economy as a whole, and the cost of leaving Nigeria's healthcare system is not negligible[323].

Alarmingly, the World Health Organization's (WHO) comprehensive assessment of global health systems ranked Nigeria a dismal 187th out of 191 countries[324]. The fact that adjacent nations like Togo, Ghana, Niger, and Mali scored higher than Nigeria is pitiful. Although, the public and private sectors make up Nigeria's health care system, it is depressing to see the recent huge migration of Nigerians seeking medical care and medical professionals (such as doctors and nurses) to more hospitable areas. Shockingly enough, also, a report by Phillips Consulting[325], reveals a staggering healthcare workforce deficit in Nigeria, with a nurse-to-patient ratio of 1:20,000 and a doctor-to-patient ratio of 1:2,000. According to Clare Omatseye, president of the Healthcare Federation of Nigeria, there are around 37,000 doctors in the diaspora from Nigeria, 30,000 in the United States, and more than 5,000 in the United Kingdom, Great Britain, and Northern Ireland[326].

Inadequate medical facilities and equipment, poor human resources management, a lack of motivation and compensation, corruption, poor health care financing, decreased government spending on health, political instability, the absence of a unified framework for disease response, prevention, surveillance, and treatment. Exorbitant user fees, a severe shortage of healthcare providers, and a pervasive lack of trust in the health sector are further influencing the development of Nigeria's health care system as a whole and driving Nigerians to travel abroad for medical care[327]. The crisis prompted quick responses from external organisations, including multilateral

[320]MD Herrick, Medical Tourism: Global Competition in Health care. Dallas: National Centre for Policy Analysis [2007].Available atwww.ncpa.org/pdts/st304.pdf accessed 6 December 2024.
[321]M Abubakar, S Basiru, J Oluyemi, R Abdulateef and E Atolagbe, (2018). 'Medical Tourism in Nigeria: Challenges and Remedies to Healthcare System Development'. *International Journal of Development and Management Review* [2018] 13(1), 223-238.
[322] Phillips Consulting, *Investment Opportunities in Nigerian Health Industry* (Lagos: Phillips Consulting, 2017).
[323] PricewaterhouseCoopers, *Restoring Trust to Nigeria's Healthcare System* (Lagos: PwC, 2016).
[324]World Health Organization (2000). World Health Report 2000 – Health Systems: Improving Performance. Geneva: World Health Organization.
[325]*Ibid* (n 7).
[326]P Okafor, (2017, August 23). Nigeria loses $1bn annually to medical tourism – Omatseye. *Vanguard*.Available athttps://www.vanguardngr.com/2017/08/nigeria-loses-1bn-annuallymedical-tourism-omatseye/ accessed 5 December 2024.
[327]SA Obansa, AOrimisan, 'Healthcare Financing in Nigeria: Prospects and Challenges'. *Mediterranean Journal of Social Sciences*[2013] 4(1), 221-236.

and bilateral donors[328]; nevertheless, these responses have yet to result in improved health status and general quality of life for Nigerians[329]. Nigeria is grappling with the consequences of missed opportunities, having failed to capitalize on past chances to establish a robust and sustainable healthcare system. This study aims to investigate the issue of medical tourism in Nigeria, within the purview of the challenges, concerns, and implications for healthcare policy and practice. The paper examines among others the concept and evolution of medical tourism, looking at the definitions, dimensions, and debates surrounding it. The paper goes forward to look into the trends, patterns, and implications of medical tourism in Nigeria. The challenges, medical concerns, legal concerns, social concerns and their implications for Nigeria's healthcare landscape, and the regulatory framework for medical practice in Nigeria, while maintaining a focus on the area of medical tourism, are all constituent components of this work. The paper concludes that unified medical tourism legislation can address these medical, legal and social concerns.

The Concept and Evolution of Medical Tourism: Definitions, Dimensions, and Debates

To Anyika, global competition in the medical tourism industry is growing[330]. Lunt, Smith, Exworthy, Green, Horsfall and Mannion supported this view when they stated that its expansion is linked to economic growth, globalisation, and the uptake of health care[331]. Suffice that to be what it may, the definition of medical tourism is not universally agreed upon. The approaches used by different countries result in significant differences in definition[332]. According to Noree[333], however, the majority of definitions of medical tourism focus on the selection of health services, such as dental care, reproductive procedures, organ transplants, and health examinations, which raises ethical and patient safety problems. Foreign patients are counted in certain nations as they visit hospitals, but in other countries, patients are counted as they enter the country. Additionally, some nations consider the nationality of the patient rather than their domicile[334]. Recently, there has been an increase in the number of people travelling abroad to obtain medical care that is either significantly unavailable, inaccessible, or prohibitively expensive in their native country. Several scholars agree that medical tourism is a significant component of health tourism, despite the fact that its definition is unclear[335].

A phenomenon known as "medical tourism" occurs when a nation purposefully markets its medical services and facilities to tourists in addition to the standard tourist amenities offered there[336]. According to Carrera and Bridges[337], medical tourism is defined as a planned or organised trip outside of one's normal healthcare environment with the goal of restoring or improving one's health

[328]EO Onyibocha, O Irinoye, EO Sagua, OT Ogungide-Essien, JE Edeki and OLOkome, 'Sustainable Healthcare System in Nigeria: Vision, Strategies and Challenges'. *IOSR Journal of Economics and Finance*[2014] 5(2), 28-39.
[329]*Ibid* (n 1).
[330]*Ibid* (n 5).
[331]*Ibid* (n 2).
[332]E Kelley, *Medical Tourism* (Geneva: World Health Organization, 2013).
[333]T Noree, 'The Impact of Medical Tourism on the Domestic Economy and Private Health System: A Case Study of Thailand'. (PhD Thesis).*London School of Hygiene & Tropical Medicine* [2015].Doi: 10.17037/PUBS.02267963.
[334]*Ibid* (n 17).
[335]L Al-Lamki, 'Medical Tourism: Beneficence or Maleficence?'*SQU Med J* [2011] 11(4), 444-447.
[336]G Goodrich and J Goodrich, 'Healthcare Tourism – An Exploration Study'. *Tourism Management*[1987] 2(1), 217-222.
[337]MP Carrera and JF Bridges, 'Health and Medical Tourism: What they Mean and Imply for Healthcare Systems'. *In Health and Ageing*[2006]15, The Geneva Association.

through medical procedures; however, it has significant effects on the health care system and the economy.

To Samir and Karim[338], medical tourism is defined as the phenomenon wherein patients traverse international borders, departing from their country of origin to seek medical care in other developing or developed countries. Snyder, Crooks and Turner[339]also maintained the same view, while Epundu, Adinma, Ogbonna and Epundumade a distinction by stating that the concept excludes patients/individuals who require emergency medical care while on vacation in another country, long-term residents in a foreign country, and those who travel as a result of bilateral agreements[340]. The Medical Tourism Association defined medical tourism as a condition in which people from one country travel to another to receive medical care that is equivalent to or better than what they would receive in their native country. Patients who choose to cross international borders in order to receive medical care are said to be engaging in medical tourism. Dental care, fertility treatments, cosmetic surgery, and elective surgery are a few examples of this medical attention (therapy)[341].

According to Johnston, Crooks, Snyder, and Kingsbury[342], medical tourism is the deliberate departure of patients from their nation of residence in order to obtain non-emergency medical care overseas. Medical tourism is the practice of people leaving their own country to receive medical treatment, such as surgery, overseas, typically without the necessary cross-border care arrangements in place[343]. According to Mogaka, Mashamba Thompson, Tsoka-Gwegweni, and Mupara[344], medical tourism is the practice of patients travelling abroad in pursuit of medical services that are either prohibited, unaffordable, or unavailable in their home health care systems because of a variety of factors, including high medical expenses, unequal access to high-quality healthcare, and different types of medical procedures and techniques. There have been strong objections to the use of the term "medical tourism" because it is a misnomer that implies leisure travel and frivolity, ignores the importance of patients' mobility, and eliminates the suffering that patients face[345]. Kangas believed the term to connote whole lots of ideas rather being restricted to

[338] N Samir and S Karim, 'An Insight: Medical Tourism, Local and International Perspective'. *Oman Medical Journal* [2011] 07.

[339]J Snyder, V Crooks and L Turner, 'Issues and Challenges in Research on the Ethics of Medical Tourism: Reflections from a Conference'. *Journal of Bioethical Inquiry*[2011] 8, 3-6.

[340]UU Epundu, ED Adinma, BO Ogbonna and OC Epundu,'Medical tourism, public health and economic development in Nigeria: Issues and Prospects'. *AsianJournal of Medicine and Health* [2017] 7(2), 1-10. doi: 10.9734/AJMAH/2017/36658.

[341]*Ibid* (n 19).

[342]R Johnston, VA Crooks, J Snyder and P Kingsbury, 'What is Known about the Effects of Medical Tourism in Destination and Departure Countries? A Scoping Review'.*International Journal of Equity in Health* [2010] 9(24), 1-13. doi: 10.1186/1475-9276-9-24.

[343]A Whittaker, 'Pleasure and Pain: Medical Travel in Asia'. *Global Public Health: An International Journal for Research, Policy and Practice*[2008] 3, 271-290.

[344]JJ Mogaka, TP Mashamba-Thompson, JM Tsoka-Gwegweni and LM Mupara, 'Effects of Medical Tourism on Health Systems in Africa'.*African Journal of Hospitality, Tourism and Leisure* [2017] 6(1), 1- 25.

[345]IA Glinos, R Baeten, M Helbe and H Maarse, 'A Typology of Cross-Border Patient Mobility'. *Health & Place* [2010] 16, 1145-1155.

mean leisure medical travel[346]. Such writers as Cormany and Baloglu[347], Crozier and Baylis[348], Fedorov, Tata, Raveslooy, Dhakal, Kanosue and Roncarati[349], and Song[350], however, have proposed various nomenclatures as the most appropriate terms to describe the transfer of people overseas for medical treatment. These terminologies include "biotech pilgrims," "medical refugees," "medical outsourcing," and "international medical travel", all of which encapsulate the notion of individuals seeking medical care beyond their national borders. According to Lunt, Smith, Ex-worthy, Green, Horsfall and Mannion[351], medical tourism has analytical relevance because, as a term, it represents a propensity to travel and a willingness to receive treatment, two important characteristics of the unexplored worldwide market for health travel. The broader economic impact of medical travel is constituted by the health sector, which also suggests the commercialization and commoditization of such travel. Medical tourism transcends all simplicity of notions of "willingness to travel" for healthcare and highlights the industry's involvement, advertising concerns, and supplier-induced demand.

Examining Medical Tourism in Nigeria: Trends, Patterns, and Implications

Emerging breakthroughs in medical technologies, disparities in healthcare regulations among countries, global economic imbalances, and globalization all contribute to medical tourism in the twenty-first century[352]. In Nigeria, the persisting economic crisis has had a considerable influence on the health sector, which receives inadequate fiscal support[353]. There is little doubt that most healthcare institutions in Nigeria perform worse than those in industrialized countries due to a lack of basic facilities and equipment[354]. Nigeria's budgetary allocations and per capita government investment on health are far lower than what a standard healthcare system requires[355]. This has rendered most healthcare institutions inoperable in terms of facilities and human resource development, contributing to a high percentage of medical tourism among those who can afford such trips. In low- and middle-income countries, such as Nigeria, government hospitals lack basic diagnostic machines for chronic diseases and medical treatments for mild health conditions, causing patients to die from minor illnesses such as diarrhoea, malaria, accidents, tetanus, typhoid, and fever[356]. As a result, many Nigerians have lost faith in the country's healthcare system. It should be mentioned that medical tourism is not limited to the wealthy in Nigeria; even those who

[346]B Kangas, 'Traveling for Medical Care in a Global World'.*Medical Anthropology: Cross-Cultural Studies in Health and Illness* [2010] 29, 344-362.

[347] D Cormany and S Baloglu, 'Medical Travel Facilitator Websites: An Exploratory Study of Web Page Contents and Services Offered to the Prospective Medical Tourist'. *Tourism Management* [2010] 32, 709-716.

[348] GK Crozier and F Baylis, 'The Ethical Physician Encounters International Medical Travel'. *Journal of Medical Ethics* [2010] 36, 297-301.

[349] G Fedorov, S Tata, B Raveslooy, G Dhakal, Y Kanosue and M Roncarati, *Medical Travel in Asia and the Pacific: Challenges and Opportunities* (Bangkok: UN ESCAP, 2009).

[350]P Song, 'Biotech Pilgrims and the Transnational Quest for Stem Cell Cures'.*Medical Anthropology: Cross-Cultural Studies in Health and Illness* [2010] 29, 384-402.

[351]*Ibid* (n 16).

[352]H Widdows,'Localized Past, Globalized Future: Towards an Effective Bioethical Frame-Work Using Examples from Population Genetics and Medical Tourism'. *Bioethics* [2011] 25(2): 83- 91.

[353]NV Orji, JJ Inyang,JS Akpan, FO Bassey and HU Edodi, 'Nigerian Tourists´ Concerns Towards Medical Risks and Social Challenges'.*Afri Journal of Hosp.*[2020] 9(4): 612-625.

[354]L Muraina, I Tommy and CMonye,*Outbound Medical Tourism: Result of a Poor Healthcare System* (Ciuci Consulting, 2012).

[355]*Ibid*

[356]*Ibid*

cannot afford such a visit go above and beyond to raise cash through social networks. Some people even seek medical care abroad although their health condition may be treated in Nigeria due to a lack of trust in the Nigerian healthcare system[357]. A survey conducted in Nigeria among those who have engaged in medical tourism and those who are planning to embark on medical tourism in Nigeria discovered that 40.2% strongly believe that inadequate medical treatment in their home country is the reason for their participation in outbound medical tourism[358]. Additionally, it was found that the majority of respondents (47.7%) cited inadequate infrastructure as the primary cause of their outbound medical tourism activities. Because the cost of treatment is comparable to the quality of care received overseas, over half of the respondents (59.8%) stated that they participate in outbound medical tourism. Because there are competent medical care providers overseas, 52.6% of the respondents strongly believed that they participate in medical tourism[359]

Challenges of Medical Tourism in Nigeria

A variety of variables contribute to the growing popularity of medical tourism among Nigerians. Travelling abroad for medical routine physical checkups and surgically treatable diseases is perceived as an elite idea by the affluent in the society. Furthermore, the perceived inadequate quality of service and treatment options offered at the country's healthcare institutions has resulted in limited patronage among those who can afford the relatively high healthcare costs in more industrialised countries. This costs the health business a considerable amount of money in missed revenue, as well as the country's expense of paying for these services when these customers are government officials, hence negatively damaging the Nigerian health market. Many claim that the country's service quality may not be comparable to that of the countries receiving the patients. However, few people may be aware that a Joint Commission International (JCI) approved health facility exists in the country. TheJoint Commission International (JCI)is recognized as the "International leader in Healthcare Accreditation around the world and is the oldest and largest standards setting and accrediting body in health care in the United States"[360]. This distinction shows JCI's prominent role as the primary accreditation organisation, having approved many of the most sought-after health institutions in the destination nations that medical tourists visit[361]. Since foreign hospitals and doctors are not subject to the same regulations, in-country hospitals and doctors are at a disadvantage due to the medical code's prohibition on advertising[362]. There might not have been a need for this repeal argument due to an unequal benefit if the profession had been protected globally and free of ads. The unequal playing field necessitates a reexamination of this code, particularly in developing nations with a growing middle class that can afford services, even though there is strong opposition to physician advertising and it is still illegal in many nations, including some developed nations[363]. Since the internet has created a whole new global village, it is challenging and divisive to enforce such advertising restrictions in a nation. If

[357]SA Na, AY Nee and CY Onn,'Medical Tourism: The Effects of Perceived Benefits, Perceived Risks and Geographic Region'. *Pertanika Journal of Social Sciences & Humanities* [2017] 25, 143-52.
[358]*Ibid* (n 38).
[359]*Ibid* (n 43).
[360] Who is JCI - Who We Are | Joint Commission International. Available athttp://www.jointcommissioninternational.org/about-jci/who-isjci/ accessed 7 December 2024.
[361]DM Herrick, *Medical Tourism: Global Competition in Health Care* (Texas, USA: National Center for Policy Analysis 2007).
[362]*Ibid* (n 27).
[363]S Zwier, 'The Neglected Repercussions of a Physician Advertising Ban'.*J Med Ethics*[2014] 40(3), 198-201.

left unchecked, such practices will continue to lead to disparities in access and knowledge among a nation's citizens.

Patients who travel outside of the country for medical treatment because they are uninformed of equivalent therapeutic options in their home country are doing themselves a disservice. Most of the time, they use the internet to look for services, which quickly connects them to a wide selection of Medical Treatment Facilities (MTFs) and health facilities throughout the world, providing them with multiple options for care. The cost of flying for care, usually with at least one companion, if channelled into patient management in-country, would cover the cost of treating the patient with significant leftover. Furthermore, because so few people are able to accompany the patient to the place for his or her care, the cultural value of supportive management by family members—which is highly valued in our environment—is undermined. The precise psychological impact that the lack of this family support can have is hard to predict. Additionally, it is impossible to completely rule out the possibility of a fatality during a medical journey overseas. Because it might be expensive to send a family member's remains back to the country, this raises the expense of management dramatically[364].

Additionally, patients who travel for medical tourism are unlikely to learn about the regulations controlling medical practice in the nations they are visiting and are likely to assume that equivalent regulations exist in their home country[365]. In situations that lead to litigation, such an assumption may be incredibly inaccurate and deceptive. Over time, Nigeria and many other resource-poor nations have seen brain drain, with the most talented scientists moving abroad to work as experts. In order to convert brain drain into brain gain, the experts must be appropriately hired to stay in Nigeria and offer the specialisedtreatment they have developed over the years. When they can effectively promote what they bring to the nation as well as the time and place where they may be reached while there, this will be feasible[366]. The likelihood that the visiting physician will make more visits is high if he or she finds the time spent in his or her native country to be rewarding. During such visits, information and skills can be transferred to those in the country who will be able to continue providing these services to the public.

Medical Concerns and Challenges in Medical Tourism in Nigeria

Medical tourism has given rise to a plethora of ethical concerns, giving rise to the need for critical examination. Medical tourism has ethical ramifications for both population and individual health[367]. While some patients may benefit from high-quality healthcare due to their wealth and influence, others may experience health issues when returning home, maybe as a result of the subpar treatment they received in foreign facilities[368]. Follow-up may be necessary for some medical operations performed on patients in order to track the healing process[369].The majority of patients, however, do not spend enough time in foreign institutions to adequately examine their

[364]OlusesanAyodejiMakinde, OlalekanOlaleye and Brandon Brown, 'The Impact of Medical Tourism and the Code of Medical Ethics on Advertisement in Nigeria'.*Pan African Medical Journal* [2014] 19(103). DOI: 10.11604/pamj.2014.19.103.5217.
[365]*Ibid*
[366]*Ibid*
[367]H Wahed, 'Ethical and Legal Issues in Medical Tourism'. *IIUMLJ.*[2015] 23, 227.
[368]*Ibid*
[369]L Turner, 'First World Care at Third World Prices. Globalization, Bioethics and Medical Tourism'.*BioSocieties* [2007] 2(3), 303-25.

health issues due to the financial burden. The onus of correcting any careless actions by foreign medical professionals usually falls on local physicians in the country of origin of medical tourists[370]. For instance, 39% of patients who underwent neuro-surgical surgery died from problems after returning to Nigeria, according to a study done at a medical facility there among patients who came in after receiving treatment abroad[371]. Over 25% of these patients required unscheduled follow-up care due to infections[372]. Some of the medical services that medical tourists seek after an operation is completed may also be prohibited or unethical in their native country, which could make follow-up challenging[373].

Medical tourists seeking treatment abroad may be exposed to bacteria that do not exist or are unusual in their native country, boosting the spread of infectious diseases to their place of residence[374]. Devastating outbreaks could result from infectious diseases contracted overseas, particularly if the population lacks innate protection to them[375]. For example, inadequate organ screening procedures in certain foreign hospitals may make organ transplant recipients more vulnerable to infection problems[376]. For instance, there have been reports of cases when certain individuals contracted hepatitis B while undergoing renal transplants in India and heart surgery in Pakistan[377].The unethical practice of using foreign patients, particularly those from low- and middle-income countries, for experimental treatment without informing them of the negative outcome of such a procedure, as well as the trend of harvesting organs from dead foreign patients without the deceased's family's approval, has been witnessed in numerous occasions[378]. There has also been increased interest in the effectiveness of medical personnel performing treatments on patients in hospitals abroad. While many foreign private clinics provide services to visitors, some clinics might not meet the standards set by the majority of regional medical regulatory agencies[379]. In order to provide the impression that these clinics provide healthcare services in accordance with internationally recognised standards of quality and safety, some of them have been approved as accredited facilities in partnership with the national government[380].

[370]LH Chen and ME Wilson, 'The Globalization of Healthcare: Implications of Medical Tourism for the Infectious Disease Clinician'. *Clin Infect Dis.*[2013] 57(12), 1752-1759.
[371]EO Idowu and OA Adewole,'Spectrum of Neurosurgical Complications Following Medical Tourism: Challenges of Patients Without Borders'. *Afr. Health Sci.*[2015] 15(1), 240-5.
[372]*Ibid*
[373]OA Makinde,'Physicians as Medical Tourism Facilitators in Nigeria: Ethical Issues of the Practice'. *Croat Med J.*[2016] 57(6), 601-604.
[374]NS AbdMutalib, LC Ming, SM Yee, PL Wong and YC Soh, 'Medical Tourism: Ethics, Risks and Benefits'. *Indian Journal of Pharmaceutical Education and Research*[2016] 50(2), 261-70.
[375]*Ibid*
[376]AE Anker and TH Feeley, 'Estimating the Risks of Acquiring a Kidney Abroad: A Meta-Analysis of Complications Following Participation in Transplant Tourism'. *Clin Transplant*[2012] 26(3), E232-E241.
[377]ST Green,'Medical Tourism - A Potential Growth Factor in Infection Medicine and Public Health'. *J of infect.*[2008] 57(5), 429.
[378]JJO Mogaka, L Mupara and JM Tsoka-Gwegweni,'Ethical Issues Associated with Medical Tourism in Africa'.*J Mark Access Health Policy*[2017] 5(1), 1309770.
[379]J Behrmann and E Smith,'Top 7 Issues in Medical Tourism: Challenges, Knowledge Gaps, and Future Directions for Research and Policy Development'. *Glob Jour of Health Sci.*[2010] 2(2), 80.
[380]*Ibid*

Legal Concerns and Challenges in Medical Tourism in Nigeria

The legal concerns pertaining to medical tourism have been examined by academics. When medical tourists receive subpar treatment abroad, they might not be able to pursue legal action, particularly in nations without legislation protecting foreign travelers[381]. It may be challenging to demonstrate subpar care even in jurisdictions with such laws, particularly if the legislation mostly depends on testimony from medical professionals in those nations[382]. In addition, international litigation is costly and challenging to implement[383]. As a result, individuals who are not wealthy and dissatisfied with the medical care they received abroad would not be able to pursue legal action. The cost of hiring a qualified attorney, travel expenses, and lodging may place additional financial strain on patients who travel abroad in search of justice. Patients find it challenging to bring solicitors from their own country due to the various rules that apply in other nations. Even in cases where pursuing legal recourse is feasible, language and cultural barriers may make it difficult since international solicitors might not comprehend the courtroom if the country where the case is being heard is the one where the treatment was sought[384]. The most practical solution for these medical tourists seeking justice is to hire a lawyer in the nation where the surgery was performed, which might be costly.

Even in circumstances where it is possible, a favorable judgment may not result in enforcement[385]. It is improbable that such a judgment will be implemented or that they will receive monetary compensation. One of the reasons for the high cost of health care in the United States is that patients have the legal right to seek remedy through court procedures if they are treated negligently or incorrectly[386]. Also, some organ transplantation procedures performed abroad are illegal because they typically involve the purchase of organs. This frequently occurs in severely poor nations, as poverty confuses people's perceptions of the repercussions of selling their organs. A recent case is a former Nigerian congressman who was convicted in the United Kingdom of coercing a young man into giving a kidney for a sick daughter through financial incentive without properly educating the young man on the repercussions[387].

Social Concerns and Challenges in Medical Tourism in Nigeria

Low-and middle-income nations become dependent on the rich world and lose faith in their healthcare systems as a result of medical tourism, which is an act of neo-colonialism[388]. Medical tourism turns healthcare into a commodity that only wealthy people can afford. Because medical tourism gives them alternative access to healthcare, political leaders and other key stakeholders who should be developing local healthcare systems have not done so, which further contributes to the poor state of local healthcare systems in low- and middle-income countries[389]. Medical tourism

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[381]PNJ Kassim, 'Medicine Beyond Borders: The Legal and Ethical Challenges'. *Med Law*[2009] 28(3), 439-450.
[382]N Cortez, 'Patients without Borders: The Emerging Global Market for Patients and the Evolution of Modern Health Care'. *Ind. Law J.*[2008] 83(1), 71-132.
[383]*Ibid* (n 66).
[384]*Ibid* (n 36).
[385]*Ibid*
[386]*Ibid*
[387]N Princewill and K Godwill, Nigerian Senator Jail for 9 years for organ harvesting plot.Accessed 7 December 2024.
[388]JJO Mogaka, L Mupara and JM Tsoka-Gwegweni,'Ethical Issues Associated with Medical Tourism in Africa' *J Mark Access Health Policy*[2017] 5(1), 1309770.
[389]R Smith, M MartínezÁlvarez and Chanda,'Medical Tourism: A Review of the Literature and Analysis of a Role for Bi-Lateral Trade'. *Health Policy* [2011] 103(2-3), 276-82.

may worsen poverty and economic inequality in low- and middle-income nations, as patients may deplete their savings while seeking treatment overseas[390]. Such persons may also lack the funds to deal with issues that develop as a result of such visits when they return to their native country. As long as therapy is available abroad, Low- and Middle-Income Countries (LMICs) may feel no obligation to remedy the deficiencies in their healthcare system, forcing individuals to put their material well-being at risk in order to receive necessary care[391]. Medical tourism may also result in patients substituting clinical criteria for economical reasons due to the poor status of their local healthcare systems and a desire to seek treatment. For example, medical tourists may choose to visit less expensive foreign hospitals over more expensive ones, regardless of the quality of care provided there[392].

The Tripartite Consequences of Medical, Legal, and Societal Concerns in Medical Tourism: Implications for Nigeria's Healthcare Landscape

Medical tourism is quickly expanding in Nigeria. However, disparities in socio-economic status and power stratifications within the country can result to inequities in access to healthcare. Unequal power and economic standing in society may also have an impact on justice issues when patients receive subpar care in foreign hospitals. Given the medical, legal, and social issues associated with medical tourism, Nigeria must first establish machinery to ensure that their healthcare systems are up to standard, as well as cutting-edge technologies to measure and meet the medical challenges of its citizens[393]. This will significantly limit the movement of patients from one country to another seeking healthcare services, as well as the financial burden that overseas medical travels impose on regular Nigerian households.

Nigeria's government must enact enforceable laws, policies, and guidelines on medical tourism that regulate the quality and standard of hospitals where patients can seek medical care abroad and protect their legal rights in case of complications from substandard care. This is because it is nearly impossible for a country to have all the necessary measures to prevent its citizens from seeking medical care abroad due to differences in the efficacy and optimization of healthcare systems across the world. For example, in the event of difficulties, a patient's death due to inadequate care, or if it is discovered that organs of deceased patients are being exploited without the proper authorisation from the patient's family, the treating physician or healthcare professional should be required to sign a legal implication form[394]. Similar to this, organ transplantation procedures overseas should go through the right government agencies to check the donor's identity and, if necessary, obtain informed permission before allowing the travel to foreign mission embassies for visas. Relevant health stakeholders should also continue to educate the public about the complications that may be linked with certain medical treatments sought outside of Nigeria, particularly cosmetic surgery, which may result in follow-up challenges when they return to the nation.

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[390]B Kangas,'Hope from Abroad in the International Medical Travel of Yemeni Patients'. *Anthropol Med.*[2007] 14(3), 293-305.
[391]*Ibid*
[392]*Ibid* (n 27).
[393]Adeponle Olayode Adeoye, 'Assessing the Associated Medical, Legal, and Social Issues in Medical Tourism and its Implications for Nigeria'. *Pan African Medical Journal* [2023] 45(145). DOI: 10.11604/pamj.2023.45.145.41104
[394]*Ibid*

Regulatory Framework for Medical Practice in Nigeria

The primary legislative enactment governing the practice of medical profession in Nigeria is delineated by the provisions of the Medical and Dental Practitioners Act[395]. The Medical Council of Nigeria was founded under *Section 1(1)* of this Act with the responsibility of establishing the degree of education and training needed to pursue a career in medicine. It is also in charge of publishing the list of people who are permitted to practice medicine in Nigeria, reviewing the standard, and making sure that registers of those authorized to do so are established and continually updated[396].

The provisions of this Act stipulate that an individual must be registered with the Council in order to hold an appointment or practice medicine in Nigeria[397]. This registration may be temporary (i.e., for a brief period of time), full, or provisional. New graduates of medical school must register provisionally. Fresh graduates are granted a provisional registration certificate that enables them to work in accredited organizations in order to obtain real-world experience while being closely supervised and guided by one or more fully trained medical professionals. The individual is eligible to obtain a certificate of experience upon successfully completing such a period of employment[398]. The certificate of experience enables the holder to be fully registered as a medical practitioner upon application. To be completely registered as a medical practitioner in Nigeria, an individual must successfully finish a training program authorised by the Council and obtain a certificate of experience[399].

Furthermore, if a foreign-trained medical professional can show that he has been chosen for a specific amount of time to work in an authorised hospital or institution in Nigeria and that he has passed the Council's assessment exam, if any, after obtaining certain credentials outside of Nigeria that the Council currently recognises, the Act permits him to be temporarily registered in Nigeria. For the term of their job, a person with a temporary registration in Nigeria is entitled to the privileges associated with being a fully registered medical practitioner[400].

Finally, the Medical and Dental Practitioners Act[401], the Nursing and Midwifery (Registration etc.) Act[402], the National Health Act[403], the Code of Medical Ethics in Nigeria[404], the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Medical Oath, the Compulsory Treatment and Care for Victims of Gunshot Act[405], the Patients' Bill of Rights[406], the Pharmacy Act[407], and the Criminal Code Act[408] are some of the statutes that govern medical practice in Nigeria, the country still lack a legislative instrument or enactment specifically meant for the regulation of

[395] CAP M8, Laws of the Federation of Nigeria, 2004.
[396] *Section1(2).*
[397] *Section 17.*
[398] *Section 12.*
[399] *Section 8 and Section 9.*
[400] *Section 13.*
[401] *Ibid* (n 80).
[402] No. 89, 1979.
[403] No. 208, vol. 101, 2014.
[404] Made pursuant to section 1(2)(2), CAP MS.
[405] No. 105, 2017.
[406] Patients' Bill of Right Act 2018.
[407] Pharmacy Act of Nigeria 1992 No. 91 P17 – 2.
[408] Criminal Code Act 1965 CAP C38.

medical tourism, this has left a lacuna in the system that needs to be addressed as medical tourism in the country is witnessing rapid evolution.

Conclusion

It has been made clear that people benefit from the growth of medical tourism in several ways. It enables quicker access to medical care and provides people with the chance to receive high-quality care that is not available in their native countries at a reduced cost. However, the growth of medical tourism brings up a number of medical, legal and social concerns that could hinder the industry's future advancement. Some of these medical, legal and social dilemmas have been covered in this article.

The absence of legal remedies and laws governing medical tourism are the legal problems. We suggest adding alternative dispute resolution techniques to current medical tourism laws and creating a consistent set of guidelines relevant to all countries engaged in medical tourism to help us overcome these obstacles. Patients may be able to receive compensation through alternative dispute resolution instead of going through the drawn-out legal process. In order to help patients and raise knowledge of their rights and legal options in cases of medical harm brought on by medical tourism, a unified regulation is required.

Important ethical questions are also brought up by patients' usage of medical tourism, including those pertaining to patient safety and the effects of medical tourism on both the patients' home and destination nations. First, the disparity in the criteria used to determine the quality of care raises doubts about the quality of care for certain treatments offered by healthcare professionals. Second, because the cost of medical care is borne by the patient's home country, it presents ethical challenges, as is the follow-up care provided after returning home. Furthermore, medical tourism may worsen health disparities for the impoverished locals in the countries of destination. Finally, when individuals go to receive therapy that is prohibited in their native nations, medical tourism presents an ethical dilemma. The idea is to establish a standardised accreditation process that is in charge of evaluating the standard of care provided by all healthcare providers. To guarantee that all patients have access to improved healthcare and to control unlawful treatment, a standardised regulatory framework should also be established in order to ensure that medical tourists are legally and medically guided.

Integrating Chromotherapy as a Measure for the Correction of Offenders in Nigeria: A Comparative Perspective

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Abstract

The Nigerian Correctional Service (NCoS) is statutorily mandated to reform, rehabilitate, and reintegrate offenders, reflecting a shift from punitive to corrective justice. However, despite progressive reforms under the Nigerian Correctional Service Act, 2019, rehabilitative outcomes remain limited due to the Service's overreliance on conventional tools such as sentence remission, education, vocational training, classification, and aftercare services. This paper adopts a doctrinal and comparative methodology to interrogate these mechanisms and argues for the integration of chromotherapy as a complementary correctional strategy grounded in behavioural science and therapeutic design. Drawing comparative insights from South Africa, Kenya and Ghana, the study highlights the growing adoption of environmental psychology and colour-based interventions in custodial reform. These countries have demonstrated that colour dynamics; through architectural design, light modulation, and visual stimuli can mitigate aggression, alleviate anxiety, and promote cognitive calmness among inmates. Such interventions align with the broader African trend towards humanised penal systems that balance deterrence with psychological rehabilitation. The paper contends that Nigeria's correctional jurisprudence must evolve beyond statutory formalism to embrace interdisciplinary innovations capable of producing measurable behavioural change. Integrating chromotherapy into correctional policy offers a low-cost, evidence-driven framework for improving inmate well-being, institutional safety, and reintegration prospects. It concludes that adopting this approach would situate Nigeria within a progressive African correctional paradigm that redefines correction as a process encompassing not only moral and vocational reformation, but also emotional and psychological renewal.

Keywords: Chromotherapy, Correctional reform, Rehabilitation, Penal Policy, Nigeria

1.0. Introduction

The criminal justice system in any society is designed to combat crime and ensure public safety through the effective functioning of its three interdependent components: the police, the courts, and the correctional institutions[1]. Within this structure, the Correctional Service bears the unique and complex responsibility of custodial management, reformation, and reintegration of offenders.[2] In Nigeria, this role is formally anchored in the Nigerian Correctional Service Act 2019[3] (NCoSA) which redefined the former prison system to reflect a shift from punitive incarceration toward a more rehabilitative and restorative philosophy. The Act underscores the 'three Rs' of correction: reformation, rehabilitation, and reintegration as the central purposes of custodial intervention.[4]

These objectives resonate with global correctional standards, particularly the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)[5], which affirm that the purposes of imprisonment are not only to protect society against crime and reduce recidivism but to reintegrate offenders as law-abiding, self-supporting members of society.[6] This reintegration, as the Rules emphasize, requires that the period of imprisonment be constructively used to provide access to education, vocational training, moral and spiritual development, and psychological and social support tailored to individual treatment needs.[7]

The Nigerian Correctional Service Standing Orders (Custodial) 2020 [8] and the NCS 2019 provide a range of correctional tools such as remission of sentence, educational and vocational training, classification and categorization of inmates, and aftercare services; all aimed at behavioural modification and social reintegration. Yet, despite these frameworks, the effectiveness of rehabilitation remains constrained by persistent challenges, including overcrowding, resource deficits, and inadequate integration of behavioural and therapeutic science into correctional practice.

Against this backdrop, this paper explores the potential integration of chromotherapy (colour therapy) as a complementary correctional mechanism capable of advancing the rehabilitative mandate of the Nigerian Correctional Service (NCS). Chromotherapy; an emerging psycho-corrective approach that utilizes colour stimuli to influence mood,

[1] UNODC's Strategic Vision for Nigeria 2030. United Nations Office on Drugs and Crime. https://www.unodc.org/conig/uploads/documets/2024-05-13 Accessed 12th October, 2025 See also Yemi Akinseye-George, *The Nigerian Criminal Justice System: A Practical Guide* (2nd edn, LexisNexis 2019) 45–52.

[2] Nigerian Prisons Service (2018) Annual Report

[3] *Nigerian Correctional Service Act* 2019, Laws of the Federation of Nigeria (LFN). The Act repealed the *Prisons Act* (Cap P29, LFN 2004) and marked a paradigm shift from a punitive to a corrective and rehabilitative philosophy in Nigeria's penal administration. Major innovations include the change of name from the *Nigerian Prisons Service* to the *Nigerian Correctional Service*; the bifurcation of the Service into Custodial and Non-Custodial units; formal recognition of non-custodial measures such as community service, probation, parole, restorative justice and suspended sentences; enhanced human rights protections for inmates including the right to education, vocational training and healthcare; and statutory emphasis on decongestion, mandating that no custodial centre shall exceed its capacity, with responsibility placed on the State Controller to reject admissions beyond capacity. The Act also introduced structured provisions for rehabilitation, reintegration, and after-care, aiming to align Nigeria's correctional framework with international standards.

[4] Section 10 (f, g) Nigerian Correctional Service Act, 2019

[5] *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN General Assembly Resolution 70/175, adopted 17 December 2015. The *Nelson Mandela Rules* represent the universally acknowledged minimum standards for the humane treatment of persons deprived of liberty. They revise and expand the original *Standard Minimum Rules for the Treatment of Prisoners* adopted in 1955, incorporating contemporary human rights principles and the legacy of Nelson Mandela. The Rules emphasize the inherent dignity of prisoners (Rule 1), the prohibition of torture and ill-treatment (Rule 43), and the rehabilitative purpose of imprisonment (Rule 4). They provide detailed guidance on healthcare equivalence, disciplinary procedures, staff training, and conditions of confinement, while reaffirming that imprisonment itself constitutes the punishment and must not be aggravated by inhumane treatment. The Rules have become a benchmark for national prison reforms, including Nigeria's *Correctional Service Act 2019*, which reflects many of their principles.

[6] Nigerian Prisons Service (2018) Annual Report

[7] Nelson Mandela Rules (n. 5)

[8] *Nigerian Correctional Service Standing Orders (Custodial) Revised Edition 2020* (Abuja: Nigerian Correctional Service, 2020). The 2020 Standing Orders operationalise the *Nigerian Correctional Service Act 2019* by detailing administrative and procedural standards for custodial management, marking a shift from punitive imprisonment to reformation, rehabilitation and reintegration in line with international human rights norms.

behaviour, and mental balance has been increasingly examined in health and institutional contexts for its therapeutic potential.[9] This study adopts a doctrinal and comparative methodology, reviewing Nigeria's legal and institutional correctional framework alongside relevant practices from other African countries such as South Africa**,** Kenya and Ghana, where environmental and psychosocial interventions have begun to shape modern correctional reforms.

By situating chromotherapy within the broader philosophy of restorative and humane correction, the paper argues that Nigeria can align more closely with both African and global standards that view rehabilitation not merely as the cessation of crime, but as a process of psychological transformation, human dignity restoration, and social reintegration**.**

2.0. The theory and practice of correction

The reformative function of the NCS is central to the nation's response to crime and public safety. The Service's mission; to protect society through the safe custody, reformation, rehabilitation, and reintegration of offenders reflects a progressive shift from punitive incarceration toward human-centred correction. According to Thanni,[10] except for inmates sentenced to death or life imprisonment without parole, most offenders will ultimately return to society. Thus, the condition in which they re-enter the community is a matter of profound societal importance. Even condemned inmates may rejoin society through the exercise of constitutional powers of amnesty or pardon by the President or State Governors[11]. It therefore follows that the core concern of correctional philosophy is not merely containment, but the transformation of offenders into law-abiding citizens capable of contributing to national development.[12]

Corrections refers to the structures, policies, and practices involved in managing individuals who have been accused or convicted of crimes. It includes the wide range of institutions, programs, and services that supervise offenders. Corrections is generally divided into two categories: institutional corrections, which involve jails and prisons, and community corrections, which include probation, parole, and other non-custodial sanctions.[13] Similarly, Orakwe[14] conceptualises corrections as a systematic inquiry into the mindset of the offender with the purpose of understanding the roots of antisocial behaviour and implementing programmes aimed at restoring moral rectitude. In essence, correction constitutes the final and most transformative phase of the criminal justice process; one that encompasses both pre-trial and post-conviction management of offenders for the enhancement of social order and public safety.
Under the NCoSA 2019, correctional philosophy is explicitly codified, unlike the position under the Prison Act.[15] Section 2(1) outlines the objectives of the Service, including the promotion of international human rights standards, the implementation of non-custodial measures, and the enhancement of reformation, rehabilitation, and reintegration. Section 10 further expands these objectives into a comprehensive framework encompassing safe custody, behavioural assessment, educational and vocational empowerment, psychological and spiritual counselling, and aftercare support. Collectively, these functions are designed to ensure that imprisonment contributes to the offender's eventual reintegration rather than perpetuating cycles of criminality. Categorizing the function of the prison and highlighting its correctional role, Bamgbose[16] stated that what the prison does is generally to secure and control, to punish and to rehabilitate and reform the offenders…identifying the causes of their antisocial dispositions; setting in motion mechanism for their treatment and training for eventual reintegration into society as moral law-abiding citizens upon discharge….

[9] Somia Gul, Rabia Khalid Nadeem and Anum Aslam, 'Chromotherapy—An Effective Treatment Option or Just a Myth? A Critical Analysis on the Effectiveness of Chromotherapy' (2015) 1(2) *American Research Journal of Pharmacy* 62 http://www.arjonline.org accessed 16 December 2025.
[10] Thanni, D.A. Treatment Beyond Bars: An Assessment of Non-Custodial Treatment Options for Offenders in Oyo State, Nigeria. Lead City University Law Journal (LCULJ) 5th Volume, Issue 1 (2023)
[11] See Section 12 (2) (c) Nigerian Correctional Service Act, 2019
[12] Thanni, D.A. (n.10)
[13] Ross JI, 'What is Corrections, and What Are Its Problems?' in *Key Issues in Corrections* (Policy Press 2016) ch 1 https://doi.org/10.51952/9781447318811.ch001 accessed 16 December 2025.
[14] Orakwe, I.W (2010) Issues in contemporary corrections. The Transformation. Vol 1, No 1.p13
[15] Prison Act CAP P29, Laws of the Federation of Nigeria, 2004
[16] Bamgbose, O (2010) *The sentence, the sentencer, and the sentenced: Towards prison reform in Nigeria*. An Inaugural lecture. University of Ibadan. p52

Crime deterrence and control in modern parlance has shifted in paradigm from punishment to restoration of the offender and this can only be achieved through the instrumentality of the various apparatus of correction.[17] An offender would have been corrected if he no longer poses threat to the society upon his return and he becomes a fully participating member of the community.[18]

However, while the NCoSA 2019 and the Standing Orders (Custodial) 2020 articulate a reform-oriented philosophy, practice often remains dominated by custodial logic rather than correctional outcomes**.** Dambazau[19] aptly distinguishes between custody and correction, noting that while the former involves security and control through barriers, armed guards, surveillance, and discipline; the latter is a process of behavioural modification and social reintegration. Custody, in other words, may be a necessary condition for correction but is not sufficient by itself. The ultimate test of a correctional system is not whether inmates are securely held, but whether they are morally, psychologically, and socially transformed upon release.[20,21]

Comparatively, other African jurisdictions provide valuable lessons for Nigeria's correctional evolution. South Africa, for instance, has embedded its correctional philosophy within a constitutional framework that emphasises dignity and human development. The Correctional Services Act 111 of 1998[22] redefined imprisonment as an opportunity for rehabilitation, requiring individualised correctional sentence plans, psychological services, and structured reintegration programmes. The establishment of the Department of Correctional Services' Care and Development Programme underscores an integrated approach combining education, therapy, and vocational empowerment as central to the offender's reintegration process.[23]

Similarly, Kenya's Prisons Act (Cap. 90) and its subsequent Prisons Reforms Programme (2002–2012) recognised the limitations of punitive incarceration and initiated reforms to promote restorative justice, vocational training, and psychosocial rehabilitation. Kenya's correctional administration now integrates chaplaincy, counselling, and mental health interventions as key tools in behavioural transformation; an approach from which Nigeria could draw significant inspiration.[24]

In Ghana, the Prisons Service Act 1972 (NRCD 46) and its 2015 reforms likewise signal a movement toward correctional humanisation, though implementation remains uneven. Ghana's Correctional Service has experimented with reintegration partnerships between correctional centres and civil society organisations, focusing on skills training and post-release monitoring. The Ghanaian experience illustrates that rehabilitation is most effective when community institutions are co-opted into the process, ensuring that correction does not end at the prison gate.[25]

In light of these comparative examples, the Nigerian system's overemphasis on confinement reveals an enduring gap between legislative aspiration and operational reality. The true measure of correctional success lies in the offender's

[17] Obiandu,O (2013) No deviant can change in chains; A case study of human –relations approach in effective penal management; Perspectives on Nigeria Prison Service, national security and national development. *The reformer. A bulletin of Nigeria Prison Service.* Vol 4. No 5 p63

[18] Omotosho,O (2004) Redefining punishment in criminal cases. LlM Thesis University of Ibadan.p42-43

[19] Dambazau A, *Criminology and Criminal Justice* (2nd edn, Spectrum Books 2007) 197

[20] Office of the United Nations High Commissioner for Human Rights, A/HRC/60/55: Human rights and the social reintegration of persons released from detention (UN OHCHR 2024) <https://www.ohchr.org/en/documents/thematic-reports/ahrc6055-human-rights-and-social-reintegration-persons-released> accessed 10 October 2025.

[21] Ladan, B (2011). The NOUN-NPS Partnership as a veritable vehicle for prisoners' education in Nigeria. *The Transformation Digest. Nigeria Prison Service.* Vol 1, No.2 p9

[22] Correctional Services Act 111 of 1998 (South Africa).

[23] Bruyns HJ and Nieuwenhuizen C, 'The Role of Education in the Rehabilitation of Offenders' (2004) 17(2) *South African Journal of Higher Education* https://doi.org/10.4314/sajhe.v17i2.25293. accessed 16 December, 2025

[24] Ndung'u PK, 'Administration of the Kenya Prisons Organization' (UNAFEI Resource Material Series No 98) https://www.unafei.or.jp/publications/pdf/RS_No98/No98_IP_Kenya_2.pdf accessed 16 December 2025.

[25] Aaporekuu J, 'Role of Correctional Services in the Rehabilitation and Reintegration of Offenders: Ghana in Perspective' (April 2022) https://www.researchgate.net/publication/359722660_Role_of_Correctional_Services_in_the_Rehabilitation_and_Reintegration_of_Offenders_Ghana_in_Perspective accessed 16 December 2025.

post-release adjustment and capacity for lawful, productive citizenship. Hence, the NCS must expand its rehabilitative philosophy beyond existing frameworks to embrace innovative, evidence-based correctional interventions, including psychological and environmental therapies such as chromotherapy. By integrating such holistic and behavioural-science-informed approaches, Nigeria can begin to actualise the rehabilitative ideals already envisioned within its statutory instruments.

3.0. The Concept and Therapeutic Basis of Chromotherapy

In advancing the reformative objectives of the NCS, it is essential to explore alternative therapeutic models that complement psychological and behavioural interventions. Chromotherapy, also known as colour therapy, is one such emerging approach. Rooted in the premise that colour influences mood, cognition, and physiology, chromotherapy employs light and colour frequencies to restore balance to the human body and mind.[26] Although often associated with complementary medicine, its integration into correctional psychology presents a novel opportunity to enhance rehabilitation outcomes within custodial environments.[27]

The theoretical foundation of chromotherapy rests on the psychophysiological interaction between sensory stimuli and emotional response. Colours are known to affect the autonomic nervous system: blue hues promote calmness and cognitive clarity; green encourages emotional stability; while red and orange may stimulate energy and motivation when applied in controlled doses.[28] Within the correctional context, such responses can be harnessed to mitigate aggression, anxiety, and depression; conditions disproportionately prevalent among inmates. The approach is therefore consistent with behavioural modification theory, which recognises environmental conditioning as a determinant of conduct.[29] Globally, correctional administrators have begun to explore environmental design as a component of rehabilitation.[30] For instance, Scandinavian prison architecture integrates natural light, soothing colour palettes, and open spatial design to promote psychological well-being and reduce recidivism.[31] These practices underscore the principle that humane environments foster humane behaviour. In Nigeria, where overcrowding, monotony, and sensory deprivation characterise most custodial centres[32], chromotherapy offers a low-cost yet potentially transformative means of enhancing mental health and behavioural regulation.

Empirical evidence, though limited in African settings, suggests that the therapeutic use of colour can reduce aggression and promote cooperation among confined populations[33]. Integrating chromotherapy into the Nigerian correctional framework would thus align with the rehabilitative mandate of the NCS, particularly its emphasis on psychological reformation and reintegration. By situating chromotherapy within the broader correctional philosophy, Nigeria can pioneer an indigenous model of environmental rehabilitation that harmonises science, psychology, and human rights in offender management.

4.0. Correctional Activities of the Nigerian Correctional Service: An Evolving Framework for Offender Reformation

[26] Azeemi STY and Raza M, 'A Critical Analysis of Chromotherapy and Its Scientific Evolution' (2006) 2(4) *Evidence-Based Complementary and Alternative Medicine* 481 https://doi.org/10.1093/ecam/neh137 accessed 16 December 2025.
[27] Ibid
[28] Ibid
[29] Ibid
[30]Gnatiuk L and Zhuravlova KS, 'Environmental Design of the Rehabilitation Center' (2024) *Theory and Practice of Design* https://doi.org/10.32782/2415-8151.2024.34.26 accessed 16 December 2025
[31] Thordson E, *Designing for Humanity* (Design thesis, Department of Architecture and Landscape Architecture, North Dakota State University 2017/2018) https://core.ac.uk/download/pdf/211310531.pdf accessed 16 December 2025.
[32] National Human Rights Commission (Nigeria), *Prison Report 2018* (edited by Tony Ojukwu and Okay Benedict Agu) https://www.nigeriarights.gov.ng/files/publications/PRISON-REPORT-min.pdf accessed 16 December 2025.
[33] Kundu, S and Kundu, D. (2015) Count Cesare Mattei's Liquid Color Therapy. *International journal of homeopathy & natural medicines*. 1. 3: 28-34 doi : 10.11648/j.ijhnm.20150103.11

Reforming an offender within an environment defined by loss of liberty and autonomy is an inherently complex undertaking.[34] The success of such reformation depends on a combination of institutional, environmental, and personal factors including the offender's psychological resilience, social background, length of sentence, nature of the offence, and perception of justice.[35] The NCS is tasked with achieving correction of offenders. To this end, it deploys a range of correctional tools and programmes designed to modify behaviour, instill discipline, and prepare inmates for lawful reintegration into society.

4.1.0. Juridical Basis and Organisational Legitimacy

Every correctional activity in Nigeria begins with the validation of a legal warrant of committal, which serves as the statutory instrument authorising the custody of an inmate. The warrant affirms the legality of imprisonment and provides essential details such as the name of the inmate, sentencing court, charge number, duration, and judicial signature. Beyond its procedural importance, the warrant offers psychological reassurance to the inmate that their incarceration is lawful and subject to due process. This assurance fosters cooperation between inmates and custodial authorities, which is vital for effective reform.

4.1.1 Symbolism of Uniform and Colour Psychology

Uniforms play both administrative and psychological roles in the correctional process. Awaiting trial inmates wear green, while convicted inmates wear blue, and correctional officers typically appear in shades of green uniforms as well. In psychological terms, green evokes feelings of renewal, growth, and calm symbolising hope and rehabilitation, while blue is associated with serenity, trust, and stability. This use of colour as a behavioural regulator indirectly echoes the principles of chromotherapy, where colour influences emotional balance and behavioural outcomes. Thus, even within its traditional uniform system, the NCS already employs rudimentary elements of colour-based environmental therapy, though unintentionally.

4.1.2 Classification and Segregation

Effective correctional administration depends on proper classification of inmates by gender, offence type, security risk, and legal status. Section 14 of the NCoSA 2019 and the Standing Orders (Custodial) 2020 provide detailed guidance on such classification. Segregation helps prevent the cross-contamination of criminal tendencies, protects vulnerable groups, and enables targeted rehabilitation. As of 2024, the NCS operates over 250 custodial facilities, including Maximum, Medium, and Open Custodial Centres, as well as Borstal institutions for juveniles and Female Custodial Centres. This tiered system mirrors international standards, such as those adopted by South Africa's Department of Correctional Services and Kenya's Prison Service, both of which prioritise structured inmate categorisation as a key to behavioural modification.

4.1.3. Welfare and Counselling Services

The Welfare Unit plays an indispensable role in bridging the gap between inmates and the outside world. Welfare officers who are often referred to as 'licensed traffickers' provide authorised communication channels, facilitate family contact, and assist with procuring basic needs. Unlike uniformed officers, welfare officers typically operate in plain clothes to foster trust and openness. Their work aligns with the Nelson Mandela Rules, which emphasise the maintenance of social relationships and the reduction of institutional stressors. Welfare support mitigates psychological breakdown, creating the mental stability necessary for inmates to benefit from other correctional programmes.

[34] United Nations Office on Drugs and Crime, 'Prison and penal reform: the need for change' (UNODC, 2024) <https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html> accessed 10 October 2025.
[35] United Nations Office on Drugs and Crime, The Prevention of Recidivism and the Social Reintegration of Offenders (UNODC 2023) <https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf> accessed 10 October 2025.

4.1.4. Education as a Pathway to Reform

Education remains one of the most transformative correctional tools employed by the NCS. Through collaborations with the National Open University of Nigeria (NOUN), inmates can pursue formal education from basic literacy to university degrees. By 2024, there were at least twelve NOUN study centres in Nigerian custodial institutions, with over 2,000 inmates benefiting from the programme. Empirical data shows that educated inmates have a significantly lower likelihood of recidivism[36]. In 2018, the NCS received the UNESCO Confucius Prize for Literacy in recognition of its prison education initiatives[37]. This achievement aligns Nigeria with countries like Ghana and Kenya, where prison education has also become an anchor of rehabilitation policy. Educational engagement not only builds human capital but also reinforces inmates' sense of self-worth and social relevance[38].

4.1.5 Vocational and Skill Acquisition Programmes

For non-academic inmates, vocational and skill acquisition programmes provide practical means for post-release survival[39]. Inmates receive training in tailoring, metal work, carpentry, agriculture, and small-scale manufacturing.[40] The NCS operates multiple industrial and agricultural centres across the country, including twelve mechanised farms and over 150 agricultural projects. These activities correspond with South Africa's Offender Labour and Skills Programme[41] and Kenya's Prison Industries Initiative[42], both of which use productive labour as tools for reintegration. Vocational training, when linked with After-Care and Earning Schemes, creates a continuum of correction that extends beyond incarceration.

4.1.6. Earning Scheme and Certificate of Good Conduct

The Inmates' Earning Scheme, provided under the NCoSA 2019, allows inmates to receive a portion of proceeds from vocational activities. This system fosters financial discipline, encourages productivity, and aids reintegration by providing modest savings upon release. Complementing this is the Certificate of Good Conduct, issued to inmates who demonstrate outstanding behaviour and commitment to reform. The certificate has social and legal implications: it functions as evidence of rehabilitation and protects against discrimination after release. These incentive-based mechanisms operationalise behavioural conditioning, rewarding compliance and reinforcing internal motivation for change.

4.1.7. Remission, Recreation, and Religious Engagement

The Remission of Sentence policy provides a powerful behavioural incentive by reducing an inmate's term by up to one-third for good conduct. It is a structured reward system that directly aligns personal behaviour with institutional privilege. Alongside this, recreational and sporting activities promote mental wellness, teamwork, and emotional regulation;

[36] Steven Sprick Schuster and Ben Stickle, 'Educating Prisoners: New Meta-Analysis Reinforces That It Reduces Recidivism' (Prison Legal News, 1 April 2023) <https://www.prisonlegalnews.org/news/2023/apr/1/educating-prisoners-new-meta-analysis-reinforces-it-reduces-recidivism/ accessed 10th October, 2025

[37] UNESCO, '2018 UNESCO Confucius Prize for Literacy Laureate Meets with Nigerian Government and UNESCO Abuja Representatives' https://www.unesco.org/en/articles/2018-unesco-confucius-prize-literacy-laureate-meets-nigerian-government-and-unesco-abuja accessed 16 December 2025.

[38] Stevens Sprick Schuster (n 39)

[39] O A Abdullahi and E O Musa, 'Integration of Emerging Technologies in Correctional Centres to Enhance Vocational Skills Acquisition' IIARD International Journal of Correctional Science, Management and Technology, Vol 9 No 5 (2023) 160–175

[40] Ibekwe O, 'Perceived Impact of Vocational Skills Acquisition On Reformation and Reintegration of Inmates' Kano Journal of Education (2022) 45–59

[41] Department of Correctional Services, Annual Report 2023/24 (Republic of South Africa) <https://www.dcs.gov.za> accessed 10 October 2025.

[42] United Nations Office on Drugs and Crime, 'Program for Legal Empowerment and Aid Delivery (PLEAD)' (UNODC Regional Office for Eastern Africa) https://www.unodc.org/roea/en/program-for-legal-empowerment-and-aid-delivery-plead.html accessed 10 October 2025.

serving as therapeutic outlets. Similarly, religious programmes, including chaplaincy services by the Catholic Archdiocese, Redeemed Christian Church of God, and NASFAT, support moral transformation. Faith-based engagement contributes significantly to reducing aggression and promoting forgiveness within prison populations.

4.1.8. Counselling, Psychological and Therapeutic Interventions

Psychological support is an integral part of correctional work. The NCoSA 2019 mandates the provision of counselling and therapy to help inmates manage stress, depression, and aggression. Professional counsellors and psychologists deliver targeted interventions to address behavioural triggers and criminal thinking patterns.[43] However, Nigeria's approach remains underdeveloped compared to South Africa's structured Offender Rehabilitation Path (ORP), which integrates psychological profiling into every inmate's correctional plan[44]. It is within this gap that the use of colour as a non-invasive therapeutic tool can find its most promising application, particularly in reducing anxiety, aggression, and emotional imbalance in custodial environments.

4.1.9. After-Care and Reintegration

Reintegration represents the final stage of correction. Through the After-Care Services Unit, discharged inmates receive vocational tools, start-up funds, and continued monitoring for at least one-year post-release. The establishment of Half-Way Homes ensures gradual reintegration and reduces recidivism. This practice parallels Kenya's Half-Way House Programme[45] and South Africa's Community Corrections System[46], which extend correctional supervision beyond the prison walls. Such transitional support systems are vital to sustaining behavioural reform and protecting society from reoffending.

4.1.10. Towards a Multi-Modal Correctional Model

The NCS's array of correctional tools demonstrates a broad, multi-sectoral approach to offender reformation. Yet, these programmes remain heavily dependent on material resources and institutional stability. There is growing recognition that environmental and sensory interventions such as colour psychology, light modulation, and spatial design can complement existing programmes by enhancing inmates' emotional well-being and receptivity to reform. Comparative evidence from South Africa's Brandvlei Prison, which introduced controlled use of calming colour schemes in its therapeutic units, suggests that integrating chromotherapy principles could strengthen behavioural outcomes.

Therefore, as Nigeria continues to modernise its correctional philosophy, the inclusion of scientifically informed approaches like chromotherapy could enrich its existing correctional framework, creating a more holistic, humane, and effective environment for offender transformation.

6.0. Chromotherapy as an Integrated Correctional Tool

The persistent debate over the effectiveness of Nigeria's correctional system has generated numerous analyses attributing inefficiency to poor infrastructure, inequitable resource distribution, unprofessionalism, and inadequate staff training. Above all, chronic congestion remains the most frequently cited impediment to achieving meaningful correctional

[43] Adebayo, A.O. 'The Role of Professional Counselors in Prison Rehabilitation in Nigeria' Nigerian Journal of Clinical Psychology (2023) 12(2) 101–119.
[44] Shanta Balgobind Singh and Patrick Bashizi Bashige Murhula, 'Offender Rehabilitation Approaches in South Africa: An Evidence-Based Analysis' in The Palgrave Handbook of Global Rehabilitation in Criminal Justice (Palgrave Macmillan, 2022) 525–540.
[45] Kenya Probation Service, *Kenya Probation Service: Leading the way in Africa and Globally* (Kenya Probation Service, Nairobi, undated) <https://probation.go.ke/sites/default/files/downloads/Kenya%20Probation%20Service%20FINAL.pdf> accessed 10 October 2025.
[46] Lincoln Fitzpatrick, François Louw and Kimberly Kras, 'Community Corrections in South Africa' in Loan Durnescu, James M Byrne, Benjamin J Mackey and Faye S Taxman (eds), *The Routledge Handbook on Global Community Corrections* (Routledge 2021) 45–62.

outcomes. This paper does not intend to go over those well-known challenges, but to explore the under-examined potential of chromotherapy as a complementary, scientifically grounded, and non-invasive correctional tool that could be integrated with existing reformative programmes within NCS.

Correctional tools yield the best results when integrated. In practice, single-strand interventions whether vocational, educational, or psychological have proven less sustainable unless combined with broader environmental and behavioural conditioning strategies. Chromotherapy, although not a mainstream correctional method, aligns closely with this integrated approach. It functions as an additional therapy capable of reinforcing the objectives of counselling, rehabilitation, and behavioural modification. While its use in correctional settings remains novel in Nigeria, it is not entirely alien. It has been applied in some Nigerian hospitals and therapeutic institutions as an individualised mental-health intervention. This paper therefore proposes the systematic integration of chromotherapy into the correctional framework as a holistic and low-cost enhancement of existing programmes.

6.1.0. The Science of Colour and Psychological Influence

Research from the National Institute of Mental Health Bethesda, Maryland, USA demonstrates that human behaviour, mood, and overall psychological efficiency are significantly influenced by colour balance[47]. Our mental health and physical energy depend upon the body's ability to maintain equilibrium across its sensory and emotional stimuli of which colour is a vital element. When this balance is disrupted, stress, aggression, depression, and anxiety often manifest. Colour therapy seeks to restore that balance by using the vibrational frequencies of different colours to stimulate or calm specific physiological and psychological functions.

According to Kundu and Kundu[48], colour constitutes a form of vibrational energy that has long played a key role in healing across civilizations; from ancient Egypt and India to China and Greece. Modern neuroscience affirms that colours are light waves perceived through photoreceptors in the retina called cones, which translate them into neurological signals. These signals influence the pituitary and pineal glands, prompting hormonal secretions that directly affect mood, motivation, and emotional regulation.[49] Thus, when colour enters the body whether through light, environment, or visual exposure; it modulates the body's neuroendocrine responses, influencing behaviour at a subconscious level[50]. Empirical evidence suggests that colour can shape judgment, concentration, and perception. Hospitals, schools, mental health facilities, and even high-performance offices now employ controlled colour environments to enhance calmness, productivity, and emotional well-being. Prison design researchers in the United Kingdom, Canada, and South Africa have similarly begun exploring the role of environmental colours in moderating aggression and promoting cooperation among inmates.[51]

6.1.1. Colour, Energy, and Human Behaviour

Chromotherapy rests on the principle that every colour in the light spectrum — red, orange, yellow, green, blue, indigo, and violet — vibrates at a distinct frequency. Each frequency corresponds with the body's energy centres (chakras) and can be used to restore physical and emotional balance. The human body absorbs colour energy at the cellular level; every cell requires light energy to function optimally. When specific wavelengths of colour light interact with these cells, they can either energise, calm, or heal physiological and psychological imbalances.

In correctional psychology, these effects have practical implications. For example:

[47] Elliot AJ, 'Color and Psychological Functioning: A Review of Theoretical and Empirical Work' (2015) 6 *Frontiers in Psychology* 368 https://doi.org/10.3389/fpsyg.2015.00368 accessed 16 December 2025.
[48] Kundu, S and Kundu, D n27
[49] ibid
[50] ibid
[51] Dominique Moran, Jon Sadler and Emma Collett Widdop, *Design Principles for Prison Landscapes: Security, Biodiversity and Wellbeing* (University of Birmingham, 2025).

- Blue and green hues are known to calm the nervous system, reduce heart rate, and alleviate tension. When applied to walls, uniforms, or therapeutic spaces, they encourage cooperation and emotional stability.
- Yellow and orange tones enhance optimism, stimulate mental activity, and reduce depressive symptoms; valuable for inmates prone to apathy or hopelessness.
- Red, while energising, must be used sparingly, as it can elevate aggression and anxiety. In chromotherapy, red is typically reserved for stimulating physical vitality in lethargic or withdrawn individuals.

The categorisation of colours into warm (red, orange, yellow), cool (blue, violet), and neutral (green) provides a framework for designing balanced environments within correctional institutions. In this sense, colour becomes not just aesthetic, but therapeutic infrastructure a silent yet powerful regulator of behaviour.

6.2.0. Practical and Comparative Applications in Correctional Contexts

In advancing the discussion on the therapeutic and behavioural implications of colour in correctional environments, the Baker-Miller Pink intervention provides a striking case study. Emerging from the field of environmental psychology, this intervention demonstrated that colour can transcend aesthetic value to assume a functional and even rehabilitative role in managing human behaviour within custodial environments.

The concept originated in the late 1970s through the work of Alexander Schauss, who investigated the physiological and psychological effects of colour on aggression. Schauss identified a particular shade of pink which was later standardised as Baker-Miller Pink which appeared to reduce aggression and anxiety while inducing a calming effect on individuals exposed to it.[52] The first documented application occurred in a naval correctional facility in Seattle, Washington, where detention cells were painted in the Baker-Miller Pink colour. Reports suggested a noticeable decline in aggressive incidents and a general atmosphere of calm among the inmates.[53] These early findings inspired similar experiments across the United States and parts of Europe, as correctional administrators sought non-invasive behavioural management tools consistent with humane treatment objectives. The psychological basis for the intervention was attributed to the colour's influence on physiological arousal. Studies indicated that exposure to Baker-Miller Pink could lower heart rate, reduce blood pressure, and suppress feelings of hostility by altering endocrine responses associated with stress.[54] In this sense, colour was conceptualised as an environmental influence capable of modulating behaviour.

However, subsequent research revealed a more complex picture. While initial results were promising, later evaluations found that the calming effects of Baker-Miller Pink were often short-lived, context-dependent, or even counterproductive once the novelty faded.[55] These findings underscore the importance of situating environmental interventions, and as a matter of fact the entire correctional procedure, within a holistic framework that considers architectural design, lighting, ventilation, and the broader culture of respect and dignity within correctional institutions.

However, despite these limitations, the Baker-Miller Pink experiment remains foundational in highlighting the relationship between environment and behaviour in custodial environments. Its significance lies not merely in the colour itself but in that it represents a shift towards evidence-based, human-centred correctional design.[56] More recently, several correctional systems have begun to explore environmental and colour-based therapies as part of their behavioural management strategies. In Switzerland, pink and pastel-coloured holding cells are used for aggressive or violent

[52] Alexander G Schauss, 'The Physiological Effect of Colour on the Suppression of Human Aggression: Research on Baker-Miller Pink' (1979) 10 *Journal of Orthomolecular Psychiatry* 174–185.
[53] Morton Walker, *The Power of Color: How It Can Reduce Fatigue, Save Your Life, and Boost Your Sex Life* (Avery Publishing 1991).
[54] Alexander G. Schauss (n 58).
[55] Gillian Lawson, 'Colour and Human Response in Correctional Environments: Revisiting the Baker-Miller Pink Experiment' (2005) 14 *Colour Research & Application* 89–98.
[56] Robin Evans, *The Fabrication of Virtue: English Prison Architecture, 1750–1840* (Cambridge University Press 1982)

offenders to induce calmness. Empirical evaluations found that exposure to these colours reduced agitation and violent incidents within hours.[57]

In Canada, there is recognition among architects, advocacy groups, and corrections-personnel that the entire prison environment which includes its colour, interior finish, lighting, and artwork has meaningful impact on inmates' well-being and response to correctional efforts. For instance, Parkin Architects' design guidelines advocate for use of non-oppressive colour schemes, natural light and exterior views, and colour-resistant yet humane materials in cell and communal spaces.[58] The John Howard Society notes that colour-coding of wings and the introduction of murals and more varied colour schemes may assist in orientation and reduce institutional stress.[59]

The Scandinavian approach, particularly in Norway's Halden Prison, provides a global benchmark for the conscious integration of environmental and psychological design into correctional philosophy. Norwegian correctional law is grounded in the principle of normality, which holds that life in prison should resemble life outside as closely as possible.[60] To this end, the physical environment is deliberately designed to sustain inmates' psychological well-being and prepare them for reintegration. Halden Prison, often referred to as the world's most humane prison, employs carefully selected colour palettes such as earth tones, soft greens, and blues to induce calm and self-regulation.[61] Such environmental design reduces aggression, enhances cooperation with staff, and supports rehabilitative programming.[62] Colour, in this context, functions as a silent behavioural guide; an instrument of correction that complements education, therapy, and vocational training.

Kenyan prison administrators have also expressed interest in adopting environmental modifications including chromotherapy-inspired colour zoning to promote emotional regulation among inmates undergoing rehabilitation. There is growing research on how prison architecture, cell layout, lighting, windows and general sensory environment affect inmate psychological well-being, for example in Kamiti[63] and Marimanti[64] prisons. The deliberate use of colour as a psychological and therapeutic instrument within the NCS remains largely under explored and happening almost by sheer inadvertence; occurring without explicit theoretical or scientific grounding.

6.2.1. The Green Maria and Symbolic Reform

One of the earliest recognisable instances of applying colour psychology within Nigeria's correctional reforms occurred in 2005 when the traditional Black Maria vehicles used for transporting inmates were replaced with Green Marias.[65] This

[57] Switzerland has implemented 'Cool Down Pink' in about 30 cells across several jails and police stations, confining aggressive inmates to pink-painted cells for periods less than 2 hours with reported reductions in agitation. See *MedicalXPress*, 'Can pink really pacify?' (2018) https://medicalxpress.com/news/2018-09-pink-pacify.html, *Big Picture: Are prisoners calmer when their cells are painted pink?* BPS (21 April 2015) https://www.bps.org.uk/research-digest/are-prisoners-calmer-when-their-cells-are-painted-pink accessed 12th October, 2025.

[58] Parkin Architects, 'Correctional Facilities Designed as Healing Environments' (Parkin) https://www.parkin.ca/insight/correctional-facilities-designed-as-healing-environments/ accessed 12th October, 2025

[59] John Howard Society of Canada, 'Physical environment in prisons' https://johnhoward.ca/blog/prison-physical-environment-research/ accessed 12th October, 2025

[60] Denny M, 'Norway's Prison System: Investigating Recidivism and Reintegration' (2016) 10 *Bridges: A Journal of Student Research* art 2 https://digitalcommons.coastal.edu/bridges/vol10/iss10/2 accessed 16 December 2025.

[61] Gerstenfeld J and Lymishchenko V, 'Book Review: *The Norwegian Prison System: Halden Prison and Beyond* by Are Høidal and Nina Hanssen' (2025) *International Criminal Justice Review* 0(0) https://doi.org/10.1177/10575677251347246 accessed 16 December 2025

[62] ibid

[63] Kasau RW, Munala G, Majale C, *'The Built Environment of Kamiti Maximum Security Prison, Nairobi: Implications for Rehabilitation and Psychological Well-being'* (2025) 8 *East African Journal of Interdisciplinary Studies* 1

[64] Muturi M G, Kiptui K, Kithela S M, *'Relationship Between Prison Physical Environment and Mental Health of Inmate: A Case of Marimanti G.K Prison in Tharaka-Nithi County, Kenya'* (2024) *International Journal of Research and Innovation in Social Science* 8(9).

[65] Agande, B. Jan.23, 2005. Nigeria: prison reform: 'green maria to replace black maria'. Vanguard newspaper. Retrieved Nov. 28, 2016, from allafrica.com/stories/20051240224

administrative decision, although not publicly articulated in psychological terms, reflected a conscious shift toward more humane and less punitive symbolism. The colour black had long been associated with oppression, fear, and despair. These are sentiments that reinforced the dehumanising image of imprisonment. In contrast, green conveys calmness, renewal, and hope, such qualities consistent with the rehabilitative ideals enshrined in the NCSA 2019.

6.2.2. Colour in Uniforms and Institutional Psychology

Uniform colour designations provide a means whereby chromotherapy principles are being applied within the NCS, though not presented as a formal chromotherapy principle or approach. The Service uses distinct colour codes to differentiate between categories of inmates and officers each carrying embedded psychological and symbolic meanings that align with correctional objectives.

The Awaiting Trial Inmates (ATIs) wear green uniforms; a colour symbolising healing and emotional stability. This class of inmates typically experience uncertainty, anxiety, and emotional volatility due to their uncertain status. Green's calming and harmonising effects help mitigate these stresses, promoting composure and hope while reducing tension and aggression. On the other hand, convicted inmates appear in blue uniforms. Blue is associated with tranquillity, sobriety, and reflection. It lowers blood pressure, slows respiration, and induces meditative calm. In correctional psychology, blue supports introspection and penitence, encouraging inmates to engage in reflective behaviour consistent with reformation and moral rehabilitation. Correctional officers' green attire mirrors the calming symbolism attributed to awaiting trial inmates. It projects authority tempered by serenity and balance, subtly reinforcing the Service's dual commitment to security and humane treatment. The alignment between uniform colour and psychological function, even if unintended, demonstrates that colour already plays a significant role in Nigeria's custodial environment.

As part of its remodeling efforts, the NCS recently changed the color of its officers' uniform from shades of green to brown and muted orange. Brown, as a warm earth tone, tends to promote feelings of stability, groundedness, reliability, and order[66]. These are qualities that may enhance the perception of authority balanced with approachability. Muted orange, being a softer and less saturated version of the more energetic orange, can add visibility and warmth without overstimulation.[67] Custodial environments often suffer from stress, authority conflicts, and emotional volatility. Uniforms in brown and muted orange can help reduce psychological distance between officers and inmates. Brown's stabilizing quality can promote a sense of calm and predictability, potentially reducing the adversarial dynamics that vivid colours may trigger. The warmth of muted orange may help humanize interactions, subtly signalling approachability or alertness without aggression. The effectiveness of this uniform colour change depends on several moderating factors particularly the cultural associations inmates and officers bring to those colours, and whether this uniform shift is part of a broader programme of environmental respect and rehabilitative culture. By formalising these insights through chromotherapeutic design and empirical validation, the NCS could convert an incidental practice into an evidence-based correctional strategy.

The official colours of the NCS; green and yellow further underscore the latent adoption of chromotherapy principles. Green, as earlier noted, signifies healing, renewal, and calmness which are traits that resonate with the Service's core objectives of rehabilitation and reintegration. Yellow, on the other hand, evokes warmth, optimism, and intellectual stimulation. It promotes focus and mental clarity, qualities essential for the educational and vocational programmes that form the backbone of the Service's rehabilitative mandate. When applied together, green and yellow create a chromatic harmony that represents healing through enlightenment.

Uniform colour alone will not solve structural issues such as overcrowding, poor amenities and inadequate staff training. However, as part of an integrated design strategy it represents a modest but meaningful step toward more humane correctional practice.

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[66] Angela Wright, *The Beginner's Guide to Colour Psychology* (Kyle Books 2014)

[67] Helen E. Ross, 'Colour and Psychological Function in Architectural Environments' (2018) 42 *Journal of Environmental Psychology* 32–45.

7.0. Conclusion and Recommendations

7.1.0 Conclusion

One of the central mandates of the NCS is the custody and reformation of offenders. The NCoSA 2019 provides that every person confined in a custodial centre is deemed to be in the legal custody of the Superintendent and subject to the discipline and regulations made under the Act.[68] While this provision covers both convicted and un-convicted persons, its scope differs significantly in practice. The NCS has the full mandate to reform, rehabilitate, and reintegrate convicted offenders, but with respect to un-convicted inmates, its powers are limited to custody and production before the court, as the presumption of innocence[69] remains operative until conviction.

This legal distinction imposes both ethical and operational constraints. Engaging un-convicted inmates in structured correctional activities may amount to overreach, given that they may later be discharged or acquitted. Furthermore, the uncertainty surrounding the duration of their stay in custody undermines the continuity required for any meaningful reformative intervention. This is because correctional processes such as education, skill acquisition, and psychological reconditioning are inherently progressive and time-dependent; applying them to transient populations may result in wasted resources and administrative inefficiency[70].

The challenge becomes apparent when viewed against the demographics of Nigeria's custodial population. As of 19 September 2024, the total inmate population nationwide was 84,492, comprising 27,052 convicted persons (32%) and 57,440 un-convicted persons (68%).[71] This disproportionate figure implies that more than two-thirds of Nigeria's prison population cannot legally undergo reformation and rehabilitation. The consequence is twofold: first, the correctional objectives of the NCS are frustrated; second, Nigerian custodial institutions risk functioning more as schools of crime than as centres of transformation.

This imbalance also casts doubt on the efficiency of Nigeria's wider criminal justice system. A national population of over 232 million[72] with fewer than 100,000 incarcerated persons does not, on its face, indicate an unmanageable burden. Yet the system's chronic congestion results not from excessive convictions but from delays in trial processes and pre-trial detentions. Thus, the issue is not overcrowding per se but systemic stagnation. The persistence of this imbalance undermines the legitimacy of correctional administration and complicates efforts to implement rehabilitative innovations such as chromotherapy, which presupposes a stable and accessible offender population.

Former Controller-General of Prisons, Olusola Ogundipe, once observed that correctional services contribute significantly to human capital development by equipping prisoners with skills for post-release reintegration[73]. Yet, as he also acknowledged, this vision is undermined by the overwhelming number of awaiting trial persons (ATPs). Since only

[68] Section 12(1) NCoSA 2019

[69] The principle of presumption of innocence is a fundamental guarantee of fair trial recognised under both domestic and international law. It requires that every person accused of a criminal offence be treated as innocent until proven guilty according to law. It is enshrined in section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which provides that 'every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.' Internationally, it is reflected in Article 11(1) of the Universal Declaration of Human Rights 1948 and Article 14(2) of the International Covenant on Civil and Political Rights 1966, both of which Nigeria has ratified. The principle protects accused persons from prejudicial treatment by law enforcement agencies and the public, limits the powers of correctional institutions over unconvicted inmates, and ensures that the burden of proof rests squarely on the prosecution.

[70] Vera Institute of Justice, People in Jail and Prison in 2024 (Vera Institute 2024) https://www.vera.org/news/jail-and-prison-populations-have-decreased-since-2019-but-continued-progress-isnt-promised Accessed 10th October, 2025

[71] Nigerian Correctional Service. https://corrections.gov.ng/statistics_summary Accessed 19th September, 2024

[72] https://www.worldometers.info>nigeria-population assessed 16th September, 2024

[73] Ogundipe O (2011) The Nigeria Prison Service and the Challenges of Reformation; Matters Arising. The Reformer. A bulletin of the Nigeria Prison Service. Vol.4, No 3 p28

convicted offenders may lawfully undergo rehabilitative programmes, the NCS's capacity to fulfil its statutory mandate depends heavily on the efficiency of the judicial process that delivers convicts into its care.[74]

Nevertheless, the constraints imposed by a high ATP population cannot wholly absolve the NCS of inefficiency. The effectiveness of any correctional programme is best measured by a reduction in recidivism. A low rate of reoffending signifies that treatment regimes are achieving behavioural transformation. Effective correction requires a structured, evidence-based, and multi-dimensional approach that recognises the diverse psychological, social, and environmental needs of offenders.[75] Tailored interventions ranging from cognitive-behavioural therapy to vocational training and environmental conditioning (such as chromotherapy) must be applied with consistency and continuity to yield measurable outcomes.

For Nigeria, the path forward lies in adopting a correctional philosophy that is both legally grounded and scientifically progressive. Chromotherapy, as explored in this paper, represents an example of how innovative, low-cost, and evidence-supported interventions can complement traditional correctional programmes. When combined with behavioural modification techniques and a humane custodial environment, such integrative measures can make correction not only workable but transformative. Correction can work but only where legal frameworks, institutional discipline, and psychological science converge in a deliberate and sustained manner. The NSC must therefore move beyond custodial containment toward a comprehensive, rehabilitative vision that recognises offenders as subjects of behavioural transformation rather than mere objects of confinement.

Colours influence human behaviour whether consciously perceived or not. They regulate mood, perception, concentration, and social interaction. The custodial environment, often marked by monotony, stress, and hostility, provides an ideal setting for exploring the therapeutic and corrective potential of colour. When harnessed scientifically, chromotherapy can serve as a silent but potent ally in achieving the three Rs of the Nigerian Correctional Service: reformation, rehabilitation, and reintegration. By merging traditional correctional practices with chromotherapy-informed environmental design, Nigeria can take a decisive step toward a more humane, scientifically driven, and effective correctional philosophy one that treats not only the crime but also the mind, body, and spirit of the offender.

Comparatively, South Africa and Kenya provide instructive examples. South Africa's Correctional Services Act 111 of 1998 mandates the individualisation of offender treatment through psychological assessment and structured rehabilitation plans. The Department of Correctional Services employs offender development profiles to match treatment with behavioural needs, an approach that has modestly reduced recidivism.[76] Similarly, Kenya's Prisons Act (Cap 90) integrates moral instruction, education, and vocational programmes with psychosocial support, increasingly experimenting with restorative practices and non-custodial alternatives.[77] Both jurisdictions demonstrate that correctional success is not solely a function of material resources but of institutional design, programme continuity, and scientific integration into offender management.[78] Chromotherapy definitely has promising potentials. Its adoption must however proceed cautiously, subject to more research and empirical evidence on its actual influence of modifying the behaviour of inmates. Presently, the body of empirical evidence remains limited, and context-specific validation is necessary. Although the conscious application of colour therapy in correctional institutions remains underdeveloped in Nigeria, the latent incorporation of colour symbolism in uniforms, transportation systems, and institutional branding reveals a foundational awareness of its significance. With structured research, inter-ministerial collaboration, and policy innovation, chromotherapy could evolve from the sphere of inadvertence into a core element of integrated correctional practice, supporting Nigeria's aspiration to reform its penal system in line with modern therapeutic and human rights-based principles.

[74] Ibid
[75] World Health Organization, *Community mental health services: promoting person-centred and rights-based approaches* (WHO 2021).
[76] Bruyns HJ and Nieuwenhuizen C (n21)
[77] Ndung'u PK (n24)
[78] Vera Institute of Justice (n 70).

Chromotherapy represents a frontier in the pursuit of humane, evidence-based correctional practice in Nigeria. By recognising colour as a psychological and behavioural modifier, the NCS can expand its rehabilitative framework beyond punitive traditions toward holistic reformation. The approach, though unconventional, aligns with global correctional trends that integrate environmental design, psychology, and behavioural science into inmate management. Its systematic adoption, if supported by policy, empirical research, and cross-disciplinary collaboration could transform correctional institutions into spaces that not only restrain but also restore. Integrating colour therapy into correctional policy thus embodies a pragmatic synthesis of science, law, and compassion: an innovative pathway through which Nigeria may achieve the rehabilitative ideals envisioned under the Nigerian Correctional Service Act 2019.

7.2.0 Recommendations

The inadvertent use of colour in Nigeria's correctional system points to an untapped potential for developing a structured chromotherapy policy framework. This framework would involve the deliberate application of colour psychology across three levels as lessons from other jurisdictions show.

1. **Architectural Design**: Many of the Nigerian Custodial facilities are quite old, needing renovation while new and modern ones are being built. NCS should apply chromotherapeutic principles in the new designs and consider possibility of renovation to incorporate chromotherapeutic principles.
2. **Staff and Inmate Uniform:** While the principles of chromotherapy are obvious in color allocation in Nigerian custodial facilities, NCS should move away from sheer advertence to calculated deliberateness. The colours allocated to both staff and inmates should be reassessed in light of behavioural science to ensure alignment with emotional and social objectives. This should also be communicated to stakeholders as a principle inherent in the human right based approach to correction of inmates in Nigeria.
3. **Chromotherapy as an Integrated/Complementary Approach:** The effectiveness of correctional tools is largely dependent on applying identified tools to specific individuals, and not applying generally across board. Chromotherapy tools and interventions should be incorporated into psychology therapy sessions and zoned into rehabilitation and counselling programmes. It should be subsumed into all the other correctional tools currently in use as much as practicable and used together as a collective and integrated strategy. Colour therapy should not be isolated as an experimental or aesthetic supplement, but integrated within existing correctional tools such as education, counselling, and vocational programmes.
4. **Pilot Models:** Nigeria can adopt pilot models within select custodial centres, to test the behavioural and psychological impact of chromotherapy as an integrated approach to correction of offenders in Nigeria.
5. **Collaborative Efforts and Research**: The Nigerian Correctional Service should explore collaborative actions with relative bodies and organisations such as universities, the Nigerian Psychological Association, and design experts to collect empirical data and develop home grown/context-specific chromotherapy models applicable within the Nigerian custodial environment.
6. **Capacity Building, Training and Retraining:** Training and retraining of correctional officers is one of the cardinal principles of correctional practice in Nigeria and the world over. Modules on chromotherapy as a complementary approach should be integrated into the existing curriculum to provide wholistic training for correctional officers, psychologists, and welfare personnel to understand colour psychology and effective deployment in rehabilitative settings.
7. **Policy Recognition and Administrative Approval:** The Nigerian Correctional Service Standing Orders (Custodial) 2020 should explicitly acknowledge chromotherapy and environmental psychology as complementary approaches to correction in Nigeria.
8. **Ethical and Cultural Consideration:** Adopting chromotherapy must respect ethical standards and cultural variances across the country. Colours evoke different meanings across Nigerian societies and this must be recognized from one correctional facility to another. Cultural perceptions of colour should guide selection, ensuring that interventions promote dignity and inclusivity. Importantly, colour use should remain rehabilitative, not coercive, aligning with international human rights norms governing the treatment of inmates.

Towards Excellence: A Journal of the College of Law, Bowen University, VOL 2, ISSUE 1; Cynthia Chukwufumnanya Izu, Esq.[1], Olayide Oladipo Dara, Esq.[2] Samson Akinlola Oyediran, Esq[3] Page 104-118.

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Promoting Elderly Rights and Combating Discrimination: An Examination of the Legal Framework for Sustainable Reforms in Nigeria

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Abstract:

The growing population of elderly individuals in Nigeria presents a critical challenge for human rights advocacy and legal protection. With approximately 4.5% of the population over 60 as of 2015, and projections indicating this figure will rise to 6.3% by 2050, the protection of elders' rights has become a pressing issue. However, despite the uniqueness of elders, Nigeria still lacks adequate and comprehensive legislation for the protection and promotion of human rights. There is a large population of elders whose rights are not protected due to inadequate legislative structure. This study explores the human rights entitlements of elderly Nigerians, such as the right to life, health, dignity, social security, and protection from abuse. It critically analyzes the existing legal provisions, including the Nigerian Constitution and relevant international human rights instruments, to assess their efficacy in addressing the needs of elderly citizens. The study identifies challenges in enforcement, the lack of comprehensive laws, and socio-economic factors contributing to neglect and abuse of elders and their rights. Finally, the study proposes recommendations for strengthening legal protections and creating a more inclusive and supportive environment for the elderly in Nigeria. This includes adopting international human rights standards and the development of robust policies to ensure the dignity and well-being of older Nigerians. It is on this note that this study suggests that an appropriate and supportive legislative framework based on internationally accepted human rights standards is required to ensure the highest quality of respect, protection, and fulfillment of the rights of elders in Nigeria.

KEYWORDS: Elders, Rights, Legislations, Protection, Nigeria

1.0 INTRODUCTION

All over the world, the population of elders are increasing every day[465]. Statistics confirm that over 962 million people living on earth today have reached the age of 60years.[466] A plethora of research have described elders as vulnerable persons within any system.[467]They are vulnerable in various ways especially physical abuse and maltreatment with utmost disregard.[468] While the guarantee, fulfillment, and respect of all human rights are fundamental for elders, certain rights, entitlements, and freedoms are inalienable to them. These rights include; the right to life, and an adequate standard of living including access to adequate, nutritious, and quality food, clothing, and housing. Others are; the highest possible standard of physical and mental health, work and fair working conditions for those still working, right to human security, human dignity, right to be safe and free from violence, cruel, inhuman, or degrading treatment including neglect, and all forms of physical and psychological abuse. In addition to the above, other array of rights such as privacy and family life; right to own and inherit property; freedom from discrimination based on sex, age, or any other status, movement; access to adequate social security assistance and protection; and the right to liberty, redress, and fair hearing and so on are largely significant. The opportunity and freedom to make effective decisions concerning their well-being and to fully participate based on equality in all spheres of society are also central to their fundamental human rights and needs.[469]

Recently, reports revealed that Nigeria ranks high among countries with the highest proportion of elders in Africa.[470] By 2030, 1 in 6 people in the world will be aged 60 years or over. At this time the share of the population aged 60 years and over will increase from 1 billion in 2020 to 1.4 billion. By 2050, the world's population of people aged 60 years and older will double (2.1 billion). The number of persons aged 80 years or older is expected to triple between 2020 and 2050 to reach 426 million. [471] Also, the United Nations in the 1980s, projected that by the year 2025, Nigeria's position would rise from 27th to 11th.[472] Yet, the government has failed to map out any strategy for the protection and promotion of elders in Nigeria. Therefore, elders in Nigeria require extraordinary attention towards ensuring that their rights, welfare, and well-being are protected and guaranteed as the population of aging adults is on the increase, hence, there is a need for laws and regulations addressing and ensuring that the rights of elders are adequately respected and protected. Despite the necessity for the protection, care and welfare of elders, the human rights of elderly persons in Nigeria are yet to receive adequate human

[465]Aging adults over the age of 60 are referred to as elders in this study.
[466]United Nations, 'World aging population' (2017) 1, <https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/May/un_2017_worldpopulationageing_report.pdf> accessed on April 19th, 2024.
[467]E Langmann, "Vulnerability, Ageism, and Health: is it Helpful to Label Older Adults as a Vulnerable Group in Health Care?" (2023), 26(1) PMID 134
[468] J H Mike, "Nurturing a positively sensitive society: A Human Rights Framework for the Protection of Older Persons in Nigeria" (2020), 4(6) IJRISS 289.
[469]M. Fredvang and S Biggs, "The Rights of Older Persons: Protection and Gaps under Human Rights Law"(2016), Social Policy Working Paper no. 16 at 5-21
[470]J H Mike, "Nurturing a Positively Sensitive Society: A Human Rights Framework for the Protection of Older Persons in Nigeria" (2020), 4(6) *IJRISS* 287
[471] World Health Organization, 'Ageing and Health' (2024)< https://www.who.int/news-room/fact-sheets/detail/ageing-and-health> accessed 10th March 2025
[472] J. I. Ani, "Care and Support for Elderly in Nigeria" (2020), 12(1) *NJSA* 10

rights attention and legislative intervention. Many elders suffer human rights violations ranging from discrimination, social and political exclusion, poverty, neglect, isolation and abuse. This is worse for the poorer ones who are forced to live in deplorable accommodations and environments, especially in rural areas or urban ghettos and slums. The government is yet to develop suitable policies, laws and socio-economic and welfare programs that will effectively cater for the human rights and interests of the elders.

The Constitution[473] of Nigeria provides for the rights of persons including that of elders. Although it stipulates actions to be taken to guarantee their right, the provisions are limited and rarely implemented. The Constitution promotes the fundamental objectives and principles of state policy for every citizen. In section 14 (2) (b)[474], it provides that; "the security and welfare of the people shall be the primary purpose of the government."[475] Also, section 16 (2) (d) insists "that suitable and adequate shelter and food, reasonable minimum living wage, old age care and pensions and unemployment, sick benefits and welfare of the disabled are provided for all citizens."[476] It is rather sad that the above provision of the law is not enforceable by section 6(6)(c)of the Constitution. The Nigerian courts have adopted the same attitude to the non-justiciability of the socio-economic provisions in Chapter II and have upheld the unenforceability of its provisions. For example, in the case of *Olubunmi Okogie (Trustee of Roman Catholic Schools) & ors v. Attorney General of Lagos State*[477], the Court reaffirmed the provisions of Section 6(6)(c). Unfortunately, despite the high significance of the socio-economic and cultural provisions in Chapter II, their practical enforceability has been undermined by the Constitution that guaranteed to promote and protect the welfare and wellbeing of all persons in Nigeria. Impliedly, the few laws existing in Nigeria are largely inadequate and unenforceable.

Therefore, this study will examine the rights of elders, appraise the existing legal framework in Nigeria for the protection and promotion of elder's rights, assess the challenges inhibiting legislative intervention in Nigeria and proffer recommendations for better policy formulation and laws for protection and promotion of elder's rights and welfare in Nigeria.

To achieve this study, international conventions like the Universal Declaration of Human Rights (UDHR),[478] African Charter on Human and People's Rights,[479] Convention on the Rights of Persons with Disabilities (CRPD),[480] International Covenant on Economic, Social, and Cultural Rights (ICESCR)[481] among others will be examined.

1.1 Methodology

This study is centered on elder's rights and welfare in Nigeria. The study adopted a doctrinal research approach. Resources from both primary and secondary sources specifically within the

[473]Constitution of the Federal Republic of Nigeria, 1999 (as amended), C29, LFN 2004
[474] Ibid.
[475] Ibid.
[476] ibid
[477](1981) 1 NCLR 218
[478]Universal Declaration of Human Rights (UDHR), 1948
[479]African Charter on Human and People's Rights (Banjul Charter), 1981
[480]United Nations Convention on the Rights of Persons with Disabilities, 2007
[481]International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1976

subject matter of this study were utilized. Some of the primary sources consist of the Constitution of the Federal Republic of Nigeria 1999, Criminal Code Act,[482] And Older Persons (Rights and Privileges) Bill, 2019. In addition, International Conventions such as the Universal Declaration of Human Rights (UDHR), the African Charter on Human and People's Rights, the Convention on the Rights of Persons with Disabilities (CRPD), International Covenant on Economic, Social, and Cultural Rights (ICESCR) were examined. The study also relied on secondary resource materials such as books, cases, newspapers, internet materials, articles and journals from diverse scholars in the field of Human Right Law.

2.0 Conceptual Clarification

2.1 Who is an Elder?

The Oxford Advanced Learner's Dictionary defines 'Aging' as the process of growing old.[483]An elder is defined by the Cambridge dictionary as "an older person, especially one with a respected position in the society."[484] In today's parlance, the term "elders" can be interchanged as senior citizen, the aged, the elderly and older persons. However, this study adopts the term "elders". "Ageing" has evolved into a worldwide conversation and a policy concern attracting the focus of governments on international, regional, and local levels. In Africa, countries are experiencing demographic and epidemiological changes which pose a unique policy changes and information needs.[485]

In Article 1 of the Universal Declaration on Human Rights,[486] it states that "all human beings are born free and equal in dignity and rights."[487] Therefore, this equality does not change with age: older men and women have the same rights as people younger than themselves.[488] Although there is no universally accepted standard definition of who an aged person/elder is, the United Nations stipulates the age of sixty.[489] In Nigeria, the aged can be categorized as people who fall within the age bracket of sixty or sixty-five and above.[490]In many developing nations, the retirement age typically falls between sixty and sixty-five, marking the onset of old age. This assumption stems from the belief that individuals aged sixty or older are less productive and have limited economic contributions, prompting the necessity for retirement at

[482]Nigerian Criminal Code Act, Cap C38, Laws of Federation of Nigeria (LFN) 2004.
[483]A S. Hornby 'Oxford Advanced Learner's Dictionary' (6th ed. Oxford University Press)
[484]Cambridge Dictionary, "Elder" (2024), <https://dictionary.cambridge.org/dictionary/english/elder#:~:text=an%20older%20person%2C%20especially%20one%20with%20a%20respected%20position%20in%20society> accessed on April 19th, 2024.
[485] Helen O Osinowo et al, *The Adults and Aged: The Nigerian Situation* (Royal People Nigeria Ltd. 2012) 1.
[486] The Universal Declaration of Human Rights, established in 1948, is now recognized as customary law that is binding on every country in the world. The UN has compiled translations of the Universal Declaration on Human Rights in over 300 languages and dialects.
[487] ibid.
[488]Help page International, "Strengthening Other Peoples' Right Towards a UN Convention", at 4, online:<https://social.un.org/ageing-working-group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf> accessed on 10 April 2024.
[489] Ibid at 3
[490] Marcus AyodejiAraromi, "Protecting the Rights of Old People in Nigeria: Towards a Legal Reform"(2015), 40 JLPG 131, online: <https://core.ac.uk/download/pdf/234650285.pdf> assessed on April 20th, 2024.

this stage.[491] Certainly, Nigeria stands out as the most populous nation of African descent, and there's a clear indication of a significant rise in the elderly population in the foreseeable future.[492] This consistent increase in the number of elders signals a notable transformation in the age makeup of society, potentially leading to adverse effects on the economy. Sadly, the expectations of older generations who raised their children with the hope of receiving support in their old age have been dashed, as many of these children struggle to secure suitable employment after completing their education. Consequently, a significant portion of these young adults still rely on financial assistance and care from their elderly parents.[493]Furthermore, even those who have the financial means to support their parents often find themselves unable to provide the necessary care and attention due to the demands of their jobs and family obligations.

In a context where the field of human rights advocacy has become increasingly specialized, marginalized groups such as children, migrant workers, persons with disabilities, and women have received specific recognition for their unique needs by the United Nations.[494]It is now imperative for this focus to extend to aging adults, acknowledged as a distinct demographic deserving of specialized care and attention under human rights law.[495]According to Fredvang and Biggs[496],

> *The perception of old age as a social problem rests upon the assumption that older persons are in some way separate from those who are not yet old—that the aged and the non-aged are two different categories of human beings. Thus, elders are seen as being segregated from society, producing a gap that must be bridged, while at the same time recognizing the particular needs and contributions of this group.* [497].

2.2 Rights of Elders in Nigeria:

2.2.1 Right to be protected from discrimination:

One of the significant rights that elders should be given consideration is the right to be free from discrimination. As stated earlier in this study, it is largely agreed upon that "all human beings are born free and equal in dignity and rights,"[498] This clause highlights that every person has rights, regardless of age. The Constitution of the Federal Republic of Nigeria expressly prohibits all forms of discrimination in section 42[499]. Therefore, age should not be a reason for discrimination against anyone. The right to be free from discrimination encompasses some of the rights of the elderly. The rights to employment, property ownership, education, and political participation are a few examples. Due to their age, older adults are frequently denied from

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[491] Ibid.
[492] Marcus Ayodeji Araromi, "Protecting the Rights of Old People in Nigeria: Towards a Legal Reform" (2015), 40 JLPG 131, online: <https://core.ac.uk/download/pdf/234650285.pdf> assessed on April 20th, 2024.
[493] Ibid
[494] Ibid
[495] M Fredvang and S Biggs "The Rights of Older Persons: Protections and Gaps under the Human Right Laws" (2012), at 5.
[496]Ibid at 6
[497] Ibid
[498] Universal Declaration of Human Rights 1948, Art. 1, online:<https://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf> accessed on April 20th, 2024.
[499] The Constitution of the Federal Republic of Nigeria, Chapter IV, s. 42

denied access to services, and jobs, and treated without respect because of their age, gender, or disability.[500]

2.2.2 Right to be protected from abuse:

The problem of abuse has crept into the ranks and files of all human cultures, affecting a wide range of individuals ranging from young girls, ladies, adults, and teenagers. However, over time, marital violence and child abuse have received more attention than adult abuse, even though the idea of elder abuse is now gaining acknowledgment in both the medical and popular spheres.[501] Abuse of older adults can take many forms, including financial, verbal, sexual, and psychological. All elders have the right to be protected from all forms of abuse. Even those with higher levels of education are not immune to abuse; the poor and disadvantaged elderly in Nigeria are particularly susceptible to it.

2.2.3 Right to Social Security:

This is firmly established in international human rights law and several treaties specifically refer to old age protection through social security.[502] Several instruments at the regional level also emphasize the right to social security of older people. These instruments include the African Charter on Human and Peoples' Rights;[503] the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights[504]; and several International Labour Organization (ILO) conventions and declarations. These conventions include Convention C102 concerning Minimum Standards of Social Security (1952) and Convention C128 concerning Invalidity, Old-Age and Survivors' Benefits. Convention 102 establishes globally agreed minimum standards for all nine branches of social security: medical care, sickness benefits, unemployment benefits, old-age benefits, employment and injury benefits, family benefits, maternity benefits, invalidity benefits, and survivor benefits. Article 25(b) of the *Convention on the Rights of Persons with Disabilities (CRPD)*[505] makes reference to 'Ageing adults' on the right to health services, and in Article 28(2)(b) on the right to access social protection and poverty reduction programs.

2.2.4 Right to Health Care:

One of the most significant components of elders' human rights is their access to health care. World Health Organization (WHO) defined health care as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity".[506] The concentration

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[500]Help Age International, "Strengthening Older People's Rights: Towards a UN Convention" (2010) at 4.

[501] D. O. Adeniji, and D. A. Oladejo, "Developing a Positive Attitude towards De-phasing Elder Abuse and its Health Implications" in O. Osinowo et al., (eds.), The Adults and Aged in Nigeria: Issues and Researches (Royal People Nigeria Ltd. 2012) at 168.

[502] The right to protection in old age is embedded in articles 9, 10 and 11 of the ICESCR, article 11 of the CEDAW, article 26 of the Convention on the Rights of the Child, article 5 (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 28 of the Convention on the Rights of Persons with Disabilities, article 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

[503]*African Charter on Human and Peoples Rights on the Rights of Older Persons in Africa 1982.*

[504] *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988*

[505] *Convention on the Rights of Persons With Disabilities, 2008*

[506]*WHO Constitutive Act, 1946.*

of clinics and hospitals in urban areas far from the majority of older people's homes, the inability to pay for medical services, the expense of transportation, a lack of knowledge about available services and entitlements, poor health service management, a shortage of medical professionals with the necessary training to care for the elderly, and the unfavourable attitude of medical professionals are some of the possible causes of the abuse or infringement of the right to health care of elderly persons.[507] The Federal Republic of Nigeria's 1999 Constitution stipulates that the state will focus its policy on guaranteeing that the welfare, health, and safety of all individuals employed are protected and not mistreated; all individuals have access to medical care and health facilities.[508] Furthermore, "every individual shall have the right to enjoy the best attainable state of physical and mental health."[509] According to Article 16 of the *African Charter on Human and People's Rights*, to which Nigeria is a party. It further stipulates that State Parties to the Charter must take the required actions to safeguard the health of their citizens and guarantee that they receive medical care when they are sick.

2.2.5 Right to Social Protection:

Various states in Nigeria have been saddled with the responsibility of developing policies that would ensure that elders who retire from employment are provided with adequate pensions and other forms of social security.[510] Also, these states are to ensure that the processes and procedures of accessing pensions which are majorly the first aging adults resort to meeting societal demands are decentralized, simple and dignified.[511]

2.3 Theoretical Framework

Here, theories that support the care and administration of elders' needs will be discussed. This will help to lead credence to the study and expose the necessity of strengthening any subject matter in any Jurisdiction. The theories discussed are:

2.3.1 Human Rights Approach:

Relatively, issues pertaining to elders should be treated as a human right as enshrined in Article 25(1) of the *Universal Declaration of Human Rights*[512]thus:

> *Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*.[513]

The Human Rights Council Advisory Committee published a report in January 2010 outlining the global impact of demographic aging and the growing instances of human rights violations

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[507] ibid at 4
[508] *Constitution of the Federal Republic of Nigeria*, 1999, C 20, s 17(3)(c) and (d).
[509] *African Charter on Human and People's Rights*, Art 16
[510] *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa*, 2016, Art. 7(1)
[511] Ibid, Art. 7(3)
[512] Universal Declaration of Human Rights 1948, art 25(1)
[513] Ibid.

against the elderly, encompassing issues such as physical and moral integrity, vulnerability to poverty, and employment.[514] In its report, the Committee advocated for the creation of a specialized human rights treaty to amplify the visibility of older individuals within legal frameworks. The rationale behind this proposal was to explicitly address the rights of the elderly within general human rights laws, thereby combating discriminatory practices and attitudes targeted towards them, which currently render them unseen as a collective under the law.[515]

The phrase "human rights of aging elders" refers to a variety of international and state agreements, including the rights to sufficient social security, help, and protection; the freedom from discrimination based on age or any other status in all spheres of life, including work, housing, and health care; as well as social services; the right to healthcare or excellent health; and the right to be shielded from abuse, both physical and psychological. Additional rights include the right to full and effective participation in decisions pertaining to their well-being, the right to be treated with dignity, and the right to fully and actively participate in all facets of society's political, economic, social, and cultural life.[516]

2.3.2 Maslow's Theory:

This theory concentrates on the fundamental needs of humans and their emergence. The theory is also known as "Maslow's hierarchy of basic needs theory." This is a result of his description that the basic needs of humans are hierarchical in nature. It has been agreed upon that when the basic needs of humans become met, they begin to strive for other needs in order to get satisfaction for their higher-level needs.[517] The essence of this theory is to measure/understand the value of life and the well-being of the elders.[518] Maslow's theory, classified human needs as safety, love, physiological, esteem and self-actualization. The theory justifies that elders' physiological needs comprise air, water, food and sleep, which are considered the most significant of any other needs and can be satisfied even if the income is very low.[519] Maslow's theory also concludes that once psychological needs are met, safety needs precede them. Safety needs include medical care, financial security required for their day-to-day activities and shelter to serve as care homes.

According to Maslow, psychological and this need is more psychological in nature, which implies that unless a person feels secure and safe the next set of needs won't emerge. After the examined needs, the next sets of needs are called higher-level needs. Immediately the lower-level needs are satisfied, and the quest or **desire** for love and belongingness becomes necessary for aging adults. Aging adults start seeking warmth, acceptance, love from their family

[514]Human Rights Council, Advisory Committee, The Necessity of Human Rights Approach and Effective United Nations Mechanism for Human Rights of Older People, 2010 (Chung Report).
[515] ibid
[516]S N Mandal, (2011) "Protecting the Rights of Old Age Person in India: A Challenging Facet of Human Right" *Global Journal of Human Social Science* (2011) 11 (5) at 25.
[517]Pradipty Bhardwaj, A Critical Analysis of Senior Citizens' Rights in India, Amity International Journal of Juridical Sciences (2020) ISSN.2395-4019, at 68
[518] H U, Rizwan, "Life Satisfaction and Basic Needs among Elderly People in Pakistan: Evidence from the PSES Data"; PDR, (2012) 51(4) at 519-540
[519]Pradipty Bhardwaj, A Critical Analysis of Senior Citizens' Rights in India, Amity International Journal of Juridical Sciences (2020) ISSN.2395-4019, at 68

members, relatives and friends.[520] Confidence and status of senior citizens form the next set of needs called the Esteem needs. It implies the extent to which the elder members of the family are involved in the decision-making process of the household. If their role in the decision-making is primary or is jointly involved with their children, then it satisfies their esteem needs. Self-actualization is the last need in Maslow's hierarchy of basic needs that implies the state when a person feels that he/she has been able to satisfy or achieve all the needs, which shows one's life satisfaction.

Issues therefore may arise due to the inability of most aging adults to satisfy or reach their needs due to the lack of food, shelter, safety, love and confidence.[521]

3.0 Legal Framework for Elders Protection

3.1 National Legal Framework

The rights, welfare and needs of the aged in Nigeria are yet to be given significant legal backing despite their vulnerable nature. However, some of our laws were able to segmentally introduce the essence of the rights, needs and welfare of the aged thus;

a) **The Constitution:**

The Constitution[522] recognizes the rights of the aged. This very right was encapsulated in Chapter II of the Constitution. It provides thus:

> *Providing all citizens with adequate housing, food, a reasonable national minimum wage, elderly care, pensions, as well as support for the unemployed, sick and disabled*.[523]

Significantly, the state shall direct its policy towards ensuring old age care and pensions, and unemployment, sick benefits and welfare of the disabled.[524] Although it is a blanket provision, it seeks to protect old people from economic hardship and care-related impediments due to their vulnerable nature. Also, Section 17(3)[525] provides that the state has the directives to provide policies that would ensure securing adequate means of livelihood, just and humane conditions of work, protect the health, safety and welfare of all persons in employment; and ensure equal pay for equal work without discrimination on any ground whatsoever, including age. Interestingly, Section 17(3)(d) and (f)[526] aims to ensure that there are adequate faculties and health facilities for all persons to live decent and dignified lives. The section further reiterates the commitment of the State to the people, particularly the disadvantaged and vulnerable persons. Also, the State is to direct its policies towards granting public assistance and social security in deserving cases or other conditions of need.[527]

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[520]Pradipty Bhardwaj, A Critical Analysis of Senior Citizens' Rights in India, Amity International Journal of Juridical Sciences (2020) ISSN.2395-4019, at 67

[521] ibid

[522] The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[523] Ibid, s.16(2)

[524] Ibid, s.16

[525]The Constitution of the Federal Republic of Nigeria, 1999, c 20, s 17(3).

[526] The Constitution of the Federal Republic of Nigeria, 1999, c 20, s 17(3)(d)and (f)

[527] Ibid at s. 17(9) d

Despite the provisions in Chapter II, the provisions are non-justiciable, hence unenforceable by or on behalf of the aged. Section 6(6) (c) of the Constitution[528] provides thus;

> *Shall not except as otherwise provided by the Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision conforms with the fundamental objectives and Directive Principles of State Policy set out in Chapter II of this Constitution*.[529]

The provision of the above section ousts the jurisdiction of the court as it relates to Chapter II of the Constitution. By implication, the courts lack jurisdiction to entertain matters concerning socio-economic and cultural aspirations and the Fundamental Objectives and Directive of Principles of State Policy of the Constitution. The question that agitates the mind of every Nigerian citizen is why would rights be included on one hand and their enforcement be invalidated on the other hand.[530] The import of this provision as a non-justiciable entitlement bereft the applicability of the provisions of judicial recourse to compel government compliance.[531] Thus as it stands, the provisions are mere political objectives and goals, devoid of a concrete redress mechanism against the duty bearers to guarantee the enjoyment of these important provisions by the senior citizens of Nigeria. The Nigerian courts have generally adopted the same attitude to the non-justiciability of the socio-economic provisions in Chapter II and have upheld the unenforceability of its provisions.

In the case of *Okogie (Trustee of Roman Catholic Schools) & ors v. Attorney General of Lagos State*[532], the Court reaffirmed the challenge that Section 6(6)(c) poses to the judicial application of the Chapter II. The Court held that it is rather unfortunate that despite the importance of the socio-economic and cultural provisions in Chapter II, their practical enforceability has been undermined by the same Constitution that pledged to promote the welfare and well-being of all persons in Nigeria. Also, it must be noted that the provisions in the Constitution are largely inadequate to capture all the dimensions of socioeconomic rights of the aged. The provision in Section 16(3)(d)[533] simply obliges the state to direct its policies and resources toward the welfare objectives. This language of the law simply does not guarantee all the dimensions of the rights of the elderly. The text of the law does not provide for the availability and accessibility of the necessary services and facilities, mechanisms, and means of guaranteeing their rights in a gender-sensitive and non-discriminatory manner. Nevertheless, it is encouraging to note that the Constitution guarantees the civil and political rights of elders. From the foregoing, it is pivotal that section 6 of the Constitution be expunged or amended in order to facilitate the enforcement of socio-economic rights that are barred under the law.

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[528] The Constitution of the Federal Republic of Nigeria, 1999, c 20, s 6(6) (c)
[529] Ibid
[530]J Akande, *Introduction to the Constitution of Nigeria (1999)* (Imprint: Ebute-metta, Lagos: MIJ Professional Publishers 2000) at 271
[531]O. Nnamuchi, "Kleptocracy and its Many Faces: The Challenges of Justiciability of the Right to Health Care in Nigeria" (2008), 52(1) *JAL* 1-42 at 2
[532] (1981) 1 NCLR 218
[533] The *Constitution of the Federal Republic of Nigeria*, C 20, s 16(3)(d)

b.) Criminal Code:

Section 341 of the *Criminal Code*[534] further penalizes the abandonment of children under the age of seven. However, the laws are yet to expressly focus on elders who also fall within the category of vulnerable persons. Older women may be the victims of section 55(1)(d) of the Penal Code[535] that permits a man to physically chastise his wife as no exception is provided for the wives that are advanced in age. Nevertheless, the criminal statutes make provisions that can be interpreted in the interests of elders and prosecute any abuse and neglect. For example, section 300 of the *Criminal Code*[536]provides that it is an offense for any person having the charge of another who is unable to provide for himself the necessities of life, because of age, sickness, unsoundness of mind, detention, or any other cause, to withdraw himself from such charge. The law further adds that it is immaterial whether the charge is undertaken under a contract, imposed by law, or arises because of any act, whether lawful or unlawful, of the person who has such charge to provide for that other person the necessities of life. The law also imposes a punitive measure for a breach of the duty to provide the necessities of life by caregivers.[537]

Similarly, section 305 (a) (2) of the Code[538] provides that anyone who maliciously and intentionally breaches a contract of service knowing fully well (or having reasonable cause to believe) that the action will endanger the health or human life is guilty of an offense. What this portends is that contracted caregivers may be liable where they unlawfully and maliciously break their contracts in a manner that exposes the life and health of older persons to danger. This protection is reinforced by section 305 which provides that when a person undertakes to do any act, the omission of which is or may be dangerous to human life or health, it is the person's duty to ensure that the duty as contracted is dutifully carried out. Such a person who fails in his/her performance of duty is held to have caused any adverse consequences which result to the life or the health of anyone by reason of any omission to perform that duty. Noticeably, however, the law does not expressly impose this duty on relatives of elderly people to undertake and effectively carry out this duty, it only makes it an offense for those who have assumed this duty. Notwithstanding, these provisions of the law can be relied upon for the prosecution of those who maltreat, neglect, and abuse the elderly.

Apart from the Federal Republic of Nigeria's Constitution, there's a noticeable absence of specific legislation directly protecting the rights of the elderly in the nation.[539]. While efforts are made by the government to address this issue, during President Muhammadu Buhari's tenure[540], the Senior Citizens Centre Bill was introduced in the House of Representatives[541]. This bill aims to establish senior citizens' centers in the Federal Capital Territory (Abuja) and other interested states throughout Nigeria[542]. These centers are designed to cater to the needs of

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[534] *Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN)*, 2004
[535] *Nigerian Penal Code Act, Cap. C53, Laws of the Federation of Nigeria (LFN)*, 2004
[536] *Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN)*, 2004
[537]*Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN)*, 2004, s.*339*
[538] *Nigerian Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (LFN)*, 2004
[539]Kunle Azebajo, "Older Person's Days: Eights months after Law's passage, Nigerian Senior Citizens still out of sight" (2018), online: premium times <https://www.premiumtimesng.com/features-andinterviews/287659-older-persons-day-8-months-after-lawnigerias-senior-citizens-centre-not-effected.html> accessed on April 20th, 2024.
[540] 8 years from 2015-2023
[541] Ibid
[542] Ibid

senior citizens by organizing various activities such as recreation, sports, healthcare, education, counseling, and social programs. Projections suggest that the establishment of these centers could potentially create around 720,000 job opportunities nationwide, benefitting both the elderly and unemployed youths. Despite being signed into law, there's been a noticeable lack of communication or action from the federal government regarding the implementation of this legislation.[543] Other unsuccessful attempts have been undertaken to ensure that the rights of elders are protected by the appropriate legislation. One such is the Bill for an Act to provide social security for unemployed graduates and elders in Nigeria and for purposes connected thereto that was sponsored by Senator Anyim Ude.[544] Also, the Welfare of Senior Citizens Bill,[545] Which sought to protect and establish special privileges for senior citizens of Nigeria was presented to the National House of Assembly in 2011. It made provision for penalties for breach thereunder and matters connected therewith. The Bill was never passed into law after its first reading at the National Assembly of the Federation. The Bill was read for the first time in the Senate of the National Assembly but could not go beyond that level.

c.) **National Policy for Older Persons:**

This was signed into law and officially endorsed by the Federal Executive Council in February 2021. Its primary aims include ensuring security, independence, active involvement, comprehensive care, and the preservation of dignity for elders. Additionally, it establishes channels to reinforce traditional support structures for the elderly, sets up a regulatory framework for aging-related matters, ensures sufficient and lasting income, and security, and promotes healthy aging.[546] Moreover, it emphasizes the protection and promotion of the basic human rights of older individuals. Furthermore, it mandates the establishment of an efficient data management system to facilitate effective research, planning, monitoring, and evaluation of aging-related initiatives. However, although the above policy is a step in the right direction, policies are not law and consequently do not have a binding effect but are merely persuasive.

4.0 Challenges of the Enforcement of the Right of Elders in Nigeria:

4.1 Lack of political will and commitment:

Although constitutional rights are guaranteed by Nigerian law, there has been minimal effort to improve the living conditions of elders in Nigeria. The issues surrounding elders are seldom considered significant in the development policy agenda.[547] Sadly, the many policies and/or legislations in Nigeria do not address the issues and challenges of elders, despite the country's growing percentage of elderly citizens.[548] The Nigerian government has been doing little to nothing to provide for the welfare of elders because of the syndrome that views this as the

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[543] Ibid

[544]Patience Edirin Mudiare, "Abuse of the aged in Nigeria: Elders also cry" (2013) 3(9) AIJCR 79- 87 @ 81

[545] A Bill for an Act to establish special privileges for senior citizens in Nigeria, provide penalties for breach there under, and other matters connected therewith.

[546] William Ukpe, "FG approves National Policy on Ageing for Older Persons" (2021**),** online: Nairametrics<https://nairametrics.com/2021/02/12/fg-approves-national-policy-on-ageing-for-older-persons/> accessed on April 20th, 2024.

[547]Patience Edirin Mudiare, "Abuse of the aged in Nigeria: Elders also cry" (2013) 3(9) *AIJCR* 79- 87 at 84

[548] Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, ''State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*

family's responsibility. For instance, when they are eligible for a pension, this is very frequently not paid, and when it is, it is frequently not paid on time.[549]

Due to the lack of access to retirement-oriented occupations that provide pensions upon retirement for elders, the majority of elderly Nigerians are faced with social neglect and desertion. In Nigeria, the bulk of the elderly population resides in rural areas and their major occupation is subsistence farming.[550] Many elderly people who reside in metropolitan areas are essentially self-employed and must work until they are unable to work anymore to support themselves.[551]

4.2 Social and economic factors:

A serious challenge posed by the actualization of the rights of elders is the government's inability to meet the regular payment of pensions to retirees who had diligently worked within the public service sector and, the inability to provide social services and health facilities to cater for the needs of the aged. [552] In Nigeria, poverty is still a significant issue; it is believed that over 60% of the country's population makes less than $1 per day.[553] The nation suffers from widespread poverty, with older people potentially more vulnerable due to their retirement from the workforce and the lack of financial support provided by the social security systems.[554]

Because of the lack of social services and economic hardship, the majority of Nigeria's senior citizens are at risk of poverty.[555] Elders in Nigeria not only have shorter life expectancies but also spend a larger percentage of their lives in bad health as a result of poverty and inadequate infrastructure development. Many elderly persons have been unable to achieve adequate well-being and life satisfaction due to poverty. According to estimates, 70% of Nigerian workers are employed in the unorganized sector, which offers no social security or protection of any kind.[556] After a lifetime of hardship, lack of access to healthcare, and poor nutrition, a large number of elderly persons reach retirement age.[557] They don't have enough personal funds in these circumstances to cover their everyday expenses.

4.3 Health issues of older people and inadequate access to health care:

Statistics show that a plethora of studies provide information regarding the increasing prevalence of chronic diseases and disability among certain elders in Nigerians.[558] Health issues

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[549] Ibid at 37
[550] Ibid at 37
[551] A D Shofoyeke and P A Amosun, ''A Survey of Care and Support for the Elderly People in Nigeria" (2014) 5(23) *MJSS* 2553
[552] Marcus Ayodeji Araromi, "Protecting the Rights of Old People in Nigeria: Towards a Legal Reform" (2015), 40 *JLPG* 131 -143, at 1 online: <https://core.ac.uk/download/pdf/234650285.pdf> assessed on April 20th, 2024
[553] Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, ''State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*
[554] *Ibid at 37*
[555] Ibid at 37
[556] Ibid at 37
[557] Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, "State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*
[558] C. E. Ekpenyong et al., "Double burden, non-communicable diseases and risk factors evaluation in sub-Saharan Africa: The Nigerian experience" (2012), 1(2) EJSD 249-270 at 250 cited in Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, "State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*

and a decline in functional ability are common aspects of elders that typically impact their sense of financial security. A study conducted in southeast Nigeria found that the most prevalent non-communicable diseases among elderly people were diabetes, mellitus, dyspepsia, musculoskeletal disorders, cardiovascular disorders, and visual impairment.[559] In Nigeria, the current distribution of resources has been heavily skewed towards maternal and child health as well as biased attention directed to the three big infectious diseases (malaria, tuberculosis, and HIV/AIDS), this has left geriatric non-communicable diseases with little attention.[560] All of this takes place against a backdrop of extremely restricted access to healthcare for the elderly in the nation due to a lack of personnel and facilities as well as out-of-pocket payment arrangements.

4.4 Social protection structure and systems:

Nigeria's elderly population is under-served in terms of social support, and as their numbers grow, so does the need for social assistance. The bulk of Nigeria's aged population resides in rural areas and are primarily subsistence farmers who do not get government social assistance or pension payments.[561] There are few elderly people in Nigeria who are insured under the contributory pension scheme. The informal economy like farming, trading, carpentry, and palm wine tapping is the main source of employment and may be the group most in need of the limited social security benefits that pension plans offer, but they are not included in the scheme. In contrast, this pension plan is primarily intended for people who work in the formal sector of the economy.[562] The social security arrangement in Nigeria faces many challenges, which include: poor coverage, inadequacy, lack of administrative efficiency and transparency, and poor governance and regulation.[563] The pension scheme is major flooded by the corruption of officers which in turn, adversely affects elders from having access to their money/finances when needed.[564]

4.5 Lack of enforcement mechanisms

The redundancy of Chapter 11 of the Constitution by S. 6(6)[565] accounts for the low effectiveness of some of the sectoral laws. Thus, the laws are more of a rubber stamp without any effect on the maintenance and protection of the rights of aging adults.

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[559] Gabriel Uche, "Burden of non-communicable diseases among geriatric Nigerians in a rural hospital in the resource-constrained setting of Eastern Nigeria"(2013), 1(1) SJPH 141- 146 cited in Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ 37*

[560] Ibid at 37

[561] M. O. Adedokun, "Caring for the elderly: Towards a better community" (2010), 2(3) *EJES* 283-291 at 290

[562] O. Obashoro-John, "Global Aging Issues: The Nigerian Situation" (2011), *JAEE* 62 cited in Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ at 37*

[563] Yetunde Aluko, "Old Age and Social Security in Nigeria: The Challenges of the New World Order" (2007), 1(1) *IJMSS* 73-87 cited in Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ at 37*

[564] Awawu Grace Nmadu, Victoria Nanben Omole and Istifanus Anekosun, State of the Elderly in Nigeria: Ethical Dimensions" (2018) 6(1) *GBEJ at 38*

[565] *Constitution of the Federal Republic of Nigeria, 1999 (as amended*)

5.0 Conclusion

This study shows that Nigeria is yet to develop a robust law for the care, rights, and protection of elders, which in turn accounts for the diminishing status of the elderly in Nigerian society. This is detrimental to the well-being of the elderly population in Nigeria and poverty among the elderly is imminent. Therefore, there is a need for a well-structured legal framework for the care, welfare, and protection of aging elders in Nigeria.

5.1 Recommendations

These include the need for a single codified specific law on the protection and promotion of the rights and welfare of aging adults in Nigeria. There is a need for a monitoring and evaluation committee or commission whose aim would be majorly to collate data and assess the effectiveness of government schemes put in place for the protection and promotion of the rights of aging adults. Furthermore, effective care centers need to be established in the 36 states of Nigeria with special units on counseling, medical, legal and any other psycho-social support. The government must ensure that there is a budgetary allocation for aging adults not just for pension after retirement but for their welfare particularly to help those who are not within any formal sectors or family members.

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Regional Protection of Human Rights in Africa: Sick or Dead?

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Abstract

The African Commission on Fundamental Human Rights (FHR) is in control of citizen's rights organisations in the black man's regional states. As a result of the body's rulings guiding governments to implement their Charter obligations, domestic laws have been impacted. Member states of regional organisations have endeavoured to establish regional conventions, commissions, and tribunals to maintain these values since the United Nations (UN) General Assembly approved a resolution ensuring fundamental rights of every human in 1948. Some of African nations have incorporated human rights instruments into their own legal systems, allowing them to put these safeguards into action. At first, governments in Latin America and Europe legitimised human rights protections within separate regional frameworks. Efforts to establish human rights safeguards on a regional level have lagged behind in Africa and Asia. To ensure that regional human rights tribunals fulfil their commitments to impartiality and fairness, this article will examine why African regional human rights bodies have failed thus far and provide solutions for how they can win over the continent's inhabitants.

Keywords: Human Rights, Banjul Charter, African Commission, Communication, Sovereignty

Introduction:

A broad examination of regional human rights norms reveals notable differences in the institutionalization and execution of rights of people across various regions. Obviously, the Europe and Latin America stand out for their relatively advanced legalization and enforcement mechanisms, whereas Africa and Asia exhibit comparatively lower levels of institutionalization. These regional differences reflect historical, political, and socio-economic contexts that have shaped creation of people's rights, norms and enforcement systems put in place from different parts of the world.

Europe has the most institutionalized and legally binding human rights mechanisms, with a significant body of literature detailing various human rights instruments. Many people believe that the European human rights setting is the best all over the world. A number of agreements and treaties including the ECHR and the EU Charter of Fundamental Human Rights, provide the groundwork for this. A well-developed prosecution strategy, the European Court of Human Rights (ECHR) lets individuals sue member states for alleged human rights breaches. A great deal of scholarly and policy discourse has focused on human rights in Europe, which is supported by the region's robust legal and institutional structure.

Human rights standards and enforcement procedures has been in existence for a very long time in Latin America, even though the region is not as institutionalised legally as Europe. Both the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR) have been instrumental in ensuring that states face consequences when they violate human rights. Despite persisting obstacles including political instability and inadequate rule of law in many nations, Latin America continues engaging with human rights issues, as seen by the expanding volume of literature on the topic. But Latin American academics and politicians are more concerned with human rights at the states and continental levels than with international human rights systems, especially those of developing nations, especially those in Africa and so called third world countries.

Prosecution and institutionalization of the Fundamental Human Rights (FHR), conversely, are major obstacles in Africa. Although human rights protection is laid forth by the African Court on Human Rights (ACHR) and the African Charter on Human Rights (ACHR) sometimes regarded as Banjul Charter, overall, the execution falls short of expectations. The region faces challenges in protecting citizen's fundamental rights as a result of civil and political unrest, authoritarian regimes, and a lack of proper prosecution strategies. Compared to Europe and Latin America, Africa has less developed legal and institutional frameworks, and human rights violations often go unpunished due to weak judicial systems and limited regional enforcement capabilities.

Asia presents a unique case, as it lacks a comprehensive regional human rights system similar to those in Europe, Latin America, and Africa. Instead, human rights protection is primarily addressed at the national level, with significant variations between countries. Some nations, such as Japan and South Korea, have relatively strong domestic human rights protections, while others, particularly those with authoritarian governments, have weaker enforcement systems. The Southeast Asian Association Nations made some efforts to encourage fundamental rights of humans through the association's declarations known as ASEAN human rights declaration, but these efforts remain largely non-binding and lack robust enforcement mechanisms. The focus on national rather than provincial or regional slants to human rights reflects diverse political and cultural landscapes of Asia, making regional consensus on human rights norms more challenging.

Overall, the institutionalization of human rights varies significantly across regions. Europe and Latin America have made the most progress in developing legal frameworks and enforcement mechanisms, whereas Africa and Asia face more significant challenges. While Europe has the most legalized enforcement systems, Latin America continues to expand its human rights literature and institutional frameworks. Africa, on the other hand, struggles with weak enforcement, and Asia remains largely focused on national rather than regional human rights initiatives. These differences highlight how regional circumstances significantly plays a role in determining how human rights laws are developed, protected and enforced for proper prosecution.

Thus, this paper delves into the evolution of fundamental rights of citizens, its instruments in the continent of Africa and how those rights were shaped by several factors like cultural factors, domestic circumstances, and international pressures, showing that human rights protection mechanisms are shaped by a combination of the two. Africa has failed miserably in its attempts to protect human rights on a regional level, in contrast to other continents like Latin America and Europe, theses two continents boast of progressive democracies withe strong regional organisations that do a better job of this.

Evolution of Human Rights Courts in Africa Countries

The notable foundation for what is now known as the League of African Unity (OAU) was established in the year 1963. While OAU agreement did not specifically mention human rights preservation, it did encourage member nations to "have regard" for the Universal Declaration of Human Rights (UDHR) as a means of promoting international cooperation. Protection of rights of citizens was definitely not one of the objectives and aims of the OAU's founding states.[566] "In its charter, Organisation of African Unity (OAU) as it is then called, firmly stated its commitment to protecting national sovereignty, ending colonialism, strengthening national solidarity, and promoting international collaboration and development among its member states. It wasn't until 1981, when the African Charter on Human Rights (ACHR), often referred to as the Banjul Charter, was ratified, that human rights principles were finally integrated into the OAU framework".[567]

Banjul Agreement encompasses numerous rights within its framework, yet it also exhibits several notable deficiencies. Part 1, Chapter II's articulation of "duties" is the Banjul Charter's first and foremost flaw. Article 27 stipulates that every individual has "duties towards his immediate family members and society where he or she belongs, the State, i.e. the country of residence and some other constitutionally established and recognized communities as well as the international community" as listed below. Each citizen has a responsibility to "serve his national community by dedicating his physical and cognitive capacities to its service" and to avoid "compromising the security of the State," as outlined in article 29, which provides further details about these obligations."[568]

The second shortcoming of the agreement was the absence of a non-derogation clause, that should ensure that certain rights and privileges remains inviolable under whatever circumstances. The Charter of agreement indeed incorporates an exclusionary provision that

[566] E. Kannyo, *The Banjul Charter on Human and People's Rights: Genesis and political background*. In Human Rights and Development in Africa, E. Claude, Welch, Jr. and I. Ronald I. Meltzer (eds.) (New York: State University of New York), pp. 128–151, 2019.

[567] O. Olusola, and S. Amadu. *The OAU and Human Rights: Prospects for the 1980s and beyond*. Human Rights Quarterly, 8(1), 89–103, 2020.

[568] M. Mutua, *The African Human Rights Court: A two-legged stool?* Human Rights Quarterly, 21(2), 342–363, 1999.

safeguards considerable array of guaranteed entitlements. However, it regrettably includes several justifications that permit the derogation of certain rights.

Third, it incorporates several "claw-back" clauses that allow for additional exceptions and limitations to the proclaimed human rights. These clauses impose conditions on the adherence to the values outlined in the agreements under specific conditions. For instance, "No person's freedom can be taken away from them unless certain conditions are met and as established by law beforehand."[569] While numerous nations in Africa have historically enacted oppressive laws that curtail human rights, this clause effectively diminishes the significance of such guarantees. "No individual may, in accordance with law, be subjected to dealings that limit the exercise of the freedom," states the 8th Article, with similar restrictions on the unfettered practices of several religious rituals. In a bid to ensure that there is peace and harmony, national governments frequently take a very strict stance. The freedom to gather is also limited. " Any exercise of this right must adhere to the requirements set out by law, particularly those that are designed to safeguard the safety of our country, our well-being, our morals, and the rights and freedoms of others."

"The lack of "progressive realization" terminology in the Charter is a positive aspect; as a result, everyone is required to immediately act to make sure their rights are enforced.[570] Consequently, nations are unable to rationalize ongoing violations by citing a gradual incorporation of human rights safeguards. Moreover, a more optimistic perspectives are presented by the gravity of the threat posed by violation of momentum as well as achievements of a more democratized Africa Continent".[571]

To effectively advocate before the Commission. Numerous obstacles must be navigated. These obstacles encompass the Commission's incapacity to proceed until every local remedy has been fully utilized. It additionally encompasses the constraints on the language that may be employed in petitions. Communications must refrain from being disparaging or insulting towards a state.[572] The Commission acknowledges, nonetheless, that in certain instances, local remedies may be lacking, insufficient, or ineffective. In instances where such conditions prevail, the Commission may opt to accept the communication irrespective of the attempts made at local remedies. In instances of grave and extensive transgressions, local remedies may be overlooked.[573] "The absence of additional enforcement for its recommendations is notable, especially when these recommendations remain undisclosed, thereby precluding the possibility of public scrutiny and pressure". Instead of protecting individual rights, "Massive violations" and upholding state relations are the primary responsibilities of the Commission.[574]

The Commission takes its time even after acknowledging a petition. If the complainant and the violation are unable to reach a peaceful agreement within three months of beginning the dialogue, then..., the Commission shall intervene in an effort to facilitate a "amicable solution." A further limitation is that, in every instance, the authors of the communication are unable to maintain anonymity, even when disclosing the identity of the complainant poses a risk to their

[569] Article 6, African Charter.
[570] C.A. Odinkalu, Analysis of paralysis or paralysis by analysis? Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights. Human Rights Quarterly, 23(2), 327–369, 2001.
[571] T. Buergenthal, *International Human Rights in a Nutshell* (2nd ed.) St Paul, MN: West Publishing Co., 1999.
[572] Article 56, African Charter.
[573] *ibid,* Odinkalu
[574] *Ibid,* Ojo and Sesay

safety. The Commission is required to conduct an exhaustive investigation, then report back to the Heads of State with a set of recommendations for the relevant parties.

An important problem has been brought to light upon the discovery that the charter is inadequate in human rights protection, as numerous violations have been perpetrated by various African governments. The measures implemented in pursuit of that objective are outlined as follows:

i. The African Commission on Human Rights Protection

"When it came to seeking justice for human rights violations, the only entity that existed was the African Commission on Human Rights," the statement read. A unified forum to handle the many disagreements and wars that broke out on the African continent between nations and between citizens and their governments was lacking. The most imperative of the numerous rulings issued by the African Commission in matters concerning purported breaches of human and peoples' rights was the landmark case of SERAC & Another v. Nigeria. This case dealt with the allegations of rights violations associated with development in the unstable Niger Delta region, and the African Commission aimed to establish its significance in this correspondence[575].

An important regional human rights body that oversees the implementation of human rights across the African continent is the African Commission on Human Rights. Although it has a vast mandate, the Commission struggles to ensure that states adhere to its recommendations, particularly when it concerns non-compliant states. Human rights breaches in African countries are one of the most common things the Commission can do. Statements, resolutions, and recommendations are frequently issued by it to urge state actors to maintain the responsibilities laid down in the Banjul Charter—another name for the African Charter on Human Rights. It actively monitors, investigates, and reports on abuses. The Commission is quick to point out infractions, but it lacks formal enforcement measures and faces pushback from some nations, so it can't do much to ensure compliance. Political maneuverings, lax rule of law, and an unorganized mechanism for enforcing state accountability frequently impede the efficacy of its endeavors.

The communications procedure is an important part of the protective mandate of the Commission's since it provides a quasi-judicial process through which individuals, NGOs, and other groups can file complaints against State Parties that they believe have violated human rights. The Commission follows this process when it investigates allegations, evaluates petitions, and makes recommendations to governments that it finds to be in infringement on the African Charter. While this procedure does provide victims with a method to seek redress, states are under no legal obligation to do so because the Commission has the power to actually implement its findings. Some governments selectively follow the Commission's recommendations, while others choose to ignore them entirely, casting doubt on the system's overall effectiveness.

In accordance with the African Charter, the Commission is primarily responsible for the following: Promoting basic human and civil rights entails conducting research, running public awareness campaigns, organizing seminars and conferences, and pressuring states to enact policies and laws that are consistent with human rights standards. Collaborating with a range of partners, including civil society organizations, the Commission aims to strengthen human rights advocacy on a continental level. Receiving and reviewing complaints is the responsibility of the Commission on human rights abuses, conducting investigations into those abuses, and

[575] Communication No. 155/2001 *SERAC & Another v Nigeria* (2001), 15th Annual Activity Report: 2000–2002.

making recommendations to the states. It checks in with governments on a regular basis to see if they're living up to their Charter commitments, sends out fact-finding missions, and reviews official reports. Lacking robust enforcement mechanisms, the Commission's role is mostly advisory rather than legally enforceable. To help states understand and execute the African Charter, the Commission offers authoritative interpretations of its provisions, outlining their scope and significance. In order to clarify the Charter and make sure its provisions are interpreted consistently in varied political and legal situations; this function is vital.

Furthermore, the association of the heads of AU countries has shouldered the body with additional responsibilities, which it must fulfil. Some of these duties may include providing advice to African Union institutions on issues that pertains to citizen's rights, responding to new human rights concerns as they arise, and helping to create legal instruments to improve Africa's human rights (HR) framework.

The African Commission on HR has a wide-ranging goal, but it faces serious structural and institutional obstacles. Among these are insufficient manpower and funding, political meddling, and the absence of legally enforceable powers to prosecute the commission's rulings. The objective of establishing the ACHR was to fortify the enforcement of human rights through the courts. However, the Court is not without its flaws, such as the low ratification rates and lack of respect of certain state to its rulings. Finally, the effectiveness of the ACHR in ensuring adherence to citizen's rights standards is still an important concern. To fully realize the rights as stipulated in the African Charter, it is essential to strengthen the Commission's authority, improve state cooperation, and enhance enforcement mechanisms.[576]

In accordance with its dictates (to protect fundamental human rights) of its people, the Commission, scrutinizes complaints through the communication procedure. Upon thorough examination of the complaint and the facts gathered from both parties, the Commission will render a decision concerning the potential violation of any provisions within the Charter or its associated instruments. The ultimate determinations made by the Commission are referred to as "recommendations." These do not constitute binding judgments. Consequently, the recommendations frequently lack enforcement by the States that have been condemned, as they do not possess legal binding authority on State Parties since the African Commission's authority is quasi-judicial.

Due to severe constraints, the Commission has resorted to sending institutional letters to non-compliant nations in an effort to enforce its rulings and remind them of their responsibilities under Article 1, which stipulates the following:

"… in accordance with the privileges, obligations, and guarantees included within this Charter and execute them through the use of legislation and other means".

Furthermore, it is required to report on the activities taken to implement its decision to the Assembly of Heads of State and Government of the African Union (AHSGAU) by a number of specified dates.[577] In addition, within the given timeframes, it is essential to inform the AHSGAU of the measures taken to implement its resolution.[578] Regardless of the Assembly's

[576] Article 45 African Charter.

[577] Rule 112 of the African Commission's Rules of Procedure of the African Commission (2010) <http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en> pdf.

[578] Article 58.

involvement, the condemned states are only urged to implement the suggestions.[579] It is clear that there are no steps or strategies put in place to safeguard that the Commission's recommendations are implemented, even with the involvement of the Assessment.

It is clear that the States Parties that are being condemned are only being urged to follow the suggestions.

What follows is an outline of the African Commission's shortcomings in protecting rights which is as follows:

a. The duration of the reviews is extended due to the considerable interval permitted between the acknowledgement of the message and the assessment of its acceptability.
b. b. The Commission is showing a growing tendency to condemn human rights violations on the continent; nonetheless, it is facing difficulties in protecting Charter rights from States that violate them.
c. An crucial embodiment of the Commission's safeguarding mandate is the communications procedure. To make sure that State Parties respect the rights in the Charter, the Commission is supposed to use this quasi-judicial process. The process is lengthy, and states often reverse themselves on judgements made about communications. Even though the resolves issued by the Commission on Communications may exhibit a forward-thinking approach regarding the safeguarding of human rights, their impact frequently diminishes due to the lack of enforcement by the States that have been criticized.
d. The emphasis placed by commissioners on settlements, often at the cost of efficiency, is particularly concerning given the pressing nature of the cases presented to them.
e. The examination of communications exhibits considerable variability, frequently extending over a duration of two to eight years. For example, the complaint filed by Diakite occurred in 1992, with the subsequent decision being issued in 2000[580]
f. The decisions of the Commission are purely recommendations to the States parties; they are not legally binding as States were not being held accountable for their execution by any means.

Deficiencies observed within the African Commission, especially with regards to the protection of peoples' rights, have raised significant concerns about the ongoing relevance of this regional entity, affecting not only the State-victims but also the individuals impacted and various non-governmental organizations.

The sluggishness and absence of definitive resolutions, coupled with the inadequate comprehension of the procedures by States, NGOs, and individuals, undoubtedly account for the comparatively little or lack of interaction directed to the Commission, and consequently, the modest tally of adjudicated decisions[581] The insufficient enforcement of the African Commission's decisions has prompted scholars to advocate for the creation of a legally binding entity to ensure adherence to the Commission's findings[582] It is noteworthy that even to date, the lack of enforcement remains unresolved.

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[579] According to NB Pityana's commentary in the 4th issue of the African Human Rights Law Journal, "Reflections on the African Court on Human and Peoples' Rights," the Assembly lacks the authority to compel Member States to adhere to its mandate. (2004) 6 at <http://www.ahrlj.up.ac.za/pityana-n-b>.

[580] *Diakite v. Gabon*, Decision, 73/92 (ACmHPR, Apr., 1994)

[581] *The African Court on Human and Peoples' Rights towards the African Court of Justice and Human Rights*, International Federation for Human Rights – FIDH, https://www.fidh.org/IMG/pdf/african_court_guide. pdf p.27 (Accessed on 5th January, 2022).

[582] Viljoen F. Louw L., *The Status of the Findings of the African Commission: From Moral Persuasion to Legal Obligation* 48, Journal of African Law 1, 10, 18, 2004,

ii. The African Court on Human Rights

The Togo Constitutive Act of the African Union, passed in 2000 in Lome, the capital of Togo, was a watershed moment in the fight for democracy, fairness, equality before the law, and effective leadership. A human rights matter or one concerning the interpretation or application of an African Union treaty or Act would be heard and decided upon by the African Court of Justice, as stated in the institution's Constitutive Act. Since the adoption of the Constitutive Act of the African Union, Africa has been building a complex institutional framework to guarantee justice for states within the union and for victims of human and peoples' rights violations[583].

Established in 1998, the African Court on Human Rights came into full functioning in the year 2009 when the Protocol took effect in January 2004. The role of the Court is to bolster the African's protective mandate by providing additional resources.[584] It is the intention of this Court to address the deficiencies that have been identified within the African Commission, including its insufficient institutional framework, inadequate funding, decisions that do not have binding repercussions, and the failure to execute them.[585] The African Charter on Human Rights is one example of an international human rights charter that requires ratifying states to fulfil certain duties. The responsibility for ensuring that these obligations are met lies with the Court. Human rights violations can be reported to the Court or, under some circumstances, the African Commission on Human and Peoples' Rights by individuals or non-governmental organisations (NGOs).

The main reason for founding the Court was to strengthen and improve Africa's system for protecting human rights. This court came into being with the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 and the establishment of the European Court of Human Rights. A global framework to safeguard human rights was the Court's primary objective, rather than permitting national authorities to use the concept of sovereignty as an excuse to cover up human rights crimes that occurred within their own country.[586]

As stated in the preamble of the Court's Protocol, the African Court on Human and Peoples' Rights is obligated to supplement and enhance the efforts of the African Commission on Human and Peoples' Rights, which has been ongoing since its establishment in 1987. According to Article 2 of the Protocol, the Court must also perform the following:

"*enhance the safeguarding task assigned to the African Commission on Human and Peoples' Rights... by the African Charter on Peoples' Rights*."

The African Court on Peoples' Rights is responsible for a variety of tasks, such as:

a. After a party has made a decision, a re-valuation may be done by the court if more information becomes available. The submission must be within six months from the date of the party's knowledge of the evidence by the party summiting the request.[587] Unless the Court orders differently, this motion for review will not prevent the decision from going into effect.

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[583] All 53 AU member states have ratified the Constitutive Act repealing the 40-year-old OAU Charter and replacing it with the AU. <www.african-union.org> Accessed 12th August, 2022.

[584] Article 2 Court Protocol Liwanga R.C. *From Commitment to Compliance: Enforceability of Remedial Orders of African HR Bodies,* 41 Brooklyn Journal of Int'l Law 1 (2015) 115, 116 (on the Court's powers and jurisdiction).

[585] *Ibid.*

[586] n.6

[587] Article 67 of the Rules of Court.

b. In a diplomatic capacity, the Court operates. This is accomplished by the Court by mediating a settlement to the complaint that is acceptable to both parties.[588]
c. Requests for opinions and advice legally on matters pertaining to African Charter or any other applicable human rights instrument can be made by any African Union Member State, an organ of the African Union (such as the Assembly of Heads of State and Government, the Parliament, or the Economic, Social and Cultural Council), or an organisation recognised by the African Union to the Court., instance, ECOWAS, is one example of a regional economic community. The UN Declaration on the Rights of nationals was formally adopted in June 2006 by the United Nations Commission on Human Rights. However, the African group voiced concerns about the wording of several articles in the Declaration, which delayed the adoption of the International Federation for Human Rights by the United Nations General Assembly that year[589]. As a result, the African Union heads of state reiterated their intention to delay the text's adoption while they solicit the Commission's opinion on possible changes. The Commission provided a detailed legal opinion on the terms of the Declaration during the 2007 Summit conference in Addis Ababa, Ethiopia, which addressed the concerns of the African Group. The Protocol also grants the African Court the authority to render advisory opinions.
d. The Court interprets and revises its own decisions. This type of request can be made by any party to the case up to twelve months after the verdict was made.[590] The other parties to the case are invited to provide their observations when the Court receives a request for interpretation. The same judges who considered the case's merits also go at the application. Unless the Court decides differently, the request for interpretation will not cause a delay in the decision's execution.
e. The parties to a disagreement are encouraged to try to work out their differences amicably by the court. With this power, the court can find a way to make peace that satisfies the demands of both sides of the conflict. For example, before the court hands down its ruling, a state may revoke a discriminating law if it is asked to do so by the court.[591]
f. This function highlights the two competing jurisdictions of the Court: first, it can be asked to rule on any regarding human rights provisions in the Charter or other ratified documents by the State in question; and second, it can arbitrate on petitions presented by individuals claiming human rights violations as documented in the charter or ratified documents by the State in question. In an effort to mediate a peaceful resolution, the court will step in.[592]

However, regarding compliance, the Court seems to have achieved minimal progress compared to the African Commission. Therefore, it is still unclear if establishing a new court would bring about the required improvements.

Relationships between African Commission (AC) and African Court on Human Rights (ACHR)

According to the preamble of the protocol, it is the duty of the African Court on Human Rights to strengthen, advance then foster the goals of the African Commission. Substantiating the ACHR, Article 2 specifically according to the protocol states that, the Court is to bolster the safeguarding function of the ACHR.

a. Interim rules of procedure established by both the Court and the Commission demonstrate the mutually beneficial nature of their partnerships. Most importantly, the

[588] Article 9 of the Protocol.
[589] Section 4 of the Protocol to African Court on Human and Peoples' Rights
[590] Article 28 (4) of the Protocol and Article 66 of the Rules of Court
[591] *Association for the Defense of Human Rights v. Djibouti, Communication* 133/94.
[592] Article 3.1 of the Protocol

African Commission has the authority to petition the Court to address any violation of the rights granted by the African Charter by a State that has signed the Protocol.[593] With this authority, the African Commission can take matters from NGOs and individuals without Court access and direct them to the Court in the hopes that the Court will then take them up on their requests. As stated in Article 34(6) of the Protocol, this can be done in situations where the state in question has not indicated that it permits NGOs and individuals to file direct appeals with the Court. Only Mali and Burkina Faso have given their approval for this recommendation thus far.

b. Any non-governmental organizations (NGOs) that are not parties to the African Commission on Human and Peoples' Rights cannot directly petition the Court unless the complaining state has made the declaration required by Article 34(6) of the Procedure.[594]
c. Beyond that, when the Court asks for it, the Commission should provide an opinion before determining the admissibility of a complaint as quickly as practicable. The Court has the discretion to remand a matter to the Commission for additional review of the admissibility of the complaint at any time prior to making a final decision.[595] Although it may seek an advisory opinion, the Commission ultimately decides on all matters before the Court. The Court can't do its job or accomplish its goal until the connection between it and the Commission is defined.

After being passed by the OAU on June 27, 1981, and coming into force on October 21, 1986, the African Charter on Human and People's Rights is promoted and overseen by the African Commission and the African Court on Human Rights. The Commission is situated in Banjul, Gambia, whereas the Court is situated in Arusha, Tanzania.[596]

iii. African Court of Justice and Human Rights

The AU Assembly decided to merge the African Court of Human and Peoples' Rights with the Court of Justice in July 2004, at a session in Addis Ababa, Ethiopia, and again in July 2005 in Sirte, Libya, in order to consolidate resources for a single continental court. The merging was mainly driven by the fact that the two courts had overlapping jurisdictions, despite their separate purposes and missions. The two institutions shared common ground in their jurisdictions, with the ACHR focusing on human rights disputes and the ACHJ addressing state disputes. This intersection revealed potential areas of shared jurisdiction, indicating that the two were not in.[597] Human rights issues, including the ability of citizens of one member state to freely travel to another member state's territory, were under the purview of the two courts.[598]

Judicial process governs the Court, and all States Parties must adhere to its rulings.[599] The African Union Executive Council oversees the implementation of the judgments by the relevant States, possessing the authority to make final and binding decisions regarding State Parties[600]

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[593] Part I. Chapter V Interim Rules of Procedure of the Commission.
[594] Part I, Chapter V.
[595] *Ibid,* Article 6.3
[596] The African Commission and African Court for Human Rights, The Practical Guide to Humanitarian Law, <https://guide-humanitarian-law.org/content/article/3/the-african-commission-and-african-court-for-human-rights> p.20 (Accessed on 18th January, 2022).
[597] Hansungule M, *African Court and the African Commission on Human and Peoples' Rights*; in Anton Bösl and Joseph Diescho (eds.), *Human Rights in Africa: Legal Perspectives on their Protection and Promotion*, Konrad Adenauer Stiftung, Windhoek, p. 235, 2009.
[598] *ibid*
[599] Article 43(6) of the Merger Protocol
[600] Article 46

According to Article 23(2) of the Constitutive Act and Articles 46(4)-(5), it is the Assembly's duty to impose sanctions on the State party that has failed to comply. Unfortunately, states continued political hesitancy to address the problem of non-compliance is shown by the insufficient ratification of the merger protocol. This means that the African Court of Justice faces the same structural problems that its forebears had. The current African Court of Justice and Human Rights (ACJHR) was founded in the year 2008 through an amalgamation of the African Court of Justice and the African Court on Human Rights. The Commission and the Court could investigate human rights breaches brought to their attention by Member States or individuals' complaints or correspondence up until 2008.

Anyone, including State Parties, individuals, and NGOs, has the right to submit communications to the African Commission for Human Rights. There are a number of admissibility requirements that the communications must meet. Only states that have voluntarily recognised the African Court of Justice and Human Rights' authority can be the targets of complaints filed by individuals NGOs. The African Commission on Human and Peoples' Rights, on its own behalf or as an intervenor in a case before it, or on behalf of a citizen or intergovernmental organisation in Africa, or any State party in the region, may bring its complaints about the Court's authority to this court.[601]

Members of the public, NGOs, and state parties are all welcome to address the African Commission on Human and People's Rights with their comments. The communications must fulfil many standards in order to be admissible. Individuals or NGOs can only file complaints against states that have willingly acknowledged the authority of the African Court of Justice and Human Rights. Any State party in the region, an African individual, an international organisation, or the ACHR may petition this court to challenge the jurisdiction of the Court.[602]

Challenges of the African Human Rights System

In light of the formation of significant judicial human rights bodies in Africa, such as the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights and the African Court of Justice and Human Rights, the continent remains entrenched in a struggle against pervasive human rights abuses. These institutions were established to advance and safeguard human rights, elucidate legal provisions and offer redress for victims. Nonetheless, the efficacy of these measures has been significantly constrained by insufficient enforcement mechanisms, lack of state collaboration and political meddling. "A number of African governments exhibit a tendency to selectively adhere to rulings or disregard them entirely, thereby compromising the legitimacy of these judicial institutions". The hesitance exhibited by various states to endorse essential protocols, including the provision that permits individuals and NGOs direct access to the Court, significantly undermines the integrity of the system. Consequently, the absence of accountability endures, prompting victims to seek recourse through international institutions such as the International Criminal Court (ICC) in their pursuit of justice. In the absence of more robust commitments from African nations, the prevalence of human rights violations is likely to persist, notwithstanding the presence of these legal frameworks.

In Africa, infringements have been increasing and the ineffective nature of judicial bodies has exacerbated human rights violations due to institutional shortcomings in enforceability. While these entities possess the authority to compel a State-violator to halt human rights

[601] African Human Rights System, International Justice Resource Center, https://ijrcenter.org/regional/african/ (Accessed on 20th January, 2022)
[602] *ibid*

infringements, initiate legal action against those implicated in such violations, remedy the harm inflicted upon victims and implement additional measures to uphold human rights,[603] however, the bodies lack coercive power to enforce their decisions. The African Court on human rights rely on the willingness of the Member States to enforce their remedial orders.[604]

It is important to observe that, notwithstanding the commitments made by Member States to uphold human rights and adhere to judicial rulings, the implementation of the few judgments issued remains largely unfulfilled by the states in question. Forst posits that the majority of decisions are either partially implemented or entirely unimplemented.[605] Because of this, many victims of human rights abuses wind up having to resort to taking their cases to supranational courts such as the International Criminal Court, the International Criminal Tribunal for Rwanda, the International Court of Justice, or other internationalized or hybrid criminal tribunals rather than relying on the African courts on human rights, which are essentially toothless bulldogs.

i. Eroding Relevance of the African Court on Human Rights

The limitation of the Court is one of the factors that are responsible for the irrelevance of the decisions of the African Court on human rights and this is evident in the implementation of article 62 which provides that:

The present Charter recognizes and guarantees certain rights and freedoms, and each state party is obligated to report on the legislative or other actions taken to implement these rights and freedoms every two years from the date the Charter comes into force.

Because it does not have the authority to make legally enforceable decisions against state parties that have breached the Charter's provisions, the African Commission is obligated to provide reports but cannot force governments to do so. No judgment against a state party can be legally enforced by the Assembly alone. All it can do is decide whether or not to let their infractions be published.[606] Instead of the Commission, the politically-motivated Assembly—which includes the actual perpetrators—has been bestowed with this authority.[607] So far, no international body has been established under the African Charter with the authority to impose binding decisions on states that have disobeyed its requirements. Whereas the European Convention on Human Rights provides victims of human rights violations with proper remedies including monetary compensation, the African Charter does not. Because the African Charter does not adequately safeguard and compensate victims of human rights violations in Africa, those victims have no choice but to seek redress through supranational courts like the International Criminal Court (ICC), the International Court of Justice (ICJ), etc. Because

[603] Asadho and Madam O. Disu v. Democratic Republic of Congo, Communication 274/03 and 282/03, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], 89 (Nov. 5, 2013), Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, Communication 379/09, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], 142 (Mar. 12, 2014), Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt, Communication 334/06, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], 233 (Mar. 3, 2011), <http://www.achpr.org/files/sessions /9theo/Communications/334.06_/achpreos9_334_06_eng>. Pdf Accessed on 15 January, 2025.

[604] L. Gerald, V. Neuman, *Bi-Level Remedies for Human Rights Violations*, 55 Harv. Int'l L. J. 323, 325, 2014.

[605] D. Forst, The Execution of Judgments of the European Court: Limits and Ways Ahead, 7 Vienna J. Int'l Const. L., Feb. 2013, at 1, available at https://www.icljournal.com/ download/pdf, Accessed on 14 January, 2025.

[606] Article 59 ACHPR.

[607] Ex-Commissioner Moleleki Mokama in C. Odinkalu, Interview with Moleleki Mokama, Interights, cited in Murray, op. cit., 414, 2020.

Africa's judiciary is not impartial and is susceptible to political manipulation by certain African governments, efforts to seek restitution via national courts have also been unsuccessful. Therefore, while granting relief against national governments, African judges use great caution.

ii. Modes of Instituting Complaints against a Member State

In order for the African Court to decide on human rights claims brought under the African Charter, three distinct channels are outlined in Article 5 of the Protocol to the African Charter on Human and Peoples' Rights, which deals with the establishment of the African Court. The African Commission, Member States, individuals, and NGOs are among the many groups that can utilise these avenues to seek justice and hold those responsible for human rights violations to account.

Primary Path: The African Commission can submit complaints on behalf of an individual (Article 5(1)(a)). By Article 5(1)(a) of the Protocol establishes the African Commission on Human and Peoples' Rights as the primary body authorised to bring complaints on behalf of persons asserting breaches of the African Charter before the African Court for the purpose of adjudication. This procedure acts as a crucial protection for individuals and groups who may lack the legal capacity or means to directly approach the Court, guaranteeing that human rights violations are remedied even when direct individual complaints are limited. The Commission, functioning as a quasi-judicial entity, examines purported infractions and decides whether to advance cases to the Court, especially when states have failed to offer sufficient remedies at the national level.

Second Avenue: Actions Initiated by Member States (Article 5(1)(b) and 5(1)(d)) The alternative method for case submission to the African Court is accessible to member countries of the AU, as specified in Article 5(1)(b) and 5(1)(d) of the Protocol. This approach allows states to submit cases under two separate conditions:

Interstate Grievances (Article 5(1)(b)): According to Article 5(1)(b), an AU Member State is entitled to initiate a lawsuit against another state that is a signatory to the African Court Protocol. This clause permits states to pursue judicial resolution of issues concerning purported infringements of the African Charter by another state. Such situations may occur when one state perceives that another Member State is perpetrating systemic human rights violations or neglecting its Charter responsibilities. Despite the theoretical existence of this mechanism, its application has been rare owing to political factors and the hesitance of African nations to confront each other in the Court.

Claims Pertaining to Nationals of the Claimant State (Article 5(1)(d)): Article 5(1)(d) permits a state to initiate a claim before the African Court on behalf of one of its own nationals whose rights have been infringed by another state. This clause offers a diplomatic and legal mechanism for states to safeguard their citizens against human rights violations in foreign jurisdictions. In this instance, the state functions as an intermediary, championing the rights of its nationals and pursuing redress through the Court. Nonetheless, akin to interstate claims, this technique is hardly employed due to political sensitivities and apprehensions regarding state sovereignty.

Third Avenue: Unrestricted Access for Individuals and NGOs (Article 5(3)). The third and most direct approach for pursuing justice via the African Court is outlined in Article 5(3), permitting an individual and (NGOs) the right to present claims directly to the Court in instances where a state has infringed upon their rights as delineated in the African Charter. This provision is crucial as it offers victims of human rights breaches a direct means to pursue legal remedies without depending on intermediaries like the African Commission or their own governments.

This privilege is somewhat restricted by Article 34(6) of the Protocol, which stipulates that individuals and NGOs may only initiate proceedings against a state if that state has issued a specific declaration acknowledging the Court's jurisdiction to adjudicate such complaints. In the absence of this proclamation, the Court lacks the authority to consider complaints brought by individuals or NGOs against that state. This constraint severely impedes access to justice, since numerous African nations have abstained from issuing the requisite declaration, thus shielding themselves from direct legal confrontations with their own population or human rights entities. Consequently, citizens in numerous nations cannot directly access the Court, so constraining the efficacy of the legal apparatus in remedying human rights violations at the continental level.

Complaints mechanisms serve to afford individuals, and occasionally organizations, the opportunity to engage with procedures overseen by an authority tasked with addressing allegations of mistreatment and human rights violations. Their function is to furnish a layer of administrative protection that complements the judicial remedies that should remain accessible at both domestic and supranational levels[608]

International Comparison with Other Regions

The term "enforcement" refers to a coercive approach to monitoring sanctions imposed by the Human Rights Courts and all members. Since African human rights bodies do not have the power to issue binding decisions against state parties that have violated the Charter, they cannot force states to submit their reports. Once the African Commission has decided on a case's merits, it is solely responsible for making recommendations to the Assembly of Heads of State and Government of the African Union.[609] The Assembly itself cannot make binding decisions against state parties. It can only decide to permit publication of their violations.[610] This power is conferred not on the African Commission but on the Assembly, which is a political body that consists of the very guilty parties.[611] Therefore, the African Charter has no international institution that can make binding decisions against states that have violated the provisions of the Charter. The victims of the violation of human rights cannot get any adequate remedy (such as monetary compensation) under the African Charter as it is the case with the European Convention on Human Rights.

This noticeable lack of enforcement of the decisions of the African Courts on human rights as stated above is responsible for the creation of one court of human rights after the other in the search for a body that will effectively enforce the decisions of the human right court on the erring States. It is noteworthy, that the lack of enforcement remains unresolved to date.

In Africa, human rights treaties function as international agreements that possess distinct characteristics, fostering a heightened interaction between national and international spheres. While states exhibit a lack of uniformity in their implementation of these treaties, they may choose various models influenced by a multitude of factors related to the historical, political and legal culture of each nation.

The successful safeguarding of human rights on a global scale necessitates that the execution of international human rights treaties be regarded as a responsibility shared by all national

[608] United National General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988. See Principle 33, para 4.

[609] Article 58 ACHPR.
[610] *ibid*.
[611] *ibid*.

authorities, with a particular emphasis placed on the role of domestic courts. The State legislature is required to enact a new law, while the administration must take decisive action to uphold the principles of human rights. This entails a thorough review of the alignment between domestic legislation and international treaties, as well as a proactive engagement with the authorities granted by these human rights agreements. When domestic courts encounter cases that involve conflicts between domestic law and international human rights treaties, it is imperative that they employ a harmonising interpretation. This entails interpreting domestic legislation in a manner that aligns it with the provisions of International Law.

Enforcement and Compliance Issues

Considering the multitude of rulings delivered by the human rights Courts in Africa, these institutions have not only affirmed their status as the foremost human rights authorities across the two continents but have also offered direction to Member States regarding the nature of their responsibilities under the relevant legal frameworks. Consequently, the domestic legislations of the Member States have been subject to certain amendments or rectifications.[612]

The findings of human rights courts in Africa are progressively shaping the interpretations of national laws by domestic courts. Noteworthy instances include the Constitutional Court of Benin, which, in various rulings, not only cited the African Charter but also implemented it directly. The Supreme Court of Lesotho additionally drew upon the African Charter in conjunction with various other international human rights treaties.[613]

The Africa Charter's complaints mechanism provides an important avenue for recourse to complainants who could not find redress at the national courts. The finding of the Commission assisted in garnering international awareness and solidarity, as was the case in Nigeria during the regime of General Sanni Abacha,[614] when Ken Saro Wiwa and the eight Ogoni activists were executed.

While the human rights courts in Africa have contributed positively, especially regarding the interpretation of the African Charter, the influence of the African Court on Human Rights has not matched that of its European equivalent on the Member States. The judicial systems in Africa fail to offer a substantive solution for the infringement of human rights. The recommendations presented are purely advisory in nature and do not impose any binding obligations on the Member States. The case of Ken Saro-Wiwa exemplifies this, as he was sentenced to death in Nigeria alongside eight Ogoni activists. The appeal made by the African Commission for their release went unheeded[615] This demonstrates the lack of authority and diminishing power of the Commission in carrying out its protective function.

The Impacts of Regional Human Rights Court on Member States: The impact of the African Court on Human and Peoples' Rights on its Member States has been characterised by a pattern of selectivism, frequently shaped by political expediency rather than a sincere dedication to the principles of human rights. A number of African governments have either disregarded the Court's rulings or complied selectively when it serves their interests, thereby undermining the authority and effectiveness of the Court. The irregular compliance undermines the regional human rights framework and cultivates a skepticism regarding its capacity to provide justice. Consequently, numerous discontented Africans,

[612] Christof, Heyns & Frans, Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, (2001 *23 Hum. Rts. Q*. 483 <https://scholar.google.com/scholar_ lookup?>

[613] *Molefi Ts'epe v The Independent Electoral Commission*.

[614] *Int'l PEN (on Behalf of Saro–Wiwa) v Nigeria*, Comm. Nos. 137/94

[615] *ibid*

finding themselves unable to obtain justice through national or regional avenues, are increasingly seeking recourse through supra-national judicial entities such as the International Court of Justice (ICJ) and the International Criminal Court (ICC), both situated in The Hague. The institutions in question are presently encumbered by a plethora of human rights grievances from African individuals and organisations that have, regrettably, found local remedies to be ineffective.

In Europe for instance, the ability to petition on an individual basis is the backbone of Europe's human rights protection system. So far, progress in protecting fundamental rights within the domestic systems of the Member States has been ensured by the individual's direct access to an international organ competent to examine his or her complaint of a violation of one of the rights and freedoms recognised in the European Convention. The right to petition the court directly has far-reaching effects on both the applicant and the domestic position; it would be tragic if the European system were to alter in a way that would limit or diminish these benefits in order to eliminate the backlog, given the importance of these rights and this has impacted positively on the European States. In Turkey and some European States, it is clear that there has been a shift towards better guaranteeing and providing protection even on domestic level. In some of these States, the protection of fundamental rights is for everyone, not just individual applicants.

African governments on the other hand must transcend mere symbolic gestures and implement tangible measures to enhance adherence to the Court's rulings. Authentic political commitment is essential to transform the protection of human rights from mere rhetoric into a tangible reality. Enhancing the credibility of the African Court would diminish dependence on international courts, thereby cultivating a more resilient and autonomous human rights framework across the African continent.

The African Charter has had a substantial impact on normative issues, particularly with regard to some thematic resolutions which served as both defined rights and benchmark for the evolution of domestic legislation in some African States:

Abolition of Death Penalty in Benin: Supporting the movement to abolish the death penalty in Africa, the Charter called on States to impose a moratorium on capital punishment by urging governments to put a stop to death sentence and supported the African movement to do away with it. One notable example where it has been implemented is the Benin Constitutional Court. The Benin court has cited and even directly applied the African Charter in a number of instances.

Freedom of Expression in Nigeria: Normative concerns have been significantly influenced by the Charter. In particular, the "Principles of Freedom of Expression" and the "Principles and Guidelines on the Right to a Fair Trial" were topical resolutions that helped define rights and set standards for how domestic laws should develop. In several African nations, the Charter constitutes a fundamental component of national law, owing to the existing constitutional framework. Nigeria, for example, has formally incorporated the Charter into its domestic legal framework via enacted legislation.[616] In numerous cases, the conclusions drawn by the Commission was pivotal in fostering global awareness and unity, exemplified by the situation in Nigeria under the Abacha regime. The influence of the Charter and the findings of the African Commission on national courts in Nigeria has been progressively notable, aiding in the interpretation of national laws.

[616] African Charter (Ratification and Enforcement) Act, Chapter A9, Laws of the Federation of Nigeria (LFN) 2004

Right to Land in Kenya: In the 1970s, the Endorois, a semi-nomadic pastoralist tribe in Kenya's Rift Valley, were forcibly removed from their traditional lands around Lake Bogoria in order to make way for a national park. After failing to resolve the issue at the national level, the Endorois were helped by the Minority Rights Group to submit a case with the African Commission in 2003. Inadequate preservation of the Endorois' traditional way of life and the lack of consultation or compensation for the forced displacement was examined in the case. It claimed that the Endorois were discriminated against, had their property taken from them, were denied access to their land's natural resources, had their religious and cultural practices perverted, and were subjected to development.

According to the African Commission's finding, it was illegal to force the Endorois to leave their ancestral grounds. The Endorois people's ancestral land rights were not recognised or protected by the Kenyan government, according to the African Commission. In addition, it did not provide sufficient compensation or other grazing land following their eviction, did not help with the return of their land, and similarly kept the community out of development initiatives that were relevant to them.[617]

A deep national conversation about indigenous peoples' integration into Kenya began with the Endorois verdict. By reaching out to state parties, we hope to bring attention to the importance of human rights and to support current national measures to reform laws and institutions and improve people's lives. While acting as Special Rapporteurs, commissioners also communicate with states to resolve claims related to their duty. In addition, the ruling in the Endorois case confirms that anyone can ask Parliament to consider any issue under its purview, including new laws, changes to existing laws, or repeal of existing laws. All proposed laws must pass through various committees before being adopted or approved by the president.[618]

Political Participation of Women in Lesotho: Lesotho women's political engagement and the African Commission's ruling [619] had an impact on the case law of African regional and national courts as well as on the decisions of national courts. For example, the South African Development Community Tribunal's regional courts followed it in their rulings.[620] and even the International Court of Justice".[621]

As a very important human rights body in Africa, the African Commission has guided Member States on the nature of their obligations under the Charter and, through its interpretations, shaped national laws to be consistent with the African Charter.

Recommendations for Reforms: In its Member States, the African Court has had an impact on human and peoples' rights, but this has been marked by a pattern of selective adherence, driven more by political expediency than a genuine commitment to human rights ideals. The legitimacy and efficacy of the Court have been undermined because some African governments have either ignored or selectively obeyed the Court's decisions when it suits their interests. There is growing mistrust in the regional human rights framework and its ability to provide justice as a result of the inconsistent compliance.

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[617] Ctr. for Minority Rights Dev. v Kenya, Comm. 276/2003, 27th ACHPR AAR Annex (Jun 2009 - Nov 2009)

[618] Kenya Law Reform Commission, A Guide to the Legislative Process in Kenya (2015), <http://www.klrc.go.ke/index.php/reports-and-publications/562-a-guide-to-the-legislative-process-in-kenya>, p. 31.

[619] *Ts'epe v Independent Electoral Commission and Others* No. 11/05 CC 135/05.

[620] *Campbell v. Zimbabwe*, Judgment, Case No. SADCT: 2/07 (SADC, Dec. 13, 2007)

[621] *Diallo (Republic of Guinea v Democratic Republic of the Congo)* ICJ GL No 103, [2012] ICJ Rep 324, ICGJ 435 (ICJ 2012), 19th June 2012, International Court of Justice [ICJ]

As a result, many angry Africans are turning to supranational judicial bodies like the ICJ and the ICC in The Hague for representation after failing to get justice through domestic or regional channels. The relevant institutions are currently swamped with human rights complaints lodged by African individuals and groups that have, unfortunately, exhausted all local remedies.

The African governments must do more than just talk the talk when it comes to ensuring that the Court's decisions are followed. To turn human rights protection from empty words into meaningful action, genuine political will is necessary. Building a stronger and more independent human rights framework on the African continent might be achieved by bolstering the credibility of the African Court, which would reduce reliance on international tribunals.

Conclusion: Due to a plethora of structural barriers, international efforts to protect human rights in Africa are still far from effective. Inadequate enforcement mechanisms, political meddling, and inconsistent compliance by states are some of the issues that the African human rights system faces, despite its established legal structure and institutions. The aforementioned deficiencies have profoundly eroded public trust in the capacity of regional courts to administer justice effectively.

Consequently, a significant number of Africans have become disenchanted with the judicial system, viewing it as inadequate in delivering substantial protection and remedy for human rights infringements. The inability of African courts to ensure state accountability has engendered a sense of skepticism, prompting victims to pursue justice through external entities such as the International Criminal Court (ICC) and the International Court of Justice (ICJ). Without a sincere dedication from African governments to fortify these institutions and uphold their resolutions, the regional human rights framework will persist in facing challenges related to its legitimacy and the confidence of the public.

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Regulating the Frontiers of Medicine: Ethical, Policy, and Regulatory Frameworks for Xenotransplantation

Onyegbule Kelechi

Abstract

The idea of transferring organs from animals to human's dates back to antiquity, as shown in the fable of Daedalus and Icarus. However, xenotransplantation is a relatively recent phenomenon. That prospect presents a slew of legitimate ethical concerns, as well as bogus ones caused by cultural ignorance of science. As a systematic scientific study, xenotransplantation dates only to the latter half of the 20th century, with episodic xenotransplantation events occurring before that. As the science of xenotransplantation has advanced in the 20th and 21st centuries, the public's awareness of the potential therapy has also increased, leading to shifting ethical stances towards xenotransplantation in important areas, such as public health concerns, animal rights, and religious perspectives on the procedure. This article aims to examine the concept of xenotransplantation in terms of its ethics, policy, and regulatory considerations. The doctrinal research method is adopted to unravel with holistic view modern trends in xenotransplantation and how it has impacted the medical field. The findings reveal there have been numerous attempts to effectively carry out xenotransplantation and most proved abortive and the prosecution violation to that effect is difficult. The article concludes that there is a significant concern for society in general when it comes to xenotransplantation. There are also "bad ethics" issues that arise as a result of scientists' refusal to acknowledge ethical considerations in science. This, combined with public misunderstanding of science, fosters the spread of religious and other non-rational concerns, such as the argument that xenotransplantation is capable of transmitting deadly viral diseases to the human race. These baseless concerns can only be alleviated if public comprehension of science improves and scientific understanding of ethics grows. This paper recommends that a holistic regulatory framework for xenotransplantation is paramount and the need for international harmonization and standardization of regulations should be a serious concern if all issues pertaining to xenotranplantation must be resolved.

1.0. Introduction

In their attempt to assign a definition to xenotransplantation, Mohiuddin, Singh, Corcoran, Hoyt, Thomas and Horvath stated that, xenotransplantation, the latest breakthrough in transplantation, involves taking organs, tissues, or cells from one species and transplanting them into another[622]. This innovative technique has long been hailed as a potential solution to the severe shortage of human organs available for transplantation. For decades, the idea of using non-human organs and tissues to meet the overwhelming demand for conventional donors has captivated clinicians, scientists, healthcare providers, and patients alike - and its roots stretch back hundreds of years[623]. In the 1600s, xenotransfusion was the first documented attempt at xenotransplantation. In the 1800s, xenoskin transplants were tried before more ambitious attempts at kidney xenotransplantation. As the possibility of xenotransplantation has become more realistic due to advances in medical science and technology, there has been a

[622] MM Mohiuddin, P Singh, A Corcoran, J Hoyt, J Thomas and K Horvath, 'Genetically Engineered Pigs for Xenotransplantation: A Review of the Recent Progress'. *Journal of Transplantation 2020* [2020] 1-13.
[623] CJ Phelps, C Koike, TD Vaught, J Boone, KD Wells and RL Troyer, 'Production of Alpha-1,3-Galactosyltransferase-Deficient Pigs'. *Science* [2003] (299) (5605) 411-414.

long line of effort[624]. Crucially, the legal and ethical environment around this innovative subject has received fresh and growing attention, although it still has to be updated on a regular basis[625]. The World Health Organisation (WHO), the Transplantation Society (TTS), and the International Xenotransplantation Association (IXA) have made significant efforts in this area, but as the field develops, more work must be done from a wider international and national regulatory perspective.

Xenotransplantation has the potential to save countless lives by providing an abundant supply of organs, tissues, and cells, drastically lowering transplant wait times, and lessening the suffering of patients on transplant waiting lists. It is also a significant means of actively eradicating the trade in trafficked organs and organ transplant tourism. However, this promise is accompanied by a complicated web of ethical considerations and legal frameworks that must be carefully traversed to ensure that xenotransplantation is carried out responsibly and ethically from the laboratory to the clinic. With this, we must make sure that xenotransplantation does not have the same widespread problems that have plagued human organ transplantation, such as xenotransplant tourism[626] and unethical practices that profit from the use of animals and patients who might be duped into undergoing unapproved procedures[627].

Concerns about animal welfare (during the breeding and production of the donor animals)[628], the perceived or potential for the spread of diseases from animals to humans (xenozoonosis)[629], and cultural and religious issues, particularly the idea of crossing species boundaries in the use of their tissues for transplantation[630], have all been major obstacles to xenotransplantation in the past. These difficulties resulted in the implementation of stringent rules, embargoes, and a complex ethical discussion that still influences the field's course. The development of genetically modified pigs with organs designed to be compatible with the human immune system has advanced significantly in recent years due to groundbreaking developments in genetic engineering, which has given the field fresh hope[631]. In addition to xeno-hearts and kidneys being studied clinically in a new model using "Brain Dead"[632] recipients, these advancements have opened the door for the start of human trials involving xeno-hearts

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[624] TC Communiqué, 'First WHO Global Consultation on Regulatory Requirements for Xenotransplantation Clinical Trials: Changsha, China 19-21 November 2008'. *The Changsha Communiqué . Xenotransplantation* [2009] 16(2): 61-63. doi: 10.1111/j.1399- 3089.2009.00520.x

[625] World Health Organization, Second WHO Global Consultation on Regulatory Requirements for Xenotransplantation Clinical Trials (2011). Geneva, Switzerland: World Health Organization. Available at https://iris.who.int/bitstream/handle/10665/341817/WHO-HTP-EHT-CPR-2011.01-eng.pdf?sequence=1&isAllowed=y accessed 1 December 2024.

[626] I Kwon and H Mo, 'Xenotransplantation'. In H Ten Have (editor) *Encyclopedia of Global Bioethics* (Cham: Springer International Publishing, 2014) 1-14.

[627] WJ Hawthorne, A Thomas and RN Pierson, 'Ethics and Theoretical Issues in Kidney Xenotransplantation'. *Semin Nephrol* [2022] 42(4): 151288. Doi: 10.1016/ j.semnephrol.2022.151288.

[628] T Schiff, B Parent, I Dittmer, WJ Hawthorne, I Kwon and MM Mohiuddin, 'Next Steps for Clinical Xenotransplantation in the United States'. *Ann Internal Med* [2023] 176: 1538-153. Doi: 10.7326/m23-1823%m37903363.

[629] WJ Hawthorne, PJ Cowan , L Buhler and E Wolf, 'International Standards and Guidelines for Xenotransplantation'. *Nat Biotechnol* [2021] 39(12): 1501-1502. Doi: 10.1038/s41587-021-01148-3

[630] *Ibid* (n 5).

[631] EJ Salvaris, N Fisicaro, S McIlfatrick, A Thomas, E Fuller, AM Lew AM, et al., 'Characterisation of Transgenic Pigs Expressing a Human T Cell-Depleting Anti-CD2 Monoclonal Antibody'. *Xenotransplantation* [2023] 13(n/a): e12836. Doi: 10.1111/ xen.12836

[632] PM Porrett, BJ Orandi, V Kumar, J Houp, D Anderson, A Cozette Killian, et al. 'First Clinical-Grade Porcine Kidney Xenotransplant Using a Human Decedent Model'. *Am J Transplant Off J Am Soc Transplant Am Soc Transplant Surgeons* [2022] 22(4): 1037–10 53. Doi: 10.1111/ajt.16930

approved under "compassionate use" for live patients[633] and highly successful preclinical trials using transgenic pig islet cells[634].

In this study, we examine the xenotransplantation in line with its definition and the principles supporting xenotransplantation as it approaches widely recognised clinical translation. We explore the evolution of Xenotransplantation in the lens of its historical perspective. We also examine the ethical issues of Xenotransplantation, looking at issues relating to balancing individual and collective interests, animal rights, their use, the public's opinion of this novel medical technique, and the possible risks of xenozoonotic disease transmission. Other subject matters of this study are the public policy debate surrounding Xenotransplantation, Xenotransplantation and public health risks, regulatory challenges and concerns in Xenotransplantation and the regulatory frameworks for Xenotransplantation and the need for international harmonization and standardization of regulations, with an emphasis on the actions taken by the IXA, TTS, and WHO's top governing bodies[635]. A new era in organ transplantation is unfolding[636], and as the first clinical trials of xeno-kidneys[637] and hearts bring us closer to making xenotransplantation a reality[638], it's essential to reflect on the remarkable progress that has led us to this critical moment[639]. The delicate balance of scientific innovation, human health, and ethical responsibility has been at the heart of this journey. To move forward with confidence, we must fully understand these advances and their ethical, policy and regulatory implications[640].

2.0. Xenotransplantation: Definition and Principles

The simplest form of xenotransplantation, however far from basic, is the removal of organs from an animal and transplanting them into a human organ. The term is defined as "any procedure involving the transplantation, implantation, or infusion into a human recipient of either live tissues or organs retrieved from animals, or human body fluids, cells, tissue, or organs that have undergone ex vivo contact with live non-human animal cells, tissues, or organs"[641]. When xenotransplantation was first attempted in the 1960s, the most important

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[633] BP Griffith, CE Goerlich, AK Singh, M Rothblatt, CL Lau, A Shah, et al. 'Genetically Modified Porcine-to-Human Cardiac Xenotransplantation'. *New Engl J Med* [2022] 387(1): 35–44. Doi: 10.1056/NEJMoa2201422

[634] WJ Hawthorne, EJ Salvaris, YV Chew, H Burns, J Hawkes, H Barlow, et al., 'Xenotransplantation of Genetically Modified Neonatal pig Islets Cures Diabetes in Baboons'. *Front Immunol* [2022] 13: 898948. Doi: 10.3389/fimmu.2022.898948

[635] WJ Hawthorne, PJ Cowan, LH Bühler, S Yi, R Bottino, RN3rd Pierson, et al., Third WHO Global Consultation on Regulatory Requirements for Xenotransplantation Clinical Trials, Changsha, Hunan, China December 12-14, 2018: 'The 2018 Changsha Communiqué' The 10-Year Anniversary of the International Consultation on Xenotransplantation. Xenotransplantation (2019) 26(2): e12513. Doi: 10.1111/xen.12513

[636] JS Logan and DKC Cooper, 'Xenotransplantation: A New Era in Transplantation'. *Journal of Heart and Lung Transplantation* [1998] (17) (10) 1026-1032.

[637] RA Montgomery, JM Stern, BE Lonze, VS Tatapudi, M Mangiola, M Wu, et al. 'Results of Two Cases of Pig-to-Human Kidney Xenotransplantation'. *New Engl J Med* [2022] 386(20):1889–98. Doi: 10.1056/NEJMoa2120238

[638] MM Mohiuddin, AK Singh, L Scobie, CE Goerlich, A Grazioli, K Saharia K, et al., 'Graft Dysfunction in Compassionate Use of Genetically Engineered Pig-to-Human Cardiac Xenotransplantation: A Case Report'. *Lancet* [2023] 402(10399): 397–410. oi: 10.1016/ S0140-6736(23)00775-4

[639] Ibid (n 13).

[640] WJ Hawthorne, A Thomas and RN Pierson, 'Ethics and Theoretical Issues in Kidney Xenotransplantation'. *Semin Nephrol* [2022] 42(4): 151288. Doi: 10.1016/ j.semnephrol.2022.151288

[641] United Kingdom Department of Health (2006). – Xenotransplantation Guidance. Department of Health, London, 1–7. Available at: http://webarchive.nationalarchives.gov.uk/20090503114534/; http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicy AndGuidance/DH_063075 accessed 1 December 2024.

ethical concern became clear: organs from animals are more likely to be rejected than those donated by people. The recipient's immune system will nearly always react badly to the new transplant or organs and try to reject them since donor organs, regardless of their source, are foreign to the recipient's body. Even organ transplant recipients will need to take immunosuppressive medications for the remainder of their lives. However, because the organ comes from a different species, immunosuppressants are unlikely to work when it is removed (or "donated" barely seems suitable) from an animal.

Animal organs are rapidly rejected when transplanted into humans, as was quickly found in the early attempts at xenotransplantation. In 1964, six patients in the United States received kidney transplants from chimpanzees, a species selected due to its near genetic resemblance to humans. However, the organs were rejected, and all but one patient passed away within days (although the latter lived for nine months). Six patients received kidney transplants from baboons that same year, but none of them lived for more than two months. In three previous examples (a baboon heart and two baboon livers) from the 1980s and 1990s, the recipients died within 100 days of the transplant. In terms of transplantation from other animals, one patient received a sheep heart in 1968 and died instantly, while another received a pig heart in 1992 and died within a day[642]. These gloomy figures prompted the first attempts to genetically modify animals in order to reduce the likelihood of rejection. Since the risk of death associated with receiving a transplant would be too great for people who can afford to wait longer in the hopes of receiving an organ from a human donor, xenotransplantation of solid organs would only ever be considered for patients who "super-urgently" needed an organ. Naturally, patients will be drawn to the extremely low possibility of a successful transplant without rejection if the alternative to attempting xenotransplantation is death from organ failure. However, as will be covered below, there is another reason why xenotransplantation could be difficult, even for this tiny set of patients.

The other major ethical concern with xenotransplantation is the potential consequences if the organ is not rejected: the transplant could result in the transmission of an existing animal virus to its human host, or (worse), interaction between the animal organ and its human host could create a new virus, causing a pandemic of infection. The risk of 'zoonosis' makes xenotransplantation a matter of not only individual permission and risk, but also of public health ethics. This means that the repercussions of xenotransplantation affect not only the recipient (and the animal from which the organ is derived), but also the whole public. As Sheila McLean and Laura Williamson describe: 'The hazards of infectious disease potentially connected with xenotransplantation mean that the decision of one patient could endanger the health of third parties: their close contacts, healthcare providers, or others'[643]. Because of these concerns, monitoring for infectious disease following xenotransplantation may include not just the recipient of the organ, but also anybody in close touch with him or her, in order to avoid the modest but possibly catastrophic possibility of a pandemic. This in turn brings up some ethical concerns about the potentially coercive character of any such monitoring; although an individual may desire a xenotransplant, family members' consent should also be obtained if they are required to participate in ongoing monitoring for any zoonosis. Any xenotransplantation research would have to exclude any patient who refused to consent to such

[642] Nuffield Council on Bioethics (1996). – Animal-to-Human Transplants: The Ethics of Xenotransplantation. Nuffield Council on Bioethics, London, 168 pp. Available at: http://nuffieldbioethics.org/wp-content/uploads/xenotransplantation.pdf accessed 30 November 2024.

[643] S McLean and L Williamson, 'The Demise of UKXIRA and the Regulation of Solid-Organ Xenotransplantation in the UK'. *J. Med. Ethics* [2007] 33(7), 373-375. Doi:10.1136/jme.2007.020768.

monitoring, as well as any family members or other close relatives who did not agree to be monitored.

Finally, some conservative pundits opposed the early attempts at xenotransplantation because they saw it as a violation of human dignity to introduce animal parts into human bodies, even if it meant saving lives. This is because many religious beliefs argue that humans are a distinct type of animal (or not an animal at all), and that any form of cross-species mixing should not obscure this distinction. This view is well illustrated by the official Catholic Church statement on xenotransplantation: 'From our point of view, supported by the biblical perspective that asserts, as stated above, that man is created "in the image and likeness of God" (cf. Gen 1: 26-27), we reaffirm that humans have a unique and higher dignity'[644]. However, even the Catholic Church today recognises that xenotransplantation is ethically justifiable[645], despite some reservations about recent breakthroughs in the field. It is crucial to remember that solid organs are not the only animal parts that can be transplanted into humans, even though the early attempts at xenotransplantation were comparatively unsuccessful. Although solid organ xenotransplantation has not been successful, there has been some success with transplanting other animal parts. Many patients suffering from cardiac illness have had pig heart valves transplanted into their chests, with excellent results. Pigskin has also been used successfully in burn victims, with no signs of zoonosis.

3.0. The Historical Trajectory of Xenotransplantation: A Retrospective Perspective

For decades, humanity has witnessed xenotransplantation as having held promise as a lifeline for thousands of people waiting for organ transplants[646]. The prospect of using animal organs, tissues, and cells to save human lives has captivated the imagination of scientists, doctors, and patients. As breakthroughs bring this innovative field closer to reality, the spotlight is shifting to the complex policy, ethical and regulatory questions surrounding xenotransplantation[647]. This is especially true given the rapid progress made in recent years, which has led to the beginning of life-saving heart and kidney xenotransplantation. In cases where patients face immediate life-threatening conditions, special compassionate use authorization has been granted, allowing access to experimental treatments outside of clinical trials. This authorization, approved by the FDA, is reserved for situations where no alternative treatments are available to address the patient's life-threatening condition[648].

The history of xenotransplantation has been characterised by both optimism and difficulty. From fairly strange early conceptions and therapies to now being a clinical reality, xenotransplantation has been explored in many and varied settings. In June of 1667, xenotransfusion was tried for the first time in Paris, marking the first documented attempt at xenotransplantation in the early 17th century. A 15-year-old boy[649] received what we presume

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[644] Pontifical Academy for Life (2001). – Prospects for Xenotransplantation: Scientific Aspects and Ethical Considerations. Pontifical Academy for Life, Vatican City. Available at: www.vatican.va/roman_curia/pontifical_academies/acdlife/documents/rc_pa_acdlife_doc_20010926_xenotrapianti_en.html accessed 1 December 2024.

[645] *Ibid*

[646] *Ibid* (n 1).

[647] KC Cooper David K and P Robert Lanza, *Xenotransplantation: The Transplantation of Organs and Tissues Between Species* (Springer, 2000).

[648] JL Estrada, E Martens, AD Li, PS Patel, JR Butler and JL Platt, 'Evaluation of Human Immune Responses to Pig Cellular Antigens'. *Xenotransplantation* [2018] (25) (3) e12413.

[649] JB Denys, Lettre Escrite à Monsieur de Montmor ... Touchant une Nouvelle Maniere de Guerir Plusieurs Maladies par la Transfusion du Sang, Confirmée Par deux Experiences Faites sur des Hommes (1667). Available at: https://gallica.bnf.fr/ark:/12148/bpt6k326277d accessed 2 December 2024.

to be a modest amount of lamb blood by transfusion from French physician Jean-Baptiste Denis, who served as King Louis XIV's physician, and surgeon Paul Emmerez. Unfortunately, the second effort at xeno-transfusion failed and resulted in the patient's death, prompting the French government to criminalise it[650].

Mathieu Jaboulay performed the first documented successful kidney xenotransplant in 1906, after perfecting the vascular anastomosis procedure with Alexis Carrel. In an underlying effort, Dr. Jaboulay made an attempt to transplant a pig kidney into a 48-year-old woman, connecting it to her blood vessels in her arm. Initially, the procedure showed signs of success, with the transplanted kidney producing urine for a day and a half. Unfortunately, tragedy struck on the third day, as the kidney's blood vessels began to clot, forcing Dr. Jaboulay to remove the transplanted organ[651]. Despite the enthusiasm and pioneering spirit of these early attempts, they were ultimately hindered by a fundamental lack of understanding of the intricate complexities of transplantation, particularly when crossing species boundaries. The risks and consequences of such procedures were often underestimated, and the scientific, ethical and regulatory frameworks that guide modern medical research were not yet in place[652].

The position of Thomas, Hawthorne and Burlak is clear as they stated that in the centuries that followed, sporadic attempts at xenotransplantation were met with limited success[653], as patients struggled with infections and graft rejection[654]. As medical ethics evolved, the scientific community was compelled to confront the profound ethical concerns surrounding these practices, particularly with regards to animal welfare and the use of animals in research and as a source of organs, tissues, and cells for human transplantation[655]. The introduction of organ transplantation in the mid-20th century, coupled with a growing shortage of donor organs, reignited interest in xenotransplantation. A major breakthrough came with the discovery of alpha Gal, the key driver of hyperacute rejection (HAR)[656]. This finding led to the development of genetically modified pigs[657], designed to produce organs that would be less likely to trigger an immune response in humans. Cascalho Marilia and Jeffrey Platt revealed that these advancements enabled the first clinical trials of xeno-kidney transplants and paved the way for islet cell xenotransplantation[658]. As a result, new possibilities emerged for patients in dire need of organ transplants, offering a glimmer of hope for improved treatment options.

As we push the boundaries of xenotransplantation, let's not forget the lessons of history. By learning from the past, we can build a stronger, more compassionate foundation for the future of this life-changing field, as ethical considerations and the historical context of early, ill-

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[650] *Ibid*

[651] M Jaboulay, Greffe de Reins Au pli du coude par soudures arterielles et veineuses (1906) accessed 30 November 2024.

[652] L Platt Jeffrey, *Xenotransplantation* (American Society of Nephrology, 1998).

[653] A Thomas, WJ Hawthorne, C Burlak, 'Xenotransplantation Literature Update, November/December 2019. *Xenotransplantation* [2020] 27(1): e12582. Doi: 10.1111/ xen.12582.

[654] M Hu, WJ Hawthorne, S Yi and PJ O'Connell, 'Cellular Immune Responses in Islet Xenograft Rejection'. *Front Immunol* [2022] 13: 893985. Doi: 10.3389/fimmu.2022.893985

[655] WJ Hawthorne, A Thomas and RN Pierson, 'Ethics and Theoretical Issues in Kidney Xenotransplantation'. *Semin Nephrol* [2022 42(4): 151288. Doi: 10.1016/ j.semnephrol.2022.151288.

[656] DKC Cooper, B Ekser and AJ Tector, 'Immunobiological Barriers to Xenotransplantation'. *Int J Surg (London England)* [2015] 23(Pt B):211–216. Doi: 10.1016/j.ijsu.2015.06.068

[657] M Sykes, 'Developing Pig-to-Human Organ Transplants'. *Sci (New York NY)* [2022] 378(6616):135-136. Doi: 10.1126/science.abo7935

[658] Cascalho Marilia and Jeffrey Platt, 'Xenoreactive Natural Antibodies and the Future of Xenotransplantation'. *American Journal of Transplantation* [2001] (1) (2) 134-141.

informed endeavours have greatly influenced the ethical and legal frameworks that exist today[659]. At the core of this transformative journey is the careful balancing act between scientific innovation, human health, and ethical duty. Understanding these historical obstacles helps us to recognise the importance of the ethical and legal developments covered in this study, as they bring us one step closer to the long-awaited reality of xenotransplantation, which appears to be happening right now[660].

4.0. The Ethics of Xenotransplantation: Balancing Individual and Collective Interests

The challenges of applying core biological ethical principles such as beneficence, nonmaleficence, autonomy, and fairness to both individuals and communities are evident. Ethical thinkers have battled with the potential conflict between a dying patient's right to the sole accessible treatment and the community's right to avoid being exposed to an unknown and potentially nonexistent risk of infection[661]. Much attention has been paid to individual patients' responsibilities to the community, including debates over whether compliance with post-transplantation surveillance could be coerced and whether contracts that bind patients in advance to follow up should be considered, regardless of any subsequent wavering on the part of the individuals[662]. Others have emphasised on the community's responsibility to each individual patient. The National Academy of Sciences, Institute of Medicine Workshop on Xenotransplantation, for example, argued that if we as a community are unwilling to accept some level of risk for the sake of those among us whose suffering is obvious and potentially alleviatable, we diminish our own humanity[663]. At least one ethicist has made an effort to examine the advantages and disadvantages of xenotransplantation using logic informed by an understanding of Darwin's evolutionary theories. According to Donnelley[664], ethical reasoning in the field of evolutionary biology should reject the idea of perfection as well as the inherent drawbacks of attempts at ethical reasoning that presume linear cause and effect. Instead, it should strive to operate with an understanding of complex cascades of multiplying cause and effect.

Ultimately, the obligations and interests of the individuals and the broader community they are a part of are entwined. Although there is a chance of risk associated with xenotransplantation, there are also advantages for both the patients and society at large. Even a cursory analysis of one proposed use of xenotransplantation—trials to functionally cure juvenile onset type 1 diabetes mellitus using pig pancreatic islets—can demonstrate that the benefit may go beyond the individual recipient, a fact that is all too frequently overlooked or unacknowledged in discussions of this subject. Society is greatly impacted by the illness burden of diabetes mellitus in young people. Diabetes mellitus was the sixth most common cause of mortality in the United States in 1998. According to Eberhardt and others[665], diabetes caused 176.8 years of lost productive life before the age of 75 and 24.7 fatalities per 100,000 people. This influence hasn't

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[659] DKC Cooper, B Ekser and AJ Tector, 'A Brief History of Clinical Xenotransplantation'. *Int J Surg (London England)* [2015] 23(Pt B): 205-210. Doi: 10.1016/j.ijsu.2015.06.060.

[660] MM Mohiuddin, AK Singh, L Scobie, CE Goerlich, A Grazioli and K Saharia, et al., 'Graft Dysfunction in Compassionate Use of Genetically Engineered Pig-to-Human Cardiac Xenotransplantation: A Case Report'. *Lancet* [2023] 402(10399): 397–410. Doi: 10.1016/ S0140-6736(23)00775-4

[661] APR Aluwihare, 'New Problems Beget New Solutions'. Bull of the WHO [1999] 77: 64–5.

[662] AS Daar, 'Xenotransplantation: Informed Consent/Contract and Patient Surveillance'. Biomedical Ethics [1999] 4: 87-91.

[663] Institute of Medicine (1996) Xenotransplantation: Science, Ethics, and Public Policy. National Academy Press, Washington, D.C.

[664] S Donnelley, (1999) The Moral Landscape of Xenotransplantation. Presented at Cold Spring Harbor, New York on May 12, 1999 and University College, Oxford University, United Kingdom on September 17, 1999.

[665] MS Eberhardt, DD Ingram, DM Makuc, et al (2001) Urban and Rural Health Chartbook. Health, United States, 2001. Hyatesville, Maryland: National Center for Health Statistics.

changed much since 1950, despite continuous study and innovative treatment initiatives. Diabetes caused 96,000 hospitalisations in the USA in 1999, with an average stay of six days[666]. Intermittent injections of pig insulin have long been used to treat diabetes in humans. Porcine pancreatic islets could be used to functionally treat early-onset diabetes, which would save society a substantial amount of money and years of productive life.

5.0. The Public Policy Debate Surrounding Xenotransplantation

Both scientists and laypeople are quite concerned about the biohazards that may be connected to xenotransplantation[667]. A ban on clinical trials has previously been demanded by the Council of Europe, certain well-known scientists, and laypeople. In order to ban xenotransplantation in the United States, the global Campaign for Responsible Transplantation petitioned the Secretary of the US Department of Health and Human Services for rulemaking in December 1998. In December 1999, that petition was turned down.

The lessons learnt from zoonotic illness in general, and the AIDS pandemic in particular, suggest that there are enough infectious dangers inherent in xenotransplantation to warrant a reasonable level of concern. Scientists and policymakers in this field are caught in a conundrum caused by the inextricable marriage of unclear collective risk and potential benefit for both individuals and society, as mentioned below. In contrast to safeguarding the public from the risk of meningococcal disease, protecting the human population from infectious risks associated with xenotransplantation is more akin to the experience of gene therapy: a possible benefit is accompanied with the need for public precautions. Any clinical strategy that involves the use of xenogenetic tissue in humans should include planning ahead of time for these infectious hazards which may result later on.

5.1. Xenotransplantation and Public Health Risks

Concerns regarding the possible threats that Xenotransplantation poses to public health around the world have existed for many decades[668]. The possibility of xenozoonosis—an infectious disease that spreads from an animal to a human recipient and then to the community after xenotransplantation—has been the main focus of these. An epidemic or even a pandemic could be brought on by a xenozoonosis in the worst situation. This issue grew starting in the mid-1990s when the US Food and Drug Administration (FDA) temporarily halted plans for a clinical trial of xenotransplantation to see if baboon bone marrow could strengthen AIDS patients' immune systems[669]. The FDA imposed a de facto restriction on xenotransplantation from NHPs to humans due to the possibility of an infectious disease arising, which was regarded higher than that of more phylogenetically distant animals, such as pigs[670].

A Working Party was formed by the UK's Nuffield Council on Bioethics in 1995, and it released a study titled "*Animal-to-Human Transplants: The Ethics of Xenotransplantation*" in 1996[671]. The apparent ethical, safety, financial, and public health concerns that xenotransplantation raise are prevailing. A number of issues persist, including the possibility

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[666] MS Eberhardt, DD Ingram and DM Makuc, et al., *Urban and Rural Health Chartbook. Health, United States, 2001* (Hyatesville, Maryland: National Center for Health Statistics, 2001).

[667] LE Chapman, TM Folks, DR Salomon, AP Patterson, TL Eggerman and PD Noguichi, 'Xenotransplantation and Xenogeneic Infections'. *New England Journal of Medicine* [1995] 333: 1498-1501.

[668] Y Ye, M Niekrasz, S Kosanke, et al., 'The Pig as a Potential Organ Donor for Man: A Study of Potentially Transferable Disease from Donor Pig to Recipient Man'. *Transplantation* [1994] 57(5): 694-702.

[669] J Brown, AL Matthews, PA Sandstrom and LE Chapman, 'Xenotransplantation and the Risk of Retroviral Zoonosis'. *Trends Microbiol.* [1998] 6(10): 411-415. Doi:10.1016/S0966-842X(98)01347-X; JS Allan, 'Xenograft Transplantation of the Infectious Disease Conundrum'. *ILAR J.* [1995] 37(1): 37-48. Doi:10.1093/ilar.37.1.37.

[670] D Butler, 'FDA Warns on Primate Xenotransplants'. *Nature* [1999] 398(6728): 549-549. Doi:10.1038/19144.

[671] Nuffield Council on Bioethics, Animal-to-Human Transplants: The Ethics of Xenotransplantation. Nuffield Council on Bioethics; 1996.

of a xenozoonotic infection, even if it came to the ethically acceptable conclusion that using genetically modified pigs for xenotransplantation is acceptable. It is ascertainable that unless this risk is sufficiently managed, formal clinical studies would not be ethically acceptable. After the COVID-19 pandemic, there were increased worries about the possibility of xenozoonosis, and these worries are not unjustified. Zoonotic disease is widespread, and it is predicted that three out of every four new or emerging diseases in humans begin in nonhuman animals[672]. Furthermore, there is no shortage of well-known zoonotic diseases that have collectively contributed to large and widespread human suffering, only 13 zoonotic diseases are responsible for 2.2 million human deaths and 2.4 billion cases of illness annually[673].

A 57-year-old man with nonischemic cardiomyopathy who was not a candidate for cardiac allotransplantation received a heart transplant in January 2022 from a genetically modified pig that had ten distinct gene alterations. Although the xenograft performed admirably for over 40 days, the patient sadly passed away on day 60[674]. Graft rejection was probably the reason for the failure[675], but since the xenograft recipient tested positive for porcine cytomegalovirus, it has been hypothesised that this might have played a role in his demise. The argument that a xenozoonosis is more than just theoretically possible is supported by it. Crucially, a recipient of a xenograft may offer the "perfect" conditions for a virus to adapt in a new host because immunosuppressive therapy is required.

Since the 1990s, there have been three primary perspectives on clinical trials and the hazards of xenozoonosis:

(i) The pandemic danger associated with xenozoonosis is significant enough to exclude formal clinical studies[676].

(ii) The danger of xenozoonosis to public health is significant enough that clinical trials should not begin until there has been an adequately informed public debate to determine whether or not they desire to accept the risks and allow clinical trials, and under what conditions[677].

(iii) The absolute pandemic risk provided by XTx is low enough to allow clinical trials if adequate public health surveillance and lifelong monitoring are implemented[678].

Given any worldwide risk, no matter how minor, prudence is undoubtedly necessary, and the requirements listed in the second and third viewpoints appear to be reasonable on the surface but are nevertheless unfulfilled. It would be challenging to conclude that there has been an adequately informed public debate over the risks of formal clinical trials based just on the increasing number of studies that have been undertaken and some international media attention. Furthermore, while there is consensus that some level of health monitoring and surveillance is appropriate, there is disagreement about the extent of this and what a participant can be

[672] U.S. Centers for Disease Control and Prevention. Zoonotic Diseases. Available at https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html accessed 1 December 2024.

[673] D Grace, F Mutua, P Ochungo, et al., Mapping of Poverty and Likely Zoonoses Hotspots. Zoonoses Project 4. Report to the UK Department for International Development. ILRI; 2012.

[674] BP Griffith, CE Goerlich, AK Singh AK, et al., 'Genetically Modified Porcineto-Human Cardiac Xenotransplantation'. *N Engl J Med.* [2022] 387(1): 35-44. Doi: 10.1056/NEJMoa2201422.

[675] DKC Cooper, T Yamamoto, H Hara, and RN 3rd Pierson, The First Clinical Pig Heart Transplant: Was IVIg or Pig Cytomegalovirus Detrimental to the Outcome?' *Xenotransplantation* [2022] 29(4): e12771. Doi: 10.1111/xen.12771.

[676] S Fovargue, and S Ost, 'When Should Precaution Prevail? Interests in (Public) Health, the Risk of Harm and Xenotransplantation'. *Med Law Rev.* [2010] 18(3): 302-329.

[677] FH Bach an HV Fineberg, 'Call for Moratorium on Xenotransplants'. *Nature* [1998] 391(6665): 326-326. Doi:10.1038/34766.

[678] JA Fishman, L Scobie and Y Takeuchi, 'Xenotransplantation-Associated Infectious Risk: A WHO Consultation'. *Xenotransplantation* [2012] 19(2): 72-81. Doi:10.1111/j.1399-3089.2012.00693.x.

expected to commit to in a reasonable and practical manner[679]. As a result, there is ongoing debate about how severe and realistic post-transplant surveillance should be, as well as what is legally and ethically permissible. For example, such questions as these may be raised: Is it necessary to monitor someone for the rest of their lives? Is monitoring the recipient's social and sexual relationships required? If so, how long? Considerable investment would be necessary to carefully monitor xenograft recipients and any bystanders who may be at greater risk. Coherent plans for accounting for this have not been proposed. Finally, the advantage of xenotransplantation is limited to a tiny fraction of people in need of an organ transplant, whereas the costs and risks associated with it could be universal[680]. Overall, the trajectory appears to be that the public health risk has been judged to be low enough that formal clinical trials can be regarded sufficiently safe and hence permitted. However, it is still required to exercise due caution and take efforts to limit the potential for harm. In the end, until official clinical studies start, the infection risk posed by xenotransplantation is unknown.

6.0. Regulatory Challenges and Concerns in Xenotransplantation

Potential harm from xenotransplantation zoonoses could affect the porcine organ recipient's family, friends, and other contacts, and it could also spread far beyond the borders of regional and national jurisdictions in the event of a pandemic. International regulation is extremely desirable for a number of reasons, including the inadequacies of lower-level regulation and the prospect that a patchwork of regulations could increase some of the risks of xenotransplantation.

Since it appears doubtful that institutional animal regulators and local IRBs will possess the level of experience required to handle extremely complex issues, local regulation is insufficient. A patchwork of solutions with differing levels of rigour may result from national legislation. By 2010, for instance, there were at least 29 xenotransplant therapies accessible in 12 different nations, with 9 of those 12 without any laws pertaining to the practice[681]. Since many jurisdictions have not established the legal framework to oversee human-animal chimaeras or animals with numerous genetic alterations, monitoring of xenotransplantation is unclear[682]. In the United States, regulation is overseen by the Food and Drug Administration[683], but separate branches govern distinct parts; for example, one branch manages animal genetic changes while another regulates the use of the resulting organs as medical therapies.

Efforts to govern xenotransplantation have been made at the international level over the years. The World Health Organisation and the International Xenotransplantation Association have created criteria that member governments must enforce[684]. However, without uniform regulations and enforcement, there is still a risk of inappropriate tracking and exploitation. A lack of regulatory consistency enhances the likelihood of xenotransplant tourism, in which patients fly to other countries for less expensive or quicker treatment. Transplant tourism has been a reality for many years, and it exploits local communities for financial benefit by those at the top, to the cost of the less fortunate who make the sacrifices required to give services to foreigners, such as organ donors. Xenotourism may thrive in nations with lax rules, employing

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[679] D Rodger, DJ Hurst and DKC Cooper, 'Xenotransplantation: A Historical–Ethical Account of Viewpoints'. *Xenotransplantation* [2023]: e12797. Avaialble at https://doi.org/10.1111/xen.12797 accessed 2 December 2024.
[680] *Ibid*
[681] DK Cooper, 'Clinical Trials of Xenotransplantation: The Need for a Worldwide Registry'. *Xenotransplantation* [2020] 27(3): e12598.
[682] K Kwisda, T Cantz and N Hoppe, 'Regulatory and Intellectual Property Conundrums Surrounding Xenotransplantation'. *Nat Biotechnol.* [2021] 39(7): 796-798.
[683] P Marks and S Solomon, 'Clarifying US Regulations on Xenotransplantation'. *Nat Biotechnol.* [2021] 39(12): 1500-1501.
[684] World Health Organization, Fifty-seventh World Health Assembly. Resolutions and Decisions, Annexes — Document WHA57/2004/REC/1 (WHO, 2004).

pig organs with less robust genetic manipulation and husbandry, raising the danger of zoonotic illnesses[685]. These worries are heightened by recent instances, such as an individual engaging in clandestine genetic editing to develop offspring resistant to HIV, despite the fact that the practice violated host nation legislation[686].

Several firms that seek to generate organs for xenotransplantation make their own genetic changes to donor organs. Revivicor has developed hearts with ten genetic changes, while eGenesis and Qihan Biotech collaborated to create pigs with deactivated PERVs. NZeno has created pigs with kidneys that do not expand following implantation[687]. The degree of PERV inactivation in each model, as well as other mitigation techniques, is uncertain. Each company's technique to gene editing contains proprietary information; therefore details may not be readily available for an independent risk assessment. These concerns highlight the importance of rigorous oversight for the safety of patients, donor animals, and the larger society.

7.0. Regulatory Frameworks for Xenotransplantation and the Need for International Harmonization and Standardization of Regulations

The regulatory landscape that regulates xenotransplantation is riddled by pronounced juridical heterogeneity, with diverse national and local legislative frameworks governing the practice globally. In the United States, for example, the Food and Drug Administration (FDA) and the Centers for Medicare and Medicaid Services (CMS) constitute the primary regulatory agencies responsible for overseeing xenotransplantation research and clinical trials[688]. Similarly, other jurisdictions, including Australia, China (Chinese FDA), South Korea (Korean FDA), Argentina (AFDA), and the European Union (European Medicines Agency, EMA), as well as the Therapeutic Goods Administration (TGA) in Australia[689], have established regulatory frameworks and legislative mechanisms to govern xenotransplantation.

These current frameworks usually include some modifications to its legislation, such as oversight of research and clinical trials, safety evaluations, informed consent, and xenozoonotic disease monitoring. With a foundation in preclinical trials, it becomes necessary that laws ideally aim to strike a balance between driving scientific progress and ensuring that risks are carefully weighed and minimized. Some of these laws may require or suggest conducting trials in non-human primates as a stepping stone to testing in humans[690]. International harmonisation and standardisation of legislation is one of the most urgent demands in the field of xenotransplantation. At the moment, several nations have varied legal systems, which can provide difficulties for researchers and medical professionals. These discrepancies have the potential to impede clinical trial advancement and erect needless obstacles to the advancement of this exciting technology. Simplifying the process from research to clinical application requires harmonisation and standardisation. By embracing universal laws and standards, scientists worldwide can collaborate seamlessly, share knowledge, and build on each other's

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[685] N Cengiz and CS Wareham, 'Ethical Considerations in Xenotransplantation: A Review'. *Curr Opin Organ Transplant* [2020] 25(5): 483-488.

[686] VL Raposo, The First Chinese Edited Babies: A Leap of Faith in Science'. *JBRA Assist Reprod.* [2019] 22;23(3): 197-199.

[687] When will xenotransplantation of pig organs be possible? Nanalyze. Available at https://www.nanalyze.com/2021/03/when-xenotransplantation-pig-organs-possible/ accessed 2 December 2024.

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discoveries. This harmony would not only accelerate progress but also pave the way for global acceptance of clinical trials and their life-changing outcomes, and a world where xenotransplantation knows no borders will be made feasible[691]. And because of this, the IXA in partnership with the Transplantation Society (TTS) and in collaboration with the World Health Organization (WHO) has been engaged in fruit-yielding efforts for decades, beginning with the establishment of guidelines and a xenotransplant registry[692]. These organisations have put forth a great deal of effort to guarantee that there has been international expert consultation. Through numerous high-level discussions and collaborations, the international community has been able to come together to establish and publish widely accepted guidelines under the auspices of the IXA, TTS, and WHO[693]. The first of these was released in 2008, when the "Changsha Communique" was draughted, and the guidelines have since been updated by numerous panels of international experts[694].

8.0. Conclusions

Since the first documented xenograft in the 17th century, some attitudes towards xenotransplantation have changed. According to what is currently known, three of the major religions are generally open to the prospect of xenotransplantation, which represents a significant shift. Furthermore, as the likelihood of xenotransplantation has grown, more powerful theological perspectives have emerged, such as those supplied by the Catholic Church's Pontifical Academy for Life. However, it is evident that additional research is required in this area to gain a fully thorough understanding.

Since the 1990s, the pig has replaced the NHP as the species used to harvest organs. The utilisation of pigs as a source of xenografts is probably more acceptable to the public than NHPs. But there is still an unknown danger of xenozoonotic infection, which raises ethical questions about whether and how clinical trials should be conducted in addition to scientific ones. The genetic engineering techniques currently used on source pigs have somewhat resolved this ethical dilemma. As demonstrated by the recent clinical pig heart transplant in 2022, there is still some risk to the patient, and there may be a minor but credible risk at the community level. Finally, despite decades of research on public opinions towards xenotransplantation, additional data points are required to guarantee a deeper comprehension.

Many of the ethical questions surrounding xenotransplantation have been debated for decades in one form or another. As the science of xenotransplantation has improved, some headway has been made in resolving certain ethical issues. However, some ethical difficulties have lasted and continue to exist today, hence, the need for international harmonization and standardization in regulations.

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