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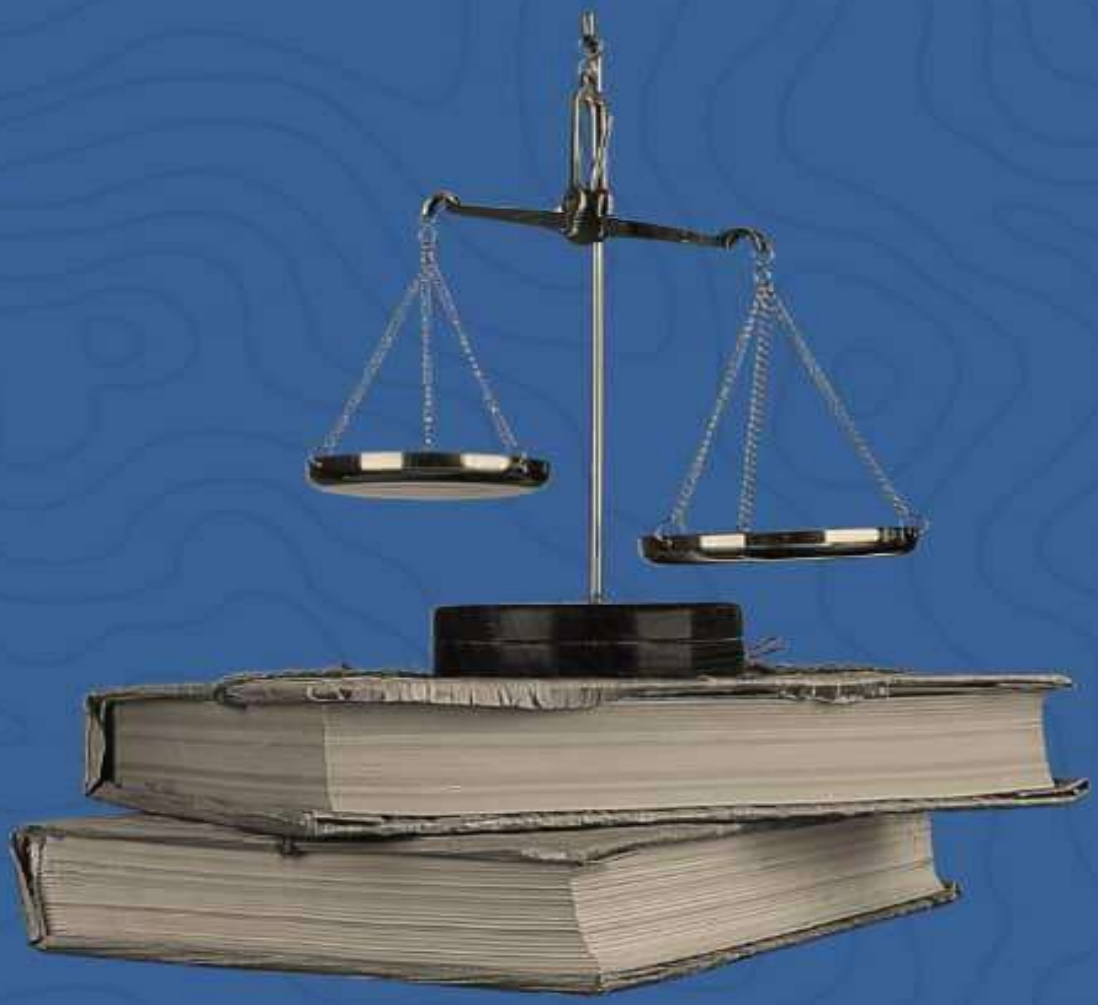

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Editorial

The Chief Editor, on behalf of the Department of Jurisprudence and Public Law, Faculty of Law, Kwara State University and the editorial board, has the great pleasure to present the maiden edition, **Vol.1 Issue 1**of our **online** bi-annual journal, **LexScriptio**, to the research community, policy makers and the world at large.

The journal is borne out of the need to project legal writings dealing with current issues in our immediate environment and the world community, bringing forth viable solutions to matters of concerns thereby contributing to the development of the society at large. Particular attention was given to each writing contained within in terms of objectivity on issues of discussion, achievable solutions and quality of thoughts. Each article was blind peer-reviewed and included for publication only after thorough compliance with the review by the author.

This issue contains series of legal topics from vibrant and seasoned personalities within and outside the academia. You will find within varieties of enriched, thought provoking and eye opening legal issues ranging from space law, legal implication of cloud seedling, currency redesign and cashless economy, cybercrimes, assisted reproductive technology and immigration.

The journal also contains pieces on ADR, health and environmental matters on conservation and biodiversity, workplace discrimination, girl child in Nigeria, current issues between Israel and Palestine etc. These writings are fantastic mix of academic, practical and critical thinking and we hope our readers find it appealing.

It is quite important to state that this issue is dedicated to **Late Dr. Hammed Adekunle Hanafi** who left this world in February 2024 and who would have been particularly excited with the decision of the Department to float this journal. May his soul rest in peace. Amen.

Sincere accolades go to every member of the Department for seeing that this journal becomes reality. ‘A dream it looked, a reality it became’. Your commitment and dedication paid off. To the Professors in the Department, the managing editor, associate editors, advisory board, editorial board, authors, the entire Faculty of Law and friends of the Department, thank you and congratulations. We did it!

We hope you enjoy reading our maiden issue of **LexScriptio** and look forward to publishing your articles, book reviews and case notes in our subsequent issues. Intending contributors should read about the journal for submission guidelines on the journal website; **https://kwasu.site/index.php/lexscriptio** and send to lexscriptio@kwasu.edu.ng. Please be informed that the publication date for the next issue is June 2025.

Dr. Khafayat Yetunde Olatinwo
Chief Editor
December 2024

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A LEGAL ANALYSIS OF IRREGULAR MIGRATION AND THE EFFECTS ON HOST COUNTRIES

Abiodun Amuda-Kannike SAN,*Shuaib Oniyeand Abdulfatai Abdulkareem*****

Abstract

This article conducts a detailed analysis of irregular migration and its legal ramifications on host countries. Delving into the multifaceted nature of the issue, it explores the strain on social services, labour market dynamics, and cultural integration challenges faced by host communities, drawing insights from real-world examples in France, the United States, and Italy. Examining the legal and policy frameworks, the article emphasizes the importance of international cooperation and collaborative efforts in managing migration flows. Hence, this paper, while adopting analytical research methodology, painstakingly seeks to strike the balance between legal ramifications of irregular migration on host countries without tampering with Human rights of the immigrants. Thus, provide insights for the development of effective, just, and sustainable solutions for host countries grappling with the intricate challenges posed by irregular migration. The proposed recommendations encompass understanding migration scales through statistics, leveraging existing legal structures, prioritizing human rights, balancing border control with economic realities, investing in diplomacy, promoting public awareness, and implementing robust monitoring mechanisms.

***Keywords*:** *Irregular migration, Host countries, and International cooperation*

Introduction

Irregular migration, a burgeoning global challenge in our interconnected world, has far-reaching implications for host countries, necessitating an in-depth legal analysis to unravel its complexities. This article aims to explore the intricate web of irregular migration, beginning with a definition that encapsulates its various forms, such as undocumented or illegal migration. The phenomenon defies easy categorization, encompassing both forced displacement and voluntary migration driven by diverse factors, such as economic aspirations, political instability, and the pursuit of a better life.

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There is no universally accepted definition of irregular migration. The International Organisation for Migration (IOM) defines it as "movement that takes place outside the regulatory norms of the sending, transit and receiving country.[1] The Court of Appeal in the case of *Mmaju & Anor v. Ikwuka*[2] defined migration as movement of people or animals from one country or region to another. It is crucial to emphasize that irregular migration encompasses the undocumented movement of individuals, known as irregular migration flows, as well as the count of migrants whose legal status may become undocumented at any given time, referred to as irregular migrant stocks.[3] For instance, individuals fleeing conflict and persecution in their home countries, who cross borders seeking refuge in another nation, may initially be classified as irregular migrants. However, their status can transition to regular once they initiate the asylum application process.[4] Moreover, individuals with legal status in a country may transition to undocumented status when their visa or permit expires.[5] In certain instances, the characterization of movements as "irregular" is more intricate. For instance, the Free Movement Protocol within the Economic Community of West African States (ECOWAS) permits unrestricted movement among its 15 member states, allowing stays of up to 90 days for those possessing valid travel documents.[6] Due to factors such as incomplete documentation or crossing at unofficial border points, movements in the region are often deemed "undocumented" or "irregular," even though the movement itself is considered regular when accompanied by valid travel documents.[7] Understanding irregular migration requires a nuanced examination of the motivations behind it, ranging from escaping conflict and persecution to seeking better economic opportunities. The interplay of push and pull factors contributes to the fluid nature of irregular migration, rendering it a multifaceted challenge.

[1] 'Key Migration Terms'. Via, https://www.iom.int/key-migration-terms. Assessed on the 28th of December, 2023.
[2] (2018) LPELR 44141 (CA)
[3] Vespe, M., F. Natale and L. Vespe, M., F. Natale and L. Pappalardo 'Data sets on irregular migration and irregular migrants in the European Union, 2017' Migration Policy Practice, 7(2): 26-33. Via, http://www.eurasylum.org/wp content/uploads/2017/08/MPP-30.pdf. Assessed on the 28th of December, 2023.
[4] Ibid
[5] 'Irregular Migration'. From Migration Data Portal, Via, https:/ /www.migrationdataportal.org/themes/irregular migration. Assessed on the 28th of December, 2023.
[6] Aderanti Adepoju, 'Promoting integration through mobility: Free movement under ECOWAS'. Alistair Boulton and Mariah Levin, For United Nations High Commissioner for Refugees. Via, https://www.unhcr.org/ sites/default/files/legacy-pdf/49e479c811.pdf. Assessed on the 28th of December, 2023.
[7] Ibid

Studying the legal effects of irregular migration on host countries is crucial due to the profound impact it exerts across various domains. This comprehensive understanding is vital for policymakers, academics, and society to navigate the economic, social, and political dimensions of this global reality. Irregular migrants often contribute to the host country's economy by filling labour shortages in sectors like agriculture, construction, and domestic services.[8] Balancing these contributions with addressing social inequalities and resource strains poses a delicate challenge for host countries.

The effects of irregular migration extend into the political sphere, shaping policies and discourse in host countries.[9] The influx of irregular migrants often becomes a contentious political issue, fuelling debates about border security, immigration policies, and national identity. Governments face the challenge of striking a delicate balance between enforcing immigration laws and upholding human rights.[10] Stricter measures may be implemented, raising concerns about human rights violations, while lenient policies may encourage further irregular migration, posing challenges to border control and national security.

Therefore, the study of irregular migration and its legal effects on host countries requires a multidimensional approach. The economic, social, and political dimensions demand nuanced analysis to comprehend the underlying causes and consequences of this phenomenon. As nations grapple with the challenges posed by irregular migration, fostering a holistic understanding is essential for devising effective policies that balance economic contributions with addressing social inequalities, cultural tensions, and political ramifications. This article serves as a stepping stone into the multifaceted realm of irregular migration, inviting readers to embark on a journey of exploration and analysis to unravel the complex web it weaves across the global landscape.

[8] 'Business and Labour Migration'. From International Labour Organization. Via, https:// www .ilo. org/ empent/ areas/business-helpdesk/WCMS_855528/lang--en/index.htm. Assessed on the 28th of December, 2023.

[9] Ambrosini, M., Hajer, M.H.J. 'The Political Challenge of Irregular Migration. In: Irregular Migration. IMISCOE Research Series. Springer, Cham. Via, https://doi.org/10.1007/978-3-031-30838-3_3. Assessed on the 28th of December, 2023.

[10] Roberts, B., E. Alden, and J. Whitley. 'Managing Illegal Immigration to the United States: How Effective is Enforcement?' *(Washington, DC: Council on Foreign Relations, 2013)* Online at: http://www.cfr.org/immigration/managing-illegal-immigration-united-states/p30658 accessed on 19th day of August, 2024.

Causes of Irregular Migration

Irregular migration, a complex and multifaceted phenomenon is driven by various interconnected factors. Understanding these causes is essential for devising strategies to address the challenges associated with irregular migration.

Economic Instability and Limited Opportunities

Economic factors play a pivotal role in irregular migration. High levels of unemployment and limited economic opportunities in migrants' countries of origin act as powerful push factors. Individuals driven by the desire for a better life and improved economic prospects embark on journeys across borders in search of employment and financial stability. Income inequalities within countries further intensify the motivation to seek better opportunity in many developing countries, high levels of unemployment and limited economic prospects have led individuals to seek better opportunities across borders.[11]

In Sub-Saharan Africa, where economic challenges have driven a significant number of people to migrate irregularly in pursuit of employment and financial stability, the region is forecasted to be the world's slowest-growing in 2021, with a projected growth rate of 3.4 percent[12]. This growth is attributed to global recovery, increased trade, higher commodity prices, and a resumption of capital inflows[13]. However, despite these factors, the recovery in Sub-Saharan Africa is expected to lag behind the rest of the world, with a cumulative per capita GDP growth of 3.6 percent over the 2020-2025 period, notably lower than the global average of 14 percent[14].

In 2020, Central and South America faced a substantial migration challenge, with approximately 42.9 million migrants globally, 11.3 million hosted within the region.[15] Limited access to legal

[11] Babiker, Mohamed Abdelsalam, 'Legal Framework of Migration in Sudan' *European University Institute,* (2010, pp.6-10.

[12] Abebe Aemro Selassie and Shushanik Hakobyan, 'Six Charts Show the Challenges Faced by Sub-Saharan Africa' Published on the 15th of April, 2021. Via, https://www.imf.org/en/News/Articles/2021/04/12/ na041521-sixcharts-show-the-challenges-faced-by-sub-saharan-africa. Assessed on the 29th of December, 2023.

[13] Ibid.

[14] Ibid.

[15] 'Intraregional migration in Latin America - Statistics & Facts'. Via,https://www.statista.com/topics/9065/intraregional-migration-in-latin-america/#topic Overview. Assessed on the 29th of December, 2023.

migration options led many to navigate hazardous routes like the Darien Gap and the Caribbean Sea.[16] The emergence of Central American migrant caravans added complexity, as large groups traversed mainly on foot from Central to North America. Notably, Venezuelan emigrants faced difficulties, with most having temporary residence permits or full residency but limited refugee status[17]. For instance, in Peru, 531,800 Venezuelans applied for asylum in 2021, yet only 4,000 were granted refugee status. In Brazil, nearly 85,800 applied, and about 49,000 were recognized as refugees by the UNHCR[18].

These economic factors not only drive individuals to leave their home countries but also have substantial impacts on the host communities that receive irregular migrants. The strain on the host community's infrastructure and resources, as well as potential competition for employment, are some of the challenges that arise as a result of irregular migration. It is essential to consider the broader economic factors that drive irregular migration and the impact it has on both the migrants and the host communities in order to develop effective policies and interventions.

Political Instability and Conflict

Political instability and conflict represent significant drivers of irregular migration. Regions marred by unrest and violence force many individuals to flee their homes in search of safety and security. The immediate threats to life and well-being create a compelling push factor, prompting people to undertake arduous journeys in the hope of finding refuge in more stable and peaceful environments. Political instability and conflict can cause immense upheaval and displacement, leading to irregular migration on a large scale. One notable example is the ongoing conflict in Ukraine. The political turmoil and ensuing conflict in Ukraine have resulted in a notable surge in irregular migration, as numerous Ukrainians seek sanctuary in neighbouring countries and beyond. The onset of a persistent refugee crisis in Europe commenced in late February 2022

[16] Matteo Villa and Alissa Pavia, 'Irregular migration from North Africa: Shifting local and regional dynamics' Published on the 3rd of August, 2023. Via, https://www.atlanticcouncil.org/in-depth-research-reports/report/ irregular-migration -from-north-africa-shifting-local-and-regional-dynamics/. Assessed on the 29th of December, 2023.
[17] Ibid.
[18] Ibid.

following Russia's invasion of Ukraine[19]. As of late May 2022, records indicate nearly 6 million refugees escaping Ukraine across Europe, while an estimated 8 million individuals have been internally displaced within the country[20]. By March 2022, approximately one-quarter of Ukraine's total population had evacuated from their residences due to the unfolding crisis[21].

Similarly, the protracted conflict in Syria has resulted in one of the most severe refugee crises in recent history. The ongoing conflict in Syria has inflicted profound suffering on its people, resulting in hundreds of thousands of casualties and millions displaced since the conflict erupted in March of 2011[22]. The humanitarian crisis in Syria is alarming, characterized by widespread deprivation of essentials such as food, clean water, and healthcare. Within Syria, a staggering 6.8 million people are internally displaced, marking the world's largest displacement and the highest number of individuals in need since the conflict's onset.[23] Additionally, approximately 5.5 million Syrians have sought refuge abroad, with another 6.8 million displaced within the country. The economic impact is severe, as over 90% of Syrians live below the poverty line, and an estimated 12.1 million people grapple with food insecurity, underscoring the immense challenges faced by the population as a result of the prolonged conflict.

The intersection of political instability, conflict, and irregular migration underscores the need for comprehensive and coordinated international responses. Addressing the root causes of political instability and conflict, providing humanitarian aid, and facilitating the resettlement of displaced individuals are essential components of effective strategies to mitigate the impacts of irregular migration on both the migrants and host communities.

[19]Amuedo-Dorantes, C., and C. Bansak. 'The effectiveness of border enforcement in deterring repetitive illegal crossings attempts' In: Gans, J., E. M. Replogle, and D. J. Tichenor (eds). Debates on US Immigration. Thousand Oaks, CA: MTM Publishing, 2023; pp. 153–161.

[20]'Needs Growing for Over 8 Million Internally Displaced in Ukraine'. Via, https://www.iom.int/news/needs-growing-over-8-million-internally-displaced-ukraine. Assessed on the 29th of December, 2023.

[21] George Ramsay, 'A quarter of Ukrainians have fled their homes. Here's where they've gone' CNN, Published on the 21st of March, 2022. Via, https://edition.cnn.com/2022/03/21/europe/ukraine-russia-conflict-10-million-refugees-intl/index.html. Assessed on the 29th of December, 2023.

[22] Ibid.

[23]Ibid.

Environmental Challenges and Climate Change

Environmental factors, exacerbated by climate change, contribute to irregular migration. Rising sea levels, extreme weather events, and resource scarcity can render certain areas uninhabitable. The resulting environmental degradation prompts individuals to migrate in search of more sustainable living conditions.[24] The impact of climate change adds a layer of complexity to the migration landscape, requiring innovative approaches to address the challenges posed by environmental factors. Climate change and environmental challenges have become significant drivers of irregular migration in recent years[25]. The intensifying impacts of climate change, such as rising sea levels, extreme weather events, and changing precipitation patterns, are leading to the displacement of populations from environmentally vulnerable areas[26]. For example, the small island nation of Kiribati in the Pacific is facing the prospect of becoming uninhabitable due to rising sea levels, prompting its residents to seek refuge in countries like New Zealand[27]. This phenomenon exemplifies how environmental challenges, exacerbated by climate change, are directly contributing to irregular migration.

In addition, prolonged droughts and desertification in regions such as sub-Saharan Africa have compelled people to leave their homes in search of more viable living conditions[28]. The increasing frequency and intensity of weather-related risks, including sudden and slow-onset events, have further exacerbated environmental challenges, driving individuals and communities to undertake irregular migration as a means of adaptation.

[24]Shuaib Oniye and Hannafi A. Ahmed, 'Effects of Climate Change on Pastoralists Transnational Economic Activities and The Need for Sustainable Mechanism in West Africa' *(Al-Hikmah University law journal, vol 3, ISSN 2476-8510 (2020)* page 161-175.

[25]Alex de Sherbinin 'Climate Impacts as Drivers of Migration' Published on the 23rd of October, 2023. Via, https://www.migrationpolicy.org/article/climate-impacts-drivers-migration. Assessed on the 29th of December, 2023.

[26] Ibid.

[27]Mike Ives 'A Remote Pacific Nation, Threatened by Rising Seas', The New York Times, Published on the 2nd of July, 2016. Via, https://www.nytimes.com/2016/07/03/world/asia/climate-change-kiribati.html. Assessed on the 29th of December.

[28]Teye, J.K., Nikoi, E.G.A. Climate-Induced Migration in West Africa. In: Teye, J.K. (eds) Migration in West Africa. IMISCOE Research Series. Springer, Cham. https://doi.org/10.1007/978-3-030-97322-3_5. (2022) Assessed on the 29th of December, 2023.

In February of 2023, a devastating 7.8 magnitude earthquake struck Southern Turkey and Northwest Syria, causing extensive damage running into billions of dollars[29]. While no family emerged unscathed, the aftermath has significantly exacerbated the already precarious lives of Syrian refugees. This event has created an impossible dilemma for Syrian refugees in Turkey they are unable or unwilling to return home, and the option to migrate to Europe is further constrained by the reinforced border measures of Greece, a pivotal entry point[30]. Regrettably, it seems that the cataclysmic earthquake in February has once again left millions of traumatized Syrian refugees in Turkey caught between a rock and a hard place.

The emerging trends of irregular migration directly linked to environmental challenges and climate change highlight the pressing need for coordinated international responses. By recognizing the intricate relationship between environmental changes and population movements, the international community can work towards innovative solutions that appropriately address the specific needs of irregular migrants while also supporting the resilience of host communities.

Social and Demographic Pressures

Social and demographic factors also play a crucial role in irregular migration. Rapid population growth in some regions surpasses the capacity of local economies to provide adequate resources and opportunities[31]. This demographic pressure becomes a push factor, compelling individuals to seek better prospects in countries that appear more promising in terms of employment, education, and overall quality of life. Social and demographic pressures significantly contribute to irregular migration by creating a push factor for individuals and families to seek better opportunities and living conditions.

One notable example of social and demographic pressures fuelling irregular migration is observed in parts of sub-Saharan Africa. The population of sub-Saharan Africa, which stood at

[29] Muhammad Tahir, 'Shaken to The Core: The Plight of Syrian Refugees After February's Earthquake' Wilson Center, Published on the 11th of April, 2023. Via, https://www.wilsoncenter.org/article/shaken-core-plight-syrian-refugees-after-februarys-earthquake. Assessed on the 29th of December, 2023.

[30] Ibid.

[31] 'Rapid Population Growth'. Via, https://www.studysmarter.co.uk/explanations/geography/changing-economic-world/rapid-population-growth/. Assessed on the 29th of December, 2023.

approximately 434 million in 1984, is projected to surge to 1.4 billion by 2025.[32] The current birth rate of 48 per 1000 population is on an upward trend, while the death rate, at 17 per 1000, is declining.[33] While demographic and environmental pressures have a relatively modest direct impact, their more significant influence is observed indirectly through factors like conflict and employment opportunities, shaping the dynamics of migration in the region.

Moreover, a growing number of women are undertaking independent migration from Central America and the Caribbean. Women comprise 58.9 percent of migrants from Caribbean countries and 50.3 percent from Central America.[34] The decision to move abroad presents a spectrum of potential opportunities and challenges, influenced by an individual's gender in intricate and multifaceted ways. The interaction between gender and migration creates a complex interplay where these factors mutually shape each other.[35]

The interaction between social and demographic pressures and irregular migration underscores the multifaceted nature of migration dynamics and the complexities surrounding the decision to migrate. It is crucial to recognize the interplay of these factors when formulating policies and interventions to address irregular migration effectively.

Addressing the impact of social and demographic pressures on irregular migration necessitates a comprehensive approach that acknowledges the diverse needs and aspirations of migrants while also considering the implications for both origin and destination communities. By understanding the underlying social and demographic drivers of irregular migration, policymakers and stakeholders can develop targeted strategies that address the specific challenges faced by migrants and the communities involved. This comprehensive approach is essential for creating sustainable solutions that mitigate the impacts of irregular migration and promote the well-being of all affected populations.

[32] Goliber TJ. Sub-Saharan Africa: population pressures on development. Popul Bull. 1985 Feb;40(1):1-46. PMID: 12266940. Via, https://pubmed.ncbi.nlm.nih.gov/12266940/. Assessed on the 29th of December, 2023.
[33] Ibid.
[34] 'What Makes Migrants Vulnerable To Gender-Based Violence?'. Via, https://rosanjose.iom.int/en/blogs/what-makes-migrants-vulnerable-gender-based-violence. Assessed on the 29th of December, 2023.
[35] Ibid.

Information Technology and Perception

The advent of information technology, particularly through social media and other communication platforms, shapes migrants' perceptions and influences their decision-making. Information about perceived opportunities in destination countries spreads rapidly, impacting the choices individuals make regarding irregular migration. The role of technology in shaping migration patterns highlights the need for policies that address the influence of information dissemination on potential migrants.[36] Information technology has revolutionized the way individuals perceive and respond to migration opportunities. Social media, online forums, and networking platforms have become pivotal in shaping the perceptions of potential migrants. For instance, the portrayal of certain countries as prosperous and welcoming through online channels can significantly influence the decision-making of individuals considering irregular migration. Images, videos, and personal accounts shared on social media platforms often create a powerful narrative that can sway the perceptions of individuals seeking better opportunities.

Moreover, the availability of information on migration routes, employment prospects, and living conditions in destination countries through digital channels can serve as catalysts for irregular migration[37]. For example, the circulation of success stories of migrants who have found economic stability and improved living standards abroad can install aspirations in others to embark on similar journeys.[38]

Conversely, the dissemination of misinformation and false promises through online platforms can also lead to misguided perceptions and decisions among potential migrants. Instances of exploitation, human trafficking, and unsafe migration practices are sometimes glamorized or misrepresented, leading individuals to make ill-informed choices about irregular migration.

[36] Dekker Rianne & Engbersen Godfried. 'How social media Transform Migrant Networks and Facilitate Migration. Global Networks' 14. 10.1111/glob.12040. Via, https://www.researchgate.net/publication/259549540_How_Social_Media_Transform_Migrant_Networks_and_Facilitate_Migration.(2013) Assessed on the 29th of December, 2023.

[37] Okunade, S.K., Awosusi, O.E. 'The Japa syndrome and the migration of Nigerians to the United Kingdom: an empirical analysis. CMS 11, 27 (2023). Via, https://doi.org/10.1186/s40878-023-00351-2. Assessed on the 29th of December, 2023.

[38] Ibid.

It is essential for policymakers and relevant authorities to acknowledge the significant role of information technology in shaping migration perceptions and to devise strategies that integrate technology-aware approaches in addressing irregular migration. Collaboration with social media platforms, community influencers, and relevant stakeholders can facilitate the development of responsible online narratives that depict a balanced and realistic view of migration opportunities and challenges.

As the landscape of migration continues to evolve under the influence of information technology, proactive measures aimed at regulating online content, providing accurate resources, and promoting ethical migration behaviour will be instrumental in addressing the complex interplay between technology and irregular migration.

Impact on Host Communities

Irregular migration has far-reaching consequences for the countries that serve as hosts to these migrants. Understanding the impact is crucial for formulating effective policies and strategies to address the challenges faced by host nations.

Strain on Social Services and Infrastructure

Irregular migration often places a strain on the social services and infrastructure of host countries. Increased demand for healthcare, education, and housing can overwhelm existing systems, leading to challenges in providing adequate services to both the migrant population and the host community. This strain poses significant social and economic challenges that need careful consideration. Several host communities around the world have experienced the strain on social services and infrastructure caused by irregular migration.[39] For example, the city of Calais in France faced significant challenges due to the establishment of informal migrant camps. Since the late 1990s, migrants have gathered in and around Calais on the northern French coast, seeking entry into the United Kingdom through the Channel Tunnel or by stowing away in

[39]'A perfect storm of crises: Why refugee-hosting countries need more support'. Via, https://www.icmpd.org/blog/2023/a-perfect-storm-of-crises-why-refugee-hosting-countries-need-more-support. Assessed on the 29th of December, 2023.

lorries bound for ferries crossing the English Channel.[40] Some are homeless individuals seeking asylum in France. On September 5, 2016, truck drivers, local farmers, and trade unionists protested the perceived wilful destruction of economy activities by migrants in the camps, demanding the closure of the camp.[41] This demonstration caused traffic disruptions at the Calais port.[42] The substantial number of migrants attempting to cross the English Channel intensified pressure on local healthcare, sanitation, and housing resources, straining the city's infrastructure and aiding social tensions between the migrant population and local residents.

In 2021, Italian National Institute of Statistics (Istat) estimated that 5,171,894 foreign citizens, comprising approximately 8.7% of the total population, resided in Italy.[43] The country's geographical proximity to the North African coast and its peninsular position have historically made the crossing of the Mediterranean Sea the predominant route for undocumented migrants. This trend gained prominence as alternative routes to the EU diminished, and political instability in Libya weakened border and coastal controls, providing opportunities for people smuggling organizations. The primary destination for sea crossings is the southernmost Italian territories, specifically the Pelagie Islands, situated 113 km from Tunisia, 167 km from Libya, and 207 km from Sicily.[44] Against this backdrop, the tragic murder of Ashley Ann Olsen in her Italian apartment by an illegal immigrant from Senegal took on political significance amidst the European migrant crisis.[45] The sudden influx of migrants seeking asylum has strained local reception centres, leading to overcrowding and resource shortages. This, coupled with the resultant pressure on public services and infrastructure, has exacerbated tensions within these communities, underscoring the imperative for comprehensive responses to address the multifaceted impacts of irregular migration.

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[40] National Research Council. 'The process of unauthorized crossing at the US–Mexico border' In: Carriquiry, A., and M. Majmundar (eds). Options for Estimating Illegal Entries at the US-Mexico Border. Washington, DC: The National Academies Press, 2013; pp. 15–37.

[41] 'Calais blockade: Protest targets migrant Jungle camp', By BBC NEWS. Via, https://www.bbc.com/news/uk-37271674. Assessed on the 29th of December, 2023.

[42] Ibid.

[43] Orrenius, P. M., and M. Zavodny. How Do E-Verify Mandates Affect Unauthorized Immigrant Workers? Federal Reserve Bank of Dallas Working Paper No. 1403, 2013.

[44] Ibid.

[45] Jacquellena Carrero and Praxilla Trabattoni 'American Woman Ashley Olsen, Found Murdered in Italy, Was Strangled: Autopsy' NBC NEWS, Published on the 12th of January, 2016. Via, https://www.nbcnews.com/news/world/american-woman-ashley-olsen-found-murdered-italy-was-strangled-autopsy-n494996. Assessed on the 29th of December, 2023.

These examples underscore the significant strain that irregular migration can place on host communities, affecting social services, infrastructure, and community dynamics. The experiences of these host communities emphasize the importance of developing targeted policies and support mechanisms to address the challenges arising from irregular migration and ensure the well-being of both migrants and local residents.

Labour Market Dynamics and Wage Pressures

The influx of irregular migrants can affect the dynamics of the host country's labour market. Increased competition for jobs may lead to wage pressures, impacting both low-skilled and high-skilled sectors. Understanding these labour market dynamics is essential for developing policies that balance the needs of the existing workforce with the inclusion of migrants in the job market. Irregular migration significantly impacts the labour market dynamics and wage pressures in host communities. The influx of irregular migrants can lead to heightened competition for jobs, particularly in sectors that rely on low-skilled labour. This increased competition often exerts downward pressure on wages, as employers may exploit the larger pool of available workers to offer lower pay and reduced benefits. As a result, both irregular migrants and existing low-skilled workers may find themselves in precarious employment situations, facing challenges in securing fair wages and decent working conditions.

For example, in countries like Greece and Spain, where irregular migration has been a significant phenomenon, the agricultural and construction sectors have experienced notable changes in labour market dynamics.[46] The availability of irregular migrant labour has altered the bargaining power of workers, impacting the wages and employment conditions in these industries. This has sparked discussions about the need for enhanced labour protections and mechanisms to safeguard the rights of all workers, regardless of their migration status.

For instance, in the healthcare sector of several European countries, irregular migrant healthcare professionals have filled critical gaps in staffing, particularly in roles that face persistent

[46]Nori, M., Farinella, D. Mobility and Migrations in the Rural Areas of Mediterranean EU Countries. In: Migration, Agriculture and Rural Development. IMISCOE Research Series. Springer, Cham. Via, https://doi.org/10.1007/978-3-030-42863-1_3. (2020). Assessed on the 29th of December, 2023.

shortages.[47] While their contributions have been vital, there have been debates about the potential impact on the wages and working conditions of native healthcare workers. The integration of irregular migrants into the labour market, especially in professions with specific skill requirements, calls for nuanced policy responses to uphold fair labour standards and address any wage disparities that may arise.

The complex interplay between irregular migration and labour market dynamics necessitates a comprehensive approach that considers the diverse impact on various sectors and skill levels. Policymakers and relevant stakeholders must engage in dialogue to formulate strategies that mitigate wage pressures, uphold labour rights, and foster inclusive labour market practices for both irregular migrants and the existing workforce.

Cultural and Social Integration

The cultural and social integration of irregular migrants poses challenges for host countries. Differences in language, customs, and traditions can create tensions and hinder harmonious coexistence. These challenges have been evident in various host communities around the world. For example, in certain European countries such as Germany and Sweden, the cultural and social integration of irregular migrants has posed significant challenges.[48] The influx of migrants from diverse cultural backgrounds has led to the need for extensive language support and cultural adaptation programs to facilitate their integration into the local communities. This has not only placed pressure on existing resources but has also necessitated a deeper understanding of cultural diversity and the promotion of social cohesion.

In Germany, the integration of irregular migrants has been a focal point of public discourse and policymaking.[49] The process of incorporating migrants into German society has encountered obstacles related to language barriers, access to education, and cultural assimilation.[50] Host

[47]'Skill shortages and gaps in European enterprises'. Via, https://www.cedefop.europa.eu/files/3071_en.pdf. Assessed on the 29th of December, 2023.

[48]'The Economic and Social Aspect of Migration', Conference Jointly organised by The European Commission and the OECD Brussels, 21-22 January 2003. Via, https://www.oecd.org/migration/mig/15516956.pdf. Assessed on the 29th of December, 2023.

[49] Via, https://journals.sagepub.com/doi/10.1177/00027642231182886. Assessed on the 29th of December, 2023.

[50] Ibid

communities have faced the task of providing language courses and support services to assist irregular migrants in adapting to the local customs and societal norms. Additionally, efforts to foster social integration have required concerted initiatives aimed at promoting cross-cultural understanding and facilitating interactions between migrants and native residents.

Effective strategies for addressing these challenges involve collaborative efforts between public authorities, civil society organizations, and local communities to promote cultural understanding, mitigate social tensions, and facilitate the integration of irregular migrants into the social fabric of host countries. These examples demonstrate the complexities involved in fostering cultural and social integration in the context of irregular migration and highlight the necessity of inclusive policies and initiatives to navigate these challenges.

To cap it here, the impact of irregular migration on host countries is multi-faceted, affecting social services, labour markets, cultural integration, security, and political dynamics. An itemized examination of these impacts provides insights into the challenges faced by host nations, informing the development of policies that promote social harmony, economic stability, and effective management of migration.

Legal and Policy Framework

The legal and policy framework surrounding irregular migration is a complex and multifaceted issue that requires careful consideration and analysis. In the context of international conventions, Europe has taken significant steps to address the rights of migrant workers through the European Convention on the Legal Status of Migrant Workers. However, the ratification of this convention by only a minority of European states raises questions about its effectiveness and widespread acceptance.

The European Convention on Human Rights (ECHR)[51] and the European Social Charter (ESC)[52] are broader instruments that provide a more comprehensive framework for the protection of migrants' rights. The ECHR, focusing on political and civil rights, ensures that foreign nationals

[51] Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe Treaty Series 005, Council of Europe, 1950.
[52] Council of Europe, European Social Charter (Revised), 3 May 1996.

enjoy the same absolute rights as European nationals. These rights include the right to life and freedom from torture, emphasizing the fundamental nature of these protections. On the other hand, the ESC covers social, economic, and cultural rights, offering a wide array of safeguards such as equal access to social housing, healthcare, prohibition of forced labour, social security, and the right to family reunion.[53]

The Inter-American Commission on Human Rights (IACHR)[54] plays a crucial role in monitoring the human rights of migrants in the Americas. With a designated Special Rapporteur on Migrant Workers and their Families, the IACHR seeks to address and rectify violations through its established mechanisms. The American Convention on Human Rights[55] provides a right to human treatment (Article 5), a right to seek and be granted asylum (Article 22), a right to equal protection (Article 24), and a right to judicial protection (Article 25) that applies to non-nationals. However, the effectiveness of these rights is often contingent on the implementation and enforcement at the national level, where laws and procedures vary significantly.

To better protect the rights of migrant workers, various activities and measures must be implemented. "Know your rights" training programs are essential, particularly for contract labourers who might be unaware of their entitled wages and working conditions.[56] Language training courses in destination countries can empower migrant workers to understand and assert their rights, especially when dealing with restrictive contracts in unfamiliar languages.[57] Monitoring recruitment agencies and employers, particularly in domestic labour, is crucial to preventing abuse, and governments can play a proactive role in this regard.

Legal representation for migrant workers becomes crucial when abuses occur, covering issues such as discrimination, sexual harassment, lost wages, and other violations of labour rights. For instance, Philippine embassies cover legal expenses in situations where allegations of abuse lead

[53] Susuan Martin, 'The Legal and Normative framework of International Migration' Published April of 2005. Via. https://www.iom.int/sites/g/files/tmzbdl486/files/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP9.pdf. Assessed on the 29th December, 2023.

[54] Inter-American Court of Human Rights Series A No 18 (17 September 2003).

[55] "American Convention on Human Rights." Treaty Series, No. 36, Organization of American States, 1969.

[56] Ibid.

[57] Migrant Workers: Report of the Special Rapporteur on Migrant Workers, U. N. ESCOR, 60 Agenda Item 14(a), 40, U. N. Doc. E/CN. 4/2004/76.

to legal proceedings.[58] Similarly, in Bahrain, if a contract dispute involving a domestic worker remains unresolved and proceeds to court, the migrant worker is provided with legal representation appointed by the court.[59] Singapore offers a toll-free telephone service that migrant domestic workers can use to access information about their rights and the process for changing employers.[60] In Costa Rica, the Ministry of Employment conducts inspections and is open to receiving complaints from female migrant domestic workers, while the National Institute of Women has implemented training programs for those working in the country.[61]Consular protection, too, plays a significant role in ensuring the security of migrant workers, although the limitations of consular offices and officials can hinder effective intervention. In some cases, public interest or class action lawsuits may be necessary to ensure that an entire class of migrant workers obtains their rights. Non-governmental organizations and trade unions can play a vital role in providing legal support and serving as rallying points for addressing systemic issues.

At the international level, the legal framework for refugee protection is derived from international human rights law, specifically international conventions and humanitarian law.[62] The gaps in protection mechanisms for irregular migrants, especially vulnerable groups like children and victims of trafficking, highlight the need for enhanced international cooperation. Harmonizing legal standards and strengthening enforcement mechanisms can address these gaps, fostering a more cohesive and effective response to irregular migration issues globally.

Thus, in the case of R v Secretary of State for the Home Department[63] among the issue raised before the court was regarding the Secretary of State's policy that certain people claiming asylum in the United Kingdom should not have their claims considered at the UK, but should instead be sent to Rwanda in order to claim asylum there. Under international law, states have the right to control the entry, residence and expulsion of aliens, and to counter attempts to circumvent

[58]'Kuwait/Philippines: Protect Filipino Migrant Workers'. Via, https://www.hrw.org/news/2018/02/21/kuwait/philippines-protect-filipino-migrant-workers. Assessed on the 29th of December, 2023.

[59]'For a Better Life Migrant Worker Abuse in Bahrain and the Government Reform Agenda'. Via, https://www.hrw.org/report/2012/09/30/better-life/migrant-worker-abuse-bahrain-and-government-reform-agenda. Assessed on the 29th of December, 2023.

[60] Ibid.

[61] Ibid.

[62]International Conventions on Civil and Political Right 1966 and the International Convention on Economic Social and Cultural Rights 1996.

[63] [2023] UKSC page 42.

immigration restrictions, subject to their treaty obligations and to any relevant principles of customary international law. However, one exception of the right to expel aliens is the principle of non-refoulement, which is enshrined in several international treaties which the United Kingdom has ratified. The court was of the opinion that the United Kingdom law prohibited not only the direct return of refugees to the country where they fear persecution, but also their indirect return via a third country.[64]

Similarly, in the matter of an application by the *Northern Ireland Human Rights Commission* & *Anor* [65] *v the Secretary of State for Northern Ireland & Anor*.[66]In these applications for judicial review, the applicants seek to challenge certain core provisions of the Illegal Migration Act 2023 (IMA). The court in its unanimous decision held that the applicants enjoyed the requisite standing to bring these proceedings and also, if necessary, potential victim status under section 7 of the Human Rights Act.[67]

In the Nigerian context, the legal framework for the protection of refugees is primarily governed by regulations designed to apply to the specific context of refugee protection.[68] These regulations are aligned with the 1951 United Nations Convention on the Status of Refugees[69], establishing general obligations for states and providing civil, economic, and social rights for refugees. The protection afforded to refugees includes defending their legal rights to admission, non-refoulement, and a status close to that of nationals within the host country's territory. It also involves safeguarding their rights, security, and welfare, particularly against acts of violence and mistreatment.

[64] See the case of R v Secretary of State for the Home Department, Ex p Bugdaycay [1987] AC 514, 532. see also MSS v Belgium and Greece (2011) 53 EHRR 2 (a case concerned with the removal of an asylum seeker to a country through which he had transited).

[65] Thisapplicantisa16-year old asylum seeker from Iran, born on 5 July 2007, who arrived in the United Kingdom as a nun accompanied child. He had travelled from France by small boat and claimed asylum on 26 July 2023, which application is not yet determined. He is currently residing in Northern Ireland and makes the case that he would be killed or sent to prison if returned to Iran.

[66] (2024)NIKB35.

[67] Ibid.

[68] National Commission for Refugees, Migrants and Internally Displaced Persons Act, L.F.N 2022.

[69] Convention relating to the Status of Refugees (189 U.N.T.S. 150, entered into force April 22, 1954). United Nations. 1951, Protocol Relating to the Status of Refugees, 1967, Organisation of African Unity Convention Governing the Specific aspects of refugee's problem in Africa 1969, Convention Relating to the Status of Stateless Persons 1954 and other treaties and conventions in relation to refugees, migrants, asylum seekers and internally displaced persons which are rectified and domesticated by Nigeria.

Again, the combine effect of section 64 & 65 of Immigration Act, 2015 prohibit illegal entry of migrants into any part of the country without necessary permit been obtained. Migration of individuals from one place to another across border has been a contentious issue which had attracted judicial pronouncement. In the case of Mmaju & Anor v. Ikwuka (supra) the court was called upon to determine the legality or otherwise of the people of Ogidi town migration.[70]

To sum it up here, the legal and policy framework surrounding irregular migration is intricate and involves a web of international and national instruments. While regional conventions and international frameworks provide a foundation for the protection of migrant workers and refugees, their effectiveness relies heavily on the commitment of states to implement and enforce these standards. Collaborative efforts, both at the regional and international levels, are essential to address the gaps in protection and ensure a more comprehensive and cohesive response to the challenges posed by irregular migration.

Summary

Irregular migration presents multifaceted challenges for host countries, spanning social services, labour markets, and cultural integration. Instances in Calais, France, and the southern U.S. border illustrate the strain on social services and infrastructure due to increased healthcare and education demands. Labour market dynamics are influenced, resulting in wage pressures in low-skilled and high-skilled sectors. Concerns emerge regarding fair wages and potential displacement of workers.

The legal and policy framework for irregular migration is explored, focusing on international conventions and regional instruments. Despite Europe's efforts, challenges persist, with limited ratification of conventions such as the European Convention on the Legal Status of Migrant Workers. Broader instruments like the European Convention on Human Rights and the European Social Charter offer comprehensive frameworks for migrant rights. In the Americas, the Inter-American Commission on Human Rights monitors rights, though effectiveness varies at the national level.

[70] (2018) LPELR 44141 (CA) See also the case of Tuoyo & Ors v. Agba & Ors (2014) LPELR 24533 (CA).

To protect migrant workers, critical measures include "know your rights" programs, language training, and monitoring of recruitment agencies. Legal representation, consular protection, and public interest lawsuits play roles in safeguarding rights. Shelters and social services are vital for those facing abuse, with repatriation and reintegration assistance provided by NGOs and religious institutions.

In the Nigerian context, regulations aligned with the 1951 UN Convention on the Status of Refugees govern refugee protection. Gaps in protection mechanisms for vulnerable groups highlight the need for enhanced international cooperation, harmonizing legal standards, and strengthening enforcement mechanisms. The article concludes by emphasizing that collaborative efforts at regional and international levels are essential for a cohesive response to irregular migration challenges.

Recommendations

Irregular migration stands as a complex global challenge with profound effects on host countries, necessitating a comprehensive approach to address its multifaceted dimensions. In this chapter, we shall be exploring avenues to help aid and better shape the issues poised by irregular migration.

Understanding the Scale: Statistics as a Basis for Action

To formulate impactful recommendations, it is imperative to first understand the magnitude of irregular migration. According to the International Organization for Migration (IOM), approximately 281 million international migrants existed globally in 2020.[71] A significant portion of this demographic engages in irregular migration, crossing borders without proper authorization.[72] Regional variations in these statistics emphasize the need for tailored solutions that account for the unique challenges faced by different host countries.

[71] 'World Migration Report 2020'. Via, https://worldmigrationreport.iom.int/wmr-2020-interactive/#:~:text=Overall%2C%20the%20estimated%20number%20of,the%20estimated%20number%20in%201970. Assessed on the 29th of December, 2023.

[72] Ibid.

In-depth analysis of these statistics reveals not only the scale of the issue but also key demographic trends, migration routes, and the motivations behind irregular migration. For example, understanding that a substantial number of irregular migrants are driven by economic factors provides a basis for crafting targeted policies addressing both border control and economic opportunities.[73]

Leveraging Existing Legal Frameworks

Effective recommendations must acknowledge and build upon existing legal frameworks at both international and national levels. The United Nations' International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[74] serves as a foundational document. This convention emphasizes the importance of safeguarding the rights of migrants, regardless of their legal status.

National legal frameworks, such as the Immigration and Nationality Act[75] in the United States, the Dublin Regulation[76] in the European Union or National Commission for Refugees Act[77] in Nigeria, provide essential tools for managing irregular migration. Recommendations should encourage host countries to strengthen and adapt these frameworks to address emerging challenges, ensuring they align with international human rights standards.

Human Rights-Centric Policies

Any recommendations put forth must prioritize the protection of human rights. The principle of non-refoulement, enshrined in international law, prohibits the expulsion or return of individuals to a country where their life or freedom is at risk. Upholding this principle requires host countries to assess asylum claims thoroughly and provide a fair and transparent process for those seeking refuge. We have previously explored the policy mechanisms put in places like,

[73] OECD/ILO 'How Immigrants Contribute to Developing Countries' Economies, OECD Publishing, Paris. (2018), Via, http://dx.doi.org/10.1787/9789264288737-en. Assessed on the 29th of December, 2023.
[74] UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158.
[75] U.S. Congress. (1964) United States Code: Immigration and Nationality, 8 U.S.C. §§ -1401 Suppl. 2 1964 .
[76] European Union, Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention"), 15 June 1990, Official Journal C 254 , 19/08/1997 p. 0001 - 0012.
[77] Cap 244 Laws of the Federation of Nigeria 1990.

Singapore, the Philippines, Costa Rica in securing human rights.[78] These policies should be encouraged and adopted by nations across the globe to put human rights first.

Furthermore, policies should ensure that vulnerable populations, such as children and victims of trafficking, receive special consideration and protection. Family reunification policies must be humane and prioritize the best interests of the child, avoiding practices that separate families or expose individuals to further harm.

Balancing Border Control and Economic Realities

One of the key challenges in addressing irregular migration lies in striking a delicate balance between enforcing immigration laws and recognizing economic realities.[79] Recommendations should advocate for policies that acknowledge the economic contributions of irregular migrants while addressing concerns related to fair labour practices and social inequalities.

For instance, implementing pathways for legal migration, such as temporary work programs or skill-based immigration systems, can provide an avenue for individuals to contribute to host countries' economies without resorting to irregular means. Canada's Provincial Nominee Program[80] serves as a model, demonstrating how a well-designed immigration system can align economic needs with legal pathways.

Investing in Diplomacy and International Cooperation

Addressing irregular migration requires a collaborative effort on the global stage. Recommendations should encourage host countries to invest in diplomatic relations and foster international cooperation. This involves not only sharing best practices but also addressing the root causes of irregular migration, such as conflict, economic disparities, and political instability. Supporting and strengthening international organizations like the international Organization for

[78] Ibid.

[79] Via,https://www.iom.int/sites/g/files/tmzbdl486/files/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP5.pdf. Assessed on the 29th of December, 2023.

[80] 'Provincial Nominee Programs (PNPs)'. Via, https://www.canadim.com/immigrate/provincial-nominee-program/. Assessed on the 29th of December, 2023.

Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) can enhance collective efforts in managing migration flows and ensuring a coordinated response.

Education and Public Awareness

Public perception plays a crucial role in shaping policies related to irregular migration. Recommendations should stress the importance of comprehensive education and public awareness campaigns. Informing the public about the economic benefits of migration, the legal pathways available, and the human stories behind irregular migration can foster empathy and understanding.

Governments should invest in initiatives that dispel myths and misconceptions surrounding irregular migration, emphasizing the positive contributions migrants make to host societies. Public discourse should be guided by facts, reducing the likelihood of misinformation and xenophobia.

Monitoring and Evaluation Mechanisms

Finally, any set of recommendations must include robust monitoring and evaluation mechanisms to assess the effectiveness of implemented policies. This involves regularly reviewing the impact of measures on irregular migration patterns, the well-being of migrants, and the host country's socio-economic landscape.

Utilizing data-driven decision-making ensures that policies remain adaptive and responsive to changing circumstances. It also allows for the identification of unintended consequences, enabling timely adjustments to achieve the desired balance between enforcement, protection, and economic considerations.

As host countries grapple with the intricate challenges posed by irregular migration, the implementation of these recommendations can pave the way for a more humane and inclusive approach. By leveraging international cooperation, adopting innovative solutions, and prioritizing human rights, nations can navigate the complexities of irregular migration while upholding the values of justice, dignity, and compassion.

Conclusion

In conclusion, the analysis of irregular migration and its impact on host countries underscores the urgency of adopting a holistic and nuanced approach. The challenges posed by irregular migration span social services, labour markets, cultural integration, and legal frameworks, necessitating multifaceted strategies for effective management. By understanding the scale of migration through statistics and leveraging existing legal frameworks, host countries can form the foundation for comprehensive policies. Human rights centric policies, a delicate balance between border control and economic considerations, investments in diplomacy, and public awareness initiatives emerge as crucial pillars. International cooperation and the strengthening of monitoring mechanisms are pivotal for addressing the root causes and consequences of irregular migration. As nations grapple with these complexities, the proposed recommendations serve as a guide for fostering a more humane, inclusive, and sustainable approach to irregular migration one that upholds the values of justice, dignity, and compassion for both migrants and host communities.

A LEGAL APPRAISAL OF THE NIGERIAN COMMUNICATION COMMISSION'S REGISTRATION OF TELEPHONE SUBSCRIBERS REGULATION (RTS) 2011: ISSUES AND CHALLENGES

Sani Rabiu Bello*and Mohammed Abubakar**

Abstract

This paper sought to appraise the Nigerian Communication Commission Registration of Telephone Subscribers (RTS) Regulation 2011 with a view to reveal its challenges. The Nigerian Communication Commission compels its licensees to register their new, existing and foreign subscribers' personal information utilizing their medium to the government central database. The regulation made provision to promote constitutional rights to privacy, freedom of expression and electronic data protection. Having perused the regulation and accessing scholarly works on doctrinal methodology of research, it reveals that the regulation though logically sound, the motive for law enforcement and counter terrorism on the part of government was over emphasized. We discovered privacy infringement, implementation gap and few section of the society were discriminated due to limited access to enrolment facilities. Consequently re-regulation, active implementation and policy on massive digital inclusion were recommended among others.

Keywords: *Implementation, Law enforcement, Privacy, Subscriber, Service providers*

Introduction

Mandatory registration of telephone users emerged after the introduction of registration requirements in Brazil, Germany and Switzerland in 2003.[1] On November 7th 2011, Nigerian Communication Commission (NCC) issued Registration of Telephone Subscribers (RTS) Regulation 2011. It requires mobile phone subscribers to allow their fingerprints and biometrics map of their face to be collected and registered to their SIM card which are later stored in government central database (CDB). As of march, 2020 over 150 countries had mandatory SIM

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[1]'Mandatory Registration of Prepaid Sim-card Users' *GSMA Whitepaper* (2013) p6 <www.gsma.com/publicpolicy/wp-content/upoads/2013/11/> Accessed 12 April 2023 at 5: 30 p.m.

registration laws.[2] Government that introduce mandatory SIM registration based their decision to do so on the belief that would improve the efficiency of law enforcement and counter terrorism efforts, the assurance to safeguard subscribers information from unauthorized use in line with constitutional right to privacy, freedom of expression and electronic data protection regime.[3]However this is far from reality in Nigeria as criminals keep using the Licensees medium to communicate high crimes and negotiate ransoms in furtherance of kidnapping.[4] In line with the above this paper appraises the RTS regulations, x-ray available literatures and surrounding reports to examine the challenges to efficient implementation of RTS regulations with a view to recommend a solution.

Clarifications of Key Terms

In order to appreciate the terminologies used in this paper the following terms carry their meanings according to Part1 of the RTS regulations which covers interpretation and were produced for clarification:

a) 'Activate' means to allow full access to a licenses network service including the ability to make and receive calls, send and receive short message and other range of services
b) 'ActivationWindow' means period of one month from the day a subscriber acquires a new line on the network of licenses within which is required to register
c) 'CentralDatabase'CDB' means subscribers information database, containing the biometrics and other registration n information of all subscribers.
d) 'SubscriptionMedium' means a subscriber identity module (R-UIM) smart cards, a CDMA subscriber identity module (CSIM) smart card, a removable user identity module (R-IUM) smart card, a CDMA subscriber identity module (CSIM) or any other mobile phones subscriber medium containing the telephone number of a subscriber, encoded network

[2] Oreolowu Adebayo, 'Considering the Legal Tenability of the Implementation of New Sim Registration Rules' Mondaq (31 December 2020) <www.monda.com/ng> Accessed 11 August 2023 at 9:00 p.m.
[3] Syed I. Ahmed and Others, 'Privacy, Security, and Surveillance in the Global South: A Study of Biometric Mobile SIM Registration in Bangladesh' *A Proceedings Of The 2017 CHI Conference on Human Factors in Computing Systems*(2017) Doi: http://dx.doi.org/10.1145/3025453-3025961;<https://epublications.marquette.edu/mscs-fac/544/><scholar.google.com> Accessed 5 October 2023 at 5:45 p.m.; GSMA whitepaper (n.1).
[4] Ademola Popoola, 'Why Kidnappings Occur Despite SIM-NIN Linkage Policy: EX- Minister' *Premium Times* (15 January 2024) <premiumtimesng.com> accessed March 17, 2024 at 8:00 a.m.

identification details, the personal identification details, the personal identification number and other user data.

e) 'SubscriberInformation' means biometrics and other personal information of subscriber recorded and stored by licensee or independent registration agent.

f) 'SubscriptionRegistrationPeriod' means 6 months from effective date which existing subscribers are expected to register their subscription.

g) 'Licensees' are mobile telephone' service that utilize a subscription medium in Nigeria such as MTN, Airtel, Globacom and Visafone among others.

Appraising the Registration of Telephone Subscribers' (RTS) Regulation 2011[5]

The (RTS) regulation was issued by the National Communication Commission (NCC), in the exercise of its powers pursuant to section 70 of the NCC Act 2003. It empowers telecom service providers (MTN, Globacom, and Airtel) to process the telecom consumers' personal and biometric data.[6] The objectives of the RTS regulation are twofold: (1) to provide a regulatory framework for the registration of subscribers to mobile telecommunication service utilizing subscription medium in Nigeria and (2) to provide for the establishment, control, management and administration of the CDB.[7]The scope of the regulation is intended to apply to all person and licenses including corporate, private and commercial subscribers to mobile telecommunication service utilizing subscription medium in Nigeria and a foreign subscribers roaming on the network of licensee in Nigeria.[8]

The RTS Regulation has 5 parts and 23 sections. Part2oftheRTS regulations empowers the commission to establish the CDB, manage, control and administer the CDB with due regards to constitutional right to privacy and freedom of expression, and in accordance with standard issued by international organization for standardization in relation to security and management of electronic and personal data. A licensee dealing with subscribers data were mandated to observe the part vi of the General Consumer Code of Practice for Telecommunication Services and any

[5] NCC's Registration of Telephone Subscribers **(**RTS**)** Regulation 2011 NCC <www.ncc.org.ng> Accessed 11 January 2024 at 10:30 a.m.
[6] Section 70 and 106 of the Nigerian Communication Commission (NCC) Act, 2003 (Act No. 19).
[7] Section 2 of the RTS, 2011.
[8] Section 3 of the RTS, 2011.

other instrument of the commission or any Act of the National Assembly on Personal Information.

Guidelines for Subscriber's Registration

Part3oftheRTS regulation provide for the registration of new, existing and foreign subscribers examined below:

- **Registration of New Subscribers**

The RTS regulation empowers licensees, independent registration agents (IRA) and subscriber registration solution providers (SRSP) to capture register and transmit to the CDB the biometric and other personal information of their subscribers. If it is a corporate body, then the biometric and other personal information of its authorized representative name, address and registration number issued by the Corporate Affairs Commission should be provided. It is noteworthy that the registration of new subscribers is free. The subscriber has responsibility to supply his personal information to the licensee within activation period. Upon capturing and registration of the biometric and the personal information, the licensee is mandated by the Regulation to activate the subscription medium on its network service. The licensee, IRA, SRS are further mandated to transmit the subscriber information to the CDB on monthly basis.[9]

- **Registration of Existing Subscribers**

Existing subscribers are to be captured and registered within their subscription registration period in accordance with section11 (2) of the RTS regulation. The existing subscribers (pre- RTS regulation) has six month within which to supply their personal information for registration. By the end of subscription registration period, upon notifying the commission, licensee shall promptly deactivate existing subscriber not registered in the CDB. However, reactivation is allowed after the existing subscribers have registered their biometric and personal information.[10]

[9] Section 11 of the RTS, 2011; 'How to Register Sim Card in Nigeria'<https://cube.ng/how-to-register-sim-card-in-nigeria>; 'Sim Registration Tips-MTN Nigeria' <https://www.mtn.ng>sim>sim-registration> Accessed 20 February 2024 at 10:30 a.m.

[10]Section 13 of the RTS, 2011; 'Sim Registration' NCC (18 March 2024) <ncc.gov.ng/stakeholders/corporate-matters/projects/72-sim-registration> Accessed 20 March 2024 at 8: 30 a.m.

- **Registration of Foreign Subscribers**

For foreign subscribers, Licensee is mandated to register any foreign subscriber's personal information who is roaming on the licensee's network service in Nigeria. A licensee who is providing roaming services in Nigeria to a subscriber of a foreign licensee shall register the personal information of such subscriber in accordance with the provisions of the Regulation before providing such subscriber with roaming services. For the purposes of sub regulation (1) of the regulation, the activation window shall be a period of 48 hours.[11]

Data Protection under the RTS Regulation

One of the most important aspects of the RTS is the part that discusses data protection and confidentiality of subscribers' information under section 9 in furtherance of the right of subscribers guaranteed by section 37 of the Nigerian Constitution 1999 As Amended and any guidelines issued by the commission including terms and condition that may from time to time be issued either by the commission or a licensees. The subscribers' personal information shall be stored in the central database on confidence. The licensees shall allow subscribers to view the said information and to request update and amendment there to.[12]

The right to privacy under section 37 of the Nigerian Constitution was interpreted widely to protect the privacy of individuals in Nigeria to include communication data.[13] In essence, the regulation recognizes the importance of privacy of a subscribers and the need to protect same to the effect that the subscriber's information contained in a central data base shall be held on a strictly confidential basis that no persons or entity shall be allowed access to any subscriber information on the central data base except as provided in the RTS regulation- such as national security.[14]

Furthermore, licensees, independent registration agents and subscribers registration solution providers are prohibited not to under circumstances retain, duplicate, deal in or make copies of any subscriber information or store in whatever form any copies of the subscribers information

[11] Section 13 of the RTS, 2011.
[12] Section 9 (1), of the RTS, 2011.
[13] *Incorporated Trustees of Digital Right Lawyers' Initiative v NIMC* (2021) LPELR-55623 (CA)
[14] Section 9 (2), of the RTS, 2011.

for any purpose other than as stipulated in the regulation or the Act of National Assembly.[15] This explained the efforts of the regulation towards protection of subscriber's personal information. This is a welcome development as its will put the minds of the subscribers at ease as far as their personal information is concerned.

The RTS regulation went further to obligates the licensees and their agents including the NCC to each take all reasonable precautions to ensure data security in accordance with international practices to prevent the integrity and prevent any corruption, loss or unauthorized disclosure of subscribers information obtained pursuant to the regulation and shall take steps to restrict unauthorized use of the subscribers information by their employees who may be involved in the capturing or processing of such subscriber information.[16] Nor shall the licensees or their registration agents retain the biometrics of any subscribers after it has been transmitted to the central data base.[17]

Moreover, even personal information sharing with security agents shall be guided by the provision of National Communication Commission Act 2003; the RTS regulation and any guidelines or instruments issued from time to time by the NCC. As such, subscriber's information shall not be released to a licensee, security agency or any other persons, where such release of subscriber's information would constitute a breach of constitution or any other Act of the National Assembly, for the time being in force in Nigeria or when such release of subscriber information would constitute a threat to National security.[18] Licensees are further mandated to abstain from releasing personal information of a subscriber to any third party without obtaining the prior written consent of the subscribers.[19] This obligation extends further to cross border transfer of subscriber's information outside the Federal Republic of Nigeria without the prior consent of the NCC.[20]

[15] Section 9 (3), of the RTS, 2011.
[16] Section 9 (4), of the RTS, 2011.
[17] Section 9 (6), of the RTS, 2011.
[18] Section 10 (2), of the RTS, 2011.
[19] Section 10 (3), of the RTS, 2011.
[20] Section 10 (4), of the RTS, 2011.

Subscriber's Rights and Benefits of Registration

Having a cursory look at the regulation, certain right and benefits of the regulations are accruable to the subscriber. These rights and benefits include:

Firstly, a subscriber is entitled to limited access during his activation window. (The user is only allowed to make and receive calls and short messages-SMS). Secondly, a subscriber is entitled to activation of his SIM card upon registration and as such will benefit from: (a) unlimited access to licensees' medium, (b) digital participation (e-commerce, e-banking, e-education, and e-passport), (c) opportunity to keep the mobile number when switching to another network provider. Thirdly, a subscriber has a right of view, update and proper amendment to his personal information in the database -CDB.[21] Fourthly, a subscriber has a freedom to deactivation and deregistration from the licensee if he desired.[22] Finally, a subscriber has the right to register any number of subscription medium with any licensees. That is through mobile number portability.[23]

Liabilities under the RTS Regulation

Both the subscribers and the licensees are subject to liabilities under the RTS regulations for failure to fulfil its respective duties or obligations. Some were provided below:

1. Subscriber is liable for activities carried out using his subscription medium he registered with his personal information.[24]
2. Licensee who breach activation regulation would be liable to penalty of ₦200,000 two hundred thousand naira for each medium. However, lack of knowledge, consent or connivance in the breach, as well as reasonable precaution and due diligence to prevent the breach constitute a defence.
3. Breach of subscriber's personal data by licensee attract penalty upon conviction of ₦200,000 on each medium. When such information where utilize by licensee or its agent for business or gain, it attract a fine of ₦1, 000.000 one million naira.[25]

[21] S.9 (1) of the RTS 2011.
[22] S.15 of the RTS 2011.
[23] S.17 of the RTS 2011.
[24] S.18 of the RTS 2011.

Addendum to the Regulation: NCC Directions and National Policy on SIM Registration

The Federal Government through (NCC) on 9th December 2020, issued directives suspending the on-going SIM registration. On 15th December 2020, it issued directive for the implementation of new SIM registration rules.[26] The directive mandate licensees to immediately suspend sale, registration and activation of new SIM cards pending an audit exercise on the CDB. Moreover, when registrations resume, existing subscribers are mandated to submit their national identity numbers (NIN) to their telecommunication service providers for synchronization with the SIM cards.[27] In furtherance of this development the NCC issued the National Identity Policy for SIM-card Registration whose framework includes establishing SIM Identity Management System to reduce fraudulent SIM registrations. It provides for Sim-card-NIN synchronization and implements device management system.[28] This allow for linking the registered sim-card to the national identity data of the users. It can be glanced from above that the citizens have fulfilled their civil and national obligations by submitting their personal information, bio-data and biometrics to the government in exchange for security but the irony is that the war against insecurity promised in return remain on the lips as acts of terror increased rather than decrease.

Issues and Challenges

Despite the efforts made by the NCC to issue the RTS regulations as head regulatory institution the object of the program is far from reality as following issues mitigates its success: limited access to source documents such as NIN enrolment centres, privacy infringement and implementation flaws.

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[25] Part iv of the RTS 2011

[26] Press Statement: Implementation of New Sim Registration Rules (15 December 2020) <www.ncc.gove.ng>Accessed 11 December 2022 at 2:15 p.m.

[27] Ibid; 'Abuja Mobile Phone Users Rush to Register Sim Cards to Beat Deadline' *Premium Times* (29 January 2013) <Premiumtimesng.Com> Accessed 12 June 2022 at 4:30 p.m.

[28] The National Identity Policy for Sim-Card Registration, 2021 *NCC* <www.ncc.gov.ng> Accessed 11 January 2024 at 9:15 a.m.

Access to Enrolment Facilities

The RTS regulation and National policy on Sim card registration is made to foreclose the lacuna in crime detection and surveillance. However, it exposes the citizens more to vulnerability and excessive hardships due to flaws in process of registration especially when the national identity number is made a priori. The insufficient centres and resources both personal and infrastructural make some citizens lose access to telephone lines after been barred and lose access to digital and financial services.[29] Similarly remote settlements have limited access to enrolment centres to affordably register with the Licensees.[30]

Privacy and Data Protection

Sim-card registrations has the benefits of national security and business convenience yet, there is a drawback such as privacy invasion through misuse or unauthorized access to personal information collected during the process or security breaches when hackers gain access to database.[31]The Federal Government in order to implement the RTS regulation and its Policy licensed over 200 agents and institution for the NIN enrolment in some states, and private and public sector.[32] What is worrisome was these subsidiary registration centres may not appreciate the privacy and data protection responsibilities and consequently resort to abuse.[33]

Similarly the NCC is empowered in the interest of public safety and national security to give orders to licensees to intercept or detained or disclose communication to authorized officers.[34] However recent reports show that phone communication data can be intercepted and released without prior court order and unrelated to crime prevention. Security experts viewed the tapping

[29] Samuel C. Uzoigwe, 'Biometric Technology in Nigeria: Examining Data Privacy Concerns. *African Academic Network on Internet Policy* (21 March 2022) retrieved from<aanoip.com.>; see also 'Nigerian Digital Economy Diagnostic Report' (World Bank Group: Washington, 2019), p. vii<www.worldbankgroup.org.> Accessed 23 March 2024 at 5:20 p.m.

[30] Eze Philips and T. Enem, 'A Short Review on the Penetration of Fingerprint Identification and Authentication System in Nigeria' *African Journal of Computer and ICT* [2021] 14 (2): 40-45 at p.41 ISSN 2006-1781 <https://afrjcict.net> Accessed 8 November, 2023 at 10:45 a.m.; it shows how the Director of NIMC equally laments this enrolment facilities gap- that the commission needed 4000 data capture centres against the 200 centres across the county.

[31] 'The Sim Card Registration Act: Pros and Cons' (7 January 2023) <https://bog.route1>. Accessed 11 March 2024 at 11:45 a.m.

[32] Press statement (n.29); nimc.gov.ng/approved-licensed-service-providers.

[33] Isuma Mark, 'How NIMC Compromise Nigerians Data by Recruiting Touts to Fleece NIN Seekers' *The Whistler* (23 January 2023) <thewhistler.ng>www.google.com Accessed 15 July 2023 at 9:15 p.m.

[34] Section 147, 148 of the NCC Act, 2003; Regulation 13 of the RTS 2011.

of phone conversations without public interest is more consistent with state surveillance or profiling for political aim.[35] It is also our view here that intercepting citizens' conversation for purposes unrelated to crime prevention or public interest is gross violation of privacy and breach of confidence. The citizens' needs confidence that their information are not traded unlawfully.

Implementation Gap

Many countries including Nigeria introduce mobile phone surveillance to monitor the phone usage after realizing that criminals make use of mobile phone to communicate organized crimes, cybercrimes and terrorism.[36] Sequel to that the service providers (MTN, Airtel, Globacom) processed phone users' biometrics and other personal information for identification; and the NCC Act, 2003 permits the interception or wiretapping phone usage for security purpose.[37] This coupled with the synchronization of Sim-card with NIN by the NCC, and NIN-enabled ATM cards shows that the government knows too much about its citizens and makes Nigeria a surveillance state.[38] The purpose of processing subscriber's bio-data and biometrics by government is to identify its citizens by mandating the licensees to know their customers KYC, which can be utilized when crime is involved. Yet one may ponder why act of terrorism, banditry, kidnapping is on the rise in the face of these human information despite the telecom service providers have a duty to prevent their network facility from being used in relation to committing offences and to assist security agents in prevention of crimes.[39] The then minister of Communication Isa Pantami who pioneered NIN-SIM data policy recently bowed to paying ransom to kidnappers further signifies government failure to utilize the available communication data to curb crimes perpetrated with the use of mobile phone.[40] This disintegrates the relationships between Sim-card registration and crime control as propagated by the then minister.

[35] Unini Chioma, 'Peter Obi and Oyedepo Phone Conversation: Whoever Leaked Audio Probably Used Security Agencies Telecoms Staff-Expert' *Nigerian Lawyer* (Abuja, 3rd April 2023) <https://thenigerianlawyers.com> Accessed 11 January 2024 at 11:30 a.m.

[36] Syed I. Ahmed, et al. (n. 5).

[37] Regulation 13 of the RTS 2011; Section 38 of the NCC Act 2003.

[38] 'Federal Government Approves Banks to Issue NIN-Enabled ATM Cards' (25 May 2023) <gazettengr.com> Accessed 31 July 2023 at 8:25 a.m.

[39] NCC Act 2003 s.146 (1) and (2); Lawful Interception of Communications Regulations 2019 <https://www.ncc.gov.ng/documents/839-lawful-interception-of-communications-regulations-1/file>.

[40] 'Nabeeha: Pantami under Fire for Raising N50m Ransom for Bandits' *VanguardNews* (16 January 2023) <vanguardngr.com> Accessed March 17, 2024 at 5:15 p.m.; AdemolaPopoola, (n. 6).

Policy is mere skeleton that receive its soul from implementation. It is the desired end of security that justify interfering with citizen's privacy and this must be reality.

Findings, Recommendations and Conclusion

Findings

1. The NCC's RTS regulations and National Policy on Sim Registrations was issued due to the growing incidence of abduction, kidnapping, bandits, cyber fraud dramatically using prepaid subscription medium to negotiate ransom with their victim family without trace. However it was observed that there was no evidence that mandatory SIM registration lead to reduction of these criminal activities.
2. There is privacy concern which is worrisome, for instance while the RTS regulation mandate limitation on release of subscribers personal information to third party and security agents, it also allowed security agents direct access to the CDB.
3. Finally the whole exercise, do not contemplate and promote rural participation as well as internally displaced person (IDPs) who may not have the necessary documents for registration and direct access to registration centres.

Recommendations

1. There is the need for reregulation to impose liability on licensees, and their agents whose medium were used to commit high crimes such as terrorism, kidnapping and robbery without making the communication data available for law enforcement. It include the establishment of cyber police department to receive direct reports from subscribers.
2. The benefits of registration are enormous; hence the regulation and entire legal regime on data protection should establish the mechanism for implementing licensees' obligation as data controllers. The access to subscribers' conversation data by security agents should only be crime related to ensure privacy in digital age.
3. Digital participation should be made a right alongside basic education. Inclusive mechanism such as enrolment facilities must be put at the doors of rural settlers, old and the illiterates.

Conclusion

Mandatory SIM registration is the policy righty used to produce user personal information to register for or activate a prepaid SIM card. The concept was adumbrated by subsequent requirement of NIN number. This allows state to identify the owner and who is making calls, SMS and online presence to undermine anonymous communications to perpetrate crime. The reason behind it is logical; however we conclude that there are privacy issues and a challenge to accessibility as well as implementation flaws which makes the realization of its intended purpose of crime detection and counter-terrorism far from reality. Consequently the unintended flaws must be addressed to be more successful.

AN ANALYSIS OF THE CLAIMS AND COMPENSATION AVAILABLE TO VICTIMS AS A RESULT OF DAMAGE IN OUTER SPACE

Olatinwo Khafayat Yetunde*

Abstract

The legal maxim 'Ubi Jus IbiRemedium' is to the extent that it is expected that injured party gets remedy for the injury suffered. Unlike individuals cum domestic activities/legal system, to determine who is/are wrong in outer space activity, the result of damage, is quite dicey. Firstly, states are of course parties to space regimes as such expected to be actors in space activities to which one or many states jointly with international intergovernmental organisations can be the one conducting the activities (launching state) that led to the damage or even the injured party. Secondly, outer space with its activities is an international subject regulated majorly by international law, so that questions involving what amounts to damage, who can present a claim, the quantum of damages, determination of adequate compensation, parties to a claim amongst others are the subject of analysis in this article. To answer these questions, this article intends to examine the relevant international law i.e. International Space Law and Customary International Law, on the claims and compensation available to victims of damage in the course of outer space activities, assess the adequacies of the claims and compensation and proffer recommendations where necessary.

Keywords: *Outer space, activities, damage, claims, compensation, victim.*

Introduction

The area of outer space be described "as any region of Space beyond limits determined with reference to the boundaries of a celestial body or system, especially (a) the region of space

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immediately beyond Earth's atmosphere (b) Interplanetary or Interstellar Space".[1] According to Fraser,[2] "space is defined by the point at which the Earth's atmosphere ends and the vacuum of space takes over". The National Advisory Committee for Aeronautics was the first to officially come up with the definition of Space,[3] and it decided that Outer Space is "on the point where atmospheric pressure was less than one pound per square foot which was the altitude that Airplane control surfaces could no longer be used and corresponded roughly 50 miles or 81 Kilometres."[4] Engineer Theodore Von Karman also calculated Outer Space to be "above an altitude of 100 Km, the atmosphere would be so that an Aircraft would need to be traveling at orbital velocity to derive any lift which is later known and adopted as the Karman Line."[5]

Outer space can also be referred to as the area outside the atmosphere of the Earth where the other stars and planet are situated. According to Scott, giving the exact definition of Outer Space has proven to be an issue and suggestions on the point of demarcation ranges between 80 Km to 100 Km.[6] In fact, issues on spatial delimitation have affected how 'outer space' is described in the domestic Laws of Some States. For instance, the National Aeronautics and Space Act[7] defines Outer Space as "the areas outside the Earth's atmosphere" while the National Space Law of South Africa defines[8]it as "the space above the surface of the Earth from a height at which it is in practice possible to operate an object in an orbit around the Earth."[9]

There came a period where space-corporation was necessary among the space-faring nations on the best way to utilise Outer Space as a meaningful foreign policy or instrument; especially with some developed countries capitalizing on space technology to further their military prowess. At a point, freedom of Space was extremely significant to those space actors with orbiting satellites,

[1] *The American Heritage Dictionary of English Language* <http://ahdictionary.com /word/search.html?q=outer+space> accessed 5 November 2024.
[2] Fraser Cain, '*How High is Space*?' 2013 <https://phys.org/news/2013-07-high-space.html> accessed on 5 November 2024
[3] *The predecessor to the National Aeronautics and Space Administration*
[4] '*How High is Space*?' 2013
[5] Ibid. (By the World Airsports Federation)
[6] Scott James, 'The Tragedy of the Common Heritage of Mankind' 2008 Stanford Environmental Law Journal Vol. 27, 101-157.
[7] Section 51, USC S 40302 (5) 2010.
[8] *Space Affairs Act* 1993 [No. 84 of 1993] G 14917. S. 1(xv).
[9] Ibid.

as the thought of obtaining permission from another national as a requirement to launch satellite was feared[10]

As a result, there are currently five major outer space treaties; Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies 1967[11] generally called the Outer Space Treaty was inspired by the reality of mankind entry into outer space[12] with the realization that Outer Space be utilised for states benefit notwithstanding 'the differences in the level of development hence leading and contributing to the advancement of understanding and cooperation among states and people;[13]Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space 1968[14] which sets out the legal framework for the provision of emergency assistance to astronauts.[15] It makes provisions as regards the immediate notification of the launching authority or public announcement regarding astronauts in distress as well as immediate assistance. The Agreement also covers the search and rescue operation and prompt return of the astronauts and recovery of space objects. The agreement deals with space objects likely damaged and or posing certain threats to cause damage in the course of their return to earth. The purport of the legal regime provided by the Agreement, however, is to provide for assistance-related obligations and a safe and expeditious return home of the space object and possible astronauts on board, not to deal with any potentially harmful aspects of such space

[10]American Foreign Relations, 'Outer Space-The Freedom of Space Doctrine' <htpps://www.americanforeignrelations.com/O-W/Outer-Space-The-freedom-of-space-doctrine.html#:~:text="Freedom%20of%20space"%20was%20extremely%20significant%20to%20those,permission%20of%20those%20nations%20that%20might%20be%20overflown> accessed on 4 November 2024

[11]"*Outer Space Treaty,* adopted by the General Assembly in its Resolution 2222 (Xxi)), opened for signature on 27 January 1967, entered into force on 10 October 1967, 98 ratifications and 27 signatures (as of 1 January 2008)." www.oosa.unvianna.org/oosa/spacelaw/outerspace.html> accessed on 5 November 2024

[12] Bakke Monika, *'Art for Plant's Sake?* Questioning Human Imperialism in the Age of Biotech' (2012) Parallax 18 (4) 9-25. <http://www.researchgate.net/publication/263523210_Art_for_Plants'_Sake_Questioning_Human_Imperialism_in_the_Age_of_Biotech> accessed 5 November 2024

[13] Preamble to the *'Outer Space Treaty'* <http://www.oosa.unvienna.org> accessed 5 November 2024

[14] "*Rescue Agreement*, adopted by the General Assembly in its Resolution 2345 (Xxii), opened for signature on 22 April 1968, entered into force on 3 December 1968, 90 ratifications, 24 signatures, and 1 acceptance of rights and obligations (as of 1 January 2008)" www.oosa.unvianna.org/oosa/spacelaw/outerspace.html> accessed 5 November 2024.

[15] See also Art. V, Outer Space Treaty 1967.

objects in their possible quality of space debris.[16]The purpose and essence of the Agreement is to call on states parties to render prompt assistance to astronauts in the event of emergencies and ensure the safety of astronauts and space objects;[17] Convention on Registration of Objects Launched into Outer Space 1975[18]often referred to as Registration Convention, is contributing immensely towards the preservation of outer space for peaceful purpose. According to Ijaiya,[19] the Convention has two essential functions. Firstly, that it is not possible to identify a spacecraft that has caused damage without a system of registration and secondly, that a well-ordered complete and informative system of registration would minimize the likelihood and even the suspicion of weapons of mass destruction being furtively put into orbit. The establishment of the Registration Convention for a large part was motivated by the desire to provide for means of identifying the launching state or states of a particular subject, in the event such space object would cause damage recoverable under the Liability Convention of 1972; Agreement Governing the Activities of States on the Moon and Other Celestial Bodies 1979.[20]The Moon Treaty, as it is commonly referred to as also applicable to Outer Space as well as other celestial bodies.[21] It is not applicable to the surface of the earth[22] and extra-terrestrial material that found its way back to earth by natural means.[23]And the Convention on International Liability for Damage Caused by Space Objects 1972,[24] main focus of this article, borne out of the acceptance of the inevitability

[16] Von der Dunk. F, 'Space Debris and the Law. Law, College of Space and Telecommunications Law Program' Faculty Publications. 3- 2001. University of Nebraska-Lincoln.<http://digitalcommons.unl.edu/spacelaw/4> accessed 5 November 2024.

[17] Preamble to the Rescue Agreement 1968.

[18] "Registration Convention", adopted by the General Assembly in its resolution 3235 (XXIX)), opened for signature on 14 January 1975, entered into force on 15 September 1976, 51 ratifications, 4 signatures, and 2 acceptances of rights and obligations (as of 1 January 2008)" www.oosa.unvianna.org/oosa/spacelaw/outerspace.html>accessed 5 November 2024.

[19] Ijaiya H, *"The Legal Regime Regulating The Environmental Aspect Of Outer Space. Seventh International Conference on Legal Regimes of Sea, Antarctica, Air and Space. 15-17* January 2010, New Delhi conference papers.

[20] "*Moon Agreement or Treaty"*, adopted by the General Assembly in its resolution 34/68, opened for signature on 18 December 1979, entered into force on 11 July 1984, 13 ratifications and 4 signatures (as of 1 January 2008)." <https://www.oosa.unvianna.org/oosa/spacelaw/outerspace.html>accessed 5 November 2024.

[21] Bohlmann Ulrike, 'The Need for a Legal Framework For Space Exploration' 'Studies in Space Policy Series-Human In Outer Space' Vol 1 (Springer, Vienna, 2009) Pg 182-195.

[22] See Art. L.

[23] Ibid.

[24] "*Liability Convention"*, adopted by the General Assembly in its Resolution 2777 (Xxvi)), opened for signature on 29 March 1972, entered into force on 1 September 1972, 86 ratifications, 24 signatures, and 3 acceptances of

of space accidents by the International community as damage by space objects is inevitable. The Convention observes that notwithstanding that precautionary measures might have been taken by a launching State, damage may still be caused and such calls for rules concerning responsibility for space accidents and prompt payment of compensation to be put in place.[25] International Organisations involved in outer space activities include the United Nations, the International Maritime Satellite Organisation (IMSO), International Telecommunication Unions (ITU) and the International Telecommunication Satellite Organisation (ITSO)[26]

The incident of Russia's Sputnik 4 (Space Satellite) which re-entered the earth in 1962 informed the need to set in motion a regime on international responsibility and liability for damage in respect of outer space activities. This is so when Russia denied that a fragment of the satellite did not belong to it in order to avoid liability under international law. The Russian Government's attitude and the need to curb future denial informed the UN Committee on Peaceful Uses of Outer Space (UNCOPOUS) to put in place the '1963 ***Declaration on Legal Principles Governing the Activities of State in the Exploration and Use of Outer Space,*** **'**which was subsequently modified as Outer Space Treaty 1967[27], to include the provision that states that launch or procure the launching of space object are 'internationally responsible for damage caused on earth.'[28]

No definition or description of damage is provided for in the whole of the provisions of the Outer Space Treaty. It also failed to describe what would amount to damage in the event of a specific happening but provided succinctly for a liability regime[29] which was subsequently *blown-up* or expanded by the provisions of the Convention on International Liability for Damage Caused by

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rights and obligations (as of 1 January 2008)" <https://www.oosa.unvianna.org/oosa/spacelaw/outerspace.html> accessed 5 November 2024.

[25] See Preamble.

[26] Others include the International Institute of Space Law (IISL) established in 1959, International Astronautical Federation (IAF) established in 1950 and the International Academy of Astronauts established in 1960.

[27] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the "Outer Space Treaty", adopted by the General Assembly in its resolution 2222 (XXI)), opened for signature on 27 January 1967, entered into force on 10 October 1967.

[28] Article XVIII (8). "Declaration on Legal Principles Governing the Activities of State in the Exploration and Use of Outer Space" 1280TH Planetary Meeting, UN General Assembly Resolution 1962 .18th Session, 13 December 1963 < accessed 13 October 2016.

[29] Outer Space Treaty 1967, Art. VII.

Space Objects 1972.[30] This Liability Convention defines 'damage' as regards Outer Space activities thus;

> The term 'damage' means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations[31]

Generally, claims can be seen as a legal assertion or demand taken by a person wanting compensation in form of payment or reimbursement for a loss under a contract, or injury due to negligence.[32] Well, this description of claim may not be suitable for claims for damages in respect of damage which is as a result of activities in space (damage caused by space object) as envisaged by the Liability Convention and the Outer Space Treaty, as '*…injury due to negligence'* may not be totally true in ascribing liability to a Defendant in the context of absolute liability[33] but may pass for claims arising from breach of contract on space activities.[34] It is observed that both Outer Space Treaty and Liability Convention failed to provide for the definition of claim, what constitute a claim and its proof. It, however, gives parties the opportunity to present a claim where such a party has suffered damage as described in the Convention.[35]

It is important to state at this point that there is a difference between a launching state and a state of registry.[36] While a launching state would be liable in the event of damage, a state of registry is only responsible for the registration of the space object and most importantly, to make sure that the activities of such registered space object conforms to the provisions of space laws.

[30] Herein referred to as the "Liability Convention 1972".
[31] Ibid, Art. I.
[32] The Law Dictionary, 'Free online legal dictionary' Black's Law Dictionary (2nd Ed) <https://thelawdictionary.org/claims/> accessed 16 September 2024.
[33] Liability Convention 1972, Art. II and IV (1)(a).
[34] Ibid, Art. III and IV (1) (b).
[35] See the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. UN General Assembly Resolution 60/147 2005.
[36] Registration Convention, Art, I (c).

Nature of Parties and Claims in Outer Space

Parties to Outer Space activity suits are the State, intergovernmental agency and natural or juridical persons (represented by a state). 'A State which suffers damage, or whose natural or juridical persons suffer damage, may present to a launching State a claim for compensation for such damage.'[37]Claims concerning states can be an inter-party or third party claim. State A can sue State B for injury sustained as a result of State B's Space activities as seen in ***Canada V. Russia*** **(**Cosmos 954 incident).[38]Cosmos 954 is a Soviet nuclear power Satellite launched in on the 18th September 1977. This Satellite showed signs of abnormal behavior and on the 23rd January 1978 at about 6:53 Eastern Standard Time, before the startled eyes of a few Northwest Territory residents, it re-entered the earth atmosphere to the north of the Queen Charlotte Islands and disintegrated. This caused radioactive debris to scatter over portions of Canadian territory, particularly along a strip of land starting near Great Slave Lake and continuing north eastward toward Baker Lakel and on the other side, the launching State for Space Object. And on the other side, the launching State for Space Object *A* can sue both the launching States for Space Object *B* and space object *C*.[39]

Just like an international intergovernmental organisation can incur liability, it can also be a Claimant in respect of damage suffered. Any claim made by any organisation arising out of the provision of the Liability Convention for compensation in respect of damage suffered by it and which a declaration has been made in accordance with the Convention should be presented by a member of the organisation which is also, of course, a party to the Convention.[40] Hence, Just like an International Inter-governmental Organisation can incur liability for damage caused jointly and severally, it can also present a claim where it is the Organisation that has suffered

[37] See Art VIII (I).

[38]Settlement of Claim between Canada and the Union of Soviet Socialist Republics for Damage Caused by Cosmos 954 (Released on April 2, 1981) <https://www.jaxa.jp/library/space_law/chapter_3/3-2-2-1_e.html> accessed 7 October 2024. Bryan Schwartz & Mark L.Berlin, After The Fall: Analysis of Canadian Legal Claims for Damage Caused by Cosmos 954 (1982) 27 McGill Law Journal, 678- 680.

[39] (a) If the damage has been caused to the third State on the surface of the earth or to aircraft in flight, their liability to the third State shall be absolute; (b) If the damage has been caused to a space object of the third State or to persons or property on board that space object elsewhere than on the surface of the earth, their liability to the third State shall be based on the fault of either of the first two States or on the fault of persons for whom either is responsible. See Art IV (1) (b).

[40] See Art XXII (4).

damage as a result of space activities. Where it suffered damage, 'a claim for compensation for such damage shall be presented by a State member of the organisation which is also a State Party to the Liability Convention.'[41]

An individual or Corporation are also given opportunity to lay claims for injuries sustained as a result of damage caused by space object. This right cannot be fulfilled personally as the injured individual private person or entity cannot lay claim personally but through his State of nationality.[42] However, where 'the State of nationality has not presented a claim, another State may, in respect of damage sustained in its territory by any natural or juridical person, present a claim to a launching State. If neither the State of nationality nor the State in whose territory the damage was sustained has presented a claim or notified its intention of presenting a claim, another State may, in respect of damage sustained by its permanent residents, present a claim to a launching State.'[43]

Position of private entity, is quite different. Unlike the State and an International Intergovernmental organisation, a private entity cannot present a claim directly, as with Customary International law generally, an individual is not seen as a subject of international law. The doctrine of diplomatic protection is retained as individual are only connected with the state through the concept of Nationality which could be acquired through different methods. Therefore a party that has suffered damage must be able to be represented by a State (whether of Nationality, State, in whose territory damage is suffered or another State that deems it fit) for the purpose of presenting the individual entity's claim.[44]

Claims Procedure under the Liability Convention

Time-Limit

The Liability Convention establishes a statute bar regime to the effect that a Claim for compensation cannot be brought after one year of the occurrence.

[41] Art XXII (4).

[42] Lawrence P.W, Substantive Bases for Recovery for Injuries Sustained by Private Individuals as a Result of Fallen Space Objects (1978) (6) (2) Journal of Space Law; 161-169. Julian H, Legal Basis for a National Space Legislation. (Kluwer Academic Publishers 2004) 69.

[43] See Art VII (2 & 3).

[44] Fabio T, Fundamentals of Space Law and Policy (Springer Science & Business Media 2013) 51.

> A claim for compensation for damage may be presented to a launching State not later than one year following the date of the occurrence of the damage or the identification of the launching State which is liable.[45]

This time-limit is, however, pardonable where a Claimant is not aware 'of the occurrence of the damage or has not been able to identify the launching State which is liable for the damage. Where such is the situation, the Claimant may present its claim within one year following the date on which it become aware of the aforementioned facts. This should not exceed one year following the date on which the State could reasonably be expected to have learned of the facts through the exercise of due diligence.'[46] This is a reflection of the Conventions motive in ensuring adequate, prompt and effective compensation regime, hence, the convention does not expect a Claimant to sleep over a claim thinking it can be presented at anytime. Again, even though the time-limit is extended, the provision still does not give room for a claimant to relax as suggested by the subjective test of 'reasonable' being put on the Claimant to exercise due diligence in observation and awareness.

In order to prevent being 'out of time' a Claimant is allowed to present its claim even where the severity of the damage is not fully ascertained. A Claimant is entitled, after becoming aware of the full extent of the damage, 'to revise the claim and submit additional documentation after the expiration of such time-limits until one year after the full extent of the damage is known.'[47] It is still possible that identifying a space fragment could seem difficult despite being registered at the national registry and with the UN secretary-general. Identifying a whole object would be simpler that just fragments. This was the situation with the US-Russia where some unidentified space object fragments were found in the United States territory. US communicated the presence of the

[45] See Art X (1).
[46] Ibid, (2).
[47] Ibid, (3).

fragment to the UN Secretary-general and the fact that it is yet to identify its origin and extent of impact or damage.[48]

Revising a claim after identification of the origin of space object and extent of damage may include the Claimant bringing in fresh claims, additional claims, increasing the amount of compensation payable under the claim or claiming other forms of reparation as it deems fit.

Presentation of Claim

The first step in the presentation of claim under the Convention is to seek remedy through diplomatic channel.

> A claim for compensation for damage shall be presented to a launching State through diplomatic channels. If a State does not maintain diplomatic relations with the launching State concerned, it may request another State to present its claim to that launching State or otherwise represent its interests under this Convention. It may also present its claim through the Secretary-General of the United Nations, provided the Claimant State and the launching State are both Members of the United Nations.[49]

This provision on negotiation is a 'classical rule of international law'[50] so that parties can sit and resolve issues of claims amicably through diplomatic avenue. This procedure, though envisages diplomatic relationship between parties, it still takes care of the situation where the Claimant and the launching State do not maintain diplomatic ties. Where parties do not have diplomatic relationship, the Convention provides for two possible way out that the claimant can present its claim, to wit; another state having diplomatic tie with the other state may, upon solicitation, present the claim to the state or represent its interest under the Convention as the case may be, or Secretary-General may present the claim on behalf of the Claimant and this is only allowed where both parties are members of the United Nations. One may wonder if the time limit would

[48] The fragments were later identified to belong to Russia. See UN Doc. (A/AC.105/87) & (A/AC.105/87, Add.I) September 1970.
[49] See Art. IX.
[50] Valerie Kayser, Launching Space Objects: Issues of Liability and Future Prospects" (Kluwer Academic Publishers 2004) 54.

not run out in the process of negotiating with the State interested in presenting such a claim as well as other expenses that may be incurred for such 'generosity' by the other State.[51]

Where the damage is caused by an International Intergovernmental Organisation, 'any claim for compensation in respect of such damage shall be first presented to the organization. It is only where the organisation has not paid, within a period of six months, any sum agreed or determined to be due as compensation for such damage, may the Claimant State invoke the liability of the members which are States Parties to this Convention for the payment of that sum.' And on the other hand, where it is the International Intergovernmental organization has suffered damage, 'any claim for compensation in respect of such damage shall be presented by a State member of the organisation which is a State Party to the Convention.'[52]

Seeking local remedy for damage is not a prerequisite for presentation of a claim for compensation under the Convention.[53] A Claimant can go ahead and present its case to the launching State for compensation under the Convention without first going to its national court or administrative tribunal or any other local means of remedying the wrong in the launching State and neither does a Claimant need a local permission or authorisation from the local means in order to so present its Claim. Also, a claimant is free to consider any local means to remedy the wrong it has suffered, however, doing that would preclude or prevent such a Claimant from presenting a claim in respect of the same damage under the Convention. According to Article XI (2) 'Nothing in this Convention shall prevent a State, or natural or juridical persons it might represent, from pursuing a claim in the courts or administrative tribunals or agencies of a launching State. A State shall not, however, be entitled to present a claim under this Convention in respect of the *same damage* for which a claim is being pursued in the courts or administrative tribunals or agencies of a launching State or under another international agreement which is binding on the States concerned.'

[51] Art. IX.

[52] Art. XXII (1-5).

[53] Art. XI "Presentation of a claim to a launching State for compensation for damage under this Convention shall not require the prior exhaustion of any local remedies which may be available to a claimant State or to natural or juridical persons it represents".

As logical as this provision seems, preventing multiplicity of claims, it still opens up a situation where a Claimant can pursue its claim under the Convention on damage, subject of claim, not part of its claim in the national court of the launching state but both damage, subject of the claims, arising from the same occurrence.

The operating word in the provision '*same damage*' would allow a Claimant to split its claims, each on different damage, but as a result of the same space activity mishap. For example, assuming the US space satellite fall and exploded on Russia's territory as a result of which properties were destroyed, people injured physically while some suffered psychological trauma either from the injury, losing a loved one or from witnessing the horrific event. Russia can seek or pursue a claim in respect of damage to its people on both direct and indirect damage such as loss of earnings and interest in US court or administrative tribunal or agency and at the same time pursue a claim under the Convention for direct damage (not part of claims in the court) from the same mishap under the provision of Article XI(2). Claims for damage which happened as result of space activities like the *Cuban Cash Cow Claims* (supra), *Canada V. Russia* (supra), *Skylab-1*(Supra) were resolved through diplomatic negotiation

The Liability Convention provides for the establishment of 'a Claims Commission at the request of either party (Claimant or the Launching State) if no settlement of a claim is arrived at through diplomatic negotiations as provided for in Article IX, within one year from the date on which the Claimant State notifies the launching State that it has submitted the documentation of its claim.'[54]

A Claims Commission of three members is to be set up by the parties. The parties are required to appoint the chairman of the Commission while the other two members are to be appointed by the parties respectively. Once the request for the establishment is made, such appointment is to be made not later than two months of the request.[55]

Where no decision is arrived at on the appointment of within four months of the request for the establishment of the commission, the Secretary-General may on request of either party makes such appointment within another two months upon the request. Where a parties fails or refuses to appoint its member as provided in Article XV, the other party is at liberty to request the so

[54] Art. XIV.
[55] Art. XV.

appointed chairman to proceed with the claims as a sole-member of the claims commission[56] and in the event of any vacancy in the composition of the membership of the commission, the mode of appointment of the new member(s) would be as the same with the initial appointment.[57]

"No increase in the membership of the Claims Commission shall take place by reason of two or more claimant States or launching States being joined in any one proceeding before the Commission. The Claimant States so joined shall collectively appoint one member of the Commission in the same manner and subject to the same conditions as would be the case for a single claimant State. When two or more launching States are so joined, they shall collectively appoint one member of the Commission in the same way. If the claimant States or the launching states do not make the appointment within the stipulated period, the Chairman shall constitute a single-member Commission."[58]

The Convention allows the Claims Commission to determine its procedure, place(s) where it shall sit and all other administrative matters while expenses in regard to the commission shall be borne by both parties unless the Commission determines otherwise.'[59] Hence, there is no formal and specific procedure for a Claims Commission. The implication is the absence of precedent, as there could be as many procedures as there are cases. The decisions and award of the Commission is determined by the majority vote except where its sit as a single-member commission.[60] While acting 'in accordance with international law, principles of justice and equity, the Commission has the mandate of deciding the merit of the claim for compensation and thereupon determines the amount of compensation to be paid.'[61]

Article XIX makes provision on the status of the award to be final and *binding* on the condition that such *bindingness* and finality of the award and decision is dependent on the wish and agreement of both parties. Where the parties agree otherwise or disagree on the binding effect of such award, the Commission's award is deemed final and *recommendatory* and the parties are enjoined to consider it in good faith. This article views this provision as good as not made, as it

[56] Art. XVI.
[57] Art. XVI(2).
[58] Art. XVII.
[59] Art. XX.
[60] Art. XVI (3,4,5).
[61] Art. XVIII & XIX.

still made negotiation through diplomatic channel viable. Why have a claims commission, whose award may likely be disregarded by making the *bindingness* of the award subject to the consent of both parties, otherwise the Commission's award is merely recommendatory to be considered in good faith.[62]

The award or decision[63] of the commission which is required to be made public must be made within a year from the setting up of the Commission. No extension of this period may be granted except it is found to be necessary.[64]

Though the Convention provides that States are not prevented from entering into further bilateral or multilateral agreement to compliments its provisions, it however omitted to provide or suggest another way out for disputant where diplomatic negotiation failed which led to the establishment of a Claims commission whose decision is also not agreed to as binding by the parties.

Situation of Individual Victims under the Convention

The question which the Convention failed to provide an answer to is; what happens in the event that the individual affected dies, will his claim die with him? What if the injury he sustained is from a space object belonging to a private entity of a State who is not a party to the Convention? The dicey issue as it concerns individual whether private or juridical is this; the Convention has been able to borrow from the customary international law so that a state responsible, that is State of registration in most cases, or state in whose territory, damage is suffered or another state that deems it fit may present a claim on behalf of the individual. Now what if the table is turned and the Individual is not the claimant but the defendant knowing the assumption that space launch is deemed to be conducted by entities with enough financial resources like a State or international inter-governmental organisation. The quick answer that may come to mind is that the claim would be presented to the state of registry. Where this is the case, then the thin line between responsibility and liability arose. Where would the sum for compensation come from or rather who pays the compensation? The Convention has totally failed to consider this scenario. Efforts

[62] Armel K. "*Space Law: Current Problems and Perspectives for Future Regulation"* in Marietta B & Kai-Uwe S (eds), Essential Air and Space Law Series (2) (Eleven International Publishing 2005) 117.

[63] "Certified copies of the award is to be delivered to each parties and to the Secretary-General of the United Nations and reasons for reaching such award must be given by the Commission." Art, XIX (4 & 2).

[64] Art. XIX.

to offer a solution to this could be that the state of registry would be responsible for the payment. This is because it must have collected monies for licenses, permit, registration and some other space launch fees and, as such, has assumed responsibility for the payment of compensation in respect of damage as a result of the registered space object. Also, the state of registry must have put some domestic measures into place such as insurance and indemnity policies in cases of damage.[65] For example, where a launch is been undertaken by Corporate entities, the United States through NASA 'requires every non-united states government user of its launch services to provide a third party liability policy covering each launch and naming as additional named insured to U.S Government, its contractors and subcontractors.'[66]

National of a launching state and a 'foreign nationals, during such time as they are participating in the operation of a space object from the time of its launching or at any stage thereafter until its descent, or during such time as they are in the immediate vicinity of a planned launching or recovery area as the result of an invitation by that launching State, are precluded from filing a claim under the Convention.[67] Foreign nationals under this provision will include engineers, astronauts or any other foreigner participating whether in launching, fixing, operating the space object by invitation of the launching state.[68]

[65]See Registration Convention on the responsibility of a State of Registry.

[66]S308. (a) The Administration is authorized on such terms and to the extent it may deem appropriate to provide liability insurance for any user of a space vehicle to compensate all or a portion of claims by third parties for death, bodily injury, or loss of or damage to property resulting from activities carried on in connection with the launch, operations or recovery of the space vehicle. Appropriations available to the Administration may be used to acquire such insurance, but such appropriations shall be reimbursed to the maximum extent practicable by the users under reimbursement policies established pursuant to S 203(c) of this Act. (b) Under such regulations in conformity with this section as the Administrator shall prescribe taking into account the availability, cost and terms of liability insurance, any agreement between the Administration and a user of a space vehicle may provide that the United States will indemnify the user against claims (including reasonable expenses of litigation or settlement) by third parties for death, bodily injury, or loss of or damage to property resulting from activities carried on in connection with the launch, operations or recovery of the space vehicle, but only to the extent that such claims are not compensated by liability insurance of the user: Provided, That such indemnification may be limited to claims resulting from other than the actual negligence or willful misconduct of the user. Carl Q C, *'International Liability for Damage Caused by Space Objects*(1980) (74) 346-371. American Journal of International Law. 348.

[67]Liability Convention 1972, Art. VII.

[68] Ibid.

A further rethink of this provision may occasion a probe such as: what would happen to a national of a launching state who suffered damage as a result of its state space activity while he is in another state for, maybe, a short visit? Again would the state of the foreign nationals fold their arms and do nothing where the right to claim is taken away from its national?

Again, any claim arising from the Outer Space Treaty and the Liability Convention would be for the damage[69] suffered as a result of a launching State Space Activities, that is, 'damage resulting from space object fallout to earth surface, aircraft in flight or harm caused elsewhere than the surface of the earth to a space object of one launching state or to persons or property on board such a space object by a space object of another launching state.'

Compensation

Usbi jus ubiremedium, a cardinal principle of law, dictates that where a legal right has been violated, there must also be a legal remedy or action at law.[70] This principle is embodied in the Liability Convention which makes provision for compensation for victims of damage. The term 'compensation' can be put down simply as payment of monetary damages for breach of law and for the purpose of this article, for a breach of international space law which often stem from State responsibility.[71] There are numerous international agreements, cases, and states practice on international responsibility and subsequent compensation. For example, the Draft Articles of State Responsibility provides that 'the responsible state is under an obligation to make full reparation for the injury caused by the International wrongful act.'[72]The UN Declaration on Conference on the Human Environment is to the effect that 'the States have, in accordance with the Charter of the United Nations and the principles of international, sovereign right to exploit their own resources pursuant to their own environmental policies, the responsibility to ensure

[69]See Art, IV (1) (b).

[70] Dinah Shelton, Remedies in International Human Rights Law (Oxford University Press 1999).

[71] Arzt D.E, '*The Right to Compensation: Basic Principles Under International Law. Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem. Palestinian Refugee*' 1999 PRRN <https://prrn.mcgill.ca/research/papers/artz4.htm> accessed 3 October. 2024.

[72] Art 31. See also Article 38 Second Protocol to the Hague Convention for the Protection of Cultural Property, Article 51First Geneva Convention, Article 52 Second Geneva Convention, Article 131 Third Geneva Convention and Art 148 Fourth Geneva Convention.

that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.'[73]

The application of the foregoing principle can be found in cases like the *Corfu Channel (United Kingdom) V. Albani (1949)* where the ICJ ordered Albani to pay the compensation claim of £843,947 to the United Kingdom after the court had held in 1948 that Albani is responsible under international law for the explosions that happened on 22nd Oct, 1946, in Albani waters for the loss of human life and damage suffered by the United Kingdom.[74] Also in *Ahmadou Sadio Diallo (Republic of Guinea) V. Democratic Republic of Congo,* where the court held that 'the Democratic Republic of Congo was under obligation to make appropriate reparation, in the form of compensation to the Republic of Guinea for the injurious consequences of the violations of international obligations (under the African Charter on Human and Peoples Rights and the International Covenant on Civil and Political Rights)' and thereafter awarded the sum of $85,000 for non-material damage and $10,000 for material damage suffered by the complainant's national[75](A case of diplomatic protection). The International Tribunal for the Law of the Sea (ITLOS) held the Republic of Guinea responsible for the violation of the rights of Saint Vincent and the Grenadines under UNCLOS[76] by stopping and arresting MV Siaga (ship) and detaining its crew and therefore awarded compensation against Guinea.[77] In *Pulp Mills Case (Argentina V. Uruguay)*, the ICJ held that:

> a state is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory or in any area under its jurisdiction, causing significant damage to the environment of another state. This court has

[73] Principle 21, Stockholm 1972.

[74] *Corfu Channel* case (Assessment of amount of compensation). Judgment of 15 December 1949 <https://worldcourts.com/icj/eng/decisions/1949.12.15_corfu.htm#:~:text=The%20Court%20considers%20the%20true%20measure%20of%20compensation> accessed 25 September 2024.

[75] Re Compensation owed by the Democratic Republic of Congo to the Republic of Guinea. Judgment of 19 June 2012. ICJ Reports. 24 <https://icj-cij.org/case/103#:~:text=Democratic%20Republic%20of%20the%20Congo)%20%20(Compensation%20owed> accessed 25 September 2024.

[76] Article 56(2) & 58 United Nations Convention on the Law of the Sea 1982.

[77] *MV Siaga (Saint Vincent and the Grenadines V. Guinea)* case No. 2. Judgment of 1 July 1999 Award of $2,123,357 as compensation for the arrest and detention of vessel and crew in violation of the United Nations Convention on the Law of the Sea <https://itlos.org/en/main/cases/list-of-cases/case-no-1/#:~:text=The%20Application%20dealt%20with%20a%20dispute%20concerning%20the> accessed 30 August 2024.

> established that this obligation is now part of the corpus of international law relating to the environment.[78]

The customary international law on remedying international wrong is also upheld in the outer space regimes. The Outer Space Treaty makes States involved in outer space activities to which such activities have occasioned damage to another state, its nationals whether natural or juridical to be internationally liable for the damage.[79] However, the Liability Convention expands the provision by giving a succinct procedure for claiming compensation.

Even though none of the Agreements define or describe compensation, the provisions of the Liability Convention suggest what may be described as compensable damage for claimant to identify his interest and where he finds the provision wanting he can resort to other international agreements for compensation claim.[80] Compensable damage under the convention are (a) loss of life (b) personal Injury (c) Health Impairment (d) loss or damage to property caused directly by space object only.[81]

The restrictive attitude of the Convention on damage to which compensation may be sought has led many writers, including this article, to assert that the Convention does not envisage compensation on indirect damage. According to Diederiks-Verschoor and Kopal,[82]'reading the article, it is clear that only direct damage and not indirect damage, is contemplated by the convention'[83]One may state that the form of reparation under this Convention is a further testimony to the need for expansion of some of its provisions to accommodate salient issues.

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[78]"*Pulp Mills on the River Uruguay (Argentina V. Uruguay)"* 2010 I.C.J Judgement of 20 April 2010 Gen. List No 135; Provisional Measures, Order of 13 July 2006. ICJ Reports 2006, 113, J.

[79]See Article VII. "*States Parties to the Treaty shall pursue studies of outer space, including the moon and other celestial bodies, and conduct exploration of them so as to avoid their harmful contamination and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter and, where necessary, shall adopt appropriate measures for this purpose. If a State Party to the Treaty has reason to believe that an activity or experiment planned by it or its nationals in outer space, including the moon and other celestial bodies, would cause potentially harmful interference with activities of other States Parties in the peaceful exploration and use of outer space, including the moon and other celestial bodies, it shall undertake appropriate international consultations before proceeding with any such activity or experiment*." Art. IX.

[80] Liability Convention 1972, Art. XXII.

[81] Art, 1 (a).

[82]Isabella Henrietta Diederiks-Verschoor and Vladimir Kopal authors of 'An Introduction To Space Law' (Kluwer Law International 2008)

[83]Ibid. 38-39.

Compensation is the only form of reparation contemplated under this convention coupled with the few situations of compensable damage. What will be the situation where the compensation granted is not adequate?

The list of forms of damage to which a claim for compensation may be brought are more comprehensive in some other international law on liability like the Convention on Supplementary Compensation for Nuclear Damage constituting an integral part of the world nuclear liability regime, provides inter alia for '(i) loss of life and injury to persons, (ii) loss of or damage to property, (iii) economic loss arising from loss or damage as in (i) and (ii) (iv) costs of measures of reinstatement of impaired environment (v) loss of income deriving from an economic interest in any use or enjoyment of the environment (vi) cost of preventive measures and further loss or damage caused by such measures (vii) any other economic loss other than any caused by the impairment of the environment.'[84] Also, the opinion expressed in *Lusitania case*[85] supports other kinds of damage thus 'that one injured is under International law entitled to be compensated for an injury inflicted resulting in mental suffering, injury to his feelings, humiliation, shame, degradation, loss of social position or injury to his credit or to his reputation, there can be no doubt, and such compensation should be commensurate to the injury. Such damage is very real and the mere fact that they are difficult to measure or estimate by money standards makes them nonetheless real and affords no reason why the injured person should not be compensated therefore as compensatory damages, but not as a penalty…'[86]

The compensable damage as provided in the liability convention though restrictive in text has been given wide possibility in practice as observed in the *Canada V. Russia (Cosmos 954 Incident) supra*[87] wherein Canada was able to claim compensation for clean-up operation, mitigation against radioactive contamination that wasn't even present in the environment, trespass for the mere fact of entry of the satellite into the territory and psychological harm.

[84] Convention on Supplementary Compensation for Nuclear Damage 1997, Art ll.

[85] Opinion in the Lusitania cases. November 1, 1923; 17-32. < https://www.worldcourts.com/iatc/eng/decisions/1923.11.01_USA_v_Germany_3.pdf#:~:text=PARKER,%20Umpire,%20delivered%20the%20opinion%20of%20the%20Commission,> accessed 28 September 2024.

[86] Garcia-Amador F.V, Louis B.S & Baxter R.R, Recent Codification of the Law of State Responsibility for Injuries to Aliens (Oceana Publications INC. New York 1974) 116.

[87] Settlement of Claim between Canada and the Union of Soviet Socialist Republics for Damage Caused by Cosmos 954 (Released on April 2, 1981).

Almost none of these claims were material damage. Nonetheless, Canada was able to secure the sum of $3miiloin from Russia after lengthy negotiation as provided for in the Liability Convention.[88] The compensable damage here is more of the expenses in the clean-up operation undertaken by the by Canada after the Russian Nuclear powered satellite disintegrated into Canada territory.[89] Canada's success has in fact laid precedent for future claims under the space regime that non-material claims could also arise under the Convention such as interest or loss of income as a result damage to property and a Claimant may not necessarily rely on other international law and cases.

It suffices to assert that this principle go hand in hand with other international regimes on state responsibility as seen in the provision of Article1-3 & 31 (2) that injury includes 'any damage, whether material or moral caused by the internationally wrongful act'[90] and the *Trail Smelter case*[91]involving transnational pollution and the court upheld the principle that no state should destroy or unnecessarily interfere with the environment of another.[92] This principle has been emphasised in a number of cases including *Corfu Channel case (supra), the Nuclear Test Cases,*[93] *Geogia V. Tennessee Copper Co. & Ducktown Sulphur, Copper and Iron Co.*[94] *Spain V, France*[95] *and Chorzow Factory case.*[96]

[88] Ibid.

[89] Atsuyo Ito, Legal Aspects of Satellite Remote Sensing (Martinus Nijhoff Publishers 2011) 73-74, 269

[90] Draft Articles on State Responsibility 2001.

[91]*United State V. Canada Arbitration* 3 R. International Arbitration Awards 1905 (1938, 1945).

[92]Bryan Schwartz & Mark L.Berlin, After The Fall: Analysis of Canadian Legal Claims for Damage Caused by Cosmos 954(1982).

[93]*Australia V. France* (1973) International Court of Justice Report, 99 <https://www.icj-cij.org /case/58/summaries#:~:text=INTERNATIONAL%20COURT%20OF%20JUSTICE.%20Nuclear%20Tests%20(Australia%20v.> accessed 28 September 2024and *New Zealand V. France* (1974) International Court of Justice Report, 253 & 457 < https://www.worldcourts.com /icj/eng/decisions/1974.12.20_nuclear_tests2.htm> accessed 28 September 2024.

[94](1907) 206 U.S 230.

[95]*Lake Lanoux (Spain V. France) Arbitration*, (1957) 12 Report of International Arbitration Award, XII 281-317.<https://legal.un.org/riaa/cases/vol_XII/281317_Lanoux.pdf#:~:text=Par%20un%20compromis%20signé%20à%20Madrid%20le%2019> accessed 28 September 2024.

[96]*Chorzow Factory (Germany V. Poland)* (1928) P.C.I.J Ser. A, No. 17 (Sept. 13). File No.E.c.XIII. Docket No. XIV:I.

Measuring Compensation in Outer Space Regimes

The compensation regime established by the Liability Convention did not create a fixed compensation for claimant except that it created types of damage that may be occasioned to warrant claim for compensation. According to the Convention, the Claims Commission to which dispute may be referred is given the discretion to determine the appropriate amount payable as compensation and it envisages a 'prompt payment under the terms of the Convention of a full and equitable measure of compensation to victims of damage[97]. Awarding compensation under the Convention is to be determined in accordance with international law and the principles of justice and equity'[98]

It is observed, the first yard stick in measuring damages is to resort to the principle of international law, this is so even where taking the principle into account would lead to awarding lesser amount to the claimant as long as the principle of international law is considered; this is where justice and equity would be well utilised.[99] Under the Convention, a Claimant may not be able to recover full cost where such is against international law but the application of the principles of justice and equity would be used in mitigating any rigidity which may be occasioned from the application of international law as equity preaches conscience. This would enable the tribunal to use their discretion to remedy the wrong suffered appropriately fitting the particular situation and circumstance.[100] According to McClintock 'in this general juristic sense, equity means the power to meet the moral standards of justice in a particular case by a tribunal having the discretion to mitigate the rigidity of the application of strict rules of law so as to adapt relief to the circumstances of the particular case'[101] Hence, the tribunal upon a claim can decide to award to a Claimant compensation equaling the market value or owner's use value of his property as the case may be.

[97] Liability Convention 1972, Art. XII.

[98] Ibid.

[99] This is due to the huge financial commitment involved in space launch and the disastrous effect of a fallout.

[100] Pablo Mendes De Leon' Settlement of Dispute in Air and Space Law' in 'The Use of Airspace and Outer Space for all Mankind in the 21st Century [Proceedings of the International Conference on Air Transport and Space Application in a New World held in Tokyo from 2-5 (Kluwer Law International June 1993) 337.

[101] McClintock, McClintock on Equity 1 (2 ed 1948) in Ronald E.A 'Measuring Damages under the Convention On International Liability for Damage Caused by Space Objects' (1978) 6 (2) *Journal of Space Law*. 153.

The second yard stick is the concept of restoration which according to the convention 'in order to provide such *reparation* in respect of the damage as will restore the person, natural or juridical, State or international organisation on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred.'[102] Again this is in the spirit of customary international law to the effect that a victim be compensated enough to *status quo ante*, as though nothing had happened. In other words, the responsible state is expected to clear up the consequences of the wrongful doing and restore the situation which would have existed if the mishaphad not occurred (*restitution in integrum*).This would include cost of restoring the properties not only directly affected but that which got destroyed as a result of actions taken by the Claimant on mitigation, control, repair or restoration of the damage. An extension of the principle is found in Article 34[103]which provides for:

> Full reparation for injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provision of chapter

This provision reaffirms the forms which reparation may take, that is, the appropriate court or tribunal may order for restitution or compensation or satisfaction or a combination of the forms of reparation as the case may be to remedy the wrong complained. Restitution would, of course, take the form of re-establishment of the situation, be it rebuilding, reconstruction, or release of detainees as in ***Saint Vincent and the Grenadines V. Guinea*.**[104] Thus, 'a state responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution is not materially impossible and does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.'[105]

[102] Liability Convention 1972, Art. XII.
[103] Article of State Responsibility dealing with forms of reparation, Chap II
[104] See the award of the International Tribunal on the Law of the Sea in *MV Siaga, ITLOS case No 2 1999 and Panama V. France (the Camouco Case) 2000 Case No. 5* https://www.worldcourts.com/itlos/eng/decisions/2000.02.07_Panama_v_France.pdf#:~:text=(PANAMA%20v.%20FRANCE)%20APPLICATION%20FOR%20PROMPT%20RELEASE.%20JUDGMENT..
[105] Liability Convention 1972 Art 35.

The *Chorzow Factory case (supra)*[106] is a typical example of the application of two forms of reparation (restitution and compensation) by the Permanent Court of International Justice. This is because, often time, mere restitution or re-establishment may not be adequate as other incidental damage may have been incurred as a result of the loss of property which could be economic loss or indirect damage as the case may be or where restitution could not be effected.[107]The 'State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, where only restitution is not adequate.' The compensation shall cover any financially assessable damage including loss of profits insofar as it is established. Unlike restitution, this is in form of monetary payment to the victim of the damage (State, natural or juridical persons) which payment, must be commensurate with the actual damage. This dictates that an award for compensation is on a payment that has been assessed with the damage. Hence, a Claimant may not be able to apply for a sum of money over and above the actual worth of the damage as compensation. This was what played out in *Lusitania* case (supra) where the payment was described as a judicially ascertained *compensation* for the wrong. The remedy should be proportionate with the loss, so that the injured party may be made whole[108] and all he suffered remedied while not serving as a punitive measures.[109] Majority of the outer space related cases on damage as a result of fallout always end in the payment of compensation as seen in the Skylab 1 *(Australia V. United States) (supra)* and *Cosmos 954 (supra)* where a full payment of the sum of $ 6 million was paid to the government of Canada. Although Canada spent close to $14 million in its clean-up of debris and radioactive materials and other expenses, it only filed for a claim of $ 6 million. This payment is in tandem with the international law standard of compensation which is provided to be full and adequate as enshrined in the Liability Convention

[106] Publications of the Permanent Court of Justice Series A-No.17, Collection of Judgments (A.W Sijthoff's Publishing Company, Leyden, 1928). The Factory At Chorzow (Claim for Indemnity) (The Merit) Germany v. Poland 1928 Docket XIV: I.<http://worldcourts.com/pcij/eng/decisions/1928.09.13_chorzow1.htm>accessed 12 August 2024

[107] Ibid 'the responsible State was under the obligation to restore the undertaking and, if this be not possible, to pay its value at the time of the indemnification, which value is designed to take the place of restitution which has become impossible".

[108] *Lusitania Case (Supra), Judgment of November 1923, Report of Arbitral cases Vol II.*

[109] Octavio Amezcua Noriega, 'Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections. Transnational Justice Network. 2011 University of Essex. ETJN, Reparation Unit. Briefing Paper No. 1.

which requires 'the prompt payment under the terms of the Convention of a full and equitable measure of compensation to victims of such damage.'[110]

Whether *only* satisfaction as a form of reparation in space-related damage would be sufficient is a food for thought, owing to the immense destruction space objects fallout could create. Article 37 provides that 'the State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation. Satisfaction may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.' While restitution and compensation can be adequate reparation severally, satisfaction alone, according to this article, cannot be adequate reparation in where there is a claim under the Convention except to serve as *sui generis*. Except for where there is no actual damage and all that the Claimant based its claim on is 'trespass', for the illegal entry of space object[111] or particle into its territory which is not envisaged by the Liability Convention.[112] Maybe awarded jointly with one or the two other forms of reparation but not singly. Evidently, Satisfaction can be an adequate form of reparation in some other cases like the *Nuclear Test Cases (supra)* where the case was not concluded on the merit but on the French's promise to New Zealand that it would put a halt to the further conduct of the atmospheric testing.[113] and the situation of US-China in 2001 where the United States had to apologise for its intrusion when its military aircraft landed in Huinan, China without any prior authorization.[114]

Again, compensation under the convention is just for direct damage caused by space object. It is further observed that the only form of remedy available to a Claimant under the Liability

[110] See the preamble to the Convention.

[111] OlatinwoKhafayatYetunde: Ex-Raying the Freedom of Passage of Spacecraft through the Airspace of a Foreign State. 2017 (11) Journal of the National University of Advanced Legal Studies, 109. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nualsj11&div=9&id=&page> accessed 1 October 2024.

[112] Ibid. COSMOS 954 (Supra). Canada's claim of trespass on the presence of Cosmos 954 in it territory was not considered in the negotiation between it and Russia.

[113] *New Zealand v. France*, 1973 I.C.J. Pleadings, vol. II, (Nuclear Tests) 3, 8 (Application dated 9 May 1973). See also Australia v. France, 1974 I.C.J. 372, 388 (Judgment of 20 December 1974) in Bryan Schwartz & Mark L.Berlin, After The Fall: Analysis of Canadian Legal Claims for Damage Caused by Cosmos 954 (1982) 683

[114] Boleslaw Adam Boleslaw, International Law: A Dictionary. Dictionaries of International Law, No. 2 (Scarecrow Press Inc 2005) 111.

Convention is compensation. The Convention does not provide for other forms of remedy such as restitution and satisfaction even though, as observed in the cases analysed, that restitution can be a good remedy in claims under the Convention, more particularly, where mere compensation will not be adequate. Though most of the cases cited are not in outer space activities, it shows that other forms of reparation can be effective in space-related claims and it would, therefore, be wise where these forms of reparation such as restitution, more especially, is considered under the Liability Convention.

Conclusion and Way Forward

It is observed that the Liability Convention does not contemplate indirect and consequential damage as a compensable damage, subject of a claim for compensation under the Convention. One of the reasons averred by Canada in their claims is that the presence of Radioactive contamination caused by Cosmos 954 amounted to devaluation of the Canadian Territory and that such presence has also caused anxiety to its people and the governments of its nation, hence, the Canadian population are subjected to mental stress and anxiety generated by fear of the debris and this is a cause of injury to them.[115] This is a form of consequential damage not contemplated under the Convention. A person could suffer mental stress just by being informed of the presence of or an impending fall-out of a space object even if such fall-out was averted. The provision is not wide enough to accommodate such claims but as seen, it is very possible from Canada's situation

A state may present its claim directly, or upon request, through the UN Secretary-General as long as both the Claimant and the Defendant are members of United Nations,[116]to another state where it does not maintain diplomatic ties with the state concerned with the launch or otherwise represent its interest as enshrined in the Convention. The position of a claim of an individual whose death is as a result of damage as a result of space object is also not provided for. The cause of damage, space object, is limited in scope as space debris is not considered as a source of damage.

[115] Ibid.
[116] Liability Convention 1972, Art. IX.

It is further seen that compensation is the only form of reparation considered under the Convention and the effect of the decision of a Claims Commission under the Convention on dispute of damage depends on the parties, that is, the parties can choose to be bound by the decision or not. This means that a victim, who has been awarded compensation by the commission, may be paid or not.

The lack of explicit procedure for claims commission may also prevent precedent as each Claims Commission may adopt procedure of its choice, the time limit for the presentation of claim could also prevent a claimant bringing his/her or claim outside the time-limit of one-year, where the damage is identified after a year of the occurrence.

Finally, the Liability Convention fails to make provision for execution of the award (which is only binding at the instance of the disputants) of the claims commission even though it preaches prompt payment of compensation.

AN APPRAISAL OF LEGAL AND POLICY FRAMEWORK ON CONSERVATION OF BIODIVERSITY IN NIGERIA: CHALLENGES AND WAY FORWARD

Ganiyu Yahaya*

Abstract:

Biodiversity, a standout array of life formed on earth. Hence, it requires adequate conservation. Given Nigeria's rich natural resources and diverse ecosystems, biodiversity conservation is a critical issue in Nigeria. This paper examines the relevant extant laws and policies regulating biodiversity conservation in Nigeria through doctrinal methods of legal research, which include statutes, case laws, relevant textbooks and articles, and legal commentaries. It highlights and explains the gaps and challenges that hinder effective implementation and enforcement. It, also, explores the roles of stakeholders, including government agencies, non-governmental organizations, and local communities, in biodiversity conservation efforts. The study revealed that the extant legal framework to conserve biodiversity in Nigeria seems to be weak due to one impediment or another that poses as challenges. In conclusion, this paper recommends strengthening enforcement mechanisms and increasing collaboration among stakeholders and local community participation in conservation efforts to improve biodiversity conservation in Nigeria.

Keywords: *Biodiversity, Conservation, Legal Framework, Policy Framework, Challenges, and Way Forward.*

Introduction

Biodiversity is the concept of diversity in all life forms. The concept is a global environmental problem that attracts great attention from everyone, as the rate of species extinction has increased in the last few years. Biodiversity refers to the variety of life forms on Earth, including flora, fauna, and microorganisms, as well as the ecosystems in which they co-exist.[1] The impacts of biodiversity are many; because they cause significant direct or indirect impacts on most, if not

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[1]E. O. Wilson, *The Diversity of Life* (Harvard University Press 2018).

all, ecosystem processes.[2] The concept encompasses the vast array of living species, their genetic differences, and the complex ecosystems they form and inhabit. Biodiversity is essential for ecosystem function and human well-being.[3] Hence, a need to conserve biodiversity is inevitable.

However, conservation of biodiversity is essential for maintaining the country's ecological balance, supporting sustainable development, and preserving the cultural heritage of its diverse communities. Climate change is another significant threat to biodiversity in Nigeria. The Intergovernmental Panel on Climate Change (IPCC) predicts that rising temperatures and changing rainfall patterns will have a profound impact on Nigeria's ecosystems, leading to shifts in species distributions and increased risk of extinction. According to a study by Okeke et al.,[4] Nigeria has lost over 50% of its forest cover in the past few decades, primarily due to logging, agriculture, and urbanization. This loss of habitat has led to a decline in biodiversity, with many fauna and flora species facing extinction. On the same vein, the Nigerian Conservation Foundation (NCF)[5] reports that over 1,000 flora species and 300 fauna species are currently at risk of extinction in Nigeria. Thus, to this end, conservation of biodiversity in Nigeria is a critical issue that is governed by both judicial and statutory provisions.[6]

The Nigerian Constitution recognizes the importance of biodiversity conservation. Accordingly, section 20 of the Constitution states that the State shall protect and improve the environment and safeguard the water, air, land, forest, and wildlife of Nigeria. This constitutional provision is the background for the protection of biodiversity in the Nigeria and provides a legal basis for the development of policies, laws and regulations to conserve natural resources.

In alignment with the constitutional provisions, Nigeria has enacted workable laws and regulations to protect biodiversity. For instance; the Endangered Species (Control of International Trade and Traffic) Act of 1985, which prohibits the trade and trafficking of endangered species and their products. This law aims to prevent the illegal exploitation of

[2] Art. 2 Covention on Biological Diversity (CBD), 1992.
[3] Center for Sustainable Systems, University of Michigan. 2023. "Biodiversity Factsheet." Pub. No. CSS09-08.
[4] C. l. Okeke, 'Community-Based Conservation in Nigeria: Challenges and Opportunities' [2020] (25) (4) *Conservation Biology* 789-797.
[5] Nigerian Conservation Foundation. 'Threats to biodiversity in Nigeria' (2020).https://www.ncfnigeria.org/threats-to-biodiversity-in-nigeria. Accessed 10 May 2024.
[6] J. O. Ogunji& J. O. Arowosegbe, 'Legal and Institutional Framework for the Conservation of Biodiversity in Nigeria' [2011] (2) *Journal of Law, Policy and Globalization* 24-35.

wildlife for assurances of their survivals; the National Parks Service (NPS) Act of 1991 establishes a framework for the management and conservation of national parks across Nigeria. The NPS Act regulates such activities like hunting, logging, and mining, to ensure the preservation of biodiversity and the sustainability of natural resources.

However, the extant legal framework to conserve biodiversity in Nigeria seems to be weak due to one impediment or another that poses as challenges. In a bid to address these challenges, this paper aims to critically appraise the extant legal framework, identify the challenges facing its implementation, and propose recommendations for the way forward.

Conceptualizing Biodiversity Conservation

Biodiversity conservation is a critical issue in today's world, as the loss of species and ecosystems continues at an alarming rate.[7] The concept of encompasses the protection and management of the variety of life forms on earth towards sustainable development as enshrined in the Rio de Janeiro's Sustainable Development[8], including plants, animals, and microorganisms, as well as the ecosystems in which. This concept is based on the understanding that biodiversity is crucial for the ecosystems' effective functionality, which provides a vital human well-being in return.

In the study by Berkes[9], it was opined that community-based initiative is one of the major approaches to Biodiversity conservation, in which Nigeria needs to adequately key in. By involving the local community, a sustainable conservation will be guaranteed for a longer term.[10] For instance, sustainable forestry practices will assist in effective conservation forest ecosystems, while serving, in another, as a source of income for the local communities. In the same vein, sustainable fishery system protects aquatic lives in biodiversity, while simultaneously supporting the livelihoods in fishing local communities. Similarly, Sustainable use of natural resources/heritage is another vital approach for biodiversity conservation. The approach suggests the resources are used in a way that is sustainable and does not harm biodiversity, as the local

[7] CBD (Convention on Biological Diversity) *Global Biodiversity Outlook* (Montreal, Canada: Secretariat of the Convention on Biological Diversity; 2020) 5.
[8] Principle 3 of the Rio Declaration on Environmental and Development, 1992.
[9] F. Berkes, 'Rethinking community-based conservation' [2004]18(3) *Conservation Biology*621-630.
[10] Ibid.

communities depend on natural resources for their livelihoods.[11]Another approach is called a Protected Area, which is a key tool in biodiversity conservation. This effort, accordingly, includes establishment of national parks and wildlife reserves for the purpose to protect natural habitats and species within the ecosystem.[12] It is important to note, however, that these special areas identified for this purpose are not always effective in conserving biodiversity, because human activities often result in encroaching of the said areas by way of claiming ownership of such area so protected. Hence, this can pose as impediment to biodiversity conservation.

It is consequential to note that the concept faces several challenges, which stand against the tide of biodiversity conservation, especially in Nigeria. According to Ajayi et al.[13], the challenges faced by biodiversity conservation includes habitat destruction, poaching, pollution and climate change, deforestation, and over-exploitation of natural resources. Thus, loss of natural habitats, extinction of natural resources, and fragmentation of ecosystems are the aftermath of the challenges which escalate threatening the survival of many species.

No doubt that biodiversity conservation faces multifaceted challenges, which have been undermining the essence for the legal framework. Although, the extent at which the challenges had eaten up the natural resources/heritage is in different from one jurisdiction to another. On this note, this study observes that the challenges are categorized into two perspectives, which are challenges to conservation of biodiversity and challenges to the legal framework regulating the conservation of biodiversity. Whereas, this study will do just to appraisal of the latter, as it is the primary concern of this study.

Legal Framework

The legal framework is the collection of laws and judicial precedents that establish the rules and principles governing a given concept or phenomenon including biodiversity conservation. Nigeria has a complex legal framework for biodiversity conservation. The following is an overview of the major components of the legal framework. Thus:

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[11]N. Dudley, *Guidelines for applying protected area management categories* (Gland, Switzerland: IUCN, 2008).
[12] Ibid.
[13]A. N. Ajayi, and others, 'Challenges of Biodiversity Conservation in Nigeria' [2010] (6)(12) *Journal of Applied Sciences Research* 2262-2270.

a. Constitution[14]

The Constitution of the Federal Republic of Nigeria (CFRN) acknowledges the significance of the environment (including conservation of biodiversity), in its chapter II, which bothered on Fundamental Objectives and Directive Principles of State Policy. Section 20 therein states that 'The state shall protect and improve the environment and safeguard the water, air, and land, forest and wildlife of Nigeria.'

However, the enforcement of section 20 of the Constitution is, ordinarily, non-justiciable by virtue of section 6(6)(c) of the Constitution. Nevertheless, the position has been changing to make Chapter II justiciable and this position has also been restated in *Attorney General of Ondo State v Attorney General of the Federation &ors.*[15] Similarly, it has been further recognized with combined reading of section 20 and article 24 of the African Charter on Human and People's Right which has been applied in ***SERAC v. Nigeria[16] and Jonah Gbemire v. Shell Petroleum Development Company of Nigeria Ltd.***[17] Thus, the justaciabilty of chapter II recently years avails more opportunities for biodiversity conservation, as stakeholders would be more proactive in the course of conserving biodiversity in Nigeria.

b. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act

The Legislation for biodiversity conservation in Nigeria is primarily regulated by the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act[18] of 2007. This Act establishes NESREA as the primary regulatory agency that responsible for enforcing environmental laws and regulations (including those related to biodiversity conservation).[19] Within the ambit of the Act, certain provisions, inter-alia, are vital to the conservation of biodiversity in Nigeria. Thus, the NESREA enforces standards towards environmental protection and sustainability, while its regulations aimed at protecting biodiversity. This includes the protection of endangered species, regulation of trade in wildlife, and control of activities that

[14] CFRN, 1999 (as amended).
[15] [2002] LPELR623,
[16] [2001] ACHPR,
[17] Unreported suit no. FHC/B/CS/53/05
[18] NESREA act, 2007.
[19] Ibid, s. 2, 7 & 8.

threaten habitats.[20] NESREA, therefore, collaborates with international organizations, NGOs, and other stakeholders to enhance biodiversity conservation efforts. The agency, also, engages the public through education and awareness programs to promote sustainable environmental practices.[21] In the same vein, NESREA is responsible for collecting and analysing data related to environmental quality and biodiversity, helps in monitoring the standard state of biodiversity and the effectiveness of conservation efforts.[22]

Under the Act, discharging hazardous waste into the environment is a serious offence Punishable, upon conviction, with a fine not exceeding N1,000,000 (one million Naira only) and for individuals or N10,000,000 (ten million Naira only) for corporate bodies, or imprisonment for a term not exceeding five years, or both. Similarly, failing to comply with compliance orders issued by NESREA is another key offence that is punishable with an additional fine of N50,000 (fifty thousand Naira only) per day for individuals and N500,000 (five hundred thousand Naira only) per day for corporate bodies during which the offence continues. In a short form, all there punishable offences are including; Engaging in activities that cause air or water pollution, any act leading to significant environmental degradation, such as deforestation, wildlife poaching, and habitat destruction, which are either punishable with fines, imprisonment, or the requirement to undertake remediation activities. All these provisions aimed at, inter-alia, conserving biodiversity in Nigeria.

However, it is crucial to pinpoint that if the NESREA is focusing much on standards, enforcement, public engagement, and adequate data monitoring as enshrined in the Act, NESREA would have been recording a gigantic success while playing its crucial role in safeguarding Nigeria's biodiversity. Furthermore, the quantum of punishment (fines and imprisonment) is on the lower side vis-à-vis the standard in other jurisdictions on the same or similar offence. For instance, the quantum of punishment (fines and imprisonment) in the UK is based on the standard scale of fines which has a range of maxima starting at; Level 1: £200, Level 2: £500, Level 3: £1,000, Level 4: £2,500, and Level 5: £5,000, However, a number of environmental offences carry exceptional summary maxima (ESM), which allow for heavier

[20] Ibid, s. 7.
[21] Ibid.
[22] Ibid.

fines like; £20,000, £50,000 and £250,000 at the top end of the scale. Imprisonment on the other hand, entails substantial environmental offences to be generally punishable by imprisonment for up to two years in the Crown Court.

c. Forestry Act

The Forestry Act[23], originally enacted in 1958 and subsequently revised, is a significant piece of legislation in Nigeria aimed at the conservation and sustainable management of forests and biodiversity. The Forestry Act mandates the conservation and sustainable management of forest resources in Nigeria, focusing on the protection of biodiversity, prevention of deforestation, regulation of activities within forest reserves, and establishes penalties for encroachment and illegal activities within forest reserves.[24]

The Act contains certain key provisions for biodiversity conservation, which includes; emphasis on the importance of sustainable forest management practices that conserve biodiversity, protect soil and water resources, and maintain ecological balance; and encouragement of the involvement of local communities in conservation efforts through education, training, and benefit-sharing schemes.[25]

Under the Act, illegal logging, hunting, and other unauthorized activities within forest reserves are strictly prohibited.[26] Accordingly, illegal trade in forest products, including timber and wildlife, and destruction of forest habitats, such as setting fires and clearing land without permission are prohibited.[27] All these offences are punishable under the Act ranging from fines, impediment, confiscation of vehicles and equipment involved in the illegal activities, and additional penalties, such as community services, reforestation efforts and compensation for environmental damage.[28] No doubt, the Act is robust in conserving biodiversity of the forest Reserve, but its impact appears to be weak as destruction of forest inhabitants persists in the country.

[23] Forest Act, 1958 (revised).
[24] Ibid, s. 3-7.
[25] Ibid, s. 19 & 20.
[26] Ibid, s. 13.
[27] Ibid, 14 & 15.
[28] Ibid, 16, 17 & 18.

d. Endangered Species (Control of International Trade and Traffic) Act

The Endangered Species (Control of International Trade and Traffic) Act[29] is a crucial piece of legislation in Nigeria aimed at regulating, controlling and monitoring the trade and traffic of endangered species to protect biodiversity.[30] This Act aligns with international efforts to conserve wildlife and prevent the extinction of vulnerable species.[31]

Furthermore, the Act provides a comprehensive provision for the protection of endangered species in Nigeria by regulating their trade and traffic. By establishing stringent permit requirements, enforcing penalties for violations,[32] (the severity of penalties is proportionate to the nature and extent of the offence), and promoting international cooperation[33], the Act plays a crucial role in conserving biodiversity. The provisions for public awareness, capacity building, and integration with national policies further strengthen the Act's effectiveness in protecting endangered species and their habitats.[34]The Act ensures Nigeria's compliance with international treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This includes adhering to international standards and reporting requirements.

However, despite the Act's robust provisions and severe penalties, weak enforcement undermines biodiversity conservation in Nigeria.

e. National Parks Service Act

The National Parks Service Act[35] in Nigeria is a significant law that establishes national across the country and regulates the overall management of the parks. With this mandate, the law plays a vital role in conserving biodiversity and protecting natural resources within the ecosystem.[36] The objectives of this law include preserving biodiversity, maintaining ecological processes, and protecting endangered species and their habitats.[37]

[29] Endangered Species (Control of International Trade and Traffic) Act of 1985
[30] Ibid, s. 1-6.
[31] Ibid, s. 12.
[32] Ibid, s. 10.
[33] Ibid, s. 12.
[34] Ibid, s. 19-22.
[35] National Parks Service Act, 1999.
[36] Ibid, s. 1.
[37] Ibid, s. 2.

Furthermore, one of the key provisions for Biodiversity Conservation within the purview of this Act is the protection of critical habitats and endangered species within the national parks across Nigeria. This is implemented through restrictions on certain activities that may threaten these areas and species.[38] In the same vein, the law established Buffer Zones around sensitive areas, which help in protecting the core areas of national parks from external threats.[39]

However, despite the robust specifications of the legislation for biodiversity conservation, the legislation still finds it difficult to adequately achieve its mandates, as the destruction of species in the national parks is still in perpetuity in Nigeria. Thus, an adequate enforcement mechanism is required for biodiversity conservation in Nigeria.

f. Environmental Impact Assessment (EIA) Act

The EIA Act[40] is a comprehensive legislation designed for assurance of environmental and biodiversity safety. The Act's major mandate is to ensure that the impacts of proposed projects are thoroughly assessed and managed to flying of such project.[41] By mandating public participation, rigorous assessment processes, and strict enforcement strategies, the Act plays a crucial role in conserving Nigeria's biodiversity.[42] The spirit of provisions for offences[43] and punishments[44] under the Act guarantees compliance, hence making the EIA Act a key tool for sustainable development and environmental protection in Nigeria (which including conservation of biodiversity).

g. Harmful Waste (Special Criminal Provisions, etc.) Act

The Harmful Waste (Special Criminal Provisions, etc.) Act[45] of 1988 is one of extant legislation in Nigeria aimed at prohibiting the illegal carrying, depositing, and dumping of harmful waste within the Nigerian environment.[46] The Act advocates the need to protect the environment and its

[38] Ibid, s. 21.
[39] Ibid, s. 22
[40] Environmental Impact Assessment (EIA) Act, 1992.
[41] Ibid, s. 1.
[42] Ibid, s. 2 & 3.
[43] Ibid, s. 11-15.
[44] Ibid.
[45] Harmful Waste (Special Criminal Provisions, etc.) Act of 1988.
[46] Ibid, s. 1.

biodiversity from the adverse effects of harmful waste.[47] It establishes a framework for the protection of public health within the environment (including biodiversity) from the dangers posed by harmful waste.[48] It is significant to understand that the Act contains initiatives which educate the public about the dangers of harmful waste and the need for compliance with the Act. This is to be carried out through public campaigns, and training programs (for law enforcement agency and environmental officers).[49] However, it is pertinent to note that, despite provisions for a severe punishment (ranging from life imprisonment, substantial fines, and to forfeiture of property), violation of the law is raising eyebrows due to weak enforcement and nonchalant attitude.[50]

h. National Biosafety Management Agency (NBMA) Act.

The National Biosafety Management Agency (NBMA) Act[51] is a crucial legislative framework in Nigeria that governs the safe management of genetically modified organisms (GMOs) to protect biodiversity, human health, and the environment.[52] It is an offence under the Act; to develop, handle, transfer, or use GMOs without the necessary permits from the NBMA, to providing false or misleading information in biosafety applications or reports, failure to comply with any regulation, order, or directive issued under the Act, and any attempt to endanger Biodiversity or causing environmental harm by conducting activities that pose a significant risk to biodiversity or human health.[53] Punishment under the Act upon conviction include; fines up to N2,500,000 for individuals and N5,000,000 for corporate bodies, or imprisonment for a term not exceeding five years, or both, Seizure and destruction of unauthorized GMOs and related products, suspension, or revocation of permits and approvals for non-compliance, etcetera.[54] Nevertheless, the punishment section is severed enough to foster effective enforce. Thus, the law is moderately weak.

[47] Ibid, s. 16.
[48] Ibid, 17.
[49] Ibid, 18.
[50] Ibid, 12 & 13.
[51] National Biosafety Management Agency (NBMA) Act of 2015.
[52] Ibid, s. 8-12.
[53] Ibid, s. 13-16.
[54] Ibid, s. 17-19.

i. Animal Diseases (Control) Act

The Animal Diseases (Control) Act[55] provides a comprehensive legal framework for the prevention and control of animal diseases in Nigeria. The mandates and functions include; enforcing quarantine measures, regulating animal movement, supporting vaccination and treatment programs, and imposing penalties for violations.[56] The Act plays a critical role in protecting animal health and conserving biodiversity. Thus, the integration of disease control measures with national biodiversity conservation policies further enhances the effectiveness of the Act in maintaining healthy ecosystems and species populations.[57]

j. International Conventions and Agreements

In addition, Nigeria is a signatory to series of international conventions and agreements such as the Convention on Biological Diversity (CBD), the Ramsar Convention on Wetlands[58] (signed in 1971 in Ramsar, Iran, and came into force in 1975with aims to promote the conservation/wise use of wetlands and their resources, and almost 90% of UN member states have acceded to the Convention in a bid to providing a framework for the conservation and sustainable use of biodiversity), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1975 (which advocates and fosters a need for adhering to international standards/reporting requirements, aims at ensuring that international trade in specimens of wild animals and plants does not threaten the survival of the species, and requires parties to implement measures to enforce its provisions, including penalties for trade in violation of the Convention, and to submit periodic reports on their implementation of the Convention), the United Nations Convention to Combat Desertification (UNCCD)[59] (It was adopted in Paris, France, on June 17, 1994, came into force in December 1996, and the only internationally legally binding framework that addresses desertification and drought), African Convention on the Conservation of Nature and Natural Resources[60] (Signed in 1968 in Algiers, Algeria, arms to promote the conservation and sustainable use of nature and natural resources in Africa, and

[55] Animal Diseases (Control) Act of 1988.
[56] Ibid, s. 14-17 for offences and punishment for forms of violation.
[57] Ibid, s. 18 & 19.
[58] See articles 2, 3, 4 & 5.
[59] See articles 4 & 12.
[60] See articles II& IX, and VII & XI.

obliges contracting parties to adopt conservation measures related to wildlife, soil, and water resources), etcetera.

k. Analysis of cases on Biodiversity Conservation in Nigeria

Case law in Nigeria in respect of conserving biodiversity reflects the enforcement of the extant environmental laws and the role of the judiciary in upholding these laws. Here are some notable case laws that elucidate the legal principles and as they affect biodiversity conservation in Nigeria:

i. *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*[61]

This case involved the pollution of water bodies as a result of oil spills by the Nigerian National Petroleum Corporation (NNPC). in this case, the Centre for Oil Pollution Watch, an NGO, filed a suit for an order to compel the NNPC to clean up the polluted environment. Consequently, the Court of Appeal held that NGOs have the *locus standi* to sue on behalf of the affected communities. In the judgment, the court emphasized that environmental protection is inevitable and the responsibility of the NNPC to remediate the polluted areas.

ii. *Gbemre v Shell Petroleum Development Company of Nigeria Ltd*[62]

In this case, Jonah Gbemre, filed a lawsuit for himself and the Iwherekan community against Shell and the Nigerian government. He challenged the flaring of gas in the Niger Delta as a violation of the right to life and dignity. In the suit, the Federal High Court ruled that gas flaring was unconstitutional and amount to infringement of the fundamental rights to life and dignity of a person as enshrined in the Constitution. Consequently, the court ordered Shell to stop gas flaring immediately in the community. This case marked a significant victory for environmental well-being and biodiversity conservation.

[61] [2019] LPELR-48609(CA).
[62] [2005] AHRLR 151 (NgHC 2005)

iii. ***The Registered Trustees of the Association of Victims of Export Oil Spill Pollution v Mobil Producing Nigeria Unlimited***[63]

In this case, Mobil Producing Nigeria Unlimited spilled oil, which caused extensive damage. Hence, the plaintiffs sought compensation for the damage to their land and aquatic lives. The court held that the Mobil is liable for the oil spill and awarded damages as sought to the affected communities. The judgment underscored the need for remediation and the importance of holding companies responsible for environmental degradation.

iv. ***Oronto Douglas v Shell Petroleum Development Company Ltd & Others***[64]

In this case, an environmental activist called Oronto Douglas, sued Shell for failure to conduct an environmental impact assessment (EIA) as sine qua non before commencing a project in the Niger Delta, as required by the EIA Act. The court ruled in favour of Douglas, emphasizing that conducting an EIA is a mandatory requirement before undertaking any project that could have a significant impact on the environment. This case highlighted that adequate enforcement of EIA regulations is crucial for biodiversity conservation.

v. ***Nigerian Conservation Foundation v Nigerian National Petroleum Corporation***[65]

The Nigerian Conservation Foundation filed a lawsuit against NNPC for the adverse environmental impact of their operations, which threatened biodiversity in the region. The court recognized the standing of environmental NGOs to sue on behalf of the environment. The case reinforced the principle that environmental groups can seek legal redress for biodiversity conservation.

vi. ***Environmental Rights Action/Friends of the Earth Nigeria v Shell Petroleum Development Company of Nigeria Ltd***[66]

Environmental Rights Action/Friends of the Earth Nigeria v Shell Petroleum Development Company of Nigeria Ltd, 2005 is a landmark case emphasizing the accountability of multinational corporations for environmental impacts. The case focused on Shell's (SPDC) oil

[63] [2001] 3 NWLR (Pt. 704) 85.
[64] nreported Suit No. FHC/L/CS/9/88
[65] [2000] 1 NWLR (Pt. 639) 124
[66] Suit No. FHC/CS/B/153/2010.

exploration in Nigeria's Niger Delta, accused of causing extensive environmental damage. The plaintiffs claimed SPDC's operations polluted air, water, and land, harming local communities' health and livelihoods, and violating both Nigerian and international environmental laws. SPDC defended itself by arguing it had attempted to minimize environmental impact, attributing much of the pollution to third-party sabotage and oil theft, and contended compliance with Nigerian regulations. The court sided with the plaintiffs, confirming SPDC's significant environmental harm in the Niger Delta and insufficient preventative measures. Consequently, SPDC was ordered to pay damages and undertake pollution cleanup and prevention efforts.

This case underscores the critical role played by the court in a bid to holding corporations responsible for their environmental impact, especially in the regions with weak regulatory enforcement culture. It also pinpoints the benefits and essence of adhering to international environmental standards to support legal claims against multinational operations in Nigeria. The court ruling highlights the mandate of the legal system to promote environmental justice, and the essence of enforcing stringent environmental laws and regulations.

vi. *Nigerian Conservation Foundation v Federal Ministry of Environment*[67]

The Nigerian Conservation Foundation v Federal Ministry of Environment, 2012, is a popular legal matter in respect of environmental conservation and regulatory oversight in Nigeria. It was argued in the case that the ministry of environment's poor enforcement mechanisms had led to many of the environmental degradations as well as the eradication of species in Nigeria. This case reiterated the importance of environmental conservation and the need for strict adherence to environmental laws, policies, and regulations in Nigeria. It also demonstrated the numerous role that NGOs can play in holding government agencies responsible for their actions in the field of environmental management.

From the aforementioned case laws, the foundation for environmental protection in the hands of the judiciary for its commitment to enforcing environmental laws and biodiversity conservation is undoubtedly established. The courts ensure compliance, hold violators responsible, and protect communities. These judicial precedents are essential for improving biodiversity conservation, and the goodwill of government agencies and stakeholders.

[67] [2009] 7 NWLR (Pt. 1138) 245

Policy Framework

This encompasses strategies, guidelines, and objectives which spur decision makers and stakeholders into action. This is created by established institution to achieve certain goals. The policy framework on biodiversity conservation in Nigeria is as follows:

a. Nigeria National Policy on Forestry 2006

The 2006 Nigeria National Policy on Forestry highlights the forestry sector as a key economic contributor since 1822, exporting significant forest produce. Nigeria's forests and woodlands are vital for genetic diversity, essential for advancements in agriculture, medicine, and industrial raw materials.[68] To this end, a need for adequate protection of Nigerian forest is sacrosanct for sustainable development and biodiversity conservation.

b. National Biodiversity Strategy and Action Plan (NBSAP) 2004

Nigeria, a signatory to the 1992 Rio de Janeiro Convention on Biodiversity, developed its National Biodiversity Strategy and Action Plan in 1997 and updated it in 2004. The Plan aims to integrate biodiversity conservation into national policy, reduce poverty and promote the biodiversity industry for economic and community benefit. It aligns with ecological sustainability and social equity principles. While addressing forest fires, wood fuels, and desertification, the plan lacks specific provisions for chemical pollution affecting biodiversity. By the plan, Nigeria recognizes the need to conserve its biodiversity, hence 25% of total forest reserves are being conserved.[69] However, this study observes that the level of success recorded for conservation of biodiversity is too low compared with of the extant legal framework, hence this calls for adequate attention.

[68] Amari Omaka, *Nigerian Conservation Law and International Environmental Treaties* (Lagos: Unique Concept 2018) 322.

[69] T. D.John, 'National Biodiversity Strategy and Action Plan' [2004] *Federal Ministry Environment, Abuja, Nigeria*.

Stakeholders[70]

The conservation of biodiversity in Nigeria requires a multi-faceted approach that involves government agencies and stakeholders including; government agencies, non-government organizations (NGOs), research institutions, private companies and local communities working together towards a common goal. By collaborating and sharing resources, expertise, and knowledge, these groups can help ensure the long-term survival of Nigeria's rich and diverse natural heritage within the ambit of a robust legal system.

Government agencies play a key role in biodiversity conservation in Nigeria. The Federal Ministry of Environment is responsible for developing and implementing policies and programs aimed at protecting the country's natural resources, including biodiversity. The ministry works closely with other government agencies, such as; the Nigerian Conservation Foundation, to establish protected areas and enforce regulations to prevent illegal activities that threaten biodiversity; NESREA which is the main agency for enforcing environmental; National Parks Service: Manages national parks and protected areas. National Bio-safety Management Agency: Regulates bio-safety and GMO activities.[71]

Non-governmental organizations, research institutions, and private companies, also play a crucial role in biodiversity conservation in Nigeria. These organizations often provide funding, expertise, and technical support for conservation projects, as well as advocacy for stronger environmental policies. For example, the Nigerian Conservation Foundation has been instrumental in promoting the conservation of endangered species, such as the Cross River gorilla, through research, education, and community engagement. See the case of Environmental Rights Action/Friends of the Earth Nigeria v. Shell Petroleum Development Company of Nigeria Ltd, 2005 above.

Local communities are another important stakeholder in biodiversity conservation in Nigeria. Many rural communities rely on natural resources for their livelihoods, and their involvement in

[70] S. C. Izah and A.O. Aigberua, 'Potential Threats and Possible Conservation Strategies of Biodiversity in Niger Delta Region of Nigeria' inS.C.Izah and M. C. Ogwu (eds), *Sustainable Utilization and Conservation of Africa's Biological Resources and Environment* (Sustainable Development and Biodiversity, Springer, Singapore, 2023), 32. https://doi.org/10.1007/978-981-19-6974-4_6 accesed 11 May 2024.
[71] Ibid.

conservation efforts is essential for long-term success. By engaging with local communities and providing them with alternative sources of income, such as ecotourism or sustainable agriculture, conservation projects can help alleviate poverty while also protecting biodiversity. See the case of *Gbemre v Shell Petroleum Development Company of Nigeria* Ltd (supra).

Challenges in Implementing the Legal and Policy Framework

Despite the existence of a legal framework for biodiversity conservation in Nigeria, there are several challenges that hinder its effective implementation. Some key challenges are:

i. The Lack of Adequate Funding and Resources for Conservation Efforts: The budget allocated to biodiversity conservation is often insufficient to address the scale of the problem, leading to limited capacity for enforcement and monitoring.[72]
ii. The lack of coordination and collaboration among government agencies and stakeholders involved in biodiversity conservation. There is typically a lack of clarity regarding roles and responsibilities, leading to overlapping mandates and ineffective implementation of conservation measures.
iii. Another major challenge to implementation of legal framework regulating biodiversity conservation is the conflicting interests between conservation and socio-economic development. This is because, the country is a developing Nations, hence a need for adhering to developmental projects would be a centre of interest of government all time. No doubt, the will definitely bypass some laws for developmental project against the tide of diversity conservation. However, the aftermath of this challenge is loss and extinction of biodiversity rather than conserving.[73]
iv. Weak Enforcement Mechanisms and Corruption within Regulatory Agencies: These undermine the effectiveness of the legal framework. See Nigerian Conservation Foundation v. Federal Ministry of Environment (supra) where Nigerian Conservation Foundation challenged

[72] O. Ojo, 'Biodiversity conservation in Nigeria: Challenges and opportunities' [2015] (20)(3) *Journal of Environmental Law* 345-362; United Nations Development Programme, 'Nigeria biodiversity finance initiative: A roadmap for sustainable financing of biodiversity conservation in Nigeria' [2018] UNDP Abuja; World Bank. *Nigeria biodiversity and ecosystem services profile* (Washington, DC: World Bank Group 2019).

[73] O. Adekola, and others. 'Balancing conservation and development in Nigeria: Challenges and opportunities' [2019] 98*Environmental Science & Policy* 1-9.

the Federal Ministry of Environment regarding environmental protection and enforcement of environmental laws in Nigeria.[74]

v. Fragmentation and Lack of Coherence: The current legal framework for biodiversity conservation in Nigeria is fragmented and lacks coherence, with overlapping mandates and responsibilities among various government agencies. This has led to a lack of effective enforcement and monitoring of conservation efforts, resulting in the continued degradation of the country's biodiversity.[75]

vi. Lack of Adequate Public awareness and Local community involvement in the enforcement of the extant legal framework often poses as challenge to the efficacy and expected [76]result of the legal framework for biodiversity conservation in Nigeria. Accordingly, the public awareness can achieved via education, outreach, and engagement with local communities, which give resource-intensive and time-consuming. This way, implement will be a robust one.

vii. Lack of trained personnel and corruption: this often hindered and undermined effective implementation of legal framework for conserving biodiversity in Nigeria. Accordingly, lack of adequate enforcement mechanisms also undermines biodiversity conservation in Nigeria.[77]

Conclusion and Recommendations

In conclusion, the legal framework regulating biodiversity conservation in Nigeria is essential to safeguard the country's rich natural heritage. However, there are several challenges that hinder its effective implementation. By addressing issues such as inadequate funding, lack of coordination, and weak enforcement mechanisms, Nigeria can improve its efforts towards conserve biodiversity and achieve sustainable development. Collaboration among government, civil society, local community, and other stakeholders is essential to overcome these challenges and ensure the long-term conservation of Nigeria's biodiversity.

[74] See also, *Environmental Rights Action v Federal Government of Nigeria Citation: (2006) AHRLR 227 (NgHC 2006)Suit No: FHC/PH/CS/517/06,* which focused on the government's failure to enforce environmental regulations in the Niger Delta. The court highlighted the need for effective enforcement to protect the environment and public health.

[75] Ibid.

[76] C. Okoli, and Others, 'Community involvement in biodiversity conservation in Nigeria: A case study of a conservation project in the Niger Delta' [2021] 35(2) *Conservation Biology*432-445.

[77] A. Ogunjemilua, and Others, 'Challenges to the enforcement of environmental laws in Nigeria [2020] 25(3) *Journal of Environmental Law* 345-362.

To address the challenges facing the legal framework regulating biodiversity conservation in Nigeria, the followings are suggested for a way forward:

1. Let there be a need for increased monitoring funding and resources for conservation efforts. The government should allocate a larger budget to biodiversity conservation and ensure that funds are effectively utilized for enforcement and research.
2. Addressing Biodiversity Loss can be done through actively works to mitigate threats to biodiversity such as habitat destruction, pollution, over-exploitation of resources, and climate change.
3. The government should engage local communities in conservation efforts, recognizing their role and traditional knowledge in protecting biodiversity.
4. There should be an improved coordination and collaboration among government agencies, NGOs, and local communities involved in biodiversity conservation. Clear guidelines and mechanisms for cooperation should be established to ensure effective implementation of conservation measures.
5. Let there be a need for strengthening enforcement mechanisms and increasing transparency in regulatory agencies. Measures should be put in place to prevent corruption and ensure that violators of environmental laws are held accountable.
6. Nigeria must strengthen its enforcement mechanisms and increase public awareness and participation in conservation efforts. By keying into best practices in biodiversity conservation, Nigeria can effectively protect its natural heritage for future generations.
7. Nigeria must adopt best practices in biodiversity conservation, including the establishment of clear legal frameworks, the integration of biodiversity considerations into land use planning and development policies, and the promotion of community-based conservation initiatives.

AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND INTERNATIONAL ARBITRAL AWARDS IN NIGERIA

Sani Emmanuel*

Abstract

The judgment of a forum court is practically worthless in another jurisdiction, except it is recognised by the court of the foreign jurisdiction. In a bid to circumvent the challenges that this may pose, international businessmen, the world over, now resort to arbitration to settle their disputes, but paradoxically the arbitral process including the award depends on national legal orders for their validity and effectiveness. Another dimension to the challenge, becomes apparent when enforcement is sought against the properties of State counter-parties. The study which was based on a doctrinal research methodology, interrogated the extant laws in Nigeria, and it was observed that foreign judgments, foreign and international awards are enforceable in Nigeria based on both statutory and treaty regimes. Unlike foreign judgment which depends on the principle of reciprocity and comity enshrined in domestic conflict of laws which is fraught with procedural uncertainties, arbitral awards are covered by treaty regimes, and therefore enhances certainty and predictability of enforcement. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), and the International Convention on the Settlement of Investment Disputes between States and Nationals of other State (1965), are instructive in that regard. However, enforcement in that context, is characterised by a regime of information asymmetry, as between both jurisdictions, which can open the flood gate for abuse. A policy and legislative framework, is therefore required to bridge the gap, and create a system of authentication of foreign judgment and arbitral awards, beside the extant provision for minimal judicial review.

Keywords: *Recognition, Enforcement, Foreign Judgment, International award, Arbitration*

Introduction

Enforcement of judgment across national jurisdictional boundaries constitutes a major concern in international business and cross border dispute resolution, because of the territorial limitations of jurisdiction. A judgment has no effect outside the jurisdiction of the original court of the country where it is rendered.

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In other words, judgments rendered by one State's court usually have no force in another sovereign State. This invariably poses challenges on the path of parties involved in cross border disputes, as lack of certainty in that respect, may result in re-litigation of the same subject matter in the forum, where the judgment is sought to be enforced.[1] Since the judgment of a national court has no force outside the jurisdiction where it was entered, such judgments has to be recognised by the courts of the foreign jurisdiction for it to be enforceable, particularly where there is no treaty obligation[2] between the connected jurisdictions for mutual recognition and enforcement of judgments. In that case, the parties may rely on the notion of comity of nations,[3] which has no universal of uniform criteria for ascertaining its content and application, because of the divergent approaches adopted in different legal system.[4] Thus, a judgment obtained in one jurisdiction may not be of much worth in another; where enforcement of the judgment is sought.

Private arbitration has become the preferred alternative to litigation for businesses engaged in cross- border trade. The reason for this trend is not farfetched, business men try to circumvent the rather cumbersome and time consuming procedure, and inherent uncertainty that characterises litigation in domestic courts. Another justification in favour of arbitration is the possibility of resolving disputes involving State parties and private entities, especially in the area of investor - State disputes. Arbitration in this context, enable the private investors navigate around the issue of immunity enjoyed by sovereign States[5], in which case, both the foreign investor and the host State consents to arbitration. The prior consent of the State is often times, contained in a multilateral or bilateral treaty, or an international investment agreement. The prior consent to submit to arbitration can be construed as an implied waiver of immunity. [6]

Arbitration is said to be a private process with public effect,[7] therefore, it depends on the public legal system to have its binding effect, in terms of the recognition and enforcement of the awards rendered. International arbitration in particular, invariably depends on the support of more than

[1] Ralf Micheals, 'Recognition and Enforcement of foreign Judgments', Max Planck Encyclopedia of Public International Law, available at <www.mpepil.com> accessed on 10-02-20.

[2] The principle presupposes that one sovereign state voluntarily adopts or enforces the laws of another sovereign country out of deference, mutuality, and respect, although the doctrine is not embodied in international law; sovereign state still uses it for public policy reasons. See- www.law.corneli.edu>Wex

[3] M.A Petsche, 'International Commercial arbitration and the Transformation of the Conflict of Law Theory', *Michigan State University Journal of International Law* (2009) (18) 453.

[4] Ibid.

[5] (see detail discussion in section 5 below).

[6] Ibid

[7] Jan Paulson, 'Arbitration in Three Dimensions', *International and comparative law* Quarterly (2010) 6 (2) 14

one legal system to achieve that effect.[8]In the context of international commercial arbitration, "the award rendered by the private arbitrators will only have the public effect that the national legal system confers upon it".[9]Thus the capacity to enforce an arbitral award depends on recognition and the willingness of national courts to enforce same.[10] The practice in most countries is to recognise and enforce both domestic and foreign arbitral awards, but permits limited judicial review in appropriate cases.

Similarly, the extant regime for settlement of investor- State investment disputes is within the purview of public international law and to a large extent, is designed to avoid the legal system of the host State. International investment contracts are usually made subject to international law as investors tilt towards a delocalised system of adjudication of dispute that hinged on international law. The recent trend is the adoption of Bilateral Investment treaties (BITs) or Trade and Investment Agreements[11]. The Convention on the Settlement of Investment Disputes between States and Nationals of other States under auspices of the World Bank achieved a milestone in the quest for an international legal framework for promoting and protecting cross-border investments particularly flowing from developed countries to developing countries.[12]

The establishment of the International Centre for Settlement of Investment Disputes between a Contracting State and Nationals of another Contracting State (ICSID) filled the void by providing a veritable international and delocalised institutional mechanism for investor –State investment disputes.[13]ICSID is designed to be self- contained machinery operating totally independent of domestic legal system. However, it essentially places reliance on domestic court for the recognition and enforcement of the Award. The convention indisputably therefore, grants access to an international forum where disputes between states and private non -state actors settle disputes under the rule of international law, but paradoxically again, domestic courts inevitably are saddle with the function of enforcement of the decisions of such supranational dispute resolution bodies.

[8] Ibid.
[9]Buhring-Uhle, (n.1) 54.
[10]Ibid.
[11] E.g. North American Free Trade Agreement (NAFTA)
[12] R. Bruno, *Access of Private Parties to International Dispute Settlement: A Comparative Analysis*, Unpublished LL.M Thesis submitted to Harvard Law School (1997) 3.
[13] Ibid, 79

This work seeks to interrogate the legal basis for the recognition and enforcement of foreign judgments and arbitral awards rendered in respect of cross-border or transnational commercial transactions, on one hand, and the extent of judicial intervention in respect of the execution of international awards rendered in the case of Investor-State arbitration under the ISCID framework, on the other hand. The position of law in relation to the enforcement of judgments and arbitral awards against State counterparties is also an incidental question considered in this this work.

Recognition and Registration of Foreign Judgment and Arbitral Awards

There is generally no obligation to recognise foreign judgment however, relative progress have been recorded in international commerce with the possibility of enforcing foreign judgment in another state's court within the framework of the extant private international law regime,[14]where municipal rules are in place to permit the recognition and enforcement of foreign judgment in other countries other than the forum court. The enforcement of a judgment necessarily involves recognition of the said judgment, although situation may arise where the judgment recovered in a foreign court may require recognition only.[15] There can be generally no enforcement of judgment without recognition.[16]

Foreign judgments therefore, are not automatically enforced, for domestic courts in Nigeria to enforce a foreign judgment, it has to first recognise it, and to that extent,[17] a foreign judgment has to be registered in Nigeria for the purpose of execution. Upon registration, the foreign judgment will have the same force and effect as the judgment of a Nigerian court. The registering court consequently would have the same control over the execution, as though it is the original judgment of that court.[18]A registerable judgment for the purpose of enforcement under the extant regime, contemplates monetary judgments of foreign jurisdiction and bordering on international commercial arbitral awards.

[14] Omoruyi & Onomrerhin, 'Attitude of Nigerian Courts to the Enforcement of Foreign Judgment: An Examination of Selected Decision of the Court of Appeal and the Supreme Court', *NAUJILJ (* 2018) (1) 29.

[15] For instance, in a case of breach of contract where the foreign court absolves the defendant of liability by holding that there was no breach of contract by the defendant and consequently no issue of enforcement is contemplated because of the declaratory nature of the relief.

[16] C. M. V. Clarkson & J. Hill, The conflicts of laws (3rded, Oxford University Press, Oxford, 2016) 59,161,203

[17] P. Erokoro, "Enforcement of Judgments outside jurisdiction: Laws, Practices and Procedures: Juriscope Alphajuris workshop series (Abuja, Law quart publishers 2011) 178

[18]*Adwork Ltd v Nig Airways Ltd* (2000) 2 NWLR (Pt. 645) 415.

Judgments in this context, therefore encompasses situations where national courts or the courts of the seat of arbitration are called upon to decide on the validity and effect of an arbitral award, basically in "post award proceedings".[19] In ***Tulip Nigeria Ltd v. Noleggioe Transport Maritime S.A,***[20]the Court of Appeal held that by the provision of section 2(1) of the Foreign Judgment (Reciprocal Enforcement)Act, 'judgment' means judgment or an order given or made by court in any civil proceedings and shall include an award in proceedings on an arbitration, if the award has, pursuance to the law in force in the place where it was made, become enforceable in the same manner as a judgment given by the court of that place.[21] For an arbitral award to fall within the contemplation of the section, the award must be elevated to the status of the judgment of the High Court, in effect, the party must seek leave of the relevant court to enforce the award in the same manner as a judgment.[22] Thus, an arbitral award can only be elevated to the status of a judgment that is registerable under the relevant statue in Nigeria, where leave of the forum court has been sought and granted.[23]

In the context of international commercial arbitration, "the award rendered by the private arbitrators will only have the public effect that the national legal system confers upon it".[24] The practice in most commonwealth countries including Nigeria, is to recognise and enforce both domestic and foreign arbitral awards, but permits limited judicial review in appropriate cases.

Recognition and Enforcement of Foreign Judgments

There is no existing multilateral or bilateral regime, based on treaty law for the reciprocal recognition and enforcement of foreign judgment to which Nigeria is a State party. Foreign judgments are enforced in Nigeria either under statute or at common law. The existing statutory framework is based on the provisions of the Reciprocal Enforcement of Judgment Ordinance,

[19] M. Scherer, 'Effects of Foreign Judgments Relating to International Arbitral Awards: is the 'Judgment Route' the Wrong Road?' *Journal of International Dispute Settlement*, (2013) 4 (3) 587-628 available online at <http://jids.oxfordjournals.org> accessed on 12-4-20.

[20] (2011) 4 NWLR (pt. 1237) p.254.

[21] For more detailed discourse, see Omoruyi & Onomrerhinor, 'Attitude of Nigerian Courts to the Enforcement of Foreign Judgment: An Examination of Selected Decision of the Court of Appeal and the Supreme Court*', NAUJILJ (2018)* (1) 28.

[22] Ibid.

[23] Ibid.

[24] Buhring-Uhle (n.1).*54.*

1922,[25]and the Foreign Judgment (Reciprocal Enforcement) Act[26]enacted in 1961. The controversy as to the applicability of the 1922 Ordinance enacted during the colonial era, and which was not repealed by the later Act, when it was enacted in 1961, has been laid to rest by the Supreme Court in the case of *Dale Power Systems Plc v. Witt & Bush Ltd,*[27]wherein the court held to the effect that, the later legislation did not repeal the earlier legislation in that regard.[28]
The Ordinance of 1922 covers the reciprocal enforcement of judgments obtained in the "United kingdom and other part of Her Majesty's Dominion and Territories under her Majesty's Protection".[29] The later legislation was enacted to apply to judgment of the courts of Commonwealth counties and other foreign countries as the Minister of Justice may designate. The minister of justice is imbued with the power under section 3(1) of the Act to make an order extending the application of the Act to any foreign country with substantial reciprocity of treatment with respect to enforcement of foreign judgment.

However, it has been observed that "the Act is yet to be made applicable to any specific foreign country because, the Minister of Justice has not issued such Order"[30] therefore, by the provision of section 9 (1) of the Act, the applicability of the Ordinance is preserved within its sphere of coverage until such a time that the Minister of justice will make the relevant order extending its applicability to other jurisdictions, only then will the earlier cease to be operative.[31] Judgments emanating from countries that are outside the coverage of the foregoing statutory recognised jurisdictions can only be recognised and enforced under the general common law regime. The Nigerian court like the English court would recognise and enforce foreign judgments, but the

[25] Cap 175 Laws of the Federation of Nigeria and Lagos 1958.
[26] Cap F35, LFN, 2004.
[27] (2001) 8 NWLR (pt. 716) p.669.
[28] Similarly, in the case of *macaulayv. R. Z. B Austria (2003)* 18 NWLR (pt.852) p.282, wherein the supreme court held that the ordinance is applicable only to the extent that the minister of justice has not made any order under section 3 (1) of Foreign Judgments (Reciprocal Enforcement) Act extending the application of the later Act.
[29] By virtue of section 2 of the Ordinance it was extended by proclamation under section 5 - to judgments of the supreme court of the Gold coast colony (Ghana), Sierra Leone, The Gambia, New Found Land, New south Wales, the State of Victoria, Barbados, Bermunda, British Guiana, Gilberaitar, Grenada, Jamaica, Leeward Island, St. Lucia, St. Vincent and Trinidad and Tobago.
[30] A. Akeredolu& C. Umeche, "The International Comparative Legal Guide to: Enforcement of foreign Judgments: Nigerian Chapter" (Global Legal Group, 2017) 23.
[31] Ibid.

pertinent question for consideration: "is not whether foreign judgment should be recognised and enforced… but which judgment should be recognized and enforced".[32]

There are two theoretical bases for recognition and enforcement of judgment in that regard: the theory of obligation and the theory of reciprocity.[33] The theory of obligation is premised on the notion that, if the original court assumed jurisdiction on a proper basis, then the court's judgment should *prima facie* be regarded as creating an obligation between the parties to the foreign proceedings, which the relevant municipal court is called upon to recognise and enforce in appropriate cases.[34] In effect, under this theory, a foreign judgment which orders a defendant to pay damages is to be regarded as a debt which the claimant can enforce in the local court.[35] The theory of obligation was adopted in the English court in the case of *S* ***Schibsby v. Westenholz,***[36]Blackburn J, in that case stated as follows:

> We think that…the true principles on which of foreign tribunals are enforced in England is…that the judgment of a court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which courts in this country are bound to enforce; and anything which negatives that duty, or forms a legal excuse for not performing it, is a defence to the action.[37]

The theory of reciprocity presupposes that the courts of one country should recognise and enforce the judgment of another country on reciprocal basis, if the other country is willing or accords similar recognition and enforcement of the judgment of the country in question.

Recognition and Enforcement of Foreign Judgments under Statute

Enforcement under the extant statutory dispensation is by registration. The 1922 Ordinance stipulates that the judgment creditor seeking to enforce a foreign Judgment in Nigeria should apply to the High Court for leave to register the said judgment by means of petition made either *ex parte* or on notice,[38]and the 1961 Act also stipulates that a judgment creditor may apply to a superior court in Nigeria for registration of a foreign judgment from countries within the scope

[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] (1870) LR 6 QB 155.
[37] See G. *Omoaka, 'Legal Regime for the Enforcement of judgment in Nigeria: An overview*"(2004)1.
[38] The application is required to be accompanied by an affidavit which complies with the provision of Section 3(2) of the ordinance and a certified true copy of the judgment sought to be enforced duly exhibited.

of the Act.[39] The effect of registration is to give the registering court control over the execution of the said judgment, as if same was the original judgment of the registering court.[40]In the case of *Shona-jason Ltd v. Omega Air Ltd,*[41]it was held that, the effect of registration of a foreign judgment in a Nigerian court is for all intent and purposes, to make the registered judgment the judgment of the Nigerian Court.

The foreign judgment must satisfy the general statutory requirement to make it enforceable in Nigeria otherwise the registration of such judgment can be effectively challenged.[42]The Supreme Court in *Shona-Jason* case[43] enunciated the statutory basis upon which the courts in Nigeria can set aside the registration of a foreign judgment or suspend the execution of the said judgment. The statutory conditions include: (i). the judgment must be rendered by a superior court of the country of the original court, (ii). it must be a money judgment and for a sum certain. (iii). the judgment must be final and conclusive of the issues between the parties to the disputes, (iv). the judgment must not have been obtained by fraud, (v). the original court must have acted with jurisdiction and the judgment as rendered is capable of being executed in the country of the original court, (vi). the judgment must also, not be contrary to public policy or any provision of any legislation in force in Nigeria and, (viii). the said judgment must not have been wholly satisfied.[44] The application for registration must be made within the period of 6years and 12 months from the period the foreign judgment was recovered[45]or such longer period as may be permitted by the relevant registering court in Nigeria,[46]which must be a superior court of record.

Recognition and Enforcement of Foreign Judgment at Common Law

A foreign judgment that does not emanate from any jurisdiction within the purview of the statutory coverage cannot be automatically registered and enforced in Nigeria. Such judgments can only be enforced by commencing a fresh action that is predicated on the foreign judgment sought to be enforced before the relevant court in Nigeria.[47]A foreign judgment, at common law

[39] Section 4(1) Foreign Judgment (reciprocal Enforcement) Act, cap F35, LFN,2004 (FJREA).
[40] Ibid,section 4(2).
[41] (2006) 1 NWLR (Pt.960) 28.
[42] FJREA, Section 6(1) and section 3(2) of Reciprocal Enforcement of Judgment Ordinance 1922.
[43] Ibid.
[44] Ibid.
[45] FJREA, Section 100.
[46] See *marine & Gen Ass Co v. OU Ins Ltd* (2006) 4 NWLR (pt. 971) 622.
[47]Akeredolu & Umeche,(n.31) *23.*

constitutes a debt, giving rise to a fresh cause of action in favour of the judgment creditor.[48] The judgment creditor may therefore, apply for summary judgment or proceed against the judgment debtor under the undefended list procedure where applicable,[49]where the plaintiff contends that the defendant has no defence to the claim or *vide* a writ of summons where there is need for a full trial.[50]

The grounds for challenging the enforcement of foreign judgment at Common Law are similar to those outlined under the statutory regime, which are essentially founded on common law principles. Similarly, for a foreign judgment to be enforced at Common Law, there are some conditions that has to be satisfied including the requirement that: the original court must not have acted without jurisdiction,[51]the judgment must be for a fixed sum of money,[52]the judgment must also be final and conclusive in the country of origin,[53] the judgment must not have been obtained by fraud[54] and the judgment should not be in respect of a cause of action which is contrary to public policy in Nigeria.

Recognition and Enforcement of Foreign Arbitral Awards

There are five legal avenues for the enforcement of foreign arbitral awards enumerated as follows: (i) by action upon an award, (ii) by registration under the Foreign Judgment (Reciprocal Enforcement) Act, (iii) enforcement pursuant to Section 60 of the Arbitration and Mediation Act, (iv) enforcement under the framework of the New York Convention on the Recognition and Enforcement of Foreign Arbitral award [55]and (v) enforcement under the framework of the

[48] Ibid.
[49] B. Ajibade& B. Oregbembe, (n.31)ch. 23.
[50] Ibid, para 2.4.
[51] The position enunciated in *Buchanan v. Rucker* (1808) 9 East 192, is to the effect that the pertinent question when considering whether the original court was a court of competent jurisdiction is not whether the foreign court was entitled to assume jurisdiction according to the foreign law, but whether the foreign court had jurisdiction according to the English rules of private international law.
[52] The fixed sum of money contemplated does not include tax or penalty due to the foreign jurisdiction.
[53] The effect is that the judgment must permanently decide the matters between the parties, if the judgment can be challenged in the same court with the possibility of it being set aside or varied; the judgment will not be regarded as final and conclusive- *Nouvion v. Freeman* (1889) 15 App Cas 1.
[54] Fraud covers cases of presentation of evidence which the other party knew to be false, where a litigant has been deprived of the opportunity to take part in the foreign proceedings either by trick of the other party (*Ochsenbein v papelier (1873) 7 Ch. App 695),* or as a result of violence (*Abouloff V. oppenheimer (1882) 10 QBD 295)* and cases which border on the defendant's objection relating to fraud by the foreign court.
[55]The convention is applicable to Nigeria by virtue of section 54 of the Arbitration and conciliation Act.

International Centre for Settlement of Investment Disputes (ICSID). The ICSID framework has its bases in international law and, and to that extent, shall be treated separately.

Action at Common Law

A foreign arbitral Award can be enforced by an action in Nigeria under common law. A party that seeks to enforce an arbitral award rendered in a country that has no reciprocal arrangement with Nigeria in that respect, may bring a fresh action with the foreign award as the basis of the cause of action.[56] The position at common law "is to view every valid arbitral award as a contract, which is inexorably binding on the disputing parties".[57] It is considered that, there is an implied term in an arbitration agreement that parties agree to perform the award.[58]The Supreme Court in the case of *Alfred TopherInc of New York v. Edokpolor,*[59]the Supreme Court held to the effect that, a foreign award is enforced in Nigeria by suing base on the foreign award. In that case a New York company brought an action for the enforcement of an award rendered in foreign arbitration, and governed by the law of New York in the United States of America, which has no reciprocal arrangement in that regard with Nigeria. The Nigerian Supreme Court held that the application brought for direct enforcement ought to have been struck out by the lower court for lack of reciprocity, because the plaintiff could sue upon the foreign judgment at common law.[60] However, for the plaintiff to succeed in the action, he has the burden of proving the existence of an arbitration agreement, the proper conduct of the arbitration in accordance with arbitration agreement and the validity of the award.[61]When the Nigerian court enters judgment by pronouncing on the validity of the award, the award thereupon constitutes *estoppel,* and the successful party can therefore, proceed to enforce the award by the appropriate mechanism.[62]

[56] Emmanuel Dike, '*Facts and Myths on the Enforcement of Foreign Arbitral Award in Nigeria',African Law & Business*, ICLG .com available at <www.iclg.com/alb/facts-and-myths-on-the-enforcement-of-foreign-arbitral-awards-in-nigeria> accessed on 13-04-20.

[57] C. A Obiozor, 'The Machinery for Enforcement of Domestic Arbitral Awards in Nigeria- prospects for stay of Execution of Non- Monetary Awards',*JILJ,* (2010).167-173.

[58] See *Norske V London General Insurance Co (1927)* 43 TLR 541.

[59] (1965) 1 All NLR 292.

[60] O. O Abe, Enforcement of Foreign Arbitral Award in Nigeria, Unpublished L. LM Short Thesis submitted to Department of Legal studies, Central European university, Budapest, Hungary, March,2011.

[61] Ibid.

[62]Obiozor (n.58) *168.*

Enforcement by Registration

Foreign Arbitral awards can be recognised and enforced by virtue of the Reciprocal Enforcement of Judgment Ordinance, 1922 or the Foreign Judgments (Reciprocal Enforcement) Act. Under the framework of both statutes, the Award sought to be enforced must have become enforceable in the same manner as a judgment rendered by the court which is capable of being recognised and enforced, and not as an award.[63] The 1922 Ordinance applies only to judgments on awards obtained in the United Kingdom and countries that hitherto constitute "other parts of Her Majesty's Dominions and Territories under her protection", whereas the 1961 Act[64] applies to any country in respect of which the Minister of Justice may Order or direct that it shall apply on the basis of reciprocity.[65]

By Direct Enforcement under the Arbitration and Mediation Act

Foreign arbitral awards can be enforced directly pursuant to section 60 of the Arbitration and Mediation Act,[66]which incorporated the provision of the New York Convention,[67] without prejudice to the jurisdiction it was granted, and considers the arbitral award binding on the parties thereof. The Act provides to the effect that, "an arbitral award shall, irrespective of the country in which it is made, be recognised as binding and subject to section 57 and 58 of this Act,[68]upon application in writing to the court be enforced by the court".[69] In that regard, it has been submitted that although the term 'irrespective of the country" is used, going by the express wordings of statute, it does not connote automatic right to enforcement. Thus, the party relying on the award or applying for enforcement is expected to furnish the court with a duly authenticated original award of certified true copy of the award, the original arbitration agreement or a duly certified copy of the agreement,[70] and a duly certified copy of the translation

[63] B. Ajibade, 'Enforcement of Foreign Arbitral Awards in Nigeria: Quo Vadis', *A* paper delivered at the Annual Conference of Chartered Institute of Arbitrators, Nigerian Branch (25-03-11).
[64] Section 2 of the Act defines judgment to include an award.
[65] Ibid.
[66]Arbitration and Mediation Act, 2023, Laws of the Federation of Nigeria.
[67] The Convention on the recognition and Enforcement of Foreign Arbitral Awards, New York, 1958
[68] Section 58 of the Act provides that "any of the parties to the arbitration agreement may, request the court to refuse recognition or enforcement of the award' based on the specific grounds provided thereof.
[69] Ibid, Section 51(1).
[70] Ibid, Section 51(2), (a) & (b).

of the arbitral award or agreement in case where they are not made in English language.[71] Thereupon the party may with leave of court so obtained, be entitled to enforce the award in the same manner as a judgment or order of the court.[72]

The condition upon which an application for enforcement under the foregoing provision of the Act may be set aside are set out in Article v of the New York Convention are in consonance with the provision of Section 58 of AMA and are enumerated as follows: (i) a party to the arbitration agreement was under some incapacity, (ii) the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the laws of Nigeria, (iii) the party was not given proper notice of the appointment of an arbitrator or arbitral proceedings or was otherwise not able to present his case, (iv) the awards deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, (v) the award contains decision on matters which are beyond the scope of the submission to arbitration, (vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless such agreement was in conflict with the provision of the Act from which the parties cannot derogate and, (vii) where there is no agreement between the parties in respect of the composition of the arbitral tribunal and where the arbitral procedure was not in accordance with the Act.[73]

The fulfilment of the forgoing is predicated on the overriding qualification in subsection (b) to wit: the subject matter of the dispute is not capable of settlement by arbitration under the law of Nigeria, and that the recognition and enforcement of the award is against public policy of Nigeria.[74] In the case of ***K.S.U.D.B V. Fanz Construction Ltd,***[75]the Supreme Court whilst considering the issue relating to the basis of setting aside an arbitral award on the grounds that it offends Nigeria's public policy, held that the following matters cannot be subject of arbitration in Nigeria: an indictment for an offence of a public nature, disputes arising from illegal contract, gaming and wagering, disputes leading to a change of status such as divorce petitions,

[71] Ibid, section 58 (2) (c).
[72] Ibid, section58 (3)..
[73] Ibid, Section 58 (2) (a) (i)-(viii)
[74] Ibid, Section58 (b).
[75] (1990) 4 NWLR (Pt 172).

bankruptcy petitions, winding up of accompany and, any arbitral agreement that empowers the arbitrator to give decision *in rem.*[76]

Recognition and Enforcement of ICSID Awards

Traditional international law in the area of foreign investment hitherto, contemplated only State parties, and only State parties participated in dispute resolution either through negotiations or international courts. Thus, the only option opened to aggrieved investors is to rely on his home state to put forward their claims in international proceedings by way of diplomatic protection,[77] after the investor must have exhausted the domestic remedies offered by the host state's domestic courts.[78] However, the extant regime has evolved in the nature of investor-state arbitration, which entitles private parties to bring limited action against State actors before supranational tribunals. This development was occasioned by the fact that, over the years, domestic courts have proved not to be a viable option to adjudicate on matters of foreign investment which particularly borders on expropriation.[79]

The ISCID convention achieved a milestone with the establishment of an international framework for the protection and promotion of foreign investment between developed and developing countries, together with the creation of a highly delocalised and international institutional machinery for the settlement of investment disputes.[80]In the words of Delhaume:

> *(ICSID) constitutes a self –contained machinery operating in total independence from domestic legal systems. In the context of ICSID, the sole role of domestic courts is one of judicial assistance intended to facilitate the recognition of ICSID awards and to increase their effectiveness…The Washington Convention gives direct effect access to international forum and enables investors provide in an investment*

[76] See F.O Akinmoladum, Enforcement of Arbitral Awards in Nigeria: an Appraisal of the Emerging TrendsA Thesis submitted to the School of Humanities and Social Science, The American University in Cairo, Egypt .Electronic copy available at:<http://ssrn.com/absract=1556607>acessed 20/8/21.

[77] Christoph Schreuer, 'Interaction of International Tribunal and Domestic Court in Investment Law, Contemporary issues in international Arbitration and Mediation'- electronic copy available at<https://investmentlaw.univie.ac.at> accessed on 27-07-22.

[78] Ibid.72

[79] Domestic courts are not considered alternative option for settlement of disputes with the host state because there is usually no independence of the judiciary in most countries, and the executive often times tend to intervene in court proceedings. There is also the issue of loyalty to the forum state, which may likely influence the outcome of proceedings, especially where the huge amount of monetary compensation is involved. Another consideration in that regard borders on the fact that domestic courts are bound to apply local laws, even if the domestic laws are in conflict with international law and standards recognised for the protection of investors. See Schreuer (n.78).

[80] Schreuer (n.78).

> Agreement that disputes will be decided under the rules of international law. in exchange, the Washington protects contracting states from other forms of foreign international litigation… the investor cannot bring suit in a non-ICSID forum whether in the investor's state or elsewhere[81]

In the same vein, Broches observed that "in order to protect the balance of right between investor and states, the drafters established' a complete, exclusive and closed jurisdictional system, insulated from national law' with respect to arbitration proceedings, award and review of awards".[82]

It has been submitted that, the decision of national courts of the parties, particularly that of the host state, cannot determine the jurisdiction of an international tribunal.[83] Investment tribunals have resisted any attempt by respondents to challenge the jurisdiction of international tribunal, by way of anti-suit injunction[84]. By virtue of Article 41(1) of the ICSID Convention, an ICSID tribunal has power to independently determine the scope of its jurisdiction. It specifically provides that "the tribunal shall be the judge of its own competence"[85]Article 25 (1) is emphatic on the jurisdiction of the ICSID institutional dispute settlement mechanism. It provides that, "the jurisdiction of the centre shall extend to legal disputes arising directly out of an investment between a contracting state… and a national of another contracting state, which the parties to the dispute consent in writing to submit to the centre. When parties have given their consent, no party shall withdraw its consent unilaterally". Written consent as noted earlier in this work, may take the traditional form of an express arbitration clause incorporated in the investment agreement between the foreign investor and the host state, or where state consent to ICSID arbitration in its foreign investment law or in a bilateral investment treaty [86]

Article 26 and 27(1) of the ISCID Convention clearly expresses the primary aim of delocalisation that underlays the convention, which is achieved through the exclusive nature of

[81] G.R Delaume, ICSID Arbitration, in J.D.M Lew (ed), Contemporary problems in international Arbitration (springer Dordrecht,1987) -e-book- springer Dordrecht: available at<https://doi.org/10.1007/978-94-017-1156-2> accessed 27-04-22.

[82] A. Broches, 'Award Rendered pursuant to the ICSID Convention, Binding Force, Recognition, Enforcement and Execution', *ICSID Review Foreign Investment Law Journal* (1987) 297-288.

[83] Schreuer (n.78).

[84] See SPP v. Egypt, Decision on Jurisdiction II, 14 April 1988, 3ICSID Reports131, para 60, SGS v. Pakistan, Decision on jurisdiction, 6 August 2003, 8 ICSID Reports 406.

[85] ICSID Convention.

[86] Schreuer (n.78).

ICSID mechanism. Article 26 provides that "consent of the parties to arbitration under this convention shall, unless otherwise stated, be deemed consent to arbitration to the exclusion of any other remedy". Thus, the import of the provision is to ensure that resort to national remedies are expressly excluded.[87] Similarly, Article 27(1) bars the resort to diplomatic protection and any other remedy to the foreign investor's contracting member state in relation to the dispute submitted to ISCID arbitration.[88] In effect therefore, once an ICSID arbitration clause exclude the jurisdiction of national court, and ICSID is chosen, the national court of the parties no longer has the competence to hear an international investment dispute,[89] and cannot even order attachment or other provisional measures.[90] The dispute can only be resolved between the host state and the investor by the ICSID.

The exclusivity of the ICSID mechanism is further achieved by reason of the fact that, the award cannot be set aside by national courts, and in the case where the award has obvious defect, such award can only be annulled by a special *ad hoc* Committee specially constituted for that purpose within the framework of ICSID. Thus, under the ICSID Convention, the review procedure for award is exclusive and self-contained. The Awards of ICSID tribunal are protected under the exclusive remedy rule under Article 53,[91] which provides that "the Award shall be binding on the parties and shall not be subject to any appeal or to any other remedy, except as provided for in the convention". The ICSID Convention contemplates limited grounds for annulment of award by its special ad hoc committee in exceptional circumstances including, where the complaint borders on issue as to whether the tribunal was not being properly constituted, manifest excess of powers, serious departure from fundamental rule of procedure, and failure to state the reason on which the award is based.[92]

The ICSID system is further insulated from the interference of national courts, as it is designed to operate fully on the international plane, particularly as the Convention contemplates that any dispute that arises between contracting state in relation to interpretation or application of the Convention which cannot be settled by negotiation is to be referred to the International Court of

[87] Ibid.
[88] Ibid.
[89] Hans van Houtte, *The Law of International Trade* (2nded, Sweet & Maxwell, 2002) 7.14.
[90] C. Brower and R. Goodman, "Provisional Measures and the protection of ICSID jurisdictional Exclusivity against Municipal proceedings" (1990) I.C.S.I.D Review. 431.
[91] ICSID Convention, Article 53.
[92] ICSID Convention, Article 52(1).

Justice (ICJ) by any of the party to such dispute.[93] In effect, each contracting state has accepted the compulsory jurisdiction of the ICJ as to disputes with other contracting state only, as it relates to disputes in respect of the interpretation and application of the Convention, but the substantive dispute are excluded from such submission to ICJ.[94]

However, despite the foregoing, domestic court plays a relevant role in respect to the enforcement of the awards[95] rendered in investment arbitration, particularly by an ICSID tribunal.[96] Recognition and enforcement of awards essentially requires interaction of 'international and domestic law', therefore the resultant effect is a sort of mixed- jurisdictional structure in that respect.[97] The ICSID convention provides that awards are to be recognised as binding and their pecuniary obligations are to be enforced like final domestic judgment in all states parties to the convention.[98] It therefore means that, recognition and enforcement may be [99]sought in any member State party's Jurisdiction, and to that extent, a successful party may select a state where enforcement seems to be most promising.[100]

The procedure for enforcement is primarily governed by the domestic law in relation to enforcement of judgment in each country. The ICSID Convention specifically provides that the execution of an award shall be governed by the laws concerning the execution of judgment in force in the state in whose territories such execution is sought. It further enjoins contracting states to designate a single court or authority for the purpose of recognition and enforcement of

[93] ICSID Convention, Article 54.

[94] See *Belgium v. Spainre Bacelona Traction*, ICJ Rep. (1970) 3.

[95] The ICSID award does not give a specific definition of what constitutes an "an award", Article 53 (2) states however that "award shall include any decision interpreting, revising or annulling such award pursuant to Article 50,51 or 52". However, the general consensus is to the effect than an award, being a functional equivalent of a Judgment, refers to final decision of an arbitral tribunal rendered on its merit, and disposing off of all the issues and question raised in relation to the dispute. See C. Schreuer, L. Malintoppi, A. Reinisch, A. Sinclair, The ICSID Convention A commentary on the Settlement of Investment Dispute Between States and Nationals of other States (2nded, Cambridge University Press, 2010) 275-280.

[96] A. Reinish, Enforcement of Investment Awards, in 'arbitration under international investment Agreement (K. yennaca- small ed,2010) 671-697.

[97] C.E Oseoamen, Problems of Enforcement of Award in International Investment Law, An LL.M Thesis submitted by the University of Liverpool School of Law and Social Justice (15th September,2014) 17

[98] ICSID Convention, Article 54(1) provides: "each contracting state shall recognise an award rendered pursuant to this convention as binding and enforce the pecuniary obligation imposed by that award within its territories as if it were a final judgment of a court of that state".

[99] ICSID Convention, Article 54(3).

[100]Oseoamen (n.98).

award rendered under ICSID regime.[101] It is to be noted that, Nigeria implemented the provisions of the ICSID Convention in that regard, by virtue of the International Centre for Settlement of Investment Dispute (Enforcement of Award) Act,[102]which designated the Supreme Court of Nigeria as the competent authority for the recognition and enforcement of ICSID Awards.[103] It has been submitted in that regard that the foregoing provision of the convention, paradoxically recognises the jurisdiction of the member States to the ICSID Convention in respect of execution of awards, contrary to the delocalisation and exclusivity intendment of investment arbitration in that context, therefore, the efficiency of the enforcement mechanism, is intricately intertwined with the judicial efficiency, and attitude of the domestic jurisdiction towards the arbitral process.[104]

Conversely, the powers of domestic court to enforce ICSID awards are circumscribed to limit its scope. The designated domestic court or competent authority within the contemplation of the ISCID Convention is limited to verifying whether the award is authentic.[105] It does not extend to judicial review of the substance of the claim adjudicated upon by the Investment Tribunal. Domestic courts cannot therefore, even purport to examine whether the ICSID had Jurisdiction, whether it adhered to proper procedure, or whether the award was subsequently correct, or whether the award is in consonance with the forum state's public policy.[106]

Nigeria ratified the ICSID or Washington Convention in 1965 and also took steps to enact the International Centre for the Settlement of Investment Dispute (Enforcement of Awards) Act (ISCID Act),[107] which specifically provides for the recognition and enforcement Awards rendered by ICSID tribunal as final judgment of court in Nigeria,[108] and the Supreme Court of Nigeria was specifically designated as the proper forum for the enforcement of ICSID awards as noted above.[109] The ICSID Act specifically implement Article 54 of the Washington Convention

[101] ICSID Convention, Article 52(2) provides that each contracting state party must designate a court or authority for this purpose and notify the Secretary- General of ISCID.
[102] Cap I 20, Laws of the Federation of Nigeria, 2004.
[103] Ibid, Section 1 (1).
[104] Oseoamen, op cit. P.17
[105] Schreurer; op.cit. PP.85
[106] Ibid
[107] Cap I20 LFN, 2004
[108] Ibid,Section 1(1)
[109] Ibid

which specifically provides that contracting state shall recognise the award under the convention as binding and enforce the obligation in the award as the final judgment of the court of that state.

Enforcement of judgments and arbitral Awards against State Counterparties

If we accept the view that transnational commercial disputes cover dispute that arises out of trade and commerce conducted across national boundaries, then it is inevitable that such transactions may be carried out between either natural or juridical persons in different countries. These juridical persons may be private corporations or State own entities which are usually constituted to carry on commercial activities. States occasionally participate directly in international trade by themselves or through State owned company or agencies of government. The problem of immunity usually arises when sovereign states engage in cross-border commercial activities. In the event of any dispute which may arise from such transaction, the state party cannot be dragged before the court of another sovereign state.

This is in view of the traditional doctrine of sovereign equality.[110] Sovereign immunity is therefore, a legal doctrine based on the principle of equality of state, and it presupposes that a sovereign state or state entity is immune from any suit, whether civil or criminal before the court of another state.[111]The scope of the doctrine covers not only sovereign government, but its political sub- divisions, departments and agencies, and state owned companies from being sued in any judicial forum without its consent.[112] The import therefore, is that, a sovereign state may not exercise prescriptive, executive and adjudicative powers over sovereign state or over the properties of other sovereign state within its jurisdiction[113] The position of law in expounded by Lord Atkin in *The Chrisna* is the effect that:

> The first is that the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings, whether the proceedings involve the process against his person or seek to recover from specific property or damages… The second is that they will

[110]The principle of sovereign equality is a principle of international law that connotes that all states are equal before international law no matter the size of their territory, population, economy or military, and in principle, each states is entitled to be in control over affairs within their borders and are protected from undue interference from outside

[111] J. Lew, L. Mistelis, S. Kroll, *Comparative international Commercial Arbitration* (The Hague- London- New York: Kluwer Law International, 2003) p.774

[112]H. Schreuer, *State Immunity: Some Recent Developments* (Grotius, Cambridge,1988) p.91-124

[113]R.D Goeorges, 'Foreign Sovereign Immunity: Impact on Arbitration' (1993) 38 Arb J P.34-47

> not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his of which he is in possession or control…[114]

The immunity accorded to sovereign hitherto used to be absolute, but several countries the world over have adopted a more restrictive view. Consequently, in most legal systems, transactions of public authority (acts *jure imperii*) have been distinguished from commercial transactions (*jure gestionis*). Thus, acts *Jure imperii* are granted immunity, whilst acts *jure gestionis* are not accorded immunity. However, there is no general consensus in international law, as to what constitutes act *jure imperii*. It has been observe that many attempt have been made to provide an exhaustive list of transactions that would constitute such acts of a public authority, but it turned out practically impossible to reach a consensus in that regard.[115]

Lord Denning noted the forgoing development in the case of ***Trandex trading Corporation v Central Bank of Nigeria***[116] as follows:

> Many countries have now departed from the rule of absolute immunity. So many have departed from it that it cannot longer be considered a rule of international law and that it has been replaced with the doctrine of restrictive immunity. The doctrine gives immunity to acts of government nature, described in latin as jure imperii, but no immunity to acts of commercial nature jure gestitonis.[117]

The English Court of Appeal in that case, rejected the plea of sovereign immunity by the Central Bank of Nigeria in an ordinary commercial transaction as opposed to governmental acts, held without equivocation that the intrinsic nature of the transaction and not its purpose or object was material consideration in determining whether the transaction was a commercial or governmental nature. On that basis, the court held that, the fact that the letter of credit was issued for the purpose of purchase of cement by the Nigeria Ministry of Defence did not make the transaction a governmental act.[118]

[114] (1939) AC 485, 490, (1939) 1 ALL E.R P.720-721
[115] I. Brownlie, 'Contemporary Problems Concerning the Jurisdictional Immunity of State' (1983) *B.Y.I.L* 75
[116] (1977) QB 529
[117] Ibid
[118] C. B Okosa, 'The Limit of Sovereign and Diplomatic Immunity, The Constitution'(2004) 4 (1) 88-93

The Court of Appeal adopted a similar position in the case of ***African Reinsurance Corporation v JDP Construction Nigeria Ltd,***[119] which was decided based on the Diplomatic Immunities and Privileges Act. The court emphatically reiterated the law to the effect that a foreign sovereign cannot claim immunity when he is engaged in trade, commerce or ordinary business activities. The court further held that it would be immoral and unjust to set the appellant free from being call to answer for obligations it freely assumed under a contract. The claim for immunity was accordingly rejected.[120]

It is therefore the position under the extant law that, where a foreign sovereign state by itself files a claim before a court or an arbitral tribunal, it is deemed to have waived its immunity of jurisdiction, and to that extent, it can be the subject of a counter-claim. In the same vein, the acceptance of an arbitration clause in a contract is considered a waiver of the immunity of jurisdiction.[121] An agreement to arbitrate is construed in most cases to constitute a waiver of immunity in respect of both the arbitral proceeding and the ancillary proceeding in national court, where the national court of the seat is called upon to intervene.

However, a waiver of immunity by a sovereign state to be amenable to the jurisdiction of the court of another State does not necessarily translate to the waiver of immunity from enforcement or execution of judgment against the properties of a sovereign state within the jurisdiction of a foreign sovereign state. It has been submitted that, under international law, States and state entities which do not enjoy immunity of jurisdiction for a specific claim, can still enjoy immunity from enforcement for state properties or assets used for public service. A forum court is not permitted to seize foreign State owned properties or to enforce judgment against foreign state property used for public service[122] thus, a state is not permitted under international law to place embargo on foreign war ships which dock in its port, or to attach embassy buildings or properties of a foreign State. There is however no general consensus on the borderline between assets required for public service and other assets.[123] The case of ***AIC Ltd v. Federal Government of Nigeria***[124]is instructive in that regard. In that case, the English court considered

[119] (2003) F.W.L.R (pt.176) p. 667
[120] Okosa (n.199) 91
[121] Hans van Houtte, op cit. para 2.07
[122] Ibid, para 2.08
[123] C. Schreuer, op cit. p.10-43
[124] (2003) EWHC 1357 (Queens Bench Division)

the question whether a judgment obtained by AIC Ltd against the Federal Republic of Nigeria from Federal High Court of Nigeria was capable of being recognized and enforced in the UK. FRN contented that by virtue of Section 1 of the State Immunity Act, 1978, the state was immune from the jurisdiction of the English Court, and that there was no waiver of its immunity in the circumstance. The court agreed with the contention and upheld the plea of sovereign immunity.

The same position has been upheld in respect of arbitral award. In ***L R Avionics Technology Limited v. Federal Republic of Nigeria & one other,***[125]the English Court set aside a charging order enforcing an arbitral award and related foreign judgment made against FRN on the ground of state immunity. The charging Order was hitherto issued over a property owned by FRN, but which was leased to a private Company to process Nigeria passport and applications.[126] In the United State of America, Nigeria also succeeded in its plea of sovereign Immunity in the case of ***Verlinden v. Central Bank of Nigeria,***[127] wherein the US District Court upheld the plea of the Nigeria Central Bank on grounds of jurisdiction bordering on the Sovereign immunity under the US Foreign Sovereign Immunities Act (1976) (FSIA), and granted the motion of dismissal after determining that no of the exception to the plea of sovereign immunity under the FSIA applied to the case.[128] It is worthy to note that, the exception under the FSIA includes: express or implied waiver, commercial activity carried on in the US, expropriation of property contrary to international law, and monetary damages in respect of personal injury in the US.[129]

As noted above, state immunity does not prevent a State or state entity from agreeing to submit to the authority of an arbitral tribunal. Under international law, a state is bound by an agreement to arbitrate contractual disputes, and the ability to do so, is in itself seen as an incidence or

[125] (2016) EWHC 1761 (comm)
[126] See also *Continental Transfer Technical Ltd v Federal Republic of Nigeria* (2009) EWHC 2898
[127]103. S.Ct. 1062 (1983)
[128]28 U.S.C ș1605 (a) (1982)
[129] P. E Bergum, Verlinden B.V v. Central Bank of Nigeria: Expanding Jurisdiction under the Foreign Sovereign Immunity Act 6. Nw. J Int'l L & Bus, 320 (1984-1985) available at http://scholarlycommons.law.northwestern.edu/njilb/acessed 07/04/22

attribute of sovereignty.[130] It has been submitted that arbitration can only validly proceed on the basis that the state concerned agreed to arbitrate, and as such an agreement to arbitrate is generally considered to be a waiver of immunity. Such a waiver is considered all encompassing, as it arguably extends to the jurisdiction of the court of the seat of arbitration to supervise the arbitral process.

In the context investment awards, the obligation imposed on domestic court to enforce ICSID award is clearly subject to the establish rule of customary international law in respect of immunity from jurisdiction and execution the inures in favour of sovereign States. Article 55 of the Convention specifically states thus: "nothing in Article 54 shall be construed to derogate from the law in force in any contracting state relating to immunity of that state or any foreign state from execution".[131]

It has been opined in that respect that, Article 54(3) and 55 effectively derogates from the powers conferred on domestic court to enforce ISCID awards because, it invariably means that certain assets of a contracting State party either at home or abroad in another contracting State party's jurisdiction are exempted from investment arbitration and the enforcement of investment arbitral awards. This position is premised on the ground that such asset is reserved for public, military or diplomatic purposes are not subject to seizure by way of enforcement by national courts.[132] Consequently, execution of ISCID award against a debtor state party's property can only be possible if those property can be shown not to serve the state's official purposes. It is established under international law that even where state and state entities do not enjoy immunity from jurisdiction for a specific claim, the state can still enjoy immunity of assets used for public service.[133] The claim of sovereign immunity is applicable even before the court of other contracting party of the ICSID convention, who are not parties to the particular dispute leading to the award sort to enforced.[134]

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[130] See F. B Badmus- Busari, Sovereign Immunity and Enforcement of Awards in International Commercial Arbitration: A Thesis submitted to Tulane University- Law School: Emory University School of Law, April 25, 2013

[131]ISCID Convention

[132]Schreurer; op.cit. PP.85

[133]See H. Schreuer, *State immunity: Some Recent Developments* (Groitus, Cambridge, 1988) 92-124

[134] M. Sornarajah, 'The Enforcement of arbitral awards made in Foreign Investment Disputes' in C. Wing and h. Lai (eds) (Faculty of Law National University of Singapore Press, 1997) 27

Conclusion

Foreign judgments and arbitral awards are enforceable in Nigeria pursuant to the extant conflicts of laws in Nigeria, and under treaty regime in the case of international awards respectively. However, for foreign judgment to be duly executed they must be duly recognised and registered in Nigeria by the relevant authority of the enforcing court, thereafter the such judgment can be enforced in the same manner, as if it were the judgment of the enforcing court in Nigeria. Arbitral awards are more specifically enforceable in Nigeria based on Nigeria treaty obligation either under the New York Convention or the Washington Convention respectively.

However, the enforcement of such awards are to a large extent dependent on the provisions of domestic legislation in Nigeria, and thus not sacrosanct. It is observed even in a highly delocalised arbitration under international law. Domestic courts exercising their jurisdiction to enforce foreign judgment incidentally conduct minimal judicial review within the frame work of both national law to ensure compliance with the stipulated standards or criteria before execution is sanctioned within the jurisdiction of the court in Nigeria. Conversely, it therefore means that where a foreign judgment or international arbitral award contravenes the dictate of national or international standard, the court in Nigeria will refuse to enforce such foreign judgment or arbitral award.

The argument in favour of the indispensability of judicial intervention in international arbitration or arbitration in general further gain traction with the decision of the English Court in the *Federal Republic of Nigeria v Process & Industrial Developments Ltd*[135] delivered on 23rd of October, 2023. The Court per Robin Knowles J CBE set aside the arbitral award against Nigeria to the tune of over $11.5 billion including post award interest, on grounds that the "awards were obtained by fraud and the way in which they were procured was contrary to public policy". It thus argued that beside 'lending' the coercive powers of the court to support the arbitral process, the exercise of judicial review in that regard is pertinent, in case where arbitration is found to have been conducted under the table.

It is therefore, recommended in view of the information asymmetry that characterises the extant regime of enforcement, that a deliberate policy and legislative framework should be devised to

[135](2023) ECHC 2638 (Comm)

bridge the gap by creating a system that is predicated on the authentication of the original court or tribunal that delivered the judgment or rendered the award by a means of formal notification, beyond mere Certification with the official seal the foreign court. By so doing, it is opined that it will stem the tide of malpractice and fraud. The provision for such additional measure of scrutiny is based on the presupposition that the arbitral process need to utilise the coercive power of the judiciary to enforce the commitment of parties throughout the entire process, ranging from questions bordering on the jurisdiction of the arbitrators, enforcement of the arbitration agreement, interim protective measures, recognition and enforcement of arbitral awards and in peculiar circumstance judicial review of the award for example, where fraud, corruption and public policy consideration are in issue.

ANALYSIS OF LEGAL REGIME OF TAXATION ON ELECTRONIC COMMERCIAL TRANSACTIONS IN NIGERIA

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Abstract

The growth of electronic commercial transactions [e-commerce] in Nigeria has rapidly increased due to advances in telecommunication services. On one hand, e-commerce has allowed companies to engage with consumers worldwide, resulting in significant economic gains. However, it has also led to high levels of tax avoidance as some businesses seek to evade paying taxes. The paradigm shift from a physical commercial environment to a technology-driven one has made it difficult for tax authorities to determine the ***appropriate*** *tax on profits/income derived from e-transactions. Additionally, the borderless, trans-border, virtual, intangible, and anonymous nature of e-commerce transactions makes it challenging for tax administrators to track and enforce compliance. To address these issues, the Companies Income Tax Act and other tax laws were amended through the enactment of the Finance Act 2019 and 2020. This paper seeks to provide a critical analysis of the legal regime of taxation of e-commerce transactions in Nigeria, including the challenges faced in enforcing the extant law. The paper recommends proper implementations of the various provisions of the enactments in order to boost the country's economic growth through taxation of e-commerce transactions.*

Introduction

The advancement of information and communication technologies (ICTs) and the internet has revolutionised business operations, enabling new electronic methods of conducting business transactions.[136] This form of business transactions, commonly referred to as e-commerce, has become globally recognised due to its ability to offer businesses a speedy, flexible and efficient

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[136] C.E. McLure, 'Taxation of Electronic Commerce in the European Union' (California USA: Hoover Institution, Stanford University 2001) www.citeseex.ist.psu.edu/down accessed 12 January 2024

platform for selling goods and services to consumers around the world. Furthermore, e-commerce has experienced rapid growth in the recent years, which was accelerated by the COVID-19 lockdowns declaration/pronouncement that restricted movement and forced people and businesses to shift towards digitalisation. This shift has fundamentally altered how businesses operate and how people interact.

E-commerce has become an integral part of global business and our daily lives.[137] Despite being a developing country, Nigeria has shown a steady increase in e-commerce adoption. E-banking, with its cashless policy is one areas of e-commerce that particularly has proven to be successful in Nigeria.[138] While in both business-to-business (B2B) and business-to-consumer (B2C) e-commerce growth are expected to continue growing beyond 2023 and 2025.[139]In 2018, Nigeria's e-commerce transactions were valued at $13 billion, making it one of the largest e-commerce sectors in Africa and it is growing at an impressive rate of 25% annually, with revenues expected to reach $75 billion by 2025. Meanwhile as at 2022, Nigeria was ranked the 38th largest market for e-commerce nationwide, with total revenue of US$7.6 billion. Not only has this digital commerce generated significant revenues, but it has also created 87 Nigerian platforms, providing employment opportunities to 2.9 million people. This has led to rapid economic growth, innovation, and access to various services.[140]

The new trend of development in the e-commerce globally has created a vacuum and shortfall in government revenue and at the same time an opportunity which government can attest to generate more revenue. It is no doubt that there is an astronomical increase in the level of e-transaction thereby reducing the rate of conventional commercial transaction. There is also a great shift from conventional mode of life to another pattern through electronic means. This has

[137] Panle, R. A. & Okpara, A. J. 'The Nigerian Tax Policy on E-Commerce on Social Media: A Study of E-Informal Sector' [2021] (9*) Open Journal of Business and Management;* 2223

[138] Igwebuike Agbo , Nwadialor , E. O E-commerce and Taxation Revenue [2022] (5) (8) *Noble International Journal of Economics and Financial Research* ; 83

[139] Uwakwe, H. 'Prospects and Challenges of E-Commerce in Nigeria', *The Punch Newspaper*, (Lagos, February 7 2016).

[140] Lawrence, D. Nigeria's Private Sector Looks Past the Pandemic. *International Finance Corporation world bank group Insight* <https://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/insights/nigeria-ps-looks-past-pandemic> accessed 18 February 2023

increased the rate of transactions done electronically which are not captured within the tax net due to lack of formidable legal framework thereby resulting in tax loss.

Thus the shift from a physically-oriented commercial pattern [traditional permanent establishment] to a technology-driven electronic pattern poses severe legal and regulatory issues concerning taxation regimes. This is concern on how online transactions (e-commerce) can be captured effectively within the tax framework considering the challenges of jurisdiction usually associated with e commerce transactions. i.e. the residence of buyers and sellers or where the transaction took place might be complicated to trace/track.

As a way of minimising tax avoidance and evasion and in order to explore the opportunities embedded in the new trend of development in e-commerce, Nigeria introduced new legislation aimed at reforming our tax policies through its newly introduced Finance Act, 2022. One of the key elements of this new legislation is the inclusion in the tax net, online businesses that derive income in Nigeria.

By this innovation, resident and non-resident companies who engaged in e-commerce are taxed on the income derived in Nigeria through the principle of significant economic presence (SEP). This innovation has, however, addressed the gap and allocation of profit, which are global tax consequences of e-commerce. However, the administrative implementation of this innovation can be challenging in Nigeria because there are no adequate guidelines and directives for the effective implementation of the Act. And where the innovation is not well implemented, the goals, objectives and intendment of the Act may be jeopardized. This research will therefore analyse the legal regime of taxation of e-commerce transactions and also make appropriate recommendations.

Concept of E-Commerce

Electronic-commerce, also referred to as e-business, online- commerce, e-commerce or internet commerce, is generally considered to involve the use of electronic systems, such as the internet and computer networks, to facilitate the production, distribution, sale, and delivery of goods and services. Electronic transactions can therefore occur through various means, including telephone, fax, and automated teller machine [ATM], credit or debit card, television shopping, and online

delivery of government services.[141] Filani & Aina are of the view that the scope of e-commerce is wide and includes all electronically mediated transactions between an organisation and a third party. It is not restricted solely to the actual buying and selling of products, but includes pre sale and post-sale activities.[142]The World Trade Organization (WTO) defines e-commerce as the process of producing, advertising, selling, and distributing goods and services over telecommunication networks.[143] Similarly, the United Nations Commission on International Trade Law (UNCITRAL) defines e-commerce as the exchange of data messages related to commercial activities.[144]While the Organization of Economic Cooperation and Development (OECD) provides a comprehensive definition, stating that e-commerce activities involve transactions related to trade and grounded in the transmission of digitized data, regardless of whether payment and delivery occur online.[145]

It is important to recognize that e-commerce encompasses more than just buying and selling online. It also involves the transfer of products, services, and information through computer networks. This can include activities such as online customer service, collaborating with business partners, and exchanging documents within an organization using the internet.[146] Other examples of e-commerce include online catalogues that display images of products, allowing users worldwide to order goods like books, wine, and more. Additionally, e-commerce can offer access to services such as legal, accounting, medical, and other consulting, which subscribers can access for a fee with an electronic password. With the advent of inexpensive desktop video cameras, video conferencing, once reserved for larger businesses, is now accessible for personal use. Even stock brokerage firms, mutual funds, and other e-commodities offer securities trading. Finally, banking business is now conducted through electronic channels and the internet, with the ability to receive and pay money and handle bills electronically.

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[141] Opara, C. 'Taxation of E-Commerce', [2014] (2)*Global Journal of Politics and Law Research*; .2

[142] Filani, A. O. &Aina, S. A. 'E- Commerce and Enforcement of Consumer Rights in Nigeria: Issues, Prospects and Challenges' (2020) 3 (1) *Journal of Law and Judicial System*; 2.

[143] WTO General Council, Work Programme on Electronic Commerce, adopted by the General Council on 25 September 1998, 30 September 1998 WT/L/274, retrieved from < http://www.wto.org/english/tratop_e/ecom_e/wkprog_e.html> accessed 30 January 2023.

[144] Organisation for Economic Corporation and Development (OECD), Manual 2014 on The Challenges of Taxation of Digital Economy

[145] United Nations Commission on International Trade Law (UNICITRAL) 1996.Para 15

[146] Bielu, K. J. A Legal Appraisal of Taxation of Electronic Commerce in Nigeria [2021] (12)(2) *NAUJILJ;* 86

E-commerce has 6 basics models explained as follows[147]

i. Business to Business - This refers to Business to Business transactions. Under this platform, companies do business with each other. This involves not the final consumer but the manufacturers, wholesalers, retailers etc.

ii. Business to Consumer- Under this model of e-commerce, companies sell their goods and/or services directly to consumers. Consumers can browse their websites and see products and pictures and read reviews. After doing so, the consumers place their orders, and the company ships the goods directly to them. Amazon, Flipkart, Jabong, etc, are popular examples of companies involved in this e-commerce.

iii. Consumer to Consumer - This electronic platform assists merchants in selling their goods and assets directly to interested parties. Under this model, the consumers are in direct contact with each other. No firm is involved. Usually, the goods traded are cars, bikes, electronics etc.

iv. Consumer to Business- This is the reverse of B2C. The consumer provides a good or some service to the company.

v. Business-to-Administration (B2A): It encompasses all transactions conducted between and companies and public administration. This involves a large amount and variety of services particularly in the areas such as fiscal, social security, employment, legal documents and registers.

vi. Consumers-to-Administration (C2A): This encompasses all electronic transactions conducted between individuals and public administration.[148]

Issues in Tax Administration of E- commerce

The success of a nation's economy greatly depends on its ability to smoothly and efficiently conduct economic activities. These economic activities are crucial to any nation because

[147] C. McClure 'Taxation of Electronic Commerce in the European Union". (Hoover Institution, Stanford University USA, 2009) 55.

[148] Igwebuike A. &Nwadialor, E. O. "E-commerce and Taxation Revenue" [2022] (5) (8) *Noble International Journal of Economics and Financial Research* ; 82

revenue/tax is derived from the well-regulated operation of these activities. Traditionally, commercial transactions were conducted with a traditional market approach in mind, and taxes collected from these activities served as a key source of government revenue. To establish a physical presence and maintain operations, businesses often registered their location, providing both the government and the business with certainty about tax obligations.[149]However, this is not the case in e-commerce transaction because of the nature of online business. Administration of tax in E-commerce transaction has however generated some issues which are:

Geographical location: Global industrialisation and advancements in production and distribution have transformed the traditional concept of a market from being confined to a specific location or a designated location for the exchange of goods and services to boundless geography underpinned by daily human interactions in pursuit of basic necessities.[150]For instances, it is possible for a market place or place of business of a particular e –commerce transaction to involve more than two countries. Mr. "A" who is in Nigeria can order goods from Mr. "B" (online store) who is the United Kingdom and the goods be supplied by Mr. "C", a producer who is in China. Today, even a small online business in Lagos can connect with customers worldwide through a simple webpage accessible to anyone with an internet connection.

The ease of accessing the globe as a single market place has facilitated remote economic activity and this has created challenges for local, state or federal tax authorities. It becomes difficult to impose (or enforcing) their taxes on such economic activities that take place outside of their geographic jurisdictions or that involves more than one geographical location.

Anonymity: In certain situations, the internet's decentralized structure allows individuals to remain anonymous.[151] As a result, it's challenging for economic participants/vendors to be

[149], O. M. Atoyebi' Taxation in Electronic Commerce' *Opinion Nigeria* (18 December 2021) <https://www.opinionnigeria.com/taxation-in-electronic-commerce-by-oyetola-muyiwa-atoyebi-san/ > accessed 20 March 2023.

[150] P. Omoniyi, E. O. Joseph'The Legal Framework for Taxation of Digital Goods and Services in Nigeria' The Mooting Society (March 2017) <https://lexgemot.wordpress.com/2017/03/05/the-legal-framework-for-taxation-of-digital-goods-and-services-in-nigeria/> accessed 18 March 2023.

[151] Froomkin, M. Flood Control on the Information Ocean: Living with Anonymity, Digital Cash, and Distributed Databases'[1996] (15) *J.L. & Com*; 395, 414-49

identified, especially in the business-to-consumer segment of e-commerce.[152]This anonymity also enables taxpayers to leave minimal evidence of their involvement in economic activities, making it difficult for tax authorities to track and audit them. Due to the network's anonymous nature/it make the functions of tax authorities to be more difficult and challenging. For example, the Australian Taxation Office audited numerous Australian companies with web operations that claimed to be located within the country, but fifteen percent of them could not be located. This trend makes it challenging for tax administrators to gather taxes.[153]

Cross Border/ Borderless: Taxation is the exercise of sovereign power over taxable activities within a country's defined territorial boundaries.[154] International taxation follows the principle that taxable activities must be linked to a country. For corporate taxation, there is a traditional requirement that both resident and non-resident companies [NRC] must have a Permanent Establishment (PE).[155]In the case NRC, this PE can take the form of a subsidiary or an agent, and it is necessary for the company to be taxable in the source jurisdiction/country. If an NRC's activities within a source jurisdiction do not meet the criterion of a PE, then profits earned in the source jurisdiction are not taxable. The requirement of a PE is designed to prevent double taxation by multinational companies and to promote international trade. At this point, the source jurisdiction must register for tax purposes and comply with its tax laws.

Under section 13(2)(a) of the Companies Income Tax Act and Article 5 of its Double Taxation Treaties, Nigeria uses the term "fixed based" as an equivalent of "permanent establishment".[156]However, the system's effectiveness has been tested by the trend of business digitalization.

Companies in the digital economy can exploit traditional tax system loopholes to avoid paying taxes easily. This can be achieved by taking advantage of weak transfer pricing regimes, hybrid

[152] Ibid

[153] Summers, Tax Administration in a Global Era,' 34th General Assembly of the Inter-American Centre of Tax Administrators, *Treasury* (July 10, 2000) , 759.

[154] Attorney General v. Lutwydge [(1729) Bumb 280, 145 ER 674], Holman v Johnson (1775) [1 Cowp 341] In Government of India v Taylor [(1955) 1 All ER 292]

[155] N. Gorter& P. Schrievers. Tax Challenges Arising from Digital Economy FININACIER, <https://www.financierworldwide.com/tax-challenges-arising-from-the-digitaleconomy#.YCPzl-hKjIU> accessed 11 June 2022.

[156] Article 5 of the UK/Nigeria Double Taxation Agreement signed 9 June 1987

mismatch arrangements, double tax treaty benefits, or by exploiting the lack of a permanent establishment in jurisdictions where they operate.

Legal Regimes of Taxation on E-commerce in Nigeria

In the early 2000s, owing to its novelty, policymakers debated whether e-commerce should be taxed. Some argued that the internet and e-commerce platforms should not be taxed to encourage economic growth. However, due to globalisation, many countries now tax electronic businesses to grow and prioritize government revenues. Nigeria is also implementing e-commerce taxation to boost its revenue base amid economic challenges caused by the Covid-19 pandemic and the crash at the international market of oil prices.[157] Whereas, digital businesses like Jumia and Amazon generate trillions of Naira from Nigeria without paying taxes because these companies are not physically present in the country. To effectively analyse Nigeria's effort towards e-commerce transactions, it is essential to understand the traditional structure for the taxation of corporate entities within the Nigerian legal system. This shall be done by looking at the legal regime of e-commerce taxation under the CITA and Finance Acts

Traditional nexus of taxation under CITA [Pre-Finance Act 2019]

In Nigeria, companies are legally recognized as artificial persons under CITA and are required to pay taxes, this obligations extends to even the foreign companies. The income tax for individuals or corporate entities is based on a connecting factor [nexus] that determines if they are liable for taxes in a specific jurisdiction. Prior to the Finance Act, there were established rules for the taxation of companies in Nigeria. These rules were based on a structure that limited the imposition of income tax to the geographic location of the taxable entity, with consideration given to the source of income or fixed base. These rules are discussed below.

Broad Source Rule under Section 9(1) CITA

Section 9(1) CITA provides that:

> *'Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of section*

[157] Muhammad M., et al, 'Online Shopping Inventory Issues and Its Impact on Shopping Behaviour: Customer View' < https://link.springer.com/chapter/10.1007/978-3-319-59427-9_83 > accessed 2 December , 2023

> *40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in Nigeria.*

According to the source rule of taxation, a country has the right to tax income that is earned from activities conducted within its borders, provided that specific nexus thresholds are met. This perspective is reinforced by the Offshore International SA v FBIR[158] case, where it was determined that a company does not need to be registered or resident in Nigeria for it to be subject to taxation. It has been noted that the source rule under section 9(1) CITA is extensive, such that there is no requirement for MNCs or NRCs to have physical presence in Nigeria.[159] These source rules are evident in the phrase "accruing in, derived from, brought into or received in Nigeria,"….as used in the Act.

Hooper J. noted that:

> the words' accruing in' and 'received in' appear to me to import an explicit territorial limitation to Nigeria; the words 'derive from' appear to me to be designed to meet, among other things, cases where profits arise from a transaction carried out in Nigeria by a non-resident. The words brought in' appear to bring into the net tax profits from transactions carried outside Nigeria by a Nigerian company, but the tax is restricted by profits imported into Nigeria. [160]

Based on this interpretation, digital multinational corporations or non-resident companies would be subject to taxation in the Nigerian jurisdiction simply by conducting business within or into Nigeria. It has also been noted that when income is derived from a place, it means that the income has its origin in that place, where it is earned.[161] Therefore, income generated by digital companies involved in e-commerce would be subject to taxation under section 9(1) CITA's statutory source rules.

Business Jurisdiction and Principle of Attribution

The business jurisdiction was previously applied to income related to the fixed base concept, also known as a permanent establishment. According to the former Section 13(1) of the CITA, a

[158] (2011) 4 TLRN 58 at 82

[159]Obayemi, O. "Taxation of International E-Commerce Transactions in Nigeria" [2020] (6) *Jos Journal of International Law and Jurisprudence*; 206

[160]Toufic Karan v Commissioner of Income Tax 12 [WACA] 331

[161]Ipaye, A. "Taxation of Foreign Residents and Business under Nigeria Law" [2002] (1) (48) *The Commercial & Industrial Law Review*; 66-67

Nigerian company's profits are considered to accrue in Nigeria, regardless of where they come from or whether they are received in Nigeria. As a result, any operating business based in Nigeria is required to pay taxes on their earnings. However, a foreign or non-resident company (NRC) is only taxed in Nigeria if it can be proven that it has a commercial presence or business interest in the country, and if it has ascertainable profit that can be attributed to its presence in Nigeria.[162]

CITA before the amendment further provided that, if any of the activities listed below occur or a combination of such activities take place, it will indicate the presence of a taxable commercial establishment:

a. Operating from a fixed base in Nigeria, which could include having a physical presence, a Nigerian address or other substantial territorial ties with Nigeria, or if the Nigerian location is a regular stopover for business purposes.
b. Entering into a contract with a dependent agent in Nigeria who conducts commercial transactions on behalf of the business.
c. Undertaking a single contract in Nigeria for tasks such as surveys, deliveries, installations, or construction, otherwise known as turnkey projects.
d. Engaging in a fictitious or contrived transaction in Nigeria involving a related party.

This provision for CITA requires that NRC/foreign companies must have a Fixed Base also known as a Permanent Establishment (PE) in Nigeria in order to be taxed. This also includes situations where an NRC executes contracts through a dependent agent in Nigeria. While the phrase "permanent establishment" or ‘fixed based’ is not explicitly stated in the Act, it is defined in Article 5 of Model Double Tax Treaties. The Nigerian Double Tax Treaties (DTTs) further define permanent establishment/ fixed based as 'a fixed base of business through which the business of an enterprise is usually or partly carried on.'[163]Hence, this fixed base is typically a permanent physical establishment. The principle behind this provision is that NRCs must have a

[162] F. J. Adekunle ‘Digital Tax: An Overview of the Companies Income Tax Act and Challenges Arising From Taxation of the Digital Economy” (August 2021) Dissertation University of Lagos 19-30

[163] Double Tax Relief (Between Federal Republic of Nigeria and the Government of the Kingdom of Belgium) Order [S.I. 15 of 1992] Article 4(2)

significant presence, or fixed base/ permanent establishment, in Nigeria to be subject to tax on their profits attributable to that establishment.[164]

The Permanent establishment rule has also been defined in many cases to determine a company's tax liability. The court has had to determine in different cases the existence of a fixed base by different companies based on this rule. Hence, case law on the imposition of CIT on international transactions highlighted the significance of establishing either a fixed base or a permanent establishment. In *Offshore International SA v. FBIR*,[165] a Panamanian undertook well drilling and completion contracts from some Nigerian companies. It formed a wholly-owned Nigerian subsidiary to which it subcontracted the Nigerian operations to fulfil the contracts. On the basis that the contract profit was Nigerian, the Panamanian was assessed. The Panamanian, on Appeal, maintained that it was a foreign company incorporated in Panama with no Nigerian residence. However, the court found that the Nigerian subsidiary's wholly-owned performed drilling operations on behalf of the Panamanian parent. According to the court:

> If the plaintiffs enter into an agreement to take up oil drilling contracts in respect of oil wells to be drilled in Nigeria, and they undertake to do it by or through a person who is their son as it were, and they guarantee to supply the wherewithal required by that person for the execution of the said oil drilling operations in Nigeria, and the said operations are being executed, it will be vain for them (the plaintiffs) to say that they have no trade or business in Nigeria.

According to Section 13 of the Companies Income Tax Act, foreign companies must establish a "fixed base" in Nigeria. The court has determined that meeting this requirement necessitates a physical presence. However, this differs from companies operating in the digital economy who often structure their businesses in a way that avoids being classified as having a "fixed base" under Nigerian law. As many e-commerce transactions are conducted by non-Nigerian companies, incorporation in Nigeria is not always necessary. Consequently, the tax authorities

[164] John, D.C. "Corporate Taxation Laws in Nigeria, A Review" [2011] (2)(1), *International Journal of Legal Studies and Governance*; 246.
[165] (2011) 4 TLRN 58

are unable to collect taxes from these companies. While traditional income tax regimes may not be effective in taxing digital companies, the taxation of goods may prove to be more efficient.

Taxation of the Nigerian Companies involved in e-commerce under the Finance Act 2019 and 2020 [Post Finance Act 2019]

For many years, businesses operating within the Nigerian e-commerce and digital economy have taken advantage of the Permanent Establishment (PE) or fixed base clause outlined in Section 13 (2) of the Companies Income Tax Act (CITA).[166] Unfortunately, this has resulted in a significant gap in revenue, as companies with only a virtual presence have not been required to pay taxes on their income. This directly contradicts the Nigeria National Tax Policy (NTP),[167] which seeks to promote equality and ensure that Nigeria's tax administration framework aligns with global standards. On January 13th, 2020, President Muhammadu Buhari signed the Finance Bill 2019 into law,[168] which has greatly improved the traditional framework for companies operating in Nigeria and has effectively expanded the taxation of digital activities, including e-commerce. The most notable change brought about by the Finance Act is the amendment to Section 13 (2) of the CITA via Section 4 of the Finance Act. This amendment introduced the concept of significant economic presence (SEP) under Nigerian law and added a new paragraph (c and e) to Section 13(2) of CITA. As a result of these changes, Section 13(2)(c) of CITA now:

> (c) If it transmits, emits or receives signals, sounds, messages, images or data of any kind from cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce application store, high-frequency trading, electronic data storage, online adverts, participative network platform, online payments, to the extent that the company has a significant economic presence in Nigeria and profit can be attributable to such activity*[169]*

[166] Companies Income Tax Cap c21, Laws of the Federation of Nigeria, 2004 (as amended)

[167] T. Oyedele Nigeria Has a New National Tax Policy (PwC, 2 February 2017) https://pwcnigeria.typepad.com/tax_matters_nigeria/2017/02/nigeria-has-a-new-national-tax-policy.html# accessed 17 July 2023

[168] Anderson Tax LP, 'President Buhari Signs the Finance Bill, 2019 into Law' (Anderson Tax LP, 14 January 2020)<https://andersentax.ng/president-buhari-signs-the-finance-bill-2019-intolaw/#:~:text=On%2013%20January%202020%2C%20President,now%20Finance%20Act)%20into%20law > accessed 17 January 2023.

[169] Finance Act, 2019, . (6,) (107) Government Notice No. 11, 14th January, 2020, Lagos, Nigeria

While Section 13(2)(e) of CITA now provides that:

> If the trade or business comprises the furnishing or technical, management, consultancy, or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has a significant economic presence in Nigeria

From the above provision, a company's profits other than a Nigerian company from any trade or business shall be deemed derived from Nigeria if these three conditions are established. These conditions are:

• The company is involved in digital, electronic or online business in Nigeria

• The company derives profit from such activities and;

• The company has a significant economic presence (SEP) in Nigeria.

The effect of this amendment is that MNCs without having been incorporated in Nigeria or having a permanent establishment (PE) in Nigeria would still be subject to company income tax (CIT) in Nigeria so long as they satisfy the SEP requirements. Thus, SEP is now the new "nexus rule" *and decides* whether an enterprise providing digital services or a foreign enterprise providing technical services is liable to income tax on enterprises in Nigeria.[170]

Companies Income Tax (Significant Economic Presence) Order, 2020

While Section 4 (b) of the Finance Act introduced the Significant Economic Presence (SEP) concept under Nigerian law, it failed to expatiate what constitutes a "Significant Economic Presence". Instead, Section 4 (4) of the Finance Act provides that the Minister may, by Order, determine what constitutes the significant economic presence of a company other than a Nigerian company. Thus, considering the need to clarify the concept and its localization, the Minister of Finance, Budget, and National Planning issued the Companies Income Tax (Significant Economic Presence) Order, 2020, on 29th May 2020.[171]

[170]Aduloju O. I. "Taxation of the Nigerian Digital Economy in View of the 2019 and 2020 Finance Act" [2022].< https://ssrn.com/abstract=4002469> or < http://dx.doi.org/10.2139/ssrn.4002469>accessed 13 January 2023; 36-38

[171] Anderson Tax LP, "Minister of Finance Issues CIT (Significant Economic Presence) Order, 2020" (Anderson Tax LP, 7 June 2020) <https://andersentax.ng/minister-of-finance-issues-companies-income-taxsignificant-economic-presence-order> accessed 21 January 2023

The SEP Order details the conditions that create a taxable presence for Non-Resident Companies (NRCs) providing digital, technical, management, consultancy or professional services in Nigeria. The Ministerial Order provides that a non-resident company shall have SEP in Nigeria if it satisfies any of these following conditions

Paragraph 1 of the SEP Order provides that a foreign company shall have a SEP in Nigeria in any accounting year where it:

a. derives ₦25 million annual gross turnover or its equivalent in other currencies from any or combination of the following digital activities:
   i. streaming or downloading services of digital content, including but not limited to movies, videos, music, applications, games and e-books to any person in Nigeria; or
   ii. transmission of data collected about Nigerian users generated from such users' activities on a digital interface, including website or mobile applications; or
   iii. provision of goods or services other than those under sub-paragraph 5 of the Order, directly or indirectly through a digital platform to Nigeria; or
   iv. provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria;

b. uses a Nigerian domain name (i.e., .ng) or registers a website address in Nigeria;

c. has a purposeful and sustained interaction with persons in Nigeria by customizing its digital page or platform to target persons in Nigeria, including reflecting the prices of its products or services in Nigerian currency or providing options for billing or payment in Nigerian currency.

Paragraph 2(1) of the SEP order further provides that a non-resident company providing technical, professional, management, or consultancy services shall have a significant economic presence in any accounting year where it earns income or receives payment from a person resident in Nigeria or a fixed base or agent of a non-resident company (NRC).

As a result of recent changes to Nigerian tax laws, companies and entities involved in e-commerce transactions within Nigeria are now required to pay taxes in the country. Therefore, all NRCs that meet the above thresholds must register with the FIRS for income tax purposes and

file their returns with the tax authorities at the appropriate time. The Nigerian Income Tax (Common Reporting Standards) Regulations 2019 and various agreements signed by the Nigerian Government, which went into effect on 1st July 2019, will allow the FIRS to receive specific information from over 105 countries where Nigerian tax residents have bank accounts. The Regulations also mandate that qualifying financial institutions in Nigeria submit electronic returns detailing financial account information for specific individuals, which must be filed with the FIRS annually. The FIRS will be able to use the information obtained through this medium to recover taxes owed by the NRC. However, how these provisions will be implemented in practice and the extent to which the FIRS will seek to enforce its powers is yet to be seen.

The Finance Act, 2020

The Finance Act 2020, signed into law with an effective date of 1st January 2021, builds upon the Finance Act 2019 in regards to the taxation of NRCs, especially those involved in digital activities with Nigerian clients. Section 55 of the CITA was amended to include specific provisions for filing requirements for NRCs with a taxable presence in Nigeria.[172] Consequently, such NRCs must now file income tax returns, global audited financial statements, and audited financial statements for their Nigerian operations. Furthermore, there is now clarification on the tax return requirements for NRCs with a taxable presence in Nigeria.

Significantly, the Finance Act 2020 amends section 68 of the CITA to recognize emails and other electronic means as approved channels for the FIRS to serve notices of assessments and for taxpayers to submit their objections, respectively.[173] The Act also grants the FIRS the power to use digital platforms for tax collection and administration. As a result, the introduction of electronic communication with tax authorities in 2021 is expected to lead to quicker resolution of tax audits. Additionally, taxpayers, particularly those in the digital economy, should expect the FIRS to embed its application user interface in their tax administration and collection systems.[174]

[172] Finance Act 2020, s. 16
[173] Ibid s. 18
[174] Obayomi, W. &Ors, "Nigeria's Tax and Regulatory Landscape:"[2021] <https://home.kpmg/ng/en/home/insights/2021/02/nigerias-tax-and-regulatory-landscape-2020-in-retrospect-andoutlook-for-2021.html> accessed March 10, 2023

The Federal Government has taken unilateral action to address the taxation of the digital economy in its efforts to expand its tax base. The introduction of the Significant Economic Presence (SEP) rule for taxation of digital activities represents a development in the framework governing digital economy taxation under CITA. It is also evident from the Finance Act and SEP Order that Nigeria aims to keep pace with the rest of the world and develop a taxation framework for its digital economy that is compatible with global standards.

The Pros and Cons of Unilateral Approach of Taxation on E-commerce in Nigeria

Nigeria has enacted the Finance Act to tax e-commerce transactions, regardless of whether they are conducted by resident or non-resident entities within the country. This has been achieved through the SEP principle and other tax reforms, making Nigeria one of four countries to take a unilateral approach to taxing the digital economy. In contrast to the 139 countries adopting the Two-Pillar solution of the OECD, Nigeria benefits from a ₦25 million threshold for certain digital services under the SEP Order, capturing more MNEs for taxes. Furthermore, the SEP Order has a wider scope of coverage, including technical, management, professional, and consultancy services, making it likely that more entities will be subject to taxation. By taking this independent approach, Nigeria can update and implement new rules as needed and address any future gaps without relying on the OECD.

However, it is important to acknowledge the potential administrative complexities and difficulties that may arise for multinational enterprises in enforcing and complying with the SEP Order, especially given that IF/[OCED] members have committed to the Two-Pillar solution. This could result in significant non-compliance and hinder the realization of projected tax revenues from the taxation of non-resident companies under the SEP Order.

Furthermore, there is a risk of reputational damage and trade tensions that could arise from implementing the SEP Order as a unilateral measure. This could lead to disputes with other countries, resulting in double taxation and potential trade retaliation. As an import-dependent economy actively seeking Foreign Direct Investments (FDIs), Nigeria's decision to not

participate in the Two-Pillar solution may harm trade relations and discourage the inflow of FDIs.[175]

A key issue that has arisen is the lack of clear guidance regarding the implementation of the SEP Order. This raises concerns about the tax authority's ability to effectively manage the SEP Order. It is worth noting that the major players in the digital economy/e-commerce are located outside of Nigeria, and in many cases, have no presence in the country whatsoever. This means that it will be difficult for the FIRS to contact these entities and deliver any necessary documents or notices. While the FIRS may explore electronic communication methods, there may be limited options available for enforcement against these companies, leaving many cases unresolved with regards to taxation in this industry. It is crucial to ensure that proper implementation is followed in order to fully realize the proposed revenue from the SEP Order.

Conclusion and Recommendation

In today's world, e-commerce has been the new normal business activities, where technology has elevated e-commerce globally. This is to the extent that

> Uber, the world's largest taxi company, owns no cars, Facebook, a well-known media company, produces no content; the world's most valuable retailer Alibaba has no inventory; and the world's largest accommodation provider Airbnb has no real estate.[176]

With the constantly evolving landscape of business structures, there is an immense potential for revenue generation through the taxation of e-commerce and digital services. To fully capitalize on this potential, it is crucial that necessary measures are put in place to ensure the seamless implementation of relevant laws. This has prompted international efforts from various countries, including the OECD. In Nigeria, the recent and timely amendment of CITA and VITA through the

[175] E. Onasami&. R. Ajila 'Nigeria: Taxation Of The Digital Economy- An Analysis Of The OECD Two-Pillar Solution And The Potential Impact On Nigeria' *Andersen in Nigeria* (November 16 2021) <https://www.mondaq.com/nigeria/tax-authorities/1132730/taxation-of-the-digital-economy--an-analysis-of-the-oecd-two-pillar-solution-and-the-potential-impact-on-nigeria> accessed 30 January 2023

[176] Goodwin, T. "The Battle is for the Customer Interface"< https://techcrunch.com/2015/03/03/in-the-age-of-disintermediation-the-battleis-all-for-the-customer-interface/> accessed 26 March 2023

Finance Act by the National Assembly has positioned Nigeria as an active player in the international scene regarding taxation.

However, as with many laws in Nigeria, non-enforcement has been a persistent issue. Proper and active administrative quarters must ensure effective implementation to prevent any hindrance to the progress of the Finance Act 2020. Failure to enforce compliance due to technical difficulties or lack of guidelines could result in tax evasion and revenue loss, undermining the purpose of SEP orders and the Finance Act.

Based on these findings, the study recommends the following actions.

To improve database management, the government should collaborate with other tax jurisdictions. One way to achieve this is by implementing the Organization for Economic Cooperation and Development's (OECD) Two-Pillar solution. This solution is a plug-in alternative that can help Nigeria's tax authority efficiently implement tax regimes and track tax revenues. By signing on to this proposition, Nigeria can ensure that multinational corporations (MNCs) and digital companies like Amazon, Google, and Facebook pay their fair share of global taxable income, regardless of where they are headquartered or the jurisdictions they operate in. The OECD's framework makes it more likely that Nigeria will earn these tax revenues compared to the SEP Order option. By opting in, MNCs will find voluntary compliance easier, and Nigeria will also mitigate the risks of trade wars and reputational damage. Additionally, this solution encourages foreign direct investment (FDI) inflows as investors will have more confidence in Nigeria's tax treatments for both the digital economy and other economic activities.

APPRAISAL OF THE ROLE OF LEGAL RESEARCH ASSISTANT TO JUDGES IN THE NIGERIAN JUDICIAL SECTOR

Precious Fasuyi*, YewandeFatoki, and Okpoi Elade-Ebi Godwill*****

Abstract

Judicial or legal research assistants play a vital role in the process of adjudication. The judicial assistants or research assistants are persons who carry out research on legal topics and lend assistance in whatever ways possible for the Judges. They are in a position of trusted agents of a Judge. This paper stems from the fundamental problem that little is known about the role and duties of the legal research assistant as they work with the judges behind the scene and not all courts have embraced the judicial assistant and also there is the lack of regulatory framework guiding the research assistants in the course of their duty. The aim of this paper is to consider the important role the legal research assistant plays in the administration of justice and decision-making in Nigeria notwithstanding the introduction of Artificial Intelligence in the 21st Century. The paper adopts the Doctrinal method of legal research. The paper finds that the research or judicial assistant have not been totally embraced by all courts in Nigeria and there is no law in existence which spells out the power, duties or regulation to guide research assistants in the course of their duties. Hence, their scopes of duties are not defined. The paper concludes that the position of a legal research assistant is not holistically recognized under the Nigerian judicial system and recommends that the judiciary needs to embrace the use of judicial research assistant for the overall improvement and more efficient decision making process of the justice sector in Nigeria.

Keywords: *Judicial Assistants, Research, Legal Research, Case Management, Judicial officers,*

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Introduction

Legal research assistants also referred to as judicial assistants, Court clerks and legal assistants are those officers of the Court that are tasked to provide a helping hand to Judicial Officers by conducting factual research and providing written court documentation for upcoming and present cases. Indeed, it may be said that a judicial clerk (another name for a Legal Research Assistant) is an individual generally another Lawyer, who provides direct assistance and counsel to a judge in making legal determinations and in writing opinions by researching issues before the court[1].The rationale behind employing judicial assistants in the Nigerian judiciary is as a result of the increased workload experienced by the judges and the consequential delays in judicial action. This made the employment of personnel, learned in the area of law quite necessary. They were for that purpose employed to assist judges in conducting legal research, drafting orders and opinions, proof-reading drafts of the judge's orders and opinions, editing and verification of citations and generally assisting the judge during courtroom proceedings.[2]The legal research assistants facilitates in proper management of cases before a judge, hence leading to a speedy dispensation of justice,[3] In the United Kingdom, this category of persons are referred to as court clerks albeit, most of them are trained paralegals. The judiciary system in Nigeria has not fully embraced this particular role court clerks or judges research assistants and it is in the light of the forgoing that this work will be taking into consideration, a critical examination of the role of the judicial assistants to judges in Nigeria, distinguishing between research and legal research, duties of a legal research assistant, the significance of a judicial assistant to judges in Nigeria, the challenges experienced by legal research assistants, the future of judicial assistants in relation to the introduction of Artificial Intelligence (AI) in Nigeria judiciary. Furthermore, the work will be providing possible recommendations to some of the challenges encountered by the Judicial Assistant in Nigeria.

[1] The Free Encyclopedia, 'The Law Clerk' <https://en.wikipedia.org/wiki/Law_clerk> accessed on 12 January 2023

[2] T Gilbert, 'Application of Professional Ethics and Code of Conduct to Judicial/Legal/Research Assistants as Court Employees' National Judicial Institute. Paper presented at the National Workshop for Legal/Research/Judicial Assistants, July 2016.

[3]Essential Information on Judicial Assistants http://study.com/articles/Judicial_Assistant_Job_Description_Duties_and_Salary.html accessed

Definition of Legal Research

Legal research is generally the process of finding an answer to a legal question or checking for legal precedent that can be cited in a brief or at trial. Sometimes, legal research can help determine whether a legal issue is a "case of first impression" that is unregulated or lacks legal precedent. Virtually every lawsuit, appeal, criminal case, and legal process in general requires some amount of legal research[4].

Legal research is the process of identifying and retrieving information necessary to support legal decision-making. In its broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation[5].

Objectives of Legal Research

Law may be termed as a behavioral science as it regulates human behavior. It is expressed in words which are used in a particular context. Whatever be the source of law, it cannot provide remedy for all the situations and for all the time to come. Changes in society demand that law should move with the time, if it has to remain alive and active and it can remain alive, active and useful, if it is aware of its lacuna and takes steps to overcome it with the passage of time. The object of legal research therefore, is to find out lacuna or deficiencies in the existing laws and to suggest suitable measures to eliminate them[6]. If there is an area for which there is no law at all, the objective of legal research would be to suggest suitable legislation for that area; but if there is a law for that area, but due to one reason or the other, it did not work, its aim would be to suggest reform in the existing law so as to make it workable. Thus the significance of legal research lies in the submission of proposal for reform in the existing law, be it enacted, customary or judicial. However, this would not be the end or the sole objective of the legal research. When research is undertaken as a part of process of law reform, it is undertaken for making suggestions for improvements in the law on

[4] Black Law Dictionary Sixth Edition 296
[5] Ibid
[6] Resource Guide On Strengthening Judicial Integrity and Capacity – United Nations Office on Drugs and Crime- December (2011) 43

concrete and easily identifiable matters and the formulation of those proposals in precise terms[7]. This is very significant and governing factor in the area of legal research.

The following may be taken as objectives of legal research[8]:

1. To discover new facts.
2. To test and verify old facts.
3. To analyse the facts in new theoretical framework.
4. To examine the consequences of new facts or new principles of law; or judicial decisions.
5. To develop new legal research tools or apply tools of other disciplines in the area of law.
6. To propound new legal concept
7. To analyse law and legal institutions from the point of view of history.[9]
8. To examine the nature and scope of new law or legal institution.
9. To ascertain the merits and demerits of old law or institution and to give suggestions for a new law or institution in place of old one
10. To ascertain the relationship between legislature and judiciary and to give suggestions as to how one can assist the other in the discharge of one's duties and responsibilities and[10]
11. To develop the principles of interpretation for critical examination of statues[11]

Distinguishing between Research and Legal Research

Research may be very broadly defined as systematic gathering of data and information and its analysis for advancement of knowledge in any subject. Research attempts to find answers to intellectual and practical questions through application of systematic methods. Webster's Collegiate Dictionary defines research as "studious inquiry or examination; especially investigation or experimentation aimed at the discovery and interpretation of facts, revision of

[7] Nigeria Case Management System, By Mahmud Adamu, Assistant Chief Programme Analyst, At The National Workshop for Information and Communication Technology Staff, 24 th May 2017

[8] C. Soreen. Legal Research Methodology an Overview *Journal of Emerging Technologies and Innivative Research* 8 (10) assessed 7 https://www.jetir.org/papers/JETIR2110354.pdf

[9] Ibid.

[10] Ibid

[11] The Role of Judicial Assistants, Consultative Council of European Judges Strasbourg (2019) https://rm.coe.int/opinion-22-ccje-en/168098eecb. Accessed 19th March 2024

accepted theories or laws in the light of new facts, or practical application of such new or revised theories or laws"[12]. Some people consider research as a movement, a movement from the known to the unknown[13].

It is actually a voyage of discovery. We all possess the vital instinct of inquisitiveness for, when the unknown confronts us, we wonder and our inquisitiveness makes us probe and attain full and fuller understanding of the unknown. This inquisitiveness is the mother of all knowledge and the method, which man employs for obtaining the knowledge of whatever the unknown, can be termed as research[14].

Research is, thus, an original contribution to the existing stock of knowledge making for its advancement. It is the pursuit of truth with the help of study, observation, comparison and experiment. In short, the search for knowledge through objective and systematic method of finding solution to a problem is research[15]. The systematic approach concerning generalization and the formulation of a the\of enunciating the problem, formulating a hypothesis, collecting the facts or data, analysing the facts and reaching certain conclusions either in the form of solutions(s) towards the concerned problem or in certain generalizations for some theoretical formulation[16].

Legal Research.

Flowing from the above explanation of what a research is in itself, legal research is distinct in character from every form of research for the following reasons:

1. Legal research plays a crucial role in proposing reforms to enhance the efficacy and relevance of the legal system. This involves analysing the causes of legal problems, evaluating alternative solutions, and formulating recommendations for legislative or policy changes[17].

[12] Webster Collegiate Dictionary
[13] FK Stage, and K Manning, *Research in the College Context: Approaches and Methods (*Brunner-Routledge, New York, 2003)
[14] M McConville and W H Chui, eds, *Research Methods for Law (*Edinburgh University Press, Edinburgh, 2007) 19
[15] P Cane, and HM Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford, Oxford University Press 2010) 2.
[16] Ibid
[17]Legal Research and its Characteristics; Law Notes https://lawnotes.co/legal-research-and-its-characteristics/; assessed 24th April 2024

2. Legal research encompasses the study of human behaviour within the context of societal norms, institutions, and legal frameworks. This is done through the use of other discipline such as (sociology, psychology) in studying how human response to the rules and regulation set by the legislators[18]

3. Legal research involves both verifying established legal principles and discovering new ones through empirical analysis and scholarly inquiry.[19]

The Legal Research Assistant

Legal research assistants are sometimes referred to as those individuals who are trained in the law and employed by the state to assist judges in researching legal opinions. One may therefore refer to them as the Judicial Officer's private adviser, who helps frame the issues in the mind of the Judge before they are then crystallized in the form of a written Judgment. Judicial or Legal Research Assistants are persons who carry out research on legal topics and lend assistance in whatever ways possible for the Judges. They are in a position of trusted servants or agents of a Judge, and to an extent what binds the Judge, also binds the judicial assistant.[20]

The ethical values and standards applicable to Judges also apply in some respect to the Judicial/ Legal Assistant, as the ethical values of integrity, equality, decorum, comportment, etc are embedded in the rules of the Code of Conduct for Judicial officers and the Code of Conduct for Court Employees. Court employees hold highly visible positions of public trust and it is desirable that a standard of conduct which a court employee should observe the prescribed and published for the information of the court employee and the public in general so that the objectives set out in the preamble may be achieved.[21] The Code of Conduct for Court Employees applies to all categories of persons involved in the day-to-day administration of the courts whether as staff of special courts, tribunals, Commissions of Enquiry, Judicial Service Commissions or Committee.

[18]Legal Research and its Characteristics; Law Notes https://lawnotes.co/legal-research-and-its-characteristics/; assessed 24th April 2024
[19]Ibid.
[20] Stage, (n 13)
[21] Paragraph 4 of the preamble to the code of conduct for court employees of the Federal Republic of Nigeria, 2004.

A judicial/legal assistant is first of all a legal practitioner within the meaning of the term "Legal Practitioner" and 'legal practice' as defined by the Legal Practitioner's Act. He is therefore under duty or bound to comply with the standards regulating the conduct of members of the legal profession contained in the Rules of Professional Conduct for Legal Practitioners which derives from the Legal Practitioners Act. Where he deviates, then the applicable sanctions both under the Codes and appropriate laws may be meted.

The American judicial system recognizes this category of judicial staff as those shadowy individuals who are trained in law to assist Judges in researching legal opinions. However, in several other countries different terminologies are used to describe them. In the United Kingdom, for example, they are called Judicial Assistants, while in Australia; they are called Judicial Associates; whereas the United States and Canada call theirs, Law Clerks. Legal Research Assistants play an important and valued role within a legal system.[22] In researching legal topics and lending assistance in whatever way is necessary, they provide a much needed support facility for the Judiciary. However, the boundaries of their role within a legal system can often become blurred especially where their roles intercept with that of their Principals, the Judicial Officers[23].

Role and Importance of Research Assistants to Judges in Nigeria

The Nigerian Judiciary has continuously made efforts towards improving the Court system in ways that will enhance effective justice administration and speedy justice delivery in our country. One key area to exemplify this is in the recruitment of competent staff and the improvement in their capacity and performance of court employees. This includes but not limited to the addition of relevant professionals (Research Assistants) that will drive the other factors of justice administration for good result. The first aspect that determines the judicial assistants' role is the reasoning behind employing them.

[22] Resource Guide of Strengthening Judicial Integrity and Capacity- United Nations Office on Drugs and Crime- December 2011, 44 <https://www.unodc.org/unodc/en/treaties/CAC/judicial-integrity-guide.html> Assessed 20 March 2024.

[23] G Coonan, 'The Role of Judicial Research Assistants in supporting the Decision Making Role of the Irish Judiciary-2006 173 https://www.irishjudicialstudiesjournal.ie/assets/uploads/documents/pdfs/2006-Edition-01/article/the-role-of-judicial-research-assistants-in-supporting-the-decision-making-role-of-the-irish-judiciary.pdf>accessed 20 March 2024.

1. The introduction of Judicial/Legal/Research Assistants as new personnel in the service of the judiciary though not yet widespread in all the courts or jurisdictions in Nigeria appears an important step in the support of the value of research resource to the onerous but noble duty of the judicial officer[24]. In the same vein, the issues of disputes and crimes that come to resolution centers including the courts are of complex nature while the desire for speed, efficiency and quality has assumed a universal choice that is, everybody wants best service. Therefore, for effective, efficient and quick justice delivery the judicial officers need the research resource from these Assistants.[25]

2. Another important role the legal research Assistants play is decision enhancing as they do the background work on a given case, spot the most important issues, summarize the arguments, give an impression of which arguments are most persuasive and thus identify the aspects of the case that should have an impact on the final decision[26].

3. The Research assistant is an assistant to the Judge and serves at the discretion of the Judge and performs a broad range of functions. Research assistants are usually assigned legal research, drafting, editing, proof-reading and verification of citations; frequently they also have responsibility for library maintenance, document assembly, service as court room crier and some personal errands for the Judge.

4. In ***Hall. v. Small Business Administration***[27], the Court described the functions of research assistants as follows: sounding boards for tentative opinions and legal researchers who seek the authorities that affect decisions, Clerks are privy to a judge's thoughts in a way that neither parties to the law suit nor his most intimate family members may be.

5. Primarily, Research Assistants perform complex paralegal and legal secretarial support to judges. They edit, proofread, and reviews opinions and court orders for correctness with respect to grammar, spelling, punctuation, content, and organization. They calendar cases for

[24] Application of Professional Ethics and Code of Conduct to Judicial/Legal/Research Assistants As Court Employees, By Gilbert Tor, Deputy Director of Research, National Judicial Institute. A paper presented at The National Workshop for Legal/Research/Judicial Assistants, July 2016.
[25] Coonan, (n 22).
[26] M Adamu, 'Nigeria Case Management System' (At The National Workshop for Information and Communication Technology Staff, 24th May 2017).
[27] 1983.C05.41733 695 F.2D 175.

oral argument. Prepares final opinions by checking facts referenced against all documents from the lower court such as the clerk's and reporter's transcripts, administrative record, exhibits, and correspondence[28].

6. They also verify legal authorities cited using resources found in the law library and computer data bases such as state and federal statutes, textbooks, handbooks, restatements, and legislative intent materials. They proofread and carefully inspect galley proofs of all published opinions for complete accuracy. Maintains and updates chambers library. Organizes and routes work, sets priorities, and follows up to ensure coordination and completion of assigned work. They exercise skill in setting priorities that accurately reflect the importance of assigned responsibilities. They work closely with Clerk's Office and file room staff to ensure that materials are received and sent out in timely fashion.

7. They may (as the case may be) also be responsible for managing scheduled trials, motions and court hearings, as well as supervising interns, volunteers or other research assistants.

8. Some judicial assistants draft basic court documents to be reviewed and approved by the judge, such as notices that a hearing is scheduled or that another document has been received.

9. Summarizing or reducing each legislation or case decision to a concise paragraph collate to a handout, subdivided into relevant legal topic such Matrimonial Causes, Negligence, Land Law, Conveyance, Contract, Tort, etc Verifying the accuracy of citations or quotations from legislation, case law and other materials[29].

10. Pointing out obvious errors with a view to clarifying the meaning of the Judgment example an error in syntax that might make the meaning of a sentence ambiguous.

Challenges Encountered by Judicial Research Assistants

The Nigerian judiciary has embraced the use of Judicial Assistants because of the enormous workload saddled on the judges in our various courts and the various delays in Judicial Action. This in a way has helped with proper case management and efficiency of cases. However, as

[28] N Holvast, 'The Power of the Judicial Assistant/Law Clerk: Looking Behind The Scenes at Courts in The United States, England and Wales and the Netherlands' *The International Journal for Court Administration* 7(2) 12.
[29] Ibid `12.

their functions are not contained in any statutory document, their duties are not definite, and therefore the Judicial Assistants encounter challenges in the course of its duty.

One major challenge being encountered by the research assistant is some of them may be over labored and saddled with responsibilities even outside the scope of their work as research assistants. Some combine and perform the role of protocol officer, personal assistants and legal research officer roles together. Sometimes they assist in library maintenance, document assembly, and run some personal errands for the judge.

Apart from the role of making research for the judge, the judicial officers as part of their training are encouraged to prepare legal opinion on issues or matters before the court. This legal opinion sometimes serve as draft judgment, however, there judges may at times leave the writing of judgments to the research assistants. This in a way not effectively serve the purpose of Justice because the research assistants are merely appointed to serve as an assistant to the judge but not to be judges in themselves[30].

Artificial Intelligence and the Future of Judicial Assistants in Nigeria Judiciary.

Artificial Intelligence (AI) is a domain of computer science which deals with the development of intelligent computer systems, which are capable to perceive, analyze, and react accordingly to the inputs[31]. It is well-known fact that humans are considered as the most intelligent and smart species on earth. The features which have helped them to bag this title include the ability to think, apply logic, do reasoning, under-stand the complexity, and make decisions on their own. They can also do planning, innovation, and solve problems to a greater extent.[32] Some of the specific goals of AI are replicating human intelligence, solving knowledge-intensive tasks, building machines, which can perform tasks, that require human intelligence and creating some system which can learn by itself. With the development of Artificial intelligence, there have been several predictions on the decline of several professions and professionals including the

[30] Ibid.
[31] Spector L, Evolution of Artificial Intelligence Elsevier publication https://www.sciencedirect.com/science/article/pii/S0004370206000907. Accessed 27th April 2024.
[32]Moumita Ghosh &Thirugnanam A: Introduction to Artificial Intelligence. https://www.researchgate.net/publication/351758474. Accessed. 20th June 2024.

profession of judges or judicial assistants.[33] The question we need to ask is whether the role of judges or their assistants can be overtaken by Artificial Intelligence. With Artificial intelligence technology, there is the general assumption that cases will be treated the same way for cases with similar characteristics. However this view is not completely true because the judge's reasoning actually shows that each case tends to be approached independently. In the same light judges assistants are pivotal to a smooth and efficient decision making by the court and as such, they cannot be displaced.[34]

It is expedient to state, that data plays a crucial role in the judicial system as it helps the judges fit together the circumstances surrounding a particular case in an effort to see that justice is served. The judiciary is a text processing industry as documents, and texts are the raw material of legal and judicial work. As such, the judiciary has long been a field ripe for the use of technologies[35]. The judiciary system has in one way or the other adopted the use of technology such as Artificial Intelligence in the course of its work through digitization, and a trove of data in the form of court opinions, statutes, regulations, books, practice guides and law reviews. This was mostly prevalent during the period of COVID -19 pandemic.[36]

Artificial Intelligence (AI) has assisted in automating various processes and also performs jobs more successfully and efficiently. AI can help with legal research analysis by analyzing legal data including case law and statues and in a way facilitate the decision making process of the judges leading to better outcomes, if applied. With Artificial Intelligence, as the use of cases of AI and other technologies continue to permeate the judiciary, judges, lawyers and staff must continue to be at the center of all decisions.[37] AI came into existence for enhancing or elevating

[33] N Ahmad, 'Is Artificial Intelligence replacing Lawyers? Global Science Research Journals international Journal of Law and Conflict Resolutions' (2021) 9 (3).

[34] Shidarta, and AB Munir, 'Can Artificial Intelligence Technology Replace Judges in Deciding Legal Matters?' <https://www.researchgate.net/publication/353331173_Can_Artificial_Intelligence_Technology_Replace_Judges_in_Deciding_Legal_Matters>. Accessed 4 June 2024.

[35] E Schindler, 'Judicial System are turning to AI to help Manage Vast Quantites of Data and Expedite Case Resolution',https://www.ibm.com/blog/judicial-systems-are-turning-to-ai-to-help-manage-its-vast-quantities-of-data-and-expedite-case-resolution/ Accessed 30 January 2024.

[36] H Panjari, 'Role of Artificial Intelligence in the Judiciary System' https://www.linkedin.com/pulse/role-artificial-intelligence-judiciary-system-hetal-panjari accessed 20 June 2024.

[37] Ibid.

the legal sector, but can never replace humans. Humans will always be humans and as such, cannot be replaced in the judiciary system.

Conclusion and Recommendation

The legal research assistant plays an important role in the judiciary, the facilitate smooth decision making by the judge as they do the background work on a given case, spot the most important issues, do some drafting, proofreading, summarize arguments, give an impression of which arguments are most persuasive and thus identify the aspects of the case that should have an impact on the final decision of the court. the legal research assistant faces several challenges one of which is that, their roles is not codified in any document and there is basically no law establishing their office, this makes them perform duties or functions, not within the scope of their work.in addition not all court system in Nigeria has fully embraced the practice of making use of a legal research assistant, The role of the judicial assistant is under threat daily by the rise of technology, pressures from the increased workload of the Court, increasingly complex issues at the heart of disputes as well as the need to ensure that one does their job diligently, meticulously and timeously. As such, the temptation and pressure to cut corners may at times seem expedient. However, the relationship between the Legal Research Assistant and their Principal is symbiotic and akin to an apprentice and master situation where they mutually work together to attain a stated goal, but the apprentice is at all times beholding to the instructions and guidance of the master. The glue which knits these two professionals together is the mutual rules of best practice that binds them both. As it stands today, Artificial Intelligence cannot replace the judges, lawyers or judicial assistants in the judiciary sector as AI cannot process decision making as humans. Each case is decided based on its own merits

From the forgoing discussions, the following is here by recommended for the judicial research assistant to function maximally in his role and duty.

i. Continuous mandatory retraining of Judicial Research Assistants: Immediately after appointment, there should be a mandatory training program for all research assistants and the training should not be once and for all activity.

ii. There is a need for a Formal guideline on the scope of duties of Judicial Assistants in addition, Judges should ensure the assignments assigned to the research assistants are within the scope of their duties, so as to prevent a situation where they will perform duties which are ***ultra vires*.**

iii. The role of the Research assistants needs to be encouraged by all court systems in Nigeria in order to facilitate smooth and speedy dispensation of justice.

iv. Judicial assistants should be selected in a transparent process based on objective, merit-based criteria taking into account experience, qualifications, legal skills, integrity, communication skills and motivation.

v. Working as a judicial assistant can also be a prerequisite (formal or informal) for becoming a judge, although this may not be a compulsory this must be taken into account in the selection process. An educational purpose of a judicial assistant scheme must be given adequate weight in the selection process.

vi. For the time being, the Judicial Assistants should be guided by own Rules of Professional Conduct for legal practitioners, the Code of Conduct for Court Employees as well as the Revised National Judicial Council Code of Conduct for Judicial Officers.

CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA'S OIL INDUSTRY: GOVERNANCE GAPS AND IMPLICATIONS FOR NATIONAL SECURITY AND DEVELOPMENT

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Abstract

The discovery of oil in Nigeria drastically transformed its economy and international trade system. However, rather than fostering national prosperity, it has left much of the population in poverty and worsened the country's infrastructure. This challenge is compounded by the insufficient Corporate Social Responsibility (CSR) efforts from oil companies, resulting in recurring crises, civil unrest, and escalating violence within the oil-producing regions, which has national repercussions and poses a threat to security. This paper explores the impact of CSR shortcomings by oil corporations on Nigeria's national security and development. A qualitative research approach is used, drawing on primary sources and secondary sources. Findings reveal a lack of coherent policy or legislation on CSR in Nigeria, underscoring the need for stronger regulatory frameworks and closer scrutiny of oil companies' CSR initiatives. The study recommends engaging genuine stakeholders and local community members in CSR project planning and implementation to ensure relevance, continuity, and meaningful impact on beneficiaries.

Keywords: *Oil corporations; Corporate Social Responsibility; Sustainability; Community; Community Development, Legislation*

Introduction

In today's global landscape, businesses have become powerful entities with significant influence over social and economic conditions. Corporations now possess the capacity to complement government efforts in addressing infrastructure needs and improving the quality of life for communities. In historical contexts, this role of societal influence shifted from religious institutions, which once held unrivaled power symbolized by grand churches, to state authorities.

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Today, it is corporations that construct the most prominent buildings, representing the shift in societal power from religious and governmental institutions to corporate entities.[1]

However, in Nigeria, corporations—especially those within the oil sector—have often failed to address even basic infrastructure needs within their host communities, amplifying socioeconomic disparities and exacerbating poverty in many oil-producing regions. This gap in Corporate Social Responsibility (CSR) has had profound implications for security and social cohesion. The resulting socioeconomic inequalities and deprivation have led to widespread discontent and unrest, which now challenge Nigeria's national security and developmental objectives. This environment of discontent has hindered the growth of social capital, which is essential for sustainable national development, while also eroding traditional moral values and community cohesion, particularly among the youth.[2]

The current landscape of insecurity in Nigeria reflects these societal fractures: from the insurgency in the Northeast and militancy in the oil-rich Niger Delta to secessionist movements in the Southeast. These issues underline the urgent need for a robust CSR framework within the corporate sector, particularly for companies in resource-extractive industries. As a leading oil producer globally, Nigeria holds a strategic position, but the CSR contributions of its oil corporations remain disappointingly low, with limited impact on the economic and social wellbeing of host communities.[3]

In the contemporary global landscape, businesses are no longer solely judged by their financial performance or basic compliance with Corporate Social Responsibility (CSR) frameworks. They are increasingly expected to play a pivotal role in tackling some of the world's most critical challenges, including climate change, education, public health, and poverty alleviation. This evolution reflects a growing societal expectation that corporations, especially those with

[1] C Valor 'Corporate Social Responsibility and Corporate Citizenship: Towards Corporate Accountability' *Business and Society Review* (2005) 110(2) 191-212 at 193.

[2] O Y Abdul and U ARaheem, 'Spiritualization of Social Disadvantage.' in H. A. Saliu, E. Amali, J. Fayeye& E. Oriola,(eds), Democracy and Development in Nigeria (Lagos: Published by Concept Publications 2006) p. 158.

[3] M Bintube, **"Boko Haram Phenomenon: Genesis and Development in North Eastern Region Nigeria"** (2015) *International Journal of Sociology and Anthropology Research*, Vol. 1, No. 1, pp. 1-22, March, European Centre for Research Training and Development UK, available at <www.eajournals.org> accessed 29 October 2024.

significant environmental and social footprints, contribute actively to sustainable development and the overall well-being of communities in which they operate.

As the world's sixth-largest oil-producing nation, Nigeria is uniquely positioned to leverage its oil industry for substantial socio-economic benefits. Given the magnitude of its oil production, one would naturally expect the CSR initiatives of Nigerian oil corporations to be transformative, with a profound and far-reaching impact on local communities and the broader society. Such efforts could serve as a catalyst for development, addressing pressing issues such as environmental degradation, inadequate healthcare, poor educational infrastructure, and widespread poverty, particularly in the oil-rich but underdeveloped Niger Delta region.

However, the reality has been starkly different. Despite their significant economic contributions and high revenue streams, the CSR activities of Nigeria's oil corporations have been widely criticized as inadequate and largely ineffective. Rather than delivering substantial and sustained improvements in living standards, these initiatives have often been piecemeal, poorly executed, or designed without meaningful community involvement. The resulting impact has been minimal, failing to address the root causes of socio-economic and environmental challenges in host communities.

This disconnect highlights a critical governance gap: while oil corporations generate immense wealth, their CSR practices have not translated into corresponding socio-economic advancements. In many cases, these initiatives are viewed as superficial or tokenistic, aimed more at enhancing corporate image than delivering genuine, long-term benefits to affected communities. Consequently, Nigeria's oil industry, which should ideally be a driver of sustainable development, remains a source of socio-economic discontent and environmental degradation.

Addressing these shortcomings requires a fundamental shift in how CSR is conceptualized and implemented within Nigeria's oil sector. There must be a move beyond mere compliance or symbolic gestures, toward integrated strategies that prioritize community engagement, transparency, and accountability. Only then can the CSR efforts of Nigerian oil corporations

begin to match the scale of their operations and contribute meaningfully to resolving the nation's most pressing socio-economic and environmental issues.[4]

This paper examines the link between insufficient CSR initiatives by oil corporations in Nigeria's oil-producing areas and the broader implications for national security and development. It explores how the neglect of CSR has intensified local grievances, contributing to unrest and endangering the stability essential for development. By analyzing these challenges, the study aims to highlight the potential for CSR reforms as a strategy to address corporate-community tensions, foster national cohesion, and support sustainable development.

The Concept of Corporate Social Responsibility (CSR)

Corporate Social Responsibility (CSR) refers to the expectations society holds for corporations to engage in economic, legal, and ethical practices that benefit their communities.[5] Unlike traditional business frameworks focused solely on profit maximization within legal boundaries, CSR integrates ethical considerations, encompassing society's broader expectations of corporations' roles. While some proponents argue that a corporation meets its CSR responsibilities merely by generating profits legally, the CSR framework posits additional obligations.[6] Beyond economics and law, CSR encompasses the ethical responsibilities to provide tangible community benefits such as employment, security, and welfare for employees. A broader proposition has been put forward to the effect that industry owes its employees not just protection from harm but also an active role in providing economic security.

This was alluded to as early as 1932, when Dodd expressed the view that:

[4]Frynas, Jedrzej George, *"Corporate Social Responsibility in the Oil and Gas Sector"* (2009) *Journal of World Energy Law & Business*, Vol. 2, No. 3, pp. 178-195, available at https://www.researchgate.net/publication/247577729_Corporate_social_responsibility_in_the_oil_and_gas_sector accessed 18 October 2024.

[5]Carroll, Archie B., ***"The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders"*** (1991) *Business Horizons*, Vol. 34, No. 4, pp. 39-48.

[6]Semotiuk, Orysia, *"The Role of Law in Corporate Social Responsibility and Stakeholder Theory"* (2004) Master of Laws Thesis, Faculty of Law, Queen's University, Kingston, Ontario, Canada, p. 22.

> there is a wide spread and growing feeling that industry owes to its employees not merely the negative duties of refraining from overworking or injuring them, but the affirmative duty of providing them so far as possible with economic security.[7]

This expanded CSR perspective recognizes the corporation's significant economic power and its responsibility as a primary source of employment and services in society. For a business to achieve these economic goals, it must maintain profitability to sustain its operations and contribute positively to society. Legal compliance represents another critical aspect of CSR, wherein corporations are expected to adhere to established laws and regulations on taxation, environmental protection, consumer rights, and contractual duties. As artificial legal entities, corporations are obligated to follow these societal rules. This legal foundation was reinforced in the 1960s and 1970s when social movements highlighted environmental, labor, and consumer safety issues, further embedding the legal aspect within CSR.[8]

The third CSR component is ethical responsibility, which involves actions that align with societal values, even in the absence of a legal mandate. Consumers increasingly expect corporations to act ethically, often basing purchasing decisions on companies' ethical conduct. Thus, corporations hold an ethical duty to positively impact society, anticipating regulatory developments and setting standards that minimize harm.[9]

While regulation serves as a protective measure, ensuring minimum standards of behavior,[10] the law has inherent limitations. Often reactive, the law typically responds only after a social issue has emerged, as seen with consumer protection legislation that often follows harm.[11] Moreover, regulations can sometimes reflect industry standards due to the government's reliance on insider knowledge from industry experts during the regulatory process. This dependence, although

[7]E. Metrick Dodd, "For Whom Are Corporate Mangers Trustee? (1932) 45 Harv. L. Rev. 114 at 1154.

[8]Etikan, Julie, ***"Corporate Social Responsibility (CSR) and its Influence on Organizational Reputation"*** (2024) *Journal of Public Relations*, Vol. 2, No. 1, pp. 1-12.

[9]Mohm, Lois A., Weds, Deborah J., and Harris, Katherine E., ***"Do Consumers Expect Companies to be Socially Responsible? The Impact of Corporate Social Responsibility on Buying Behavior"*** (2001) *The Journal of Consumer Affairs*, Vol. 35, p. 45 at p. 49.

[10]William, C.A., *"Corporate Social Responsibility in an Era of Globalisation,"* U.C. Davis Law Review, Vol. 35 (2002) 705 at 717.

[11]See *Sarbanes-Oxley Act* (2002), United States; and for Canada, see Bill 198, in fact it has been dubbed CSOX, with the "C" standing for Canada

beneficial for technical insights, can undermine the objectivity of regulations. Critics argue that involving corporations in their regulatory oversight creates cyclical dynamics that compromise CSR goals.[12]

CSR also includes the expectation for corporations to proactively address social and environmental issues, such as reducing pollution, supporting education, and addressing poverty.[13] Given their financial strength, corporations are seen as vital partners in addressing these issues where government resources are insufficient. Some corporate leaders may support these activities for shareholder benefit, yet true CSR proponents contend that genuine CSR requires altruistic motives, irrespective of economic return.[14]

To establish a legal foundation for proactive CSR, analogies to natural persons' duty of care in tort law have been considered. Like a bystander's duty to aid those in danger when a special relationship exists, corporations, due to their economic reliance on society, could be viewed as having a duty to assist society when facing challenges. This duty aligns with the artificial legal personhood corporations enjoy, extending this protection from business people to society.[15] Recognizing this duty is not incompatible with capitalist principles, as similar expectations apply to natural persons, regardless of economic incentives. Progress necessitates new legal precedents, suggesting that society's expectations of corporations may indeed warrant such legal evolution. Lord Denning's golden dictum is handy here, according to him "if we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both." In other words if there seem to be no established rule on any aspect of the law, the earlier one is made the better.*[16]*

[12]For instance the Nigerian Corporate Affairs Commission (CAC) comprises or members representing Manufacturers Association of Nigeria (MAN), Nigerian Bar Association, some of whom work directly or indirectly for these corporations and so on.

[13] In the case of Nigeria fighting corrupt practices in and out of the government and the corporations and funding NGO's involved in the fighting corruption may well be regarded as positive social contribution of a corporation.

[14] See Lord Denning in Storer v Manchester City Council [1974] 3 All ER 824 at 828: where he said in similar vein that "…you do not look into the actual intent of a man's mind…look at what he said and did."

[15] This was in Donoghue v. Stevenson [1932] All ER Rep 1; [1932] AC 562; House of Lords.

[16] See Packer V Packer [1953] 2 All ER l27.

Theoretical Perspectives on Stakeholder, Conflict and Development Theories

Stakeholder, conflict and development theories could be examined as the basis for demonstrating the relationship between corporate social responsibility in the content of corporate governance, national security and development. This approach illustrates the connections between the societal goals and corporations in it.

Stakeholder Theory

Stakeholder Theory canvassed by R. Edward Freeman[17], extents the duties of corporations beyond the shareholders to include all individuals or groups impacted by their operations. The theory emphasised the role of the all the stakeholders in the area of collaboration with each other in decision making for mutual benefits. The stakeholder theory recognised employees, customers, suppliers and local communities' interests as critical in corporate matters.

Corporate social responsibility (CSR) is underscored by the stakeholder theory which emphasises integration of the interests of anyone affected by the operation of a corporation in the pursuit of its own business interest. Involvement of oil corporations in the Niger Delta in education, health, infrastructure and environment issues sits well within the stakeholder theory.

CSR is apparently guarantees good community relation with the corporations, just as stakeholder informed approach to cooperate governance promotes inclusiveness and accountability. This aligning societal aspiration with corporate objectives which promote sustainability and peaceful co-existence between the corporation and the community.

Aligning corporate governance with the stakeholders' interest is a potential solution to conflict reduction and prevention and a promotion of partnership between corporation and the host communities. In communities with natural resources being exploited by Multinational Corporations such as the Niger Delta, the stakeholder theory and by extension of CRS represents the antidotes to instability and conflicts which is a foundation for the promoting national security and development.

[17]Freeman, R.E., *Strategic Management: A Stakeholder Approach* (Boston, MA: Pitman, 1984).

Conflict Theory

Conflict theory originated from Karl Max's[18] analysis of societal structure. Karl Max discussion of classes of people in society indicates that an economic system which favour the elites and marginalize the general populace is bound to eventually create tension and promotes unrest where such disparity is allowed to fester and unaddressed. The theory demonstrates how domination of power and resources by a section of the society promotes conflict and increase tension in the society.

Tension can be drastically reduce where CSR is employed by corporation to ameliorate economic disparities. CSR can be employed to promote health, education, employment generation, reduce social-economic challenges thereby reduce disparity in the society. A corporate governance system which prioritises conflict theory by addressing possible conflict areas no doubt promote good corporation and community relation. It equally deescalate tension in the communities. Explosive activities and tendencies are usually avoided by corporation applying conflict theory. It's equally ethically correct in corporate governance parlance as it promote inclusive decision making process. Where conflict theory is jettisoned there is the likelihood of neglecting inequalities and the voices of the oppressed.

Development Theory

Development theory is rooted in economic, social and political advancement of the society. The developmental state model, emphasizes government-led strategies and partnerships with private sector entities to drive growth and improve living standards.

Development theory and CSR are aimed at sustainable development where corporations play an active role in advancing national goals such as poverty alleviation, infrastructure development and environmental sustainability. Public-private partnerships provide a framework for aligning corporate efforts with development theory and all it trappings.

Corporate Governance practice based on development theory promotes corporate ethics and national development. Development focused corporate governance approach results in the

[18]Marx, Karl, *The Essentials of Marx: The Communist Manifesto* by Karl Marx and Frederick Engels, (New York: Vanguard Press, 1926).

corporations' contribution to community and national development, and conversely reduces retrogressive activities from corporations and their officials.

Addressing systemic challenges such as inequality, inadequate infrastructure, and poor education is crucial for stability and growth. Development approach to governance aligned with progress and priorities that create resilient communities, decreasing vulnerability to conflict and enhancing national security.

Stakeholder, conflict and development theories offer a comprehensive framework for understanding the roles of CSR and corporate governance in national security and development. Together, these theories emphasize the importance of inclusive, ethical and strategic corporate practices that address societal challenges. By aligning corporate actions with broader developmental goals, these frameworks underscore the potential of CSR to drive sustainable progress, enhance social cohesion and strengthen national stability.

CSR Scorecard for Oil Corporations in Nigeria

Oil corporations operating in Nigeria, such as Shell,[19] Chevron, Mobil, and Agip, articulate policies that recognize their host communities. Shell's policies emphasize a constructive role in addressing social issues beyond direct business interests,[20] while Chevron's "Chevron Way" mission aims to enhance communities' well-being and maintain transparent communication on environmental impacts.[21] Mobil and Agip have also developed community-centered policies. Despite these efforts, local perceptions often characterize these corporations as dismissive, lacking empathy, and isolated from host communities. Representatives negotiating on behalf of these corporations are seen as detached and collaborative only with local elites, often misaligned with the general populace's interests.

Local community members perceive that oil corporations' CSR efforts fall short, particularly when addressing fundamental issues like infrastructure, health, and economic development.

[19] Shell alone is responsible for the exploration of over 50% of the oil in Nigeria until recently.
[20] Royal Dutch/Shell Group of Companies, statement of General Business Principles (London and The Hague: Shell, 11 March 1997)
[21] Chevron, the Chevron way, (San Francisco: Chevron, 1995). See also NNPC/Chevron Joint Venture, Community Development Philosophy (Lagos: Chevron Nigeria Ltd, November 1997).

Basic community needs, such as access to clean water and healthcare, remain unmet, as Oil Company workers receive exclusive services, and their needs are met through company-controlled resources. Infrastructure improvements around oil facilities rarely extend to surrounding villages, creating disparities that highlight the corporations' limited integration with host communities. Thus, a judicial commission of Inquiry once concluded that, there is "*a lack of meaningful contact and consultation between the oil companies and the communities in which the oil companies operate and therefore lack of understanding between both parties, where there is such lack of understanding there is always confusion, disorder and all that makes for disturbances."*[22]

Communities expect oil corporations to prioritize the well-being of those directly affected by their operations, especially concerning environmental risks. Oil spills and pollution have devastated agriculture, fishing, and water resources, resulting in public outcry in affected regions. Society's expectations extend beyond mere damage prevention; there is an ethical responsibility for corporations to contribute to essential needs, such as education, poverty alleviation, and infrastructure, particularly given the economic and environmental impact of their operations.

While CSR frameworks emphasize proactive measures to mitigate environmental and societal harm, oil corporations often fail to meet these minimum standards. Communities rightfully fear that continued corporate negligence will exacerbate pollution, expose residents to hazardous conditions, and threaten traditional livelihoods. Given their resources and expertise, oil corporations have the capacity to protect the environment and communities, yet evidence indicates a disconnect between corporate policies and on-ground realities.

The oil industry's CSR performance in Nigeria thus reflects a substantial gap between societal expectations and corporate actions. Host communities in Nigeria consistently encounter environmental degradation, limited access to essential services, and insufficient corporate

[22]Judicial Commission of Inquiry into *Umuechem Disturbances Report* (January 1991).

accountability. The disparity between policy and practice in the Nigerian oil sector highlights the need for a strengthened CSR framework, greater legal enforcement, and ethical commitments to ensure that corporate activities align with societal welfare and environmental sustainability.

Shifts in the Concept of National Security

The understanding of national security has evolved significantly from a narrow, state-centered focus, typical of the Cold War era, where the security of the state and its institutions was paramount. In that period, national security prioritized state officials and apparatus, while citizens' safety was an indirect outcome of a secure state. However, modern threats—especially rising intra-national and ethnic conflicts—redefine security concerns, moving the focal point toward individuals within the state. Increasingly, internal issues like ethnic, religious, and cultural divisions present greater threats to national security than external conflicts, necessitating a new approach to safeguarding both citizens and the state.[23]

In many cases, state security measures may inadvertently target citizens under the guise of safeguarding national sovereignty. Here, national security conflates with governmental stability, allowing state power to suppress dissent or assert control over citizens, often at a high cost to individual liberties.[24] This evolving definition aligns with international bodies like the United Nations and the UN Development Programme, which advocate for a citizen-centered approach. Consequently, realigning security practices to focus on individual well-being and safety aligns with broader humanitarian principles, ensuring that state security measures also promote public safety rather than suppressing it.

[23] Frynas, G., "Corporate Social Responsibility in the Oil and Gas Sector" (2009) 2(3) *The Journal of World Energy Law & Business* 178-195.

[24] Examples of this are the killing of about 350 Shites Muslim sect in Kaduna in Dec 2015 and the killing of some people residing in an uncompleted building in Abuja under the pretense that they were Boko Haram Terrorists in Sept., 2013 see Premium Times @ https://www.premiumtimesng.com/news/headlines/201615-kaduna-govt-says-347-shiites-killed-by-nigerian-troops-given-secret-mass-burial.html, (accessed Oct. 28th 2024) with a caption titled: Kaduna Government says 347 Shiites killed by Nigerian troops given secret mass burial and Premium Times @ https://www.premiumtimesng.com/news/145094-apo-killings-nigerian-army-sss-extrajudicially-kill-7-label-boko-haram.html (accessed Oct. 28th 2024) with the caption Apo Killings: Nigerian Army, SSS, extra judicially kill 7, then label them Boko Haram respectively

Increasingly, internal conflicts-whether based on ethnic, religious, or other group identities-have escalated the threats within national borders. Nigeria's efforts against groups like Boko Haram illustrate how national security concerns are becoming internalized, with military campaigns aiming to protect citizens from domestic threats. Scholars generally agree that national security today must prioritize individual security, reflecting the shift in both theory and practice toward a more inclusive understanding of security. Additionally, internal tensions over resource control, as seen in the Niger Delta, spotlight the security challenges tied to resource allocation and the equitable distribution of national wealth.

Today, national security considerations for Nigeria encompass economic, demographic, and environmental threats alongside traditional military concerns. This comprehensive perspective helps identify the underlying causes of internal strife, offering insights into the security implications of widespread environmental degradation, pollution, poverty, organized crime, and infrastructure decay. Relying solely on military intervention overlooks these non-combatant threats, which are now just as likely to fuel internal conflicts as any traditional external threat.

Incidents of Crisis Undermining National Security

i. **Ekpan Women's Protest Against Oil Company Policies (1986)** On August 25, 1986, 10,000 Ekpan women from Delta State's Uvwie clan staged a protest at the Nigerian National Petroleum Corporation (NNPC) facility, demanding employment and local development support. The women blocked access to NNPC's plants, halting work and fuel distribution. Police intervention failed, underscoring community frustration over unfulfilled promises. The women's demands included jobs, utilities, scholarships, and fair compensation for acquired land.

ii. **The Ogoni Movement (1990s)**Founded in 1990, the Movement for the Survival of the Ogoni People (MOSOP) represented Ogoni grievances over environmental degradation due to oil activities by Shell Petroleum. The "Ogoni Bill of Rights" encapsulated these demands, including the right to control local resources and political autonomy. MOSOP's activism attracted international attention,[25] pressuring Shell to reconsider its environmental practices

[25] In May 1994, four prominent Ogoni leaders were brutally murdered by a mob of youths. These men had been

and corporate social responsibility. Despite some progress, the Ogoni struggle highlights the need for policy reforms to safeguard communities and meet CSR expectations.[26]

iii. **Demonstrations/Protests Against Chevron (2016)** In August 2016, protests erupted against Chevron in Nigeria's Niger Delta, where youth blockaded company facilities demanding job creation and housing. The demonstrators cited the destruction of local settlements and the lack of socioeconomic benefits despite Chevron's use of community land. Such local grievances reflect the broader demand for a fair distribution of oil wealth and heightened accountability from multinational corporations.[27]Protesters alleged that Chevron's operations had led to environmental damage and highlighted the widespread poverty persisting in resource-rich areas.[28]

iv. **Niger Delta Protests Following 2011 Oil Spill (2014)** In March 2014, Niger Delta communities rallied against Shell over the aftermath of a 2011 oil spill, which had devastated local fishing grounds. Protesters demanded reparations and environmental restoration, uniting communities to hold Shell accountable for its CSR obligations and urging the company to commit to sustainable practices.

v. **Community Disputes with Universal Energy Resource (2013)** On July 7, 2013, AkwaIbom communities protested Universal Energy Resource's failure to fulfill its CSR agreements for local development projects. The protest exposed recurring CSR gaps, with host communities demanding adherence to commitments that had promised infrastructure, education, and other essential services.

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associated with a faction of MOSOP that had differed with Saro-Wiwa on the organization's tactics and strategy and had been regarded by some in MOSOP as government collaborators. Ken Saro-Wiwa and several other Ogoni activists were immediately arrested on charges of murder and incitement to murder. Sixteen members of the MOSOP leadership were put on trial, and nine, including Ken Saro-Wiwa, were eventually convicted and sentenced to death by a special tribunal. Without the right to an appeal, the Ogoni Nine were executed on November 10, 1995.

[26]Ogoni and Nigeria Conflict Over Oil, Trade and Environment Database,(http://www1.american.edu/ted/ice/ogonioil.htm); (accessed 23rdNovember 2024). Ogoni Protests Escalate in Nigeria as Shell Fails to Implement UNEP Report, An Article Published on Arts Activism Education Research By Sarah Shoraka (11th December, 2013); http://platformlondon.org/2013/12/11/ogoni-protests-escalate-in-nigeria-as-shell-fails-to-implement-unep-report/ (accessed 23rd November 2024)

[27]Demonstration Against Chevron In Nigeria, Published by Reuters, (August 2016); http://www.reuters.com/article/nigeria-oil-idUSL8N1AW209 (accessed 23rdNovember 2024)

[28]Ulf Laessing (2016), Demonstration against Chevron in Nigeria's Delta widens - Being a publication of Reuters Africa http://af.reuters.com/article/nigeriaNews/idAFL8N1AW209 (accessed 24th day of Oct 2024)

vi. **Septa Energy and Local Community Protests (2013)**In 2013, over 500 women from AkwaIbom State staged a protest against Septa Energy, a subsidiary of the Seven Energy Group. The women halted construction of a gas plant to demand compliance with previously promised development initiatives. With symbolic gestures like cassava leaves, they highlighted community dissatisfaction with unmet CSR obligations.

vii. **Niger Delta Avengers (2016)**Emerging in 2016, the Niger Delta Avengers (NDA) intensified internal security challenges by targeting oil infrastructure, reducing Nigeria's oil production to its lowest in two decades. Their demands include autonomy and resource control, as well as ecological restoration for affected areas. These attacks have impacted national revenue significantly, showcasing the broader impact of unmet community needs and CSR promises on national security.

These incidents illustrate that Nigerian communities expect CSR practices that encompass employment, local development, environmental preservation, education, and worker protection from oil corporations. However, recurring protests, including acts of civil disobedience, underscore persistent unmet demands. Government officials often face accusations of collaborating with oil corporations, which has undermined local trust and led to systemic corruption. This discontent, combined with government inaction, has fueled resistance movements within the Delta region.

In addition, traditional rulers, sometimes acting as intermediaries for oil companies, often receive financial incentives, creating a socioeconomic divide within communities. These select elites benefit directly from corporate presence, often at the expense of broader community welfare. Consequently, CSR efforts highlighted by oil companies rarely represent the broader population's expectations, and the resulting disenfranchisement fosters resentment among residents.[29] Local communities increasingly view oil corporations as exploitative, with the wealth of a privileged few contrasting sharply with widespread poverty. As tensions escalate,

[29]Omofonmwan, S. I. & Odia, L. O., "Oil Exploitation and Conflict in the Niger-Delta Region of Nigeria" (2009) 26(1) *J. Hum Ecol* 25-30.

protests have become an essential platform for communities seeking to address their grievances and demand accountability, reflecting broader implications for Nigeria's national security.[30]

Oil Corporations' Corporate Social Responsibility (CSR) Failures and its Impact on National Security

Since Nigeria's first commercial oil discovery in 1956, the country has grown to produce roughly 2.3 million barrels of oil per day, with reserves estimated at between 16 and 22 billion barrels, mainly concentrated in the Niger Delta. The Nigerian Constitution of 1999, in Section 44(3), establishes federal ownership of all mineral resources, vesting control of oil and gas in the government and empowering the National Assembly to make laws on the sector's management. As a result, only companies licensed by the federal government, both domestic and international, can engage in oil exploration.

Oil production in Nigeria is dominated by foreign companies, primarily from Europe and the United States, operating in joint ventures with the state-owned Nigerian National Petroleum Corporation (NNPC). The NNPC typically holds a 55% to 60% stake in these joint ventures. Major players like Mobil, Chevron, ELF, Agip, and Texaco operate through partnerships, while smaller companies maintain individual concessions. Oil extraction has considerable environmental impacts, most acutely felt in the Niger Delta, a vast wetland spanning over 20,000 square kilometers, of which 6,000 square kilometers are rich mangrove forests with high biodiversity and unique ecosystems.[31]

However:

[30] See Niger Delta Avengers @ https://en.wikipedia.org/wiki/Niger_Delta_Avengers (accessed on 28th Oct 2024)

[31] Zabbey, N., "Impacts of Extractive Industries on the Biodiversity of the Niger Delta Region, Nigeria" (Paper presented at a 3-Day National Workshop on Coastal and Marine Biodiversity Management, Pyramid Hotel, Calabar, Cross-River State, 7-9 September 2004).

> …oil-led development has clearly seriously damaged the environment and the livelihood of many of those living in the oil producing communities…but Nigerian environmental laws in most aspects comparable to their international equivalents are poorly enforced.[32]

The natural consequence of the situation above is the tension and series of crisis which has always been present essentially within the oil producing areas with spiral effect on the country as well.[33]

Despite the region's ecological importance, oil-driven development has severely degraded the environment and eroded the livelihoods of Niger Delta communities, where fishing and agriculture are mainstays. While Nigerian environmental regulations align with many international standards, they are rarely enforced, leading to widespread pollution, habitat destruction, and economic hardship. This systemic failure has fueled tensions and unrest, disproportionately affecting oil-producing areas but also creating ripple effects across Nigeria.

The lack of robust corporate social responsibility (CSR) initiatives by oil corporations, compounded by government complicity, has severely compromised the Niger Delta's economic resilience. Oil extraction has not only depleted local resources but has led to practices detrimental to sustainable living. In many cases, essential resources—be it land, rivers, or even entire communities—are sacrificed to ensure unimpeded oil flow, often with government security forces intervening to protect oil interests over community welfare.

This dynamic has spurred significant security challenges as militant groups continue to emerge, demanding CSR responses that genuinely benefit local communities, including development support, healthcare, education, and poverty alleviation. The government's inconsistent and largely politicized approach to addressing the region's developmental needs has exacerbated local frustrations and violence, exposing an ineffective national security strategy. The

[32]Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (1999, New York) p. 7.

[33]However, on October 30th 1990, a protest riot brook out at Umuechem, a village in the eastern part of Port Harcourt, the River state capital. Official Report admits that eighty people were killed by the security agent and property worth Millions of Naira destroyed. Again official record admits that 495 houses were either destroyed or badly damaged.

government is therefore "trying to plug holes in what is an increasingly leaky dam."[34]Essentially, the state's inability to establish meaningful regulatory standards for CSR leaves it reliant on coercive methods to manage citizen discontent. Such instability heightens the risk of wider conflict, increased secessionist movements and deepening economic challenges.[35]

Recommendations and Conclusion

The challenges in the Niger Delta and Nigeria's broader development landscape present a stark reminder of the nation's struggle to achieve sustainable progress, leaving it lagging behind even the slowest-growing global economies. The persistence of militancy, oil theft, illegal refining activities and renewed secessionist agitations highlight the intersection of environmental degradation, economic disparity and political instability. These crises underscore the pressing need for strategic reforms in governance, as well as a reimagining of the role and accountability of corporate entities, particularly in the extractive industry.

Corporate Social Responsibility (CSR) represents a pivotal mechanism to bridge the entrenched governance gap and foster socio-economic stability in Nigeria. To this end, robust legislative and regulatory frameworks must be enacted to harmonize, standardize, and enforce CSR practices. This is crucial to ensuring that corporate investments are not just philanthropic gestures but align with Nigeria's national development priorities, addressing the root causes of inequality, environmental degradation, and local unrest.

Historically, one of the significant barriers to the success of CSR initiatives has been the exclusion of host communities from meaningful participation in the planning, prioritization, and execution of projects. This exclusion has fueled mistrust and resentment, limiting the effectiveness and sustainability of corporate efforts. As Nigeria moves forward, it is imperative for oil corporations and other stakeholders to embrace a bottom-up approach that prioritizes

[34]See International Crisis Group, "Fuelling the Niger Delta Crisis," available at https://www.crisisgroup.org/file/2625/download?token=gd44vYmx (accessed 28 October 2024).
[35]Abdelaziz, Gamal Sayed & Hosny, Sara and Osama, Hassan, "CSR Attribution: Is it the Cornerstone of CSR Success?" (2024) 6(3) Journal of Humanities and Applied Social Sciences.

community engagement and inclusivity. By involving host communities from the inception of CSR initiatives, corporations can ensure that these projects address genuine local needs, thereby fostering a sense of ownership and shared purpose.

Furthermore, beyond the immediate benefits to host communities, inclusive and impactful CSR practices have far-reaching implications for national security and stability. By addressing socio-economic grievances and creating opportunities, CSR can help to weaken the appeal of militancy, reduce criminal activities such as oil theft, and foster trust between corporations, communities, and the government. This collaborative dynamic can serve as a foundation for long-term peace and economic resilience, particularly in regions fraught with tension and underdevelopment.

In a broader context, embedding effective CSR into Nigeria's developmental framework offers an opportunity to redefine the role of private sector actors as strategic partners in nation-building. Corporations can no longer operate in isolation from the socio-political realities of their environments. By aligning their activities with national priorities, they contribute to a more inclusive economic model that addresses inequalities, promotes environmental sustainability, and drives innovation.

Ultimately, CSR must evolve from being a peripheral business activity to a transformative tool for bridging governance gaps and advancing national security. It is not just about corporate philanthropy; it is about redefining accountability and responsibility in a way that positions businesses as drivers of equitable growth. In doing so, Nigeria can harness the power of CSR to catalyse meaningful progress, reduce instability, and lay the groundwork for a resilient and prosperous future.

ETHICAL IMPLICATIONS AND LEGAL VOID IN CLOUD SEEDING AS A WAR STRATEGY

Abdulbasit Kolapo Imam*

Abstract

Cloud seeding, a technology that manipulates rainfall patterns, presents a potential military advantage in the 21st century. However, its use in warfare raises serious ethical and legal concerns. This paper looks into the moral complexities of weaponising cloud seeding. It analyses the environmental threats posed by manipulating weather systems, the potential harm to civilians caught in engineered storms, and the disruption it could cause to delicate ecosystems. The paper further exposes the inadequate legal framework surrounding this technology. Existing treaties like the Environmental Modification Convention (ENMOD) and the Hague Conventions have loopholes that leave room for debate on their application. Additionally, regulations vary greatly between countries, highlighting the need for a unified global approach to cloud seeding. To address these gaps, the paper proposes a comprehensive legal framework. It suggests strengthening existing treaties, reinterpreting international law with a focus on environmental protection, and even creating a new treaty specifically outlawing military cloud seeding. Ultimately, the paper emphasises the crucial role of international cooperation and responsible governance. It argues that cloud seeding should be used for peaceful purposes, such as managing droughts or floods. Only through international collaboration can we ensure that this technology serves humanity and does not end up as a tool for war.

***Keywords**:* Cloud Seeding, Weather Modification, War Strategy, International Law

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Introduction

The fast-changing complexity of modern warfare presents a constant challenge for decision-makers. Technological advancements blur the lines between traditional and non-traditional tactics, raising concerns about unforeseen consequences. One particularly troubling area of focus is the potential weaponisation of weather modification techniques. Among these techniques, cloud seeding emerges as a capability that's both ethically questionable and strategically interesting. Cloud seeding disrupts the natural rain cycle. Introducing specific substances, like silver iodide or dry ice, into clouds influences ice crystal formation, ultimately promoting or inhibiting rainfall.[1] This technology holds immense benefits for drought mitigation and agricultural management in peacetime. Imagine vast arid regions receiving life-giving rain or drought-stricken farmlands experiencing a much-needed boost in crop yields. However, the potential for manipulation in conflict situations raises serious concerns that should be further investigated.

The concept of manipulating weather patterns for military purposes is not a novel one. Historical records offer glimpses of attempts to influence rainfall as far back as ancient China, where emperors sought to control agricultural outcomes. However, the 20th century witnessed a significant escalation with the rise of organized scientific research and experimentation. During the Vietnam War, the United States' "Operation Popeye" employed cloud seeding techniques over the Ho Chi Minh Trail, aiming to disrupt enemy supply lines by triggering heavy rainfall and mudslides.[2] While ultimately deemed ineffective, this covert operation, declassified in the 1970s, serves as a conscious reminder of the destructive potential of weather warfare. The excitement of cloud seeding as a military strategy lies in its ability to disrupt enemy operations in a seemingly bloodless manner. Imagine a scenario where a nation can manipulate weather patterns to trigger floods in enemy territory, hindering troop movements, destroying infrastructure, and disrupting agricultural production. Conversely, the ability to control rainfall could be used to create droughts, crippling agricultural production and hindering enemy logistics.

[1] Edith Brown Weiss. (2020). Climate Change and Geoengineering the Climate. Brill | *Nijhoff EBooks*, 216–268. <https://doi.org/10.1163/9789004422018_010>

[2] Olson, K. R. and Speidel, D. R. (2023). United States Secret War in Laos: Long-Term Environmental and Human Health Impacts of the Use of Chemical Weapons. *Open Journal of Soil Science*, 13(04), 199–242. <https://doi.org/10.4236/ojss.2023.134009>

However, the ethical implications are profound. Unintended consequences, such as floods or droughts, can devastate entire regions, inflicting harm on civilian populations and ecosystems far beyond the intended target zone. A country attempting to disrupt enemy supply lines with heavy rain risks causing widespread flooding in its border regions, displacing civilians and causing immense economic damage. The long-term environmental repercussions also remain largely unexplored. Disrupting natural weather patterns in one region could have dangerous effects on global climate systems, potentially triggering droughts or extreme weather events in other parts of the world.

The absence of clear international regulations governing the use of cloud seeding in warfare creates a critical legal void. This legal ambiguity creates a dangerous uncertainty, leaving nations free to interpret existing treaties in ways that could potentially legitimize the use of cloud seeding for military purposes. Existing treaties like the Environmental Modification Convention (ENMOD) aim to prohibit military environmental modification techniques with "widespread, long-lasting or severe effects" (Art. I, 1). However, the interpretation of "widespread" and "severe" remains open to debate, creating a potential loophole for the use of cloud seeding, which may not always produce these extreme consequences[3]. Similarly, principles within the Hague Conventions and the Geneva Conventions offer some potential legal grounds for regulating cloud seeding based on proportionality and limitations on causing unnecessary environmental damage (Hague Convention (IV) Respecting the Rights and Duties of Neutral Powers in Case of War on Land, Art. 23(g);

Article23(g):

> It is especially forbidden...
>
> To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

Additional Protocol I to the Geneva Conventions, Art. 55(1)). However, the ambiguity surrounding the specific language and the lack of a comprehensive framework leave significant gaps.

[3]Ishfaq, S. (2022, September 10). Environmental Modification – A War Without Weapons. Retrieved August 11, 2024, from *Paradigm Shift website*: https://www.paradigmshift.com.pk/war-without-weapons/.

Article 55(1):

> Care shall be taken in warfare to protect the natural environment against widespread, long-term, and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended, or may be expected, to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

The historical record offers cautionary tales of the potential dangers of weather modification experiments. The Lynmouth Flood of 1952 in Devon, United Kingdom, which claimed 35 lives, remains a controversial event. While officially attributed to an act of nature, declassified documents suggest that the Royal Air Force (RAF) may have been conducting cloud-seeding experiments in the region as at the time, raising questions about the potential link between these experiments and the devastating flood [4].

The international community has recognized the potential dangers of weather warfare. The ENMOD Convention, which entered into force in 1978, prohibits signatory states from engaging in military or any other hostile use of environmental modification techniques with "widespread, long-lasting or severe effects" (Art. I, 1). However, the treaty's effectiveness is limited by the fact that not all nations are signatories. Notably, China, a country with a growing weather modification program, is not a party to the ENMOD Convention.[5]This raises concerns about the potential for unregulated manipulation of weather patterns with the potential to destabilize entire regions. The case of China's growing weather modification program further highlights the urgency of addressing the legal and ethical issues surrounding this technology. China has openly stated its ambition to become a leader in weather modification by 2025, with plans to significantly expand its artificial rainfall and snowfall operations[6]. While China maintains that its program is for peaceful purposes, neighboring countries like India view these developments with

[4] Vidal, J., and Weinstein, H. (2001, August 30). RAF rainmakers "caused 1952 flood." Retrieved August 11, 2024, from the *Guardian website*: <https://www.theguardian.com/uk/2001/aug/30/sillyseason.physicalsciences>

[5]Jash, A. (2024, March 15). Is China modifying the weather? India has concerns. Retrieved August 11, 2024, from orfonline.org website: <https://www.orfonline.org/expert-speak/is-china-modifying-the-weather-india-has-concerns>

[6] Griffiths, J. (2020, December 3). China to expand weather modification program to cover area larger than India. Retrieved August 11, 2024, from *CNN website*: <https://edition.cnn.com/2020/12/03/asia/china-weather-modification-cloud-seeding-intl-hnk/index.html>

suspicion, particularly given China's proximity to the Tibetan Plateau, a crucial source of water for the region.[7] The potential for unintended consequences and the lack of international consensus on the use of weather modification for military purposes create a precarious situation.

This paper will investigate the historical use of weather modification for military purposes, analyze the legal frameworks surrounding this technology, and explore the ethical and environmental considerations. This paper seeks to address a critical gap in our understanding of the ethical predicament associated with weaponized cloud seeding. We will analyze the current fragmented legal landscape, highlighting the limitations of existing treaties such as the Environmental Modification Convention (ENMOD). Furthermore, we will propose a framework for responsible regulation of this technology in the context of armed conflict. This framework will necessitate international cooperation and the establishment of a robust legal framework that strengthens existing treaties, reinterprets existing international law through an environmental protection lens, and potentially establishes a dedicated treaty specifically prohibiting cloud seeding for military purposes.

Problem Statement

The military application of cloud seeding technology presents a complex challenge to international security, environmental stability, and global governance in the 21st century. While offering potential tactical advantages in warfare, such as disrupting enemy logistics and creating advantageous battlefield conditions, these benefits are overshadowed by critical concerns. The absence of comprehensive international regulations governing military cloud seeding creates dangerous ambiguity, threatening environmental integrity and global security frameworks. This problem focuses on three primary areas namely unintended environmental consequences, conflict escalation and geopolitical tensions, and accountability and enforcement challenges.

Unintended Environmental Consequences

Cloud seeding involves deliberately manipulating natural weather patterns by introducing substances like silver iodide or dry ice into cloud formations to influence precipitation.[8]However,

[7]Jash, A. (2024, March 15). Is China modifying the weather? India has concerns. Retrieved August 11, 2024, from orfonline.org website: <https://www.orfonline.org/expert-speak/is-china-modifying-the-weather-india-has-concerns>

the ramifications extend far beyond the immediate target area, potentially triggering acascade of unintended environmental consequences. The interconnectedness of global weather systems means that alterations in one region can have far-reaching and unpredictable impacts elsewhere. China's ambitious weather modification program, aiming to cover an artificial rainfall operation area exceeding 5.5 million square kilometers by 2025, illustrates the scale of potential environmental impact.[9]The long-term ecological effects of repeated cloud seeding operations remain poorly understood, with potential consequences for biodiversity, soil composition, and water quality. The cumulative impact could exacerbate broader environmental challenges related to climate change and ecological stability.

The potential for cloud seeding to cause indiscriminate harm to civilian populations and the environment conflicts with established principles of distinction and proportionality in armed conflict. Unlike conventional weapons, weather manipulation effects are not easily contained within designated combat zones. Altering weather patterns could lead to widespread civilian suffering through crop failures, water shortages, or natural disasters, raising serious concerns about compliance with international humanitarian law.

Escalation of Conflict and Geopolitical Tensions

The ambiguity surrounding the legal status of cloud seeding in warfare introduces unpredictability into international relations. The potential for weather modification as a first-strike tactic or part of a broader military strategy blurs the lines between conventional and unconventional warfare, potentially lowering the threshold for armed conflict. The subtle, delayed, and geographically dispersed effects of weather modification make it challenging to attribute responsibility definitively, creating a precarious situation where nations might employ cloud seeding preemptively, fearing their adversaries might do the same. This scenario could trigger a dangerous escalation spiral, with nations retaliating against perceived weather manipulation with their own atmospheric interventions or conventional military responses.

[8] Edith Brown Weiss. (2020). Climate change and geoengineering the climate. Brill | *Nijhoff EBooks*, 216–268. <https://doi.org/10.1163/9789004422018_010>

[9] Griffiths, J. (2020, December 3). China to expand weather modification program to cover area larger than India. Retrieved August 11, 2024, from *CNN website*: <https://edition.cnn.com/2020/12/03/asia/china-weather-modification-cloud-seeding-intl-hnk/index.html>

Recent geopolitical tensions highlight the potential for weather modification to amplify existing conflicts. In 2012, Iranian President Mahmoud Ahmadinejad accused unnamed enemies of dispersing rain clouds over Iran, attributing droughts and crop losses to alleged weather warfare.[10]While the Iranian Vice President Hassan Mousavi was quoted to have declared the event as an acute issue and soft war by the West. The situation in South Asia provides another example, with India expressing growing concerns over China's weather modification activities in the Tibetan Plateau, viewing them as a potential threat to national security[11]. Given the strained relations between these nuclear-armed neighbors, the perception of weather manipulation as a hostile act could significantly escalate tensions. Furthermore, the difficulty in distinguishing between civilian and military applications of cloud-seeding technology complicates the international response, as legitimate weather modification for agricultural or water management purposes could be misconstrued as hostile acts.

The rapid advancement of weather modification technologies presents a classic arms race dilemma. As nations invest in developing more sophisticated cloud seeding capabilities, others may feel compelled to follow suit to maintain strategic parity. China's ambitious weather modification program, aiming to achieve a "developed weather modification system" by 2025 and reach a "worldwide advanced level" by 2035 exemplifies this trend and could prompt other nations to accelerate their own research and development efforts. This technological competition carries the risk of outpacing the development of appropriate legal and ethical frameworks to govern the use of these powerful capabilities.

Accountability and Enforcement Challenges

The absence of a robust international legal framework specifically addressing military applications of cloud seeding creates significant challenges in terms of accountability and enforcement. Without clear norms and agreed-upon standards, holding nations accountable for the misuse of weather modification technologies or enforcing future regulations becomes difficult. This legal vacuum could incentivize the proliferation of cloud seeding capabilities

[10]Wolchover, N. (2012, September 11). Could Iran's Enemies Really Be Destroying Its Rain Clouds? Retrieved August 13, 2024, from *NBC News website*: <https://www.nbcnews.com/id/wbna48993677>

[11]Jash, A. (2024, March 15). Is China modifying the weather? India has concerns. Retrieved August 11, 2024, from orfonline.org website: <https://www.orfonline.org/expert-speak/is-china-modifying-the-weather-india-has-concerns>

among state and potentially non-state actors, as the perceived military advantages might outweigh the uncertain legal consequences. The situation is further complicated by the dual-use nature of cloud seeding technology, which has legitimate civilian applications in agriculture and water resource management [12].

The current international legal landscape offers limited recourse for nations that may suffer environmental damage or civilian casualties as a result of another country's cloud seeding activities. Existing frameworks such as the Environmental Modification Convention (ENMOD) prohibit the hostile use of environmental modification techniques with widespread, long-lasting, or severe effects. However, the convention's effectiveness is limited by its broad language and the difficulty in proving that specific weather events were the result of intentional manipulation[13]. The lack of universal participation in relevant international agreements further complicates the situation, with China, a leader in weather modification technology, not being a signatory to the ENMOD Convention.[14]This creates potential loopholes and inconsistencies in the global governance of weather modification technologies, allowing some nations to operate outside the constraints of international norms.

Addressing the above listed challenges requires a comprehensive approach to developing international law concerning the military application of cloud seeding. Key questions to be addressed include how international law can be updated to effectively address the unique challenges presented by military applications of cloud seeding, considering the potential for unintended environmental consequences. Additionally, mechanisms need to be established to monitor and verify compliance with regulations, given the difficulties in attributing weather events to intentional manipulation. Finally, the international community must balance the need for accountability and enforcement with the legitimate interests of states in developing weather modification technologies. The ultimate goal is to establish a robust legal framework that promotes the responsible use of cloud seeding and prevents its exploitation for hostile purposes,

[12] Shevchenko, O. and Horiacheva, K. (2021). Impact of Weather Change Technologies on Global Security. *Land Forces Academy Review, 26(4)*, 321–327. <https://doi.org/10.2478/raft-2021-0042>

[13]Ishfaq, S. (2022, September 10). Environmental Modification – A War Without Weapons. Retrieved August 11, 2024, from Paradigm Shift website: <https://www.paradigmshift.com.pk/war-without-weapons/>

[14]Jash, A. (2024, March 15). Is China modifying the weather? India has concerns. Retrieved August 11, 2024, from orfonline.org website: <https://www.orfonline.org/expert-speak/is-china-modifying-the-weather-india-has-concerns>

while addressing the ethical implications that extend beyond the immediate context of conflict, raising questions about humanity's relationship with nature and the limits of acceptable intervention in natural systems.

Literature Review

The use of weather modification techniques, particularly cloud seeding, for military purposes presents a complex challenge in international law and ethics. This review examines the existing legal frameworks, historical precedents, and contemporary developments related to weather modification activities, highlighting the significant gaps in regulation that this study aims to address. The legal landscape surrounding cloud seeding in warfare is characterized by a patchwork of international treaties and conventions that, while not explicitly addressing weather modification, provide some potential avenues for regulation. The Hague Conventions of 1907, foundational to international humanitarian law, prohibit actions such as "wanton destruction of property" and "employment of poisons or poisoned weapons" (Hague Convention (IV) Respecting the Rights and Duties of Neutral Powers in Case of War on Land, Art. 23(g); Art. 23(a)). While cloud seeding is not specifically mentioned, the principles of proportionality in attack and avoiding unnecessary suffering could potentially be applied to argue against its use in military operations.

Similarly, the Geneva Conventions of 1949, particularly Protocol I, offer another layer of potential regulation. Article 55 of Protocol I prohibits "widespread, long-lasting or severe damage to the natural environment" as a consequence of military operations (Additional Protocol I to the Geneva Conventions, Art. 55(1))[15]. This could potentially be interpreted to limit the use of cloud seeding if its effects are deemed to fall under this definition. However, the ambiguity surrounding the terms "widespread," "long-lasting," and "severe" creates uncertainty in application. The Environmental Modification Convention (ENMOD) of 1976 provides a more focused approach to the issue, explicitly prohibiting environmental modification techniques with

[15] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (2022). Art. 55. Retrieved August 13, 2024, from ICRC website: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48>

"widespread, long-lasting or severe effects" for military purposes[16]. However, the effectiveness of ENMOD is limited by its narrow scope and lack of robust enforcement mechanisms. The convention only applies to a specifically listed set of techniques, and it remains unclear whether cloud seeding is explicitly included. This creates a potential loophole that nations could exploit to argue that their cloud-seeding activities fall outside the treaty's scope.

Beyond these core conventions, other international agreements offer additional, albeit limited, legal considerations. The UN Convention on the Law of the Non-Navigational Uses of International Watercourses acknowledges the right to utilize shared water resources for cloud seeding while emphasizing the responsibility to avoid causing harm to the environment of other states sharing the resource (Art. 5).[17] The Convention on Biological Diversity and its Nagoya Protocol require nations to ensure their cloud seeding practices don't negatively impact biodiversity and necessitate obtaining consent from local communities before initiating such activities. Additionally, the Convention on Long-Range Transboundary Air Pollution regulates the emission and transport of air pollutants generated by cloud seeding processes.[18]

The historical case of "Operation Popeye," a covert US cloud seeding program conducted during the Vietnam War, serves as a critical example of the potential military application of weather modification techniques. This operation, which aimed to disrupt enemy supply lines by triggering rainfall over the Ho Chi Minh Trail, highlights the real-world implications of using cloud seeding as a weapon and the lack of clear legal boundaries surrounding such actions.[19] More recently, China's ambitious weather modification program provides a contemporary case study of large-scale weather alteration capabilities. While ostensibly for civilian purposes, China's plan to expand its weather modification system to cover an area of 5.5 million square kilometers by 2025 has raised concerns among neighboring countries, particularly India. This

[16]Vöneky, S. (2020). Freiburger Informations papierezum Völkerrecht und ÖffentlichenRecht Limiting the Misuse of the Environment during Peacetime and War -*The ENMOD Convention*. Retrieved from <https://www.jura.uni-freiburg.de/de/institute/ioeffr2/downloads/online-papers/FIP%202020_05_Voeneky_ENMOD-Convention_final.pdf>

[17] UNGA Convention on the Law of the Non-Navigational Uses of International Watercourses (adopted 21 May 1997, entered into force 17 August 2014) A/RES/49/52, art 5.

[18] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (adopted 29 October 2010, entered into force 12 October 2014), art 7.

[19] Olson, K. R., and Speidel, D. R. (2023). United States Secret War in Laos: Long-Term Environmental and Human Health Impacts of the Use of Chemical Weapons. *Open Journal of Soil Science, 13(04),* 199–242. <https://doi.org/10.4236/ojss.2023.134009>

program, involving the deployment of fuel-burning chambers on Alpine slopes in the Tibetan Plateau region, demonstrates the potential scale and sophistication of modern weather modification efforts.[20]The ethical considerations surrounding cloud seeding in warfare are multifaceted and intertwined with legal and environmental concerns. The potential for civilian harm and unintended consequences is a primary ethical dilemma. Cloud seeding can have unpredictable and far-reaching impacts, potentially causing widespread water shortages which could lead to food insecurity and displacement of civilians[21]. These consequences could disproportionately impact vulnerable communities already facing environmental challenges.

Furthermore, the use of cloud seeding in warfare raises questions about adherence to the principle of distinction, a fundamental tenet of international humanitarian law requiring combatants to distinguish between military objectives and civilian populations[22]. The indiscriminate nature of weather modification makes it challenging to ensure that its effects are limited to military targets, potentially violating this principle. The long-term environmental implications of manipulating weather patterns remain largely unknown. Cloud seeding could disrupt delicate ecological balances, impacting plant and animal life, and potentially exacerbating existing environmental problems like desertification.[23]The potential for these actions to contribute to or intensify climate change adds another layer of ethical complexity to the use of weather modification in warfare.

The existing works reveals significant gaps in the legal and ethical frameworks governing the use of cloud seeding in warfare. The absence of a comprehensive, dedicated international treaty specifically addressing weather modification for military purposes leaves room for potential misuse and exploitation. The existing legal instruments, while providing some basis for regulation, lack the specificity and enforcement mechanisms necessary to effectively govern the

[20]Jash, A. (2024, March 15). Is China modifying the weather? India has concerns. Retrieved August 11, 2024, from orfonline.org website: <https://www.orfonline.org/expert-speak/is-china-modifying-the-weather-india-has-concerns>

[21]Bruintjes, R. T. (1999). A Review of Cloud Seeding Experiments to Enhance Precipitation and Some New Prospects. *Bulletin of the American Meteorological Society, 80(5)*, 805–820. <https://doi.org/10.1175/1520-0477(1999)080%3C0805:arocse%3E2.0.co;2>

[22] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (2022). Art. 48. Retrieved August 13, 2024, from *ICRC website*: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48>

[23]Kuhl, L. (2022, August 11). Dodging silver bullets: how cloud seeding could go wrong. Retrieved August 13, 2024, from *Bulletin of the Atomic Scientists website*: <https://thebulletin.org/2022/08/dodging-silver-bullets-how-cloud-seeding-could-go-wrong/>

use of this technology in conflict situations. The scientific uncertainty surrounding the long-term environmental and societal impacts of cloud seeding further complicates efforts to establish clear legal boundaries. Without a full understanding of the potential consequences, it becomes challenging to define and enforce concepts like "widespread, long-lasting or severe effects" as outlined in the ENMOD Convention. Moreover, the international community's fragmented approach to regulating cloud seeding in warfare highlights the need for a more unified and comprehensive strategy. The lack of standardized regulations across countries and the absence of regional initiatives specifically targeting this issue create a potentially dangerous situation where accountability for misuse might be difficult to establish. This paper aims to address these gaps by proposing a more robust legal framework specifically tailored to the challenges posed by cloud seeding in warfare. This research aims to contribute to the development of laws and regulations governing the use of weather modification techniques in military contexts by examining the limitations of existing treaties, analyzing historical precedents, and considering contemporary developments. The focus is on minimizing potential environmental damage, protecting civilian populations, and preventing the unintended escalation of conflicts through the misuse of cloud seeding technology.

In conclusion, this existing reading about this topic highlights the urgent need for international cooperation and a renewed focus on strengthening and clarifying existing legal principles governing weather modification in warfare. As cloud seeding and other weather modification technologies continue to advance, it is crucial to establish a comprehensive legal framework that can address the unique challenges that come with these technologies in military contexts. This study aims to contribute to this goal by identifying key areas for legal development and proposing solutions to fill the current regulatory void surrounding cloud seeding in warfare.

Theoretical Framework

For the purpose of the discussion in this paper, we will be using two relevant theoretical frameworks to gain valuable insights, namely International Regime Theory and the Precautionary Principle. These frameworks offer different but complementary perspectives on how to approach the issue of regulating weather modification technologies in a military context.

International Regime Theory, as articulated by scholars like Krasner (1983) and Young (1989), focuses on how states cooperate to address shared problems through sets of principles, norms, rules, and decision-making procedures[24]. In the context of cloud seeding, this theory helps explain the challenges in creating effective international regulations. For example, the ENMOD Convention represents a partial regime addressing environmental modification techniques, but its effectiveness is limited by factors such as rule clarity, consensus among states, and enforcement mechanisms. Recent scholarship has expanded on these ideas. Brunnée and Toope (2010) argue that regime effectiveness is enhanced by perceived legitimacy, stemming from inclusive processes, fair rules, and adaptability[25]. Considering that technologies like cloud seeding have both beneficial and potentially harmful applications, as a result creating effective regulatory frameworks for such dual-use technologies is challenging.[26]

The Precautionary Principle, prominent in international environmental law since the 1990s, advocates for precautionary measures when an activity threatens harm to human health or the environment, even if cause-and-effect relationships are not fully established.[27]This principle is a tool for navigating uncertainty in the face of potential environmental harm. While it advocates for proactive measures to protect public health and the environment, striking a balance is crucial. Overly stringent applications can stifle innovation and economic growth.[28] Conversely, a weak interpretation may fail to safeguard against significant risks. Ultimately, the principle should be informed by robust, independent scientific assessment to prevent the manipulation of evidence.[29]

The Precautionary Principle aligns with recent developments in international environmental law,

[24]Brahm, E. (2016, July 12). International Regimes. Retrieved August 13, 2024, from *Beyond Intractability website*: <https://www.beyondintractability.org/essay/international_regimes>

[25]Brunnée, J., and Toope, S. J. (2010). Legitimacy and Legality in International Law. *Cambridge University Press*.

[26]Selgelid, M. J. (2009). Governance of dual-use research: an ethical dilemma. *Bulletin of the World Health Organization, 87(9)*, 720–723. <https://doi.org/10.2471/blt.08.051383>

[27] Wingspread Conference on the Precautionary Principle — The Science and Environmental Health Network. (2013, August 5). The Science and Environmental Health Network. Retrieved from *The Science and Environmental Health Network website*: <https://www.sehn.org/sehn/wingspread-conference-on-the-precautionary-principle>

[28] Stirling, A. (2016). Precaution in the Governance of Technology. *SSRN Electronic Journal.*<https://doi.org/10.2139/ssrn.2815579>

[29] Peel, J. (2005). The precautionary principle in practice: environmental decision-making and scientific uncertainty (pp. 222–225). *Sydney: Federation Press.*

such as the Paris Agreement on climate change.[30]Which incorporates precautionary approaches to prevent irreversible damage to the climate system. This precedent could provide a basis for applying similar principles to the regulation of weather modification technologies.

International regime theory provides insights into the political and institutional dynamics of creating effective international regulations, while the precautionary principle offers a normative guide for decision-making in the face of scientific uncertainty and potential severe harm. Together, these frameworks can help the development of more comprehensive and effective international legal instruments to govern the use of weather modification technologies in military contexts, balancing the need for regulation with the complexities of international cooperation and scientific uncertainty.

Methodology

The methodology for this analysis relies primarily on historical case studies and recent developments in weather modification technologies, with a focus on their potential military applications. Due to the often-classified nature of such programs, publicly available information is limited. However, declassified documents, existing analyses, and recent statements provided some level of insights into the development, use, and implications of weather modification technologies in a military context.

USA's Operation Popeye

The United States' "Operation Popeye," conducted during the Vietnam War, serves as a critical historical case study for understanding the military application of weather modification technologies. This covert cloud seeding program, operational from 1967 to 1972, aimed to extend the monsoon season in Southeast Asia, particularly over the Ho Chi Minh Trail. The primary objective was to impede enemy logistics through increased rainfall and muddy conditions, effectively using weather as a weapon of war[31]. Operation Popeye represents one of the first known large-scale attempts to use weather modification as a military tactic. The program

[30] UNFCCC. (2022). Key aspects of the Paris agreement. Retrieved August 13, 2024, from *UNFCCC website:*<https://unfccc.int/most-requested/key-aspects-of-the-paris-agreement#:~:text=The%20Paris%20Agreement>

[31]Hersh, S. M. (1972, July 3). Rainmaking Is Used As Weapon by U.S. *The New York Times*. Retrieved from <https://www.nytimes.com/1972/07/03/archives/rainmaking-is-used-as-weapon-by-us-cloudseeding-in-indochina-is.html>

involved aircraft flights that dispersed silver iodide into clouds, aiming to increase precipitation. While the full environmental impact of Operation Popeye remains unclear, its exposure led to significant international concern and debate about the ethics and legality of such operations.

The revelation of Operation Popeye highlighted several key issues that continue to be relevant in discussions of weather modification today. First, it demonstrated the potential for unintended consequences in weather modification efforts. Altering weather patterns, even in a localized area, can have far-reaching effects that are difficult to predict or control. Second, the program underscored the challenges in distinguishing between civilian and military applications of weather modification technology. The same techniques used for benign purposes like drought mitigation could potentially be weaponized, blurring the lines between peaceful and hostile uses. Perhaps most significantly, Operation Popeye led to increased international awareness of the need for oversight and regulation of weather modification technologies. The program's exposure was a key factor in the development of the Environmental Modification Convention (ENMOD), which prohibits the military or hostile use of environmental modification techniques.[32]

China's Weather Modification Program

Unlike the covert nature of Operation Popeye, China's contemporary weather modification program provides a case study in the open pursuit of large-scale weather alteration capabilities. In 2020, China announced ambitious plans to expand its weather modification system to cover an area of 5.5 million square kilometers by 2025. This program, while ostensibly for civilian purposes such as drought mitigation and hail suppression, has raised concerns among neighboring countries, particularly India. China's weather modification efforts are notable for their scale and sophistication. The program involves the deployment of a vast network of fuel-burning chambers on Alpine slopes, particularly in the Tibetan Plateau region. These chambers are designed to release silver iodide particles into the atmosphere, promoting cloud formation

[32]Ishfaq, S. (2022, September 10). Environmental Modification – A War Without Weapons. Retrieved August 11, 2024, from *Paradigm Shift website*: <https://www.paradigmshift.com.pk/war-with>

and precipitation. According to reports, more than 500 such burners have been deployed across Tibet, Xinjiang, and other areas.[33]

The Chinese program has already demonstrated its capabilities in several high-profile events. During the 2008 Beijing Olympics, cloud seeding was reportedly used to ensure clear skies for the opening ceremony[34]. Similar techniques were employed during the 2022 Winter Olympics. These demonstrations highlight the potential effectiveness of weather modification technologies, but also raise questions about their broader implications. China's weather modification activities have not gone unnoticed by its neighbors. India, in particular, has expressed concerns about the potential impact of these activities on its own weather patterns and water resources. Indian Defence Minister Rajnath Singh has publicly stated that climate change in certain border states may be related to national security, hinting at concerns over China's weather modification activities.[35]

Comparative Analysis of USA and China's Weather Modification

The comparison between Operation Popeye and China's current weather modification program reveals significant shifts in the approach to and perception of weather modification technologies over several decades. While Operation Popeye was a localized, explicitly military effort focused on Southeast Asia, China's program aims for much broader coverage, potentially affecting weather patterns across a vast region including parts of neighboring countries. This expansion in scale underscores the potential for weather modification to have far-reaching, cross-border impacts. The stated purposes of these programs also differ markedly. Operation Popeye was designed to gain tactical military advantage, whereas China frames its efforts as primarily civilian, addressing issues like drought and agricultural productivity. However, the dual-use nature of weather modification technology blurs the line between civilian and military applications. China's program benefits from decades of scientific progress since Operation

[33]Jash, A. (2024, March 15). Is China modifying the weather? India has concerns. Retrieved August 11, 2024, from orfonline.org website: <https://www.orfonline.org/expert-speak/is-china-modifying-the-weather-india-has-concerns>

[34] Li H, Dai Y, Wang H, Cui J. Artificial seeding effects of convective clouds on the opening day of Beijing 2008 Summer Olympics. J Geosci Environ Prot. 2017;5(4):118-138. doi:10.4236/gep.2017.54010

[35]Jash, A. (2024, March 15). Is China modifying the weather? India has concerns. Retrieved August 11, 2024, from orfonline.org website: <https://www.orfonline.org/expert-speak/is-china-modifying-the-weather-india-has-concerns>

Popeye, with advances in meteorology, cloud physics, and delivery systems likely increasing the effectiveness and precision of weather modification techniques. This technological progression amplifies both the potential benefits and risks associated with weather modification.

Both programs have triggered international concern, but the nature of these concerns has evolved. Operation Popeye led to immediate calls for international regulation, resulting in agreements like ENMOD. China's activities, while not explicitly military, have prompted diplomatic tensions and security concerns, particularly with India, reflecting the growing recognition of weather modification as a potential security issue, even when not overtly militarized. Perhaps the most striking difference lies in transparency. Operation Popeye was a classified program, only revealed years after its implementation while China's program, while not fully transparent, is much more open about its existence and general aims. This openness, however, has not fully allayed international concerns about the program's potential impacts and intentions, highlighting the complex challenges surrounding the development and use of weather modification technologies in the modern era.

Legal Implications

The case studies of Operation Popeye and China's weather modification program highlight several potential dangers and legal considerations that remain relevant today. Large-scale weather modification could have far-reaching and unpredictable effects on ecosystems and climate patterns. The Intergovernmental Panel on Climate Change has noted that techniques like cloud brightening, while potentially effective in reflecting solar radiation, could significantly impact regional weather patterns and the ozone layer [36]. Weather systems do not respect national boundaries, raising concerns about unintended impacts on neighboring countries. India's apprehensions about China's weather modification activities in Tibet illustrate this issue. The potential for weather modification to affect water resources, agriculture, and local climate in neighboring regions presents a significant challenge to international relations and security. The historical use of weather modification as a weapon, as demonstrated by Operation Popeye, remains a significant concern. While current programs may be civilian in nature, the potential for

[36]Raczek T. Geoengineering: Reining in the weather warriors. *Chatham House – International Affairs Think Tank.* February 15, 2022. Accessed August 13, 2024. <https://www.chathamhouse.org/2022/02/geoengineering-reining-weather-warriors>

weaponisation cannot be ignored. The difficulty in distinguishing between civilian and military applications of this technology complicates efforts to prevent its hostile use.

The primary international agreement governing weather modification is the ENMOD Convention, which prohibits the military or hostile use of environmental modification techniques. However, this agreement has limitations. For instance, China is not a full signatory, having only agreed to apply the convention to Hong Kong and Macau.[37] Furthermore, the convention's focus on military use may not adequately address the security implications of large-scale civilian weather modification programs.

One of the most significant hurdles in regulating weather modification is the difficulty in verifying compliance with international agreements. Distinguishing between natural weather events and those induced by human intervention is extremely challenging, complicating efforts to enforce any prohibitions on weather modification for military purposes. These case studies highlight the complex interplay between scientific advancement, military strategy, and international law in weather modification. They underscore the urgent need for updated international agreements and transparent dialogue to address the potential risks and ethical concerns associated with these technologies. As weather modification capabilities continue to improve, the international community faces the challenge of balancing the potential benefits of these technologies with the need to prevent their misuse and mitigate their potential negative impacts on global security and the environment.

Discussion of Findings

This study has explored the ethical and legal predicament surrounding cloud seeding as a potential war strategy. The findings reveal a complex landscape characterized by legal ambiguity, ethical concerns, and an urgent need for standardized international regulations. The absence of clear international regulations governing cloud seeding in warfare creates a dangerous vulnerability in the global legal framework. Existing legal instruments, such as the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD), The Hague Conventions (1907), and the Geneva Conventions (1949),

[37] United Nations Treaty Collections. Convention on the prohibition of military or any other hostile use of environmental modification techniques. 10 December 1976. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=INDandmtdsg_no=XXVI-1andchapter=26andclang=_en>

offer fragmented and potentially subjective protections. This legal ambiguity increases the risk of nations resorting to cloud seeding technology in conflicts, exploiting the lack of explicit prohibitions.[38] To address this gap, several potential avenues for establishing standardized laws have been identified. One approach involves expanding the ENMOD Convention to explicitly include cloud seeding within the scope of prohibited environmental modification techniques. This would require defining clear criteria for assessing the "widespread, long-lasting, or severe effects" in the context of weather modification. Additionally, establishing more robust verification and compliance mechanisms would be crucial to ensure the treaty's effectiveness in regulating cloud seeding activities.

Another option is to clarify existing international law by reinterpreting treaties to encompass cloud seeding. This could involve applying the Hague Convention's prohibition on "wanton destruction" (Art. 23(g)) to the potential environmental damage caused by cloud seeding. Similarly, interpreting the Geneva Convention's Protocol I regarding "widespread, long-lasting or severe damage to the natural environment" (Art. 55(1)) to include the effects of weather modification could provide additional legal grounds for regulation. However, this approach would require international legal consensus and potentially the development of new protocols or interpretations.

Interestingly, developing a dedicated international treaty specifically addressing cloud seeding use especially in warfare could provide the most comprehensive solution. Such a treaty could clearly define cloud seeding technology and its various applications, outlining permissible and prohibited uses in both peacetime and wartime contexts. It would also establish robust enforcement mechanisms and penalties for violations, creating a framework for international cooperation in monitoring and regulating cloud seeding activities. The ethical implications of cloud seeding in warfare are significant and must be carefully considered. The indiscriminate nature of weather modification challenges the principle of distinction in international

[38] Mulder A. The legal frameworks for cloud seeding: navigating international regulations. *Corax Foundation*. Published May 15, 2023. Accessed May 1, 2024. <https://coraxfoundation.com/2023/05/15/the-legal-frameworks-for-cloud-seeding-navigating-international-regulations>

humanitarian law, making it difficult to limit effects to military targets[39]. For instance, inducing rainfall to flood enemy supply routes could lead to widespread civilian displacement and agricultural disruption in the targeted region and beyond. This raises serious concerns about proportionality and the ability to conduct cloud seeding operations in compliance with the laws of war.

The potential for cloud seeding to contribute to or intensify climate change adds another layer of ethical complexity to the use of weather modification in warfare. Scientific uncertainty regarding the long-term effects of large-scale cloud seeding compounds the ethical dilemma. The precautionary principle in environmental ethics suggests that in the face of such uncertainty, we should err on the side of caution and avoid actions that could cause severe or irreversible harm. The complexity of global weather systems means that even well-intentioned cloud seeding operations could have unforeseen ripple effects across vast geographic areas. Addressing the key questions surrounding the regulation of cloud seeding in warfare requires a multifaceted approach. Updating international law to effectively address the unique challenges presented by military applications of cloud seeding must consider the potential for unintended environmental consequences. This could involve developing specific protocols within existing frameworks or creating new legal instruments that explicitly address weather modification techniques. Establishing mechanisms to monitor and verify compliance with regulations is crucial, given the difficulties in attributing weather events to intentional manipulation. This could involve the creation of an international body responsible for monitoring weather patterns and investigating potential violations. Advanced technologies, such as satellite imagery and atmospheric sensors, could be employed to detect unusual weather patterns or the presence of cloud seeding agents.

Realistically, addressing the ethical concerns surrounding cloud seeding in warfare requires an all-encompassing framework for assessing the potential risks and benefits of these technologies which should include the development of international guidelines for the responsible use of weather modification techniques, incorporating principles of environmental stewardship and respect for civilian populations. Addressing these issues requires a collaborative international

[39] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Art. 48. 2022. Available from: <<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48>. Accessed August 13, 2024.

effort to develop comprehensive legal frameworks, establish effective monitoring mechanisms, and navigate the ethical implications of weather modification technologies.

Recommendations

To address the identified legal and ethical challenges surrounding cloud seeding in warfare, we propose the following comprehensive recommendations focusing on the establishment of legal instruments, policy development, enforcement mechanisms, and responsible deployment of the technology:

Strengthening International Legal Frameworks

Expanding the ENMOD Convention is the most important step to explicitly include cloud seeding within its scope. This expansion should clearly define cloud seeding techniques and establish specific criteria for assessing "widespread, long-lasting, or severe effects" in the context of weather modification. Simultaneously, developing a dedicated treaty specifically addressing cloud seeding in both military and civilian contexts is necessary. This treaty should define permissible and prohibited uses of cloud seeding technology, establish clear guidelines for environmental impact assessments, outline mechanisms for international cooperation and information sharing, and set penalties for violations and procedures for dispute resolution. Additionally, clarifying existing international humanitarian law, such as the Hague and Geneva Conventions, to explicitly cover weather modification techniques is essential. This could involve developing additional protocols or interpretative guidelines that apply principles of proportionality and distinction to cloud seeding activities.

Enhancing Policy and Governance Structures

Establishing an international oversight body is equally important to effectively govern cloud seeding activities globally. This body would be responsible for monitoring compliance with international regulations, conducting investigations into alleged violations, facilitating information exchange between nations, and providing technical assistance and capacity building for developing countries. Implementing a global registry of cloud seeding activities is also crucial, requiring all nations to report planned and ongoing weather modification operations. This registry should include detailed information on the purpose, scope, and duration of cloud

seeding activities, environmental impact assessments and risk mitigation strategies, and regular updates on the progress and outcomes of operations.

Furthermore, establishing notification protocols is essential, creating a mandatory system for prior notification of cloud seeding activities, especially those that may have transboundary effects. This system should require nations to inform neighboring countries before conducting cloud seeding operations, establish clear communication channels for addressing concerns and resolving disputes, and set timelines for notification and response procedures.

Strengthened Enforcement Mechanisms

Developing robust verification protocols is essential for ensuring compliance with cloud seeding regulations. These protocols should include regular inspections of cloud seeding facilities and equipment, satellite monitoring of weather patterns and atmospheric conditions, and analysis of environmental data to detect anomalies potentially related to weather modification. Creating a sanctions framework is equally important, involving a transparent system of sanctions for violations of cloud seeding regulations. This framework should include economic penalties for minor infractions, restrictions on access to weather modification technologies for repeated violations, and referral to international judicial bodies for severe breaches. Enhancing attribution capabilities is also crucial, requiring investment in technologies and methodologies to improve the ability to attribute unusual weather events to intentional manipulation. This will require some advanced technology capability as well as data sharing and analysis networks.

Promoting Ethical Considerations

Designing well laid out ethical guidelines for the use of cloud seeding technology is essential. These guidelines should address principles of environmental responsibility and intergenerational justice, respect for national sovereignty and territorial integrity, and considerations of proportionality and distinction in military applications. Establishing transparency measures is equally important, implementing mechanisms to ensure transparency in cloud seeding activities. This should include regular public reporting on weather modification operations, open access to environmental impact assessments and research findings, and engagement with civil society organizations and affected communities. Promoting international dialogue is also crucial,

facilitating ongoing discussions among nations, experts, and stakeholders on the ethical implications of weather modification through regular international conferences and forums, collaborative research initiatives, and engagement with diverse perspectives, including from developing countries and vulnerable populations.

Capacity Building and Education

Organising training programs for policymakers and legal professionals on the legal and ethical aspects of cloud seeding is essential. These programs should cover international law and regulations governing weather modification, environmental impact assessment methodologies, and ethical decision-making frameworks for deploying cloud seeding technology. Enhancing public awareness is equally important, implementing public education initiatives to inform citizens about cloud seeding technologies and their potential impacts. This should include educational materials for schools and universities, public awareness campaigns through media and social platforms, and community engagement programs in areas potentially affected by cloud seeding activities.

Implementing the above-listed recommendations will enable the international community to establish a framework for governing the use of cloud seeding technology. This approach balances the potential benefits of weather modification with the need to protect the environment, respect national sovereignty, and maintain global security. Considering the level of development in the cloud seeding space, evolving legal and policy frameworks will be crucial to address emerging challenges and ensure the responsible deployment of this powerful technology.

Conclusion

Cloud seeding technology presents a complex challenge, offering potential benefits while raising significant ethical and legal concerns in both military and civilian applications. This paper has focused primarily on military uses, but it's crucial to recognize that even civilian deployment of cloud seeding could lead to misinterpretation and conflict if not properly regulated and communicated. The ability to manipulate weather patterns is a double-edged sword, offering tactical advantages in warfare but raising profound ethical questions and legal ambiguities. The absence of clear international regulations creates a dangerous gray area, increasing the risk of

misuse and unintended consequences. Ethical concerns surrounding cloud seeding are undeniable. Disrupting weather patterns, even with benign intentions, could have far-reaching environmental consequences, potentially harming civilians and ecosystems across borders. The long-term impact on ecological balances remains a significant cause for alarm.

The legal landscape is fragmented and inadequate, with existing international treaties offering only piecemeal protections. This lack of clear legal boundaries hinders accountability for potential misuse or unintended consequences. Urgent international cooperation is needed to develop comprehensive regulations governing both military and civilian uses of cloud seeding. Policymakers, military strategists, and international organizations must work together to establish oversight mechanisms, promote responsible governance, and foster dialogue between nations. Without concerted action and comprehensive regulation, the destructive potential of weather manipulation whether intentional or unintended, military or civilian could become an unavoidable reality. The international community must work together to harness the benefits of cloud seeding while mitigating its risks, ensuring this powerful technology serves humanity rather than becoming a source of conflict or environmental degradation.

EXAMINATION OF THE LOOPHOLES IN THE RECENT CURRENCY REDESIGN AND CASHLESS ECONOMY POLICY IN NIGERIA

Olariyike Damola Akintoye*

Abstract

The Central Bank of Nigeria (CBN) announced on 26 October 2022, the redesign of three out of the eight Naira notes in circulation. The move is geared towards entrenching the cashless economy policy. According to the CBN, over 85% of the currency in circulation is kept outside the vaults of commercial banks, which has encouraged kidnapping and the demand for ransom by kidnapers in Nigeria. This Paper attempts to look at the loopholes in the cashless economy and currency redesign policy. The method adopted in carrying out this research work is doctrinal research method. The study revealed that one of the major problems of the cashless policy was wrong timing, that is, the policy was introduced very close to the 2022 general elections. Another problem identified was the three months' time frame given to Nigerians to swap old notes for new ones which was too short. Similarly, the CBN acted in contravention of The Money Laundering (Prevention and Prohibition) Act passed into Law on May 17 2022, to set standard and promote the effective implementation of legal, regulatory and operational measures for combating money laundering, The Paper recommends that, for the cashless policy to be successful, the e-payment system needs to be upgraded in Nigeria, and the time to swap old currency notes for new notes should not be too short as to bring untold hardship on the people.

Keywords: *loopholes, currency redesign, cashless policy, and central bank of Nigeria, Nigeria.*

Introduction

In October 2022, the Central Bank of Nigeria (CBN), decided to simultaneously redesign three of Nigerian bank notes and introduced new cash withdrawal limits. This move of the CBN was intended to, "kill two birds with one stone." That is, to entrench the cashless economy agenda and to minimize access to large volume of money used by terrorists and kidnappers. The last

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time the CBN redesigned Nigerian currency was between the year 2004 and 2006 which was over 20 years ago. The currencies redesigned then, were the smaller denominations of N5, N10, N20, and N50 naira notes which were later printed on polymer substrates.

Redesigning of currency is not new to global economy as many nations have had the cause to redesign their currency at one time or the other. However, while other countries, like the United States of America and the United Kingdom had seamless redesign exercise, Nigeria's experience has not been smooth for some reasons. First, the timing of the currency redesign was awkward, and some have described it as wrong timing,[1] as it coincided with the country's general elections period. Also, the time frame of three months given by the CBN to swap the old notes for new was too short. This makes many analysts conclude that the policy was not well thought out and that it was targeted at politicians who were about to go to the polls for the general election.

Another reason why the currency redesign exercise was not as successful as it was in other climes was lack of adequate preparation. After people were compelled to return their old currency notes within a period of three months, the CBN could not provide new notes to replace the old naira notes.

The cash crunch that the new cash policy created resulted in stampedes, insurrection and with people going to the extent of destroying Bank's Automated Teller Machines (ATM) in some parts of the country. Some bank officials were physical attacked because there was the believe that they were the ones hoarding the new naira notes to give them out to politicians at a price. Some bank managers were indicted, and the most disturbing part was the effect the cashless policy had on people's psyche and how some frustrated citizens stripped themselves naked in banking halls, while others kept vigil outside the various deposit money banks in the hope to get money from the ATM, which had stopped dispensing money. It got so bad at some point that people started buying the old naira notes with very high commission from Point-of-Sale (POS) Machine operators.

[1]Onimisi P.D, ''Currency Redesign: What implication does it have for Socio-economic development in Nigeria*''* Association of African Development Finance Institutions, March 6, 2023. <www.scirp.org/journal/articles?>accessed 18 December 2024.

The History and Role of Central Banks

Sweden founded the first ever Central Bank, called *Sveriges Riksbank in 1668*,[2]This was followed by the Bank of England founded in 1694. Central banks have been said to wield great influence, over a country's monetary, financial, and economic conditions, and the kind of monetary policy pursued by the central bank can affect macroeconomic outcomes such as the level of unemployment and inflation. The common man on the street describes the expansionary monetary policy interventions of the central bank as 'pumping liquidity into the system' or 'printing money.'[3] The oldest central bank arose from early European experiences with paper money during the seventeenth and eighteenth centuries. At the period in question, Europe not only developed innovative insurance products and established primitive versions of public bond and stock markets, but also experimented with various ways of issuing banknotes, to provide alternative means of payment apart from coins and to raise funds for the government.[4]

The CBN is the apex bank in Nigeria. Its core mandate is derived from the 1958 Act of Parliament, as amended in 1991, 1993, 1997, 1998, 1999, and 2007. The CBN Act, 2007 of the Federal Republic of Nigeria, charges the Bank with the overall control and administration of the monetary and financial sector policies of the Federal Government. The central Bank has the following main functions;[5]

1. Control the base rate and inflation or ensure monetary and price stability.
2. Issue legal tender currency or control the money supply through open market operations.
3. Maintain reserve requirement with private banks to safeguard the international value of the legal tender currency.
4. Ensure there are sufficient Foreign Exchange Reserves
5. Act as Bankers and provide economic and financial advice to the Federal Government

In view of the above, the bank is charged with the responsibility of administering the Banks and Other Financial Institutions Act (BOFIA), 2020, with the sole aim of ensuring, high standards of

[2]Boyce P, '*Central Bank: Definition, Objectives and Functions'* available at: <https://boycewire.com> accessed March 26, 2023.
[3]Herger N., *Understanding Central Banks,Springer Nature Switzerland AG* 2019, p.9.
[4] Ibid.
[5]Statement of CBN Core Mandate- Central Bank of Nigeria <https://www.cbn.gov.ng aboutcbn> accessed April 10 2023.

banking practice and financial stability through its surveillance activities, as well as the promotion of an efficient payment system[6] One can also deduce from the CBN Act that currency management is a key function of the CBN.[7] According to the CBN Governor, the integrity of a local legal tender, the efficiency of its supply, as well as its efficacy in the conduct of monetary policy are some of the characteristics of an efficient Central Bank.[8]

Benefits of Currency Redesign

Countries around the world redesign and reissue their legal tender for several reasons, chief among which is the prevention of counterfeit currencies. Experiences from other jurisdictions have shown that effective currency redesign can support regulatory reform. The CBN Governor, Godwin Emefiele reiterates this when he said that the organisation has the best interest of Nigerians at heart when the policy was introduced. To justify the redesign exercise, he said that.

> *Our aim is mainly to make our monetary policy decisions more efficacious and like you can see; we've started to see inflation trending downwards and exchange rates relatively stable. Secondly, we aim to support the efforts of our security agencies in combating banditry and ransom taking in Nigeria through this program and we can see that the Military are making good progress in this important task in Nigeria.*[9]

In the same vein he said.

> *Let me assure all Nigerians that the CBN, with the Deposit Money Banks and other very important stakeholder, Such as, the Economic and Financial Crimes Commission (EFCC), the Independent and Corrupt Practices Commission (ICPC) and the Nigeria Financial Intelligence Unit (NFIU) are working together to ensure that the ultimate goal, which is to deliver to all Nigerians, a new currency that meets global standard is achieved.*[10]

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[6] *Central Bank of Nigeria: The Core Mandate of the Bank*, available at: <www.cbn.gov.ng accessed 12 May 2023 https://www.cbn.gov.ng/aboutcbn/coremandate.asp> (last visited on April 11, 2023).

[7] As enshrined in Section 2(b) of the CBN Act 2007

[8] Extract from the full text of CBN Governor Godwin Emefiele's statement on the issuance of new naira bank notes. October 26, 2022. accessed 20 April 2023

[9] Press Statement by the Nigerian CBN Governor Godwin Emefiele on the progress of implementation of new redesigned currency by the Central Bank of Nigeria, January 29, 2023, available at:<https://www.cbn.gov.ng> accessed April 4, 2023).

[10] Ibid

Emefiele, further said that the currency redesign should normally have been done within a 5-8 years window, but in Nigeria, the CBN has not been able to undertake this important currency and liquidity management function for about 19 years[11] He also debunked the rumor going around that the policy was targeted at a group of people that is the politicians, but that it was, 'derived from CBN in-house analysis to strengthen Nigeria's macroeconomic fundamentals and better Nigeria's socioeconomic conditions.' He however gave different reasons for the redesign.

Firstly, that the currency redesign policy will help mop up monies outside the banking system,[12] estimated to be over 85% of the currency in circulation, 'that had contributed to rising inflation and currency speculation, which had resulted in foreign exchange challenges in recent times.' Secondly, that the number of the 'unbanked' population is alarming and thirdly, that insecurity and ransom-taking by kidnappers in Nigeria needs to be addressed urgently and fourthly, solve the problem of currency counterfeiting among others.[13] According to James Emejo the naira redesign and implementation of the cashless policy would plug fiscal leakages, boost government revenue, and aid the economic empowerment of vulnerable Nigerians as well as benefit the country as a whole. The following are the expected benefits of currency redesign;[14]

a) It increases currency security by helping nations keep counterfeiting to a minimum and stay one step ahead of threats.
b) It is anticipated to boost the economy, lower cash management cost, advance financial inclusion and improve the government's ability to monitor the money supply.

Those who support redesigning the naira currencies in Nigeria said it will bring about a lot of benefits, for example it,

a. Will decrease inflammatory pressure and suppress insecurities in Nigeria

[11] Godwin Emefiele Ibid.

[12] In 2015, currency-in-circulation was only N1.4 trillion but as of October 2022, currency-in-circulation had risen to N3.23 trillion; out of which only N500 billion was within the Banking industry and N2.7 trillion held permanently in people's homes. Ordinarily, when CBN releases currency into circulation, it is meant to be used and after effluxion of time, it returns to the CBN thereby keeping the volume of currency in circulation under the firm control of the CBN.

[13] In announcing the Naira redesign program, the CBN Governor said the move was aimed at checking the increasing ease and risk of currency counterfeiting evidenced by several security reports, and the increased risk to financial stability as well as the worsening shortage of clean and fit currency, with the attendant negative perception of the central bank.

[14] Central Bank of Nigeria https://www.cbn.gov.ng>ccd Pdf accessed 20 April 2023.

b. Will reduce money stock, which will slow the long-term course of inflation by reducing the amount of currency held outside of banks.
c. May result in interest rate reductions from the ensuing deflationary pressure, which will stimulate economic activity in the short to medium term,
d. Will increase aggregate demand and improve output growth
e. Will lessen the inclination to buy votes during the March 2023 elections
f. Will strengthen financial institutions, lessen corruption, and improve bank performance due to an increase in the use of electronic banking channels
g. Will result in more transactions taking place through bank accounts and more agents being able to access the government's tax collection system and more agents in the tax net will result in an increase in revenue generation for the Federal Government of Nigeria.[15]

However, the above is against the belief held by other analysts that redesigning Naira notes will not check rising inflation[16]

> *The CBN Act provides the apex bank with the power to "arrange for the printing of currency notes and the minting of coins: as well as issue, re-issue and exchange currencies notes and coins at the Bank's offices and at such agencies as it may, from time to time establish or appoint"[17] The fact that the CBN has just about three months to redesign, produce and circulate the new currencies' notes and only four months to recall the old notes leaves much to be desired and many analysts have asked the salient question, why the rush?*

Similarly, Section 20 (3) states that

> *"notwithstanding sub-section (1) and (2) of this section, the Bank shall have power, if directed to do so by the President and after giving reasonable notice on that behalf, to call in any of its notes or coins on payment of the face value there and any note or coin*

[15]Emejo James., "Merits of Naira Redesign, Cashless Initiatives", This Day February 8, 2023 available at: <https://www.thisdaylive.com> accessed March 18, 2023.
[16]BukolaIdowu, ZakaKhaliq and Olushola Bello," Redesigning Naira won't Check Rising Inflation-Analysts" Professor Bongo Adi of the Lagos Business School speaking to Leadership News Available at: https://leadership.ng/redesigning-naira-wont-check-rising-inflation-analysts/# accessed March 20, 2023.
[17] S. 18(a) 18(b) Central Bank of Nigeria Act.

> *with respect to which a notice has been given under this subsection, shall, on the expiration of the notice, cease to be legal tender"*

From the above quotation, one would think that the only requirement for reissuing currency is that the CBN intends to do so, arranges for the process to be done, and gives reasonable notice to the members of the public of its intention to do so.

A look at global best practices shows that where there is an inadequacy in the provisions of the law, recourse is made to regulations, policies, precedents, and international best practices.[18] In this wise, let us look at India and the United States of America experiences based on how each nation handle their currency redesign.

India's Currency Redesign Experience

In 2016, the India government[19] in its bid to stop corruption and reduce the amount of money in circulation, withdrew and reintroduced the 500 and 1000 denominations of the India rupees within six months. Reports said that the scheme froze "agriculture and small businesses with a liquidity shock, put people through unnecessary hardship, disrupted supply chains, and destroyed demand for everything from autos to property"[20] In addition, the report stated that net savings in India were reduced by 50 per cent a year after the policy was implemented. The currency in circulation also increased to 20 trillion rupees from 18 trillion rupees before the policy.

The International Monetary Fund, in one of its reports, provided that the disruption caused by the cash shortages dampened consumer and business sentiments.[21] This same scenario is playing out in Nigeria, where the abruptness of the policy and the consequent shortage of cash led to the policy's poor performance. Unlike the picture that was painted by the NBN governor, the short time within which the policy lasted before the deadline for its full implementation was extended to December 2023, brought a lot of hardship to majority of Nigerians.

[18]OcheiAnthonia., "Naira redesign- the law and global best practices", Business Day Newspaper, November 18, 2022.
[19] Under Prime Minister Narendra Modi.
[20] Andy Mukherjee., "By a 99.3% Verdict, India's Cash Ban Was a Farce" Bloomberg News August 30, 2018, 2023 available at: <https://www.bloomberg.com> accessed March 14, 2022.
[21] International Monetary Fund Article IV, Consultation Report on India 2018 accessed March 15, 2023

The United States of America's Experience

Unlike what played out in India in 2016 and the failed exercise in Nigeria in 2023, the United States of America's experience is quite different. This is because in the US, the currency redesign and distribution exercise are both systematic[22] and systemic[23] and therefore came out with a better result.[24] Before a Federal Reserve[25] note enters circulation, it must pass through four critical stages which are design, order, production, and issuance. The Federal Reserve handles the monetary policies of the government independently and without legislative intervention. In addition to that, it performs all other functions of a central bank- regulating bank activities, conducting surveys about the US and global economy –all under the common objective of maintaining financial stability.[26] According to the US Federal Reserve, the primary purpose of any redesign is security. "The careful integration of exclusive security features to keep cash safe, secure and to ensure the stability of the US economy'' According to the agency in redesigning the currency;[27]

> Notes must be resistant to increasingly sophisticated counterfeit attacks, new features closely aligned into the new design, are developed to address this threat. More than a decade of research and development, followed by years of optimization and

[22] Systematic means constituting or based on a system, according to a system, Webster's Universal Dictionary & Thesaurus, Geddes &Grosset, 2007, Scotland, UK p.470 ; done or acting according to a fixed plan or system, Oxford Languages and Google-English Oxford Languages, available at: <https://languages.oup.com/google-dictionary-en/> accessed March 21, 2023.

[23]Systemic means something that is affecting the whole body, Webster's Universal Dictionary & Thesaurus, Geddes &Grosset, 2007, Scotland, UK p.471 ; it also means relating to a system especially as opposed to a particular part, Oxford Languages and Google-English Oxford Languages. https://languages.oup.com/google-dictionary-en/ accessed 21 March 2023 .

[24]Ogwu Sunday M, 'Currency Redesign: Lessons For Nigeria From Global Practices' Daily Trust Newspaper February 5, 2023 available at:<https://dailytrust.com/currency -redesign-lessons-for-nigeria-from-global-practices/>accessed March 20 2023).

[25] The Federal Reserve, more commonly referred to as ''The Fed'' is the Central Bank of the United States of America and is the supreme financial authority behind the world's largest free-market –economy. Because of the US' influence on the global economy, 'the Fed' is considered one of the most influential financial institutions in the world. The Federal Reserve is headquartered in Washington DC.

[26]Federal Reserve (The Fed) available at:<https://corporatefinanceinstitute.com/resources/economics/federal-reserve-the fed/?gclid=CjwKCAjw9J2iBhBPEiwAErwpeT8MoEbfKgulJ5vimbWbuoH0x1xIGbFJ2dGXxNAqM3SGtBorVlv0cBoCgNYQAvD_BwE> accessed April 2,2023).

[27]AnthoniaOchei, 'Naira Redesign – The Law and Global Best Practices' Business Day, 18 November 2022 https://loyalnigerianlawyer.com/naira-redesign-the-law-and -global-best-practices/ (accessed January 29,2023).

> integration testing into the banknote, is required to ensure the successful deployment of these features into US currency[28]

The Bureau states that "the current denomination sequence and planned issuance dates have been in development with the Advanced Counterfeit Deterrence Committee since the year 2011: The USD denominations and the corresponding date of issuance are $10 (2026), $50 (2028), $20 (2030), $ (2032) and $100 (2034). This sequence addresses risk mitigation and counterfeiting concerns"

The lesson to learn from the USA is that the process of their currency redesign is in sequence and the planning /execution, will take a period of 23 years. This is in contrast with Nigeria that first announced its currency redesign policy in October 2022, and gave a window of about three months for the exercise to be concluded. The Supreme Court of Nigeria, however saved the day when it ruled, that the deadline for the abolition of the old naira note should be extended to December 31, 2023.

The Cashless Economy Policy

The Cashless policy is an economic policy aimed at reducing the amount of produced currency in the economy, and involves more electronic–based payments.[29] The new policy on cash-based transactions seeks to reduce the amount of physical cash circulating in the economy, and not to eliminate the use of cash completely, as well as to encourage more electronic based transactions in the payment for goods, and services.[30] In 2012, the CBN disclosed its plans to begin a transition to a cashless economy, as part of the country's ambition to become one of the top 20 economies by the year 2020. The new policy seeks to ensure a seamless, inclusive and equitable implementation of the exercise for the overall benefit and growth of Nigerians, the financial system and the economy as a whole.[31] The cashless policy initiative of the CBN has according to

[28] The US Bureau of Engraving and Printing, which collaborates with the Federal Reserves as well as the Treasury Department and the US Secret Service reported that the US has ongoing plans to redesign its currencies.

[29]Ejiobih C, "Empirical Review of the Challenges of the Cashless Policy Implementation in Nigeria: A Cross-Sectional Research" Journal of Physics: Conf. Series 1299 (2019) 012056 Doi: 10.1088/1742-6596/1299/1/012056. accessed 10 May 2023

[30]Ibid.

[31]Central Bank of Nigeria <https://www.cbn.gov.ng cashless> accessed 10 May 2023.

James Emejo proven to be a business enabler, rather than a threat to the economy.[32] This is due to the following identified benefits that can be derived from the cashless policy;

a. It will establish a change in our payments systems in Nigeria. This is very important for economic growth and ultimately attainment of the Nigeria's vision 20 2020.
b. It will reduce the huge cost of providing banking services. The money saved will be used to lend credit to Nigerians.
c. It will help the Central Bank and commercial banks better manage Nigeria's economy to ensure that monetary policy works.[33]

In addition to the above, there are some projected benefits for consumers, for corporations and for the government. On the side of the consumer, the expected benefits of the cashless policy are increased convenience, more service options, reduced risk of cash-related crimes, cheaper access to (out-of-branch) banking services and access to credit. For corporations, the expected benefits are, faster access to capital, reduced revenue leakage, and reduced cash handling costs while the benefits that are expected for the government are, increased tax collections, greater financial inclusion and increased economic development.[34]

Because the cashless policy is good and the projected benefits numerous, and it is estimated to provide faster economic growth, it is important that the implementation is properly executed. Lack of proper execution by the CBN, caused a lot of hardship for Nigerians especially those in the informal sector.

While speaking in support of the cashless policy, the CBN governor said that.

The level at which people carry cash in Nigeria is unacceptable, our economy uses too much cash for transactions for goods and services, especially for buying and selling, this is not how it is done in other progressive countries of the world, where there are other payment options like debit and credit cards, bank transfers, bank direct debits, Automated Teller Machines (ATMs) and mobile phone money. Essentially, the cashless policy seeks to among other things; increase

[32]Emejo J, Ibid.
[33] Cash-Less FAQs_230426_171645.pdf (Last visited April 24, 2023) accessed 23 MAY 2023
[34] Ibid.

the volume of all available payments instruments in the country as well as promote end to end electronic payments in the country.[35]

Even though the process to reduce cash usage in the economy commenced in 2012, the implementation has been delayed and there had been five reversals in the bank's attempt to go cashless and promote financial inclusion since 2014. The reversals, were born out of the need to deepen the country's payment system infrastructure in Nigeria, as well as the need to enlighten the public to choose other available payment options, instead of the excessive reliance on cash for transactions.[36] Even though the CBN believes it has put in place enough infrastructure that would help Nigeria achieve a cashless policy that will be in line with global practices, this is in serious doubt, going by the untold hardship majority of Nigerians experienced when they were compelled to go cashless during the cash redesign exercise between January and March 2023.

Critics of the cashless policy have argued that it would further impoverish Nigerians and create unemployment in the financial value chain. However, Emejo said they lack evidence to buttress their rejection.[37] That notwithstanding, even if Nigerians are ready to adopt cashless initiatives, all the needed infrastructure must be put in place. Nigeria's current banking and digital payment infrastructure is inadequate to cater for the expected growth in the volume of digital /electronic based transactions.[38]

Introduction of withdrawal limits in Nigeria

On December 21, 2022, the CBN announced an upward review of its cash withdrawal policy across all payment channels by individuals and corporate organisations. That is, effective January 9, 2023, individuals and corporate entities can withdraw a maximum of N500,000 and N3million respectively on weekly basis, compared to the N100,000 and N20,000 and N100,000 and 500,000 which were previously announced on December 6, 2022. The upward review was

[35] Press Statement by The CBN governor Mr Godwin Emefiele.

[36] Alternative cash payments options include, Point-of-sale (POS) terminals, Mobile payment systems, internet banking, Multi-functional Automated Teller Machine (ATM), Electronic Funds Transfer Systems, and Direct Debit.

[37] Supranote 11 and 12 at p.6-7. Omejo said further that it is not surprising that most of the objections to the central bank policies are those who currently benefit from the rot in the system-politicians and other corrupt public officials who take undue advantage of the opaque system of administration that does not allow for transparency in government business.

[38] Jaiyeola Temitayo, "Nigeria's Digital Payment Infrastructure Inadequacy" in an Interview with Route Pay CEO Femi Adeoti, Punch Newspaper April 18, 2023.p.11

because of the feedback it received from stakeholders on the implementation of the policy.[39] In addition, the CBN stated that in compelling circumstances, where cash withdrawal above the limit is required for legitimate purposes, such requests will be subject to a processing fee of 3 and 5 percent for individuals and corporate organisations respectively.

Complementary Guideline

The Nigerian Financial Intelligence Unit (NFIU) unveiled new guidelines aimed at mitigating money laundering, terrorist financing, and proliferation of weapons amongst others. The provisions of the framework also prohibit cash withdrawal from public accounts and ban the payment of estacodes and overseas allowances to civil and public servants in cash.

The Money Laundering (Prevention and Prohibition) Act of 2022 was passed into Law on May 17, 2022, to set standard and promote the effective implementation of legal, regulatory, and operational measures for combating money laundering, Section 2 of this Act, provides.

No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding, N5,000,000 (five million naira) or its equivalent and N10,000.00 (ten million naira) or its equivalent for individuals and corporate bodies respectively.[40] In addition, it criminalises attempts at breaking up transactions into bits to circumvent the threshold value stated in the Act.

What went wrong in Nigeria?

According to the CBN directive, old naira notes were to be in circulation with the new notes until January 31, 2023, when the old naira notes would cease to be a legal tender. However, because of the hardship that was occasioned by the new cash policy, after much pressure from members of the public and particularly the politicians who were going to the polls in March and the fear that it could disrupt the whole electoral process, the CBN extended the initial deadline to February 10, 2023. Not satisfied with this extension, three states, Zamfara, Kaduna and Kogi approached the Supreme Court with an application seeking an interim injunction restraining the Federal Government from enforcing the 10 February deadline. This application was granted, but the

[39]CBN updated circular dated December 21, 2022, and addressed to all Deposit Money Banks (DMBs) and other financial institutions, Microfinance Banks, Mobile Money Operators and Agents .

[40] Section 2 Money Laundry (Prevention and Prohibition) Act, 2022

CBN treated the law in contempt by not directing the banks to obey the Supreme Court's interim order.

The CBN ordered Deposit Money Banks (DMB) and other financial institutions to ensure that weekly-over-the-counter (OTC) cash withdrawals by individuals and corporate entities do not exceed N100,000 and N500,000 respectively. The apex bank also fixed daily minimum withdrawal via point of sale (PoS) terminals at N20, 000. The move was to take effect from January 9, 2023. These guidelines put many citizens to excruciating economic hardship as it got to a point that it became very difficult to withdraw any cash at all, and at another point no matter how much a customer wants to collect the bank could only give each customer N2, 000 cash.

By placing a limit on how much cash can be withdrawn daily, the CBN has breached the Money Laundering Act, 2022, which puts a limit of cash withdrawals and deposits at N5m for individuals and N10m for corporate entities.[41]However, some are of the view that there is actually no restriction because bank customers can still withdraw any amount of money way above N100, 000 weekly, but have to pay a 5% withdrawal fee. This is however making it more expensive to withdraw your own money, and an infringement on the fundamental human rights of Nigerians, particularly the right to property.[42] Another question that needs to be answered is, can the money in bank account be regarded as property? And if you are made to pay an extra fee when you want to withdraw your money from the bank, could it be said that it is being taken compulsorily? Nigerian Human Rights Lawyer, Mr. Femi Falana faulted the CBN new cash withdrawal limits as "illegal, null and void.[43] In response to the contradictory policies, 15 states sued the Federal Government[44] and two states joined suit with the Federal Government on the opposite side.

[41] S. 2(1) MLA

[42]Section 44 of the 1999 Constitution states that no immovable property or any interest in an immovable property shall be taken possession of compulsorily.

[43]Egobiambu E," CBN's Cash Withdrawal Limits is illegal" December 12 2022 available at: <https://www.channels.com/2022/12/12/cbns-cash-withdrawal-limits-is-illegal-falana> (Last visited December 12,2022).

.[44]Kaduna, Kogi, and Zamfara were later joined by Cross-River, Sokoto, Lagos, Ogun, Katsina, Ondo and Ekiti states. Later Nasarawa, Niger, Kano, Jigawa, Rivers and Abia states joined suit. However, Rivers and Abia states filed separate suits that were consolidated with the main one. Edo and Bayelsa states joined the side of the Federal Government to oppose the suit.

The Supreme Court Judgment Aborting the Policy

Three State governments, Kaduna, Kogi, and Zamfara filed a suit against the Federal government seeking an order, invalidating the CBN's recent banknotes redesign. The Justice Okoro led seven-member panel [45] gave an interim order on February 8, 2023, that the old and the new banknotes should continue to circulate until the determination of the suit brought before it. The Federal government/CBN did not obey this interim court order, which made the Supreme Court to berate President Buhari for not obeying previous provisional order to halt the policy until it decided the case.[46] The court also said the correct process has not been followed,[47] and declared the directive given by the President as invalid because, "such directive is not just handed down after personal conversation with the governor of CBN."

The Socio-Economic Rights and Accountability Project also filed a lawsuit against the President over, "the unlawful directive banning the use of old N500 and 1,000 banknotes, contrary to the interim injunction granted by the Supreme Court that the old N200, N500, N1000 notes remain legal tender." Joined in the suit as defendants were the Attorney General of the Federation, the Minister of Justice, [48] and the CBN. The CBN failed to act on the Supreme Court's ruling, by not instructing the deposit money banks to comply with the ruling.

On March 3, 2023, the Supreme Court of Nigeria reversed the CBN policy on new notes and ordered reliefs as follows.

1. A declaration that the currency redesign and accompanying cash limit policies are inconsistent with the CBN Act.
2. A declaration that the President cannot make a unilateral policy without consulting with and carrying along the states.
3. A declaration that in issuing the policy, the President is under an obligation to also consult with and carry along the National Council of states.
4. A declaration that the policy has impeded the functions of the state governments

[45] Other Justices that sat on the case are Emmanuel Agim, Amina Augie, Mohammed Garba, Ibrahim Saulawa, Adamu Jauro and Tijani Abubakar.

[46]Nduka Orjinmo, Nigeria's Supreme Court rules CBN naira redesign invalid' BBC News, Abuja 3 March 2023 available at: <bbc.co.uk/news/world-africa> accessed April 2,2023)

[47] Supreme Court rulling on Cash redesign and cash withdrawal limits.

[48]Abubakar Malami, SAN

5. A declaration that the directive of the president is illegal
6. An order that the old version of the naira notes shall continue to be legal tender with the new naira notes until December 2023.[49]

Justice Emmanuel Agim, delivering the lead judgment in the case, brought by the state governments, said, " the rule of law upon which our democratic governance is founded becomes illusory if the President of the country, or any authority or person refuses to obey the order of courts" Expressing unfamiliarity with any law which empowers a bank to withhold a customer's money and refuse to give him/her, the lead judgment extended the validity of the old naira notes until 31 December, ordering that they remain legal tender alongside the new notes, up till the newer deadline.

The Justices of the Supreme Court based their decision on the fact that enough notice was not given to the public before the old notes were withdrawn, and that not enough of the new notes were released into circulation, leading to cash crunch, widespread anger, and frustration.[50]

The Supreme Court also declared that the unconstitutional use of powers by President Buhari on the naira re-designing breached the fundamental rights of the citizens in various ways, adding that such use of powers by the President was not permitted under democracy and was an affront to the constitution.[51]

Recommendations

This Paper therefore comes up with the following recommendations.

There is the need to put in place all the necessary banking and digital payment infrastructure.

There should be enlightenment of members of the public to choose other available payment options, instead of the excessive reliance on cash for transactions.

Nigeria should borrow a leaf from the United States of America government which has in place a long-time plan for the phasing out of old bank notes, thereby giving enough notice to the public before withdrawing the old notes.

[49] Supreme Court ruling of March 3, 2023, on the new cash policy in Nigeria.
[50] Many people were unable to get cash to pay for food and slept outside banks.
[51] JideOjo, "Supreme Court decision on naira redesign policy" Punch Newspaper, March 8, 2023 Available at: <https://punchng.com/supreme-court-decision-on-naira--redesign-policy/> (Last visited April 1, 2023).

There should be creation of more awareness to bring the unbanked into the banking system.

Lastly, the various tiers of government should set good example for the citizens by obeying court orders, because nobody is above the law. Not doing this is a sign of the failure of the rule of law.

Conclusion

To answer the question did the CBN act within the law, the answer is yes and no. Yes, in the sense that the cashless policy is within the purview of the mandate given to the CBN by its enabling Act. Not only is it within the law, but the policy also if properly executed, has many economic benefits and it is often recommended to usher in economic growth. No, in the sense that the CBN failed to properly implement the policy. In conclusion, the cashless policy if well implemented can result in massive economic growth and ultimately attainment of the Nigeria vision 20- 2020.[52] Which has not been achieved four years after the targeted year 2020. It will also reduce the huge cost of providing banking services and the money saved can be used to lend credits to Nigerians.

In the same vein, if most of the people embrace e- payment, it would move Nigeria into a cashless society, and with its proper use, corruption which is a cancer in government arena will be drastically reduced. E-payment is however faced with challenges, like public acceptability, lack of uniform platform being operated by the banks, lack of adequate infrastructure and issues of security.

In addition, one can say no to the question because the implementation of the cashless policy contravened the fundamental right of the citizens to peaceful enjoyment of their property which includes money which they were not able to withdraw from their bank accounts. The policy also contravened another law, the Money Laundering Act, 2022

The timing of the introduction of the cashless policy was wrong as it was too close to the March 2023 general elections. If not for the people's resolve to go on with the elections despite all odds the election would have been aborted.

[52] That is, to be one of the best 20 economies before the year 2020. This vision is a tall ambition yet to be achieved 3 years after the targeted year

Disobedience of the order of the Supreme court by the defendants[53] is a sign of the failure of the rule of law and as was declared by the Supreme Court it shows that the country's democracy is a mere pretension which is now replaced by autocracy. Up till now, Nigerians are still experiencing difficulties accessing cash at banks and from ATM machines and it is not clear yet the impact the reversal will have on the economy in the nearest future.

Even though many people have switched to online banking, millions of people and businesses in the rural areas remain heavily dependent on cash. Also, the problem of frequent failed electronic payment transactions has discouraged many Nigerians from patronising e-transactions. There is however an improvement in the e-payment services in March 2023 as against the experience in January and February.[54] According to new industry statistics from the Nigeria Inter-Bank Settlement System (NIBSS), Nigeria used electronic gateways 1.35 billion times in March 2023, 448.54 million times more than the 901.46 million times they did in February of the same year. Cashless transactions grew by 44.84 percent to N126, 73tn in the first quarter of 2023 from N87, 49tn in the corresponding period of year 2022.

A tightly contested presidential election which took place in March 2023, was won by the ruling party, although there were some cases of vote buying, but they were not as rampant as in previous elections. According to the President of Nigeria in his national broadcast on 16 February 2023, notwithstanding the initial setbacks experienced, the evaluation and feedback mechanism set up revealed that gains have emerged from the policy initiative. He said he has been reliably informed that since the commencement of the exercise, about N2.1 trillion out of the banknotes previously held outside the banking system had been successfully retrieved. This represents about 80% of such funds. The president noted also that the new monetary policy has also contributed immensely to the minimization of the influence of money in politics.[55]

Although the President gave his administration a pass mark on what was generally described as "poorly conceived and shoddily executed naira redesign,[56] the United Nations lend credence to the fact that the naira redesign policy and the resultant naira crunch was a failure because it

[53] The CBN and the attorney General of the Federation

[54]Jaiyeola, Jaiyeola " E-Payment rise to N49 trillion over naira crises" The Punch Newspaper , Tuesday April 18, 2023, p.26

[55] President Mohammadu Buhari in his national broadcast on 16 February 2023.

[56]Adelakun Abimbola, "Buhari Doesn't Deserve Forgiveness" in the Article Thursdays with Abimbola Adelakun, The Punch Newspaper April 27, 2023 p.30 aadelakun@punching .com.accessed April 20 2023

crippled the Nigerian economy. The UN disclosed this in a report produced by the United Nations Conference on Trade and Development. UNCTAD[57]The report further said that a shortage of cash, triggered by the replacement of the 1000naira which is the country's highest currency denomination hobbled the economy, especially the informal sector.

[57] United Nations Trade and Development Report Update: Global Trends and Prospects (April 2023)

FORGIVENESS IN THE CRIMINAL JUSTICE SYSTEM IN NIGERIA: A REVIEW OF PUBLIC PROSECUTOR V. SHAWN TAN JIA JUNWITHIN THE CONTEXT OF ISLAMIC LAW

Abdulkareem Azeez*

Abstract

In the administration of criminal justice system in Nigeria, offences are against the State and the role of the victim is limited to being a witness for the Prosecutor. Unlike other stakeholders who have been clothed with the powers to forgive, pardon, grant amnesty or discontinued an ongoing case, the victim, whose rights have been violated has no such powers. Adopting doctrinal method of legal research, this article adopted a tripartite approach in dissecting the research topic. It examined the role of other stakeholders in contradistinction with the role of the victim within the context of forgiveness; it reviewed and critique the decided case of Public Prosecutor v. Shawn Tan Jia Jun and finally explore the position of Islamic Law as far as forgiveness is concerned and the active role played by the victim. The results demonstrated that the victim, who is directly affected by the commission of the crime is not included among those granted the powers to forgive, pardon, grant amnesty or discontinued an ongoing case. It is therefore recommended that the criminal justice system should introduce 'victim forgiveness' and emulate the Islamic criminal law wherein the victim played a very active role and has the power to forgive or discontinue the case.

Keywords: *Forgiveness, Islamic law, Criminal Law, Dispute Resolution, Shawn Tan Jia Jun*

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Introduction

The criminal justice system in Nigeria is regulated by the Administration of Criminal Justice Act (ACJA)[1] and Administration of Criminal Justice Laws (ACJL) respectively[2]. The Act applies to the Federal Government while the Laws apply to the State Governments. The States are at liberty to review, improve on and domesticate the ACJA to suit their peculiar needs. The Nigerian Criminal law classified crimes as offences against the State and empowers only the State through its instrumentalities to arrest, arraign, prosecute offenders[3] using the victim in most cases as the 'star-witness', to secure conviction and the subsequent sentencing of the defendant by the court. Whereas, the State has put in place structures and mechanisms to check commissions of crimes, prosecute offenders and award punishment and/or fine as the case may be. However, save for the role of a star-witness, the victim has no say in how the case should be prosecuted or whether the defendant should be forgiven.

In criminal cases, the office of the Attorney General (A.G) either for the State or Federal Government has been given the rare privilege to discontinue a case by invoking the *Nolleprosequi* clause[4]. It means the AG who is not a victim and may not understand the state of mind and pains of a victim is empowered at any stage of the trial to discontinue it if he deems it fit that such discontinuance is in the best interest of the State. Similarly, the Chief Judge of a State, Governor or President have the powers under the law to pardon or grant amnesty to a convict. The difference between the powers granted to the AG and Chief Justice/Governor or President is that while the former is during trial, the latter is after sentencing. Either way, the law has empowered 'strangers' so to say in the determination of the rights of the victim without corresponding powers given to the victim. Recently, the Federal Government signed into law, the Administration of Criminal Justice Act which seeks to provide a bit of consolation from the

[1] ACJA 2015. Is an Act of the National Assembly whose provisions apply to criminal trials for offences established by an Act of National Assembly and other offences punishable in the Federal Capital Territory, Abuja.

[2] Tosin Osasona, 'Time to Reform Nigeria's Criminal Justice System', Journal of Law and Criminal System, (2015)(3)(2)

[3] Ibid

[4] Nolle Prosequi is the statutory powers given to the Attorney General of the State or Federation to take over or discontinued any criminal case at any stage before the final judgement. See Sections 174 (C) and 211(C) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). See also *Chief Lere Adebayo v The State* (2012) LEPLR 35098 CA

traditional provision wherein the victim can now be award compensation[5] but without the power to either discontinue the case except with the approval of the Attorney General or to out rightly forgive the defendant.

The core of this research is to appraise the level of involvement of a victim in the prosecution/determination of his/her case; powers granted to other stakeholders to discontinue, pardon or grant amnesty to the defendant; review and critique the case of ***Public Prosecutor v. Shawn Tan Jia Jun,*** provide the Islamic Law position and suggest recommendations.

Conceptual Framework of Forgiveness in the Administration of Justice in Nigeria

To distinct the animal kingdom from the world of men, there is the need to have a system where rule of law is enforced. A society governed and ruled by men wherein rights of others are respected and punishment for violating those rights are stipulated. Nigeria, being a former colony of Britain designed her legal system in accordance with British Common Law system.

The post-independence Nigeria criminal system saw two codes of law. Penal code for the Northern part of the country who are predominately Muslims and Criminal Code for the Southern part of the Country with majority being Christians. It was recently that the Government enacted the Administration of Criminal Justice Act as a uniform Criminal Law for the entire country.

Nigeria, being a Common Law country is practicing adversarial system. The adversarial system of justice works to resolve cases in court by pitting partial advocates for each side against one another with a judge who works to ensure that the rules of court and law are followed. The system thrives by its use of interested opposing parties debating over an issue in order to ensure the pursuit of justice. This system of justice delivery has been criticized for its value of winning over truth, but studies show it is a system that looks to protect the rights of individuals on trial[6].

As far as forgiveness is concerned, the traditional understanding and reality about crimes in most common law jurisdictions including Nigeria depict that they are offences against the State and

[5] Section 319(1)(a) of the ACJA provides that a court may, within the proceedings or while passing judgment, order the defendant or convict to pay a sum of money as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict.

[6] IkengaK.E.Oraegbunam,'The Jurisprudence of Adversarial Justice', A New Journal of African Studies, (2019)(15)(1)

only the State via its legal instrumentality can decide what must be the punishment awarded to an offender. The State has put in place procedures that once the commission of a crime is reported or established, the suspect/defendant will be arrested; investigated and tried before a competent court of law. The State through the office of the Director of Public Prosecution (DPP)or Commissioner of Police proffer a charge against the defendant, arraign and prosecute him using the victim as the prosecution's witness. The role of the victim is limited to that of a witness and nothing more. This was the position until recently when the Administration of Criminal Justice Act[7] was enacted wherein compensation in certain cases is proposed to be given to the victim in addition to any prison term a judge might give to the defendant upon conviction

Role of the Attorney General (A.G State/Federal)

The office of the Attorney General (A.G) is a creation of the law[8]. In the system of Administration of Justice in Nigeria, A.G occupies a very prominent position. As the number one Chief Legal Officer and Commissioner for Justice, A.G exercises a controlling authority in the conduct of any civil proceeding affecting government or any of its agencies. The Constitution[9] provides ***"There shall be an Attorney-General for each State who shall be the Chief Law Officer of the State and a Commissioner for Justice of the government of that State"***. The holder of the office is appointed by the Governor and confirmed by the State House of Assembly members.

To contextualize the duties of the A.G, he is in-charge of the Ministry of Justice and has responsibility for the various departments and agencies of the Ministry. As the Chief Law Officer of the State, he exercises his power and performs his functions either personally or through any Law officer in the department or agency of the Ministry. His functions include: Giving legal advice to government, Ministries, Statutory bodies and Departments of Government; Arranging for legal officers or lawyers to prosecute criminal matters; arranging for lawyers to institute or defend civil actions on behalf of the State, its parastatals and agencies; Keeping under review all the laws applicable with a view to their systematic development and reform; Preparing executive

[7] Administration of Criminal Justice Act (ACJA) 2015

[8] Attorney General of the Federation is provided for under Section 150 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended)

[9] Attorney General of the State is provided for under Section 195 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

bills in accordance with directives from the Cabinet for Laws to be enacted by the State House of Assembly; Preparing subsidiary legislation for government Ministries and other Bodies; Attending the State Executive Council meeting where policies are formulated for the State; and Performing any other duty that may be assigned to him by the Governor[10].

Furthermore, the Attorney-General is the Chief Public Prosecutor in a State for all criminal matters. In the exercise of his powers to institute, undertake or discontinue criminal proceedings as conferred on him by S.211 of the Constitution[11], the Attorney-General shall not be subject to the direction or control of any person or authority. In the exercise of the aforementioned powers, the Supreme Court of Nigeria had held that the Attorney General is a master unto himself, law unto himself, and is under no control – judicial or otherwise whatsoever. The exercise of his discretion in that regard is final and irreversible by even his appointer and is subject only to public condemnation in the court of public opinion[12].

The above judicial pronouncement succinctly captured the enormous powers at the disposal of the A.G which is always subject to abuse. To put the discussion into proper perspective and demonstrate how powerful the AG is, it is important to review two cases which were discontinued by the office of the A.G with a view of driving home the point that if the A.G who is not directly affected by the commission of the crime is empowered to, at a will and without question discontinued an ongoing case, then it will align with logic and common sense that the victim of the crime should equally be empowered to play active role in the determination of a case which directly affects him/her.

FRN vs Sen. DanjumaGoje& 3 others

This case occurred during the regime of the former A.G of federation, AbubakarMalami SAN, the accused persons were charged on alleged forgery and financial embezzlement, including

[10] Office of the Attorney General, Lagos State Ministry of Justice available @ https://lagosstatemoj.org/office-of-the-attorney-general accessed on 28th October, 2024

[11] By Section 211 of the Constitution, the prosecutorial powers of the Attorney General have been constitutionally guaranteed.

[12]AbdulsalamGambo. A Critique of the Power of Attorney General in the Administration of Criminal Justice in Nigeria (LLM Dissertation Faculty of Law Ahmadu Bello University 2015)

contract of fraud on food supply to the State Government House as well as loan facilities taken from Access and Union Banks without following due process. On 7th day of October 2011, the four accused persons were arraigned on 21-amended count charge of conspiracy and money laundering which they all pleaded not guilty.

After 2817 days of trial in court, the case was stalled when in an emergency hearing before Justice Babatunde Quadiri, the EFCC counsel, Mr Wahab Shittu, told the court that the agency was withdrawing from the case and handing it over to the office of the Attorney-General for continuation. Instead of continuing with the case, the AGF however, stated that after a thorough review of the matter, there was no prima facie case against the accused persons and in the Ag's opinion, the case was weak and frivolous. Against that background, the A.G withdrew the charges against Goje from the court in exercise of his constitutional power[13]. The withdrawal of the case by the AGF made Goje a free man. This was a case involving corruption, abuse of office and the need to hold public office holders accountable for their actions done on behalf of the people. One would have thought that the office of the A.G will carry out a detached investigation with a view of ascertaining how five billion naira belonging to the State was mismanaged. Rather, in supposedly exercising his power, the A.G without recourse to the affected people discontinued the case and the accused persons became free!!!

CASE TWO[14] "Charge No. CR/216/2016 for giving false information to the Police"

Unlike the first one, this is a recent case during the regime of the new A.G of Federation Fagbemi Lateef SAN. The gist of the matter is that **s**ometimes in November 2013, One Mr. Benjamin Joseph, the owner of Citadel Oracle Concepts Limited, lodged a petition at the Police Special Fraud Unit (SFU), Ikoyi, Lagos that the company's letterhead papers and its board resolution were forged by the Plaintiffs and some officers of Technology Distributions Limited, and Access Bank to carry out a contract with the FIRS without their knowledge. He sent a similar petition in early 2014 to the Nigeria Police Headquarters (Force CID) Abuja. However, both the SFU and Police Headquarters found the allegations to be false after due investigations

[13] 'AGF Took Over Goje's N5bn Corruption Case, Evoked NolleProsequi' EFCC Media & Publicity (20th July 2019). See also 'Top Controversial Cases Taken Over by Nigeria's Attorney General, Malami, and How They Ended', Sahara Reporter,(3rd June, 2020)

[14]Adamu Sani, 'When Nigeria's Chief Law Officer Obstruct Justice', THISDAYLIVE (8th October, 2024)

and charged Mr. Benjamin Joseph to court in Charge No. CR/216/2016, before Honourable Justice Peter Kekemeke of the FCT High Court, Abuja. Whereas, the Prosecution closed its case in 2018 but Benjamin Joseph has failed or refused to open his defence.

In a twist of event, Mr. Benjamin Joseph, in 2016, wrote another petition (on the same set of facts) against Chief Igbokwe and Princess Kama and some officers of Technology Distributions Limited (now TD Africa Limited) to the then Vice President of Nigeria, Prof. Yemi Osinbajo, who endorsed the case to the EFCC for investigation and prosecution. The EFCC subjected the duo of Chief Igbokwe and Princess Kama to trial in ***Charge No.CR/244/2018,*** that lasted for three years and at the end of which they were discharged and acquitted by Honourable Justice Senchi of the FCT High Court (as he then was). In the said judgment, Honourable Justice Senchi held that Benjamin Joseph, as the nominal complainant, gave false information to the Vice President and the EFCC and imposed a N20million damages against him for false petitioning and to serve as a deterrent to others. This judgement corroborates and vindicates the Police in prosecuting Mr. Benjamin Jospeh in the said Charge No. CR/216/2016 before Justice Kekemeke.

Upon the resumption into office by the new Attorney General, Lateef Fagbemi SAN, Mr. Benjamin Joseph allegedly approached his revered office to intervene, withdraw, and discontinue the criminal case filed by the Police against him. Whereupon, the Attorney General, relying on his powers under Section 174 of the Constitution, wrote to the Inspector General of Police to withdraw and discontinue the criminal case against Benjamin Joseph. The said two Plaintiffs averred that the Attorney General never heard from them or even from the Police Prosecutor handling the case, Mr. Simon Lough SAN, before giving the instruction on a one-sided story from Mr. Benjamin Joseph.

However, in utter disbelief of all lawyers involved in the case, when the other ***Charge No. CR/216/2016,*** came up before Honourable Justice Peter Kekemeke on Thursday, 20 June 2024, a lawyer from the Office of the Attorney General and Minister of Justice, Barrister F. N. Umorh, Assistant Chief State Counsel, announced appearance for the Prosecution and said she had the instruction of the Attorney General to withdraw and discontinue the case. This is despite the fact that the Order of the Honourable Justice Ekwo was made in the presence of the lawyers from the Office of the Attorney General, and it was brought to the attention of Honourable Justice

Kekemeke in the course of the proceedings on 20 June 2024. In the circumstance, Honourable Justice Kekemeke was constrained into making a ruling striking out ***Charge No. CR/216/2016,*** discharging and acquitting Benjamin Joseph.

Whereas it is not within the scope of this research to critique the correctness or otherwise of the use of A.G fiat, the crucial point to note is that the law empowers the A.G to discontinue an ongoing matter without recourse or approval of the victim. The A.G is so powerful that with just a letter to the court/Judge, an existing case can be discontinued.

Role of the Judge/ Governor/ President

Historically speaking, the concept of pardon/clemency or amnesty is said to have emanated from the Greek and Roman Empire[15]. Due to the Greek democratic practice back then wherein power exclusively resides with the people, it was an established custom that any pardon or clemency must be presented via a petition which must be signed/supported by not less than six thousand people[16]. The procedure to seek the support of the people is to curb arbitrary pardon/clemency by the leadership or subject the process to the whims of political leaders which was the practice in the Roman Empire.

The practice in both Greek and Rome set the framework for the development in England of monarchical pardon powers, which later found its way into the Nigerian legal system, now enshrined in sections 175 and 212 of the Nigerian Constitution. The section provides as follows:

1. The President may: a) Grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions. b) Grant to a person a respite either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence; c) Substitute a less severe form of punishment imposed on that person for such an offence; or d) Remit the whole or any part of any punishment imposed on that person for such an offence or ay penalty or forfeiture otherwise due to the state on account of such an offence.

[15]Melissa Dowling,'Clemency & Cruelty in the Roman World' University of Michigan Press, (2006)

[16] Rita Abhavan Ngwoke and Sogunle B. Abayomi An Appraisal of the Power of Pardon under Nigerian Law: Lessons from Other Jurisdictions Beijing Law Review, (2022)(13)(2)

2. The President's powers under subsection (1) of this Section shall be exercised by him after consultation with the Council of State.
3. The President, acting under the advice of the Council of State, may exercise his powers under sub-section (1) of this section about persons concerned with offences against the army, naval or air force law or convicted or sentenced by a court-martial.

Contextualizing the above provisions, wherein it is understandable that the offence is against the State which is represented by the President/Governor, and granting such individual the ability to pardon an offender, however, the practice of seeking the support of at least six thousand people as practiced in Greek is not obtainable in our country. Similarly, the provision of the constitution is not helpful as the condition for the grant of such amnesty/pardon has not been codified or provided. It is easier therefore for the occupier of the office of the Governor/President to abuse the power by granting his political stooges pardon even when such grant is against the popular wish of the people he represents.

It is important to state that the power to pardon can only be exercised after the conviction and sentencing of an accused person. This is the position of the Court for instance, in ***Solola & Anor v The State***[17] the Nigerian Supreme Court said: "It needs to be stressed for future guidance that a person convicted for murder or sentenced to death by a High Court and whose appeal is dismissed by the Court of Appeal is deemed to have lodged a further appeal to this Court and until that appeal is finally determined the Head of State or the Governor of a State cannot under sections 175 or 212 of the Constitution as the case may be, exercise his power of prerogative of mercy in favour of that person". The Court of Appeal in the same case ***(Appeal No. CA/A/77/2001)*** earlier drove the point home more vividly thus: "…whichever the word is used, it presupposes that the person to be pardoned has done something, which the law presumes to be criminal or has committed an offence or is guilty of a crime. To interpret the power of pardon of a governor of a state to include the pardon of someone whose right to a presumption of innocence is guaranteed and protected by the Constitution, and against whom there cannot be a suggestion of having done something criminal without a pronunciation of guilt by a court of law, will be to bring the provision of Section 212(1)(a) of the 1999 Constitution into direct conflict with the provision of Section 36 (5) of the Constitution".

[17] (2005) 11, NWLR (pt.937) 460

It is therefore settled that the President/Governor or Chief Judge who is not directly affected by the alleged crime committed and may not understand the extent of damage the convict has caused to the victim, has in law been granted the powers to technically forgive the convict via the grant of pardon or amnesty as the case may be. It is against this background that this article passionately advocate that the victim of the crime should or ought to be clothed with similar power to grant forgiveness whether before the conclusion of the trial or post conclusion.

THE CASE OF *PUBLIC PROSECUTOR V. SHAWN TAN JIA JUN* AT THE MAGISTRATE COURT[18]

This was a case decided by the Magistrate Court of Singapore. Why am I using Singapore as a case study? It is because Singapore inherited from England a criminal justice system similar to that of Nigeria which considers that an offence committed is against the State and the liability of the offender was owed first and foremost to the State[19]. This approach is different from the concept of restorative justice which seeks to restore the familial or social relationship between the victim and the offender which has been broken or damaged by the offence committed by the latter.

In this case, the charge as proffered by the Prosecutor is reproduced. That " ***You, SHAWN TAN JIA JUN, on 15 July 2020, at or about 12.00pm, at address in Singapore, did voluntarily cause hurt to one Leong MiuKheng Seraphina, to wit, by punching and kicking her abdominal area when she was 9 weeks pregnant and punching her face, intending to cause hurt to her, and thereby causing her to sustain the following injuries: · right and left-sided redness over her face associated with right-sided inferior · orbital and maxillary bone tenderness on palpation; · anterior chest redness; · mild tenderness over her midline of the thoracic (upper) spine; · grab marks over her right arm with dark red bruises seen over the dorsum of the right hand; and · similar multiple dark red bruises seen over the left arm, dorsum of the left hand, bilateral knees and bilateral shins, and you have thereby committed an offence punishable under Section 323 of the Penal Code (Cap 224, 2008 Rev Ed)".***

[18] *Public Prosecutor v Shawn Tan Jia Jun* [2021] SGMC 87
[19] *Public Prosecutor v UI* [2008] 4 SLR(R) 500

Fact of the Case

The Accused and the victim started dating right from the high school, the relationship continued post-high school and became intimate. They later found themselves nine weeks' pregnant on 10th July 2020 and was given a week by the doctor to decide whether to keep or abort the foetus before it became too late to perform safe abortion. On 14 July 2020, the victim visited and stayed overnight at the Accused's home. They got into a heated argument the next day at around noon whilst discussing the next steps pertaining to the pregnancy and started shouting at each other. In the midst of the heated argument, the Accused pushed her onto the bed, punched and kicked her abdominal area and punched her face multiple times. The Accused's mother, who was at home at that time, stopped the incident. The victim called her friend, who fetched her from the Accused's home. She subsequently sought medical treatment at NUH. After medical examination, she was discovered to have sustained injuries, as stated in the charge.

Case of the Prosecution

The Prosecution sought a custodial term of at least 2 weeks' imprisonment against the Accused on the basis of general deterrence in accordance with the sentencing framework set out in the law. The Prosecution submitted that the case fell within Band 1 in light of the low harm suffered by the victim. In assessing the Accused's culpability, the Prosecution pointed out that the custodial threshold would be crossed because of two factors: first, that the injuries were inflicted in the context of a domestic violence/relationship, and secondly, the risk of injury posed to the victim's 9-week old foetus.

With respect to the relationship between parties, the Prosecution submitted that the Courts had readily imposed custodial sentences on accused persons who inflict domestic violence on their family members or on their partners to send a strong deterrent signal showing the Court's disapproval of violent acts inflicted on more vulnerable persons within a domestic partnership. With respect to the harm caused, the Accused's actions resulted in the victim experiencing supra pubic pain at her abdominal region.

In urging the Court to consider the potential harm to the 9-week-old foetus, the Prosecution cited the road traffic accident case of ***PP v KohThiamHuat***[20], where the High Court took into account

[20] [2017] 4 SLR 1099

the potential risk of harm in determining the extent of harm to be taken into account for the purpose of sentencing, in addition to actual harm caused. The Prosecution also cited the case of ***PP v Hue An Li***[21] to draw a parallel between the fact that "speeding increases the risk of harm occurring" and that "throwing multiple punches at a victim's body and abdominal area poses a risk of harm to the victim and/or causes the victim to suffer harm". It was submitted that drawing from both these cases, the Court ought to consider that the higher the degree of danger posed by this offender, the higher the risk of harm and the greater need there is to deter others from doing so. Further, there was a need to deter the like-minded from similar violent behaviour that puts vulnerable persons in domestic relationships in harm's way.

Case of the Defense

The Defence counsel informed the Court that the Accused and the victim had been dating for a few years and had opted for an abortion when they found out that the victim was pregnant because they decided that they were too young and were not ready to become parents at that time. However, after the victim stayed overnight with the Accused on 15 July 2020, they had second thoughts and started arguing in the Accused's bedroom. The argument became increasingly heated and emotional, and both parties started shouting at each other. The Accused tried to leave the room to give themselves time to calm down, but was held back by the victim, who wanted him to stay and resolve the matter. It was at this time that as the Accused was struggling with her to leave the room and end the dispute that he pushed her onto the bed and assaulted her. It was submitted that the incident happened impulsively without premeditation over a very short period of time. It was completely out of character and he was deeply remorseful over the wrongfulness and foolishness of his actions.

After the incident, the Accused reconciled with the victim, and they planned to get married by the end of 2021. On her own accord, the victim tried to withdraw her complaint to the police and drop charges against the Accused, but was told that the case was no longer under the police's control. She then went to see her Member of Parliament for assistance to drop charges.

The Defence also informed the Court that the Accused made an honest living as a delivery rider and was in a poor financial situation. He lived with his mother, stepfather and two younger step-

[21] [2014] 4 SLR 661

siblings, who were in Primary One and Two. He worked hard to support his family and vowed never to conduct himself again as he did at the time of the incident. It was highlighted that the Accused was a first-time offender, had cooperated fully with the police and pleaded guilty at the first opportunity. The injuries suffered by the victim were not severe. The Court was urged to give the Accused a chance to return to becoming a contributing member of society. The Defence counsel sought a fine of $3500.00 against the Accused, or alternatively, an imprisonment term not exceeding one week.

Decision of the Court

In the words of the trial judge "I turned to the aggravating factors highlighted by the Prosecution and the mitigating factors submitted by Defence counsel. The two aggravating factors raised by the Prosecution was the fact that this case involved domestic partners and that the victim had been pregnant at that time. In the Accused's favour was his relatively young age of 24 years, his plea of guilt and his prospects for rehabilitation as demonstrated by his sincere remorse in his personal hand-written mitigation plea, his resolve to improve himself, positive working attitude and desire to do better in his life in order to take better care of his family? I accepted the Accused's explanation that the incident occurred because both parties had been agitated in their argument just moments before. He tried to leave the room in order to end the argument, but the victim held onto him and refused to let him leave". The subsequent acts of violence by the Accused was committed on impulse and the physical altercation with them was not pre-mediated. The injuries suffered by the victim was superficial and minor, and she was given a retrospective one-day MC for 15 July 2020.

In this case, the victim had not only forgiven the Accused but agreed to marry him within the next couple of months. The Prosecution rightly pointed out that forgiveness was a private matter between the victim and the offender and should not affect the sentence imposed on the offender by the courts, which reflected public interest in criminal punishment: ***Ng Kean Meng Terence v PP***[22]**.**However, there were two possible exceptions to this: **first, where the sentence imposed on the offender would aggravate the victim's distress, and secondly, where the victim's forgiveness was relevant to a determination of the harm the victim has suffered as a result of the offence.**

[22] [2017] 2 SLR 449

Forgiveness by the victim should be regarded as a private matter between the victim and the offender, which should not affect the sentence to be imposed except under two conditions (1) where the sentence imposed on the offender would aggravate the victim's distress and (ii) the victim's forgiveness was relevant to a determination of the harm suffered as a result of the offence. These exceptions were explained at length in ***PP v UI***[23], a case involving the rape of the victim by her natural father several times when she was between ten and 14 years of age. In mitigation, the Defence tendered letters from the victim and her mother expressing their forgiveness of the offender and pleaded for leniency. In considering these exceptions, the Court of Appeal referred to a case commentary on the English case of ***R v Adam John Nunn***[24] in the Criminal Law Review and the summary expressed by Lord Bingham CJ in ***R v Gerard Martin Roche***[25]. The first exception was considered in Nunn, a case in which a young man was sentenced to four years' imprisonment at the first instance for causing the death of his best friend due to dangerous driving. At his appeal against sentence, the deceased's mother and sister provided lengthy written statements to the English Court of Appeal expressing that the length of the sentence imposed on the offender had made it more difficult for the mother and the sister to come to terms with the loss and grief which they suffered following the death of the victim. The deceased's mother had stated in her written statement that: While ... [the offender] remains in prison, I will remain concerned about him, worrying about him and this will continue to be a source of additional grief to me.

This was regarded by the English Court of Appeal as "clear evidence" that the length of the sentence was causing the deceased's family additional grief, and the offender's term of imprisonment was accordingly reduced to three years. The second exception was from another English Court of Appeal case, where the offender had been charged with the rape of his former domestic partner. In R v James Kevin Hutchinson[26], the victim attempted to withdraw the charges before and during the course of the trial and told the court that she still loved the offender. The offender was convicted and sentenced to six years' imprisonment. On appeal, Owen J, observed that (at 137): It seems that the fact of [the victim's] forgiveness [of the

[23] [2008] 4 SLR(R) 500
[24] [1996] 2 Cr App R (S) 136
[25] [1999] 2 Cr App R (S) 105
[26][1994] 15 Cr App R (S) 134

offender] must mean that the psychological and mental suffering must be very much less in those circumstances than would be the case in respect of a woman who very understandably could not forgive such an offence as that with which we are dealing [ie, the offence of rape]. Accordingly, some mitigation must be seen in that one factor.

Accordingly, the sentence against the offender was reduced to five years' imprisonment. In my view, both these exceptions were present in this case. In a letter handwritten by the victim dated 25 October 2021 tendered to Court, the victim put forth an impassioned plea for the Accused to be dealt with leniency. She explained that they had been dating for a long time (5 years) since secondary school and she was well aware that he was a man of good character. He was decent, cared for his family and kept his word. Although they had already decided to abort the pregnancy before the incident, he stayed with and provide for their future together and had changed tremendously. She also informed the Court that she had tried to drop the charges against the Accused but was unable to do so. She then approached her Member of Parliament for Chua Chu Kang GRC Mr Zhulkarnain Abdul Rahim for assistance and was advised to provide a character reference for him. To understand the nature of the victim's forgiveness of the Accused in this case and why the exceptions in PP v UI were made out, I quote the relevant portions of her letter to the Court:

> I would like to bring to light the kind of person that he is despite what has happened in recent times. Shawn is a person of good moral character. I realize that might seem hard to believe given the circumstances but it's true nonetheless. I am very well aware of the charges that he is facing and the consequences of those actions, but having seen how much effort he has put into change for the better I would like to plead for leniency he's a true gentleman and he's always true to his words. I'm sure he will learn from this experience and will not think of repeating it. I have known Shawn since we were in secondary school and have been together for the past five years. In the time spent together, I have seen and gone through ups and downs with him and all the while I have been convinced that he is a decent person at the core. He just needs more people to believe in him so that he can become the person I know he is the deep down. We have actually made plans to go for an abortion before the incident and he did not let what happened stop him from being there for me. He kept to his words and was by my side

> through it all he took very good care of me and did more than what was needed from him, especially when I was recuperating. These specific features make me believe he is truly a decent man. I do see a future with him and I do not wish for this charge to have a negative impact on his future, academically and socially. Shawn has shown me that he knows what he did was wrong and he's incredibly remorseful they happened. He is willing to do whatever it takes to make reparations, financially and emotionally if possible. But to do that he needs to be given an opportunity to get a second chance. I recognize that Shawn broke the law and I do not believe that he should get off without any punishment. But I believe that just because he made a mistake it doesn't make him a bad person. Everyone makes mistakes and looking beyond the wrongs, I'm convinced that he is indeed a kind, loving, thoughtful and selfless person I'm confident that he will take responsibility for his actions and will not reoffend.

The victim also shared that in meting out any sentence against the Accused, the Court should be mindful that it would affect her as well, as they were planning their future together. This should be seen in the light of the fact that they were to be married in the very near future and the Accused had plans to join a new company in a new job role.

As an observer at close range, the victim was essentially testifying to the fact that the Accused was a good and responsible person who had acted out of character in a one-off incident, and who had also changed for the better since then. The Accused was of relatively young age and had clearly learnt his lesson. The fact of the victim's forgiveness was well established in this case by virtue of the fact that she had agreed to marry him at the end of the year and was looking forward to their future together. This was perhaps the most important indication of her faith in his character and transformation. As she explained, any sentence imposed on the Accused would therefore also impact her as well, fulfilling the exceptions in PP v UI and Ng Kean Meng Terence in regarding the victim's forgiveness as a mitigating factor. I had invited the Prosecution to respond to the exceptions in PP v UI presented in this case, but was informed by the learned Prosecutor that the Prosecution's written submissions was as far as they would go in arguing this case.

Court's Conclusion

Having considered fully the exceptional facts of this case, I sentenced the Accused to a fine of $3500.00, in default two weeks' imprisonment.

THE CASE OF *PUBLIC PROSECUTOR V. SHAWN TAN JIA JUN* AT THE APPEALATE COURT[27]

Not satisfied with the decision of the trial court, the Prosecution appealed to the High Court against the sentence of a fine imposed on the **Tan.** At the Magistrate Court, Tan pleaded guilty to one charge of voluntarily causing grievous hurt, under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) and was sentenced to a fine of $3,500 in default of two weeks' imprisonment.

In the Prosecution's appeal, they argued, *inter alia*, that the learned District Judge had placed undue weight on the Victim's forgiveness of Tan. They sought for a sentence of two weeks' imprisonment instead. The High Court found that forgiveness did not apply as a mitigating factor in the present case. The Prosecution's appeal was allowed, and Tan's sentence of a fine of $3,500 in default two weeks' imprisonment was set aside and substituted with a sentence of two weeks' imprisonment.

Review of the Case

The position of the High Court substituting the fine of $3,500 with two weeks imprisonment is not only overzealous but unreasonable considering the following points: that the respondent pleaded guilty to the charge; the victim wrote a letter pleading for the forgiveness of the respondent and how sentencing him to prison will affect their future plan of getting married; the offence with which the respondent was charged provided for an alternate punishment which the trial court has awarded pecuniary fine as a way of saving the relationship. It appears the appellate court is not interested in the wellbeing of the victim and her position in the determination of the case. The appellate judge discountenance the exceptions provided under the law, to wit ***"(1) where the sentence imposed on the offender would aggravate the victim's distress and (ii) the victim's forgiveness was relevant to a determination of the harm suffered as a result of the offence"***

[27] [2022] SGHC 76

From the victim's letter, both exceptions are applicable. It was so detailed that both of them are planning to get married; that the respondent had in the past stood by her in all her challenges and in the instant case, he was with her through the process; that she is not saying the respondent should not be punished, but a fine will be sufficient.

The appellate judge has used his office to destroy a prospective marriage because it is very unlikely for the respondent to come back from prison and marry the victim. The law should equally be interested in striking a balance in the application of certain provisions especially when the drafter of the law deliberately included alternate punishment. Would it not be a win-win situation where the respondent is made to pay fine and later marry the victim?

The Islamic Law Position

Unlike the man-made criminal legal system, Islamic Law has its source from the Quran, Hadith as Primary Source and Ijma and Qiyas as the Secondary Source[28]. Similarly, a victim under Islamic law is more proactive and involved in the determination of the dispute. He is not only a witness but has powers to forgive the defendant and discontinue the case.

Islamic legal system provides for an alternative means of resolving crimes by substantially involving and empowering the victim or his family on how best to resolve the conflict[29]. The priority of Islamic Law is not to destroy an existing relationship but to ensure disputes are managed in the most matured and effective way. The philosophy behind such provision is never to underestimate or promote commission of heinous crime but to be practical and realistic in terms of addressing conflicts. For instance, where a breadwinner of a family is killed and survived by wife and children, the conventional legal system arrests the offender, arraign, prosecute and eventually send him to jail/life imprisonment or death. In this process, the government has no special package for the family of the deceased and there are no financial emoluments given to the deceased immediate family to address their financial needs, unlike Islamic Law that provides for blood-money in such circumstance[30].

[28] Sources of Islamic Law available @ https://islamiclabourcode.org/sources-of-islamic-law/ accessed on 27thNovember, 2024

[29] Surah An-Nisaa 4v92. See also Sahih Al-Bukhari 9:83:41-50

[30] He who has killed a believer by mistake must set free a believing slave, and pay the diya to the family of the slain unless they remit it as a charity. (Surah An-Nisaa 4v92)

In the instant case, the accused is young and in love, the parties had challenges on how to cope financially with little or no income while expecting a baby. In such a scenario, it is expected that parties will have slight misunderstanding which ought to be resolved amicably. No doubt, the accused is at fault and deserve to be punished, in the humble view of this writer, the punishment awarded in form of fine is enough without the need to send the accused to prison. Of what use is the prison term considering the concept of reformation in the criminal justice system? How is the prison term helpful to the victim who had pleaded for pardon for her future husband? Will the government or criminal justice system provide a husband for the victim when the accused refused to go ahead with the marriage as planned? Is it not detrimental to the victim that she is getting married to an ex-convict, is the monetary fine awarded against the accused not enough? These are some of the unresolved questions that the prosecutor ought to ask before appealing the judgement of the lower court.

The above lacuna is being taken care of by the divine provision which provides for the concept of restorative justice in Islamic criminal law that emphasizes recovery, reconciliation, and reintegration of offenders into society. This approach pays special attention to the needs of victims, encourages their active participation in the dispute resolution process, and involves the community as a key stakeholder. It identifies the potential for using the concept of restorative justice in Islamic criminal law as an alternative to resolving disputes. A restorative approach allows the parties involved to reach mutually satisfactory agreements, restore damaged relationships, and reduce the risk of repeat offenses. It is therefore submitted that the concept of restorative justice in Islamic criminal law can be an alternative that has the potential to improve justice in dispute resolution.

In promoting such concept, Allah says in the glorious Quran, ***"And the retribution for an evil act is an evil one like it, but whoever pardons and makes reconciliation – his reward is [due] from Allah. Indeed, He does not like wrongdoers.***[31]*"* In the above verse, we can understand that Allah will reward and bless those who are truly able to forgive. While it may sometimes be the hardest thing we do, we must understand the importance in reconciling with those we may have never thought possible of being forgiven – we must do this if not for ourselves, then at least for Allah.

[31] Surah Ashurah, *(Quran 42 verse 40)*

Similarly, Allah says ***"And whoever is patient and forgives – indeed, that is of the matters [worthy] of resolve.***[32]*"* The Quran reminds us again that being patient and being able to forgive are two sides of the same coin – if we are to truly live as a united Ummah, we must continuously strive towards reconciliation and forgiveness for the betterment of our society.

When the rich people threatened not to assist the needy, Allah says ***"Do not let the people of virtue and affluence among you swear to suspend donations to their relatives, the needy, and the emigrants in the cause of Allah. Let them pardon and forgive.*** *Do you not love to be forgiven by Allah? And Allah is All-Forgiving, Most Merciful.*[33]*"* Just as we love to be forgiven and shown mercy by Allah, we must strive towards showing mercy and forgiveness in our own lives – as Muslims, this is the least we can do in showing how much we love Allah.

Conclusion

Laws are made for humans and not the other way round. Where the law provides for both fine and imprisonment, the judge should be at liberty to choose which of the punishments best suit the circumstance. Similarly, the interest of the victim should play a crucial role in the determination of the case as advocated for in this article. The essence of justice will be defeated as in this case where the appellate through the help of the Court substituted the payment of $3500 as fine with two weeks imprisonment without considering how the judgement will affect the existing cum the future relationship between the defendant and the victim. In my humble opinion, the priority of the justice system should be reformation of the defendant and not mortification. Justice should be for all the parties, the victim, the State and the defendant. Prosecutors should stop being overzealous and reflect on the future of the victim while seeking justice. What is the purpose of securing conviction when the future of the victim is destroyed? Would the conviction provide the victim a husband? Is the fine not enough for a first-time offender who pleaded guilty and was remorseful? These are some of the questions the prosecutor ought to have asked before insisting on imprisonment for the defendant. Laws are meant to regulate our relationship and not to destroy it. It aligns with logic and commonsense therefore that where a person is faced with two evils, he should pick the lesser one especially in a situation where picking the lesser evil will best address the concerns of all parties involved. It

[32] Surah Ashurah*(Quran 42 verse 43)*
[33] Surah An-Nur*(Quran 24 verse 22)*

contradicts logic when the prosecutor who is expected to protect the interest of the victim is the same person working hard to destroy the victim. Payment of fine and subsequent marriage by the parties would have produced a win-win situation, in the instant case, the prosecutor is happy at the expense of the victim's future, such approach should be discouraged.

INTERNATIONAL HUMANITARIAN LAW AND A REALISTIC APPROACH TO UNDERSTANDING THE RIGHTS AND PRIVILEGES OF VOLUNTEERS UNDER THE TECHNICAL AID CORPS IN NIGERIA

Moruf Olukayode Mimiko*

Abstract

Despite working in challenging conditions, Nigerian Technical Aid Corps (TAC) volunteers do not have a firm awareness of their rights and privileges. The humanitarian group has provided aid to victims of armed conflicts, including refugees, internally displaced people, prisoners of war, and victims of other violent incidents such as natural disasters, flooding, earthquakes, typhoons, hurricanes, and fire outbreaks, to mention but a few. Humanitarian organisations play unmatched roles in providing aid to those in need during armed crises. In light of the aforementioned, this article offers insight into the distinctive function played by TAC, especially in light of the increase in violent incidents and internal crises as well as the escalating complexity of the requirements of the impacted communities.

Keywords: *International Humanitarian Law, Technical Aid Corps, Rights and Privileges, Volunteers.*

General Overview of International Humanitarian Law

International humanitarian law, also known as the law of armed conflicts or the law of war, is a body of laws, rules, regulations, and accepted norms and practices by which different nations throughout the world interact with each other as well as with their citizens and citizens of other countries. It is the body of law that primarily regulates the interactions, mutual co-existence, and inter-relationships between and among independent states[1]. Thus, sovereign states are the primary objects of international law. Even though international law is primarily concerned with states only, nevertheless, individuals who have attained international personalities and state entities, including the World Health Organisation (WHO) and the United Nations Educational,

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[1]Henderson, Conway W. (2010). Understanding International Law. Wiley. p. 5. ISBN 978-1-4051-9764-9.

Scientific and Cultural Organisation (UNESCO), among others, are also the objects of international law. [2]

Generally speaking, there are two basic categories of international law, vis-à-vis, public international law and private international law. Public international law concerns itself with the question of rights and obligations between several states and between the citizens or subjects of other states. The law regulates the conduct of individuals in a particular state concerning the operations of the law affecting other individuals in other states without necessarily involving the government of any state. Under this law, the international legal system is decentralized and based essentially on consensus through agreements that are freely entered into by states when the states follow certain practices generally and consistently due to the legal obligation on their part. On the other hand, private international law (Conflict of Laws) is a species of a state's law that deals with the civil or human rights issues of the individual concerned, not only between a government and its citizens but also on how its citizens are treated by other States.

It should be stressed, however, that in recent years, the line between public and private international law has become increasingly uncertain. This is so because issues under private international law may also implicate or provoke issues of public international law. It can also be stated that many matters which are of concern to private international law are also of substantial significance for public international law, that is, the comity of nations. Any attempt, therefore, to distinguish between the two bodies of laws places each into a watertight compartment because the two overlap.

Sources of International Law

Paragraph 1 of Article 38 of the Statute of the International Court of Justice[3] is the material source of international law. It is the *font etorigo* of international law. In other words, the paragraph is the fountain of origin, the authority as well as the very foundation of international

[2] Malcolm, S. "Britannica" Available online at: https://www.britannica.com/topic/international-law/States-in-international-law. Accessed 10th January, 2024.

[3] The Statute of the International Court of Justice is a document of the United Nations and it forms an integral part of the Charter of the United Nations signed on 26 June 1945, in San Francisco, New York after the United Nations Conference on International Organization, and came into force on 24 October 1945. See the Introductory Note and the full text of the Charter issued from the Office of Public Information, DPL'5 11 — 175 (2-80) United Nations, New York.

law from which an international lawyer can determine the rule applicable to a given situation. The thrust of Article 38 Paragraph 1 as a source of international law is as follows:

I. international treaties or conventions;

ii. International customary law;

iii. General principles of law recognized by civilised nations; and

iv. Judicial decisions and juristic opinion "as subsidiary means for the determination of rules of law."

It is necessary to note that the first three sources of international law listed above are the international principal law-creating sources or processes while the fourth source of law is the law-determining source or agency or, in the words of Article 38, the 'means for the determination of rules of law.[4] The law-determining agencies are judicial institutions and opinions of the most highly qualified publicists of the various nations as subsidiary means.[5]

Clarification of Terms

a. Rights

The idea of rights is of historical antiquity. It is not a new morality (or law) that is just developing in contemporary society. Rights exist as a higher law than the legal system or any positive law in any society. In human existence, the concept appeared at different times, places, and long before the advent of the political system that produced the law-making institutions as we have them today. Sophocles[6] had his name associated with the natural rights of man. Poets, philosophers, and Politicians postulated the rights of man as normative ethical ideas.[7] Hammurabi[8] enumerated the rights of a human.

[4] The International Court of Justice to which states can refer disputes for settlement is the major law- law-determining agency. States must, however, agree to submit to the jurisdiction of the Court. States cannot be compelled to do so.

[5] See Article 38 Paragraph (1) (d) of the Statute of the International Court of Justice.

[6] This philosopher lived between C496 —406 BC, through the ages of Athenian civilisation.

[7] The rights of man as an expression of political philosophy may be traceable to the writings of early natural law theorists such as Hugo Grotius, Thomas Paine, Thomas Hobbes, Jean Jacques Rousseau, William Kant, John Locke, A. V. Dicey and Baron de Montesquieu.

[8]Hammurabi was the Babylonian King that had the ancient Code of 1188.

In the course of time and space, man struggled to proclaim the idea of his right.[9] The result has greatly culminated in the attainment of individual rights and independence of the major civilizations of the world.[10] Also, the ideological struggle influences the legal development of certain nations.[11] What is more, the Universal Declaration of Human Rights[12] which was proclaimed to the whole world has internationalized the concept of rights, in that, many nations of the world have had to adopt the full text of the Declaration in their national constitutions.

For this paper, the word 'right' is a noun that comes from the Latin word *'recto'*, that is, *'correct, straight and moral'*. Right is that which is not crooked and something of which no one may be deprived without a great affront to justice. Right entails some freedoms that should never be invaded; and some supremely sacred things. In law, a right is a just claim that is due to a person by way of a legal guarantee. In other words, it is that which the law directs, approves, or supports. That to which a person has a just or lawful claim; an interest which will be recognized and protected by a rule of law, respect for which is a legal duty, violation of which is a legal wrong.[13]

A judicial definition **of** right was given in the case of ***Afolayan v Ogunride& Others***[14] where it was held that a right is an interest recognized and protected by the law. In the case of ***Uwafo v A. G. Bendel State & Others***[15], the Supreme Court of Nigeria held that a legal right is any advantage or benefit conferred upon a person by a rule of law. In ***Nwankwo& Others v Onuwa&***

[9]In January 1776, Thomas Paine wrote a pamphlet called 'Common Sense', which supported democracy and independence. Several hundred thousand copies of the pamphlet were sold in the Colonies, and the idea of independence caught fire among the Americans. On July 4, 1776, the Declaration of Independence was adopted by the Continental Congress. The Declaration was written by Thomas Jefferson with the help of Benjamin Franklin and John Adams. Mostly, the document was a list of how the King had denied Americans their rights.

[10]As a matter of fact, between the 1 8th and 1 9th centuries, increased modem awareness of rights was witnessed in continental Europe and America culminating in the United States of America Declaration of Independence of July 4, 1776, and the French Revolution of 1789. The United States of America and France set the tone by adopting bills of rights embodied in their national constitutions.

[11] In England alone, there was the Magna Carta 1215, the Bill of Settlement 1617, the Habeas Corpus 1679, the Bill of Rights 1869, etc. Another Declaration was the American Bill of Rights of 1791.

[12] The Universal Declaration of Human Rights as set forth by the United Nations General Assembly on 10 December 1948, has thirty Articles. See full text of the Declaration issued from the Department of Public Information, DP1J876—409 11-November 1988- l00M.

[13]See L. B. Curzon, A Dictionary of Law, 1st Edition, 1979, MacDonald & Evans Ltd., p.299.

[14](1990) I NWLR (pt 127) 369 at 391.

[15](1982)7SC 124at273

Another[16], it was held that the word 'right' means an interest or title in an object or benefit conferred upon a person by a rule of law. Justice Oputa[17] defined a right as follows:

> A right in its most general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. A legal right is thus the capacity residing in a man of control, with the assent and assistance of the state, the action of others. It follows then that every right involves a person invested with the right, or the person entitled, a person or persons on whom that right imposes a correlative duty or obligation; an act of forbearance which is the subject matter of the right; and in some cases an object, that is a person or thing to which the right has reference, as in the case of ownership. A right therefore is in general, a well-founded claim, and when a given claim is recognised by the civil law, it becomes an acknowledged claim or legal right enforceable by the power of the state.[18]

There are different types of rights, relating to animate or inanimate objects. Some of these rights are: (1) Absolute and unqualified rights, these are rights that belong to every human being such as the right to personal liberty and the right to life. An unqualified right is a right that cannot be denied or waived except under specific conditions. For instance, a plaintiff has an absolute right to a voluntary non-suit case before it is finally submitted. That is, a plaintiff has a voluntary dismissal of a case without a decision on the merits. After final submission, the court has the discretion to grant or deny a voluntary non-suit; (2) Right of entry, which means the right of taking or resuming possession of land or other real property in a peaceable manner such as the

[16](1994) 5 NWLR (pt 343) 191 at 204.

[17]Justice Chukwudifu Oputa is a renowned Nigerian human rights justice of the Supreme Court of Nigeria. But, he is now retired from the Supreme Court of Nigeria.

[18]See Hon. C. A. Oputa, Human Rights in the Political and Legal Culture of Nigeria, 1989, the Nigerian Law Publications, Lagos at p. 38.

landlord's right to enter a tenant's property to make repairs; (3) Right of survivorship, which means in land law joint tenant's right to succeed the whole estate upon the death of the other joint tenant; and (4) Human rights which the United Nations takes cognisance of under the Universal Declaration of Human Right, 1948.

The entire gamut of Chapter IV of the Constitution of the Federal Republic of Nigeria (Promulgation) Act, 1999[19], is devoted to fundamental rights which are inherent in man withoutwhich he cannot function as a human being. Under the Chapter, the rights span through Sections 33 and 46. For ease of reference, below are the rights and their corresponding sections:

i. Section 33 - Right to life
ii. Section 34 - Right to dignity of the human person
iii. Section 35 - Right to personal liberty
iv. Section 36 - Right to a fair hearing
v. Section 37 - Right to private and family life
vi. Section 38 - Right to freedom of thought, conscience, and religion
vii. Section 39 - Right to freedom of expression and the press
viii. Section 40 - Right to peaceful assembly and association
ix. Section 41- Right to freedom of movement
x. Section 42 - Right to freedom from discrimination
xi. Section 43 - Right to acquire and own immovable property anywhere in Nigeria
xii. Section 44 - Right to compensation for property acquired compulsorily
xiii. Section 45 - Restriction on and derogation from fundamental rights
xiv. Section 46 - Special jurisdiction of High Court and Legal Aid

These rights are fundamental because they are entrenched in the Constitution and are recognised as protectors of civil liberties in Nigeria. However, fundamental rights and human rights mean the same thing and can be used interchangeably. To protect the rights and freedoms of other persons, however, limitations may be placed on the enjoyment of the fundamental rights. Of course, no right is enjoyed in absolute terms anywhere in the world. Some rights are limited to citizens of Nigeria such as the right to freedom from discrimination based on ethnicity, sex

[19]See the Laws of the Federation of Nigeria, No. 24, Cap C23, 2004.

religion, and political opinion, whilst others apply both to Nigerian citizens and foreigners such as the right to life and the right to dignity of the human person.

b. Privilege

The term 'privilege' had its origin in the Latin word, *'privilegium*.[20] The Oxford Dictionary of Current English[21] defines privilege as a special right or advantage for a particular person or group.[22] Based on the definition of a right and the various types of rights, it can be inferred that a distinction between a right and a privilege would entail that a privilege is an exceptional right, immunity, or exemption belonging to a person by his status or office, for example, the immunity from arrest accorded to diplomats, Members of Parliament or House of Representatives.

In defamation, a defamatory statement is privileged in the course of judicial proceedings even though it may have been made with malice, and thus no action will succeed if brought against the person who made the defamatory statement. Again, in the law of evidence, the following matters are protected from disclosure on the ground of privilege-professional confidence which exists between a barrister and his client and matrimonial communication in criminal proceedings.

c. Volunteer

The term 'volunteer' is of French origin. It is derived from *voluntary,* i.e. 'voluntary'. When the word is used loosely and as a noun, it means a person who freely offers to do something or a person who works freely for an organization without being paid.[23] This refers to a person or someone who gives his/her services without any express or implied promise of remuneration.

[20] Among others, privilege means an exceptional law made in favour of or against an individual. In other words, it is the 'law affecting an individual'. Also, it is a right, advantage, favour or immunity granted to some person, group of persons or class, not enjoyed by others and sometimes detrimental to them. See the

[21]See the 3" Edition, 2001, Oxford University Press at p. 713.

[22]Vinod K. Agarwal defines privilege as a benefit conferred on a person, company or class; it is also an exception from some burden. See 'A Dictionary of Legal Terms with Indian Equivalents', 1979, Jaime Publications, Bombay, India, at p. 114. L. B. Curzon defines privilege as a special right or immunity conferred on some person or body or a rule of evidence justifying a witness's refusal to produce a document or to answer a question. See, A Dictionary of Law, I" Edition, 1979, MacDonald & Evans Ltd., p.267.

[23]We have some voluntary organisations in the world such as the Boys' Scout, the Girls' Guide, the Boys' Brigade, the Red Cross, Amnesty International, etc. Membership of any of these organisations is free and the services rendered are also free without any monetary considerations. But, rewards can be offered for ajob well done and salaries paid to supporting or administrative staff.

Other Concepts that Resemble Volunteer

(i) Aliens

These categories of persons are severally known as foreigners, non-nationals, and non-citizens. They are different from volunteers. At common law, a distinction is drawn between friendly and enemy aliens. Enemy aliens comprise not only citizens of hostile states but also all other aliens voluntarily living in enemy territory or carrying on business within that territory. This brings to the fore the sharp and conventional differentiation between legal and illegal aliens.[24]

An alien is a person who resides within the borders of a country in which he is not a citizen or a subject. He does not owe any allegiance to the particular country if he has not naturalised as its national.[25] Aliens are to be treated in the same way as nationals of the state concerned when it comes to the safeguarding and enforcement of human rights. However, an alien is normally subject to certain civil disabilities such as disenfranchisement from voting or being voted for; and also ban from employment in certain areas, for example, the diplomatic corps. But an alien remains a subject of the local law within the country in which he or she resides.

A state may legitimately refuse to admit aliens or may accept them subject to the fulfillment of certain conditions. A state must give convincing reasons for expelling an alien.[26] In addition, when the occasion demands, the reasons for the expulsion must be stated before an international tribunal.[27] However, many municipal systems provide that the authorities of a country may

[24]ibid

[25]ibid

[26]There are international and national conventions or instruments which provide for reasons to be given upon expulsion. For example, Article 13 of the International Covenant on Civil and Political Rights states that a lawful alien in the territory of a State Party to the Convention may be expelled therefrom only in pursuance of a decision reached accordingly with the law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by and be represented for a purpose before a competent authority. The Constitution of the Federal Republic of Nigeria, 1999, states categorically that the President may deprive a person, other than a person who is a citizen of Nigeria by birth or by registration, of his citizenship if he is satisfied that such a person has within a period of 7 years after being naturalised been sentenced to imprisonment for a term of not less than 3 years. See Chapter III, Section 30 of the Nigerian Constitution which relates to deprivation of citizenship.

[27]Consular offices and consuls were introduced. A consul is a state official living in a foreign city and protecting the state's citizens and its business interests. A consul is less, inferior and subordinate to an ambassador or a diplomat. Another nomenclature is the envoy who is a messenger or an agent sent by a government to transact diplomatic business in a foreign country. An envoy too ranks below an ambassador. It should be noted that consuls and envoys, like diplomats, represent their States, but, unlike diplomats, they are not concerned with the political relations between the two States. They perform a wide range of non-political functions such as issuing passports

deport aliens without reasons having to be stated.[28] The position under customary international law is, therefore, not clear but somewhat confusing.

(ii) Diplomats

The diplomatic staff represent the interests of their states in various ways.[29] Traditionally, diplomatic relations have been conducted through the means of ambassadors and their staff who benefits from the legal principles of immunity from jurisdiction and state sovereignty while residing in the host State.[30] But with the growth and development of trade and commercial intercourse, ambassadorial functions became expanded while other related offices were established.[31]

Article 3 of the Vienna Convention[32] lists the functions of a diplomatic mission thus:

(a) Representing the sending State in the receiving State;
(b) Protecting the interest of the sending State (and of its nationals) in the receiving State within the limits permitted by international law;
(c) Negotiating with the Government of the receiving State;
(d) Ascertaining by all lawful means conditions and 3 developments in the receiving State and reporting same to the Government of the sending State; and
(e) Promoting and developing economic, cultural, and scientific friendly relations between the sending State and the receiving State.

The Convention outlines the rules of diplomatic law, codifies both the existing laws and establishes others. Questions not expressly regulated by the Convention continue to be governed by rules of customary international law. By Article 2 of the Convention, there are no rights as

and visas, looking after the shipping and commercial interests of their States, etc. See Michael Akehurst, A Modern Introduction to International Law, 3d Edition, 1977, George Allen & Unwin Ltd. At pp. 109-120.

[28]This was the situation in Nigeria during the early 80's when there was a great influx of illegal Ghanaians in the country engaged in menial jobs thereby bastardizing the Nigerian economy.

[29]We have military, political, legal, economic, cultural attaches, etc, representing the interest of the sending State in the receiving States concerning various issues and subjects.

[30]It should be noted, however, that according to Article 38 (1) of the Vienna Convention, full immunity is not granted to all the staff of a diplomatic mission. The Article speaks of administrative and technical staff (e.g. clerical assistants, archivists and wireless technicians) and of service staff (e. g. drivers, receptionists, etc.). These two categories of subordinate staff have complete immunity from criminal jurisdiction, but their immunity from civil and administrative jurisdiction is limited to their official acts.

[31]ibid

[32]The Vienna Convention on Diplomatic Relations adopted in 1961 came into force on April 24, 1964.

such under international law to diplomatic relations. The basis of diplomatic relations may be affected by other rules of international law which exist by the principle of mutual consent. Thus, if a state does not wish to enter into diplomatic relations, it is not legally compelled to do so.

(iii) The United Nations and its Agencies

Traditionally, the law of agency consists of a fiduciary relationship created by law in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions.[33] Agency consists of any arrangement made by the principal that brings his agent into a contractual relationship with a third party, the agent having the authority to act.[34] This relationship, simply known as "Master and Servant" in the labour law carries with it a vicarious liability. Whether or not an agency relationship exists would depend largely on the true nature of the agreement and the circumstances of the relationship between the principal and the agent.

An agency can also arise for governmental bodies with authority to implement some particular legislation or carry out some tasks. For example, the 'specialized agencies' of the United Nations were established by inter-governmental agreements with wide international responsibilities for political, economic, social, cultural, and educational matters.[35] With the approval of the General Assembly, the Economic and Social Council also performs the daunting task of coordinating the works and activities of the specialised agencies of the United Nations.[36]

[33]Agency' is a comprehensive word which is used to describe the relationship that arises where one man is appointed to act as the representative of another. An agency agreement is one by which the agent is authorised to establish privity of contract between his employer, called the principal, and a third party: Dowrick 17 MLR. and Reynolds 94 LQR 225. See Chesire and Fifoot, Law of Contract, 10th Ed., 1981, Butterworths, London, p. 421.

[34]It is usually said that there are four types of authority: express, implied, ostensible (or apparent) and usual. Express authority needs no comment. Implied authority is authority to do all that is reasonably incidental to achieving what was expressly authorised, or authority by custom: in either case, it may be expressly negatived or limited by the principal. Ostensible authority is a form of estoppel: if the principal by words or conduct indicates that a person has authority to act on his behalf, and the third party contracts with the agent on that basis, the principal is estopped from denying the agent's authority even if in fact the agent was unauthorised. Usual authority applies only where there is an 'undisclosed principal'. See H. G. Beale, et al, Contract: Cases and Materials, 1985, Butterworths, London, p. 680.

[35]See Article 57 of the Charter of the United Nations which states that the specialised agencies shall be brought into relationship with the United Nations.

[36]By virtue of Articles 62-66 of the United Nations Charter, the ECOSOC, a major organ of the United Nations, co-ordinates the activities of such agencies as the ILO, WHO, UNESCO, UNICEF, etc.

The Rights and Privileges of a Volunteer

It is clear from the foregoing that apart from the moral obligations on the part of an organisation toward volunteers generally, international law requires that certain basic rights and privileges should be provided for volunteers to enable them to live, operate, and perform their duties and functions effectively abroad in any country where they temporarily find themselves. The following is a long list of the minimum rights that a volunteer expects from an organisation or a government:

• Interview and employment on equal opportunities and anti-discriminatory law.

• Adequate insurance coverage.

• Assignment to suitable tasks concerning training and experience, both personal and professional, as well as personal interests.

• Statement of precise job descriptions, stating tasks, responsibilities, and roles.

• Clear indication of what his schedule is and to whom he reports.

• Offer suitable and regular ongoing training for the jobs assigned to enable him to update his knowledge to take on greater responsibility.

• Offer of a chance to be promoted or be transferred to new projects, or to other activities allowing him to acquire more varied experience.

• Treatment as full members of the Organization and consideration as colleagues rather than mere unpaid help.

• Offer of support for resources and structure.

• Offer regular feedback on his work and listen to what he has to say.

• Furnishing proper supervision by competent and patient individuals who have the time to offer advice and guidance.

• Furnish a healthy and safe environment suitable for the assigned task.

• Participation in planning and developing new projects and the encouragement to make suggestions with the assurance that his opinions will be respected.

• Show appropriate and tangible recognition of efforts (e.g., through offering new responsibilities, giving prizes or simply showing on a day-to-day basis that his work is appreciated and valued by the Organization).

• Information about the Organization's policies concerning certain benefits available to him, such as reimbursement for expenses incurred on behalf of the Organisation or any other information that may concern him.[37]

A correlative of the rights and privileges that a volunteer enjoys from an organization or a government is comprised of the corresponding obligations toward an organization or a government.[38] Below are some of the obligations owed to such an organization or government:

- Openness and honesty about his motivations and goals.
- Understand what a job requires before accepting it.
- Carry out his tasks efficiently and honestly.
- Accept guidance and supervision from the person in charge of volunteers.
- Participate in any training offered by the Organization.
- Respect for confidentiality.
- Express to the Organisation's coordinator his satisfaction or dissatisfaction with the job assigned and suggest improvements or changes.
- Notify the coordinator as soon as possible if he is unable to attend a training session or carry out his assigned duties.

The American Peace Corps

The Peace Corps was initially established as an agency in the US Department of State[39] by President John Kennedy on March 1, 1961, when he signed the Executive Order 10924. The purpose of the Peace Corps is defined as providing:

[37]International Bill of Human Rights . Available online at : efaidnbmnnnibpcajpcglclefindmkaj/https://www.ohchr.org/sites/default/files/Documents/Publications/Compilation 1.1en.pdf. Accessed 5th, January, 2024.

[38] Ibid.

[39]On March 1, 1961, President John Kennedy signed the Executive Order 10924 which established the Peace Corps as an agency in the U. S. Department of State. However, since December 29, 1981, the Peace Corps became an

> ... world peace and friendship through a Peace Corps, which shall make available to interested countries and areas men and women of the United States qualified for service abroad and willing to serve, under conditions of hardship if necessary, to help the peoples of such countries and areas in meeting their needs for trained manpower.[40]

The American Peace Corps has proved to be an effective means of providing services to other countries. It has provided more than 190,000 Peace Corps volunteers who have served in 139 host countries in such areas ranging from education on HIV/AIDS to information technology, teaching of languages, mathematics, and science.

United Nations and the Technical Aid Corps

The United Nations or the United Nations Organisation is an international organisation that officially came into existence on October 24, 1945, in San Francisco in the United States of America. It is regarded as the world government. Its purposes, as set out in Article 1 of the Charter of the United Nations, include the maintenance of international peace and security, the development of friendly relations among nations, and the cooperation in solving international problems of an economic, social, cultural, or humanitarian character.

The United Nations is made up of six main organs: - the Security Council, the General Assembly, the International Court of Justice, the Secretariat, the Economic and Social Council, and the Trusteeship Council. The Secretariat of the United Nations is in New York, United States of America. [41]

The Technical Aid Corps (TAC) is an establishment under the Nigerian Federal Ministry of Foreign Affairs. The sole obligation of the Technical Aid Corps is to provide development

independent agency in the United States by virtue of S. 250 1-1 of the Peace Corps Act. The information is available online at: www.peacecorps.gov/multimedialpdf/policieslmslol.pdf. Accessed 12th , January,2024

[40]Ibid. Section 2501.

[41]United Nations. "Peace, Dignity, and Equality on a Healthy Planet". Available online at: https://www.un.org/en/about-us/main-bodies. Accessed 30th, December, 2023.

assistance mainly to the African, Caribbean, and Pacific countries as a practical demonstration of South-South cooperation. [42]

Although, the Technical Aid Corps (TAC) serves a good purpose. It differs from the United Nations in its formation and its powers. The United Nations was formed after World War II to promote peace, security, and economic development. It came into existence after the collapse of the League of Nations, which had been started after World War I. Fifty-one member states ratified its Charter on October 24, 1945, in San Francisco. President Roosevelt first coined the term 'United Nations' during World War II at a meeting of twenty-six nations who pledged to continue fighting against the evil Axis. Today the United Nations has one hundred and ninety-one members. The governing body is the Security Council made up of five permanent members and ten members elected by the General Assembly for a two-year term. The headquarters of the United Nations are in New York City. There are five official languages: Arabic, Chinese, English, French, Russian, and Spanish.[43]

On the other hand, the Technical Aid Corps (TAC) is a Scheme, which is of benefit to less endowed countries. The Nigerian government established TAC to assist needy African, Caribbean, and Pacific countries in areas of technical manpower. The legal framework for this Scheme is Decree No. 27 of 1993, which took effect in 1987.[44] The conception of TAC by the Babangida Administration in 1987 was motivated by and fashioned along the American Peace Corps, which was established in 1961 under the Peace Corps Acts.[45] The purposes of TAC, include:

- Assisting African, Caribbean, and Pacific (ACP) countries in meeting some of their assessed and perceived manpower needs in their respective countries;

- Sharing Nigeria's know-how and expertise with other African, Caribbean, and Pacific ACP countries;

[42] "Directorate of Technical Aids Corps Ministry of Foreighn Affairs". Available online at :https://www.dtac.gov.ng/DTAC/dtac/aboutDTAC. Accessed 30th. January, 2024.
[43] "United Nations Peace, Dignity and equality on a Healthy Planet" *op.cit*
[44] Nigeria and African Development Agenda: The Technical Aid Corps (TAC) Initiative". 3(6) Journal of African Studies and Sustainable Development (2020). P.111.
[45] *Ibid.*

• Facilitating meaningful contracts between the youth of Nigeria and those of the Recipient countries; and

• Promoting cooperation and understanding between Nigeria and all the other African, Caribbean, and Pacific countries.

The Responsibility of the Federal Government to the Volunteers

It is beyond polemics that our discussion so far has been on agreements as those agreements affect the rights and privileges of volunteers and other agencies in international law. After all, the crux of the issues under international law is hinged on agreements. In the same vein, we shall attempt to highlight the agreements between the parties about their rights and privileges under the Technical Aid Corps Scheme in Nigeria. [46] The first is the responsibility of the Federal Government to the volunteers which are;

- Payment of onshore and offshore allowances to the Volunteers.
- Payment of resettlement allowance.
- provision of return passages to Volunteers. Volunteers are however not entitled to baggage allowance.
- Limited fringe benefits such as leave grants.
- In the event of the death of a nuclear family member such as Parents, Spouse or offspring of a Volunteer, the Government shall be responsible for the passage of the Volunteer from his or her post to Nigeria and back, strictly subject to the prior approval of the Directorate. In line with the practice of the Directorate, it shall as of necessity be represented as the funeral of the deceased.[47]

The Responsibilities of the Recipient Country to Volunteers.

The responsibilities are:

- Provision of reasonably furnished accommodation.
- Payment of utilities such as water, electricity and gas.
- Provision of free medical services.

[46] Directorate of Technical Aids Corps *op.cit.*
[47] Ibid

- Provision of transportation where applicable.
- The recipient country shall freely deploy each volunteer to any part of the country at his own expense. It is pertinent to note that the internal deployment of volunteers is the sole responsibility of the host State.
- The recipient country shall grant the volunteer exemption for payment of local income tax. bank savings, interests and other payments by the exchange control regulations in force in the recipient country; and such other payments and facilities as may, from time to time, be agreed upon by the Directorate and the recipient country. It shall accord to the volunteers "First arrived privileges" which grants exemption from all taxes imposed by raising of important of personal effect used of volunteer within (12) twelve months of their arrival or as it is applicable in a particular country. Personal effects may be defined as household goods and articles such as motor vehicles, air conditioners, refrigerators, washing machines and other electronic gadgets which must accompany the volunteers or be imported within twelve (12) months of arrival in their respective recipient countries.
- Local sales of such items shall however be made only with the former consent of the appropriate host authority and shall be liable to import duties if sold to a person not entitled to similar privilege.[48] A recipient country may offer employment to a volunteer on completion of his assignment, on such terms and conditions as may be agreed upon by them. [49]

Conclusion

It is obvious from the preceding examination of the topic under discussion that the various agreements between the Government of the Federal Republic of Nigeria, the recipient country, and a volunteer are protected by the rules of the game and they enjoy the protection of international law. Because individuals are also subjects of international law, a volunteer under the Technical Aid Corps agreement, (like a legal alien or a foreigner, a diplomatic staff or a staff of the United Nations or its agencies) enjoys some rights and privileges in Nigeria and elsewhere outside the country where they are posted and are, therefore, protected by the law.

[48] Ibid.

[49] www.efaidnbmnnnibpcajpcglclefindmkaj/https://placng.org/lawsofnigeria/laws/N135.pdf. Accessed 2nd March, 2024.

Interestingly, the number of contingent volunteers deployed by the Government of the Federal Republic of Nigeria to the African, Caribbean, and Pacific countries continues to rise. This goes to show that the purpose of the Scheme is being achieved.[50] The Nigerian Government should be commended for its efforts in sharing its expertise with other countries where those skills and expertise are needed. While the government of the Federation deserves greater accolades for her sense of largess and the progressive need to move forward, out of the third world status, and probably to attain the vision 2020 propagated by the Federal Government, the volunteers should be equally appreciated for their voluntarism.

For example, the United Nations imposed sanctions upon Libya saying that all states should significantly reduce the number and level of their staff at Libyan diplomatic missions and consular posts and restrict or control their movements within Libyan territory.[51]

[50]For example, between 1987 and 2004, 1,677 Technical Aid Corps' volunteers were deployed to thirty-three countries.

[51]The sanction was imposed by the Security Council Resolution 748 of 1992.

ISRAEL AND PALESTINE (GAZA) PATHWAYS TO PEACE THROUGH DIPLOMATIC AND NON-DIPLOMATICCONFLICT RESOLUTION MECHANISMS.

Abubakar Issa Imam *

Abstract

The Israel-Palestine conflict, particularly the ongoing situation in Gaza, remains one of the most protracted and contentious geopolitical disputes, fueled by a history of political and moral neglect from the leaders of Israel, Palestine, and the international community. As a result, the civilian populations in the disputed areas continue to bear the heaviest burden. This suffering will only intensify if effective action is not taken to resolve the conflict. Numerous efforts have been made to address the conflict through diplomatic (peaceful) means, but a lasting peace has remained elusive. This paper explores the various strategies employed to resolve the Israel-Palestine dispute, examining historical and contemporary efforts, including diplomacy, negotiation, mediation, and military interventions. The analysis emphasises the importance of addressing key issues such as territorial claims, the right of return for refugees, security concerns, and mutual recognition in order to foster a sustainable solution. It also highlights the role of international actors and institutions in either supporting or hindering peace initiatives. The study ultimately argues that, while non-diplomatic methods may yield short-term gains for one side, diplomatic efforts, though challenging, provide a more viable path to long-term peace. To achieve a lasting resolution, the international community must adopt a comprehensive and inclusive approach that integrates both diplomatic and non-diplomatic methods, recognising the legitimate needs and rights of both Israelis and Palestinians.

Keywords: Israel and Palestine, diplomatic means of settlement, non-diplomatic means settlement, territorial disputes, and international actors.

Introduction

The Israel and Palestine conflict is one of the most enduring and complex geopolitical issues in modern history, characterised by decades of violence, territorial disputes, and series of animosities. This conflict has not only shaped the political landscape of the Middle East[1] but has also had far reaching implications on international relations and global peace efforts.[2] The journey for a lasting resolution has been pursued in the past through various means, including diplomatic (peaceful)methods of dispute settlement and none-diplomatic (forceful or coercive) in

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[1]Ibrahim Fraihat: Palestine still key to Stability in the Middle East. https://www.brooking.edu accessed on 28th August, 2024

[2]Universal de Navarra: War in Palestine and its Impact on Western Countries. https://www.uav.edu accessed on 28th August, 2024.

the side of both the Israel and Palestine resulting in military actions in response to attacks and counter attacks, yet, the conflict persisted.[3]The diplomatic settlement of disputes includes diplomatic Negotiation, Mediation, Conciliation, Arbitration, Judicial Settlement mechanisms aimed at achieving a mutually acceptable solution. These efforts have often involved the participation of global powers and international organisations such as the United Nations, United States, United Arab Emirates etc, which have sought to be a broker of peace agreements and encourage dialogue between the conflicting parties.

On the other hand, the non-diplomatic settlement of disputes encompasses the use of military force, coercion, and other forms of pressure to impose a resolution being a method adopted by both Israel and Palestine in claiming their entitlements via violence attack, occupation, blockade and other means. This approach has often led to cycles of violence, with each side seeking to assert its claims through force, resulting in significant humanitarian consequences, killings of civilian population and further entrenching hostilities.[4]

The path to peace between Israel and Palestine remains fraught with issues and challenges, requiring a delicate balance between addressing historical grievances, ensuring security, and fostering mutual recognition and cooperation, all these can only be achieved via Intervention of International powers.[5]This article will explores the potential avenues for achieving peace in the ongoing Israeli-Palestinian conflict considering both diplomatic and non-diplomatic strategies, and the prospects for a sustainable peace.

It is important to note that under the *UN Charter*[6], parties must peacefully settle their international disputes, and the organs of the United Nations which are concerned with the diplomatic settlement of disputes are the General Assembly, the Security Council and the International Court of Justice. In addition, the Charter recognises regional agencies for the diplomatic settlement of disputes which may be established under regional arrangements. The only requirement is that such regional agencies and their activities shall be consistent with the

[3]Shlomo Ben-Ami: The Israel-Palestinian Conundrum. <https://www.international.ucla.edu.> accessed on 28th August, 2024.
[4]Human Rights Watch: Isreal-Palestine Unprecedented Killings, Repression. https://www.hnw.orgaccessed on 28th August, 2024
[5]Carnegie Endowment For International Peace, Centering Rights in Isreal-Palestine Conflict Resolution. https://carnegieendowment.orgaccessed on 28th August, 2024
[6]Article 2 (3) the UN Charter

principles and purposes of the Organisation.[7]The Charter in Article 33 provide for numerous means of settling disputes as mentioned above though, it does not prescribe a particular means or way of settling disputes but rather, gives the parties the latitude to choose their dispute settlement mechanism.

Historical Background of Disputes between Israel and Palestine (Gaza)

The Israel and Palestine conflict, particularly concerning Gaza, is a very serious complex and multifaceted issues which have its roots in the late 19th and early 20th centuries. This evolution of the conflict has shaped the situation up to the present day.[8]

Palestine is a country in the region of West Asia recognised by 145 out of 193 UN member states. It encompasses the Israeli-occupied West Bank and Gaza Strip, which is collectively known as the Palestinian territories, within the broader geographic and historical Palestine region. The country shares most of its borders with Israel, and it borders Jordan to the east and Egypt to the southwest. It has a total land area of 6,020 square kilometers (2,320 sq mi) while its population exceeds five million people. Jerusalem is its proclaimed capital while Ramallah serves as its administrative center, Gaza city was its largest city until 2023.[9]

For nearly four centuries (Pre-20th Century), the history has it that, the region now known as Israel, Palestine and Gaza were part of the Ottoman Empire and during this time, the area was home to a diverse population, including Muslims, Christians, and Jews, living relatively peacefully under Ottoman rule.[10]

The Israeli-Palestinian issue goes back to nearly a century when Britain, during World War I, pledged to establish a national home for the Jewish people in Palestine under the Balfour Declaration. British troops took control of the territory from the Ottoman Empire at the end of October 1917, this led to Jewish migration to Palestine. Between 1918 and 1947, the Jewish population in Palestine increased from 6% to 33%. Due to the demographic change, tension arose leading to the Palestinian revolt from 1936 to 1939.[11]Meanwhile, an organisartion called

[7]Harris, Cases and Material on International Law 6L ed. London Sweet and Maxwell, 2004, p. 1024.
[8]Al-Jazeera: Isreal-Palestine Conflict, A Brief History in Map and Charts. https://www.aljazeera.comaccessed on 28th August, 2024
[9]IsisCB Explore: Geographic Term; Palestine https://data.isiscb.org
[10]The Othman Empire ruled Jerusalem and the region from 1517-1917, bringing many changes to the area.
[11]Britanica: Balfour Declaration (United Kingdom 1917). https://www.britanica.comaccessed on 28th August, 2024.

Zionist continued to campaign for a homeland for Jews in Palestine, thereby making the protagonist of Zionist who are an Army of trained civilians started to attack the Palestinian people, forcing them to flee their homeland.[12]

As violence continued to ravaged Palestine, the matter was referred to the newly formed United Nations. In 1947, the UN adopted Resolution 181, which called for the partition of Palestine into Arab and Jewish states, handing over about 55% of the land to Jews. Arabs were granted 45% of the land, while Jerusalem was declared a separate internationalised territory. The Jewish leadership accepted the plan, while the Arab states and Palestinian Arabs rejected it, leading to increased hostilities.[13]

The city is currently divided between West Jerusalem, which is predominantly Jewish, and East Jerusalem with a majority of Palestinian population. Israel captured East Jerusalem after the Six-Day War in 1967 along with the West Bank and this was not recognised by the international community.[14]

In 1993, Palestinian leader Yasser Arafat and Israeli Prime Minister Yitzhak Rabin signed the Oslo Accords, which aimed to achieve peace within five years. It was the first time the two sides recognised each other.[15]However, the Oslo Accords slowly broke down as Israeli settlements, Jewish communities built on Palestinian land in the West Bank, grew at a rapid pace. The settlement population in the West Bank and East Jerusalem grew from approximately 250,000 in 1993 to up to 700,000 in 2023. About three million Palestinians live in the occupied West Bank and East Jerusalem.[16]

Further to the above, the construction of Israeli settlements and a separation wall on occupied territories has fragmented the Palestinian communities and restricted their mobility. About 700 road obstacles, including 140 checkpoints dot the West Bank. About 70,000 Palestinians with Israeli work permits cross these checkpoints in their daily commute. These Settlements are considered illegal under international law. The UN has condemned settlements, calling it a big

[12]Ibid
[13]Wikipedia: United Nations Partition Plan for Palestine also known as Resolution 181 which was adopted in 1947. https://en.wikipedia.org
[14]Al-Jazeera (Note 8. Page 2)
[15]Avi Shlaim: The Oslo Accord. https://www.jstor.org accessed on 28th August, 2024
[16]Peace Now: 30 Years After Oslo, The Data That Shows How the Settlements Proliferated Following the Oslo Accords. https://www.peacenow.org accessed on 28th August, 2024

hurdle in the realisation of a viable Palestinian state as part of the so-called "two-state solution".[17]

Following the broke down of 1993 Oslo accord, there comes a second agreement in 1995 which divided the occupied West Bank into three parts area A, B and C. The Palestinian Authority, which was created in the wake of the Oslo Accords and was offered only limited rule on 18% of the land by the agreement, as Israel effectively continued to control the West Bank.[18]It should be mentioned that in 1980 Israel declared the annexation of East Jerusalem but the international community still considers it an occupied territory. Palestinians equally want East Jerusalem as the capital of their future state.[19]

Another turn of event was the rise of Hamas who seized control of Gaza Strip which made Israel to impose a blockade on Gaza in 2007. The siege continues till date and Israel also occupies the West Bank and East Jerusalem the territories Palestinians want to be part of their future state.[20]

Owing to the surprised Hamas attack inside Israel, there remain a continuous blockade on the Gaza Strip,[21]leading to cutting of electricity supplies, food, water, and fuel. At least 1,200 people were killed in that attack. The Israel and Palestine conflict, particularly the situation in Gaza, is one of the most contentious issues in modern history rooted in competing national recognition, boundary claims and religious significance, the conflict has defied numerous attempts at resolution. The humanitarian toll, particularly in Gaza, is immense, and the prospects for a lasting peace remain uncertain.

As of this year 2024, the ongoing conflict between Israel and Hamas in Gaza has resulted in a large number of civilian casualties. Over 41,000 Palestinians have been reported killed, the majority of whom are civilians, including a significant number of children. In Israel, the death toll has reached over 1,100, also including civilians affected by the hostilities.[22]The situation

[17]United Nations Office for Humanitarian Affairs: Over 700 Road Obstacles Control Palestinian Movement Within the West Bank. https://www.ochaopt.org accessed on 28th August, 2024
[18]Anera: What are Area A, B and Area C in the West Bank? https://www.anera.org accessed on 28th August, 2024
[19]Wikiedia: East Jerusalem :https://en.wikiedia.org accessed on 28th August, 2024
[20]Aljazeera: Israel-Palestine Conflict, A brief history in maps and charts. https://www.aljazeera.comaccessed on 28th August, 2024
[21]Ibid, Isreal Announces Total Blockade on Gaza. https://www.aljazeera.comaccessed on 28th August, 2024
[22]Reuters: Gaza death Toll, how many Palestinians and Israeli's Campaign Killed? https://www.reuters.com accessed on 29th August, 2024.

remains tensed, with daily reports of additional deaths, particularly in heavily targeted areas such as Gaza City.

The Root Cause of Israel and Palestine Disputes and Settlement Measures Adopted: Issues and Challenges

For this article to proffer a road in attaining peace in the ongoing Israeli and Palestinians disputes, the root cause of the issues and the settlement approached mechanism adopted since the beginning of this conflict need to be outlined and discussed which will in turns give ways to proffer an applicable means of settling the ongoing disputes. The Israel-Palestine conflict is deeply rooted in a complex history of territorial competition, religious domination, encroachment on acclaimed land and quest for recognition as a state. All these can be deduced from the above outlined historical antecedent in tracing the major cause of disputes and settlement moves and developments.[23]

The first cause of dispute between Israeli and Palestinians is the move for Jewish Nationalism known as Zionism which emerged in 19th century (Zionism and Arab Nationalism)[24]advocating for the establishment Jewish land or home in Palestine then part of Ottoman Empire because, at that time Jewish had no particular country of belonging as Jewish are in many countries like USA, BRITAIN etc and simultaneously, Arab Nationalism was growing with many Arabs in the Palestine desiring independence from Ottoman rule.[25]

Also, during and after the World War I, the establishment in Palestine of homeland for the Jewish people received support from British Government and League of Nations issued Balfour Declaration[26]stating that nothing will prejudice the religious rights of non-Jewish communities in Palestine. This led the Jewish immigration to Palestine increased significantly leading to tensions and conflicts between Jewish and Arab communities.[27]

[23]Jacob Tsunda Salihu: Historical Foundation of The Israel-Palestine Conflict. https://www.researchgate.net accessed on 29th August, 2024.
[24]Institute For Curriculum Service: Zionism and Arab Nationalism. https://icsresources.org accessed on 29th August, 2024
[25]Ibid.
[26]Britanica: Balfour Declaration. https://www.britanica.com accessed on 29th August, 2024
[27]Embassies: The British Mandate. https://embassies.gov accessed on 29th August, 2024

The after mount of the Jewish immigration is Arab Revolt,[28]Arab opposition to Jewish immigration and land purchases led to a large-scale revolt against British rule and Jewish settlements. The British responded with harsh measures the attempts to limit Jewish immigration, leading to further tensions of arrest and killings of Palestinians and destruction of their homes. In this revolt, thousands of civilian populations of Palestinians lost their lives.

This first revolt brought about the first settlement mechanism which is UN Resolution 181,[29]whereby the United Nations proposed partitioning Palestine into separate Jewish and Arab States, with Jerusalem as an international city. This plan was accepted by the Jewish leaders but rejected by Arab leaders and neighboring Arab states. The Palestinians rejected the plan because it allocated about 5% of Palestine to the Jewish. At that time, the Palestinians owned 94% of historic Palestine which comprised of 67% of its population.[30]

The second cause of disputes between Israeli and Palestinians follows the declaration of the State of Israel in 1948,[31]Israel announced its establishment and neighboring Arab states invaded. The war resulted in significant territorial changes, with Israel controlling more land than was allocated under the UN plan, and the displacement of a large number of Palestinian Arabs (*the Nakba*).[32]The following day, the first Arab-Israeli war began and fighting ended in January 1949 after an agreement to stop the war was reached between Israel and Egypt, Lebanon, Jordan and Syria. This led to the second settlement move (In December 1948) where the UN General Assembly passed Resolution 194,[33] which calls for the right of return for Palestinian refugees.[34]

This resolution 194 which is yet another settlement measure (The United Nations General Assembly Resolution 194) was sponsored by UN Mediator (Folk Bernadotte) and adopted by 35 countries out of 58 members of the United Nations at that time, 15 voted against and 8 abstaining, the main gist of this resolution was for the return of Palestinian refugees to their homes and live at peace with their neighbors, it also, proffer compensation for the property of

[28]Wikipedia: 1936-1939 Arab Revolt in Palestine. https://en.wikipedia.org accessed on 29th August, 2024
[29]Wikipedia: United Nations Partition Plan For Palestine. https://en.wikipedia.org accessed on 29th August, 2024.
[30]Ibid
[31]*Al-Jazeera*: Arab-Isreali War.https://www.aljazeera.comaccessed on 29th August, 2024
[32]Ibid
[33]Wikipedia: United Nations General Assembly Resolution 194.https://en.wikipedia.orgaccessed on 29th August, 2024.
[34]Ibid

those who choose not to return. The resolution also calls for the establishment of the United Nations Conciliation Commission to facilitate pace between Israel and Arab States. Israel objected to the Resolution 194 though not a member of the United Nations at this time but had been given *de jure* recognition. Palestinian representatives likewise rejected many articles in the Resolution but later reverse their position in 1949 and started drumming support for it having been adjudge by several organisations and individuals who believe that the Resolution 194 enshrine a right for the Palestine refugees to return to their homes which the Israel had occupied in 1948 war.[35]

However, due to the tone of Resolution 194 which was largely rejected by the Israel, the Israeli continued with her settlement expansion (Post-1948 Developments and Settlement Expansion)[36] and captured the West Bank, Gaza Strip, East Jerusalem, and other territories during the Six-Day War(until the 2005 disengagement). This marked the beginning of Israeli settlement construction in the occupied territories and it was considered illegal under international law by most of the international community, though Israel disputed this.[37]

Settlement construction began in the occupied West Bank and Gaza Strip. A two-tier system was created with Jewish settlers afforded all the rights and privileges of being Israeli citizens whereas Palestinians had to live under a military occupation that discriminated against them and barred any form of political or civic expression. This led to the first Palestinian shake off (*The first Intifada 1987-1993*)[38]erupted in the Gaza Strip in December 1987 after four Palestinians were killed when an Israeli truck collided with two vans carrying Palestinian workers. This event sparked to widespread protests, which later escalated into a broader movement.

This uprising was charracterised by demonstrations, civil disobedience, strikes and boycotts of Israel products, it also led to the establishment of the Hamas movement, an off-shoot of the Muslim Brotherhood that engaged in armed resistance against the Israeli occupation, Palestinians women and children were involved in this protest with the use of stones on the Isreali military.

[35]See Notes 33
[36]See Notes 33.
[37]Amnesty International: Israel Settlements and International Law. https://www.amnesty.org accessed on 29th August, 2024.
[38]Wikipedia: First Intifada. https://en.wikipedia.orgaccessed on 29th August, 2024

The Israeli military force to responded with life ammunition, tear gas and mass arrest. Israeli Government also imposed curfews, restrained movement in Palestinian territories and closed schools.[39]

The first Intifada having resulted in significant loss of life of women and children prompted the International Community to search for a solution to the conflict and this lead to the signing of Oslo Accords in 1993were the first direct agreements between Israel and the Palestine Liberation Organization (PLO) was made and it aim to establish a framework for future relations and the eventual creation of a Palestinian state which is referred to as "The *Oslo* Years"[40]and the formation of Palestinian Authority, an interim government that was granted limited self-rule, though, the issues at the heart of the conflict remained unresolved, leading to future tensions and the eventual outbreak of the second Intifada in 2000.[41] The Oslo Accord of 1993 though aimed to establish peace in the Israel Palestine conflict, it however fails to address issues like borders, the status of Jerusalem, the right of return of Palestinian refugees and the fate of Israeli settlements.

Despite the Accord however, violence continued between Israelis and Palestinians, settlement expansion continued with military operations, undermining trust between the parties. In 1995, Israel built an electronic fence and concrete wall around the Gaza Strip in furtherance of settlements making it difficult for Palestinian State to be actualised. All these shortfalls contributed to the eventual collapse of the Oslo Accord and the continuation of the Israeli Palestinian conflict.[42]

After the shortfalls of Oslo Accord, there was another uprising which resulted in thousands of deaths and injuries with Palestine bearing the highest casualties this revolt is referred to as "The Second *Intifada* also known as *Al-AqsaIntifada*"[43]began on September 28, 2000 to 2005, the immediate trigger was the visit of one Ariel Sharon the then leader of Israeli opposition party to the Al-Aqsa Mosque compound with thousands of security forces deployed in and around the old

[39]Ibid.
[40]Office of the Historian: The Oslo Accords and The Arab-Israeli Peace Process. https://history.state.gov accessed on 29th August, 2024.
[41]See Notes 40.
[42]Foreign Policy: Why the Oslo Peace Process Failed. https://foreingpolicy.com accessed on 29th August, 2024.
[43]Institute of Palestine Studies: The Second Intifada, Then and Now. https://digitalproject.palestine-studies.org accessed on 29th August, 2024.

city of Jerusalem, the Palestinians saw this as a provocative act, especially considering the religious significant of *Al-Aqsa* Mosque, protests and riots broke out which escalated into widespread violence and numerous suicide bombing. During this war, Israel continued with the construction of separation wall destroyed Palestinian livelihoods and communities, claiming that it is for security purposes thereby moving towards annexation of Palestinian land, this move was internationally criticised.[44]

After the second Intifada, there arises an internal crisis among the Palestinians when the leader of Palestinian Liberation Organisation (PLO) Yasser Arafat died,[45]and a year later, the second Intifada ended, Israeli settlements in the Gaza were dismantled, and Israeli soldiers and 9,000 settlers left Gaza and surrounding communities. A year after, Palestinians voted in a general election for the first time and Hamas won a majority against Fatah, a civil war broke out, lasting for months, resulting in the deaths of hundreds of Palestinians. In June 2007, Israel imposed a land, air and naval blockade on the Gaza Strip, accusing Hamas of "terrorism".[46]

Israel has also due to the several terrorism activities of Hamas group launched four different military attack on Gaza (The wars on the Gaza Strip)[47]between 2008, 2012, 2014 and 2021. Thousands of Palestinians was killed, including many children, and tens of thousands of homes, schools and office buildings have been destroyed.[48]

It is worthy to mentioned that during this protracted crisis, the International Communities also put in place The Two State Solution[49] as a settlement measure but till now, the commitment to achieve that is not materialistic even though, it was endorsed by various international bodies, the two sides are yet to give in as peace talk continuously broke down due to the settlement expansions by the Israel, political divisions in Palestine and other grey areas not address by the Two State Solution.

[44]Aljazeera: Israeli Forces attack Palestinian Worshippers at Al-Aqsa Mosque. https://www.aljezeera.com. accessed on 29th August, 2024.
[45]Wikipedia: The Death of Yasser Arafat on 11th Oct, 2024. https://en.wikipedia.orgaccessed on 29th August, 2024.
[46]Ibid
[47]Congressional Research Service: Israel and Hamas Conflict In Brief; Overview; U.S. Policy and Option for Congress. https://crsreports.gov. accessed on 29th August, 2024.
[48]Oxfam International: More Women and Children killed in Gaza by Israeli Military than any other recent Conflict in a Single Year. https://www.oxfam.org accessed on 29th August, 2024.
[49]Britannica: Two State Solution. https://www.britanica.comaccessed on 29th August, 2024.

From the forgoing, it can be seeing that series of settlement mechanism to achieve peace in the ongoing crisis in Israel and Palestine have been put in place but they remain unimplemented due to lack of commitment from all parties involved.[50]

Issues and Challenges

The Israeli-Palestinian conflict is a complex and multifaceted disputes with deep historical, political and social dimensions. In attaining road to peaceful settlement, issues and challenges needs to be identified. Followings are the core issues at the heart of the conflict.[51]

One of the prominent issues that have degenerated to the ongoing Israel and Palestine conflict is the issue of Borders and Territorial Disputes. The borders between Israel and the supposed Palestinian state have been contested by the Israeli settlement in the West Bank Gaza strip and East Jerusalem.[52]These core areas are often referenced as a basis for negotiation, but Israel has built settlements in the West Bank and East Jerusalem, complicating this issue and making the peaceful settlement move more complicated. Although this sole action of Israeli is seeing as illegal and obstacle to achieving the two-state solution under the international law by many countries and international organisations.[53]

The second issue is the control of Jerusalem, with both Israelis and Palestinians asserting claims to the city as their capital. Israel controls the entire city and regards it as its capital, while Palestinians seek East Jerusalem as the capital of a future Palestinian state. Also, another key issue is the Right of Return of Refugees where Millions of Palestinian refugees, displaced during the Arab-Israeli war[54]and their descendants, seek the right to return to their ancestral homes and Israel opposes this.

[50]Nathan J. Brown: Israeli and Palestinian Societies Have Little Remaining Hope of Peace. https://carnegieendowment.org accessed on 29th August, 2024.
[51]Kratika Kushwah: The Israel-Palestine Conflict; Exploring Legal Dimension and Paths to Resolution. https://www.abacademies.org. accessed on 29th August, 2024.
[52]Global Center For The Responsibility to Protect: Israel and Occupied Palestinian Territory. https://www.globalr2p.org. accessed on 29th August, 2024
[53]Reham Owda: How Irael, Settlements Impede The Two-State Solution. https://carnegieendowment.org accessed on 29th August, 2024.
[54]Wikipedia: 1948 Arab-Isreali War. https://en.wikipedia.org accessed on 29th August, 2024

The issue of Security is also a concern as Israel priortised their security for the prevention of terrorism attacks from Hamas group in Gaza[55]which lead to the presence of its military personnel both in Gaza, Jerusalem and west Bank, these, the Palestinians experienced every day and it create significant tension leading to violence and attack.[56]

Blockade of Gaza[57]is another issues and challenges hampering on the progress of settlement. The blockade has led to widespread poverty, unemployment, and lack of access to basic services, including healthcare and the control and distribution of water resources between Israel and the Palestinian territories remain contentious. Israeli military further exacerbated the Palestinians sufferings leading to humanitarian crisis.

The role of some international powers' players like the United States, the United Nations, and regional powers (such as Egypt and Iran) also shape the conflict situation by complicating it more as they have various interests which often influence the dynamics of the conflict.[58]

Pathways to Peace through Diplomatic and Non-Diplomatic Conflict Resolution Mechanisms

In attaining peace in the ongoing disputes in Israel and Palestine, this article suggests a hybrid approach, that, is the use of diplomatic methods such as Negotiation, Mediation, Conciliation, Arbitration and Judicial Settlement with the strategic application of non-diplomatic measures like, International Military Intervention or Occupation. The success of any of this settlement mechanism depends on international support and commitment, leadership willingness on both sides in addressing core issues such as Territorial and Boundary issues, the status of Jerusalem, rights of return of refugee, security concerns, and mutual recognition etc.

It is important to note that the UN Charter does not prescribe a particular way or means in which an internal dispute could be settled, it gives parties a freehand to settle their disputes and choose from the avalanche of disputes settlement mechanism as provided in Article 33 of the UN

[55]BBC: What is Hamas and Why is it Fighting with Israel in Gaza. https://www.bbc.com accessed on 29th August, 2024
[56]Nicholas McGrath: Everyday Insecurity in Gaza; Experiencing Blockade; Displacement and Panopticism. https//www.e-ir.info accessed on 29th August, 2024
[57]Wikipedia: Blockade of the Gaza Strip. https://en.wikipedia.org accessed on 29th August, 2024
[58]Universidad de Navarra: War in Palestine and its impact on Western Countries

Charter. Equally, the United Nations Security Council (UNSC) can intervene in the settlement of disputes under international law based on its charter and guiding principles, where a dispute poses a threat to international peace, breaches the peace, or involves acts of aggression.[59]Also, where it involved severe human rights violations, the UN Human Rights Council or other UN mechanisms may get involved. In cases of genocide, ethnic cleansing, or crimes against humanity, the UNSC can intervene to protect civilians under the "Responsibility to Protect" (R2P) doctrine.[60]This intervention can range from mediation to authorising sanctions or the use of force.[61]The UNSC can mandate peacekeeping missions or approve international military interventions to prevent escalation or resolve conflicts.

It is in line with the above, that this article suggests as first measure, the use of peace keeping mission along with the presence of International Military forces in the affected areas to alleviate tension and prevent possible attacks from both sides. This will also involve the withdrawal of Israeli military forces from the areas of concerns, which in turn, will prompt Hamas to retreat, viewing the Israeli pullback as a sign of security threats. In this context, the United Nations should prioritise promoting respect for human rights and fundamental freedoms for all individuals, irrespective of race, gender, language, or religion. Moreover, the conflicting parties are encouraged to cooperate in addressing these international issues that have global implications.[62]

One of the key internal principles that should guide efforts to reduce the tension in the ongoing Israel-Palestine conflict is adherence to international law, particularly rules designed to prevent civilian death and suffering. These include prohibitions against actions such as cutting off access to water, food, electricity, and fuel for entire civilian populations. This principle is primarily governed by International Humanitarian Law (IHL), also known as the law of armed conflict or the law of war. Several key treaties and protocols, such as the Fourth Geneva Convention (1949) and its Additional Protocols, provide specific protections for civilians during wartime. Notably, Article 54 of Additional Protocol I (1977) explicitly prohibits "starvation of civilians as a method of warfare" and the destruction of essential objects indispensable to the survival of the civilian

[59]Chapter VII of the UN Charter Article 39
[60]R2P is an international norm that seek to ensure that the international community never fails to halt the mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity
[61]United Nations University: UN Sanctions and Mediation Project. https://i.unu.edu.accessed on 30th August, 2024
[62]United Nations: Universal Declaration of Human Rights. https://www.un.org. accessed on 30th August, 2024

population, such as foodstuffs, agricultural areas, drinking water installations, and supplies, and irrigation works. The Fourth Geneva Convention[63]also prohibits the use of civilian populations as human shields and ensures that civilians have the right to leave areas of hostilities. Also, Rule 53 of the International Committee of the Red Cross (ICRC) and Customary International Humanitarian Law similarly prohibits starvation of civilians and the targeting of objects indispensable to their survival.[64] Further, "intentionally directing attacks against the civilian population"[65]and "intentionally using starvation of civilians as a method of warfare" are recognised as war crimes.[66]

All these legal frameworks are designed to ensure that military actions are conducted in a way that minimises harm to civilians and civilian infrastructure, it also establishes that cutting off essential resources like water, food, electricity, and fuel to a civilian population is generally prohibited under international law and may constitute a war crime. Therefore, the UN through its peace keeping mission aimed at restoring peace in the ongoing Israel and Palestine conflict, should prioritise the delivery of humanitarian aid to the civilian population. This includes foodstuffs, agricultural areas, drinking water installations, supplies, irrigation works, electricity and the provision of hospital for the wounded and sick civilian.[67]

Once the humanitarian situation is addressed and tensions are eased, it will be both easier and more essential to shift the focus from immediate relief to long-term peace. Achieving a permanent and lasting peace between Israel and Palestine can only be realised through diplomatic means, emphasising negotiation, mediation, and dialogue, all pursued without resorting to violence.[68]

At this stage, with the commitment of the international community to peacekeeping missions, it is essential to allow the parties to the conflict to directly engage and reach agreement on peaceful

[63]Article 17
[64]International Committee of the Red Cross: Starvation as a Method of Warfare. https://ihl.databases.icrc.org accessed on 30th August, 2024
[65]Article 52(2) of the Additional Protocol I to the Geneva Convention of 1977.
[66]Article 54(1) of the Additional Protocol I to the Geneva Convention of 1977.
[67]Humphrey Nwobashi Nwefuru: Israeli-Palestine Conflict and the United Nations Peace Initiative. https://www.ajol.info. accessed on 30th August, 2024
[68]Jonathan Rynhold: Beyond Humanitarian Aid, A Plan for Gazan Civilians is a Strategic Necessity for Israel. https://basecenter.org. accessed on 30th August, 2024

means. This process must be conducted in accordance with the "Principles of International Law Concerning Friendly Relations and Cooperation among States", which was adopted by the United Nations General Assembly in 1970. These principles outline the fundamental rules of international law that govern relations between states, promoting peaceful coexistence and cooperation. The Declaration is grounded in the UN Charter and reflects customary international law.[69]The principles read;

"That states must refrain from using or threatening force against the territorial integrity or political independence of other states, that all international disputes should be resolved through peaceful means like negotiation, mediation, arbitration, or judicial settlement, ensuring peace, security, and justice, that states must not intervene in the internal or external affairs of another state, particularly in matters of sovereignty or governance, that peoples have the right to freely determine their political status and pursue their economic, social, and cultural development, that all states, regardless of size or power, are legally equal in their rights and obligations under international law, that states are encouraged to cooperate in various fields such as economic, social, cultural, and humanitarian efforts to promote international peace and security. Lastly, the states must fulfill their obligations under international law, including treaties and agreements, in good faith."[70]

Having established the above principle, which must be observed by the disputing parties in achieving a peace settlement, it is therefore incumbent on Israel and Palestine to engage in direct bilateral negotiations. In these negotiations, both parties need to participate in sustain talks to address core issues such as borders, security, refugees, and the status of Jerusalem, with a viable roadmap for reaching a peaceful resolution.[71]

Furthermore, third-party mediators from international entities such as the U.S., EU, UN, Egypt, or Jordan can play a role in facilitating peace talks. For instance, the Oslo Accords (1993) were mediated by Norway.[72] Additionally, the International Court of Justice (ICJ) and the Permanent

[69]Sir Robbert Jennings: Position of the States in International Law. https://academic.oup.com. accessed on 30th August, 2024.
[70]These states are primarily drawn from several core documents of international law, most notably the United Nations Charter and the International Covenant on Civil and Political Rights (ICCPR).
[71]Wikiedia: Israeli-Palestinian Peace Process. https://en.wikiedia.org accessed on 30th August, 2024.
[72]Ibid

Court of Arbitration (PCA) have the authority to provide legally binding resolutions to specific disputes.[73]

Finally, the implementation of UN Security Council Resolutions, including Resolution 242 (1967) and the Oslo Accords, should be examined. These call for the withdrawal of Israeli forces from occupied territories and the recognition of every state's right to live in peace. Measures such as releasing prisoners, halting settlement expansion, or reducing military presence in sensitive areas can help build goodwill and trust, creating a foundation for broader agreements.[74]

Conclusion

In conclusion, the Israel and Palestine disputes, remains one of the most complex and prolong disputes in modern history. Driving towards a sustainable peace requires a very wider approach that balances both diplomatic (peaceful) and non-diplomatic (forceful) means of dispute resolution. While Negotiations and International Mediation offer hope for a peaceful settlement, the realities on the ground often lead to escalations in violence and achieving peace will depend on addressing core issues such as territorial boundaries, security, the status of Jerusalem, and the rights of refugees, alongside building trust between the parties. Also, for any settlement to succeed, both sides must engage in dialogue with a genuine commitment to foster peace and mutual recognition, with the require support of international community. The road to attaining peace is challenging, but a combination of peaceful negotiations and, where necessary, firm and commitment interventions may provide the framework for a lasting resolution.

[73]Kitty Sorah: International Conflict Resolution, The Potential of the International Court of Justice Versus the Permanent Court of Arbitration. https://mortzlaw.osu.edu. accessed on 30th August, 2024.
[74]National Archives: Peace to Prosperity, A vision to Improve the Lives of Palestinian and Israeli People. https://trumpwhitehouse.archieves.gov. accessed on 30th August, 2024.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR COMBATING CYBERCRIMES IN NIGERIA

Daudu S O* and Idehen S O**

Abstract

This article examines the current legal and institutional regime for combating cybercrimes in Nigeria. It shall in adeptly examine the Cybercrime Act in combating cybercrimes in Nigeria and also examine the laws combating cybercrime in other jurisdictions such as the UK and USA. The discussion shall also cover the effectiveness of the legal framework aimed at combating cybercrimes in Nigeria, and the challenges affecting the fight against cybercrimes in Nigeria and some selected jurisdictions. As the use of digital technologies and internet connectivity has increased in Nigeria, the incidence of cybercrimes such as hacking, software piracy, and credit card fraud has also risen. In response, the Nigerian government enacted the Cybercrime Act in 2015 to prohibit, prevent, and punish cybercrimes through a comprehensive legal framework. The key law regulating cybercrime in Nigeria is the Cybercrime Act of 2015. This Act aims to create a robust legal regime to combat cybercrimes by defining offences and prescribing penalties. Other relevant laws include the Criminal Code Act, Money Laundering Act, and the Nigerian Communications Act. Countries such as the UK and USA have also enacted laws to tackle the borderless nature of cybercrimes. In 1996, the Council of Europe drafted an international treaty on computer crimes. The US enacted laws like the USA Patriot Act, 2003 to expand law enforcement powers online. However, effectively enforcing these laws in Nigeria is still challenging due to factors like transnational nature of crimes, lack of technical capacity, and inadequate public awareness. This negatively impacts the fight against cybercrimes in Nigeria.

Keywords: Cyber, Cybercrime, Combat, Nigeria, Crime, Internet.

Introduction

This article examines transnational cybercrimes as crimes occurring several jurisdictions. The advancement of technology has brought about increase in the severity, comprehensiveness and sophistication of incidents of cybercrimes such that cybercrimes can now be effortlessly transnational. In the face of this reality, most countries have responded to this challenge by enacting legislations to address cybercrimes. In Nigeria today, the activities of cybercriminals have become a threat to the society. With the advent of information age, legislatures have been

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struggling to redefine laws with a view to criminalised cybercrimes. As a result of this, the Cybercrimes Act, 2015 was enacted for the prohibition, prevention, detection, response, and prosecution of cybercrimes and for other related matters. Aside the new Cyber Act, there are laws that indirectly relate to the prosecution of cybercriminals in Nigeria. These laws include the Economics and Financial Crimes Commission (EFCC) Establishment Act, Advanced Fee Fraud and Other Related Offences Act, the Nigeria Criminal Code, the Penal Code, the Money Laundering Act, and the Nigeria Evidence Act. Attempt shall also be made to other jurisdictions in their legislative effort to combat cybercrimes.

Legal Frameworks Combating Cybercrime in Nigeria

In Nigeria today, the activities of cyber criminals have become a threat to the society.[75] With the arrival of information age, legislatures have been struggling to redefine laws that fit crimes committed by cybercriminals.[76]Initially, there were no specific laws in Nigeria for combating computer crimes.[77]This led to the creation of an ideal environment for criminals to freely operate without any law to combat their criminal activities.[78] It is a general principle of law that an uncodified crime is not punishable, as provided in Section 36 of the 1999 Constitution of the Federal Republic of Nigeria[79] which states thus: A person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof prescribed in a written law; and a written law refers to an Act of the National Assembly or a law of a State.[80]

The factors involved in the prosecution of a crime under the Nigerian law emanates from one major source. As a result of this, the Cybercrime Act 2015 has been enacted for the prohibition, prevention, detection, response and prosecution of cybercrimes and for other related matters. Aside the new Cybercrime Act, there are laws that indirectly relate to the prosecution of cybercriminals. These laws include Economic and Financial Crimes Commission (Establishment) Act 2004, Advanced Fee Fraud and other Fraud Related Offences Act, Nigerian

[75]Oke, R. "Cyber Capacity without Cyber Security: A Case Study of Nigeria's National Policy for Information Technology" Journal of Philosophy, Science and Law, (2012) Vol.2, No.1, 17-22

[76]Ani, L. "Cybercrime and National Security: The Role of the Penal and Procedural Law" Law and Security in Nigeria, (2015), Vol. 10, No.7, pp. 197-232

[77]Ehimen, R. and Bola, A. "Cybercrime in Nigeria", Business Intelligence Journal, (2010) Vol.3, No.1, 93-98

[78]Ibid.

[79]Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria

[80]Ibid.

Criminal Code, The Penal Code, Money Laundering Prohibition Act and the Nigerian Evidence Act.

Economic and Financial Crimes Commission (Establishment) Act

This Act was enacted to repeal the Financial Crimes Commission (Establishment) Act, 2002. Section 1 of the Act establishes a body known as the Economic and Financial Crimes Commission (EFCC).[81]

Section 5 of the Act[82]charges the commission with the responsibility of the enforcement and the due administration of the Act, the investigating of all financial crimes including advance fee fraud money laundering, counterfeiting, illegal charge transfers and also the prosecution of all offences connected with or relating to economic and financial crimes, in consultation with the Attorney- General of the Federation. Criminal activities that would come under these economic crimes would include the activities of the 'Yahoo boys' whose activities are sabotage on the economy of the country.[83]

Section 5 has been the basis for various actions of EFCC including Emmanuel Nwude (the accused) in the case of ***Federal Republic of Nigeria v. Chief Emmanuel &Ors*.**[84]The accused in the case was reputed to have carried out the third world biggest single scam with numerous others pending in count. In this case, the accused persons were charged to the High Court of Lagos State. A57-count charge was proffered against the accused persons including the scamming to the tune of US $181.6 million and they were all found guilty and sentenced accordingly. In addition to this sentence, their assets were forfeited to the Federal Government of Nigeria and the sums of money recovered and returned to their owners.

Sections 14-18 stipulate offences within the remit of the Act. This includes offences to financial malpractices, offences in relation to terrorism, offences relating to false information and offences in relation to economic and financial crimes.[85]

Section 46 of the Act defines 'economic crime' as the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either-individually or in a group or organised manner thereby violating existing legislation governing the economic activities of

[81]Section 1 of the Economic and Financial Crimes Commission (Establishment) Act, 2002
[82]Section 5, Ibid
[83]Ehimen, Cybercrime, note 3
[84]Suit No. CA/244/05 http://www.cenbank.gov.ng/419/cases.asap(Accessed 16th March, 2021)
[85]Section 14–18of the Economic and Financial Crimes Commission (Establishment) Act, 2002

government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and policy, open market abuse dumping of toxic wastes are prohibited.[86]

Advanced Fee Fraud and other Fraud Related Offences Act[87]

The Act was enacted to prohibit and punish certain offences pertaining to advance fee fraud and other fraud related offences and to repeal other Acts related therewith. Advance fee fraud is a vexing threat and a major problem in Nigeria today.[88] The Act provides for ways to combat cybercrime and other related online frauds. The Act provides for a general offence of fraud with several ways of committing it, which are by obtaining property by false pretence, use of premises, fraudulent invitation, laundering of fund obtained through unlawful activity, conspiracy, aiding among other crimes.

Section 2 makes it an offence to commit fraud by false pretence. This Section can be used to prosecute criminals who commit cybercrimes like computer related fraud, where the offender uses an automation and software tools to mask criminals' identities, while using the large trove of information on the internet to commit fraud.[89]

According to Section 7, a person who conducts or attempts to conduct a financial transaction which involves the proceeds of a specified unlawful activity with the intent to promote the carrying on of a specified unlawful activity with the intent to promote the carrying on of a specified unlawful activity; or where the transaction is designed to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of a specified unlawful activity is liable on conviction to a fine of N 1 million and in the case of a director, secretary or other officer of the financial institution or corporate body or any other person, to imprisonment for a term, not more years and not less than five years.[90]

[86]Section 46, Ibid
[87]Advanced Fee Fraud and Other Fraud Related Offences Act, 2006, CAP A6, LFN 2010
[88]Chawki, M. "Nigeria Tackles Advanced Fee Fraud" Journal of Information, Law and Technology, (2009) Vol.1, No.4, 1-20
[89]Section 2 of the Advanced Fee Fraud and other Related Offences, 2006
[90]Section 7, Ibid

However, while in previous laws the onus was on the government to carry out surveillance on unlawful activities of criminals, the new law by virtue of Section 13 vests this responsibility on industry players, including internet service providers (ISPs) and cybercafé operators, among others. While the EFCC is the sub-sector regulator, the Act by virtue of Section 12 prescribes that henceforth, any user of internet services shall no longer be accepted as anonymous. Through what has been described as due care measure, cybercafés operators and ISPs will henceforth monitor the use of their systems and keep a record of transactions of users.[91] These details include, but are not limited to, photographs of users, their home address, telephone, email address, etc.

Money Laundering (Prohibition) Act[92]

Another related law regulating internet scam is the Money Laundering (Prohibition) Act 2004. It makes provisions to prohibit the laundering of the proceeds of crime or an illegal act. Section 14 (1) (a) of the Act prohibits the concealing or disguising of the illicit origin of resources or property which are the proceeds of illicit drugs, narcotics or any other crime.[93]Section 17 and Section 18 of the Act also implicates any person corporate or individual who aids or abet illicit disguise of criminal proceeds.[94] Section 10 makes life more difficult for money launderers by mandating financial institutions to make compulsory disclosure to National Drugs Law Enforcement Agency in certain situations prescribed by the Act.[95] In the same way, be acting on his own account, the financial institution shall seek from him by all reasonable means information as to the true identity of the principal.

This enables authorities to monitor and detect suspicious cash transactions and these Sections can be used against criminals who use the internet as a means of unlawfully transferring large amount of money from one account to another.

[91]Section 12, Ibid
[92]Money Laundering (Prohibition) Act Cap M18, LFN 2010
[93]Section 14 of the Money Laundering (Prohibition) Act
[94]Section 17 and 18, Ibid
[95]Section 10, Ibid

Criminal Code[96]

This Act was enacted to establish a code of criminal law in Nigeria. The criminal code criminalizes and sanctions any type of stealing of funds, in whatever form and also false pretences. Although, cybercrime is not specifically mentioned here, crimes such as betting, theft and false pretences performed through the aid of computers and computer networks is a type of crime punishable under the criminal code. Section 239(2) (a) and 240A of the code prohibit betting and public lotteries respectively.[97] Section 239(2)(a) provides that any house, room or place which is used for the purpose of any money or other property, being paid or received therein by or on behalf of such owner, occupier, or keeper or person using the place as or for an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse race or other fight, game, sport or exercise, of any house, room, or place knowingly and willfully permits it to be opened, kept or used or any person who has the use or management of such business of a common betting house is guilty and liable to imprisonment for one year, and to a fine of one thousand naira.[98] This Section can be used by law enforcement agencies to regulate 'Online Betting' contravene this Section. or prosecute such persons as would contravene this section.

Nigerian Evidence Act

This Evidence Act repeals the old Evidence of 1945. As opposed to the old Evidence Act, this Act allows for admissibility of digital and electronic evidence. Before the enactment of the Act, electronically generated evidence was not admissible in Nigerian courts, thereby creating a serious impediment in the prosecution of cybercrimes. In the case of ***Esso West Africa Inc. v. T. Oyegbola***[99]the court had a foresight when it stated that:

> The law cannot be and is not ignorant of the modern business methods and must not shut its to the mysteries of computer. In modern times reproduction and inscriptions documents by mechanical process are common place and Section 37 cannot therefore only apply to books of account.

[96]Criminal Code Act CAP 38, LFN 2010
[97]Section 239-240 of the Criminal Code Act
[98]Section 239(2), ibid.
[99](1969) NMLR 194 at pp.216-217

This Act is therefore a big step in the right direction towards the prosecution of cybercrime activities in Nigerian courts. Following age-long need for review of evidence laws to become age compliant, digital evidence is now admissible on Nigerian courts. The Act provides for the definition of a Computer which was not included in the 1945 Evidence Act. Under the Act, a computer is defined as 'as any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process.[100]

Section 84(1)-(5) introduces the 'admissibility of statements in documents produced by computers.[101] The Section has now made it possible for facts for which direct oral can be given to be equally evidence by a computer-produced document containing such facts, subject however to condition precedents as to the document, the computer from which it was generated and the who generated it or manages the relevant activities captured in the document, for instance cybercafé managers, secretaries, ATM card users or experts - the list is endless.[102]

Thus, in ***R v. Spiby***[103]the English Court of Appeal held that the trial judge had properly admitted evidence of computer printouts of a machine which had monitored hotel guests' phone calls. Taylor L.J. in this case confirmed that 'this was not a printout which depended in its content for anything that had passed through the human mind' and so was admissible as real or direct evidence.[104] The court also noted here that unless there was evidence to the contrary the court would assume that the electronic device generating the evidence was in working order at the material time.

Lawyers can now rely on Section 84(5)(c) to prove that information via mobile phones and other gadgets/devices are admissible. This has made it more convenient and expedient for our courts to admit computer generated evidence.

Cybercrime Act 2015

This is an Act that provides for the prohibition, prevention, detection, response and prosecution of cybercrimes and other related matters. The Act is divided into eight parts. Part I provides for the objectives and application of the Act, Part II provides for the protection of critical national

[100]Section 258 of the Evidence Act
[101]Section 84, Ibid
[102]Chinedu, L. Regulation of Cybercrime In Nigeria (Owerri; Imo State University Press; 2014) 69
[103](1990) 91 Criminal Appeal Review 186
[104]Ibid.

infrastructure, part III provides for offences and penalties, Part IV provides for duties of service providers, Part V provides for administration and enforcement, Part VI of the Act provides for search, arrest and prosecution, Part VII provides for jurisdiction and international co-operation and Part VIII provides for miscellaneous.

The objectives of the Act are to-

Provide an effective and unified legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria;

Ensure the protection of critical national information infrastructure; and Promote cybersecurity and the protection of computer systems and networks, electronic communications; data and computer programs, intellectual property and privacy rights.

Before the enactment of this Act, the legal and institutional framework regulating cybercrime in Nigeria was not unified. But through this Act, the legal, regulatory and institutional framework for the combating of cybercrime would be unified. The application of the provisions of the Act would also apply throughout the Federal Republic of Nigeria.[105]

The Act looks into the position of the nation with reference to information and communication where it provides for the designation of certain computer systems or networks as critical information infrastructure.[106]And it further provides that:

The president may on the recommendation of the National Security Adviser, by Order published in the Federal Gazette, designate certain computer systems, networks and information infrastructure vital to the national security of Nigeria or the economic and social well being of its citizens, as constituting Critical National Information Infrastructure.[107]

The presidential order made under subsection (1) of this Section may prescribe minimum standards, guidelines rules or procedure in respect of the protection or preservation of critical information infrastructure; the general management of critical information infrastructure; access to, transfer and control of data in any critical information infrastructure, infrastructural or procedural rules and requirements for securing the integrity and authenticity of data or information contained in any critical national informational infrastructure; the storage or achieving of data or information regarded critical national information infrastructure, recovery

[105]Section 2 of the Cybercrime Act, 2015
[106]Section 3 of the Cybercrime Act, 2015
[107]Ibid.

plans in the event of disaster or loss of the critical national information infrastructure or any part of it; and any other matter required for the adequate protection, management and control of data and other resources in any critical information infrastructure.

Through this aforementioned provision of the Act, national security is secured and enhanced by the protection of critical information infrastructure.

Part III of the Act discuss the offences and penalties in relation to cybercrimes. Through these provisions, crimes committed through computer and computer networks are codified and thus punishable under Nigerian law. Before the enactment of these provisions, only internet related fraud was actually a punishable cybercrime. But this Part of the Act provides for offences and penalties in relation to cybercrimes.

The Act provides for offences against critical national infrastructure. And any person who commits any offence against any critical national information infrastructure, pursuant to Section 3 of the Act, is liable on conviction to imprisonment for a term of not less than fifteen years without an option of fine.[108] Where the offence committed under subsection (1) of this Section results in grievous bodily injury, the offender shall be liable on conviction to imprisonment for a minimum term of fifteen years without option of fine.[109] Where the offence committed under subsection (1) of this Section results in death, the offender shall be liable on conviction to death sentence without an option of fine.[110]

Critical national information infrastructure is defined as those assets (real and virtual), systems and functions that are vital to the nations that their incapacity or destruction would have a devastating impact on national economic strength, national image, national defiance and security, government capability to functions and public health and safety. The critical national infrastructure is therefore a major asset for the nation, and Section 5 (1) would therefore help in promoting national security.

The Act further criminalizes unlawful access to a computer and the crime is punishable with a term of imprisonment of not less than two years or to a fine of not less than five million naira or to both fine and imprisonment.[111]The Act further provides that where the crime of unlawful access to a computer was committed with the intent of obtaining and securing access to any

[108]Section 5(1) of the Cybercrime Act
[109]Section 5(2) of the Cybercrime Act, 2015
[110]Section 5(3), Ibid
[111]Section 6(1) of the Cybercrime Act, 2015

computer data, program, commercial or industrial secrets or confidential information, the offender shall be liable to a term of imprisonment of not less than three years or to a fine of not less than seven million naira or such offender shall be liable to both fine and imprisonment.[112]

The Act discusses unlawful interception of communications, where it further provides that any person, who intentionally and without authorization or in excess of authority intercepts any data from a computer to or from a computer, computer system or connected system or network commits an offence and liable on conviction to imprisonment for a term of not less than two years or to a fine of not less than five million naira or to both fine and imprisonment.[113]

This Section aims to secure the internet which is a collection of information, protect data and protect the privacy of individuals in relation to the information they transfer through the net.

The Act also establish numerous other crimes, including unauthorized modification of a computer program or data,[114] system interference,[115] misuse of devices,[116] computer-related fraud,[117]identity theft or impersonation,[118]cyberstalking,[119] and cybersquatting.[120]

Section 17 of the Act also criminalizes cyber-terrorism and provides that any person who accesses or causes to be accessed any computer system for the purpose of committing a terrorist act as defined under Terrorism (Prevention) Act 2011 as amended commits a cyberterrorism offence and he is thus liable to life imprisonment upon conviction.

The Act also criminalizes child pornography and creates two classes of offenses under this category. The first involves the use of a computer network for the purpose of, among other activities, the possession, production, and/or distribution of materials depicting a minor, a person appearing to be a minor, or images representing a minor engaged in sexually explicit conduct.[121] The second involves the use of 'information and communication technologies' to engage in such acts as luring and meeting (here the crime requires two elements to exist: communicating with a child online followed by an in person meeting) with s child for the purpose of engaging in sexual

[112]Section 6(2), Ibid
[113]Section 7, Ibid
[114]Section 8, Ibid
[115]Section 9, Ibid
[116]Section 10, Ibid
[117]Section 12, Ibid
[118]Section 13, Ibid
[119]Section 15, Ibid
[120]Section 16, Ibid
[121]Section 14, Ibid

activities or recruiting a child to participate in a pornographic performance.[122] The penalties for the offences would range from a five to ten year prison term or fines ranging from ten to twenty million naira, or both, depending on the particular offense.[123]

Institutions Regulating Cybercrime in Nigeria

There are certain bodies in Nigeria set up by the Nigerian government mainly involve the setting- up of special bodies by the Nigerian government to deal with cybercrime.[124]And they include the Economic and Financial Commission (EFCC) and the Nigerian Cybercrime Working Group.

Economic and Financial Crimes Commission (EFCC)

The EFCC is a Nigerian law enforcement agency that investigates financial crimes such as advance fee fraud and money laundering. The commission is empowered to investigate, prevent and prosecute offenders who engage in *'money laundering, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, human trafficking, and child labour, illegal oil bunkering, illegal mining, tax evasion, foreign exchange malpractices include counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes, and prohibited goods'*.[125]

The commission is also responsible for identifying, tracing, freezing, confiscating, or seizing proceeds derived from terrorist activities. For example, in 2005, the EFCC confiscated at least hundred million dollars from spammers and other defendants.[126]

Nigerian Financial Intelligence Unit (NIFU)

This is an operative unit in the office of EFCC and was established under EFCC Act 2004 and Money Laundering (Prohibition) Act of 2004, as amended.[127] The unit is a significant component of the EFCC.[128]It complements the EFCC's directorate of investigations but does not carry out its

[122]Ibid.
[123]Ibid.
[124]Chawki, supra note 14
[125]Ibid, p.12
[126]Olukanmi, A. "Expert Group Meeting on Cybercrime", Journal of Law and Policy, Vol.2, pp. 17-21
[127]Saulawa, M., Marshal, J. "Cyberterrorism: A Comparative Legal Perspective", Journal of Law, Policy and Globalization, (2015), Vol.3, No. 1, pp. 11-22
[128]Chawki, Nigeria Tackles Advanced Fee Fraud, note 14

own investigation.[129] The unit's coordinating objective is receipt and analysis of financial disclosure of Currency Transaction Report and Suspicion Transaction. All financial institutions and designated non-financial institutions are required by law to furnish the NFIU with details of their financial transactions.[130] The NFIU has access to records and databanks of all government and financial institutions, and it has entered into memorandums of understandings (MOUs) on information sharing with several other financial intelligence centres.[131]

Nigerian Cybercrime Working Group

The Nigerian Federal government in 2004 set up the Nigeria Cybercrime Working (NCWG) to realize the objectives of National Cybersecurity Initiative (NCI).[132] The objectives of the NCI include public enlightenment of the Nigerian populace on the nature and danger of cybercrime, criminalization through new legislation of all on-line vices, establishment of legal and technical framework to secure computer systems and Networks, and protection of critical information infrastructure for the country.[133] The group was created to deliberate on and propose ways of tackling the malaise of internet fraud in Nigeria.

Legal Framework on Cybercrimes in other Jurisdictions

Canada

Canada was one of the first countries to enact criminal laws in the area of computer crime.[134]According to a study by a United Nations-sponsored network of internet policy officials, Canada is ahead of nearly two-thirds of the 52 countries surveyed in enacting laws to crack down on cybercrimes.[135]

[129]Ibid.
[130]Ibid.
[131]Ibid.
[132]Maska, M. "Building National Cybersecurity Capacity in Nigeria: The Journey so Far" (2009) Regional Cybersecurity Forum for Africa and Arab States, Tunis, available at http://www.itu.int/ITU-D/cyb/events/2009/tunis/docs/maska-nigeria-cybersecurity(Accessed 28th May, 2021)
[133]Ibid.
[134]Kowalski, M. "Cybercrime Issues, Data Sources, and Feasibility of Collecting Police-Reported Statistics", Canadian Centre for Justice Statistics, http://www.publications.gc.ca/collection/statcan/85-558-x85-558(Accessed 3rd June, 2021)
[135]Ibid.

Canada is a signatory to the Convention on Cybercrime. It requires that each state party prosecute cybercrimes committed within its territory.[136] This translates that a country could claim territorial jurisdiction in a case where the computer system attacked is on its territory, even if the perpetrator of the attack is not.

In Canada, if a crime falls under Section 430 or 342.1 of the Canadian Criminal Code that is where a computer or data is object of the crime. The code makes provision for mischief in relation to computer data. It provides for computer sabotage which include destruction of hardware, erasure or alteration of data, logic bombs. The Section provides that everyone commits computer data or mischief who willfully destroys or alters computer data; renders computer data meaningless, useless or ineffective; obstructs, interrupts or interferes with the lawful use of obstructs, interrupts or interferes with a person in the lawful use of computer data or denies access to computer data to a person who is entitled to access to it is liable to imprisonment for life if the mischief committed caused actual danger to life or to a term of ten years or two years depending on the degree of crime committed.[137]

Thus, under Section 430(1.1), an offence occurs when viruses are used to cause mischief to data. Under the code, there is no law expressly prohibiting the creation or dissemination of computer viruses. Although under Section 430(5.1) of the criminal code, distribution of virus might constitute an offence even if the virus has yet to be activated. The Section provides for that an act or omission is an offence if that act or omission is likely to constitute mischief causing actual danger to life, or to constitute mischief in relation to property or computer data.[138]

The Criminal Code also provides for computer fraud and other economic crimes. These include misuse of credit or bank cards, breach of trust or abuse of confidence, forgery and related offences.[139] Canadian courts have held that anything that can be considered property can be the object of theft or fraud. In the case of ***Regina v. Stewart,***[140] the Ontario Court of Appeal held that copying a confidential list of hotel union employees from a computer printout constituted theft of property. In the most recent Canadian case involving computer-related crime, *Turner and the Queen,*[141] the Ontario High Court reconciled the absence of Parliamentary action with judicial

[136]Article 22 of the Budapest Convention on Cybercrime,,(year)
[137]Ibid.
[138]Section 430 of the Criminal Code of Canada
[139]Ibid.
[140]42 Ontario 2d 225 (1983)
[141]13 Criminal Code of Canada 3d 430 (1984)

expansion of the definition of property.[142] In Turner, the defendants had accessed computer tapes and tampered with the program stored on the tapes so that other users were unable to use the program without first obtaining the new program code. The court found that the defendants, by their actions, had interfered with the retrieval of data off the tape, making it impossible for other users to process their work. If the Turner case is followed, Canadian courts will treat alteration or destruction of computer data specifically as an interference with property.[143]

Combating cybercrime in Canada comes under the jurisdiction of the Office of Critical Infrastructure Protection and Emergency Preparedness (OCIPEP) a division of Public Safety Canada.[144] Under the OCIPEP umbrella is the Cyber Security division responsible for the Canadian Cyber Incident Response Centre (CCIRC), Canadian Cyber Incident Response Centre Partners, Cyber Security Technical Advice and Guidance, and Cyber Security in the Canadian Federal Government. OCIPEP facilitates communication and networking amongst Canadian organizations and businesses, provides updates and advisory tools, provides training and workshops, and acts in conjunction with similar departments of foreign government.

United States

The United States (US) has certain federal laws that relate to computer crimes.[145] In the early 1980s, law enforcement agencies in the US faced the dawn of the computer age with developing issues about the lack of criminal laws available to fight emerging computer crimes.[146] Although there existed in the federal criminal code, provisions relating to the wire and mail fraud, they were incapable of combating the new computer crimes.[147] This led to the enactment of laws to deal with computer crimes. In doing so, Congress opted not to add new provisions regarding computers to existing criminal laws, but address federal computer-related offences in a single, new statute.[148]

[142]Ibid. at p.434
[143]Menelly, L. "Prosecuting Computer-Related Crime in the US, Canada and England", Boston College International and Comparative Law Review, http://www.lawdigitalcommons.bc.edu/iclr/vol8/iss2/9(Accessed 26th May, 2021)
[144]Duke, S. "Cybercrime in Canada: Strategies, Reforms and Amendments in the Canadian Judicial Law Enforcement Systems" http://www.academia.ed/documents/3397373508/cybercrime-strategies(Accessed 3rd June, 2021)
[145]Jarie, M. and Balie, M. "Prosecuting Computer Crimes" http://www.justice.gov/sites/default/files/criminal-cips/egacy(Accessed 20th June, 2021)
[146]Ibid.
[147]Ibid.
[148]Ibid.

In some situations, the Act allows victims who suffer specific types of loss or damage as a result of violations of the Act to bring civil actions against the violators for compensatory damages and injunctive or other equitable reliefs.[149] The situations in which a victim could bring an civil action for any equitable relief include physical injury to any person; a threat to public health or safety; damage affecting a computer system used by or for a government entity in furtherance of the administration of justice, national defence, or national security; loss to one or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the US only, loss resulting from a related course of conduct affecting one or more other protected computers) aggregating at least $5,000 in value; the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals; and damage affecting one or more protected computers during any one- year period.[150] As long as a victim is able to prove that he has suffered any type of loss or damage aforementioned, such will suffice for a victim to bring a civil action against the violator.

Another US federal law used for combating computer crimes is the Wiretap Act[151]. The federal Wiretap Act, as amended in 1986 by the Electronic Communications Privacy Act, protects the privacy of wire, oral, and 'electronic communications', a broad term that includes computer network communications.[152] It is both procedural and substantive.[153] It prohibits not just law enforcement, but 'any person' from making an illegal interception or disclosing or using illegally intercepted material.[154]

The prohibition crux of the Wiretap Act is found in Section 2511(1)(a), which prohibits 'any person' from intentionally intercepting, or attempting to intercept, any wire, oral or electronic communication. From the aforementioned Section, it must be shown that the interception of the communication be intentional.

While the Wiretap Act has provided for wide prohibitions in Section 2511(1), it has also provided for many exceptions in subsection 2511(2). The exceptions that are particularly relevant in the context of network crimes would be briefly discussed here. One exception is where the

[149]Subsection 1030(g) of the CFAA
[150]Subsection 1030(c) of the CFAA
[151]Section 2510 – 2522 of the Federal Wiretap Act, 18 USC
[152]Title 18 of the United States Code SS 2510-2522, The Wiretap Act
[153]Jarie, supra note 96
[154]Section 2511(1) of the Wiretap Act

consent of a party has been given.[155] Thus an interception is lawful if the interceptor is a party to the communication or if one of the parties to the communication consents to the interception.

England

In England, criminal law generally applies to illegal acts regardless of the medium used to commit the act. An exception however, is the Computer Misuse Act (CMA) 1990 (and now amended by the Police and Justice Act 2006) which its main focus is on computers. The CMA is the only legislation that explicitly and mainly focuses on computer crime. The Act creates three main offences: (i) unauthorized access to computer material,[156] (ii) unauthorized access to a computer system with intent to commit or facilitate further offences,[157] and (iii) unauthorized modification of computer material.[158] Maximum sentences for these offences range from six months imprisonment and/or a 500 Euros fine to ten years imprisonment and/or an unlimited fine. The current Police and Justice Act[159] contains amendment to the CMA under the Section called Miscellaneous Part 5 Computer Misuse amendments'. For example, Clause 39 doubles the maximum jail sentence for hacking into computer systems from five years to ten years.

Also, the Obscene Publications Act 1964 makes it illegal to publish material that tends to deprave and corrupt those viewing it. The law's approach to child pornography is that it is so offensive that possession as well as circulation of offending images is criminalized. The primary legislation consists of the Protection of Children Act 1978 and the Criminal Justice Act 1988. It is an offence to possess indecent images involving children.

Incitement to racial and religious hatred is also governed by Section 21 of the Public Order Act 1986 which states that it is an offence for a person to publish or distribute material which is threatening or abusive or insulting if it is intended thereby to stir up racial hatred, or having regard to all the circumstances, racial hatred is likely to be stirred thereby. The Racial and Religious Hatred Act 2006 gained Royal Assent on 16 February 2006.[160] The Act makes it illegal

[155]Section 2511(2) of the Wiretap Act
[156]Section 1 of the CMA
[157]Section 2, Ibid
[158]Section 3, Ibid
[159](Commencement No.9) Order 2008
[160]John, J. "Computer Misuse Overview"http://www.jisclegal.ac.uk/legalareas/computermisuse(Accessed 23rdJune, 2021)

to threaten people because of their religion, or to stir up hatred against a person because of their faith.[161]

LOOPHOLES OF THE CYBERCRIME ACT, 2015

The Nigeria Cybercrimes Act 2015, made to contain the growing spate of Internet offences by seeking to arrest, prosecute and sentence anyone found guilty of committing cybercrime and allied offences, lacks what it takes to adequately combat the menace. Though the new law was expected to make the Internet a safer place, this may not be unless the loopholes in the Act are blocked.

The Cybercrimes Act, though long in coming and beset with certain challenging components, may be applied to effectively tackle Nigeria's cybercrime and cyber security challenges. But deliberate efforts have to be made by the key players; Office of National Security Adviser and the Office of Accountant General of the Federation working with stakeholders to make this a reality."

The definitions provided in the Act are "too specific" and may give room for offenders to devise other means of committing crimes outside the specific definitions of the law. There is a danger of confusion when we use specific definitions. For example, if we say someone commits a crime with an ATM machine and in the future we have another machine that is not called ATM to commit fraudulent act, that means, by definition, the person has not committed any offence or done anything wrong." There is nothing that defines what those funds are used for. There is need for the government to fully articulate all these issues and collaborate with the citizens to have a proper framework as to the workings of the Act.

The law is no doubt a welcome development but more needs to be put in place if we most win the war against cyber-attacks in Nigeria but with the new Cybercrime Act in place, which spells out various degrees of punishment for cybercrime offenders, Nigerians will be fully-protected and be able to freely transact online businesses without further fear or intimidation, since there is a law in place.

The issue of the expertise of the Local Enforcement Agents in prosecuting cybercrime and related cases is also suspect and I foresee that according to Section 7 of the Act, the Federal High

[161]Ibid.

Courts will be overburdened as they have been made the exclusive court to handle issues arising from cybercrime offences."

Comparative Analysis of the Nigerian Legal Framework on Cybercrime with some Selected Jurisdictions

Under this section, this study would use the Nigerian Cybercrime Act 2015 as the basis for its comparison. This is because the Cybercrime Act covers virtually everything provided for by other Nigerian statutes dealing with cybercrime. Though the Cybercrime Act adequately provides for the prevention and prosecution of cybercrimes in Nigeria, there are however certain shortcomings.[162]

Unlike the Canadian Law on Cybercrime, the Nigerian Cybercrime Act does not specifically provide for email spam. Section 15 of the Act only provides for the crime of sending messages that are grossly offensive, indecent, obscene, false for the purpose of causing annoyance or with intent to harm any person, property, reputation or with intent to extort. Section 42, which is the interpretation Section, defines cyberstalking to include: '(i) the use of the Internet or other electronic means to stalk or harass an individual, a group of individuals, or an organization. It may include false accusations, monitoring, making threats, identity theft, damage to data or equipment, the solicitation of minors for sex, or gathering information in order to harass; (ii) sending multiple e-mails, often on a systematic basis, to annoy, embarrass, intimidate, or threaten a person or to make the person fearful that she or a member of her family or household will be harmed.'[163]This does not extend to email spam. Email spam involves sending large amount of unsolicited commercial email, which could occur even in the absence of any intent to annoy, threaten or annoy the receiver. In our current age, spam could even contain various malware threats that the sender of the mail might not even know about. Therefore, it is suffice to say that the Cybercrime Act is not comprehensive enough, compared to the Canadian Cybercrime Law, in relation to cyberstalking as opposed to the American legal regime that specifically provides for email spam by virtue of its CAN SPAM Act under Section 1037.

The Cybercrime Act also provides for sanction that ranges from one to five years, depending on aggravating factors and prior convictions. Also, the Cybercrime Act as opposed to the American

[162]Ani, L. Law and Security in Nigeria (Lagos: Legal Studies Press; 2016) pp. 15-27
[163]Ladan, M.T. Cyber Law and Policy in ICT in Nigeria (Zaria: ABU Press; 2015) p.14

Computer Fraud and Abuse Act (CFAA), in the United States, as it does not allow victims who suffer specific types of loss or damage as a result of violations of the Act to bring civil actions against the violators for compensatory damages and injunctive or other equitable reliefs. Section 31 of the Cybercrime Act only provides for the forfeiture of the assets to the Federal Government of Nigeria. Under the CFAA, by virtue of Subsection 1030(g), a victim could bring a civil action for any equitable relief in certain situations. The Cybercrime Act thus neglects the interests of victims that are affected by the acts of cybercriminals and does not provide them with adequate protection.

Furthermore, although Section 24(3) of the Cybercrime Act provides that law enforcement, security and intelligence agencies should undergo training programmes, the fact that the judges are not included among the people required to undergo training programmes would likely affect the effective implementation of the Act. For instance, Section 27(3)(d) of the Cybercrime Act provides that a court may not issue a warrant under subsection 2 of the Section unless the court is satisfied that there are reasonable grounds for believing that the person named in the warrant is preparing to commit an offence under this Act. If the judge in question is not well vast in matters of computer crimes and cyber security, the judge might not know exactly what constitute enough 'reasonable ground' to believe that a person named in the warrant is preparing to commit an offence under this Act. Thus, without adequate knowledge on the part of the judges about computer crimes and cyber security, the Act would not be effectively implemented.

More so, although Sections 8 and 9 of the Cybercrime Act prevent the modification of computer data and computer system through malicious codes such as viruses, they do not prevent the creation and distribution of computer viruses among people.

In view of these gaps identified in the legal framework, there is a need to properly amend the Cybercrime Act so as to cover these lapses, by "borrowing a leaf" from the above stated countries. This would go a long way in enhancing the legal framework on cybercrime by way of enhancing the legal mechanisms available for the effective eradication of cybercrime in Nigeria.

Challenges Faced in the Combating Cybercrime in Nigeria

Despite the legal framework of the Cybercrime Act in Nigeria, the menace has still prevailed in many parts of the country. The following challenges militate against effective fight against cybercrime in Nigeria:

i. Technical Challenges

When a hacker disrupts air traffic control at a local airport, when a child pornographer sends computer files over the Internet, when a cyberstalker sends a threatening e-mail to a school or a local church, or when credit card numbers are stolen from a company engaged in e- commerce, investigators must locate the source of the communication. Everything on the Internet is communications, from an e-mail to an electronic heist. Finding an electronic criminal means that law enforcement must determine who is responsible for sending an electronic threat or initiating an electronic robbery.[164] To accomplish this, law enforcement must in nearly every case trace the "electronic trail" leading from the victim back to the perpetrator. Tracing a criminal in the electronic age, however, can be difficult, especially if we require international cooperation, if the perpetrator attempts to hide his identity, or if technology otherwise hinders investigation.[165]

As networked communications and e-commerce expand around the globe, businesses and consumers become more and more vulnerable to the reach of criminals. The global nature of the Internet enables criminals to hide their identity, commit crimes remotely from anywhere in the world, and to communicate with their confederates internationally. This can happen in nearly any type of crime, from violent crime, terrorism, and drug-trafficking, to the distribution of child pornography and stolen intellectual property, and attacks on e-commerce merchants.[166]

Criminals can choose to weave their communications through service providers in a number of different countries to hide their tracks. As a result, even crimes that seem local in nature might require international assistance and cooperation. For example, a computer hacker in Oslo might attack the computers of a corporation located only a few miles away. Yet, it is very possible that the enforcement agents might have to go to U.S., French, or Danish law enforcement officials for help in finding this criminal. This would happen if the hacker routes his communications through providers in New York, Paris, and Copenhagen before accessing his victim's computer.

Naturally, criminals like these, who weave communications through multiple countries, present added complexities to governments trying to find criminals. Mutual legal assistance regimes between governments anticipate sharing evidence between only two countries, that is, the

[164]Ibid.

[165]Kristine, M.F. "Cybercrime: Conceptual Issues in Nigerian Law Enforcement" <http://www.fas.org/sgp/r425.pdf>(Accessed 21st June, 2021)

[166]Ibid.

victim's country and the offender's country. But when a criminal sends his communications through a third, or fourth, or fifth country, the processes for international assistance involve successive periods of time before law enforcement can reach data in those latter countries, increasing the chances the data will be unavailable or lost, and the criminal will remain free to attack again.

While the Internet may be borderless, national boundaries exist for law enforcement and we must respect the sovereignty of each other's countries. We increasingly are dependent on mutual cooperation from other countries in investigating and prosecuting computer crimes. Simply stated, cybercriminals know no national boundaries, and the multi-jurisdictional nature of cybercrimes requires a new multilateral approach to investigations and prosecutions.

To succeed in identifying and tracing global communications, there is need to work across borders, not only with our counterparts throughout the world, but also with industry, to preserve critical evidence such as log files, e-mail records, and other files, and must be able to do so quickly, before such information is altered or deleted.[167]

ii. Operational Challenges

In addition to technical and legal challenges, law enforcement agencies in Nigeria and around the world face significant operational challenges. The complex technical and legal issues raised by computer-related crime require that each jurisdiction have individuals who are dedicated to high-tech crime and who have a firm understanding of computers and telecommunications. The complexity of these technologies, and their constant and rapid change, mean that investigating and prosecuting offices must designate investigators and prosecutors to work these cases on a full-time basis, immersing themselves in computer-related investigations and prosecutions.[168]

It is wise to suggest that every country should have dedicated high-tech crime units that can and will respond to a fast-breaking investigation and assist other law enforcement authorities faced with computer crimes.

To effectively combat cybercrime, there is a need for proper training of investigators and prosecutors on how to investigate acts or omissions which constitute cybercrimes. This affects how they prosecute crimes in law courts.

[167]Ibid.

[168]Benedict, B., "Consensus on Cybercrime" <https://www.pressreader.com/nigeria/thisday/20150826/281900181961981> Accessed 4th April, 2021

The emergence of new technologies is compounding the efficacy of the legal and institutional efforts geared towards combating cybercrimes in Nigeria. This is more so because of the borderless and transnational nature of cybercrimes generally. Cybercrimes, such as cyber terrorism, fraud-identity theft, drug trafficking deals, cyber stalking, spam, wiretapping, logic bombing, password sniffing, privacy and child pyrography still raised their ugly heads despite the concerted legal efforts aimed at nipping the menace on the board. The growing trend of cyber crime is allegedly attributable to weak enforcement of the legal and institutional instruments put in place to fight the upsurge. The article concludes that the institutionalisation of a task force to monitor and enforce compliance to the relevant legal and institutional frameworks will be the antidotes needed to nip cyber criminalities to the kneels

PUBLIC INTEREST LITIGATION AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS: A VIABLE TOOL FOR THE PROTECTION OF THE RIGHT TO A HEALTHY ENVIRONMENT IN NIGERIA.

Halimat Tope Akaje*

Abstract

The right to a healthy environment is very crucial to human existence. The right has not been adequately protected in Nigeria due to different challenges which sometimes prevent victims of environmental pollution from access to justice. These challenges include legal, procedural, political, economic challenges and so on. This paper seeks to discuss how public interest litigation (PIL) can be applied to environmental litigation in Nigeria for the purpose of protecting the right to a healthy environment. It will enhance access to justice by' allowing concerned persons and NGOs to institute environmental matters on behalf of indigent victims of environmental pollution. The paper adopts doctrinal research methodology by relying on primary and secondary sources of information. The primary materials are legislations, cases, regional and international instruments. The secondary materials are journal articles, textbooks and online materials. This paper finds that victims of environmental pollution do not have adequate access to courts to seek redress of environmental wrongs as a result of different challenge they encounter. This paper recommends that Public Interest Litigation *should be allowed by courts in environmental matters as it will enable victims' access to justice for the purpose of seeking remedies and compensation for their injuries. Other recommendations proffered by this paper are environmental literacy and awareness, continuing capacity building for judges, independence of the judiciary, etc. The paper concludes that the application of* Public Interest Litigation *to environmental matters will enhance the protection of the right to a healthy environment in Nigeria.*

Keywords: Public Interest Litigation, Access to Justice, Environmental Protection, Right to a Healthy Environment

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Introduction

The right to a healthy environment and the extent to which it has been protected is a topical issue which is a subject of continuous debate in Nigeria. The Nigeria Constitution has not adequately protected the right since its provision on the protection of the right is non justiciable. Section 20 of the constitution places an obligation on the State to protect the environment. However, the provision of section 6 (6) (c) is a bottleneck to the realisation of the provision of section 20 as it renders it non justiciable. Thereby placing constraints on the adequate protection of the right to a healthy environment. In the same vein, other challenges such as economic, political, legal and procedural constraints and so on also constitute hindrances to access to courts to seek redress for environmental wrongs.

It is trite to state that the right to a healthy environment is a human right that has been recognised by different countries of the world.[1] The UN General Assembly recently also passed a resolution recognising the human right to a healthy environment on the 28th of July, 2022.[2] The resolution was sequel to the recognition of the R2HE by the UN Human Rights Council in 2021.[3] This reiterates the significance of the right.

Victims of environmental pollution are sometimes precluded from accessing courts for redress and compensation. The constitutional bottleneck[4], procedural and legal constraints such as; subject-matter jurisdiction, *locus standi*, pre-action notice, limitation of action and burden of proof are sometimes obstacles to the redress of environmental breaches[5] in Nigeria. And where a victim fails to surmount these barriers, he may not get justice even when he had obviously suffered from the acts of the polluter and has a cause of action. This has led to the denial of justice to environmental victims, inadequate protection of the right to a healthy environment, non-sanction or inadequate sanction of polluters, increased level of environmental pollution and

[1] Boyd D.R, 'The Constitutional Right to a Healthy Environment' (2012) 54 (4) *Environmental Science and Policy for Sustainable Development,* 4.

[2] IISD, 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment' <https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/> accessed 4 August 2024.

[3] UN Human Rights Council, 'A/HRC/43/53: Good Practices on the Right to a Safe, Clean, Healthy and Sustainable Environment'<https://www.ohchr.org/en/documents/thematic-reports/ahrc4353-good-practices-right-safe-clean-healthy-and-sustainable>accesed 3 August 2024.

[4] CFRN, 1999 s. 6 (6) (c)

[5] Ladan M T, 'Judicial Approach to Environmental Litigation In Nigeria' (Paper presented at a 4 day Judicial Training Workshop on Environmental Law Organized by The National Judicial Institute, Abuja Between 5-9 February 2007).

inadequate restoration/ cleaning of the environment by polluters. It is important to note that the denial of victims of environmental pollution from accessing courts to seek justice can lead victims to resort to self-help which can occasion security problems such as militancy unrest, kidnapping, clashes, economic meltdown and so on.

Public interest litigation is a distinctive and effective tool for enhancing access to courts/justice and for protecting the less privileged. It enables broader community or public interests to be recognised and enforced through the judicial process.[6] It allows concerned citizens and NGOs to institute actions that bother on public interests in courts on behalf of another who could not afford to do so in order to get justice. Public interest litigation has been applied to human rights matters and other constitutional matters.[7] It has also been applied to environmental litigation[8] in India, South Africa, Pakistan etc. and has helped in enhancing victims' access to justice and protecting the right to a healthy environment.

While the concept of public interest litigation is recognised in Nigeria, it has been applied to litigation of constitutional and human rights matters that are mostly non-environmental in nature. The cases of ***Okojie & Others v AG Lagos State***[9]***, Peter Nemi v AG Lagos State and Others***[10]***, Director State Security Service and Another v Olisa Agbakoba***[11]***, Olisah Agbakoba v AG Federation & Minister of Education***[12]***, Fawehinmi v Akilu***[13]***, Bayo Johnson v AG Lagos State***[14]etc. are apposite. Even though there are cases where courts have lend credence to public interest litigation in environmental matters in Nigeria, they are relatively few.[15] However, the continual degradation of the environment with its attendant consequences such as food shortage, diseases, loss of livelihood, water scarcity etc. requires that victims of environmental pollution

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6 Christine M. Forster and Vedna Jivan, 'Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience' <https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/abs/public-interest-litigation-and-human-rights-implementation-the-indian-and-australian-experience/72CBF55A890E8ACE552EE929FE7AABF8> accessed 12 September 2024.

7 Ibid

8 Kausal P. K, 'Role of Public Interest Litigation in India in Environment Protection' <https://lawcorner.in/role-of-public-interest-litigation-in-india-in-environment-protection-by-pranav-kaushal/>accessed 17 August 2024.

9 [1981] 2 NCLR 350.

10 [1996] 6 NWLR (Pt. 452) 42.

11 [1997] 3 NWLR (Pt. 595).

12 FHC/L/CS/1358/2013.

13 [1989] 3 NWLR (Pt. 112) 643.

14 [2007] 8 NWLR (Pt. 1037) 535.

15 Ramos B, 'Environmental Public Interest Litigation in Nigeria: the Paradigm Shift in COPW v. NNPC (2019) 5 NWLR (Pt. 1666) 518' (2020) 3 *Elizade University Law Journal*, 286.

must be given unhindered access to courts in Nigeria for the purpose of enhancing justice. This will help to adequately protect the right to a healthy environment, reduce environmental pollution and protect the environment. Therefore, this paper recommends the application of public interest litigation to environmental matters in Nigeria. This will help in widening *locus standi* and enables public spirited persons and NGOs to litigate environmental matters on behalf of indigent victims of environmental pollution. It will also enhance accessibility of poor victims of environmental pollution to justice.

Concept of the Right to a Healthy Environment

The right to a healthy environment was recognised for the first time at the global level in 1972 at the Stockholm Conference.[16] Scores of countries have also made provision for fundamental right to a healthy environment in their constitutions.[17] However, Nigeria and some countries Such as India, Canada etc. have no provision for fundamental right to a healthy environment in their constitutions. This right has also been given recognition in international and regional instruments[18]. The right to a healthy environment is to the effect that all humans have a right to a safe and sustainable environment [19], which allows them to access unspoiled natural resources such as food, water, air, and land, thereby facilitating their survival and that of the coming generations. This right also encompasses the engagement of the public in environmental decision-making.[20] The right to a healthy environment consists of substantive and procedural rights. The substantive rights are those rights to clean water, clean air, healthy food, and a clean environment while the procedural rights entail access to environmental information, the right to participate in environmental decision-making, and access to remedies.[21] It is worthy to note that the UN General Assembly also made a resolution recognising the human R2HE on the 28th of

[16] The Stockholm Declaration 1972, Principle 1.
[17] Boyd n1, 4.
[18] ICESCR art 12(2) (b); ACHPR art 24; SSPACHR art11.
[19] Pachamama A., 'Environmental Rights'<https://www.pachamama.org/environmental-rights>accessed 12 August 2024.
[20] Ibid.
[21] Ako R.T, 'The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India' (2010) 3, *NUJS Law R*eview, 428.

July, 2022.[22] The resolution was sequel to the recognition of the R2HE by the UN Human Rights Council in 2021.[23]

Access to Justice in Environmental Matters

Generally, the concept of access to justice puts an obligation on the state to guarantee every individual's right of access to a court or an alternative dispute resolution body for the purpose of obtaining a remedy when it is determined that his rights have been violated. Thus, it is also a right that helps individuals enforce other rights.

Access to justice in environmental matters can be defined as access of citizens or victims of environmental pollution to judicial and administrative mechanisms for redress of environmental wrongs and review of decisions, acts, and omissions related to environmental matters in a fair manner. This is for the purpose of obtaining effective and adequate remedies for the pollution of the environment and violation of their right to a healthy environment. Access to justice in environmental matters will enhance the protection the environment and guarantee the right to a healthy environment.

In Nigeria, access to justice in environmental matters is marred with different challenges. These challenges relate to legal, procedural and other constraints. These challenges include *locus standi,* burden of proof, limitation of action etc**.** poverty, politics, poor judicial attitude to environmental protection, weak enforcement, delay in dispensation of justice and so on. A plethora of cases decided by courts in Nigeria have reflected that victims of environmental pollution or citizens affected by pollution sometimes do not get justice when they institute actions to redress environmental wrongs. The cases of ***Oronto Doughlas v Shell Petroleum Development Company of Nigeria & 5 Others***[24], ***Amos v Shell BP Petroleum Development Company of Nigeria LTD***[25], ***Seismograph Services (Nigeria) Limited v Ogbeni***[26], ***Seismograph Services Limited v Benedict Onikpasa***[27], ***Jumbo v Shell B. P***[28] and so on are apposite

[22] IISD, 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment' <https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/>accessed 4 August 2024.

[23] UN Human Rights Council, 'A/HRC/43/53: Good Practices on the Right to a Safe, Clean, Healthy and Sustainable Environment'<https://www.ohchr.org/en/documents/thematic-reports/ahrc4353-good-practices-right-safe-clean-healthy-and-sustainable> accessed 3 August 2024.

[24] Suit No. FHC/2CS/573/93.

[25] [1977] SC 109.

However, the continuous degrading impacts of environmental pollution in Nigeria requires that access to justice in environmental matters must be unhindered. Victims of pollution and citizens must be able to make recourse to courts to redress environmental wrongs and violation of their right to a healthy environment without hindrances. Public Interest Litigation is therefore a viable tool for enhancing access to justice in environmental matters in Nigeria, as it will enable indigent victims of environmental pollution to assert their rights through environmental-focused NGOs, public spirited persons, environmental activists and so on.

Challenges to Access to Justice in Environmental Matters

There are many challenges militating against access to justice in environmental matters in Nigeria

1. Locus Standi

Locus standi can be defined as the legal capacity to institute proceedings in a court of law. It can also be referred to as 'standing' or 'title to sue'. It is a way courts determine who may apply to court for judicial review or remedies. Where a person has standing to sue, he will be entitled to be heard by the court even though that does not guarantee that all his claims will be successful. Therefore, a person who does not have standing to institute an action will not be heard by the court.[29] In Nigeria, *locus standi* is rooted in common law and a person will only be able to approach a court of law if he has sufficient, direct and personal interest in the matter. That is, he must show the court that he has some special interest or has sustained some special damage greater than that sustained by an ordinary member of the public.

It is important to state that sometimes, victims of environmental pollution are indigents who may not have the capacity to cater for the financial implications of instituting action in court to redress environmental wrongs done to them. This sometimes embolden polluters and leads to continuous pollution of the environment as victims are prevented from approaching courts for justice. Meanwhile, the recent increase in environmental consciousness in Nigeria has brought

[26] [1976] 4 SC 85.
[27] [(1972] All NLR 347 at 352.
[28] [1999] 13 NWLR (pt 633) p. 57.
[29] Learn Law Nigeria < https:// www.learnnigerianlaw.com/learn/administrative-law/standi> accessed 3 August 2024.

about the creation of many environmental NGOs and pressure groups in Nigeria. These groups engage in different activities to protect the environment in Nigeria. It is not uncommon to find these organisations, groups and public-spirited individuals instituting environmental matters on behalf of indigent victims of environmental pollution. This is usually for the purpose of seeking remedies and compensation for the injuries suffered by poor victims of environmental pollution.

However, the restrictive nature of *locus standi* under the common law tort rule, which is the traditional means of litigating environmental matters is Nigeria is a challenge to the institution and litigation of environmental matters in representative capacity. Since a plaintiff must establish before the court that he has exclusive and sufficient interest in a matter[30] before the court can be seized with jurisdiction to adjudicate upon the matter. Invariably, where indigent members of the public suffered environmental wrongs and have a cause of action but were hindered from instituting an action in court because of their financial incapability, they may not be able to assert their claims in court through a representative due to the restrictive nature of *locus standi* under the common law tort rules. The case of ***Oronto Doughlas v Shell Petroleum Development Company of Nigeria & 5 Others***[31], where the Federal High Court dismissed a suit based on the ground that the plaintiff has shown no *locus standi* to institute an action to request the court to compel the respondents to comply with the provisions of EIA Act before commissioning their production of liquefied natural gas in the Niger Delta region of Nigeria is apposite.

In the same vein, the prosecution of public nuisance by private individuals despite the abolishment of the old common law rules. The right to sue in public nuisance under the old common law rules was restricted to the Attorney General; as it was classified as a crime and could only be prosecuted by the state or an individual that has been granted consent by the Attorney General by the Nigerian Constitution can also inhibit access to justice in environmental matters. This is because a private individual who has suffered environmental wrongs will have to establish that he has suffered over and above other members of the public before he can have

[30] Mmadu R.A, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel' (2013) 2 (1), *Afe Babalola University: Journal of Sustainable Development Law and Policy*, 161.

[31] Suit No. FHC/2CS/573/93.

locus standi in public nuisance[32], even without being granted a fiat by the Attorney General. Where a private individual fails to so, he will not have *locus standi.*

2. Burden of proof

The burden of proof, which is the legal burden of establishing a case and adducing evidence to prove the issues which arose in the case[33] by a plaintiff or prosecution before a court can also inhibit access to justice in environmental matters in Nigeria. Generally, the burden of proof must be discharged by whoever asserts.[34] In order to establish the liability of a defendant in a civil matter to the satisfaction of the court, it must be proven on a balance of probabilities by the plaintiff. Meanwhile, the prosecution in a criminal matter must prove the liability of an accused beyond reasonable doubt before he can successfully discharge his burden of proof. Where a plaintiff fails to discharge his burden of proof, he will lose his claims.

This burden of proof is also applicable to environmental litigation in Nigeria, which are mostly decided based on the common law tort rules of nuisance, negligence, strict liability and trespass.[35] It should be noted that these common law tort rules have their specific burden of proof which must be discharged by a plaintiff, as the court will only uphold the claims of the plaintiff based on the high standard of proof.[36] In the same vein, a prosecutor in a criminal environmental matter must prove to the court beyond every reasonable doubt that the offender was liable for the crime for his case to succeed. He must not leave any chance for the court to think that the crime was possibly committed by someone else.

However, where a plaintiff or prosecutor in an environmental matter fails to discharge the burden of proof by failing to prove that the harm suffered by the victim was caused by the acts of the polluter, he will be denied access to justice. It is worthy to note that before a plaintiff or prosecution in an environmental litigation can discharge the burden of proof, he needs requisite

[32] *Oyidiobu v Okechukwu* [1972] LPELR-2884 (SC).
[33] Hassan M, 'Problem of Proof and Causation in Environmental Litigation in Nigeria' (First Degree Long Essay, Faculty of Law, University of Lagos 2015) 76.
[34] Evidence Act, s.135
[35] Abdulkadir A.B and Ainul J.A, 'Issues and Challenges In Environmental Justice Delivery System In Malaysia and Nigeria: The Need For Liberalising The Strict Rules Of *Locus Standi'* (2012) 1 (6) *Legal Network Series* (A), 21.
[36] Isa Aliyu, 'Legal Remedies For Victims of Environmental Pollution in Nigeria' (PhD Thesis, Department of Public Law, Faculty of Law, Ahmadu Bello University 2014) 28.

professional/technological knowledge and scientific evidence to prove that the pollution occasioned by the acts of the defendant or accused was the cause of the damage on the environment and the harm suffered by the victim. The financial implication of hiring experts to render the requisite professional services needed to successfully discharge the burden of proof in environmental matters are usually high. Indigent victims most times lack the capacity to bear these huge financial costs and this leads to denial of access to justice. As the failure to discharge the burden of proof prevent victims from getting redress for the environmental wrongs they have suffered from the acts of polluters.

3. Limitation of action

This can be described as the statutory period after which a lawsuit cannot be instituted by a victim against a tortfeasor or abuser in court. Ordinarily, every citizen whose right has been violated or who suffers damages due to the conduct of another is permitted by law to approach the court for a redress or sought reliefs. However, due to public policy and fairness, the legislatures have made statutory provisions for limitation of action. This is to ensure that claims are not left in perpetuity and to also bring an end to litigation. So, where the statutory period within which an action must be instituted has expired, no proceeding can be commenced after the expiration of that period.116 Such an action will be statute barred, as the plaintiff will not be able to seek any judicial intervention to enforce the cause of action. Limitation of action is also applicable to environmental matters and this puts a lot of hardship on victims of environmental pollution in Nigeria; as a plaintiff whose claim is statute barred will be barred from enforcing his right of action, even where he has obviously suffered injuries and has a cause of action.

Other challenges to access to justice in environmental matters include non justiciability of the constitutional provisions on environmental, poverty, politics, poor judicial attitude to environmental protection, weak enforcement, delay in dispensation of justice, non-independence of the judiciary, influence of political class, and need to protect the revenue generation drive of Government etc.

Public Interest Litigation and Access to Justice

Public Interest Litigation (PIL) is a legal tool that facilitates common people to access the courts to seek redress in legal matters. Public interest litigation (PIL) plays vital role in enhancing access to justice as it offers justice to disadvantaged sections of society, provides an avenue to enforce diffused or collective rights, and enables civil society to not only spread awareness about human rights but also allows them to participate in government decision making. PIL could also contribute to good governance by keeping the government accountable.

In South Africa. Public interest litigation is rooted in section 38 of the Constitution of South Africa[37]. The Section allows certain classes of persons to enforce all fundamental rights stipulated under the bill of rights through public interest litigation, irrespective of whether the conduct being challenged affects their own right. In addition, the National Environment Management Act of South Africa[38] also allows any person or group of persons to institute a proceeding for the purpose of seeking relief for the breach of the provisions of the Act or any other legislation concerned with environmental management, environmental protection or biodiversity use. [39]

While Articles 32(2) and 226 of the Constitution of India empower the Supreme Court and High Courts of India to issue directions for the purpose of enforcing fundamental human rights respectively.

It is important to note that in Nigeria, the Fundamental Right Enforcement Procedure Rules 2009 stipulates that court shall encourage and welcome Public Interest Litigation by any human rights activists, advocates, groups and NGOs for the enforcement of human rights.[40] Therefore public spirited persons or groups, concerned citizens, activists and NGOs can make application to High Courts for the enforcement of fundamental human rights on behalf of indigent victims of violation of human rights. This will enhance accessibility of poor citizens to justice. It is worthy to note that the tool of PIL has been employed by concerned citizens like Gani Fawehinmi, Femi Falana, Olisah Agbakoba, Ebun Adegboruwa, Babalola Olumide etc. to litigate human rights

[37] Murombo T and Valentine H, 'SLAPP Suits: An Emerging Obstacle to Public Interest Environmental Litigation in South Africa' (2011) 27 *South Africa Journal of Human Rights,* 87.
[38] 107 of 1998
[39] NEMA, s. 32 (1).
[40] FREP Rules, s. 3 (e).

matters and other constitutional matters in Nigerian Courts. Examples of PIL cases in Nigeria are ***Okojie & Others V. AG Lagos State***[41], ***Peter Nemi V AG Lagos State and Others***[42], ***Director State Security Service and Another V Olisa Agbakoba***[43], ***Olisah Agbakoba V AG Federation & Minister of Education***[44], ***Fawehinmi V Akilu***[45], ***Bayo Johnson V AG Lagos State***[46]etc.

Application of Public Interest Litigation to Environmental Matters in Nigeria

The application of Public interest Litigation to environmental matters is needed in Nigeria to enhance access to environmental justice and improve environmental protection and sustainability. This is because, public interest litigation will enable public spirited persons or groups, concerned citizens, environmental activists and environmental NGOs to make application to High Courts for the enforcement of environmental rights on behalf of indigent environmental victims. Especially following the provisions of the Fundamental Right Enforcement Procedure Rules 2009, which enables any person to challenge the violation or likelihood of violation of those human rights listed in Chapter IV of the 1999 Constitution and the African Charter in High Courts in Nigeria. Therefore, the right to a healthy environment can be enforced if violated in Nigeria. It is worthy to note that the decision of the court in ***Gbemre V. Shell Petroleum Development Company Limited and Others***[47] has also laid to rest the inclusion of the right to a healthy environment as a part and parcel of the right to life.

It is pertinent to note that there are dearth of cases[48] where NGOs and public spirited persons committed to the cause of environmental protection have instituted Public Interest Litigation in Nigeria on behalf of indigent victims of environmental pollution. In ***Gbemre V. Shell Petroleum Development Company Limited and Others***[49], the applicant, a native of Iwherekan Community, Delta State instituted a public interest action at the Federal High Court against Shell Nigeria and other defendants to challenge their gas flaring activities in the Community. The Applicant among other things sought for a declaration that the defendant's actions violate their human rights to life

[41] [1981] 2 NCLR 350.
[42] [1996] 6 NWLR (Pt. 452) 42.
[43] [1997] 3 NWLR (Pt. 595).
[44] FHC/L/CS/1358/2013.
[45] [1989] 3 NWLR (Pt. 112) 643.
[46] [2007] 8 NWLR (Pt. 1037) 535.
[47] [2005] Suit No. FHC/B/CS/53/05.
[48] Ramos n15.
[49] Suit No: FHC/B/CS53/05.

and dignity of persons, thereby denying them the right to a clean and healthy environment. It was held by the court that the acts of the defendants in flaring gas in the Community was a violation of the right to life and dignity of human person of all the members of the applicant's community[50], as stipulated in the 1999 Nigerian Constitution (As altered) and the African Charter on Human and People's Rights (Ratification and Enforcement) Act.[51] The position of the trial court on *locus standi* was liberal as the court allowed the applicant to institute a representative and public interest action on behalf of the victims of environmental pollution.

The Court also restrained the first and the second defendants from continuing with flaring gas in Iwherekan and ordered them to take necessary steps to wind up flaring of gas in the community. Although, the decision of the court in *Gbemre's* case has been applauded for vindicating the notion that the right to a clean and ecologically safe environment is an appendage of the right to life as enshrined in the Nigerian Constitution[52], the judgement was however declaratory and no damages was awarded in favour of the members of the Community. Shell however applied for the vacation of the injunction by the court and filed an application detailing the steps by steps modality for reducing gas flaring in the community. The court vacated the injunction but the judge was transferred on the date slated to hear the application for reduction of gas flaring. The case file was subsequently declared missing and the matter was inconclusive. This has reduced the jurisprudential weight of the decision.[53]

Even though the case was instituted in a regional court, the plaintiff in ***The Social and Economic Rights Action Center and the Center for Economic, and Social Rights V Federal Republic of Nigeria***[54] instituted a public interest litigation on behalf of the Ogoni people. The African Commission on Human Right while allowing public interest action, expounded the provision of Article 24 and held that the Nigerian Government's failure to protect the Ogoni people against pollution caused by oil exploration activities in the region and its inability to provide effective

[50] Abdulkadir A.B, 'The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria' (2014) 3 (1) *Afe Babalola University: Journal of Sustainable Development Law and Policy*, 127.

[51] CAP. A9 LFN 2004.

[52] Lawson N.G 'The Doctrine of Absolute Liability and the Right to a safe Environment: issues and Challenges in the Liability of Environmental Polluters in Nigeria' (PhD Thesis, School of Law, University of Wolverhampton, 2017), 116.

[53] Okonmah P. D, 'Right to a Clean Environment: A study of Oil Pollution in the Nigerian Delta' (PhD Thesis, Aberystwyth Law School. Aberystwyth, 2012), 116.

[54] (Communication No. 155/96 -2001).

remedies for them amounts to violation of their human rights.[55] The Commission also held that Articles 4, 14, 16 and 18 of the African Charter were violated by the Nigerian Government. The Commission urged the Nigerian Government to investigate the human rights abuses in Ogoni land, provide compensation to the victims and clean up the polluted land and rivers.[56] The Commission also asked the Nigerian Government to ensure that environmental impact assessment of oil activities are conducted before embarking on oil exploration in the region, and adequate information on the potential health and environmental risks associated with oil activities are relayed to the appropriate Government Agencies.[57]

In the same vein, the ECOWAS Court in ***SERAP V. Federal Republic of Nigeria***[58] while allowing public interest litigation held that Nigeria violated Articles 1 and 24 of the African Charter by exposing the people of the Niger Delta to extreme environmental pollution because of oil exploration.[59] The Nigerian government was ordered by the court to take all necessary steps to facilitate the restoration of the Niger Delta Environment, prevent future environmental degradation and ensure that environmental polluters are appropriately sanctioned.[60]

More recently, the Supreme Court in the case of ***Centre for Oil Pollution Watch V. NNPC***[61] lend credence to PIL in environmental matter by liberalizing the rule of standing. The appellant's (Plaintiff) case was dismissed by the trial court due to the preliminary objection raised by the respondent (defendant) challenging the standing of the appellant. The Court of Appeal affirmed the dismissal of the appellant's case. On further appeal by the appellant, the Supreme Court unanimously gave judgement in favour of the appellant. It was further held that everybody including NGOs who seek due performance of law for the purpose of safeguarding the environment against abuse for the benefit of the present and future generation should be clothed with standing. The position of the Supreme Court is commendable as it is a liberal move in enhancing PIL in environmental matters in Nigeria.

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[55] Abdulkadir n50, 127, Wondalem H. A 'The Right to environment under African Charter on Human and Peoples' Right' (2015) 2(1) *International Journal of International Law*, 220.

[56] UN Special Rappoteur on Human Rights and Environment- SERAC and CESR V. Nigeria <http://www.srenvironment.org/node/1896> accessed 12 August 2024.

[57] Ibid.

[58] General List No. ECW/CCJ/APP/08/09, Judgment No. ECW/CCJ/JUD/18/12. Holden at Ibadan, in Nigeria, 14th December, 2012.

[59] Okonkwo T., 'Environmental constitutionalism in Nigeria: Are we there yet?' (2015) 13 *Nigerian Juridical Review*, 201.

[60] Ibid.

[61] [2018] LPELR-50830(SC).

The application of Public Interest Litigation to environmental matters will enhance accessibility of poor victims of environmental pollution to justice as more people will have the opportunity of asserting their rights through concerned citizens and environmental NGOs. It will also enhance the protection of the environment and guarantee the right to a healthy environment in Nigeria.

Conclusion and Recommendations

Public interest litigation is a veritable tool for enhancing access to justice in environmental matters in Nigeria. The Fundamental Right Enforcement Procedure Rules 2009, which stipulates that court shall encourage and welcome Public Interest Litigation by any human rights activists, advocates, groups and NGOs for the enforcement of the human rights[62] listed in Chapter IV of the 1999 Constitution and the African Charter in High Courts in Nigeria is a vindication of the application of Public interest Litigation to environmental matters in Nigeria.

The adoption of public interest litigation in environmental matters will assist in enhancing the protection of the right to a wholesome environment, aid ecological and biological diversity conservation and improve sustainable development in Nigeria.

It is therefore recommended that:

a. More environmentally focused NGOs, activists and public spirited persons should engage in public interest litigation of environmental matters on behalf of indigent victims of environmental pollution.
b. Courts should constantly and conscientiously encourage public interest litigation by liberalising the rule of standing when adjudicating environmental matters.
c. The Government and environmental focused NGOs need to sensitize the populace and continuously create awareness about the environment and the need for its protection. The awareness will help to advance a change of perception and orientation about the environment and change citizenry attitude toward the environment.
d. There must be autonomy of the judiciary to ensure proper functioning of courts and judges and to insulate judges from every form of pressure and interferences to their duties from other arms of Government, politicians and other sectors in Nigeria while adjudicating environmental matters.

[62] FREP Rules, s.3 (e)

e. Judges and their supporting staff must also have access to up-to-date judicial capacity building tailored towards environmental protection to enhance their knowledge about environmental protection issues and developments in order to enable them do justice to environmental matters brought before them.
f. Funding for environmentally focused NGOs by Government, philanthropists, national and international organisations should be encouraged.

RIGHTS OF EMPLOYEES AND WORKPLACE DISCRIMINATION PHENOMENON IN NIGERIA: LESSONS FROM UNITED STATE OF AMERICA

Daudu S.O* and Ivie Osadolor**

Abstract

The rights of an employee are guaranteed and free from any form of discrimination. Despite the protection afforded by the relevant laws on labour, employment and productivity, some forms of discriminations still exist at the work place. The focus of this article is on the discriminations that inhere in employment and the rights of vulnerable individuals in the Nigeria workplace. The major objectives of this article is to identify the specific factors contributing to employment discrimination against vulnerable employees in Nigeria, such as age, gender, disability, ethnicity, religion and socio-economic background with a view to assessing the effectiveness of current measures and mechanisms in addressing employment discrimination in order to protect the rights of vulnerable employees in Nigeria. To achieve the aforementioned objective of the article, the doctrinal approach will be adopted. The authors will rely on texts, journal articles, case law, statutes, treaties and other international instruments on labour and employment in Nigeria with a view to drawing lessons from the United States of America. This article finds that vulnerable employees experienced discrimination in employment due to their personal characteristics such as race, ethnicity, gender, disability, age or sexual orientation. The article recommends the establishment of a dedicated body to investigate and resolve complaints of discrimination in employment at workplace in Nigeria. The article concludes that workplace discrimination is unhealthy and can affect the productivity of workers in Nigeria.

Keywords*: discrimination, workplace, employees, rights, jurisdiction.*

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Introduction

Workplace discrimination continues to plague many workers, not only in Nigeria but the world at large. Persons could be abused because of their ethnicity, sex or religion. Even worse, if an employee leans on his religion convictions, he may not be employed and if already employed, may be transferred to a low-paying position. The rationale for the focus of this article on discrimination in employment in Nigeria is to determine the mechanisms to curb the inequality perpetuated by discriminatory practices at workplace in Nigeria. There is therefore the need to protect the rights of the vulnerable employees at workplaces in Nigeria. Despite this, there is no deliberate move by the Nigeria government to develop and enact anti-discrimination legislation to combat the menace of workplace discrimination in Nigeria. There is also no significant improvement in Nigeria's labour law to address discriminatory practices at workplace.

Discrimination is the unjust or prejudicial treatment of individuals or groups based on certain characteristic, such as age, race, gender, ethnicity, religion, sexual orientation, disability or other factors. It involves treating some certain categories of people less favourably or denying them equal opportunities solely because of their membership in a particular group. In order words, discrimination refers to the practice of treating individuals differently because of identifiable traits such as race, colour or sex, which reduces the equality of opportunities and treatment in employment or jobs. Although existing literature on the subject recognizes the discriminatory practices at workplace in Nigeria, but in this article, we have argued that there are dare consequences for the continuous practices of discrimination at workplace in Nigeria. It is argued that discriminatory practices would not only affect the morale of workers to the dedicated, it would damage their enthusiasm to work and by extension affect the country's productivity. Discriminatory practices which have the capacity to affect production may be the cause of food insecurity in Nigeria. This research is justified because it has the impetus to drive Nigeria enthusiasm towards enacting and strengthening Nigeria labour law with a view to eliminating discriminatory practices at workplace. This research is beneficiary to the reading public and Nigeria towards developing measures that could be deployed to addressing the issues of inequality and offer protection to vulnerable employees in Nigeria.

Concept of Discrimination

Discrimination refers to differentiation, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction, or socio-economic origin that has the effect of negating another person's rights or limiting opportunities for or treating people unequally in the workplace or other settings.

Discrimination refers to the unjust or prejudicial treatment of individuals or groups based on certain characteristics, such as race, gender, ethnicity, religion, sexual orientation, disability, or other factors[1]. It involves treating people less favourably or denying them equal opportunities solely because of their membership in a particular group.

In other words, discrimination refers to the practice of treating individuals differently because of identifiable traits, such as race, colour, or sex, which reduces the equality of opportunity and treatment in employment and jobs. When people are treated differently based on personal traits that have no bearing on how well they can perform at work, this is known as discrimination[2].

Discrimination refers to the unfair or unequal treatment of individuals or groups based on certain characteristics or attributes that are unrelated to their abilities or qualifications. It involves treating people differently or denying them opportunities, rights, or benefits based on factors such as race, gender, age, religion, disability, or sexual orientation.

Discrimination is also seen as unequal treatment of individuals or groups based on certain characteristics or attributes that are unrelated to their abilities or qualifications[3]. Discrimination is the act of unfairly treating individuals or groups based on their membership in a particular category. Discrimination occurs when individuals or groups are subjected to differential treatment or denied opportunities solely based on their race, ethnicity, gender, age, or other protected characteristics.[4]

[1]Paula Braveman, Elaine Arkin, Tracy Orleans, and others, What is Health Equity? 'Behavioral Science and Policy', *Sage Journals* (2018) 4(1) 1. <https://doi.org/10,1177237946151800400 02> accessed September 22nd 2023.
[2]E. Galanaki. The Decision to Adopt Personnel Selection System Innovations: Institutional and Political Factors'. *Human Resource Management Journal*, (2002) 12(3) 69.
[3]Blau Flancine, and M. Ferber. Discrimination and Labor Markets: Handbook of Labor Economics (2016) 4(2) 385.
[4]Braveman 'What is Health Equity?' (n.8) 7.

Article 2 of the UN Convention on the Rights of Persons with Disabilities[5] gives a detailed definition of discrimination on the basis of disabilities thus;

> Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition. enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

A useful definition of non-discrimination is contained in Article 1(1)[6], which provides that discrimination includes: Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation."

Thus, the right to equal treatment requires that all persons be treated equally before the law, without discrimination. The principle of equality and non-discrimination guarantees that those in equal circumstances are dealt with equally in law and practice. Discrimination is the unjust or prejudicial treatment of individuals or groups based on characteristics such as nationality, religion, disability, or sexual orientation.[7]

Various Types of Workplace Discrimination in Nigeria

Discrimination can take two forms[8]. Direct or Indirect Discrimination.

Direct discrimination occurs when an employee is treated unfairly due to personal, physical, or social characteristics that are legally protected.[9]For instance, gender, sex, and marital status are common factors leading to direct discrimination An instance of this would be if an employer unfairly treats women based on societal stereotypes that portray them as unreliable employees

[5] Article 2 of the UN Convention on the Rights of Persons with Disabilities.
[6] ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
[7] D. Sartain and M. Fine, *The Talent Management Handbook: Creating Organizational Excellence by Identifying, Developing, and Promoting the Best People*, (2nd ed. United State, McGraw-Hill Press, (2012).
[8] S. Hajian and J. Domingo-Ferrer, 'A Methodology for Direct and Indirect Discrimination Prevention in Data Mining, in IEEE Transactions on Knowledge and Data Engineering', *International Journal of Computer Science*, (2013) 25(7) 1445 <https://doi: 10.1109/TKDE.2012.72> accessed 21 Sept 2023
[9]Hajian 'A Methodology' (n.27) 12

due to their roles as homemakers.[10]This kind of bias is both a stereotype and an example of direct discrimination. This interpretation was upheld in the case ***Imatu & Anor v. City of Cape Town***[11]. Generally, identifying direct discrimination is straightforward[12], as it is linked to the grounds for unfair discrimination listed in section 6 of the EEA.[13]

Indirect discrimination refers to policies or practices that might not be overtly discriminatory based on the listed criteria but still result in discrimination against a particular group[14]. It occurs when treating seemingly unequal individuals equally has a negative impact on the less privileged. In the case of ***Leonard Dingler Employee Representative Council v. Leonard Dingler (Pty) Ltd &Others***[15], the Labor Court held that the employer unfairly engaged in indirect discrimination. This was due to the unequal retirement benefits offered to weekly and monthly salary earners, where weekly earners, who were predominantly black, received smaller contributions and were denied fund selection. The court ruled that this situation amounted to racial discrimination against black employees. The court held that the blacks were indirectly discriminated against based on their race.

Rights of Employees in Nigeria

The term "worker's right" refers to a broad range of human rights, including the right to a decent wage, the freedom to form associations, access to equal opportunities, and protection against discrimination.[16] The right to privacy at work and other specific rights connected to the workplace include, among many others, workplace health and safety.[17] The most frequent intersection of business and human rights is in the area of worker's rights because of the link between companies, employees, and the government.[18] To address these issues, national and international instruments have been developed and are codified in national laws, international

[10] Rebecca Cook and Simone Cusack, Gender Stereotyping: Transnational Legal Perspectives, (6th ed, Philadelphia, University of Pennsylvania Press 2010).
[11] (2005) 26 ILJ 1401 (LC).
[12] Section 6, Employment Equity Act No 55 of 1998.
[13]Landman Adolph A. The Anatomy of Disputes about Equal Pay for Equal Work', South African Mercantile Law Journal (2002) (14) 341.
[14] Adams Prassl Jeremias, Binns Reuben and Kelly Lyth Ais linn, Directly Discriminatory Algorithms', *The Modern Law Review*, (2023) 86(1) 144.
[15] (1998) 19 ILJ 858 (LC).
[16]Diane Frey, 'The Sustainable Development Goals and Human Rights' (2018)1st Ed.21
[17]S Ozturk, 'Employer's Liability Regarding Domestic Workers and their Occupational Health and Safety in Turkey', *Journal of Business Economics and Finance*, (2018) 7 (4), 359<https://DOI:10.17261/Pressacademia.2018.996>accessed 20thSeptember 2023.
[18]A. Rasche, and S. Waddock, 'The UN Guiding Principles Corporate Social Responsibility Research', *Business and Human Rights Journal*, (2021) 6(2) 227<https://doi:10.1017/bhj.2021.2>accessed 20 September 2023

labour conventions, and ILO recommendations. These instruments grant workers certain rights as workers while also granting them certain rights as citizens under constitutional provisions. The rights aim to guarantee secure, healthy, fair, and equitable working circumstances. However, many employers transgress these fundamental rights because they put their profits ahead of their employees.[19]

Legal Framework on Anti-Workplace Discrimination in Nigeria

a. The Constitution

The Constitution of Nigeria is the principal law in Nigeria.[20] The Constitution is a contract between all Nigerians; this could be inferred from the preamble of the Constitution which provides:

> We the people of the Federal Republic of Nigeria, having firmly and solemnly resolved, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding and to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people, do hereby make, enact and give to ourselves the following Constitution.

The Constitution is also a contract between the Nigerian government and the people of Nigeria.[21]Chapter two of the Constitution provides for the obligations of the state to the people. This chapter is evidence of the social contract that exists between the Nigerian government and the Nigerian people.

Chapter four of the Constitution deals specifically with fundamental human rights which includes right to life, fair hearing, peaceful assembly and association, freedom from discrimination, among others.

Section 42[22] further provides:

[19]IduborEnaruna and M. Oisamoje, 'An Exploration of Health and Safety Management Issues in Nigeria's' *Effort to Scientific Journal*, (2013) 9(12) 15

[20]Constitution of the federal republic of Nigeria (1999 as amended)

[21]S 1(1) of the Constitution of the Federal Republic of Nigeria (1999 as amended)

[22]S 1(1) of the Constitution of the Federal Republic of Nigeria (1999 as amended)

1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person;
   (a) be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject.
   (b) be accorded either expressly by, or practical application of, any law in force in or in the Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria or other communities, ethnic groups, places of origin, sex, religious or political opinions.
2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

This section of the constitution prevents any form of discrimination to any person who is a citizen of Nigeria, in any form or way by reason of his sex, place of origin, religion, or tribe. This covers for discrimination in the workplace as well.

Section 15(2)[23] also provides that national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

Section 17[24] guarantees the equality of all Nigerians under the constitution and the protection of their dignity, thus preventing discrimination in the workplace. It provides thus:

In furtherance of the social order -

1. every citizen shall have equality of rights, obligations and opportunities before the law
2. the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;
3. The state shall direct its policy towards ensuring that -
   12. all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.

[23]S 15(2) of the Constitution of the Federal Republic of Nigeria (1999 as amended)
[24]S 17 of the Constitution of the Federal Republic of Nigeria (1999 as amended)

(e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever.

Section 34 of the 1999 Constitution of the Federal Republic of Nigeria has provided against forced labour. It provides that:

(1) Every individual is entitled to respect for the dignity of his person, and accordingly -

v. no person shall be subject to torture or to inhuman or degrading treatment;

vi. no person shall he held in slavery or servitude; and

vii. no person shall be required to perform forced of compulsory labour.

The Nigeria Constitution recognizes the duty of the state to ensure equal pay for equal work without discrimination on the account of sex or any other ground.[25]

Flowing from the enlisted sections, it can be said that the constitution has guaranteed the enhancement of fundamental human rights, the equality of rights of all citizens, preservation of human dignity, freedom from oppression and discrimination of any sort, workplace inclusive.

b) Labour Act

The Labour Act[26]is the primary legislation governing Labour and employment in Nigeria. It covers various aspects of employment, including conditions of employment, contracts, wages, working hours, leave entitlements, termination of employment, and trade unions. The rights of Workers in Nigeria under the Labour Act include but not limited to:

1. Right to a Written Contract of Employment: Under the Labour Act, every employee is entitled to receive a written contract of employment within three months of starting a new job. The contract should contain essential terms and conditions of employment, such as the nature of the employment, job description, remuneration, working hours, and termination conditions.
2. Right to Fair Wages: The Labour Act sets the minimum wage and provides for timely payment of wages. It ensures that employees are paid at regular intervals and in legalt ender.

[25]S 17(3) Constitution of the Federal Republic of Nigeria 1999, (as amended).
[26]Chap 198, Laws of the Federation of Nigeria 1990.

3. Right to Rest and Leave: Employees in Nigeria are entitled to rest periods during the workday and rest days during the week. Additionally, the Act provides for annual leave entitlements based on the duration of service.
4. Protection Against Unfair Dismissal: The Act provides some protection against unfair dismissal by stipulating conditions under which an employer can terminate an employee's contract without proper cause.
5. Right to equal pay for equal work: Nigeria has ratified the Discrimination (Employment and Occupation) Convention,[27] which prohibits discrimination in employment, including discrimination in remuneration.
6. Equal Opportunities: The Labour Act prohibits discrimination in employment based on sex, religion, ethnic group, or political affiliation. Every worker has the right to equal opportunities in the workplace.
7. Right to protection against unfair dismissal: The Labour Act sets out the conditions under which an employer can terminate an employee's contract and provides protection against unfair dismissal or termination without just cause.

The provision for forced Labour under the Nigeria law is provided under Section 73.[28] It provides:

> Any person who requires any other person, or permits any other person to be required, to perform forced labour contrary to the Constitution[29]shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N1,000 or to imprisonment for a term not exceeding two years, or to both.

Section 80 Labour Act[30]further states that Jurisdiction to hear complaints under section 81,[31] the Labour Act resides on the magistrate court.

Where an employee believes his rights have been breached, he can bring up an action against this breach in court. Section 81 Labour Act also provides that:

(1) Where

[27] Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
[28] S 73 Labour Act 2004
[29] S 34 (1) (c) of the Constitution of the Federal Republic of Nigeria 1999, (as amended)
[30]S 80 Labour Act, 2004.
[31]Ibid.

(a) an employer or worker neglects or refuses to fulfil a contract; or

(b) any question, difference or dispute arises as to the rights or liabilities of a party to a contract or touching any misconduct, neglect, ill-treatment or injury to the person or property of a party to a contract, any party to the contract feeling himself aggrieved may make complaint to a court having jurisdiction, which may thereupon issue a summons to the party complained against the aggrieved party, the court, the party complained against and the complaint being hereafter in this section and in sections 82 to 85 of this Act referred to as "the Complainant", "the court", "the respondent" and "the complainant" respectively.

(c) Workplace/Employees Compensation Act 2010

Section 73 of the Act defines an employee as a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments and any of the government agencies and in the formal and informal sectors of the economy. By this provision, the dichotomy earlier created by the defunct Workmen Compensation Act between contract of service and contract for service has been obviated. In essence, the Workplace / Employee Compensation Act 2010 was enacted to eliminate any form of discriminatory practices at the workplace.

Other Relevant Laws and Regulations on Equality and Non-Discrimination

(a) Universal Declaration on Human Rights

A variety of human rights agreements and treaties, including articles 23 and 24, 1948 Universal Declaration on Human Rights, specify the rights of workers at the worldwide level.

Article 23:

a. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
b. Everyone, without any discrimination, has the right to equal pay for equal work.
c. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 24 states that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

The Federal Republic of Nigeria is a member of the United Nations and the African Union. It has ratified many UN Human Rights Conventions and thus has made binding international commitments to adhere to the standards laid down in these universal human rights documents. Nigeria, asides from ratifying and adopting the UDHR, has gone ahead to sign on to several other international human rights covenants and protocols. It is noteworthy that the UDHR is applicable to all people in all countries around the world. Following the prohibition of discrimination based on race, sex, language and religion in the Charter of the United Nations, the adoption of the Universal Declaration of Human Rights in 1948 became the next important step in the legal consolidation of the principle of equality before the law and the resultant prohibition of discrimination.

Article 1 of the Universal Declaration,[32]proclaims that "all human are born free and equal in dignity and rights". While according to Article 2 of the UDHR provides:[33]

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
>
> With regard to the right of equality,

Article 71[34] provides:

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".

(b) The African Charter on Human and People's Right 1981

The African Charter on Human and People's Right 1981[35]recognizes the rights to work under equitable and satisfactory conditions, and the rights to equal pay for equal work.

(c) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979

Article 3 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, which has been ratified in Nigeria provides against the discrimination of Women. It provides thus:

[32]Art 1, Universal Declaration of Human Rights (UDHR)1948
[33]Art 2Universal Declaration of Human Rights (UDHR)1948
[34]Art 7, Universal Declaration of Human Rights (UDHR)
[35]Art 5 of the African Charter on Human and People's 198.

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.[36]

(d) European Convention on Human Rights (ECHR) 1953

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.[37]

(e) The International Labour Organization (ILO)

Nigeria has ratified the International Labour Organisation (ILO) Convention on Discrimination (Employment and Occupation) of 1958. The idea that all employment decisions are made based on an individual's capacity to perform a job, regardless of personal attributes of that individual that are unrelated to the needs of the job, is the foundation of equal employment and non-discrimination.[38]

Article 5;

States that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. The States shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.[39]

The Convention on the Rights of Persons with Disabilities[40] provides the general principles of the convention among which are hinged on: Respect for inherent dignity; individual autonomy including the freedom to make one's own choices, and independence of persons; non-

[36]Art 3 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
[37]Art 14 of the European Convention on Human Rights (ECHR) 1953.
[38]Ideh Anthony, OkwyOkpala, and Christopher Chidi, 'Towards Eliminating Discriminatory Employment Practices in Nigerian Organisations', *LASU Journal of Employment Relations and Human Resource Management*, (2020) 2(1) 75.
[39]Waddington Lisa, 'Fine-tuning non-discrimination law: Exceptions and justifications allowing for differential treatment or the ground of disability', *International Journal of Discrimination and the Law*, (2015) 15(1) 11.
[40]Art 3 of the UN Convention on the Rights of Persons with Disabilities 2006.

discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women.

Legal Framework for Workplace Anti-Discrimination in United States

The US Equal Employment Opportunity Commission has provided laws for the benefits of employees[41] who may be seen to be easily harassed because of their position and the fact that they have superiors who can at any time, seek their removal from work or discriminate them, demote or harass them. These laws have been put in place to see that an employee do not suffer at the mercy of his employer by reasons of his age, race, religion, right, colour, sex, disabilities and so on.

(a) The Occupational Health and Safety Laws in the Workplace 1970

The Act was enacted to ensure the safety and healthy working conditions of employees. The Act requires employers to provide employees with an environment free from recognised hazards and infectious agents, excessive noise levels, mechanical dangers, heat or cold stress, and conditions that are causing or are likely to cause death or serious physical harm to employees. It will therefore amount to discrimination of some certain categories if workers are constantly exposed to harmful conditions of environment while others enjoys protection. The implication is that the Act enjoins every employer of labour to provide a healthy environment for all categories of workers irrespective of race, colour, class, sex, religion, group, age, ethnicity or political opinion.

(b) Discrimination against Persons with Disabilities Act.[42] (USA)

This Act prohibits slavery and involuntary servitude further stating that any form of discrimination may be considered an incident of slavery or involuntary servitude and thus be liable to an action under this amendment.[43] While the Fourteenth Amendment guarantees equal protection of the law for all citizens.

[41]The Civil Rights Act of 1866 & 1871; The Equal Pay Act of 1963; Title VII of the Civil Rights Act of 1964; The Civil Rights Act of 1991; The Age Discrimination in Employment Act of 1967 (ADEA): The Americans with Disabilities Act of 1990 (ADA); Executive Orders 11246, 11375, and 11478; Discrimination Against Persons with Disabilities Act 2018.

[42]Discrimination Against Persons with Disabilities Act 2018.

[43]Thirteenth Amendment, Discrimination Against Persons with Disabilities Act 2018.

(c) The Civil Rights Act of 1866 & 1871

The Civil right Act[44] grants all citizens the right to make and enforce contracts for employment. It also grants all citizens the right to sue in a federal Court if they have been deprived of any rights or privileges guaranteed under the Constitution or other laws.

(d) Title VII of The Civil Rights Act of 1964

This Act prohibits discrimination on the basis of race, colour, religion, sex or national origin all aspects of employment. It also provides against unlawful employment services establishes what unlawful employment practices entail. It provides that:

> It shall be an unlawful employment practice for an employer... to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms,[45] conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

(e) Equal Pay Act of 1963

This Act requires that men and women working in and for the same establishment must be paid the same rate for work that is equal to their skill, responsibility or working conditions. That is, there must be no discrimination against sex. The Equal Pay Act of 1963 is a United States Labour Law amending the Fair Labour Standards Act aimed at abolishing wage disparity based on sex. Section 3(d)(1) of the Act provides that no employer having employees subject to any provisions of this section shall discriminate within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions except where such payment is made pursuant to: (i) seniority system, (ii) a merit system, (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex, provided that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

[44]The Civil Rights Act of 1866 & 1871.
[45]S 6 of the Equal Pay Act of 1963.

(f) The Civil Rights Act of 1991

It provides for the expansion of remedies in discrimination cases. Individuals. who feel discriminated or think they are discriminated, can ask for damages. The Civil Rights Act also provide that an employer is guilty of discrimination if it can be shown that a prohibited consideration was a motivating factor in giving out employment but if the employer can show that same decision would have been reached even without the unlawful consideration, damages would not be given against him.[46] The Act also made it unlawful to adjust the scores or use different score sheet otherwise altering the results of employment rated tests on the basis of race, colour, religion, sex or national origin.

(g) The Americans with Disabilities Act of 1990 (ADA)[47]

As a general rule, this Act prohibits an employer from discriminating against a qualified individual with a disability. The Americans with Disabilities Act of 1990[48] is a civil rights Law that prohibits discrimination based on disability. It affords similar protections against discrimination to Americans with disabilities as the Civil Right of 1964, which made discrimination based on race, religion, sex, natural origin, and other characteristics illegal. The Act also requires covered employers to provide reasonable accommodations to employees with disability and imposes accessibility requirements on public accommodations.

Case Law on Anti-Workplace Discrimination in the United States

The case of ***Burlington Northern & Santa Fe railway v. White***[49]is relatable to our discussion and it espouses the law against discrimination. The facts of that case are as follows: In June 1997, Sheila White was the only woman working in the Maintenance of Way Department at Burlington Northern & Santa Fe (BNSF)'s Tennessee Yard. When she applied for the job at BNSF, her previous experience operating forklifts was noted by Marvin Brown, her interviewer at BNSF. White was hired as a "track labourer", a job that involves removing and replacing track components, transporting track material, cutting brush, and clearing litter and cargo spillage from the right-of-way. Soon after White arrived on the job, she was assigned to operate the forklift. While she also performed some of the other track labourer tasks, operating the forklift was White's primary responsibility.

[46]S 302 of The Civil Rights Act of 1991.
[47]Title 5 of the Americans with Disabilities Act of 1990.
[48]42 USC Section 12101
[49](2006) 548 U.S. 53

In September 1997, White complained to BNSF officials that her immediate supervisor, Bill Joiner, had repeatedly told her that women should not be working in the Maintenance of Way Department. White said that Joiner had also made insulting and inappropriate remarks to her in front of her male colleagues. After an internal investigation, Burlington suspended Joiner for 10 days and ordered him to attend a sexual-harassment training session.[50]

On September 26 1997, Brown told White about Joiner's discipline. At the same time, he told White that he was removing her from forklift duty and assigning her to perform only standard track labourer tasks. Brown explained that the reassignment reflected co-worker's complaints that, in fairness, a more senior worker should have the less arduous and cleaner job of forklift operator. On October 10, 1997, White filed a complaint with the Equal Employment Opportunity Commission (EEOC). She claimed that the reassignment of her duties amounted to unlawful gender-based discrimination and retaliation for her having earlier complained about Joiner. In early December 1997, White filed a second retaliation charge with the Commission, claiming that Brown had placed her under surveillance and was monitoring her daily activities.[51]

A few days later, White and her immediate supervisor, Percy Sharkey, disagreed about which truck should transport White from one location to another. Some aspects of this conversation were disputed, however later that day Sharkey told Brown that White had been insubordinate. Brown immediately suspended White without pay. White invoked internal grievance procedures. Those procedures led Burlington to conclude that White had not been insubordinate. Burlington reinstated White to her position and awarded her back pay for the 37 days she was suspended. White filed are additional retaliation charge with the EEOC based on the suspension.

Employer actions that discriminate against an employee (or job applicant) because he has opposed a practice that Title VII forbids or has made a charge, testified, assisted, or participated in a Title VII "investigation, proceeding, or hearing is forbidden.[52]

After exhausting administrative remedies, White filed suit in federal court, where a jury rejected her claims of sex discrimination but awarded her damages of $43,000 after finding that she had been retaliated against in violation of Title VII.[53]

[50]Ibid.
[51]That charge was mailed to Brown on December 8, 1997
[52]The Anti-Retaliation Provision of Title VII of the Civil Rights Act of 1964
[53]Title VII, Civil Rights Act of 1964

On appeal, BNSF argued that White had not suffered "adverse employment action," and therefore could not bring the suit, because she had not been fired, demoted, denied a promotion, or denied wages. In November 2002, a panel of the Sixth Circuit Court of Appeals initially agreed, where Judge James S. Gwin was joined by Judge Robert B. Krupansky, over the dissent of Judge Eric L. Clay. The case was reheard however, and, in April 2004, the full court found for White, holding that the suspension without pay even if back pay was eventually awarded - was an "adverse employment action," as was the change of responsibilities within the same job category. On June 22, 2006, the Supreme Court delivered judgment unanimously in favour of Sheila White. It affirmed the decision of the Sixth Circuit.

In this case the standard for retaliation against a sexual harassment or discrimination complainant was revised to include any adverse employment decision or treatment that would be likely to dissuade a reasonable worker from making or supporting a charge of discrimination.

Comparative Intercourse of the Rights of Employees in Nigeria with the Position in the United State

The Equal Employment Opportunity Act (EEOA) of 1964 is a federal law that prohibits employment discrimination based on race, colour, religion, sex, or national origin.[54] It was enacted as Title VII of the Civil Rights Act of 1964 and was amended in 1972 to include protections for employees with disabilities and in 1991 to include protections for employees based on age.[55]

The Equal Employment Opportunity Act (EEOA)[56] in the United States and Section 42 of the Nigerian Constitution[57] and the Labour law 2004 of Nigeria are laws that prohibit discrimination in employment on the basis of certain protected characteristics. However, there are some key differences between the two laws.

The EEOA is a federal law that applies to all employers with 15 or more employees. It prohibits discrimination on the basis of race, colour, religion, sex, national origin, age (40 or over), and disability. The EEOA also prohibits retaliation against employees who file discrimination

[54]Lynch Mary Kathryn, 'The Equal Employment Opportunity Commission: Comments on the Agency and its Role in Employment Discrimination Law',*Georgia Journal of international law and comparative law*, (1990) (20) 89.

[55]Burstein Paul and Margo MacLeod, 'Prohibiting employment discrimination: ideas and politics in the congressional debate over equal employment opportunity legislation', *American Journal of Sociology* (1980) 86(3) 512.

[56]The Equal Employment Opportunity Act (EEOA) of 1964.

[57]S 42 of the Constitution of the Federal Republic of Nigeria 1999(as amended).

complaints. Section 42 of the Nigerian Constitution prohibits discrimination on the basis of race, religion, ethnicity, place of origin, sex, marital status, political opinion, or conscience. It also prohibits discrimination against persons with disabilities. However, Section 42 does not apply to all employers. It only applies to employers who are subject to the Constitution, such as the government and its agencies.

Another key difference between the EEOA and Section 42 is that the EEOA is enforced by the Equal Employment Opportunity Commission (EEOC). The EEOC is a federal agency that has the power to investigate discrimination complaints, file lawsuits on behalf of victims of discrimination, and issue regulations to interpret and enforce the EEOA,[58] Section 42,[59] on the other hand, is enforced by the Nigerian courts.

The EEOA provides more comprehensive protection against discrimination in employment than Section 42.[60] However, Section 42 applies to a wider range of employers.

The EEOA prohibits discrimination in all aspects of employment, including hiring, firing, promotions, compensation, job assignments, training, and benefits. To prove a claim of employment discrimination under the EEOA, an employee must show that:[61]

(a) They are a member of a protected class;

(b) They were subjected to an adverse employment action; and

(c) The adverse employment action was motivated by their membership in a protected class.

Employers can defend against claims of employment discrimination by showing that they had a legitimate, non-discriminatory reason for the adverse employment action.[62] The EEOA has had a significant impact on the American workplace. It has helped to level the playing field for all workers and has created a fairer and more just workplace.[63]

[58]Occhialino Noel and Daniel Vail, 'Why the EEOC (still) Matters', *Hofstra Labour and Employment Law Journal* (2004) (22) 671.

[59]S 42 of the Constitution of the Federal Republic of Nigeria 1999(as amended).

[60]Ibid.

[61]Rothenberg Jessica and Daniel Gardner, 'Protecting Older Workers: The Failure of the Age Discrimination in Employment Act of 1967',Journal of Sociology and Social Welfare (2011) (38) 9.

[62]Mukherjee Dhruba, 'The Dichotomy Between Independent and Cumulative Reasons for an Adverse Action: A New Defense For Employers to Claims of Workplace Discrimination', *Am. U. Labor and Employment*, LF (2015) (5) i.

[63]Cash Karen and George Gray, 'A Framework for Accommodating Religion and Spirituality in the Workplace', *Academy of Management Perspectives Journal* (2000) 14(3) 124.

Nigeria also has laws prohibiting discrimination in employment, but they are less comprehensive than those in the USA.[64] The Nigerian Constitution prohibits discrimination on the basis of tribe, ethnicity, religion, or political opinion.[65] However, there is no specific law prohibiting discrimination on the basis of other protected characteristics, such as age, disability, or sexual orientation. The main difference between the laws against discrimination in employment in the USA and Nigeria is the scope of protection. The US laws cover a wide range of protected characteristics, while the Nigerian laws are less comprehensive.[66]

Another difference is the level of enforcement. The US EEOC is a well-funded and experienced agency with a strong track record of enforcing anti-discrimination laws.[67] In contrast, the Nigerian government has limited resources to enforce its anti-discrimination laws.[68]

The Labour Act of Nigeria is the primary law governing employment relationships in Nigeria.[69] The Act contains a number of provisions that prohibit discrimination in employment, but these provisions are not as comprehensive as the anti-discrimination laws in the USA.

Section 18 of the Labour Act[70] prohibits discrimination in employment on the basis of tribe, ethnicity, religion, or political opinion. This means that employers cannot refuse to hire someone, fire someone, or otherwise discriminate against someone on the basis of any of these protected characteristics.

Section 20 of the Labour Act[71] prohibits discrimination in employment on the basis of disability. This means that employers cannot refuse to hire someone, fire someone, or otherwise discriminate against someone on the basis of their disability.

[64]The HIV and AIDS (Anti-discrimination) Act 2014 and The Discrimination against Persons with Disabilities (Prohibition) Act, 2018.
[65]S 42 of the Constitution of the Federal Republic of Nigeria 1999(as amended).
[66]Adejugbe Adeyinka and Adedolapo Adejugbe, 'Women and Discrimination in the Workplace: A Nigerian Perspective',SSRN 3244971 (2018).
[67]Mehri Cyrus and Ellen Eardley, '21st Century Tools for Advancing Equal Opportunity: Recommendations for Administration',Advance Journal (2009) (3) 131.
[68]Dormady Valerie, 'Status of the Convention on the Elimination of All Forms of Discrimination against Women) in 1998',*The International Lawyer* (1999) 637.
[69]Nwokpoku Joseph, 'Nigerian Labour Laws: Issues and Challenges', *World Applied Sciences Journal* (2018) 36 (1) 47.
[70]S 18 of the Labour Act 2004.
[71]S 20 of the Labour Act 2004.

However, the Labour Act does not prohibit discrimination on the basis of other protected characteristics, such as age, sex, or sexual orientation. This means that employers can legally discriminate against employees or applicants on the basis of these characteristics.

Another difference between the two laws is that the EEOA applies to all employers with 15 or employees,[72] while the Nigerian labour law applies to all employers with 50 or more employees.
Additionally, the EEOA requires employers to take affirmative action to ensure equal employment opportunity for all employees. Affirmative action is a set of policies and practices designed to increase the number of women and minorities in the workforce. The Nigerian labour law does not require employers to take affirmative action.
In addition, the Labour Act does not provide for a strong enforcement mechanism for its antidiscrimination provisions. The National Industrial Court of Nigeria has jurisdiction to hear discrimination cases,[73] but the court is often overwhelmed with cases and can be slow to adjudicate on them. As a result of these weaknesses, the Labour Act does not provide adequate protection against discrimination in employment in Nigeria.
The EEOA is a living law that continues to evolve to meet the changing needs of the workplace. The law is essential to ensuring that all workers have the opportunity to succeed and thrive.
Finally, the US laws provide for more severe penalties for employers who violate them. For example, the US EEOC can order employers to pay back pay, damages, and other compensation to victims of discrimination. In Nigeria, the penalties for violating anti-discrimination laws are much less severe.

Lessons from the America Position

The America's Labours Laws tend to protect fundamental human rights with respect to various areas of practice, wages, employment discrimination, freedom of association and right to family life. In this sub heading, the lessons derived from these laws would be expatiated.[74]

[72]Bowe Frank, et al., 'Workplace Discrimination, Deafness and Hearing Impairment', *The National EEOC ADA Research Project* (2005) 25 (1) 19.
[73]Busayo Kemisola and Akanle Oluwaseun, 'Unfair Labour Practices in Industrial Relations in Nigeria and the Role of the National Industrial Court', *Journal Law Policy and Globalization* (2022) (119) 111.
[74]Julie Olajumoke Coker, et al, 'The Impact of Labour Laws on Fundamental Human Rights in the Workplace: A Comparative Analysis Between Nigeria and the United States', *Social Values and Society (SVS)* 5(2) (2023), 54-58.

(a) Wages

As demonstrated above, the Nigeria labour laws favour the idea of minimum wage which is encouraging. But it does not look at the adequacy of the minimum wage whether it reflect the economic realities of the country. In other words, minimum wage does not reflect the required living wage for the employer which could have a negative impact on the right to privacy of the Nigerian workers. Under the United States Labour Laws, particular the fair labour standards Act, wages are necessary, such as housing, food and other necessity, if this idea of wage determination is imbibed in Nigeria, at least Nigerian workers would be able to live life beyond the poverty line.

(b) Employment Discrimination

Under the United States Civil Right Act and the American with Disabilities Act, no American is expected to be discriminated against on the ground of sex, race, nationality, or disability with respect to employment. It is unlawful for an employer to refuse to give a person job on any of the grounds stipulated above or expel any on these grounds. Under the Nigerian law, the discriminatory employment is still encouraged by the laws, that is a woman is not allowed under the law to engage in night work or underground work, even if she is qualified.

(c) Freedom of Association

The United States encourages collective bargaining and encourages parties to trade dispute to engage in it under its National Labour Relations Act by encouraging labours to form association to protect their interest. However, in Nigeria such labour association could trample upon and tear apart by the government with the connivance of the labour law.

For example, the Trade Union Act gives the President the power to prescribe any trade union. This is not a good law for the protection of the right of employee to freedom of association in Nigeria.

(d) Right to Family Life

Right to family life includes maintaining and taking care of the family. Workers are busy people who may be buried in the service to the employer with little or no attention to their family. The United States of America recognizes this and provides that 12 workweeks unpaid leave should be

granted to the employee in order to take care of his family. This is an adorable provision to ensure that family life of an employee is not endangered because of his service to his employer. In the Nigeria labour law, no such leave exists. This article suggests that in order to protect the family life of an employee, such leave should be recognized, however, with the addition, unlike the United States, that a certain percentage of the employee should be paid to him during such leave in order to cater for the needs of his family.

Conclusion

The Constitution of Nigeria prohibits discrimination in employment on the basis of tribe, ethnicity, religion, or political opinion. However, it does not explicitly prohibit discrimination on the basis of other characteristics, such as age, disability, or sexual orientation. There are a few other laws in Nigeria that prohibit discrimination in employment on the basis of certain characteristics, but these laws are limited in scope. Overall, the Constitution of Nigeria provides some protection against discrimination in employment, but there are many gaps in the law. The EEOA provides more comprehensive and stronger protection against employment discrimination than the Nigerian labour law. This is because the EEOA covers a wider range of protected characteristics, is more strictly enforced, and provides for more severe penalties for employers who violate it. It is important to note that the Nigerian labour law is still under development, and it is possible that it will be amended in the future to provide more comprehensive protection against employment discrimination. The Labour Act of Nigeria contains a number of provisions that prohibit discrimination in employment, but these provisions are not as comprehensive as the anti-discrimination laws in the USA. The Nigerian government should take steps to strengthen the Labour Act's anti-discrimination provisions to provide better protection against discrimination in employment for all Nigerians.

STATELESSNESS; A REALITY OR ILLUSION? FINDING ANSWERS IN INTERNATIONAL LAW

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Abstract

The issue of statelessness is a significant and concerning development within the realm of international law, albeit one that receives less attention. This phenomenon has the potential to be quite alarming and unacceptable, with catastrophic consequences that can only be imagined rather than experienced. Those affected by statelessness finds themselves vulnerable, lacking a secured statehood necessary to access their basic fundamental rights fully. Statelessness typically arises as a result of insecurity, instability, circumstances of birth and in rare cases actions taken by a state, which subsequently lead to lack of proof of nationality for the individual concerned. In this modern era individuals without a recognised nationality face increasing difficulty in functioning within the society. Stateless persons are extremely vulnerable and completely defenceless. The Convention Relating to the Status of Stateless Persons 1954 and the Convention on the Reduction of Statelessness 1961 both provided comprehensive provisions about the fundamental and inalienable rights of stateless persons within the territory of a contracting party that is signatory to the respective conventions. However, the question remains as to whether these international legal frameworks are adequate to address the issue at hand.

Keywords: *Stateless, Statelessness, Rights, Nationality, Citizenship.*

Introduction

The notion of statelessness and denial of citizenship pose a grievous challenge to the well-being of affected persons, peace and security globally. Arguably the concept of statelessness originated from the garden of Eden[1] where according to Biblical record Adam was expelled from his bona fide state, from that instance he ceased to be a citizen of his original state and became stateless with its attendant negative consequences. Culturally, statelessness (banishment) was a punitive

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[1] Genesis Chapter 3 vs 23 (New International Version) So the Lord God banished him from the Garden of Eden. It can safely be asserted that immediately thereafter Adam became Stateless with all the negative effects.

instrument in the hands of ancient kingdoms to punish miscreants and recalcitrant persons.[2] To put this idea in proper perspective, the Black Law Dictionary defines it as ‘‘a natural person who is not considered a national by any country’’[3] The major international framework that codified the doctrine of stateless persons put it more succinctly; ‘‘stateless persons means person who is not considered as a national by any State under the operations of its law.’’[4]

Millions across the globe are negatively affected by the horrors of statelessness. The effect makes persons in this category extremely vulnerable to dehumanising and exploitative tendencies by authorities and persons they live in their territories.[5] The highest population of stateless persons reside in Cote de Voire, Myanmar, Palestine, Yemen and Bangladesh[6]. In 1986 the government of Mauritania revoked the citizenship of over 60,000 black Mauritanians thereby exposing them to unimaginable hardship and degrading experiences.[7]

In Syria, the state used the guise of census to stripe more than 120,000 Kurds of their citizenship, this ugly 1962 event dealt a devastating blow to the socio-economic rights of the Kurds till this very moment.[8] The overriding implications and far-reaching negative consequences of statelessness on the political, economic, social and cultural rights is a scar on the conscience of the Universal Declaration of Human Rights 1949 and other continental and regional legal frameworks.

Historical Background

No human exists without belonging to a community. There is hardly a community that does not belong to a state. Hence, it is intellectually intriguing, politically challenging and demanding to contemplate a person without a state. This write-up will attempt to deconstruct the mystical

[2]C Craft, *Christianity and Culture* (OrbisBooks New York, 1979. p 52).
[3]G A Bryan, Black’s Law Dictionary, Eight Edition, 2004, p1444.
[4] Article 1 Convention Relating to the Status of Stateless Persons 1954.
[5] UNHCH; ‘The UN Refugee Agency Press Release, Abidjan Cote d’Ivoire’ 7th May, 2019.
[6]MunirUzZaman, Statelessness Around the World, Council for Foreign Relations Education. https://education.cfr.org. accessed 23rd April, 2024.
[7]‘Statelessness and the democratic transition in Mauritania. The Situation of Mauritanian Expellees in Context’ Institute for Human Rights and Development in Africa Open Society Justice Initiative, April 2007. <https://www.ihrda.org. Accessed 23rd April, 2024.
[8] Available <www.world101.cfr.org> accessed 23rd April 2024.

phenomenon of a person without a state. It is proper to render some key words into historical operational journey that can be concretely pinpointed in their proper context.

State is described by early social thinkers including John Locke as a construct consisting significant submission of individuals rights to the construct as an artificial person and impartial arbiter; without which they would be war of men against men.[9]Thomas Hobbes posited that state is a contract between individuals that the sovereign owes his authority to the will of those he governs and is obliged to protect the interests of the governed by assuring civil peace and security, life outside society would be solitary, poor, nasty, brutish and short[10]

What is implied in this characterization of the theory of state, is that, the state whether modern or medieval or centuries away embodies distinct geographic location, definite boundary, population, governments or administrators, administrative units, bureaucracy, laws, identity, culture, relationships with other states; sovereignty which represents the power of the state to make laws and enforce it within her jurisdiction.[11]

Statelessness is not limited to persons alone; states can equally be stateless.[12] There are plenty stateless nations in the world today. The Kurds are one of the largest stateless nations, with over 20 million people dispersed across six countries others are the Palestinians, Roma and the rest.[13]

Jurisprudential Twist to Statelessness

In an attempt to jurisprudentially inquire into this concept, one point must be made clear, that is the role of justice in statelessness. Whatever its definitive interpretation maybe is in itself a moral value, that is, one of the aims or purposes which man set himself in order to attain the good of life. What then is good life without an identity traceable to a state? Therefore, it is incumbent on

[9] J Locke, *Two Treatises of Government* (London Printed Awnfham Churchill, at the Black Sawn in Ave -Mary-lane, by Amen Corner 1690).
[10] H Thomas; K; Leviathan (Baltimore; Penguin Books, 698).
[11] Ole Spiermann. General legal characteristics of states; view from the past of the permanent court of international justice. https://cambridge.org. accessed 23rd May, 2024.
[12] J W Friend, Stateless Nations Western European Regional Nationalisms and the Old National. Palgrave, 2012) 23.,
[13] J Minahan, *Encyclopaedia of Stateless Nations; Ethnic and National Groups around the World* (Greenwood Westport Ct USA 2002) 29.

the part of the state to change the status of stateless persons into nationals or citizens for the purpose of derivative benefits.

If all the moral purposes of human life are about ‘‘the good’’ then the idea of justice is no more than one of the various ’goods’ which morality set before mankind[14] on the subject of stateless persons and their plight in their country of residence. A particular ‘good’ may function either as a means or as an end in itself.[15] So, it will be a general good scenario both for stateless persons and the state to be accorded nationality where they reside.

Platonic idea of justice is that the microcosm of a just man is a reflection of the pattern of a just society. He therefore, perceived justice to be situated within a sphere and that justice means conforming to that sphere. An ideal society must be just within the context of nationality to all residence.[16] Hence in modern era, equality has been regarded as the very essence of justice. It is indeed the attainment of equality, not the preserving of inequality, that modern moral and legal philosophy treat as the vital function of justice[17] and that is exactly what most stateless persons are asking for equality of nationality.[18]

Contextual Analysis of the Concept.

People are inadvertently or by agitation for self-determination trapped in the non-enviable status of statelessness. The Palestine and Gaza, Rohingya people in Nepal are all classical examples of stateless persons. Refugees displaced from their countries to enjoy limited opportunities in foreign land are in reality stateless citizens because they are not in position to access their full rights as citizens of their foreign countries in foreign shelters. This brings to mind de jure statelessness and defector statelessness.[19] International law does not provide a legal definition of de factor statelessness. However, a person is so considered when; they have a nationality but reside outside the territory of their country of nationality, and are unable or unwilling (for valid reasons) to have recourse to the protection of that country. The de factor occurs when a person is

[14] D Lloyd, *The Idea of Law* (Penguin Books England, 1964) 177.
[15] Ibid.
[16] Plato, *The Republic* (Vintage Classic Books, New York. 1991) 146.
[17] Dennis (n 11)119.
[18] Statelessness in Syria; Al Jazeera Television Documentary 8;30pm (GMT) 7th June, 2024.
[19] P McMullin, *Centre on Stateless* (University of Melbourne (factsheet)3.

a citizen of a state but has been forced out of his home state as a result of war, natural disasters, repressive regimes etc.

The de jure statelessness has ab initio protracted problem of achieving statehood like Palestine, Gaza and Rohingya. A person is de jure stateless when they meet the international legal definition of statelessness; they do not have a nationality under the laws of any country.[20]

In the first quarter of 2024 the UNHC[21] raised a worrisome alarm that millions of people around the world are denied a nationality. Over 11 million persons are at the risk of statelessness globally[22] The manifestation of this is that they often are not allowed to go to school, see a doctor, get a job, open a bank account, belong to an association, buy a house and in some extreme cases even getting married.[23] Without the aforementioned things that are unarguably necessities for existence and recreation of citizens, they are prone to face a lifetime of obstacles and disappointment.

Thus, UNHCR, has made it an ultimate goal to end worldwide statelessness by the year 2024, enjoining everyone to 'Please Take Action' and become part of the IBelong Campaign to end this injustice against mankind. The launch of IBelong Campaign in 2014 with the goal of ending statelessness within 10 years is still very far from achieving its set objectives and aspirations having just six months to the end of 2024 (as at the time of writing this).

The Challenges Faced by Stateless Persons

A stateless person being someone who is not considered to be a citizen by any State on the basis of its national laws is bedevilled with avalanche of challenges in spite of the well-thought-out intention and content of the provisions of [24] Convention on the Reduction of Stateless persons 1961.

[20] Ibid 4.
[21] *UNHCR 2024 First Quarter Report.* https//www.unhcr.org> accessed 24thApril, 2024
[22] UNCHR, '2023 Global Compact on Refugees Indicator Report' https;//www.unhcr.org.accessed 24th May, 2024.
[23]UNHCR, 'The State of World's Refugees; Fifty Years of Humanitarian Action', New York; Oxford University Press, 2000 <http;//www.unhcr.ch/pubs/sowr2000//sowr2000toc.htm> accessed 24 April 2024.
[24] Section 9 of the 1961 Convention on the Reduction of Stateless Persons.

Nationality acquisition varies from country to country likewise the circumstances necessitating the deprivation of it. These may depend on the place of birth, territory of residence, the nationality of the parents, or of the father or the mother etc. Lack of national identity is a major challenge faced by stateless persons.

Is it possible to lose nationality even one legally acquired or to have it revoked by law? What are the circumstances that can lead to that? This may happen, for instance, through a marriage or a birth outside the country of which the parents are a national, which can result in the loss of that nationality but without the certainty that the person in question will acquire a different one. Events such as territorial transfers, decolonisation, or the disintegration, breakup, or creation of a State may in question to all persons residing on the territory concerned.

Stateless persons pose a serious problem to the international community that is organised around the concept of nationality. Individuals are protected as a result of their national legal status, since they do not have an autonomous international legal personality like the state thus.

Hence in times of conflict, a party to a conflict is legally forbidden from considering stateless persons as enemies and must ensure their safety and grant them the protection provided to all civilians.[25] Stateless persons must also be granted the rights due to foreign nationals who find themselves on the territory of a party to a conflict[26] which is; all protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so.

However, stateless persons are overwhelmed with many challenges which in most cases start from the cradle and end in the grave. Few of such challenges include but not limited to: discrimination[27] denied access to birth registration, education, health care, job opportunities, marriage and the unimaginable fact of the denial of dignity of an official burial and a death certificate.[28]

[25] Article 73 of the Protocol Additional to the Geneva Convention of 12l August, 1949 and relating to the Protection of victims of International Armed Conflicts (Protocol 1) of 8 June 1977.
[26] Article 35 of the Geneva Convention {IV} on civilians, 1949.
[27] Section 42, 1999 Constitution of the Federal Republic of Nigeria (as amended).
[28]<https;//www.unhcr.org>Ibelong. accessed 2 June 2024

Stateless persons experience travel restrictions, social exclusion and heightened vulnerability to sexual and physical violence, exploitation, trafficking in persons, forced displacement and other numerous abuses.[29] To add insult to injury, due to lack of identity, stateless persons can not complain to the authorities that ought to provide protection for them.

Causes of Statelessness

In as much as '' everyone has the right to a nationality''[30]some people are born stateless while others found themselves stateless. Nationality is automatically acquired at birth (jus sanguinis-meaning law of the blood), either through parents or by virtue of being born in a particular country.[31] (jus soli-meaning law of the soil).

In Nigeria for instance, there are three ways in which citizenship can be acquired; by birth[32] registration[33] and by naturalisation[34]. Dual citizenship is legally permissible in Nigeria. Therefore, a citizen of Nigeria can equally and simultaneously be a citizen of another state.[35] The nuances here is that deprivation of citizenship[36] is possible only if the status of the citizen was acquired either by naturalisation or registration but if it is acquired through birth the State cannot deprive such person his or her citizenship.[37]

However, one or more of the following factors can give rise to statelessness. A significant cause of statelessness is discrimination based on race, ethnicity, religion, language or gender. Non-inclusion of specific groups in the body of citizens for discriminatory reasons is linked to protracted and large-scale statelessness in the country of birth.

[29] US Department of State. 'Statelessness Bureau of Population, Refugee and Migration' <https;//www.State.gov> accessed 2 June 2024
[30] Article 15 (1) Universal Declaration of Human Rights, 1948.
[31] Section 25, Constitution of the Federal Republic of Nigeria 1999 (As amended).
[32] Section 25 (1). 1999 Constitution of the Federal Republic of Nigeria (As amended).
[33] Section 26 (1) ibid.
[34] Section 27 (1) Ibid.
[35] Section 28 (1-2) Ibid.
[36] Article 15 (2) of the Universal Declaration of Human Rights 1948 (No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality).
[37] Section 30 (1&2) Ibid.

States can also deprive citizens of their nationality through changes in law using discriminatory criteria that leave whole populations stateless.[38] In fact, the majority of the world known stateless populations belong to minority groups. Gender discrimination in nationality laws is a significant cause of childhood statelessness. The laws of 25 countries do not allow women to pass on their nationality on an equal basis with men.[39] Consequently, children can be left stateless when fathers are stateless, unknown, missing or deceased.

Different countries have different laws motivated by different principles of statecraft, national history, existential issues and cross-cutting sentiments; which relatively create gaps in nationality laws, these are significant determinant of statelessness. Every state has laws under which someone acquires nationality[40] or can have it withdrawn[41] if these laws are not carefully and inclusively drafted and correctly applied, some people will inevitably be excluded and left stateless.

For instance, children whose parents are unknown like dumped infants, in a country where nationality is acquired based on decent from a national. Fortunately, most nationality laws recognise them as national of the state in which they are found.

Migration is another challenge. Migration may change a person's position under the applicable nationality laws, making it very challenging for the person to retain his or her citizenship.[42] When people migrate from countries of their births as a result of conflict or humanitarian disaster to another country where unfavourable nationality law gives rise to risk of statelessness. Often times stateless migrants are target of xenophobic attitudes more so if they belong to vulnerable minority groups.[43]A child born in a foreign country can risk becoming stateless if that country does not permit nationality based on birth alone (jus sanguinis) and if the country of origin does not allow a parent to pass on nationality to children born abroad.

[38] Stateless Nations-the Encyclopaedia of World problems. 'About 20 million Kurds are stateless spreading across Turkey, Iran and Syria' <http//encyclopedia.uia.org>. 3rd June, 2024.
[39] B Emma, 'The sexiest' nationality laws that leave children stateless' Published June 13, 2023 <https;//www.context.news> accessed 14 April 2024
[40] (n 14) Section 25,26 and 27.
[41] (n 14) Section 30 subsection 1 and 2.
[42]<https;//www.weblog.iom.int.> accessed 14thApril 2024
[43] Ibid

Continuous creation of new States in response to endless agitations and global dynamics is another cause.[44] The emergence of new states leads to reviews of geospatial delineation resulting in adjustment of borders. In numerous cases specific groups are prone to be left without a nationality and even conditions permit the incorporations of ethnic minorities in the principles of nationality for all, ethnic, racial and religious minority often experience trouble improving their connection to the mainstream country. In countries where nationality is only acquired in a top-bottom descent from a national, statelessness will be imposed on to the next generation.

Another crucial factor worth analysing is that lack of civic documentation may result to statelessness in the status of an individual if they fail to prove that they have link to a State. Being undocumented does not necessarily connote stateless status.[45] However, lack of birth registration can put people at risk of statelessness as a birth certificate provides proof of where a person was born and parentage-key information needed to establish a nationality.[46]

Statelessness is fraught with life-long impacts on those it affects. The millions of affected people around the world who are denied a nationality are often not considered entitled to many basic human rights and social insurance packages that most people takes for granted.[47]

Often, they are excluded from birth to end of life time being denied a legal identity when they are born. Access to necessities of life or things that makes life liveable and enjoyable remain a mirage to stateless persons during their lifetime and even in death.[48] In some circumstances also denied the dignity of an official burial and a death certificate when they die. This becomes a circle of generational exclusion, when children born by stateless parents continue with stateless status, who then pass it on to the next generation.[49]

[44] US Department of State. "The aftermath of world war II and the reconfiguration of nation states created a surge of stateless population" <www.state,gov> accessed 15th May, 2024

[45] UNCHR reporting on Statelessness posited that lack of proper documentation and metadata information could actually lead to statelessness <https;//www.unhcr.org accessed 15thMay, 2024

[46]UNICEF,'AStatistical profile of birth registration in Africa', November 2020. <https;//data.unicef.org/resource/a-statistical-profile-of-birth-registration-in-africa/> 26th May, 2024.

[47] UNHCR; 2023 Global Compact on Refugees Indicator Report November, 2023.

[48] S L Mira, *Statelessness A Modern History*. Harvard University Press. (2020).

[49] Ibid.

International Instruments against Statelessness

There are two significant efforts aimed at changing the international legal order from awareness creation, protection and the institutionalisation of the concept of statelessness in the conscience of international organisations and states actors. Many countries have ratified treaties or conventions that try to establish minimum guarantees for stateless persons and aim to reduce it to the barest minimum all the conditions that may cause statelessness.

Convention Relating to the Status of Stateless Persons 1954

In an international coordinated effort to recognise and ameliorate the sufferings of Stateless persons, The United Nations General Assembly convened a conference of Plenipotentiaries and drafted an international treaty on refugees and stateless persons in 1951. The same year, the Convention relating to the Status of Refugees was adopted remaining that of stateless persons. International negotiations continued up until 28th September, 1954 when the Convention relating to the Status of Stateless persons was adopted and entered into force on 6th June, 1960.

It has 86 state parties. This Convention set a minimum international status that must be granted to stateless persons. The Convention in principle tried to remind state parties of minimum rights that stateless persons must enjoy; for instance, right of association[50] Stateless persons have the right to associates as long as it is not aligned to a particular political cum economic affinity.

It does reaffirm the rights that must be granted by the laws of the state on whose territory stateless persons legally reside. The rights are cumulatively inherent in various international instruments[51] and others are socio-cultural in nature[52] they were all ratified under the auspices of the United Nations Organizations State parties to the Convention must treat stateless persons as favourably as possible and no less favourably than other foreign persons in the same circumstances. In specific mention, the provisions of this Convention apply to the following rights viz a viz;

[50] Article 15, Convention Relating to the Status of Stateless Persons 6 June, 1960.
[51] International Covenant on Civil and Political Rights, 16 December, 1966.
[52] International Covenant on Economic, Social and Cultural Rights, 16 December, 1966.

Right to property,[53] right to access to courts,[54] right to engage in different professions,[55] right to benefit from various social, administrative and other public services,[56] respect for rights in terms of expulsion and naturalisation[57] right to freedom of movement, travel documents, and transfer of assets[58] all these and many more gives insight into the content of the Convention Relating to The Status of Stateless persons.

Convention on the Reduction of Statelessness.

This convention was ratified on the 30th of August, 1961 (pursuant to General Assembly Resolution 896/IX and came into force on the 13 December, 1975. It mandates that, each state party must grant its nationality to persons who are born in its territory who would otherwise be stateless. Such nationality shall be granted at birth, by operation of law or by application being lodged with the authorities.[59]

Universal Declaration of Human Rights.

The principles enshrined in the convention has attained the force of customary international law and with its adoption into several state constitutions and legislations it inherently becomes enforceable in national judiciaries. "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.''[60] Therefore, all human beings whether stateless or with a status of a state is endowed with their dignity as a human person and that ought to be respected in all circumstances in accordance to international legal frameworks.

The Primary goal of the convention is to ensure that all but none would otherwise be stateless despite existing links with a state, such as birth, descent or residence can acquire or maintain a nationality. The convention does not ascribe any specific rights to stateless persons, but

[53] Article 13,14 (n 26).
[54] Article 16 Ibid.
[55] Article 17, 18 ibid.
[56] Article 20-25 Ibid.
[57] Article 31, 32 Ibid.
[58] Article 30 Sub Art 1,2. (n.26).
[59] Article 1 of the Convention on the Reduction of Statelessness. 30th August, 1961.
[60] Article 1 of the Universal Declaration of Human Rights. 10th December, 1948. This Charter was proclaimed at the UNGA in Paris as (GA Resolution 217A).

recommends the creation of a framework or an entity, under the United Nations, ''to which a person claiming the benefits of this convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.''[61] Unfortunately, this proposed organ was never set up, and its functions were turned over to the United Nations High Commissioner for Refugees.

African Charter on Human and Peoples Rights:

> The lofty ideals of the Afro-human-right-charter cannot be said to be achieved if the continent harbour stateless persons in this 21st century. ''All people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind''[62] The identity of people is their nationality which is an individual connection to a state in the broader context of international law. It is this identity that qualify an individual to benefit from socio-economic rights that accrued to the common heritage of mankind.

Ending Statelessness Illusion or Possibility?

About 4.4 Million people in the world are victims of statelessness, arbitrary denial of citizenship and its attendant consequences.[63] The possibility of eliminating or in a worst-case scenario reducing it to the barest minimum can be achieved through the combination of the following factors and the sincere implementation of relevant legal frameworks. Governments determine who is a national of their state through policies and legal frameworks. Therefore, effectively ending statelessness is a matter of reforming domestic laws, policies and implementation.

In October of 2013, the UN High Commissioner for Refugees strongly advocated for a ''total commitment of the international community to end statelessness.''[64] The ten-action plan developed to end this scourge are:

[61] Article 11, Convention on the Reduction of Statelessness 30th August, 1961.
[62] Article 22 of the African Charter on Human and Peoples Rights. 27th June, 1981.
[63] 2022 Annual Report of the United Nations High Commissioner for Refugees.
[64] UNHCR Global Action Plan to End Statelessness;2014-2024 (Global Action Plan).

Action 1: Resolve existing major situations of statelessness.

Action 2: Ensure that no child is born stateless.

Action3: Remove gender discrimination from nationality laws.

Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds.

Action 5: Prevent statelessness in cases of state succession.

Action 6: Grant protection status to stateless migrants and facilitate their naturalisation

Action 7: Ensure birth registration for the prevention of statelessness.

Action 8: Issue nationality documentation to those with entitlement to it.

Action 9: Accede to UN Statelessness Conventions.

Action 10; Improve quantitative and qualitative data on Stateless populations.[65]

As part of the strategy to solve the problem of statelessness on the continent of Africa, Prof Chidi Anslem Odinkalu advocated for ‘‘a continental treaty to guarantee the right to citizenship and prohibit statelessness in Africa.’’[66] The treaty will seek to facilitate the inclusion of individuals within African states, by providing legal solutions for the resolution of the practical challenges connected to the actualization of the right to a nationality; to eradicate statelessness and above all to identify the principles that should govern relations between individuals and states in relation to these issues.[67]

Non-Governmental Organisations; Non-profits organisations, public spirited individual has a very crucial role to play in the eradication of statelessness in any country. NGOs should weaponize advocacy via mass and social media in creating mass awareness as to the dangers of

[65]<http://www.unhcr.org>ibelong> accessed 25thMay, 2024

[66] C. A. Odinkalu, ‘Protecting citizenship rights and ending statelessness in Africa’ Premium Times (Abuja 19th February, 2024)

[67] Ibid.

stateless persons in a state and shaping policy direction of the government on the subject matter which will lead to proactive legislation.[68]

Policy Makers: Governments through legislation and policies establish who their nationals are. This imposes on the policy makers, political leaders and relevant public institutions responsibilities for legal and policy reforms that are necessary to effectively address statelessness.

International/Regional Organisations; States have discretion with regards to nationality because they are limited by obligations under international treaties to which they are parties by signatories, customary international law and general principles of law.

In 2015, the Economic Community of West African States (ECOWAS) adopted a declaration on the prevention, reduction and elimination of stateless persons in West Africa.[69] About 750,000 people are actually stateless and close to the same figure are at the risk of statelessness in the region and as such deprived of the basic necessities of life such as education, health care and more.

Through cooperation statelessness will be drastically reduced if not completely eradicated. The UNHCR developed global action plan that provides a blueprint of 10 action that needs to be undertaken to resolve existing situations and prevent new cases of statelessness from arising.[70]Hence, the UNHCR launched the IBelong Campaign to End Statelessness by 2024, (this current year).

Collaboration among Un Agencies: This is very vital for instance, the United Nations Children's Fund (UNICEF) has long worked on improving birth registration and civil registries, with categorical database on statelessness.[71] This will ensure ending statelessness for a bright future for every child. This is absolutely in tandem with "the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a

[68]*ICVA 2023 Annual Report. Navigating Challenges, fostering Collaboration, and embracing transformation.*<https://www.icvanetwork.org> accessed 26thMay, 2024
[69] Joint UNHCR/ECOWAS press release Abidjan, Cote D'Ivoire, 25th February, 2015.
[70] UNHCR Global Campaign to Eradicate Statelessness November, 2014.
[71]UNICEF Annual Report 2023. 'Ending Childhood Statelessness in Europe <https://www.unicef.org> assessed 26th May, 2024

nationality and as far as possible, to know and be cared for by their parents."[72] Identity of the child is key to his development, growth and access to facilities of health, education, welfare and many more. That is the crucial role name plays in the life of a child. The UN Population Fund can help governments design and implement national censuses with the aim of gathering relevant data on nationals and their status.

Conclusion and Recommendations

Statelessness is a systemic problem that perpetuates intergenerational challenges and sufferings. If it is a systemic problem, then, the same system can provide permanent solutions to it through functional policies and laws. Having nationality is something most people take for granted but to those who do not have one or who cannot prove it, this lack often sentences them to a life of discrimination, frustration, despair and penury.

Haven seen different perspectives about statelessness, it is apt to further anticipate profound and ongoing challenges faced by stateless persons around the globe, arising from discontents with politics and governance since 1960 of independence of the Nigerian State within the African context.

It is likely again that the question may have relevance for different parts of Africa facing civil unrest and arm insurrection by separatist movement. To what extent can violent and non-violent agitations for secession by outlaw Indigenous People of Biafra in the South East, Boko Haram in the North East, Oduduwa Nation Movement in the South West (all in the Nigeria state) induced self-imposed statelessness? Some separatist was reported to have burnt their national identification numbers, passports, permanent voters' cards and every valid document making them stateless in the Nigerian State in a fury.

Can the answer be relevant to the Saharawi people liberation movement (POLISARIO) in the proposed Western Sahara State in the North African state of Morocco? To what extent can all these agitations be resolved by jurisprudential principles and specific legislations? No effort should be spared to end the scourge of statelessness. Thus, it is entirely possible to resolve

[72] Article 7 The United Nations Convention on the Rights of the Child1989.

existing situation of statelessness and prevent children from growing up stateless in the future. The only solution to statelessness is the acquisition of nationality which the states are hereby enjoin to do.

By way of recommendation, states should develop strategic, pragmatic action plan to end statelessness. This of course requires a collective and collaborative efforts on the part of states, state actors and international organizations that have similar core mandate. The full adoption and implementation of the 1961 Convention on the Reduction of Statelessness is a critical instrument in the mitigation of statelessness. In another development, if states grant citizenship to children born on their territory or born to their nationals abroad it will significantly reduce the menace of statelessness.

Sensitization through awareness creation on the triggers that will bring about statelessness is necessary for its prevention. Civil documentation through birth registration is another vital component that can prevent statelessness. A broad coalition of stakeholders from various sectors can intensify the campaign and states should develop a tailor-made strategy towards the eradication of statelessness within their territory.

THE DEVIANCE AND CRIME OF DEFILEMENT OF GIRL-CHILD IN NIGERIA: CAUSES, EFFECTS AND SOLUTIONS

Yahya Duro Uthman Hambali*

Abstract

Girl-child, like her male-child counterpart, is a gift from God and deserves to enjoy the basic rights of life like every human being, in particular, the right to life and the right to dignity of human person notwithstanding her immaturity of the mind and body. However, while the girl-child is still going through her formative stages, she suffers sexual attacks from persons who should offer her protections. Such persons could include her father, persons who are as old as her great grandfather, close relation, neighbours or even total strangers. Apart from being the accepted norm of the Nigerian communities that defilement of girl-child is a deviance and the defiler, a deviant, the conduct has also been criminalised by the two principal penal laws in the country namely, the Criminal Code and the Penal Code. However, notwithstanding these formal and informal control of the deviant behaviour, girl-child continues to experience defilement in the hands of sex criminals. It then becomes necessary to interrogate the motivating factors behind the deviance of defilement of girl-child. Being a behavioural pattern, the paper examines the views of criminologists and criminal justice scholars to situate the possible causes of the deviant behaviour and why it continues to find its way into our daily life. The study adopts doctrinal methodology which reveals the general views of scholars that the deviance of defilement of girl-child could be the result of innate tendencies and societal influence and that it is not enough to criminalise the conduct through penal laws as it is presently the case, the legal framework needs to be complemented by the collective efforts of the government, the parents and the society.

Keywords: *Girl-child, Deviance, Defilement of girl-child, Victim, Victimisation.*

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Introduction

A girl-child is known for her free mind and free will to relate with people and enjoy freedom in her given environment to the fullest like her male counterparts. Her brain is still like 'tabula rasa' i.e. clean slate, in matters of sex and sexuality. It becomes problematic for her when such freedom is curtailed by a delinquent sex offender who unwholesomely takes away her pride and honour by defiling her at a time when she barely understands her environment nor what sex is all about. In Nigeria, cases of defilement of girl-child is on the rise.[1] It is particularly worrisome to hear in the news or read in newspapers how older males defiled young girls, or how a father defiled his own daughter, or how a trusted relative had unwholesome sexual encounter with his niece, or how a neighbour defiled the daughter of another neighbour, etc.[2] All these happened and are still happening notwithstanding the existence of both legal and regulatory framework to curtail the menace. As a researcher, it then becomes important to investigate the causes of such offending and the effects of the deviance on the girl-child and their parents. Issues around how the society, the parents and even the innate characteristics of the offenders contribute to the deviance of defilement of the girl-child are also worthy of investigation.

To attend to the foregoing issues, the paper has been divided into eight sections. This foregoing introduction occupies section one. The problems which the paper seeks address are discussed in section two while clarifications of the important concepts in the paper are made in section three. In a paper of this nature where the infringement on some of the fundamental rights of a girl-child is involved, the issues of rights arising from the defilement of girl-child are discussed in section four. In section five of the paper, causes of deviance of defilement of a girl-child are identified by leveraging on the existing criminological theories of crime to interrogate the possible causes of defilement of girl-child. Section six deals with the effects of defilement of girl-child on the victim, her parents and the society, while section seven of the paper deals with the plausible solutions to the crime of defilement of girl-child which are by no means exhaustive. Finally, the

[1]Osamuyi Aghasomwan Bello, 'Incidence of Girl-Child Defilement in Ugbighokho Community South-South Nigeria: The Way Forward' (2022) 13 (1) Mediterranean Journal of Social Sciences 20.

[2]See for example the report by Punch Newspaper by Naomi Chima in Naomi Chima, 'Lagos court remands man for defiling eight-year-old girl' (Punch Newspaper 21st November, 2023) https://punchng.com/lagos-court-remands-man-for-defiling-eight-year-old-girl/ accessed 18 August 2024; See also Bello n1, 20.

paper rounds up in chapter eight with brief statements on what has gone into the paper to address the problem of the deviance of defilement of girl-child.

The Problem

In spite of the numerous legislation and case law on sex delinquencies particularly, defilement of girl-child, the crime seems to be on the rise in Nigeria thereby making it unsafe for a girl-child to walk and relate freely with people in the society in the way and manner her male counterpart will do without let or hinderance.[3] There have been several reported cases of sex assault on girl-child by people who ordinarily should offer the child protection against sex predators. Instances of this abounds: It was reported in the Punch Newspaper sometimes in 2023 that a 54-year-old man, Jegede Folorunsho, was remanded in the Ikoyi Correctional Centre for allegedly defiling an eight-year-old girl in the Mushin area of Lagos State[4]; in January, 2024, the Punch Newspaper also reported that the Lagos State Sexual Offences and Domestic Violence Court in Ikeja, on Tuesday 16 January 2024, remanded a man, Onyeka Mbaka in the Nigerian Correctional Centre for the alleged defilement of a 15-year-old girl[5]; the Cable also once reported that a Chief Magistrates' Court has ordered that Jonah Luka, a 45-year-old man, be remanded in a correctional facility for allegedly defiling a seven-year-old girl in Kafanchan, Kaduna state. The offence is contrary to section 258 of the Kaduna State Penal Code.[6]

In a study conducted by Bello in Ugbighokho Community in Edo State in 2021, it was revealed that girl-child defilement is a serious problem in Ugbighokho Community as majority of the participants stated that the main defilers of females were those around their neighbourhoods and the victim's close relatives. It also revealed that the nature of the child's environment as well as poverty were the chief socio-cultural factors responsible for the defilement of females in Ugbighokho Community.[7]

[3]See Child's Right Act 2003 s 31; Penal Code Law, Laws of Kwara State, 2006 Cap P4 s 282(1) (e), Child's Right Law of Lagos state 2015.
[4]Chima n2
[5]Onozure Dania, 'Man remanded for alleged defilement of 15-year-old girl' (Punch Newspaper 17th January 2024) https://punchng.com/man-remanded-for-alleged-defilement-of-15-year-old-girl/ accessed 18 August 2024
[6]Abdulsalam Abdullah, 'Court remands man for 'defiling 7-year-old girl' in Kaduna' (The Cable, February 6, 2024) https://www.thecable.ng/court-remands-man-for-defiling-7-year-old-girl-in-kaduna/ accessed 18 August, 2024.
[7]Bello n1, 20.

In the case of ***Maduabuchi Onwuta v. The State of Lagos***[8] the case of the victim's mother was that on the 26th of November, 2013, the victim who was a year and 4 months old was taken by her mother to the appellant's room for care while she had her birth; that after she had had her bath, her daughter approached her pointing to her pant and saying "see, see"; and that she checked her daughter's pant and discovered blood on it. The victim's mother further told the court that she quickly rushed the daughter to the health centre, where it was confirmed that the daughter was defiled, and that she reported at the Police Station, following which the Appellant was arrested. The victim's mother also testified that she informed the Police that on the day of the incident, she was at home alone with her daughter and the Appellant, thereby, suggesting that only the Appellant could have defiled her daughter.

The trial court found the Appellant guilty of the one-count Charge of defilement of a 16-month-old baby left in his care when the mother went to take a shower, contrary to Section 137 of the Criminal Code, Ch. 17, Vol. 3, Laws of Lagos State. He was convicted and sentenced to 25 years imprisonment. On appeal to the Court of Appeal, the appellate court affirmed the conviction and sentence. Further appeal to the Supreme Court was also dismissed.

According to Bello,

> *Despite the harsh sentences imposed on girl-child defilers, more female children are still being defiled; this invariably implies that the female children are living in very difficult circumstances, as the environment in which the children are growing up in, is no longer safe, and this consequently impacts negatively on their development. The other source of concern is that despite adequate sensitization campaigns conducted against girl-child defilement, the existence of the relevant laws, expanding police force, growing judiciary, civil society advocacy on child rights, and parents plus local community authorities, all arrayed against girl-child defilement, appeared not to be yielding positive results as evidenced by the marked increase in the defilement of the girl-child.*[9]

[8] [2022] LPELR-57962 (SC)
[9]Bello n1,16

In all of the foregoing, the major concerns is what drives an adult to sexually assault a child who does not understand her body chemistry other than the pains she suffers from the encounter.

Conceptual Clarifications

a. Deviance

Deviance is a behaviour that violates social norms and arouses negative social reactions.[10] Some behaviours are considered so harmful that governments label them as crime and accordingly enact written laws that ban the behaviours.[11] According to Émile Durkheim theory of function of deviance, sociology and the sociological perspective are of the firm view that a society without deviance is impossible for at least two reasons. First, the collective conscience is never strong enough to prevent all rule breaking. Even in a "society of saints," such as monastery, rules will be broken and negative social reactions aroused. Second, because deviance serves several important functions for society, as any given society "invents" deviance by deferring certain behaviours as deviant and the people who commit them as deviant.[12] Durkheim illustrates this with how talking may be viewed as deviant in the monastery but normal elsewhere; and how an assailant who murders someone faces arrest and prosecution, even though, a soldier who kills a human being in wartime, may be considered a hero and given a medal.[13]

Deviance is also relative in two other ways. First, it is relative in geographical location: a given behaviours may be considered deviant in one society but acceptable in another society.[14] For instance, Whereas typical Muslim communities in the Northern Nigeria consider it a deviant behaviour for a woman to wear cloth that reveals her cleavages as such woman is regarded a deviant, on the other hand, a woman who wears such attire in some communities in the Southern Nigeria may be applauded for stepping out attractive; some Local Government Authorities in the Northern Nigeria have considered the consumption of liquor as a deviant behaviour and have accordingly enacted bye-laws prohibiting manufacture, sale and consumption of liquor in certain

[10]Manoj Jakhar, *Crime and Criminal Justice* (Random Publications New Delhi 2019) 176.
[11] Ibid.
[12] Ibid 177.
[13] ibid
[14] Ibid.

areas of their community.[15] Conversely, the manufacture, sale and consumption of liquor are legitimate in Lagos State save that the location of manufacture and sale must comply with the State's Master-plan designating specific areas as Industrial, some as commercial and others as residential because the people of Lagos State do not see it as a crime. Second, deviance is relative in time: a behaviour in a particular society may be considered deviant in a particular period but acceptable many years later; while a behaviour that is considered acceptable in a particular period may be termed deviant many years later.[16]

In this paper, any behaviour that evinces violation of social norm of abstaining from sexually assaulting girl-child and as such arouses negative social reactions, or that, is remotely connected with violation of social norm of abstaining from sexually assaulting girl-child and which arouses negative social reactions is regarded as deviance.

b. Crime

Crime is behaviour that violates laws that have specifically been enacted to ban certain deviance or behaviour.[17] Crime is an act that the law makes punishable. It means the breach of a legal duty treated as the subject-matter of a criminal proceeding.[18] It is also a violation of law, especially a serious one.[19] Crime is an act committed, or omitted, in violation of public law, either forbidding or commanding it.[20] Crime is a wrong which affects the security or well-being of the public generally so that the public has an interest in its suppression. It is frequently a moral wrong in that it amounts to conduct which is inimical to the general moral sense of the community.[21] Hence, the main purpose of the criminal law is to protect the interests of the public at large by punishing those found guilty of crimes, generally by means of imprisonment or fines. Also, it is those types of conduct which are most detrimental to society and to the public welfare which are treated as criminal.[22]

[15] See for instance, the Ilorin Township (Prohibition against the Manufacture, Sale and Consumption of Liquor in Certain Areas) Edict, 1989, s 3 and the schedule thereto.
[16] Ibid
[17] Ibid 176
[18] B.A. Garner, ed. *Black's Law Dictionary,* (8thedn. Thomson West) 399
[19] The new Webster's Dictionary of the English Language 229
[20] David Hay MA ed. *Words and Phrases Legally Defined*,*Vol. 1*,(4thedn. Lexis Nexis, 2007) 545
[21] Ibid 544.
[22]Kodilinye&Aluko, *The Nigerian Law of Torts* (2ndedn. Spectrum) 1

Crime is wider in concept than the foregoing definitions. A conduct constitutes a crime because the society sees it as such and consequently, makes it a public wrong. According to Lord Atkin, in the case of ***Proprietary Articles Trade Association V. A.G. for Canada***,[23]

> The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one: is the act prohibited by penal consequences?

Therefore, what constitutes a crime is the penal consequence that attach to a conduct because the society views the conduct as such and wants penal consequence attached to it. Hence, what constitutes a crime differs from one society to another and from one age to another. Instances of this position abound: First, Adultery is an offence in all the Northern states of Nigeria where the Penal Code applies,[24] while it is not an offence in any Southern State where the Criminal Code applies even when all the states are within the same federating unit.Second, pre-marital sexual intercourse between two consenting adults is not a crime under the Penal Code and the Criminal Code but, it is a crime in some of the Northern States of the Federation where the Shariah Penal Code has been enacted[25] and some Islamic countries of the world. Third, both the Penal Code and the Criminal Code criminalise the conduct of having carnal knowledge of any person against the order of nature or even gay-marriage because the Nigerian society views it as crime[26] but, it is legitimate in some societies of the world such as Canada, South Africa and United States of America. Fourth, the conduct of a night party is a crime in Ilorin-West Local Government Area of Kwara State[27] while it is not a crime in a host of other Local Government Areas of the same State. Fifth, adultery is a moral wrong in African societies but not a crime in every African society and this is true of Nigeria. Adultery is not a crime in the Southern States of Nigeria not because it does not offend the morality of the people as Africans but because neither the Criminal Code nor any applicable law in the South makes it so etc.

[23] [1931] A.C. 310 at 324
[24] See PC ss 387 & 388
[25] See for instance, the Shariah Penal Code Law, 2000, Laws of Zamfara State, No. 10 of 2000, ss 126 & 127 (a)
[26] See CC s 214 (1) & (3); PC s 284. See also, Armed Forces Act, Cap. A20, LFN, Vol. 1, 2004, s 81 (1) (a); *Magaji v. The Nigerian Army* [2008] 2-3 SC (Pt. II) 146
[27] See the Ilorin Local Government (Tight Security-Night Party) Bye-Law, 1991, Kwara S.L.G.N. No. 1 of 199, s3 (1) & (2)

The crux of the above stand-point and the instances thereof is that an act is a crime because a penal law is made to describe it as such with an attendant consequence. Therefore, a conduct is not a crime because it offends the morality or the sensibility or the religious inclination of the people within the community or the society but because the sovereign power enacted a law making it a crime. However, question as to which behaviours become defined as criminal and deemed worthy of punitive sanctions has been central to the study of crime and law. The functional perspective of criminal law suggests that the communalisation of a particular behaviour is the result of a consensus among members of a society. In the consensus view, criminal law encompasses the behaviours that have been determined to be most threatening to the social structure of society and the well-being of its members. According to the functionalist perspective, criminal law adapts to changes in the normative consensus of society.[28]

In this paper, crime refers to the behaviour of defilement of girl-child which the society has decided to control formally by making provisions for its prohibition and sanction in a written penal law.

c. Social control

Social control refers to ways in which a society tries to prevent and sanction behaviour that violates norms.[29] As observed from the earlier conceptual clarifications, deviance and crime arouses negative social reactions which then makes it imperative upon members of the particular society to obey those social norms in their daily life. In every society, there are two types of norms, the formal and informal norms. Whereas formal norms are those norms that sustain society equilibrium or communal living where members of the society are free from harm by fellow members, informal norms on the other hand, are those behavioural patterns that have become acceptable to the people and form part of their way of life. Examples of formal norms include taking the property of another without his or her consent and respecting the sanctity of the body of an opposite sex such as staying away from defiling a girl-child. Examples of informal norms in Africa are respect for elders, abhorrence of indecent exposure, and avoidance of unguarded utterances in public. Hence, while a formal social control such as enactment of

[28]Devendra Kumar Sharma, *Sociological Theory of Crime and Criminology* (Random Publications New Delhi, 2019) 231
[29]Jakhar n10, 176

penal laws is used to control behaviours that violate formal norms, the informal social control is used to control behaviours that violate informal norms. People typically avoid violating informal norms because of their potency to elicit anger, disappointment, ostracism, ridicule etc.[30] The formal social control applied to control behaviours that violate those formal norms is the legal system which is inclusive of penal laws and regulations.[31]

Social control is never perfect because social norms are as many as the existence of people and communities. This is why there will always be some people who violate some norms.[32] However, as society evolves, behaviours once considered criminal may be decriminalised while behaviours that had previously been acceptable may become criminalised.[33] In this context, criminal law and its accompanying sanctions are viewed as serving the essential function of creating a sense of moral superiority among the law-abiding members of society, thereby strengthening their social solidarity.[34] Therefore, crime is considered to be inevitable in the functionalist view because the pressure exerted against those who do not conform to the normative expectations is necessary to reinforce the willing conformity among members of society.[35] Solidarity result from the social forces directed against transgressors with the most powerful of these forces being criminal sanctions.[36]

In the context of the paper, social control means every mechanism either formal or informal mechanism put in place by the society to stop the deviance of defilement of girl-child.

d. Victim

The term 'victim' is derived from the Latin word '*victima*', which signifies a living being who is offered to the gods.[37] Beyond its original meaning the term has been defined in different ways. A 'victim' is a person harmed by a crime, tort or other wrong.[38] He is a person who has been

[30]Ibid
[31] Ibid
[32] Ibid
[33] See n12
[34] Sharma n28, 231
[35] Ibid
[36] Ibid
[37]Ezzat A Fattah, *Understanding Criminal Victimization: An Introduction to Theoretical Victimology*(Prentice-Hall Canada Inc., Scarborough 1991) 89
[38] Garner n18, 1561

attacked, injured or killed as a result of crime, a disease, an accident etc.[39] A victim is a person destroyed, sacrificed, or injured by another or by some condition or agency; or he is a person who has been cheated or duped; or he is a person sacrificed to some deity or in the performance of some religious rites.[40] The meaning of the word 'victim' also draws quite significantly from the emotional and psychological reactions it often evokes. Whereas the word 'criminal' is likely to attract indignation, disapproval, and moral condemnation, the word 'victim' attracts pity, sympathy, compassion, and commiseration.[41] A victim is the one acted upon as opposed to the one who acts upon him.

EU Framework Decision of the Council of the European Union on the Standing of the Victims in Criminal Proceedings [2001] also defines victim in article 1(a) as, 'a natural person who has *suffered harm*, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.'[42]

In the context of this paper, a victim is the girl-child who is defiled. The context also admits the parent or guardian of the girl-child as well as any close relative who suffers any form of financial, emotional or psychological trauma from the sexual onslaught on the girl-child.

Issues of Human Rights Arising Defilement of Girl-Child

Human Right is the totality of the conditions under which a person's choice can unite with the choice of another without negating the universal law of freedom.[43] Kant's 'freedom' refers to that area of action that is totally left to a person by reason of their humanity after excluding what they are either required to do or prohibited from doing by the Doctrine of Right.[44]

Nigeria has a dualist system in which an international treaty is not binding on the country until it is enacted into law by the National Assembly.[45] However, the Constitution of the Federal

[39]A S Hornby, *Oxford Advanced Learner's Dictionary of Current English* (8thedn Oxford University Press, Oxford 2010) 1656

[40]Cleobis H S Jayewardene and Hilda Jayewardene, 'The Victim and the Criminal Law' in Hans Joachim Schneider (ed), *The Victim in International Perspective* (Walter de Gruyter, Berlin 1982) 392.

[41] Fattah n37, 89.

[42]Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:en:PDF accessed 25 August 2024.

[43] Immanuel Kant, *The Metaphysics of Morals* (Cambridge University Press, 1996) 24

[44] James Griffin, *On Human Rights* (Oxford University Press, 2008) 61

[45] CFRN, 1999 s 12 (1).

Republic of Nigeria 1999 (as amended) (CFRN '99) contains a Bill of Rights in Chapter IV. The rights that are germane to the present discuss are right to life and right to dignity of human person. These rights are crucial because the dignity of a girl-child is violated in every case of defilement and in some cases the girl-child may lose her life due to the excessive pains and/or loss of blood associated with the deviance.

a. Right to life

This is provided for under section 33 of the Constitution of the Federal Republic of Nigeria and it guarantees the sanctity of human life. It follows that no person or authority has the right to take the life of another except in circumstances that are legally permitted by law. These circumstances are where there is justification such as killing another in self-defence,[46] or killing authorised by law such as authority given to a hangman to kill the person who has been sentenced to death after trial by a court of competent jurisdiction,[47] or killing excused by law such as killing by somebody who at the time of carrying out the act was of immature age or was suffering from insanity.[48]

Likewise, the African Charter on Human and Peoples Rights (ACHPR), 1981 states:

> *Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*[49]

This provision asserts the sacred respect for life as an important obligation of African States in the protection of human rights.[50] The foregoing is therefore a clear indication to the fact that where death results from the defilement of a girl-child, such occurrence will not only amount to an affront on the Constitution of the Federal Republic Nigeria, 1999 (as amended) but a gross violation of the appropriate penal law criminalising such unlawful killing.[51]

[46]See CC ss 286, 287 & 288; CFRN 1999 s 32(a); *Njoku v The State* [1993]6 NWLR (Pt 299) 274; *Chukwu v The State* [1992]1 NWLR (Pt 217) 255.
[47] See CC s 254; *Umaru v The State* [1990]3 NWLR (Pt 138) 364.
[48]*Apugo v The State* [2007]5 WRN 89 SC
[49]ACHPR art 4
[50] Y. Olomojobi, Human Right and Civil Liberties in Nigeria: Discussions, Analyses, and Explanations (2nd Princeton, 2018) 10
[51] See for instance Penal Code Law Cap P4 Laws of Kwara State 2006 s 221

b. Right to Dignity of Human Person

The right to dignity of human person is provided for under section 34 of CFRN '99. It prohibits torture, inhuman or degrading treatment. The ACHPR also declares:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, in human and degrading punishments and treatments shall be prohibited.[52]

The individual does not create dignity. It is inherent in his nature.[53] The right to dignity cannot be separated from an individual even if he/she were a criminal.[54] Defilement of girl-child falls within the sphere of this right. The child's capacity of free-will to decide when and to whom she will surrender her virginity is subdued and her honour and self-esteem are impaired. Such right violation is, most times, responsible for the victim's withdrawal from the public and negative impressions about men generally when they attain adulthood.

In ***Abodurin v. Arabe,***[55] the court held that individuals have the right to respect of the dignity inherent in a human being and to the recognition of his legal status.[56]

Causes of Deviance of Defilment of Girl-Child

Generally, every sex crime is a crime that involves forcing victim to have some form of sexual encounter with the criminal without their direct consent.[57]Several theories have evolved to explain why criminals choose deviant behaviours even in the face social and legal disapproval of such behaviours. It is particularly difficult to discern what pleasure a full-grown adult will claim to derive from defiling a girl-child who perhaps may be less a year old at the time of the sexual encounter. To understand the causes of this dastardly act in the context of this paper, it is important to divide the causes into two, namely, the direct causes as explained through the various theories propounded by criminologists and the indirect causes as foisted on the society by the various unnoticed but potent factors.

[52] ACHPR art 5
[53]Olomojobi n50, 51
[54] Ibid 53
[55] [1995]5 NWLR (Pt 393) 100 at 112
[56] See also *Onwo v. Oko* [1996] 6 NWLR (Pt 456)584 at 614
[57] Sharma n28, 107

a. Direct causes of deviance of defilement of girl-child

Criminologists have made several attempts to unravel what propels a criminal to cultivate the behavioural pattern for committing crime. In this regard, criminologists have come up with several causation theories to explain why offenders choose to offend. A study of the various theories will help to explain the causes of deviance of defilement of girl-child. However, it is important to bear in mind from the onset that no single theory can offer a satisfactory explanation for crime causation and this is why criminologists have offered different explanations to justify their own theory to explain delinquent behaviour. Most criminologists have preferred multiple approaches to criminal behaviour which suggests that crime generates not as a result of one solitary factor, but as a result of combination of variety of factors.[58]

The first school of criminology to theorise the cause of criminality is the Pre-Classical School of Criminology. The theory arose when evolution of criminal law was at a rudimentary stage. This demonological theory of criminality which was popular in the seventeenth and eighteenth centuries in Europe believed that man's conduct is influenced by external forces and they acknowledged the omnipotence of spirit, which they regarded as a great power. They considered crime and criminals as evidence of the fact that the individual was possessed of devil or demon the only cure for which was testimony of the effectiveness of the spirit.[59] Worships, sacrifices and ordeals by water and fire were usually prescribed to specify the spirit and relieve the victim from its evil influence. The right of society to punish the offender was, however well recognised. The offender was regarded as an innately depraved person who could be cured only by torture and pain. Hobbes suggested that fear of punishment at the hands of monarch was a sufficient deterrence for members of early society to keep them away from sinful acts which were synonymous to crimes.[60]

The Classical School of Criminology followed during the middle of eighteen century. Beccaria, the pioneer of modern criminology expanded his naturalistic theory of criminality by rejecting

[58]N.V. Paranjape, *Criminology and Penology* (1[st]edn. Reprint, Central Law Publication, Praya graj-2.2021) 260
[59] Ibid 46
[60] Ibid

the omnipotence of evil spirit. He laid greater emphasis on mental phenomenon of the individual and attributed crime to 'free will' of the individual.[61] The theory is based on the assumption that an individual can control his conduct by exercising his power of will and mind. Hence, it is that act of an individual and not his intent which forms the basis for determining criminality within him. They reasoned that the fear of punishment can bring a change in human 'will' and persuade him to desist from committing crime. The advocate of classical school supported the right of the state to punish the offenders in the interest of public security.[62]

The Neo – Classical School of Criminology are of the view that the exponents of classical school faltered in their free-will theory by ignoring the individual differences under certain situation and treating first offenders and the habitual alike on the basis of similarity of act or crime. They are of the view that certain extenuating situations or mental disorders deprive a person of normal capacity to control his conduct. Thus, they justified mitigation of equal punishment in cases of certain psychopathic offenders.[63] Neo classists were the first in point of time to bring out distinction between the first offender and the recidivists. They supported individualisation of offenders and treatment methods which required the punishment to suit the psychopathic circumstances of the accused.[64] Neo-classists adopted subjective approach to criminology and concentrated their attention on the condition under which and individual commits crime.[65]

Another effort at explaining the concept of deviance is the Social Ecology theory of Deviance which believes that neighbourhood and community characteristic influence the cultivation of deviant behaviour. This school of thought is of the view that certain characteristics of neighbourhoods and communities influence the likelihood of committing deviance and crime. Many criminogenic neighbourhood characteristics have been identified to include high rates of poverty, population density, dilapidated housing, residential mobility and single-parent households.[66] Scholars such as, Cathy SpatzWidom, Benjamin B. Wolman, and John Money are

[61] Ibid 47
[62] Ibid 48
[63] Ibid 49
[64] Ibid
[65] Ibid 50
[66] Jakhar n10, 182

of the view that there is a correlation between crime and child abuse.[67] In particular, it has been said that children who are exposed to parental neglect and/or abuse and children who witness inter parental violence turn sociopathic. Inadequate guidance, lack of moral encouragement, and frequent exposure to pathological selfishness foster sociopathic personality development.[68] This is akin to the Deviant subculture theory where some sociologists stress that poverty and other community conditions give rise to certain subcultures through which adolescents acquire values that promote deviant behaviours.[69] According to this school, poor boys become delinquent because they live within a lower-class subculture that includes several focal concerns which include a taste for trouble, toughness, cleverness, and excitement. Boys who grow up in subculture with these values are more likely to break the law.[70]

The Positive School of Criminology came with another theory in the nineteenth century and stated that neither 'free will' of the offender nor his innate depravity motivates a criminal to commit crime but the real cause of criminality lay in his anthropological features. Some phrenologist also tried to demonstrate the organic functioning of brain and enthusiastically established co-relationship between criminality and the structure and functioning of brain.[71]

Then the Clinical School of Criminology also developed their own theory which evolved from the understanding of the development of human psychology which places greater emphasis on the study of emotional aspect of human nature. The theory of the Clinical School of Criminology presupposes offender as a product of his biological inheritance conditioned in his development by experiences of life to which he has been exposed from infancy up to the time of the commission of crime.[72]

Sociological school of criminology seeks to locate causation of crime in social environment. Tarde was the first to reject the anthropological approach of positivists and held that crimes were the outcome of human tendency to imitate others. Sociologists, however, carried their researches

[67] Sharma n28, 121
[68] Ibid
[69] Jakhar n10, 184
[70] Ibid 184-185
[71] Paranjape n58, 51
[72] Ibid 57

and attempted to co-relate variations in crime rate to changes in social organization. They successfully established that other factors such as mobility, culture, religion, economy, political ideologies density of population, employment situation etc. have a direct bearing on the incidence of crime in a given society.[73]

Another theory is the Control theory of crimes. The propounder of this theory Durkheim believed that crimes generate when social and personal controls that prevent most people from criminality, weakens.[74] They believe that delinquency results from weak bonds to conventional social institutions such as families and schools. These bonds include attachment, commitment, involvement, and belief. Where there is a strong bond to these institutions, the subscribers of such bond will not want to violate the norms set by the institutions. Hence, it is the peoples' bonds to conventional social institutions such as family and school that keep them away from violating social norms.[75]

The theory developed by the Classical School of Criminology appears to inform the concept of criminal responsibility in the Nigerian Law of Crime. Criminal responsibility in the Nigerian criminal justice is determined by the presence of *actusreus* (act, event or state of affairs) and *mensrea* (mental element or state of the mind) and not by the conjecture of an evil spirit or social influence.[76]

b. Indirect causes of deviance of defilement of girl-child

Defilement of girl-child can be the consequence of a number of unnoticed factors which have become part of our daily life and unless our society begins to talk about these factors and their contribution to sex delinquency, attempts at curbing the crime might be ineffectual. Some are borne out of innate tendencies that may be difficult for any law to control while others are products of social influence and personal choices. However well crafted a legislation may appear, these unnoticed factors may continue to influence the deviance of defilement of girl-child. These will now be discussed one after another.

[73] Ibid
[74] Ibid 58
[75] Jakhar n10, 185
[76] See OluyemisiBamigbose and Sonia Akinbiyi, *Criminal Law in Nigeria* (Evans, 2015) 17; EsaOnoja, *Fundamental Principles of Nigerian Criminal Law* (Greenworld, 2015) 91

1. **Man's natural desire for sex:** Man's endless moods for sex may create some difficulties for him to remain absolutely faithful to one sex-partner. Since sexual urge has direct bearing on the reasoning faculty of man, the crave for sex can overpower the brain and deprive it of appreciating the consequence of defiling girl-child in that brief period of 'mental attack'. This explains why a 54-year-old Nigerian, Jegede Folorunsho threw caution to the wind and was completely oblivious to the consequences for his action when he allegedly defiled an eight-year-old girl in the Mushin area of Lagos State.[77]

2. **Religious Institutions**: The institution of religion which was once regarded as a potential weapon of social control has lost its force on modern times, so is the case with moral and ethical values of life. Even some acclaimed men of God are always in the news for negative reasons. Due to the impact of western culture, the age-old traditional norms and customs are fast losing their hold on many societies of the world.[78] The attendant consequence of this is that young boys as well as adults no longer regard the body of women as a sacred temple of God that must be adored and respected.

3. **White-Collar Job:** This has given rise to several new problems in human life. Parents have to stay away from their home for a considerable long time during working hours. Even when at home, they most times, leave their child in the care of house help, neighbours and relation to enable them to have sufficient rest in preparation for the next day official responsibilities. This gives rise to neglect of the children and lack of parental control over them. The youngsters, therefore, tend to become more undisciplined, reckless, repulsive and irresponsible.

4. **Social media influence:** Referring to sex deviant, Donald Taft rightly observed that changes in the habit of dress and undress, sex themes in literature, dramas, obscenity in advertisements, movies, television and cinemas may stimulate sexual impulse in varying degrees.[79] We have seen several cases of consensual sex between housemates before live cameras in 'Big Brother Naija' reality shows, just as indecent exposure is also never found wanting in the reality show. Sad enough, many young members of the Nigerian society

[77]Chima n2
[78]Paranjape n58, 205
[79]Ibid 206

subscribe to the show and even commit their resources to voting the housemates of their choice.

5. **Unregulated sale of intoxicant:** The influence of intoxicants such as liquor, drug etc., also accounts for the incidence of sex crimes. Consumption of wine and liquor has become a part of habit with most of young Nigerians. More than ever, there is now a proliferation of wine and liquor sale stands in streets, markets and garages across the nation. The wines are uncontrollably in sachets to enable affordability of the products. Most of the sellers are sadly, unlicenced. Under the influence of intoxication, a man becomes wild and rash. He becomes emotionally excited and forgetting all social, moral and legal restraints, becomes aggressive and commit sex crime recklessly, though he may repent for it after he resumes normal sense. Even fathers are known to have raped their daughters or daughter-in-law under the influence of intoxication.[80]

6. **Marital sex depravity:** This could arise where the wife either becomes sexually inactive or willingly deprives her husband of regular sex. This may indirectly motivate the husband to engage in prohibited sex conduct including defilement of girl-child where there is no adult female willing to submit herself to his sex overtures. Incompatibilities with regard to physique, temperament, habits etc. may disturb the marital life of partners which may also lead either of them or both to promiscuity as and when they get opportunity.[81]

7. **Social and cultural influence:** It has also been observed that frequency of desire for sex among persons is never uniform. It varies from person to person and greatly influenced by the cultural, group and social environment each person or group of persons find themselves. For instance, those living in broken homes, slum, crowded localities or vicious inhabitation are easily prone to sex delinquency and generally become sexual psychopaths[82] than those living in middle or high-class areas or decent environment.

8. **Indecent dressing:** Obscene wears on girl-child could indirectly attract sex predators to her. Skimpy dress, tight-fitted wears, bum-short, mini-skirt and the likes can provide a fertile ground for sex-stimulation. Hence, a parent who, in the name of civilisation, clothes her girl-

[80] Ibid 207
[81] Ibid 208
[82] Ibid 208

child without an effective watch over her movement and her environment or adequate protection for her against sex delinquency, may indirectly contribute to the occurrence of deviance of defilement of her child. However, it should be noted that, the present author is not in any way saying that a child, like any other person, does not have the right to wear whatever she prefers or move around like any other person or enjoy her right not be subjected to degrading or inhuman treatment by reason of her dressing but rather, to expose the unnoticed consequences of such exercise of freedom. This exposition is more so important bearing in mind that the girl-child at her age would not have possessed sufficient knowledge and capacity on how to protect herself against sex predators like a mature adult girl or woman.

Effects of Defilement of Girl-Child

The effects of defiance of defilement of girl-child are muti-dimensional. It can leave traumatising experience on both the child and her parents. The child and her parents are both direct and indirect victims of the sexual assault. This assertion is in line with the notion of victim in the perspective of criminology. Victim in criminological perspective can be said to be of two broad categories and these are the direct and the indirect victims of crime. A direct victim is the one who suffers the immediate consequence of a criminal act or omission, such as the child who has experienced excruciating pain from the defilement. An indirect victim is one who, not being the direct victim, suffers the effects of an injury suffered by the direct victim. Examples of indirect victim in the case of a defiled girl-child are the parents, guardian and the immediate members of the girl-child's family who bears the financial and psychological pains arising therefrom.

The trauma of victimisation is a direct reaction to the aftermath of crime. The victimised girl-child who is the direct victim suffers a tremendous amount of physical and emotional trauma. Hence, the primary injuries a defiled girl-child suffers can be grouped into two distinct categories: physical, and emotional. The secondary injuries suffered by the victim come in the form of re-victimisation of the girl-child by their abusers due to lack of protection by their parents or guardian, and/or absence of early detection of the occurrence of such deviant behaviour being unleashed on the girl-child either by a neighbour, close relation or a total stranger. Hence, when victims do not receive the appropriate support and intervention in the

aftermath of the crime they still suffer "secondary" injuries.[83] The indirect victim of girl-child defilement suffers great financial and psychological trauma in the aftermath of the victimisation of their girl-child. The cost of treating the child can be enormous, just as the thought of the pain that their child passed through during the sexual encounter and may also be passing through in the aftermath of the unwholesome act can cause very gruesome psychological stress. Since crimes against women are partly the result of social system and partly the outcome of individual pathologies, a reformatory attitude towards female victims may be helpful in achieving the desired result. The rehabilitation has to be fourfold viz, physical mental, psychological and social.[84]

The harm principle has been adopted in several jurisdictions and in international instruments to describe the concept of a 'victim'.[85] For instance, the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines the term victim in the context of harm principle as follows:

> Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.[86]

The defiance of defilement of girl-child can also leave both short-term and long-term effects on the child and her parents or guardian. Apart from the physical injuries that the child experiences, the criminal behaviour may leave the child with a permanent psychological trauma and resentment for men. It may also affect her attitudes towards sex and sexuality for the rest of her life. In a study conducted by Bello, it was revealed that the effect on the victim can be traumatic as shown in table 3 of Bello's findings from his empirical study reproduced below:

Table 3: Effect of female defilement on the girl-child in Ugbighokho Community

[83]Chanda Prakash Gupta, *Criminal Anthropology* (Random Publications New Delhi, 2019) 133
[84]Paranjape n58,211
[85] Matthew Hall, *Victims and Policy Making: A Comparative Perspective* (William Publishing, Abingdon 2010) 30.
[86] UNGA Res A/RES/40/34 (29 Nov 1985) Annex para 1.

Variables	Responses	Frequency	Percentage
Do you agree that female defilement have negative effects on the girl child	Yes	293	73.3
	No	33	8.3
	I don't know	74	18.5
What is the effect of female child defilement on the girl child?	Trauma	55	13.8
	Teenage pregnancy	98	24.5
	Psychological imbalance	141	35.3
	Spread of HIV/AIDS and STIs	106	26.5
Total		**400**	**100**

Credit: Osamuyi Aghasomwan Bello's result of field study[87]

Possible Solutions to Defiance of Defilement of Girl-Child

Apart from the formal sanctions of the deviance of defilement of girl-child, various other effective measures should also be utilized for repressing sex delinquency. In this regard, the following recommendations which are by no means exhaustive are accordingly put forward.

1. The respective State Ministry of Women Affairs should be saddled with additional responsibility of warning the public about the evil of defilement of girl-child. Closely related to this is collaboration between the Ministry of Women Affairs of the various States of the Federation, the relevant Non-governmental Organisations (NGOs), educational Institutions and the National Orientation Agency in arousing public resentment against the dastardly act through concerted efforts and intensive propaganda.
2. Bearing in mind that Law is only an instrument through which crimes can be prevented provided the law enforcement machinery implements the provisions of the law efficiently[88], it is proffered that Law enforcement agencies such as the police, the bar, the bench, the

[87] Bello n1, 22
[88]Paranjape n58, 260

rehabilitation Centre and NGOs should adopt coordinated efforts in combating the menace of the delinquency of child defilement.

3. Parental guidance is also required in stemming the tide of girl-child defilement. Parents are advised not to leave the education of their children to schools alone. They should be wary of peer group influence. Parents are accordingly advised to keep their wards well under control and pre-warn them of the possible dangers involved in illegal sexual acts, particularly, defilement of girl-child. It is also important to educate them about the existence of formal social control of such delinquent behaviour which comes in the form of penal sanctions.
4. Alcoholism has been identified as one of the potential causes of sex crimes. It is a vice which weakens the characters and impairs the faculties of mind and body. Under the influence of the intoxicant, a person loses his self-control and he may indulge in sex act even with his daughter, daughter-in-law or any other women.[89] It is therefore necessary to eradicate this menace by strict regulatory measures. Drinking in public should be made a cognizable offence and the number of bars and liquor houses should be limited by adequate licensing.
5. Religion has also been said to be instrumental in crime causation because standards of morality are set by religions institutions and when these standards are violated it result into a crime. The spiritual teaching of religion helps considerably in keeping a person away from crime and delinquency.[90] It has also been said that morality can best be preserved in a society through the institution of religion. The bond of religion keeps person within their limits and helps them to keep away from sinful and criminal acts. However, the declining influence of religion in modern times has tended to leave men free to do as they like without any restraint or fear,[91]which underscores the findings of Ruwan *et al* in their research conducted of adolescents between the ages of 13-19residing within Kaduna metropolis, that religious attendance and religious commitment were significant predictors of deviant behaviour among adolescents.[92]It is therefore recommended that religious institutions as well as spiritual leaders must constantly emphasize in their sermons how the delinquency of defilement of girl-child is hateful in the sight of the Supreme Being and how they have been warned to stay

[89] See n73, Paranjape n58,211
[90] See n71, Paranjape n58, 96
[91]Paranjape n58, 96
[92] I G F Ruwan, D S Ishaya, A O Okorie, M Y Garba, C Jose and U P Okopide, 'Appraisal of the Role of Religious Institutions in Curbing Deviant Behaviour in Nigeria' (2020) 3 (3) International Journal of Management, Social Sciences, Peaceand Conflict Studies (IJMSSPCS) 182.

clear of such forbidden behaviour. We are not unmindful of the culpability of some religious leaders in the crime commission. It is however, recommended that any religious leader found guilty of the offence should not only face the full wrath of the law but also divested of his spiritual titles.

6. There is the need to amend the relevant provision of the Administration of Criminal Justice Act, 2015 and other relevant laws to include the requirement for the State to take responsibility for the rehabilitation of the victims and make the offenders or their parents to pay compensation to the victims and possibly be responsible for their education and well-being.

Conclusion

In this paper, it has been identified that the defiance of defilement of girl-child is one of the teething problems that the country is still grappling with. The moral suasions that guide the behaviour of man towards girl-child constantly give way to many aggravating causes of deviance of defilement of girl-child. The paper has identified majority of these causes as well as the effects of the deviance of defilement of girl-child raging from direct effects to indirect effects; and from primary victimisation to secondary victimisation. The attendant consequences of the effects on the girl-child threw open in the paper the various fundamental rights of the victim that are affected whenever such crime occurs. However, the problems are not without solutions and this led the paper to proffering some conceivable solutions which are not by any means exhaustive. It is however believed that beyond the legal framework already put in place for curbing the menace, the solutions put forward in chapter seven of the paper have shown that the fight against the deviance of defilement of girl-child in Nigeria is the collective responsibility of the government, the parents and the society as whole. It is not enough to criminalise the conduct through penal laws as it is presently the case, the legal framework needs to be complemented by the collective resolve of the government, the parents and the society.

THE NEED FOR LEGAL INTERVENTION IN ADDRESSING THE IMPACT OF NOISE POLLUTION ON REPRODUCTIVE HEALTH IN NIGERIA

Vivian Ijeoma Uzoma*

Abstract

Noise pollution, an escalating environmental issue, significantly impacts human health and performance. Urbanization and industrialization contribute to pervasive noise from traffic, machinery, and social activities. Noise, defined as unwanted or harmful sound, varies in its effects based on individual sensitivity and environmental context. Sounds exceeding 80dB are particularly disruptive. Noise pollution originates from natural sources, such as insects and weather, and manmade activities, including industrial operations and urban traffic. In Nigeria, inadequate urban planning and unreliable electricity supply, leading to widespread use of noisy generators, exacerbate the problem. Social and religious events further contribute to environmental noise, affecting urban dwellers' wellbeing. The consequences are extensive, impacting physiological, behavioural, cardiovascular, and mental health, leading to hearing loss, sleep disturbances, reduced concentration, and heightened stress. Vulnerable populations like children and the elderly are particularly affected. Wildlife and reproductive health are also adversely influenced, with noise linked to reduced fertility and adverse pregnancy outcomes. The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act addresses noise pollution through standards and regulations, but enforcement is hindered by political interference and inadequate training. This article recommends that strengthening enforcement mechanisms and integrating noise pollution considerations into health policies are crucial for improving public health and environmental quality in Nigeria.

***Keywords**: Noise, Noise Pollution, Environmental law, Environmental Agencies, Reproductive Health.*

Introduction

Noise pollution is a significant environmental pollutant that directly impacts human performance.[1] Human survival and health heavily depend on a conducive environment; disruptions can lead to health issues.[2] Urbanization, civilization, and industrialization often bring noise pollution. The term "noise" comes from the Latin word "nausea," meaning 'unwanted

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[1]Awosusi, Ajoke Olukemi and Akindutire, Isaac Olusola 'Perceived Health Effects of Environmental Noise Pollution on the Inhabitants of Ado-Ekiti Metropolis, Ekiti State, Nigeria' (2014) 4(26) *Journal of Biology, Agriculture and Healthcare* 106 <www.iiste.org> accessed 20 May 2021.

[2]Otukong, I. T. O, 'Environmental Pollution and Emerging Health Hazard: the Nigerian Scenario' (2002) 7(1) *Journal of General Practice* 34

sound' or sound that is loud, unpleasant, or unexpected.[3] Noise primarily stems from human activities, especially urbanization, transportation, and industry development.[4]

Noise pollution is increasingly prevalent yet often unnoticed, even in developed countries. According to the World Health Organization, noise in large cities is the third most hazardous type of pollution after air and water pollution.[5] Individuals have varying sensitivities to noise, and they are affected differently at home and work.[6] Some people can hear frequencies that others cannot detect. Sound is measured in decibels (dB). A whisper measures 20 dB, noise in a quiet office measures 40 dB, normal conversation is 60 dB, and sound levels above 80 dB are considered noise.[7] Noise is classified as pollution due to its harmful and unwanted sound emissions into the environment.

Reproductive health encompasses all reproductive processes, functions, and systems at all stages of human life. It means having a satisfying and safe sex life, the ability to reproduce, and the freedom to decide if, when, and how often to do so. Both men and women have the right to access safe, effective, affordable, and acceptable family planning methods. They should also have access to appropriate healthcare services and a supportive environment to ensure safe pregnancy and childbirth, giving couples the best chance of having a healthy infant.[8] Reproductive health is a crucial component of health and a key determinant of quality of life.[9]

This article aims to demonstrate that noise pollution negatively affects the reproductive health of people living in polluted environments, highlighting the need for legal frameworks to protect the reproductive health rights of these individuals. Although various laws exist against noise pollution and for the protection of reproductive health, they have not adequately safeguarded the rights of those affected by reproductive health issues caused by noise pollution. This work will

[3]Narendra Singh and SC Davar, 'Noise Pollution Sources, Effects and Control' (2004) 16(3) *Journal of Human Ecology* 181

[4] Ibid

[5] C Lavanya, and R Dhankar and S Chikara, 'Noise Pollution: An Overview' (2014) 6(5) *International Journal of Current Research* 6536.

[6] P.A. Savale, 'Effect of Noise Pollution on Human Being: Its Prevention and Control' (2014) 8(4) *Journal of Environmental Research and Development* 1026

[7]Awosusi, and Akindutire, (n1) ibid

[8] UNDP/UNFPA/WHO/World Bank, 'Social Science Methods for Research on Reproductive Health Topics' (Geneva, UNDP/UNFPA/WHO/World Bank Special Programme on Research, Development, and Training in Human Reproduction, 2006) <whqlibdoc.who.int/hq/1999/WHO_RHR_HRP_SOC_99.1.pdf> accessed 12th May 2024.

[9] United Nations Population Information Network (POPIN), Guidelines on Reproductive Health (Geneva, United Nations Population Information Network (POPIN), 2002) <www.un.org/popin/unfpa/taskforce/guide/iatfreph.gdl.html> accessed 12th May 2024.

analyze existing laws and advocate for their review to better protect victims of reproductive health disorders resulting from noise pollution.

Sources of Noise

The sources of noise may be natural or manmade. Natural sources include sound from bugs, birds, weather, etc.

Natural Sources of Noise Pollution

a. Bugs

Insects can be a significant source of natural noise pollution. Examples include crickets chirping on summer nights and the vast swarms of cicadas found globally, demonstrating that bugs can generate substantial noise.[10]

b. Weather

Weather is a highly variable and often distressing source of noise pollution. High winds and storms can drown out other sounds and induce fear, even without posing an actual threat.[11]

c. Birds

Birds are inherently noisy creatures, frequently singing and chirping. During migration periods, however, their presence and noise may decrease. For nearby residents, excessive bird noise can create stressful living conditions.[12]

Manmade Sources of Noise Pollution

Manmade noise sources are categorized into industrial and non-industrial sounds.

a. Non-Industrial Noise

Non-industrial noise originates from activities such as traffic, electricity generators, religious services, and social events.[13]

[10]Lavanya, and Dhankar and Chikara, (n5) 6537.
[11] Ibid
[12] Ibid
[13] Ibid

b. Traffic Noise

Traffic noise has become a significant issue due to inadequate urban planning.[14] It is the most pervasive form of noise pollution, causing considerable annoyance.[15] This noise stems from a high volume of vehicles, including trucks, cars, and motorcycles. Urban environments with narrow streets and tall buildings amplify traffic noise. Additionally, emergency vehicles, security agents, and government officials' vehicles contribute to the noise.[16] Sound levels of 80 dB and above are physically irritating and comparable to traffic noise on a busy street.[17]

c. Electricity Generators

The demand for electricity in homes, workplaces, and industries is high. Due to unreliable power supply in Nigeria, individuals and businesses rely on generators, which produce significant noise and emit harmful smoke. Olokooba, *et. al* observed that apart from the fact that the smoke emitted from the generating plant, deplete the ozone layer and is considered as harmful, the noise from generators is equally hazardous.[18]Noise pollution is further exacerbated by recording houses and businesses using loud music for promotions.[19]

d. Religious Services

Loud worship in religious homes is another noise source. Public address systems in temples, mosques,[20] and churches generate significant noise pollution, especially during night vigils and early morning prayers. In Nigeria's multi-religious society, these activities are common, with loudspeakers and other noise-making devices contributing to the problem.

[14] P Debasish and B Debasish, 'Effect of Road Traffic Noise Pollution on Human Work Efficiency in Government Offices, Private Organizations, and Commercial Business Centres in Agartala City Using Fuzzy Expert System: A Case Study' in Awosusi and Akindutire, (n1) 107

[15] E Öhrström and A Skånberg, 'Sleep Disturbances from Road Traffic and Ventilation Noise: Laboratory and Field Experiments'(2004) 271(1 & 2) *Journal of Sound and Vibration* 279–296

[16]Awosusi, and Akindutire, (n1) 107.

[17] Ibid

[18] S.M Olokooba, and I. Ibrahim and M.A Abdulraheem-Mustapha, 'Noise Pollution: A Major Catalyst to Climate Change and Human Health Catastrophe' <unilorin.edu.ng/.../work%20shop%20NOISE%20POLLUT.ION.pdf> accessed 9th May, 2024

[19] O. Anomohanran and J.E.A Osemeikhian, 'Comparative Noise Pollution Study of Some Major Towns in Delta State, Nigeria' (2005) 11(2) *Global Journal of Pure and Applied Sciences*285–290.

[20] Singh and Davar, (n3) 183

e. Social Events

Social events, particularly in south-western Nigeria, are notorious for noise pollution.[21] Laws regulating noise are often ignored during marriages, parties, and clubbing. High-volume music and all-night dancing, sometimes even obstructing highways, make it difficult to escape the noise.[22]

f. Industrial Noise

Industrial noise pollution originates from activities like welding, hammering, drilling, and operating machinery.[23] This noise affects both workers and nearby residents, creating severe noise problems.

Companies in the oil and gas industry, involved in extracting and refining crude oil, produce considerable noise. Oil refineries, processing crude oil into products like gasoline and diesel, are large industrial complexes with extensive machinery.[24] These processes release chemicals into the atmosphere and generate noise pollution from machines like dryers, boilers, and cranes.[25] Gas flaring, a significant aspect of crude oil production,[26] also contributes to noise pollution, affecting nearby residents and workers.[27]

[21] M.O Ajayi and D.T Eyongndi, 'An Examination of Noise Pollution: A Call for Regulation and Stringent Enforcement of Existing Laws' (2018) 1(1) *Ben Idahosa University Journal of Private and Property Law* 96

[22] Ibid

[23] Ibid

[24]Joseph Omoniyi Basorun and Isaac Oluwadare Olamiju, , 'Environmental Pollution and Refinery Operations in an Oil Producing Region of Nigeria: A Focus on Warri Petrochemical Company'(2013) 2(6) *IOSR Journal of Environmental Science, Toxicology and Food Technology (IOSRJESTFT)* 18 <www.iosrjournals.org> accessed 9th May 2024

[25] Ibid

[26]Ovuakporaye Simon Irikefe and Igweh C. John and Aloamaka Chukwuma Peter, 'Impact of Gas Flaring on Cardiopulmonary Parameters of Residents in Gas Flaring Communities in Niger Delta Nigeria' (2016) 15(6) *British Journal of Medicine and Medical Research* 10; J.N. Egwurugwu and A. Nwafor, 'Prolonged Exposure to Oil and Gas Flares Ups the Risks for Hypertension'(2013) 1(3) *American Journal of Health Research* 65–72 <http://www.sciencepublishinggroup.com/j/ajhr> accessed 12 May 2024.

[27] E.I Seiyaboh and S.C Izah, 'A Review of Impacts of Gas Flaring on Vegetation and Water Resources in the Niger Delta Region of Nigeria' (2017) 2(4) *International Journal of Economy, Energy and Environment* 49 <doi:10.11648/j.ijeee.20170204.11> accessed 12 May 2024.

Consequences of Noise Pollution

Globally, noise pollution constitutes a significant public health issue, disrupting environmental tranquillity and adversely affecting human health. This is equally pertinent in Nigeria,[28] where noise exposure is increasingly recognized as a critical environmental public health concern. Prolonged exposure to noise can be detrimental to health,[29] with the extent of damage dependent on the intensity of the sound. Noise pollution poses hazards not only to humans but also to other living organisms. The effects of noise pollution can be categorized as follows:

Physiological Effects

Noise impacts physiological functions by accelerating pulse and respiratory rates.[30] Exposure to high noise levels can lead to hearing loss,[31] with substantial evidence indicating that continuous noise exposure can damage sensitive structures within the ear,[32] causing either permanent or temporary hearing impairment. Medical research suggests that noise can precipitate heart attacks[33] and cause chronic conditions such as hypertension or ulcers.[34] Additional effects include annoyance, muscle tension, nervous irritability, and strain.[35] Physiological parameters such as breathing amplitude, blood pressure, heartbeat rate, pulse rate, and blood cholesterol are also affected.[36]

Behavioural Effects

Continuous exposure to excessive noise can severely affect human health and behaviour. Sound sleep is crucial for optimal physiological and mental functioning, yet noisy environments significantly contribute to the prevalence of primary sleep disturbances.[37] Noise exposure

[28]Erimma Gloria Orie, 'The Legal Imperatives for Regulating Noise Pollution in Nigeria in the Quest for Sustainable Development: Lessons from India' (2016) 2(4) *International Journal of Business and Applied Social Science* 53.
[29] C.A Boateng and G.K Amedofu, 'Industrial Noise Pollution and its Effects on the Hearing Capabilities of Workers: A Study from Sawmills, Printing Press and Corn Mills' (2004) 11(12) *African Journal of Health Sciences* 55–60 in AO Awosusi and IO Akindutire, (n1) 108
[30]Savale, (n6) 1030
[31] R.J Donatelle, *Access to Health*. (7[th]ed. New York. Benjamin Cummings Publishers, 2002)
[32]Awosusi, and Akindutire, (n1) 106.
[33]Savale (n30) *ibid*.
[34] Ibid
[35] Ibid
[36] J. Xie and others, 'Clinical Review: The Impact of Noise on Patients' Sleep and the Effectiveness of Noise Reduction Strategies in Intensive Care Units' (2009) 13(2) *Critical Care* 208.
[37]Awosusi, and Akindutire, (n1) 106

correlates with increased sleep stage changes and awakenings,[38] leading to sleep disturbances Such as difficulty falling asleep, altered sleep patterns or depth, and awakenings, potentially necessitating the use of sleeping pills or ear plugs.[39]

Noise also impairs concentration. Studies reveal that chronic noise exposure negatively affects cognitive function and comprehension.[40] Children exposed to noise exhibit greater difficulties concentrating compared to peers in quieter environments.[41] Research indicates impaired cognitive development in children residing or studying near noise sources such as highways and airports.[42] These findings substantiate that noise increases errors and decreases motivation, thus hindering task performance in educational and workplace settings. Noise can cause pain, ringing in the ears, fatigue, and reduced performance.[43]

Cardiovascular Disturbances

Emerging evidence suggests that noise pollution may be a risk factor for cardiovascular disease. Acute noise exposure triggers nervous and hormonal responses, leading to elevated blood pressure, increased heart rate, and vasoconstriction.[44] If the exposure is sufficiently intense, there is a notable increase in heart rate, blood pressure, and stress hormone levels.[45]

Disturbances in Mental Health

While noise pollution does not directly cause mental illness, it is believed to accelerate and intensify the development of latent mental disorders.[46] Adverse effects potentially resulting from noise pollution include anxiety, stress, nervousness, nausea, headaches, emotional instability,

[38]Olokooba, Ibrahim, and Abdulraheem Mustapha, (n18) Ibid.
[39] A.O Olaosun and O. Ogundiran and J.E. Tobih, 'Health Hazards of Noise: A Review Article' (2009) 3(3) *Research Journal of Medical Sciences* 115–122.
[40] S.A Stansford and M.P. Matheson, 'Noise Pollution: Non-auditory Effects on Health' (2003) 68(1) *British Medical Bulletin* 243–257.
[41] K.D Kryter, *The Effects of Noise on Man* (2nd edn, Academic Press, Orlando 1985).
[42] G.W Evans and S.J Lepore, 'Non-auditory Effects of Noise on Children: A Critical Review' (1993) 10 *Children's Environments* 42–72.
[43]ShreerupGoswami and others 'A Study on Traffic Noise of Two Campuses of University, Balasore, India' (2011) 32(1) *Journal of Environmental Biology* 105–109.
[44] P.H Bhagwat and P.M Meshram, 'Study of Noise Pollution during Ganesh Utsav in Yavatmal City' (2013) 2(1) *International Journal of Pharma and Chemical Sciences* 496–498 in P.A. Savale, 'Effect of Noise Pollution on Human Being: Its Prevention and Control'(2014) 8(4) *Journal of Environmental Research and Development* 1030.
[45] Ibid
[46]Savale (n44)

argumentativeness, sexual impotence, mood changes, increased social conflicts, neurosis, hysteria, and psychosis. Particularly vulnerable are children, the elderly, and individuals with underlying depression.[47] Psychiatrists and psychologists have observed that noise contributes to physical health problems, causing tension and issues such as speech interference, annoyance, fatigue, sleep interference, and emotional distress.[48] In industrial settings, noise disrupts efficiency and communication, increasing the likelihood of accidents.[49] Ultimately, noise impairs task performance in educational and workplace environments, increases errors, and reduces motivation for reading and problem-solving.[50]

Effect of Noise on Wildlife

Noise pollution also impacts animals and other living organisms. For example, birds are known to avoid areas where noise levels exceed 100 dB,[51] and mammals, fish, and birds may experience miscarriages.[52]

Effect of Noise on Reproductive Health

Various studies indicate that noise pollution adversely affects reproductive health in both men and women. A study by Kyoung and JinYoung found that residential noise exposure over four years significantly correlated with male infertility diagnoses. Men exposed to higher noise levels (Q2-Q4) were significantly more likely to be diagnosed with infertility compared to those with the lowest noise exposure (Q1).[53] Another study linked noise exposure in occupational settings to lower testosterone, LH, FSH, and prolactin levels, and poorer semen quality in terms of volume, number, and motility of sperm.[54]

[47] Ibid
[48]Erimma Gloria Orie, (n28) 54
[49]Lal, *Commentary on Water and Air Pollution and Environment(Protection Laws)*, Revised by M.C. Mehta, (Vol. 2, Delhi Law House Publications 2007) 1335–1336.
[50] Ibid
[51] Hakeem Ijaiya, 'Legal Regime of Noise Pollution in Nigeria' (2014) *Beijing Law Review* ((BLR) 3
[52] Ibid
[53]Kyoung-Bok Min and Jin-Young Min, 'Exposure to Environmental Noise and Risk for Male Infertility: A Population-Based Cohort Study' (2017)226 *Journal of Environmental Pollution* 122–123
[54] A. Chamkori, and others, 'Effect of Noise Pollution on the Hormonal and Semen Analysis Parameters in Industrial Workers of Bushehr, Iran' (2016) 3(2)*Crescent Journal of Medical and Biological Sciences* 45–50 <https://www.cjmb.org/text.php?id=37>.Accessed 13 May, 2024

Pregnant women exposed to noise in the workplace may risk harm to foetuses and new borns.[55] Machinery used in various activities generates noise pollution, affecting the reproductive health of indigenous populations in impacted areas. The outcomes include fetal loss, reduced fertility, hormonal changes, menstrual irregularities,[56] abnormal sperm, and altered puberty onset.[57] Low Birth Weight (LBW) has been investigated in five occupational studies;[58] two found significant risk for noise levels above 95 dBA,[59] with a decline in mean birth weight for mothers exposed to noise above 90 dBA.[60] One study from Japan found significant risk for LBW for mothers exposed to aircraft noise above 85dBA.[61] Two smaller studies with lower quality scores also saw higher risk of LBW with higher noise exposure.[62] Although not all studies found significant associations, evidence from better-designed and larger studies supports a correlation between LBW and noise exposure.

Spontaneous abortion was investigated in three studies, with one finding significant risk for women working in sales, service, and office jobs with subjective noise exposure evaluations.[63] Another study found significant risk for spontaneous abortion in women exposed to noise levels

[55]Owoseni Joseph Sina, Ibikunle Michael Ayodele and IjabadeniyiOlasupo Augustine, 'The Effect of Noise Pollution on Physical and Mental Health of Pregnant Women in Ekiti State, Nigeria' (2017) 4(8) *European Journal of Pharmaceutical and Medical Research* 120–126.

[56]Menstrual irregularities could include short or long menstrual cycles, missed periods, abnormal bleeding, anovulation.

[57] S. Chalupka and A.N Chalupka, 'The Impact of Environmental and Occupational Exposures on Reproductive Health' (2009) *Journal of Obstetric, Gynaecologic and Neonatal Nursing (JOGNN)* 39 84 <doi:10.1111/j.1552-6909.2009.01091.x>. Accessed 12 May 2024.

[58] A.D McDonald, and others 'Prematurity and Work in Pregnancy' (1988) 45 *British Journal of Industrial Medicine*, 56–62; A.L Hartikainen-Sorri, and others, 'Occupational Noise Exposure during Pregnancy: A Case Control Study' (1988) 60 *International Archives of Occupational and Environmental Health* 279–283; C Zhan, and others, 'A Study of Textile Noise Influence on Maternal Function and Embryo Growth' (1991) 22 *Journal of West China University of Medical Sciences* 394–398; Zhang, J. and Cai, W.W., 'Occupational Hazards and Pregnancy Outcomes' (1992) 21 *American Journal of Industrial Medicine* 397–408; D Chen, and others 'Exposure to Benzene, Occupational Stress, and Reduced Birth Weight' (2000) 57 *Occupational and Environmental Medicine* 661–667.

[59] C Zhan, and others, 'A Study of Textile Noise Influence on Maternal Function and Embryo Growth' (1991) 22 *Journal of West China University of Medical Sciences* 394–398.

[60] A.L Hartikainen and others 'Effect of Occupational Noise on the Course and Outcome of Pregnancy' (1994) 20 *Scandinavian Journal of Work, Environment and Health* 444–450.

[61] T. Matsui and others, 'Association between the Rates of Low Birth Weight and/or Preterm Infants and Aircraft Noise Exposure' (2003) 58 *Nihon EiseigakuZasshi* 385–394.

[62] Y. Ando and H. Hattori, 'Statistical Studies on the Effects of Intense Noise during Human Fetal Life' (1973) 27 *Journal of Sound and Vibration* 101–110; P. Knipschild, H. Meijer, and H. Sallé, 'Aircraft Noise and Birth Weight' (1981) 48 *International Archives of Occupational and Environmental Health* 131–136.

[63] A.D McDonald and others 'Spontaneous Abortion and Occupation' (1986) 28 *Journal of Occupational Medicine* 1232–1238.

above 95 dBA.[64] A third study on environmental noise exposure (over six hours daily, subjectively evaluated) found risk for recurrent spontaneous abortion.[65] A Chinese study indicated that self-reported noise exposure during the first trimester was associated with congenital anomalies.[66] One study of black women exposed to airport noise reported a slight increase in birth defects (excluding polydactyly).[67] Experimental evidence suggests that prolonged exposure to loud noise during pregnancy may affect hearing later in life, with low frequencies posing a greater potential for harm.[68]

Legal Regime on Noise Pollution in Nigeria

The legal regime on Noise Pollution in Nigeria can be considered under two main headings: common law and statutes:

Common Law

The issue of noise pollution in Nigeria can be examined through the statutory framework and common law principles. Common law addresses noise pollution via the actionable tort of nuisance, which permits an aggrieved individual to seek damages for harm caused by offensive noise and to obtain an injunction to prevent further noise emissions.[69]

In the case of ***Abiola v Ijoma***,[70] the plaintiff and defendant were neighbours in a residential area, with the plaintiff maintaining a poultry farm at the rear of his house. The defendant housed four hundred chickens in pens adjacent to the boundary wall shared with the plaintiff. The plaintiff claimed that the excessive noise from the defendant's chickens, particularly in the early morning hours, disturbed his sleep. The court ruled in favour of the plaintiff, awarding damages for the nuisance and issuing an injunction to prevent the defendant from continuing such disturbances.

[64] C. Zhan, and others, 'A Study of Textile Noise Influence on Maternal Function and Embryo Growth' (1991) 22 *Journal of West China University of Medical Sciences* 394–398

[65] Y. Wang, Y. Liu, and Y. Dai, 'A 1:2 Matched Case-Control Study on Risk Factors of Unexplained Recurrent Spontaneous Abortion' (2011) 19 *Chinese Journal of Prevention and Control of Chronic Diseases* 49–51.

[66] J Zhang, W.W Cai, and D.J Lee, 'Occupational Hazards and Pregnancy Outcomes' (1992) 21 *American Journal of Industrial Medicine* 397–408.

[67] Ibid

[68] Ibid

[69] *Luxmoore J. in Vandepant v Mayfair Hotel Co. Ltd* (1930) 1 Ch. 138 recognizes the inevitability of some discomfort arising from noise in that noise pollution interferes with the healthy enjoyment of the environment.

[70] (1970) 2 ANLR 268.

Similarly, in ***Tebite v Marine and Trading Co. Ltd***.[71] the plaintiff, a legal practitioner, occupied premises where he conducted his law practice. The defendants, who engaged in boat building and repair on adjoining premises, were accused of causing persistent loud noise and noxious fumes through continuous machine operation. It was established during the proceedings that the noise generated by the defendants was excessively loud, surpassing typical noise levels in even the noisiest areas of Nigeria. The court ruled in favour of the plaintiff, awarding damages and restraining the defendants from further noise nuisance.

In ***Moore v Nnado***,[72] the plaintiff complained that the defendant played music at unreasonably loud levels late into the night. The court found the defendant liable for causing a nuisance, ordering him to pay costs to the plaintiff and granting an injunction to prevent further noise disturbances.

Despite these legal precedents, the common law remedy of court action has limitations in effectively addressing noise pollution in Nigeria due to several socioeconomic factors. High legal fees and the complexities of the adversarial justice system can be significant deterrents.[73]Additionally, there is a traditional tendency among Nigerians to avoid legal confrontations with neighbours or others, which further discourages the pursuit of legal action. Consequently, many individuals affected by noise pollution may refrain from seeking judicial redress, even when directly impacted.[74]

Laws Prohibiting Noise Pollution in Nigeria

National Environmental Standards and Regulations Enforcement Agency (NESREA) Act CAP N164 2010

The National Environmental Standard and Regulations Enforcement Agency (NESREA) Act is the major environmental law in Nigeria. The agency is charged with the responsibility of enforcing environmental laws, regulations and standards in deterring people, industries and organizations from polluting and degrading the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination and liaison with relevant stakeholders within and outside Nigeria on

[71] (1971) I UILR 432.
[72] (1967) FNLR 15.
[73] O.S Oyelade, 'Conflict Resolution and Human Rights in Traditional African Society' (2007) *JIL* 45 in Hakeem Ijaiya, 'Legal Regime of Noise Pollution in Nigeria' (2014) *Beijing Law Review (BLR)* 4.
[74]Ijaiya, Ibid.

matters of enforcement of policies and guidelines.[75] NESREA also has the responsibility to enforce all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforce compliance with the provisions of all international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory.[76]

NESREA was established to replace the Federal Environmental Protection Agency (FEPA) Act, which was repealed with the creation of the Ministry of the Environment.[77] NESREA's vision and mission focus on ensuring a cleaner and healthier environment for Nigerians and fostering a sense of personal and collective responsibility towards building an environmentally conscious society, thereby achieving sustainable development in Nigeria. The agency is specifically charged with biodiversity conservation and the sustainable development of natural resources, alongside the coordination and enforcement of environmental standards, regulations, rules, laws, policies, and guidelines.

NESREA is authorized to develop regulations that set specifications and standards to safeguard resources, promote public health and welfare, and enhance the natural development and productive capacity of the nation's human, animal, marine, and plant life.[78] Violations of these specifications and standards constitute an offence, punishable by a fine not exceeding N200,000 or imprisonment for a term not exceeding one year, or both, with an additional fine of N20,000 for each day the offence continues.[79] Corporate violators face a fine not exceeding N2,000,000 and an additional fine of N50,000 per day the offence persists.[80]

Regarding noise and noise pollution, NESREA is empowered, in consultation with appropriate authorities, to:

(a) Identify major noise sources, establish noise criteria, and develop noise control technologies; and

(b) Formulate regulations concerning noise emission control or abatement necessary to protect public health and welfare.[81]

[75] Section 2 NESREA Act (as amended)
[76] Ibid section 7(c)
[77] Ibid Section 36
[78] Section 20 NESREA Act
[79] Ibid section 20(3)
[80] Ibid section 20(4)
[81] Ibid section 22(1)

Violators of these regulations are subject to a fine not exceeding N50,000 or imprisonment for a term not exceeding one year, or both, with an additional fine of N5,000 for each day the offence continues.[82] Corporate violators face a fine not exceeding N500,000 and an additional fine of N10,000 per day the offence persists.[83]

The NESREA Act grants the Minister of Environment the authority to make regulations to ensure the Act's efficacy. Consequently, the **National Environmental (Noise Standards and Control) Regulations 2009** were enacted.[84] These regulations aim to maintain a healthy environment for all Nigerians, ensure the tranquillity of their surroundings, and safeguard their psychological well-being by regulating noise levels. The regulations prescribe maximum permissible noise levels for facilities or activities, provide for noise control measures, and outline mitigation strategies for noise reduction.[85] NESREA is empowered to seize, impound, confiscate, or prohibit the use of any property, tools, machinery, or other instruments that cause or are likely to cause excessive noise emissions.[86] Violators of these regulations are liable to a fine of N5,000 for each day the offence continues and, upon conviction, a fine not exceeding N50,000 or imprisonment for a term not exceeding one year, or both. Corporate offenders face a fine not exceeding N500,000 and an additional fine of N10,000 per day the offence persists.

Barriers to the Enforcement of Noise Pollution Laws

With respect to NESREA, Stewart has stated that a major problem with the agency is its lack of autonomy to develop and implement its compliance and enforcement program free from political intervention or external pressure related to economic development or other government or private sector priorities.[87] The reason for this is that the chairman of the Governing Council of the Agency is appointed by the President on the recommendation of the minister.[88]The method of appointment of the permanent secretary and the Director General of the agency is not provided for. Agency funding is very much tied to the Federal Government.[89]Another major problem of

[82] Ibid Section 22(3)
[83] Ibid Section 22(4)
[84] Statutory Instrument No. 35 of 2009
[85] Regulation 1
[86] Regulation 12 (1)
[87]Ngozi F. Stewart, 'A Roadmap for the Effective Enforcement Of Environmental Laws In Nigeria' (2011) 2 *National Environmental Law Review*, 48
[88] Section 3(1)(a) NESREA Act
[89] Ibid Section 13(2)(a)-(c)

the Agency is that many of the staff employed by the agency to carry out technical roles are not trained.[90] The above listed defects prevent NESREA from carrying out her duties effectively. There is need to address them or the problems of noise pollution in Nigeria will continue unabated. Ijaiya and Joseph have equally asserted that most of these environmental laws are written on paper but yet to be implemented as a result of the challenges and deficiencies of enforcement.[91] The enforcement agencies; the police, the court, the state and local government lack effective enforcement strategies for the implementation of the laws.[92]

The NESREA Act does not recognize that noise pollution can lead to negative reproductive health outcomes, including diseases. Notably, there has not been a single case of prosecution under the NESREA Act for noise pollution, indicating a significant gap in the enforcement of noise pollution regulations.

Domestic Legislation on Protection of Reproductive Health

The Nigerian Health Policy

In September 1994, Nigeria participated in the International Conference on Population and Development (ICPD), held in Cairo, Egypt.[93] The ICPD marked the beginning of the paradigm shift from the concept of Maternal and Child Health and Family Planning (MCH/FP) to Reproductive Health.[94] At the ICPD, the nations of the world reached an understanding on the key concepts of reproductive health and reproductive rights and agreed that reproductive health is a right for all men, women, and adolescents. The global community, at the ICPD, further agreed that reproductive health and rights are indispensable to people's health and development, and set the goal of achieving universal access to reproductive health information and services in the year 2015.[95] Thus, it became imperative for every nation to consider as important the reproductive health concept and promote quality reproductive health services in the interest of

[90] Stewart (n88) ibid
[91] H. Ijaiya, and O. T. Joseph, 'Rethinking Environmental Law Enforcement in Nigeria'. (2014) 5 *Beijing Law Review*, 319
[92] Ibid
[93] Federal Ministry Of Health, Abuja, Nigeria (2001) National Reproductive Health Policy And Strategy To Achieve Quality Reproductive And Sexual Health For All Nigerians
[94] Ibid
[95] Ibid

the wellbeing of the people, enhanced social life of the community, national development, and the future of the human society.[96]

Nigeria has some policies and laws relating to reproductive health and rights. On the policy level, the Nigerian State has seen many reproductive health policies emanate from the Government. The first policy worthy of mention is the 1988 National Health Policy and Strategy, which goal was to enable Nigerians to achieve productive lives, socially and economically.[97]There is also the National Reproductive Health Policy and Strategy 2001 and the revised national Health Policy 2004. These shall be analysed hereunder.

National Reproductive Health Policy and Strategy

In 2001, the National Reproductive Health Policy and Strategy was developed by the Federal Government. This policy was developed to address the following issues among others: the unacceptably high levels of maternal and neonatal morbidity and mortality; the increasing rate of infection with the Human Immunodeficiency Virus including MTCT and the prevalence of other STIs; Increasing high-risk behaviour of adolescents leading to premarital sexual encounters, early marriage, unintended pregnancies, unsafe abortions and the social consequences such as school dropout with subsequent negative intergenerational effects; the current fragmentation of reproductive health activities and the limited impact of existing programmes in reducing sexual and reproductive ill health, and improving reproductive health and wellbeing; the low level of male involvement in reproductive health; the low level of awareness and utilization of contraceptive and natural family planning services; Inadequate services for infertility and the associated misery; to further the implementation of the programme of action of the International Conference on Population and Development (ICPD, 1994).[98] According to the Reproductive health policy of 2001, its goal shall be to create an enabling environment for appropriate action,

[96] Ibid

[97] Federal Ministry of Health, *National Policy and Strategy to achieve Health for all Nigerians*, 1998. Though this policy did not directly provide for reproductive health care, it stipulated primary health care as encompassing maternal and child health and also family planning services. MT LADAN, Review of Existing Reproductive Health Policies and Legislations in Nigeria, A Paper Presented At A One Day Stakeholders' Forum On Reproductive Health In Nigeria. Organized By: The Independent Policy Group, Abuja. Date: 20th April 2006 Venue: Tahir Guest Palace Hotel, Kano – Nigeria.

[98] Federal Ministry Of Health, Abuja, Nigeria (2001) National Reproductive Health Policy And Strategy To Achieve Quality Reproductive And Sexual Health For All Nigerians

and provide the necessary impetus and guidance to national and local initiatives in all areas of Reproductive Health.[99]

The specific objectives of the Reproductive Health policy includes: To reduce maternal morbidity and mortality due to pregnancy, childbirth by 50%;[100] To reduce perinatal and neonatal morbidity and mortality by 30%;[101] To reduce the level of unwanted pregnancies in all women of reproductive age by 50%;[102] To reduce the incidence and prevalence of sexually transmitted infection including the transmission of HIV infection;[103] Limit all forms of gender-based violence and other practices that are harmful to the health of women and children;[104] To reduce gender imbalance in availability of reproductive health services;[105] To reduce the Incidence and prevalence of reproductive cancers and other non-communicable diseases;[106] To increase knowledge of reproductive biology and promote responsible behaviours of adolescents regarding prevention of unwanted pregnancy and sexually transmitted infections;[107] To reduce gender imbalance in all sexual and reproductive health matters;[108] To reduce the prevalence of infertility and provide adoption services for infertile couples;[109] To reduce the incidence and prevalence of infertility and sexual dysfunction in men and women;[110] To increase the involvement of men in reproductive health issues;[111] and to promote research on reproductive health issues.[112]

Despite the laudable provisions above, the policy fails to provide for comprehensive reproductive health concerns like safe abortion. Furthermore, while it provides for different aspects of reproductive health, it did not consider the idea of reproductive health and its connection to noise pollution.

[99] Article 3.1 ibid.
[100] Article 3.2.1 Ibid
[101] Article 3.2.2 Ibid
[102] Article 3.2.3 Ibid
[103] Article 3.2.4 Ibid
[104] Article 3.2.5 Ibid
[105] Article 3.2.6 Ibid
[106] Article 3.2.7 Ibid
[107] Article 3.2.8 Ibid
[108] Article 3.2.9 Ibid
[109] Article 3.2.10 Ibid
[110] Article 3.2.11 Ibid
[111] Article 3.2.12 Ibid
[112] Article 3.2.13 Ibid

The Revised National Health Policy 2004

The National Health Policy was revised in 2004, with the revised version[113] specifying 'national standards for reproductive health'.[114] The 2004 version of the policy makes provision for different aspects of reproductive health.[115] The policy states that the goal of the HIV/AIDS Policy is to: control the spread of HIV in Nigeria; provide equitable care and support for those infected by HIV; and mitigate its impact to the point where it is no longer of public health, social and economic concern, such that all Nigerians will be able to achieve socially and economically productive lives free of the disease and its effects.[116] This particular policy, even though recent, has no provision for reproductive health diseases and negative outcomes caused by noise pollution or any type of environmental pollution. Thus, while Nigeria is not lacking in policies, the problem is that these policies have not made provision for protection from negative reproductive health outcomes arising from noise pollution.

Recommendations

1. There is a need to enhance NESREA's autonomy, ensuring that she operates independently, free from political interference, with adequate funding and resources to enforce noise pollution regulations effectively.
2. There is a need to update the existing Regulations to reflect current scientific understanding and technological advancements. This also involves investing in research and development of new technologies aimed at reducing noise pollution, particularly in high risk industries and urban settings.
3. On the part of NESREA, she needs to strictly enforce existing noise control regulations, and impose significant penalties on violators to deter noncompliance.
4. Government in partnership with Non-Governmental Organisations (NGOs) should launch awareness campaigns to educate the public on the health risks associated with noise pollution and promote community involvement in noise reduction initiatives.

[113] The objectives of this revised version include reducing maternal mortality and morbidity, neo natal morbidity, promoting gender equity in reproductive and sexual health matters, etc. Federal Ministry of Health (Nigeria), *Revised National Health Policy,* 2004,
[114] Ibid
[115] Chapter 6 of the National Health Policy 2004
[116] Article 6.2 Ibid

5. There is a need to develop comprehensive noise pollution legislation that addresses all sources of noise and incorporates provisions for emerging concerns, such as the impact on reproductive health.
6. There is a need to collaborate with international organizations and other countries to share best practices, technologies, and strategies for combating noise pollution.

Conclusion

Globally, noise represents a serious public health problem. This is also the case in Nigeria. Despite the evidence about the many medical, social, and economic effects of noise, the Nigerian society, seem oblivious to the obvious fact that our cities are becoming increasingly more polluted with noise and the urgent need to appreciate the nexus between noise and reproductive health problems. Besides, there are issues with the relevant noise control regulations and enforcement of same.

Nigeria is not lacking in terms of legislation prohibiting noise pollution. However, there is still the problem of enforcement of the enacted laws and this appears to be as a result of lack of political will on the part of government. This is also further compounded by the much touted "Nigeria factor" corruption whereby some polluters, especially those in the corporate category, get away with flagrant breaches of our environment legislation. The lack of effective implementation on existing law on noise pollution is also a contributory factor to the state of the environment in Nigeria.

This paper examined the concept of noise pollution and its effect on the human reproductive health. It also analysed the laws against noise pollution, the laws protecting reproductive health in Nigeria and how ineffective it has been. The paper finds that noise has the potential to adversely affect the reproductive health of persons within the vicinity. It therefore, made some salient recommendations to that effect. By adopting these recommendations, Nigeria can make significant strides in reducing noise pollution and safeguarding the health and wellbeing of its citizens.